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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. AMC ENTERTAINMENT, INC., et al., Defendants.	Case No.: CV-99-01034-FMC(SHx) MEMORANDUM IN SUPPORT OF PLAINTIFF UNITED STATES' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: LINE OF SIGHT ISSUES DATE: Nov 18, 2002 TIME: 10:00 a.m. JUDGE: Hon. Florence-Marie Cooper

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INTRODUCTION

In 1995, defendants AMC Entertainment, Inc. and American Multi-Cinema, Inc. [hereinafter collectively referred to as "AMC"] introduced a new product to the American movie-going public -- so-called "stadium-style" seating -- whereby the majority of the rows of seats in a theater were placed on a succession of elevated risers as in many sports arenas or stadiums. Since that time, AMC has constructed and now operates over 80 theater complexes nationwide with stadium-style seating. By any measure, the enhanced lines of sight and viewing experience provided by these stadium-style theaters has proven to be a resounding success with ambulatory movie patrons and new construction of stadium-style theaters has completely taken over the industry. Indeed, almost no "traditional" theaters have been built since AMC began the stadium-style construction boom in 1995.

Unfortunately, in the vast majority of AMC's stadium-style theaters, patrons who use wheelchairs are not provided seating in the stadium section, but, rather, are consigned to seating in the "traditional" sloped-floor portion of the theaters that is both directly in front of the wall-to-wall screen and physically separate from the stadium-style section. The non-stadium portions of AMC's stadium-style theaters - with inferior sight lines and seats located uncomfortably close to the large screen - simply do not provide comparable, let alone popular or usable, seating. Disabled patrons (and their moviegoing companions) have filed a torrent of complaints with both AMC and the Department of Justice about the inferiority of the viewing experience afforded by these non-comparable wheelchair locations. Such complainants describe not only the physical discomfort engendered by these seats (including neck pain, eye strain, headaches, blurriness, and overly large or grainy screen images), but also their collective feelings of isolation, embarrassment, and anger at being denied access to the stadium-style seating section where the overwhelming majority of ambulatory patrons routinely sit.

In 1999, the United States filed this enforcement action under the Americans With Disabilities Act (42 U.S.C. § 12101 et seq.) ("ADA") to rectify these and other significant accessibility problems at AMC's stadium-style theater complexes across the country. Of particular relevance to the instant motion for partial summary judgment is Standard 4.33.3 of the

Department of Justice's regulations implementing Title III of the ADA which mandates that, in public assembly areas such as AMC's movie theaters, "[w]heelchair areas shall be an integral part of any fixed seating plan . . . and shall provide people with physical disabilities . . . lines of sight comparable to those for members of the general public." 28 C.F.R. Pt. 36, App. A § 4.33.3 (1994). The United States herein moves for partial summary judgment pursuant to Rules 56(c) and (d) of the Federal Rules of Civil Procedure and seeks an order from this Court affirming the reasonableness of the Department's interpretation of Standard 4.33.3's comparable-line-of-sight and integration requirements as applied to AMC's stadium-style movie theaters.

First, consistent with both the regulatory language and purposes underlying the ADA and its implementing regulations, the United States has reasonably interpreted Standard 4.33.3's comparable-line-of-sight requirement as requiring movie theater operators to provide patrons who use wheelchairs with a view of a movie screen -- including such factors as obstructions, viewing angles, and distance from the screen -- that is similar or equal to the views offered to most other patrons in the theater. Under well-established administrative law principles, the Department's interpretation of its own ADA regulations is entitled to substantial deference.

The Department, moreover, did not regulate on a blank slate when promulgating Standard 4.33.3 In the context of theater design, the phrase "lines of sight" is a well-established term of art that encompasses factors affecting the nature and quality of the viewing experience, including visual obstructions, viewing angles, and distances from the screen. Furthermore, both the movie theater industry generally, and AMC in particular, have long agreed (at least until litigation commenced regarding stadium-style theaters in the late 1990s), that views of the screen can be qualitatively compared and that the regulation, the phrase "lines of sight" encompasses several factors including viewing angles. Perhaps most damning, however, is AMC's own admission in January 1995 -- nearly five months ***prior*** to the opening of its first stadium-style theater complex -- that Standard 4.33.3 should be interpreted such that "[l]ines of sight for a patron in an auditorium are measured with reference to the horizontal and vertical angles of view the eye must encompass in seeing the screen." Given this admission, AMC cannot now credibly claim that the Department's reading of Standard 4.33.3's comparable-line-of-sight requirement is unreasonable

or contrary to the language of the regulation when AMC itself believed – at least prior to this litigation – that "lines of sight" included viewing angles.

Second, turning to Standard 4.33.3's integration requirement, the Department reasonably interprets this provision as requiring theater operators to provide seating for physically disabled patrons that is among the seats where a majority of the other patrons routinely sit during movies. In AMC's stadium-style movie theaters, the overwhelming majority of patrons can, and do, sit in the stadium sections. When wheelchair locations are placed only in the non-stadium section of the theater, the result is segregation and isolation of persons who use wheelchairs and their moviegoing companions who choose to sit with them. Given that Title III of the ADA and its implementing regulations were enacted to combat this very form of segregation and inequality, the Department's interpretation of the regulation's integration requirement fully comports with both the regulatory language and the ADA's anti-discrimination mandate. The Department's reading of Standard 4.33.3's integration requirement should, therefore, be afforded substantial deference.

