

1 JOHN L. WODATCH, Chief  
L. IRENE BOWEN, Deputy Chief  
2 Disability Rights Section  
Civil Rights Division

3 PHYLLIS M. COHEN  
4 Trial Attorney  
Disability Rights Section  
5 Civil Rights Division  
U.S. Department of Justice  
6 1425 New York Avenue, N.W.  
Room 4039  
7 Post Office Box 66738  
Washington, D.C. 20035-6738  
8 Telephone: (202) 514-3882  
Facsimile: (202) 307-1198

WENDY S. TIEN  
Attorney, Civil Division  
United States Department of Justice  
P.O. Box 875  
Ben Franklin Station  
Washington, DC 20044-0874  
(202) 305-1479

9 Attorneys for Intervenor  
10 United States of America

11 UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 CONNIE ARNOLD, et al., )

14 Plaintiffs, )

15 vs. )

16 )  
17 UNITED ARTISTS THEATRE )  
CIRCUIT, INC. )  
18 Defendant. )

Case No. C 93 0079 TEH

19 UNITED STATES' OPPOSITION TO  
20 DEFENDANT UNITED ARTISTS THEATRE  
CIRCUIT, INC. MOTION TO AMEND THE  
AUGUST 14, 1996 SETTLEMENT AND  
INJUNCTIVE ORDERS

Date: January 17, 2001  
Time: 10:00 a.m.  
Place: Courtroom 12

21 **UNITED STATES' OPPOSITION TO DEFENDANT UNITED ARTISTS THEATRE CIRCUIT,**  
22 **INC. MOTION TO AMEND THE AUGUST 14, 1996 SETTLEMENT AND INJUNCTIVE**  
23 **ORDERS**

24 The United States hereby files its Opposition to Defendant United Artists Theatre Circuit, Inc.'s  
25 ("UATC") Motion to Amend the August 14, 1996 Settlement Agreement and Injunctive Order ("Motion  
26 to Amend"). The United States opposes UATC's request for a *blanket* "minimum" extension of five  
27 years of the deadline to complete its barrier removal obligations under the existing Settlement  
28 Agreement and Injunctive Order ("Settlement") for the reasons set forth below. The United States asks

1 that, if the Court grants UATC's request for an extension of time to complete its barrier removal  
2 obligations, it: (1) order UATC to meet interim progress goals to insure that all obligations are met by  
3 the end of any extension period; (2) order UATC to update the Court and the Parties regarding its  
4 financial condition and progress towards fulfilling its remaining obligations at status hearings at least  
5 every six months; and (3) modify the Settlement Agreement and Injunctive Order to specify standards  
6 for the placement of wheelchair seating locations in its stadium-style movie theaters.<sup>1</sup>

## 7 **I. INTRODUCTION**

8 On October 27, 2000, UATC filed a Motion for a Limited Transfer of Venue ("Motion to  
9 Transfer Venue"). UATC stated that, due to its recent bankruptcy, it needed an extension of time to  
10 complete its barrier removal obligations under the Settlement Agreement and Injunctive Order. On  
11 November 27, 2000, at the hearing on that Motion, and Plaintiffs' and the Department's Opposition to  
12 UATC's Motion, Plaintiffs and the Department raised several issues regarding UATC's compliance with  
13 the Settlement Agreement and Injunctive Order. This Court's Order of December 1, 2000, denying  
14 UATC's Motion, indicated that an "extension hearing will [likely] bring into play a number of issues  
15 regarding UATC's compliance with the Injunctive Order." Order at 4.

## 16 **II. UATC HAS NOT MADE SUFFICIENT PROGRESS TOWARDS COMPLYING WITH** 17 **ALL OF ITS OBLIGATIONS UNDER THE SETTLEMENT AGREEMENT AND** 18 **INJUNCTIVE ORDER TO WARRANT A BLANKET EXTENSION OF TIME**

19 In its Motion to Amend, UATC alleges it has spent over \$6 million on "barrier removal for new  
20 construction, additions, renovations, concession renovations, *specific barrier removal projects*, and  
21 *removal of specific barriers* at all theatres..." Motion to Amend at 4 (emphasis added). UATC misleads  
22 the Court regarding its compliance with its barrier removal obligations set forth in the Settlement  
23 Agreement and Injunctive Order by aggregating its costs from its barrier removal projects *required* by  
24 the Settlement with other expenditures *not* required by the Settlement Agreement and Injunctive Order,  
25

---

26 <sup>1</sup> "Stadium-style movie theater(s)" or "stadium-style theater(s)" refers to movie theaters or  
27 motion picture theaters where some or all of the seating is placed on level tiers with each row/tier  
28 elevated above the row/tier immediately ahead. Stadium-style tiers are accessed by stepped, rather than  
sloped, aisles.

