

**SETTLEMENT AGREEMENT BETWEEN**  
**THE UNITED STATES OF AMERICA**  
**AND TENTH FRAME CINEMAS, LLC; DANVILLE CINEMAS LLC; SOMERSET**  
**CINEMAS, LLC AND MOREHEAD CINEMAS, LLC,**  
**UNDER THE AMERICAN WITH DISABILITIES ACT**  
**IN DEPARTMENT OF JUSTICE COMPLAINT NUMBER 592026**

**THE PARTIES**

- 1) The parties to this agreement are the United States of America and the Cinemas, LLC as owners and operators of the Cinema facilities.

**BACKGROUND**

- 2) This matter was initiated by a complaint filed with the United States Department of Justice ("the Department"). The complaint alleged that Morehead Cinemas, LLC, was in violation of Title III of the Americans with Disabilities Act ("ADA" or "the Act"), 42 U.S.C. § 12181-12189, and its implementing regulation, 28 C.F.R. Pt. 36, because it does not provide appropriate captioning and other appropriate technology for persons who are deaf or hard of hearing to view newly released movies. The Department investigated the complaint pursuant to its authority under 42 U.S.C. § 12188(b).
- 3) Mike Bartley has an ownership interest in four theaters: (1) Tenth Frame Cinemas, LLC ("Tenth Frame Cinemas"), doing business in Mt. Sterling, Kentucky; (2) Danville Cinemas, LLC ("Danville Cinemas"), doing business in Danville, Kentucky; (3) Somerset Cinemas, LLC ("Somerset Cinemas"), doing business in Somerset, Kentucky; and (4) Morehead Cinemas, LLC ("Morehead Cinemas"), doing business in Morehead, Kentucky (collectively, the "Cinemas, LLC"). Mike Bartley and Robert Mayfield serve as the Chief Operating Officers of the Cinemas, LLC and are responsible for the Cinema facilities' operations.
- 4) The Tenth Frame Cinema facility was constructed in 2001, the Danville Cinema and Somerset Cinema facilities were constructed in 2004 and the Morehead Cinema facility was constructed in 2008. The Tenth Frame Cinema facility, the Danville Cinema facility, and the Somerset Cinema facility have eight screens each and the Morehead Cinema

facility has six screens. The Cinema facilities show movies produced in digital cinema format.

- 5) The parties have decided to resolve this matter as set forth below without adjudication of this dispute. This agreement is for settlement purposes only. It does not constitute an admission of guilt or an admission by the Cinemas, LLC that they engaged in any acts or practices, including the acts or practices described above, that constitute a violation of the ADA.

## **SUBJECTS OF THE AGREEMENT**

- 6) The subjects of this settlement agreement are:
  - a) The acquisition of closed movie captioning devices for the theaters in Kentucky owned and/or operated by Cinemas, LLC and;
  - b) the acquisition of receivers and headsets for assistive listening systems and audio description technology for the theaters in Kentucky owned and/or operated by Cinemas, LLC;
  - c) the maintenance and promotion of the use of closed movie captioning devices, receivers and headsets for assistive listening systems and audio description technology for the theaters in Kentucky owned and/or operated by Cinemas, LLC.

## **AGREEMENT**

- 7) The Cinema facilities are each places of public accommodation, because they are motion picture houses or theaters, and are thus subject to the requirements of Title III of the ADA. 42 U.S.C. § 12182(7)(C); 28 C.F.R. § 36.104.
- 8) Cinemas, LLC, as private entities that own, operate, lease, or lease to places of public accommodation, the Cinema facilities, are public accommodations also subject to the requirements of Title III of the ADA. 42 U.S.C. § 12182(7)(C); 28 C.F.R. § 36.104.
- 9) Under the ADA, a public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking the steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered, or would result in an undue burden. 28 C.F.R. § 36.303(a)

- 10) Under the ADA, a public accommodation shall ensure that its movie theater auditoriums provide closed movie captioning and audio description whenever they exhibit a digital movie that is distributed with such features. 28 C.F.R. 36.303(g)(2). There is no requirement for a public accommodation to use open movie captioning as a means of compliance even if providing closed movie captioning for digital movies would be an undue burden. 28 C.F.R. 36.303(g)(10). If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, devices, facilities, privileges, advantages, or accommodations being offered or in an in an undue burden, i.e., significant difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or such burden but would nevertheless ensure that , to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the accommodation. 28 C.F.R. 36.303(h).

