

AUDREY STRAUSS  
United States Attorney  
Southern District of New York  
By: DAVID J. KENNEDY  
Assistant United States Attorney  
86 Chambers Street, 3rd Floor  
New York, New York 10007  
Tel. No.: (212) 637-2733  
[david.kennedy2@usdoj.gov](mailto:david.kennedy2@usdoj.gov)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	<b>COMPLAINT</b>
Plaintiff,	:	
	:	
v.	:	21 Civ. _____ (_____)
	:	
JUJAMCYN THEATERS, LLC	:	
	:	
Defendant.	:	

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The United States of America, by its attorney Audrey Strauss, United States Attorney for the Southern District of New York, alleges as follows:

1. This is a civil action brought to redress discrimination on the basis of disability in violation of Title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181 et seq., and its implementing regulation, 28 C.F.R. Part 36.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 12188(b)(1)(B) and 28 U.S.C. §§ 1331 and 1345.

3. Venue lies in this District pursuant to 28 U.S.C. § 1391(b), as all of Defendant’s

acts alleged in this complaint occurred in this District.

THE PARTIES

4. Plaintiff is the United States of America.

5. Defendant is Jujamcyn Theaters LLC (“Jujamcyn” or “Defendant”), a limited liability company organized under the laws of Delaware and headquartered in New York, with its principal place of business at 246 West 44th Street, New York, New York. Jujamcyn owns and operates the following theaters in New York City:

- (a) the Al Hirschfeld Theatre, opened in 1924 and located at 302 West 45th Street;
- (b) the August Wilson Theatre, opened in 1925 and located at 245 West 52nd Street;
- (c) the Eugene O’Neill Theatre, opened in 1925 and located at 230 West 49th Street;
- (d) the St. James Theatre, opened in 1927 and located at 246 West 44th Street; and
- (e) the Walter Kerr Theatre, opened in 1921, renovated and reopened in 1990, and located at 219 West 48th Street.

(collectively, the “Theaters,” and each individual theater being the “Theater”).

6. The Theaters are places of public accommodation within the meaning of 42 U.S.C. § 12181(7)(C) and 28 C.F.R. § 36.104(3), because each is a theater whose operations affect commerce. Each Theater includes a lobby, ticket window, ticket office, stages, orchestra pits, lounges, restrooms, and seating on orchestra, mezzanine and/or balcony levels.

7. The seating capacity of the Theaters ranges from approximately 1,701 (the St. James) to 931 (the Walter Kerr) persons, not including standing room positions.

FACTS

8. Defendant has failed to remove architectural barriers in the Theaters even though such removal is readily achievable, and that failure has injured persons with disabilities.

9. There is reasonable cause to believe that Defendant has engaged in a pattern or practice of discrimination under the ADA and that this discrimination raises an issue “of general public importance.” 42 U.S.C. § 12188(b)(1)(B)(i), (ii).

10. Numerous architectural barriers at the Theaters have prevented or restricted individuals with disabilities from accessing the Theaters’ goods, services, facilities, features, elements, and spaces. Removal of these barriers is “readily achievable” under 42 U.S.C. § 12182(b)(2)(A)(iv) and 28 C.F.R. § 36.304.

11. Architectural barriers to access that have existed, and/or continue to exist, at the Theaters include, but are not limited to, the following:

a. The Theaters do not have a reasonable number of wheelchair seating locations that are accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. *See* 28 C.F.R. § 36.308; 28 C.F.R. Part 36, App. D, §§ 4.1.3(19)(a) and 4.33.

b. The Theaters have not provided companion seating next to the wheelchair seating locations. *See* 28 C.F.R. § 36.308; 28 C.F.R. Part 36, App. D, §§ 4.1.3(19)(a) and 4.33.

c. The Theaters do not have accessible wheelchair seating locations that are dispersed throughout the seating areas. *See* 28 C.F.R. § 36.308; 28 C.F.R. Part 36, App. D §§ 4.1.3(19)(a) and 4.33.

d. The Theaters do not have a reasonable number of aisle seats that either

have no armrests or are equipped with folding or removable armrests that are suitable for transfer from a wheelchair (“aisle transfer seating”). *See* 28 C.F.R. Part 36, App. D, § 4.1.3(19)(a).

e. The Theaters contain a variety of barriers to accessibility at the restrooms and lounge areas.