1 including significant costs associated with its construction of new stadium-style movie theaters and new  
2 additions to its theaters.

3 Further, UATC seems to suggest that its construction of 35 *new* stadium-style movie theaters  
4 somehow has contributed to its compliance with this Court's Orders to remove barriers to access at its  
5 existing, traditional movie theaters.<sup>2</sup> Id. Similarly, UATC lists barrier removal projects it completed  
6 prior to the entry of the Settlement. In reality, and hidden among other misleading figures, UATC has  
7 completed Court-ordered barrier removal projects at only 24 locations in the past five years, or  
8 approximately 22% of the locations required to have barriers removed. Id.

9 UATC acknowledges additional non-compliance with the Settlement Agreement and Injunctive  
10 Order by its failure to complete barrier removal modifications to two theaters in Grass Valley, California  
11 (ordered to be completed by July 6, 1998 but still not completed). See Second Supplemental  
12 Declaration of David Giesler in Support of UATC's Motion to Transfer Venue at 2; Second  
13 Supplemental Declaration of Douglas A. Wolkin in Support of UATC's Motion to Transfer Venue at 2.

14  
15 **III. UATC'S PLAN FOR REORGANIZATION UNNECESSARILY RESTRICTS UATC'S**  
**COMPLIANCE WITH THIS COURT'S ORDER**

16 It appears from UATC's Motion to Amend that as early as 1997 UATC was experiencing  
17 financial problems serious enough to "limit[] UATC's ability to complete the barrier removal  
18 modifications contained in the Injunctive Order," yet UATC did not notify the Department that it was  
19 experiencing difficulties in meeting its obligations under the Settlement Agreement and Injunctive Order  
20 until January 31, 2000. See Declaration of Phyllis M. Cohen in Support of United States' Memorandum  
21 of Points and Authorities in Opposition to Motion of Defendant United Artist Theatre Circuit, Inc., to  
22 Transfer Venue ("U.S. Opposition to Motion to Transfer Venue").

23 Pursuant to this Court's Order Granting Injunctive Relief entered August 14, 1996, approving the  
24 parties' Settlement Order, UATC was to complete barrier removal projects at certain of its theaters on or

---

25  
26 <sup>2</sup> Unless a new stadium-style theater serves the same community as one of UATC's  
27 traditional, sloped floor theaters scheduled for barrier removal work, a new stadium-style theater should  
28 not be considered part of UATC's compliance with its barrier removal obligations under the Settlement  
Agreement and Injunctive Order.

1 before July 6, 2001. UATC has not completed those obligations during the past five years at  
2 approximately 77 of its theaters while at the same time building approximately 35 brand new stadium-  
3 style movie theaters. UATC argues *inter alia* that it needs at least another five years to complete these  
4 obligations in order to maintain the support of its creditors for its Joint Plan for Reorganization. UATC  
5 further argues that, even if its Joint Plan for Reorganization is confirmed, it will have “significant  
6 obligations to creditors under the Plan and be under capital and budgetary restrictions imposed by the  
7 Plan.” UATC’s Motion to Amend at 2 (need full cite). See also Giesler Declaration ¶¶ 13-14 in Support  
8 of UATC’s Motion to Amend.

9 UATC states that its obligations to its creditors under the Plan, with its “capital and budgetary  
10 restrictions”, Motion to Amend at 2, will “hamper its ability to make barrier removal modifications.”  
11 Id. at 3. These financial obligations and restrictions in the Plan were not negotiated with Plaintiffs’  
12 class counsel or the Department, nor were they apparently negotiated with an eye towards fulfilling  
13 UATC’s existing legal obligations under the Settlement Agreement and Injunctive Order. Further,  
14 UATC states that “[i]nitially, in order to maintain its viability, UATC will have to commit its funds to  
15 revenue-generating projects.” Motion to Amend at 3. While these “revenue-generating projects” are  
16 unspecified, and in spite of its financial difficulties, UATC has indicated to the Department that it  
17 intends to renovate many of its existing traditional, sloped floor theaters into stadium-style theaters and  
18 possibly build one or more new stadium-style theaters, all within the next several years.<sup>3</sup> UATC has  
19 cited its building of new stadium-style movie theaters as a contributing factor to its current financial  
20 situation.<sup>4</sup>

---

21  
22 <sup>3</sup> “The plan is to ... defend our core markets’ in part by refurbishing theaters in important  
23 markets, such as by adding stadium seats.” The Wall Street Journal, Paul M. Sherer, “Deals & Deal  
24 Makers: United Artists Theatre Makes Chapter 11 Filing, Proposing a Plan That Gives Control to  
25 Anschutz”, September 6, 2000, 2000 WL-WSJ 26608750, attached as Appendix A. See also Disclosure  
26 Statement for Plan of Reorganization of United Artists Theatre Company, et al., Article IV, B.2.d.-e.  
attached to UATC’s Motion to Transfer Venue, Giesler Declaration Exhibit F (implementing “Project  
Clean-Up, a theatre divestiture program” and “investing capital, in the form of screen expansions and  
upgrades”).

