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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
15 GODDARD, the Attorney General; and THE
16 CIVIL RIGHTS DIVISION OF THE
ARIZONA DEPARTMENT OF LAW,

17
18 Plaintiff,

19 vs.

20 HARKINS AMUSEMENT ENTERPRISES,
INC.; HARKINS ENTERPRISES, INC.;
21 HARKINS CAMELVIEW THEATRES, INC.;
HARKINS THEATRES, INC.; HARKINS
22 CENTERPOINT, INC.; HARKINS
PARADISE CINEMAS, LLC; HARKINS
23 SHEA CINEMAS, LLC; HARKINS
24 SEDONA CINEMAS, LLC; HARKINS
CINEMAS, LLC; HARKINS ARIZONA
25 MILLS CINEMAS, LLC; HARKINS

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No. CV2006-019198

COMPLAINT
(Non-classified Civil)

1 METRO CENTER CINEMAS, LLC; HARKINS
2 REEL DEALS, LLC; HARKINS PHOENIX
3 CINEMAS, LLC; HARKINS CHANDLER
4 FASHION CENTER CINEMAS, LLC;
5 HARKINS SUNSET CINEMAS, LLC;
6 HARKINS SCOTTSDALE 101 CINEMAS,
7 LLC; HARKINS YUMA PALMS, LLC;
8 HARKINS TEMPE MARKETPLACE, LLC;
9 HARKINS ADMINISTRATIVE SERVICES,
10 INC.; RED'S MOVIOLA I, LLC; RED'S
11 MOVIOLA, INC.; HARKINS SPECTRUM,
12 LLC; HARKINS BRICKTOWN CINEMAS,
13 LLC; HARKINS CASA GRANDE, LLC;
14 HARKINS CHINO HILLS, LLC; HARKINS
15 INVESTMENTS, LLC; HARKINS MORENO
16 VALLEY, LLC; HARKINS PARKE WEST,
17 LLC; HARKINS REEL DEALS, LLC;
18 HARKINS SANTAN VILLAGE, LLC;
19 HARKINS SOUTHLAKE, LLP; HARKINS
20 TEXAS ENTERPRISES, LLC; HARKINS
21 TUCSON SPECTRUM, LLC; HARKINS
22 CHANDLER CROSSROADS, LLC, HARKINS
23 NORTERRA, LLC, HARKINS STAPLETON,
24 LLC; and CORPORATIONS A-Z,

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

INTRODUCTION

This is an action brought under the Arizonans with Disabilities Act, A.R.S. § 41-1492, *et seq.*, ("AzDA"), to correct a discriminatory public accommodation practice, to provide appropriate relief to aggrieved persons and to vindicate the public interest. Movies are a vital part of the social, cultural and political life of Arizonans. Movies and their stars, themes, messages and characters infuse our social activities, entertainment, discussions and shared experiences. The State brings this matter to redress Defendants failure to provide sufficient

1 auxiliary aids and services for the class of persons who are deaf or hard of hearing and the
2 class of persons who are blind or visually impaired to allow for full and equal enjoyment of
3 movies shown at their theaters in Arizona in violation of AzDA, A.R.S. § 41-1492.02(A),(B)
4 and (F)(3).

5 JURISDICTION AND VENUE

6 1. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1492.09.

7 2. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

8 PARTIES

9 3. The Civil Rights Division of the Arizona Department of Law is an administrative
10 agency established by A.R.S. § 41-1401 to enforce the provisions of the Arizona Civil Rights
11 Act, A.R.S. § 41-1401, *et seq.*, including AzDA.

12 4. The State brings this action on its own behalf and on behalf of Frederick
13 Lindstrom (“Lindstrom”), by and through his parent, Rachel Lindstrom, aggrieved persons, and
14 the class of similarly-situated persons who are deaf or hard of hearing and do not experience
15 full and equal enjoyment of movies without a textual representation of the soundtrack because
16 of their disability (“class of persons who are deaf or hard of hearing”); as well as Larry Wanger,
17 aggrieved person, and the class of blind or visually-impaired persons who do not experience
18 full and equal enjoyment of movies without an auditory representation of the visual aspects of a
19 film because of their disability (“class of persons who are blind or visually impaired”), pursuant
20 to A.R.S. § 41-1492.09(A), (B) and (C).