12. Removal of the barriers identified in Paragraph 11 is readily achievable under 42 U.S.C. § 12182(b)(2)(A)(iv) and 28 C.F.R. § 36.304.

13. Even if such removal were not readily achievable, Defendant could have undertaken, and still can undertake, readily achievable alternatives to barrier removal to make the goods, services and facilities offered at the Theaters accessible to individuals with disabilities, including those who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(v); 28 C.F.R. §§ 36.305 and 36.308.

## CLAIMS FOR RELIEF

### CLAIM I

#### READILY ACHIEVABLE BARRIER REMOVAL

14. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 13 of this Complaint as if fully set forth in this paragraph.

15. By failing to remove the barriers identified in paragraph 11, even though such removal is readily achievable, Defendant has violated Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(iii), (iv), and 28 C.F.R. § 36.304.

### CLAIM II

#### READILY ACHIEVABLE ALTERNATIVES TO BARRIER REMOVAL

16. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 13

of this Complaint as if fully set forth in this paragraph.

17. In the alternative, if it is not readily achievable to remove all of the barriers to access alleged in paragraph 11, Defendant must provide readily achievable alternatives to barrier removal as required by 42 U.S.C. § 12182(b)(2)(A)(v) and 28 C.F.R. § 36.305.

18. By failing to undertake alternatives to barrier removal to the extent it is readily achievable to do so, Defendant has violated Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(v) and 28 C.F.R. § 36.305.

#### PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter judgment that:

A. Declares that Defendant has violated Title III of the ADA, 42 U.S.C. § 12182, at the Theaters (1) by failing to provide the wheelchair, companion and aisle transfer seating required by 28 C.F.R. § 36.308 and as set out in 2010 Standards 221.4; (2) by failing to remove architectural barriers to access as required by 28 C.F.R. § 36.304; and (3) by failing to provide alternatives to barrier removal as required by 28 C.F.R. § 36.305;

B. Orders Defendant to provide a reasonable number of accessible wheelchair locations, aisle transfer seats and companion seats that are dispersed throughout the seating area of each Theater, as required by 42 U.S.C. §§ 12182(b)(2)(A)(iv) and 12188(b)(2)(A), and 28 C.F.R. § 36.308;

C. Orders Defendant to remove all architectural barriers to access at the Theaters where it is readily achievable to do, as required by 42 U.S.C. §§ 12182(b)(2)(A)(iv) and 12188(b)(2)(A), 28 C.F.R. § 36.304 and 28 C.F.R. Part 36, App. D. Those barriers include, but

are not limited to, the architectural barriers to access set forth in paragraph 11;

D. Orders Defendant to provide readily achievable alternatives to barrier removal in all instances, if any, where it is not readily achievable to remove architectural barriers in the Theaters, as required by 42 U.S.C. §§ 12182(b)(2)(a)(v) and 12188(b)(2)(A), and 28 C.F.R. § 36.305;

E. Assesses a civil penalty against the Defendant in an amount authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), to vindicate the public interest; and

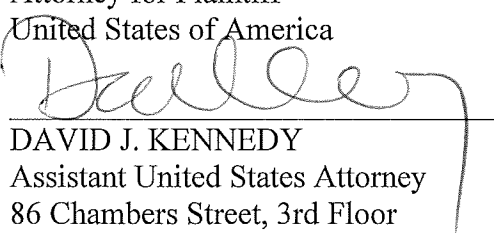
G. Orders such other appropriate relief as the interest of justice may require.

Dated: July 6, 2021

KRISTEN CLARKE  
Assistant Attorney General  
Civil Rights Division  
U.S. Department of Justice

AUDREY STRAUSS  
United States Attorney for the  
Southern District of New York  
Attorney for Plaintiff  
United States of America

By:

  
DAVID J. KENNEDY  
Assistant United States Attorney  
86 Chambers Street, 3rd Floor  
New York, New York 10007  
Tel. No.: (212) 637-2733  
[david.kennedy2@usdoj.gov](mailto:david.kennedy2@usdoj.gov)