27 <sup>4</sup> Motion to Amend at 4-6. See also CNNfn, “UA Mulls Restructuring”, April 14, 2000,  
28 attached as Appendix C.

1 UATC has stated that its “goal is to allocate funds to readily achievable barrier removal  
2 modification projects while at the same time making capital expenditures to improve the quality of  
3 individual theatres in order to retain market share and remain competitive.” See UATC’s Motion to  
4 Transfer Venue at 11. In spite of this “goal,” UATC’s Motion to Amend contains no provision to insure  
5 that barrier removal continues at an appropriate pace to guarantee this Court, Plaintiffs and the  
6 Department that UATC will complete its barrier removal obligations by the end of any extension of  
7 time.<sup>5</sup> In the event that UATC is unable to meet any terms of the Settlement and Injunctive Order, the  
8 goal of the incorporated dispute resolution procedure is to find a “substitute modification that meets the  
9 purposes of this Settlement Agreement.” See Injunctive Order ¶ 6.2.1.

10 The Department requests that, should this Court grant UATC an extension of time, this Court  
11 impose a schedule requiring either (1) that UATC complete a certain number of barrier removal projects  
12 for each year of any extension, or (2) that of the monies UATC spends on renovations to convert  
13 traditional sloped-floor theaters into stadium-style theaters, or on building new stadium-style theaters, it  
14 expend a certain percentage on the 77 theaters with remaining barrier removal obligations as a  
15 “substitute modification”.<sup>6</sup> Without such a schedule requiring progress throughout the term of any

---

16  
17 <sup>5</sup> UATC alleges that the private plaintiffs and the Department unreasonably withheld  
18 approval of its requested extension “unless UATC agreed to certain conditions unrelated to the extension  
19 issue.” Motion to Amend at 13. In fact, both private plaintiffs and the Department sought *inter alia*  
20 some guarantee from UATC of progress towards or completion of its barrier removal obligations during  
21 the term of any extension, such as some minimum monetary expenditures on barrier removal projects  
22 annually or the completion of barrier removal work at some minimum number of theaters annually. See  
23 Declaration of Phyllis M. Cohen, ¶ 5, attached as Appendix B. UATC offers no such guarantee to this  
24 Court in its Motion to Amend.

25 <sup>6</sup> In its Reply in Support of its Motion to Transfer, UATC states that its “determination of  
26 which of its remaining theatre leases it intends to assume or reject will depend in part on the cost to  
27 complete barrier removal modifications at those leased theatres.” Id. at 5, 9. See also Los Angeles  
28 Times, Bob Howard, “Valley Business Woes Likely to Curtail New Valley Theaters Construction”,  
November 14, 2000, 2000 WL 25917890, attached as Appendix D (Chapter 11 bankruptcy allows  
theater operators to cancel any leases they do not want and to keep ones they want); 2000 WL-WSJ  
26608750 (UATC’s reorganization filing “allow[s] it[] to free itself from leases on underperforming  
theaters). Thus, it appears that persons with disabilities, especially persons who use wheelchairs, are  
likely to have a significantly diminished number of accessible UATC theatres to patronize than  
anticipated at the time of entry of the Settlement Agreement and Injunctive Order.

1 extension, there is no guarantee that at the end of any extension the parties would not once again be  
2 before the Court in the same situation as now, with UATC’s barrier removal obligations still incomplete.  
3 Persons with disabilities have been denied access to Defendant’s theaters for years; they should not be  
4 asked to continue to wait indefinitely.