21 5. Harkins Amusement Enterprises, Inc. (“Harkins”) and its affiliates: Harkins
22 Enterprises, Inc.; Harkins Camelview Theatres, Inc.; Harkins Theatres, Inc.; Harkins
23 Centerpoint, Inc.; Harkins Paradise Cinemas, LLC; Harkins Shea Cinemas, LLC; Harkins
24 Sedona Cinemas, LLC; Harkins Cinemas, LLC; Harkins Arizona Mills Cinemas, LLC; Harkins
25 Metro Center Cinemas, LLC; Harkins Reel Deals, LLC; Harkins Phoenix Cinemas, LLC;
26 Harkins Chandler Fashion Center Cinemas, LLC; Harkins Sunset Cinemas, LLC; Harkins

1 profound, bilateral hearing loss which is so severe that he cannot hear or discriminate speech.
2 Lindstrom does not use hearing aids or FM equipment for sound amplification.

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

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

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

20 11. Due to their disabilities, Lindstrom and the class of similarly-situated individuals
21 require textual representation of the soundtrack in the form of either open captioning which
22 appears on the screen for the entire audience's viewing or closed captioning which is
23 transmitted onto a seat-based captioning device for viewing by the movie customer who is deaf
24 or hard of hearing.

25
26 ¹ < http://www.acdhh.org/demo_aztotal.asp > (last visited on December 5, 2006).

1 12. Movie theater owners and operators can purchase and install available technology
2 in their theater auditoriums which would allow them to display captions to provide a textual
3 representation of the sound track of a movie either in open-captioned or closed-captioned
4 format.²

5 13. There are two types of open-captioning. One type of open captioning requires the
6 captioning to be “burned” onto an individual reel of film. There may be a limited number of
7 reels of film upon which captioning is burned. A limited number of open-captioned films may
8 be obtained through an arrangement between the theater, Insight Cinemas and participating film
9 studios.³

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

16 15. Closed-captioning technology, on the other hand, displays the text only to the
17 movie customer utilizing a seat-based captioning device. One type of seat-based captioning is
18 Rear Window® Caption (“RWC”), a technology designed for movie theaters. With RWC,
19 captions are recorded on a computer disc and played simultaneously with regular screenings of
20 the movie. As the movie appears on the screen, the captions are transmitted to an LED data
21 panel installed on the rear wall of the theater auditorium; and the text is reversed. Movie
22 customers then use portable, clear reflector panels placed at their seats to reflect the captions
23 where captions appear superimposed on or beneath the movie screen. Other seat-based
24

25 ² (For a video clip demonstrating captioning see <http://ncam.wgb.org/richmedia/media/lionking/>) (last visited
December 5, 2006).

26 ³ < <http://www.insightcinema.org> > (last visited December 5, 2006).

1 captioning systems exist, including but not limited to Bounce Back Mirror Image Captioning
2 System and wearable caption displays.

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

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

10 18. According to the Arizona Department of Economic Security, it is estimated that
11 in 2004 there are 29,602 people who are legally blind and 137,131 people with low vision
12 residing in Arizona.⁵

13 19. Due to their disabilities, Wanger and the class of similarly-situated individuals
14 require an audio representation of the visual aspects of a film.

15 20. There is commercially-available technology, such as DVS Theatrical® (“DVS”) which
16 delivers descriptive narration of films via listening systems to movie patrons in headset
17 or other receivers. The descriptive narration enables people who are blind or visually impaired
18 attending movies to hear the narration to get visually-delivered information about the film in an
19 audio format through descriptions.

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

24 ⁴< <http://ncam.wgbh.org/mopix/> > (last visited December 5, 2006).

26 ⁵ See < http://www.azdes.gov/rsa/blind_01.asp > (last visited December 5, 2006); also see
< http://www.azdes.gov/rsa/vis_imp_01.asp > (last visited December 5, 2006).

1 22. Major movie studios distribute wide-release movies with descriptive narration
2 capability.

3 23. On February 17, 2006, Rachel Lindstrom filed a timely complaint of public
4 accommodation discrimination on behalf of her minor son with the State's Civil Rights
5 Division pursuant to A.R.S. § 41-1492.09(A), in which she alleged that her son had been the
6 victim of disability discrimination by Defendants. Specifically, Ms. Rachel Lindstrom alleged
7 that she called the box office of the North Valley 16 Theatres on December 14, 2005 to find a
8 captioned showing of King Kong which was playing about eleven times daily at that theater.
9 Ms. Lindstrom further alleged there were no open-captioned showings of King Kong or
10 auxiliary aids to display closed captioning at any of the theater auditoriums.

11 24. On February 17, 2006, Larry Wanger filed a timely complaint of public
12 accommodation discrimination with the State's Civil Rights Division pursuant to A.R.S. § 41-
13 1492.09(A), alleging he visited the North Valley 16 Theatres in late August 2005 to see a
14 movie with descriptive narration, but Defendants' employee at the Service Desk stated the
15 theater did not have that service for movie customers who are blind.