### DEFINITIONS

- 11) The definitions of the following terms, as defined in 28 C.F.R. 36.303(g)(1), shall apply to this Settlement Agreement:
- a) **"Closed Movie Captioning"** is the written display of a movie's dialogue and non-speech information such as the music, the identity of the character who is speaking, and the other sounds or sound effects, made available only to those movie patrons who request it. When requested, the captions are delivered via individual captioning devices used by patrons at their seats. Closed movie captioning does not result in captions being shown to all patrons by being displayed on the screen itself.
  - b) **"Audio description"** is the technology that enables movie patrons who are blind or have low vision to enjoy movies by providing the spoken narration of a movie's key visual elements, such as action, settings, facial expressions, costumes, and scene changes. Audio descriptions fills in information about the visual content of a movie where there are no corresponding audio elements. It involves a separate script that is recorded and synchronized with the movie as it is projected. The oral delivery of the script is transmitted to the user through infra-red or FM transmission to wireless headsets.
  - c) **"Alteration,"** when used with respect to an audio-amplification system in a motion picture theater auditorium, means the replacement of speakers and/or other components that are made a part of the facility's physical structure by the use of electrical wiring or other means.
  - d) **"Assistive Listening System"** means the equipment that augments a motion picture theater's audio-amplification system for persons who are hard of hearing. It includes a "transmitter," "receivers," and either headsets or "neck loop coupling devices."

- e) **"Auditorium"** means a room within a "theater" that has seats and a screen and is used for the exhibition of motion pictures.
- f) **"Headset"** means a device attached to a "receiver" that is worn over the ears of a person who is deaf or hard of hearing or blind (as opposed to a neck loop coupling device) and allows the signal to be accepted by the "receiver" attached to the headset.
- g) **"Receiver"** means the component of either an "assistive listening system" or "audio description technology" which a person who is hard of hearing or blind uses to receive signals, usually in the form of "FM" radio or infra-red waves, emitted from a "transmitter."
- h) **"Theater"** means the facility in which one or more "auditoriums" are located.

**"Transmitter"** means the component of an "assistive listening system" that converts sound from an audio-amplification system into either "FM" or infra-red waves and transmits these signals to individual "receivers" used by persons who are hard of hearing.

#### **Acquisition of Closed Captioning Devices, Receivers and Headsets**

- 12) Cinemas, LLC agree that within thirty (30) days after the execution of this, they will:
  - a) Pursuant to 28 C.F.R. § 36.303(g)(3)(i), provide 6 closed captioning devices, 6 receivers and 6 headsets for the assistive listening systems and audio description technology at Morehead Cinemas and provide 8 closed captioning devices, 8 receivers and 8 headsets for the assistive listening systems and audio description technology at Somerset Cinemas, Tenth Frame Cinemas and Danville Cinemas.
  - b) Ensure that the receivers in each auditorium each have a head set.
- 13) Within thirty (30) days after the execution of this agreement, Cinemas LLC will submit to the Department a report indicating those auditoriums at which closed movie captioning devices, receivers and headsets for assistive listening systems and audio descriptions have been provided in accordance with the provisions of paragraph 12(A).

#### **Employee Training and Customer Service**

- 14) The Cinemas, LLC shall take all steps necessary, which may include providing staff training, to ensure that at least one employee on each shift at all theaters:

- a) are informed of the availability of closed captioning devices and receivers and headsets for assistive listening systems and audio description technology;
- b) know where the closed captioning devices, receivers and headsets for assistive listening systems and audio description technology are located on the premises, so that requests for them can be honored promptly; and
- c) are familiar with how the closed captioning devices, receivers and headsets for assistive listening systems and audio description technology operate, so that they are able to provide basic instruction to customers who are unfamiliar with them, respond to customer questions or complaints, including inquiries by telephone, and conduct testing as required by paragraph 12(A).

### **Maintenance**

- 15) The Cinemas, LLC agree that they will take the following steps to ensure that closed captioning devices, receivers and headsets for assistive listening systems and audio descriptions are maintained in proper working order at all theaters:
  - a) implement a plan so that theater personnel will test all receivers and transmitters at least once every month and document the results including: the date of testing, the employee who conducted the testing and whether the tested equipment was functioning properly. Further theater personnel will, immediately test any receiver and/or transmitter about which a customer complaint is received. Whenever necessary, theater personnel will report any problems with equipment within 24 hours to Cinemas, LLC, who in turn will report any problems to the service technician within 24 hours
  - b) have a qualified technician conduct preventative maintenance on all receivers quarterly;
  - c) establish procedures requiring that, by the next business day or Monday if on a weekend when repair facilities are open after maintenance is required, Cinema personnel will take actions pursuant to the procedure in 14(a) above to ensure that repairs are made or new equipment will be obtained as soon as is practicable.
- 16) Effective as of the date of this Agreement, the Cinemas, LLC will establish written policies requiring all theaters that become inaccessible for more than 48 hours because of assistive listening systems that are in need of replacement or repair to provide information through their pre-recorded telephone messages that the assisted listening systems are not functioning at the theater and the estimated date by which repair or replacement of assistive listening systems will be completed.
- 17) Effective as of the date of this Agreement, the Cinemas, LLC will establish a policy requiring all of its theaters to issue free movie passes to a future showing of any film at any of the Cinemas, along with a full refund of any money actually paid and a written or verbal

apology, to any person with a hearing impairment or who is blind or has low vision and his or her companion(s), who cannot attend a particular showing of a film because closed movie captioning or audio descriptions are not in proper working order, if there the person bought a ticket and the system do not work and will provide a copy of the proposed policy to the Department for review and approval within ten (10) days prior to the execution of this Agreement.