5 **IV. FACTUAL CHANGES WARRANT MODIFICATION OF OTHER PROVISIONS**  
6 **OF THE SETTLEMENT AGREEMENT AND INJUNCTIVE ORDER**

7 The standard for modification of a consent order is a “significant change either in factual  
8 conditions or in law.” Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 384, 112 S. Ct. 748  
9 (1992). UATC argues that its current financial woes justify modification of the Settlement Agreement  
10 and Injunctive Order. Conveniently, UATC has twice emphasized that it seeks *only* to modify the  
11 deadline for completion of its barrier removal obligations, ignoring other issues that the parties have  
12 been attempting to resolve without this Court’s intervention for at least the last two and one-half years.  
13 Motion to Amend at 13; Motion to Transfer Venue at 10. There have been significant other changes  
14 impacting on the Settlement Agreement and Injunctive Order, in addition to UATC’s financial situation,  
15 which need to be taken into account in any modification of the Settlement Agreement and Injunctive  
16 Order. See Bellevue Manor Assoc. v. United States, 165 F.3d 1249, 1256 (9<sup>th</sup> Cir. 1999) (courts should  
17 take all circumstances into account when considering modifying or vacating an injunction or consent  
18 decree).

19 A. **UATC HAS NOT ESTABLISHED THAT ITS FINANCIAL CONDITION**  
20 **WARRANTS DELAY OF ITS BARRIER REMOVAL OBLIGATIONS FOR AN**  
**ADDITIONAL FIVE YEARS OR MORE**

21 UATC argues that because it has filed for chapter 11 bankruptcy it does not have the financial  
22 resources to complete its barrier removal obligations by the current deadline. It therefore seeks to *delay*  
23 the deadline. Motion to Amend at 16. The Department believes that, without interim deadlines or goals  
24 tied to its expenditures on renovations to stadium-style movie theaters and new construction, UATC will  
25 again have made little or no progress towards completion of its barrier removal obligations at the end of  
26 an additional five year period. While UATC is correct when it states that the standard for what is  
27 “readily achievable” includes consideration of its overall financial resources, Motion to Amend at 13, fn.  
28 9, a review of its bankruptcy filings shows it plans to renovate a number of traditional theaters into

1 stadium-style theaters. If UATC can find the financial resources to convert traditional theaters to  
2 stadium-style theaters, it can fund some annual level of progress towards fulfilling its long-standing  
3 barrier removal obligations, and it should be required to do so. See Part III *supra*. UATC has not  
4 demonstrated that it is financially *unable* to complete some level of barrier removal work annually given  
5 that it appears to be able to find the financial resources to convert some of its other theaters to stadium-  
6 style seating. Rather, these construction plans simply demonstrate that UATC does not *wish* to do  
7 barrier removal work at this time.

8 B. EVEN IF STADIUM-STYLE THEATERS WERE CONSIDERED “SPECIALTY  
9 THEATRES,” THEY HAVE BEEN THE ONLY TYPE OF THEATER NEWLY  
10 CONSTRUCTED SINCE APPROXIMATELY 1996 BY UATC AND ALL  
11 CONVERSIONS OF EXISTING THEATERS HAVE BEEN TO STADIUM-STYLE  
12 THEATERS; THEY THUS NEED TO BE ADDRESSED IN THE SETTLEMENT  
13 AGREEMENT AND INJUNCTIVE ORDER

14 Although there is disagreement among the parties as to whether or not stadium-style movie  
15 theaters are “specialty theaters” under the Settlement Agreement and Injunctive Order,<sup>7</sup> even assuming  
16 that stadium-style theaters *were* “specialty theaters” at the time of entry of the Settlement Agreement  
17 and Injunctive Order, the changed circumstances in the motion picture exhibition industry now require  
18 the Court to modify the Orders to specify requirements for new or altered stadium-style movie theaters.

19 1. The Parties Had Little, If Any, Experience With Stadium-Style Movie Theaters at  
20 the Time of the Settlement Agreement and Injunctive Order

21 The first stadium-style movie theaters opened in the United States in 1995 and 1996. Since that  
22 time, stadium-style movie theaters have become extremely popular and the dominant movie theater  
23 design, resulting in an “explosion in the construction of movie theatres with stadium seating”. Motion to  
24 Amend at 14. UATC participated in this industry trend.

---

25 <sup>7</sup> “Specialty theaters” are defined in the Settlement Agreement and Injunctive Order “those  
26 Auditoriums designed and constructed for the purpose of showing an OMNI or an IMAX-type film.”  
27 See Settlement Order ¶ 5.2. The Department has taken the position that stadium-style movie theaters do  
28 not meet the definition of “specialty theaters” as that definition specifies the format of the film, not the  
seating design.