16 25. The State's Civil Right Division investigated the administrative complaints of
17 Rachel Lindstrom and Larry Wanger and investigated Harkins and affiliates' general
18 compliance with the provision of auxiliary aids and services pursuant to its authority under
19 A.R.S. § 41-1492.09.

20 26. The Division found that reasonable cause exists to believe that Harkins and
21 affiliates discriminated against Lindstrom, a person with a disability, and the class of similarly-
22 situated persons who are deaf or hard of hearing and require a textual representation for access
23 to a movie's soundtrack and dialogue, in violation of AzDA. Harkins and affiliates have failed
24

25 ⁶ For a video clip demonstrating this technology, see < <http://ncam.wgbh.org/richmedia/media/lionking/> > (last
26 visited December 5, 2006).

1 to install equipment to provide auxiliary aids and services for viewing captioned movies; and
2 have shown an inadequate number of open-captioned films, at limited show times and restricted
3 theater locations for Frederick Lindstrom and the class of people who are deaf or hard of
4 hearing and require a textual representation of the dialogue and sound track of movies.

5 27. The Division found that at all times relevant to Lindstrom's administrative
6 complaint, the North Valley 16 Theatres did not show any open-captioned movies nor did it
7 have any equipment installed to offer closed-captioned movies.

8 28. The Division also found that at the time Lindstrom attempted to find a captioned
9 movie for her son to see at a Harkins theater, Harkins and affiliates offered open-captioned
10 movies in only two of the 262 auditoriums in their 21 theaters.

11 29. The Division also found that at all times relevant to Lindstrom's administrative
12 complaint, open-captioned movies were generally shown only twice daily in one matinee
13 showing and one evening showing scheduled at 9 p.m. or later.

14 30. The Division also found that open-captioned movies were at all times relevant to
15 Lindstrom's administrative complaints, available at any theater owned and operated by Harkins
16 and/or its affiliates outside of the Phoenix metropolitan area.

17 31. The Division found that reasonable cause exists to believe that Defendants
18 discriminated against Wanger, a person with a disability, and the class of similarly-situated
19 persons who are blind or visually impaired and require an auditory representation of the visual
20 elements of movies, in violation of AzDA. Specifically, Harkins and affiliates failed to offer
21 any descriptive narration services to their customers.

22 32. The Division found at all times relevant to these administrative complaints that
23 none of the 262 auditoriums in their 21 theaters in Arizona were equipped with auxiliary aids to
24 provide descriptive narration.

25 33. On October 17, 2006 the State issued a finding ("the Cause Finding") that
26 reasonable cause exists to believe that Defendants discriminated against Fredrick Lindstrom, a

1 person with a disability, and the class of similarly-situated persons who are deaf or hard of
2 hearing and require a textual representation, by denying full and equal enjoyment of Harkins
3 and its affiliates' services in violation of AzDA.

4 34. On October 17, 2006 the State also issued a finding ("the Cause Finding") that
5 reasonable cause exists to believe Defendants discriminated against Larry Wanger, a person
6 with a disability, and the class of similarly-situated persons who are blind or visually impaired
7 and require an auditory representation of the visual features of the film, by denying full and
8 equal enjoyment of Harkins and affiliates' services in violation of AzDA.

9 35. Since the issuance of the Cause Findings, the State, Lindstrom, Wanger and
10 Defendants attempted conciliation. To promote conciliation efforts, the State, Lindstrom,
11 Wagner and Defendants entered into a tolling agreement to extend the period for conciliation
12 until December 16, 2006. Having exhausted administrative requirements, the State is
13 authorized to file this Complaint pursuant to A.R.S. § 41-1492.09.

14 STATEMENT OF CLAIM

15 **(Disability Discrimination in Violation of AzDA)**

16 36. The State realleges and incorporates by reference the allegations contained in
17 Paragraphs 1 through 35 of this Complaint.

18 37. Defendants now and at all relevant times have owned and/or operated a place of
19 public accommodation in Arizona within the meaning of A.R.S. § 41-1492(9)(c).

20 38. AzDA prohibits discrimination against an individual on the basis of disability in
21 the full and equal enjoyment of the goods, services, facilities, privileges, advantages or
22 accommodations of any place of public accommodation by any person who owns or operates a
23 place of public accommodation.

24 39. Discrimination includes subjecting an individual based on disability, to a denial
25 of the opportunity to participate in or benefit from the goods, services, facilities, advantages,
26 privileges or accommodations of an entity; or the loss of the opportunity to participate in or

1 benefit from goods, services, facilities, privileges, advantages or accommodations that are not
2 equal to that afforded other individuals.