### **Promotion, Outreach, and Advertising**

- 18) In addition to its current practice of providing information concerning the availability of closed captioning and receivers and headsets for assistive listening devices and audio description technology as part of their website advertisements, the Cinemas, LLC agree to take the following additional actions in order to advertise the availability and promote the use of closed captioning devices and receivers and headsets for assistive listening systems and audio description technology:
  - a) as of the effective date of this Agreement, the Cinemas, LLC will install signage complying with §§ 4.1.3(19)(b) and 4.30 of the Standards for Accessible Design at any theater that currently has no such signage; and
  - b) As of the effective date of this Agreement, the Cinemas, LLC will include information about the availability of assistive listening systems in each theater's pre-recorded telephone announcements and in any newspaper advertisements.

### **ENFORCEMENT**

- 19) The United States Attorney's Office (USAO) is authorized, pursuant to 42 U.S.C. § 12188 and 28 C.R.R Part 36, Subpart E, to investigate the allegations of the complaint in this matter and to determine Cinemas LLC compliance with Title III of the ADA. The USAO has authority to, where appropriate, use alternative means of dispute resolution, including settlement negotiations, to resolve matters under this Act, and if unable to do so, the USAO has authority to bring civil actions enforcing Title III of the ADA where the Attorney General has reasonable cause to believe that a pattern and practice of discrimination has occurred, or such discrimination raises an issue of general public importance. In consideration of the terms of this Agreement set forth above, the USAO agrees to refrain from taking more formal enforcement action in this matter during the pendency of this Agreement, as long as Cinemas, LLC, comply with all terms of this Agreement.
- 20) The Department may review compliance with this Agreement at any time. If the Department believes that this Agreement or any requirement thereof has been violated, it may institute a civil action in Federal district court to enforce this Agreement or the requirements of Title III, following written notice to the Cinemas, LLC of possible violation and a period of thirty (30) days in which the theater has the opportunity to cure the alleged violations.

- 21) Failure by the Department to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.

#### **PUBLIC AGREEMENT**

- 22) This agreement is a public document. A copy of this agreement or any information contained herein may be made available to any person by Cinemas, LLC, or the Department upon request.

#### **EFFECTIVE DATE/TERMINATION DATE**

- 23) The effective date of the Agreement is the date of the last signature below. This Agreement will remain in effect for three (3) years from the effective date of this agreement.

#### **SCOPE OF AGREEMENT**

- 24) This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement, will be enforceable under its provisions.
- 25) This Agreement is limited to the facts set forth herein and does not purport to remedy any other potential violations of the ADA or any other Federal Law. This Agreement does not affect the Cinemas, LLC's continuing responsibility to comply with all aspects of Title III of the ADA.
- 26) The signer of this document for the Cinemas, LLC represents that he or she is authorized to bind the Cinemas, LLC to this Agreement.
- 27) This Agreement shall be binding on Cinemas, LLC, its agents, and its employees. In the event Cinemas, LLC seeks to transfer or assign all or part of its interest in any facility covered by this Agreement, and the successor or assignee intends on carrying on the same or similar use of the facility, as a condition of sale, Cinemas, LLC shall obtain the written accession of the successor or assignee to any obligations remaining under this agreement for the remaining term of this Agreement

FOR THE UNITED STATES:

ROBERT M. DUNCAN JR.  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF KENTUCKY

Date: 8/20/18

BY:

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FOR TENTH FRAME CINEMAS, LLC

Date: 8/21/18

BY:

Mike Bartley

Mike Bartley  
Owner and Chief Operating Officer

FOR DANVILLE CINEMAS, LLC

Date: 8/21/18

BY:

Mike Bartley

Mike Bartley  
Owner and Chief Operating Officer

FOR SOMERSET CINEMAS, LLC

Date: 8/21/18

BY:

Mike Bartley  
Mike Bartley  
Owner and Chief Operating Officer

FOR MOREHEAD CINEMAS, LLC

Date: 8/21/18

BY:

Mike Bartley  
Mike Bartley  
Owner and Chief Operating Officer