1                   2.       Changed Circumstances in the Movie Theatre Industry in General, and UATC  
2                                   Specifically, Require the Modification of the Settlement Agreement and  
  Injunctive Order to Include Standards for Stadium-Style Movie Theaters

3                   The advent of stadium-style theaters has caused many movie exhibitors, including UATC, to  
4 renovate or convert many traditional, sloped-floor theaters into stadium-style theaters or simply shut  
5 down many traditional, sloped floor theaters.<sup>8</sup>

6                   Stadium-style seats are popular because they offer greater visibility and enhanced, unobstructed  
7 sightlines to the screen.<sup>9</sup> Because most or all seats are elevated anywhere from six to sixteen inches  
8 above the row in front of them, there is a greater disparity in sightlines between seats near the front of  
9 the auditorium and seats at or near the back of the auditorium than was found in traditional, sloped-floor  
10 theaters. Because of this disparity, specific guidelines for the placement of wheelchair seating locations  
11 in UATC’s stadium-style movie theaters need to be incorporated into the Settlement Agreement and  
12 Injunctive Order to insure that persons with disabilities, especially persons who use wheelchairs, are  
13 provided with lines of sight comparable to those for members of the general public and that wheelchair  
14 seating locations are an integrated part of the fixed seating plan as required by Section 4.33.3 of the  
15 ADA Accessibility Guidelines for Buildings and Facilities (the “Standards”), 28 C.F.R. Part 36  
16 Appendix A. Currently, no provision of the Settlement Agreement and Injunctive Order adequately  
17 addresses this issue.

18                   Since at least 1998, the Department has received complaints about UATC’s stadium-style movie  
19 theaters. See Appendix B, ¶¶ 2-4. Since that time, the Department and Plaintiffs’ Counsel have had  
20 many discussions and exchanged numerous drafts with UATC in an attempt to reach a resolution of the  
21 issues relating to wheelchair-seating locations in stadium-style theaters without success.

---

24                   <sup>8</sup>       Amy Wallace, “Theaters’ Next Hit May Be Stadium Seating Entertainment”, L.A.  
25 Times, March 14, 1998, A1, 1998 WL 2407936, attached as Appendix E.

26                   <sup>9</sup>       Jeff Strickler, “Stadium Seating is Wave of Future”, Minneapolis-St. Paul Star Tribune,  
27 December 21, 1997, 1997 WL 7594704, pp. 1-2 (the benefits of stadium seating include unobstructed  
28 view; looking straight into the picture instead of looking up at the screen; avoiding the need to turn  
head), attached as Appendix F.



1                   3.       The Department Has Made Clear Its Application of Standard 4.33.3 to Stadium-  
2                   Style Movie Theaters

3                   In stadium-style theaters, members of the general public can, and do, sit in stadium-style seats.  
4                   When wheelchair locations are placed only in the non-stadium-style section of the theater, the result is  
5                   segregation and isolation of persons who use wheelchairs -- a plain violation of the integration  
6                   requirement set out in Standard 4.33.3. To be "an integrated part of the fixed seating plan," a wheelchair  
7                   space must not only be located in an auditorium or located next to another seat, it must be part of the  
8                   auditorium seating where members of the general public routinely sit. Any other interpretation of  
9                   Standard 4.33.3 would result in the very segregation and inequality that Standard 4.33.3 was intended to  
10                  prevent. In addition, the plain language of Standard 4.33.3 requires persons who use wheelchairs to be  
11                  provided "lines of sight comparable to those for members of the general public."

12                  The Court should defer to the Department's application of Standard 4.33.3 to stadium-style  
13                  theaters, as further explained below, and require that UATC's new theaters and conversions be  
14                  constructed in compliance with it:

15                  1. The required number of wheelchair seating locations in any auditorium must be  
16                  located in the stadium-style section of the theater.

17                  2. The lines of sight for persons who use wheelchairs must be within the range of  
18                  viewing angles as those offered to most members of the general public with respect to viewing angles,  
19                  distance to the screen, obstruction of view, and distortion of images.<sup>10</sup>

20                  "Lines of sight" and "comparable" are common terms used in everyday speech. United States of  
21                  America v. Middleton, 231 F.3d. 1207, 1210 (9<sup>th</sup> Cir. 2000) (in the absence of a definition, a statutory

---

22  
23                  <sup>10</sup>       The Department's interpretation of the application of Standard 4.33.3 to stadium-style  
24                  movie theaters stated above has been articulated numerous times, including in an *amicus* brief (Lara v.  
25                  Cinemark USA, No. 97-CV-502 (W.D. Tex.)), in a speech before the movie theater exhibitors' trade  
26                  association (Steven John Fellman, "Stadium-Style Seating: The Government's View", NATO News,  
27                  July 1998, p. 10), and in pleadings filed in two nationwide lawsuits brought by the Department of Justice  
28                  (United States v. AMC Entertainment, Inc., American Multi-Cinema, Inc., and Salts, Troutman, &  
Kaneshiro, Inc., Civil Action No. 99-CV-1034 FMC (Shx) (C.D. Cal. filed Jan. 29, 1999) and United  
States v. Cinemark USA, Inc., Civil Action No. 1:99-CV-705 (N.D. Ohio filed March 24, 1999). See  
Appendix B, ¶¶ 6-8.