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

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

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

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

19 44. Defendants discriminated against Lindstrom and the class of similarly-situated
20 persons who are deaf or hard of hearing, by not providing access to the sound track of movies
21 through a textual representation and therefore, denying them full and equal enjoyment of their
22 services, in violation of A.R.S. § 41-1492.02(A).

23 45. Auxiliary aids and services are commercially available for Harkins and its
24 affiliates to purchase and install in their movie theaters, which would allow for full and equal
25 enjoyment of their services through textual representations of the film by Lindstrom and the
26 class of similarly-situated people who are deaf or hard of hearing.

1 46. Defendants discriminated against Wanger and the class of persons who are blind
2 or visually impaired, by not providing access to descriptions of visual aspects of films through
3 descriptive narration and therefore, denying them full and equal enjoyment of their services, in
4 violation of A.R.S. § 41-1492.02(A).

5 47. Auxiliary aids and services are commercially available for Harkins and its
6 affiliates to purchase and install which would allow for full and equal enjoyment of the
7 services through descriptive narration by Wanger and the class of persons who are blind or
8 visually impaired.

9 48. Defendants failed to take steps to install necessary auxiliary aid equipment to
10 display closed captioning or otherwise provide captioned movies in a sufficient number of
11 theater auditoriums, show times, and locations; failed to install any necessary auxiliary aid
12 equipment for transmitting descriptions; have not developed staff training to ensure that staff
13 can properly operate the captioning and descriptive technology and assist customers with
14 sensory disabilities; and provide equal access to information about described and captioned
15 movies, show times and other accommodations and services for people with sensory
16 disabilities in the same avenues available to other movie customers.

17 49. By failing to take these steps to provide auxiliary aids and services, Defendants
18 discriminated against Lindstrom and the class of similarly-situated persons who are deaf or
19 hard of hearing and do not have access to the soundtrack of movies without a textual
20 representation because of their disabilities, in violation of A.R.S. § 41-1492.02(F)(3).

21 50. By failing to take these steps to provide auxiliary aids and services, Defendants
22 discriminated against Wanger and the class of blind or visually-impaired persons and do not
23 have access to the visual aspects of a film without descriptive narration because of their
24 disabilities, in violation of A.R.S. § 41-1492.02(F)(3).

25 51. As a result of Defendants' discrimination, upon information and belief, Lindstrom
26 and the class of persons who are deaf and hard of hearing have suffered denial of civil rights,

1 inconvenience, loss of enjoyment and other non-pecuniary monetary damages.

2 52. As a result of Defendants' discrimination, Wanger and the class of blind and
3 visually impaired have suffered denial of civil rights, inconvenience, loss of enjoyment and
4 other non-pecuniary monetary damages.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, the State requests that this Court:

7 A. Enter judgment on behalf of the State, finding that Defendants unlawfully
8 discriminated against Lindstrom and the class of similarly-situated persons who are deaf or
9 hard of hearing, in violation of AzDA because of their failure to install a sufficient number of
10 system(s) for providing captioning for movies that the film studios had captioned and which
11 are selected for showing(s) at any of Defendants' theater(s).

12 B. Enter judgment on behalf of the State, finding that Defendants unlawfully
13 discriminated against Wanger and the class of similarly-situated persons who are blind or
14 visually impaired, in violation of AzDA because of their failure to install a sufficient number
15 of system(s) for providing descriptions for movies that the film studios had described and
16 which are selected for showing(s) at any of Defendants' theater(s).

17 C. Enjoin Defendants, their successors, assigns and all persons in active concert or
18 participation with Defendants, from engaging in any public accommodation practice that
19 discriminates on the basis of disability in violation of AzDA, as allowed by A.R.S. § 41-
20 1492.09(B).

21 D. Enter injunctive relief against Defendants, including but not limited to, requiring
22 Defendants to install necessary auxiliary aids and services in additional auditoriums in their
23 existing theaters and any acquired or newly-built theaters; implement an appropriate training
24 program and evaluation of employees regarding operation of the captioning and description
25 equipment and assistance of movie patrons with sensory disabilities; develop a method of
26 soliciting information from movie customers who are deaf or hard of hearing about

1 preferences in auxiliary aids and services as newer captioning technology becomes
2 commercially available; and improve access to information about movies, show times and
3 other services and accommodations at Harkins theaters to people with sensory disabilities.

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

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

10 G. Order the State to monitor Defendants' compliance with AzDA.

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

13 I. Grant such other and further relief as this Court may deem just and proper in the
14 public interest.

15 DATED this 5th day of December, 2006.

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