1 term should be given “its ordinary meaning”); United States v. Baron-Medina, 187 F.3d 1144, 1146 (9th  
2 Cir.1999) (courts generally interpret undefined statutory terms by "employing the ordinary,  
3 contemporary, and common meaning of the words that Congress used"). Webster’s dictionary defines  
4 “line of sight” as "a line from an observer's eye to a distant point toward which he is looking."<sup>11</sup>  
5 Webster's Ninth New Collegiate Dictionary, 695 (1990). In a movie theater, the observer is the seated  
6 patron. The points being observed are the point on the screen where the film is projected. Thus, in a  
7 movie theater, lines of sight are lines from the patron’s eye to the different points on the screen where  
8 the film is being projected -- the top and bottom of the screen, the left and right sides, and all areas in  
9 between.

10 Webster’s defines the term “comparable” as “capable of or suitable for comparison; equivalent;  
11 similar.” Webster’s Ninth New Collegiate Dictionary (1990) (emphasis added). Thus, using a plain  
12 language approach to interpreting the requirements of Standard 4.33.3 in a movie theater, "comparable"  
13 lines of sight are equivalent or similar lines from the patron's eye to the points on the screen where the  
14 film is projected.

15 In Standard 4.33.3, the phrase "members of the general public" refers to persons other than  
16 individuals who use wheelchairs and their companions. The term does not refer to any one member of  
17 the general public but collectively to most members (i.e., a majority) of the general public.

18 To assess whether lines of sight are comparable, in designing and constructing movie theaters,  
19 experts such as engineers and architects consider such factors as vertical and horizontal viewing angles,  
20 distance from the screen, obstruction, and distortion. See The Society of Motion Picture and Television  
21 Engineers (“SMPTE”) Engineering Guideline Design of Effective Cine Theaters, EG 18-1994, attached  
22 as Appendix G. However, the Standards do not establish specific minimum or maximum viewing  
23 angles, distance to the screen, obstruction of view, or distortion of images that a movie theater is legally  
24 permitted to provide for wheelchair spaces. Instead, the regulation requires that the line of sight be  
25 comparable - that necessarily requires comparable viewing angles, comparable distance to the screen,

---

26  
27 <sup>11</sup> Webster's also offers a second definition of "line of sight" that is plainly not applicable  
28 here: "the straight path between a radio or television transmitting antenna and receiving antenna when  
unobstructed by the horizon." Id.

1 comparable obstruction of view and distortion of images provided for persons who use wheelchairs to  
2 those of most members of the general public. For example, although various industry design standards  
3 provide that no seat should have a viewing angle to the top of the screen exceeding 30-35 degrees, the  
4 Department does not adopt that 30-35 degree measurement as a maximum for wheelchair spaces. To the  
5 contrary, under Standard 4.33.3, the only applicable requirement for lines of sight for wheelchair spaces  
6 is comparability. Thus, if most members of the general public in a given auditorium have viewing  
7 angles to the top of the screen exceeding 30-35 degrees, then persons who use wheelchairs may also be  
8 provided viewing angles exceeding 30-35 degrees. Wheelchair spaces have lines of sight comparable to  
9 those for members of the general public so long as they provide lines of sight within the range of  
10 viewing angles as those offered to most of the general public.

11 Under the Department's application of Standard 4.33.3, wheelchair spaces must not be relegated  
12 to the worst lines of sight in the house, but neither do they categorically have to be the best. Instead,  
13 persons who use wheelchairs should be provided equal access so that their experience equates to the  
14 experience provided to members of the general public. In other words, the lines of sight provided for  
15 wheelchair locations should not be on the extremes of the range offered to others.

16  
17 4. Under Well-Established Principles of Administrative Law, the Department of  
Justice's Interpretation of Its Own Regulation Is Entitled to Substantial Deference.

18 The Supreme Court has ruled that an agency's interpretation of its own regulation is controlling  
19 unless plainly erroneous or inconsistent with the regulatory language. See Auer v. Robbins, 519 U.S.  
20 452, 461 (1997); Paralyzed Veterans of Am. v. D.C. Arena, L.P., 117 F.3d 579, 584-85 (D.C. Cir. 1997).  
21 As the Supreme Court explained, courts "must give substantial deference to an agency's interpretation of  
22 its own regulations. Our task is not to decide which among several competing interpretations best serves  
23 the regulatory purpose." Thomas Jefferson University v. Shalala, 512 U.S. 504, 512 (1994) (internal  
24 citations omitted); see also Smiley, 517 U.S. 735, 744-45 (1996); Department of Health & Human Servs.  
25 v. Chater, 163 F.3d 1129, 1133 (9th Cir. 1998) (same). "[W]here the agency's interpretation of [its  
26 regulation] is at least as plausible as competing ones, there is little, if any, reason not to defer to its  
27 construction." Thomas Jefferson Univ., 512 U.S. at 517 (quoting Good Samaritan Hosp. v. Shalala, 508  
28 U.S. 402, 417 (1993)); Chater, 163 F.3d at 1135 ("The question is not whether the interpretation

1 represents the best reading of the statute, but whether it represents a reasonable one.”).

2 Here, the Department is the agency charged by statute with responsibility for promulgating  
3 regulations interpreting rights and obligations under title III of the ADA, including the architectural  
4 standards applicable to new construction and alterations. 42 U.S.C. §§ 12183(a), 12186. Thus, under  
5 well-established Supreme Court and Ninth Circuit jurisprudence, the Department's interpretations of its  
6 regulation — including its interpretation of Standard 4.33.3 — are controlling unless plainly erroneous  
7 or inconsistent with the regulatory language. Thomas Jefferson Univ., 512 U.S. at 512; Smiley, 517  
8 U.S. at 744-45. There is no plain error or inconsistency in this case.

9 Since UATC has indicated that it intends to renovate a number of its existing sloped-floor  
10 theaters into stadium-style theaters, and possibly construct one or more new stadium-style theaters, the  
11 United States asks this Court to modify the Settlement Agreement and Injunctive Order to require  
12 UATC to provide wheelchair seating locations in the stadium seating portion of its theaters and to  
13 provide those wheelchair seating locations with lines of sight comparable to those for members of the  
14 general public.

### 15 CONCLUSION

16 For all the foregoing reasons, the United States respectfully requests that if this Court grants  
17 UATC’s Motion to Amend the existing Settlement Agreement and Injunctive Order and extends  
18 UATC’s deadline for complying with its barrier removal obligations, that the Court further amend the  
19 Orders to: (1) require UATC to meet interim progress goals to insure that all barrier removal obligations  
20 are met by the end of any extension period; (2) require UATC to update the Court and the Parties  
21 regarding its financial condition and progress towards fulfilling its remaining obligations at status  
22 hearings at least every six months; and (3) modify the Settlement Agreement and Injunctive Order to  
23 specify requirements for the placement of wheelchair seating locations in UATC’s stadium-style movie  
24 theaters.

1 Respectfully submitted,

2  
3 BILL LANN LEE  
4 Assistant Attorney General  
5 Civil Rights Division

6 JOHN L. WODATCH, Chief  
7 L. IRENE BOWEN, Deputy Chief  
8 Disability Rights Section

9 Dated:

10 \_\_\_\_\_  
11 PHYLLIS M. COHEN  
12 Trial Attorney  
13 Disability Rights Section  
14 Civil Rights Section  
15 U.S. Department of Justice  
16 Post Office Box 66738  
17 Washington, D.C. 20035-6738  
18 Telephone: (202) 514-3882  
19 Facsimile: (202) 307-1198

20  
21 Counsel for Intervenor  
22 United States of America  
23  
24  
25  
26  
27  
28

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 CONNIE ARNOLD, et al., )

4 Plaintiffs, )

5 vs. )

6 UNITED ARTISTS THEATRE )  
7 CIRCUIT, INC. )

8 )  
9 Defendant. )  
10 \_\_\_\_\_ )

Case No. C 93 0079 TEH

[PROPOSED] ORDER

11 [PROPOSED] ORDER

12 After consideration of Defendant's Motion to Amend the August 14, 1996 Settlement Agreement  
13 and Injunctive Order and the Oppositions to that Motion, the Court hereby ORDERS:

14 (1) that the deadline for Defendant's completion of barrier removal work at its Existing Theatres  
15 Outside of California is extended until July 6, 2006;

16 (2) that during each year of the five year extension, Defendant shall spend at minimum  
17 \$500,000.00 or 25% of its costs spent that year on altering any of its traditional, sloped floor movie  
18 theatres into stadium-style seating, whichever is higher, on its remaining barrier removal work at its  
19 Existing Theatres Outside of California;

20 (3) that Defendant shall appear at a status hearing every six months during the five year  
21 extension to update the Court and the Parties on its financial condition and its progress towards fulfilling  
22 its remaining barrier removal obligations. Defendant shall provide the Court and the Parties with current  
23 financial documents and detailed information regarding its barrier removal work and any alterations of  
24 its traditional, sloped floor movie theatres into stadium-style seating and any new construction of  
25 stadium-style theaters or additions to existing theatres;

26 (4) that the Settlement Agreement and Injunctive Order shall be amended to require Defendant to  
27 provide all wheelchair seating locations in its newly constructed or altered stadium-style movie theatres  
28 within the stadium seating portion of each auditorium and with lines of sight that are comparable to  
those for members of the general public, taking into account vertical and horizontal viewing angles,

1 distance from the screen, obstruction, and distortion of images.

2 IT IS SO ORDERED.

3  
4 DATED: \_\_\_\_\_

\_\_\_\_\_  
5 THELTON E. HENDERSON, JUDGE  
6 UNITED STATES DISTRICT COURT FOR THE NORTHERN  
7 DISTRICT OF CALIFORNIA  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that today I served copies of the foregoing United States' Opposition to  
3 Defendant's Motion to Amend the August 14, 1996 Settlement Agreement and Injunctive Order upon  
4 the following Parties in the above matter via prepaid Federal Express overnight mail:

4 Peter I. Ostroff, Esquire  
5 Jennifer A. Landau, Esquire  
6 Sidley & Austin  
7 555 West Fifth Street, Suite 4000  
8 Los Angeles, CA 90013-1010  
9 Telephone: 213-896-6000  
10 Facsimile: 213-896-6600

8 David Seligman  
9 Kirkland & Ellis  
10 200 East Randolph Drive  
11 Chicago, Illinois 60601  
12 Telephone: 312-861-2000  
13 Facsimile: 312-861-2200

11 Laurence W. Paradis, Esquire  
12 Disability Rights Advocates  
13 449 15<sup>th</sup> Street, Suite 303  
14 Oakland, CA 94612  
15 Telephone: 510-451-8644  
16 Facsimile: 510-451-8511

15 Linda D. Kilb, Esquire  
16 Disability Rights Education and Defense Fund, Inc.  
17 2212 Sixth Street  
18 Berkeley, CA 94710  
19 Telephone: 510-644-0154  
20 Facsimile: 510-841-8645

18 Neal Wolf, Esquire  
19 Orrick, Herrick & Sutcliffe LLP  
20 400 Sansome Street  
21 San Francisco, CA 94111  
22 Telephone: 415-773-5712  
23 Facsimile: 415-773-5759

22 I hereby certify that today I served copies of the foregoing United States' Opposition to  
23 Defendant's Motion to Amend the August 14, 1996 Settlement Agreement and Injunctive Order upon  
24 the following Parties in the above matter via United States mail:

24 Stephen Goldberg  
25 Spierer, Woodward, Denis & Furstman, P.C.  
26 707 Torrance Boulevard, Suite 200  
27 Redondo Beach, CA 90277  
28



1 Jane Curran Pandell  
2 Randell Wright  
3 Pandell, Novich & Borsuk  
4 Peri Executive Center  
5 2033 North Main Street, Suite 450  
6 Walnut Creek, CA 94596

7 Thomas Wolfe  
8 Myer, Swanson & Adams, P.C.  
9 1600 Broadway, Suite 1850  
10 Denver, CO 80202

11 Paula Alicea  
12 Gordon & Rees  
13 275 Battery Street, Suite 2000  
14 San Francisco, CA 94111

15 Patrick M. Glenn  
16 Hanson, Bridgett, Marcus, Vlahos & Rudy  
17 333 Market Street, Suite 2300  
18 San Francisco, CA 94105

19 Timothy L. McInerney  
20 McInerney & Dillon, P.C.  
21 One Kaiser Plaza, 18th Floor  
22 Oakland, CA 94612

23 Lawrence W. Schonbrun  
24 Law Offices of Lawrence W. Schonbrun  
25 86 Eucalyptus Road  
26 Berkeley, CA 94705

27 Amy B. Vandeveld  
28 3170 West Canyon Avenue  
San Diego, CA 92123

Jeffrey D. Brandstetter  
Law Offices of Jeffrey D. Brandstetter  
1 Market Plaza, Stuart Street Tower  
13th Floor  
San Francisco, CA 94105-1402

1 L. O'Neal Sutter, P.L.L.C.  
2 310 Natural Resources Drive  
3 Little Rock, AR 72205

4 DATED: January 5, 2000

5 PHYLLIS M. COHEN  
6 Trial Attorney  
7 Disability Rights Section  
8 Civil Rights Division  
9 U. S. Department of Justice  
10 P. O. Box 66738  
11 Washington, D.C. 20035-6738  
12 (202) 514-3882  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28