Third, applying Standard 4.33.3's integration requirement to AMC's stadium-style movie theaters, it is plain that AMC has violated the ADA by virtue of its pattern and practice of placing wheelchair locations outside the stadium-style section in its small and mid-sized stadium-style theaters with seating capacities under 300 patrons. Both statistical and anecdotal evidence underscore the undisputed fact that AMC movie theater patrons overwhelmingly prefer seats in the stadium-style section to seats outside the stadium section where the majority of wheelchair spaces are located. Indeed, AMC has admitted that seats on the sloped-floor portion of its stadium-style theaters are "the last to fill up everytime." This Court should thus enter an order holding that AMC has violated Standard 4.33.3's integration requirement by virtue of its pattern and practice of placing wheelchair locations in the worst locations in the theater outside the stadium-style section of its stadium-style theaters with seating capacities under 300 patrons.

LEGAL AND REGULATORY BACKGROUND

Congress enacted the ADA in 1990 to remedy pervasive and continuous discrimination against persons with disabilities. See 42 U.S.C. § 12101(a)-(b); see generally PGA Tour, Inc. v.

Martin, 532 U.S. 661, 674-77, 121 S. Ct. 1879, 1889-90 (2001). One of the ADA's primary purposes is, therefore, "to provide a clear and comprehensive mandate for the elimination of discrimination against individuals with disabilities[.]" 42 U.S.C. § 12101(b)(1).

During the congressional hearings preceding the passage of the ADA, reports, surveys and testimony offered from numerous witnesses made plain that "an overwhelming majority of individuals with disabilities lead isolated lives and do not frequent places of public accommodation." S. Rep. No. 116, 101st Cong., 1st Sess. 10-11 (1989). For example, testimony by the National Council on Disability summarized a then-recent national poll:

> The survey results dealing with social life and leisure experiences paint a sobering picture of an isolated and secluded population of individuals with disabilities. *The large majority of people with disabilities do not go to movies, do not go to the theater, do not go to see musical performances, and do not go to sports events.* A substantial minority of persons with disabilities never go to a restaurant, never go to a grocery store, and never go to a church or synagogue * * * The extent of non-participation of individuals with disabilities in social and recreational activities is alarming.

Id. (Emphasis added.)

To address these problems, Title III of the ADA expressly prohibits disability-based discrimination by public accommodations and commercial facilities. See 42 U.S.C. §§ 12181-12189. Of particular relevance to this action, Title III mandates that so-called "newly constructed" public accommodations (i.e. - covered facilities designed or constructed for first occupancy after January 26, 1993) be "readily accessible to and usable by" persons with disabilities. See 42 U.S.C. § 12183(a)(1)("Section 303"); see also id. at § 12182(a) ("Section 302") (forbidding disability-based discrimination "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation").[1] Movie theaters -- such as the stadium-style theaters owned or operated by

[1] The ADA also requires all Title III-covered facilities altered after January 26, 1992 to be "readily accessible to and usable by" individuals with disabilities "to the maximum extent feasible." 42 U.S.C. § 12183(a)(2). All of the AMC stadium-style theaters at issue in this litigation were constructed and/or altered after January 1993. See Appendix (Volume 1) of Declarations and Exhibits In Support of Plaintiff United States' Motion for Partial Summary Judgment Re: Line of Sight Issues (served Oct. 25, 2002), Ex. 1 [hereinafter "US App., Vol. __, Ex. __"]).

the AMC defendants -- are expressly encompassed within Title III's non-discrimination mandate. Id. at § 12181(7)(C) (defining the term "public accommodation" to include "a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment").

Congress granted primary enforcement authority for Title III of the ADA to the United States Department of Justice [hereinafter "Department" or "DOJ"], including the responsibility for promulgating regulations, issuing technical assistance materials, and filing lawsuits in federal court to enforce compliance with the statute and accompanying regulations. 42 U.S.C. §§ 12186(b), 12206, 12188(b). Section 303(a) of the ADA specifies that the Department's Title III-based regulations shall include, or incorporate by reference, architectural accessibility standards. Id. at § 12183(a). The ADA, however, affords the Department of Justice considerable deference when promulgating these architectural standards. The ADA states that such standards shall meet or exceed those developed by another federal agency, the Architectural and Transportation Barriers Compliance Board (commonly referred to as the "Access Board"). See 42 U.S.C. § 12186(c) (regulations issued by the Department of Justice must be "consistent with the minimum guidelines and requirements issued by" the Access Board); see also id. at §§ 12186(b), 12204.[2] The Department has authority to issue regulations that "exceed the [Access] Board's 'minimum guidelines' and establish standards that provide greater accessibility." 56 Fed. Reg. 35,408, 35,411 (1991).

In 1991, pursuant to Congress' delegated regulatory authority, the Department issued final regulations - after notice-and-comment rulemaking - to govern new construction of, and alterations to, Title III-covered facilities. See 28 C.F.R. §§ 36.101 - 36.608 & App. A; see also

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[2] Created in 1973, the Access Board is an independent federal agency with responsibility for, among other things, ensuring the barrier-free design of federal buildings and federally-assisted projects. See Rehabilitation Act of 1973, Pub. L. No., 93-112, § 502 (1973) (codified at 29 U.S.C. § 792); see also http://www.access-board.gov/about/boardhistory.htm (summarizing history and jurisdiction of the Access Board). The Board's present membership includes representatives from 12 federal agencies, one of whom is the Department of Justice. See 29 U.S.C. § 792(a)(1)(B). Guidelines issued by the Access Board concerning the ADA do not, however, have regulatory force and effect; only the Department's regulations have the force of law. See, e.g., Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities, 56 Fed. Reg. 35408, 35459 (1991).

56 Fed. Reg. 35,546 (July 26, 1991). Of particular relevance to the instant motion are two regulatory provisions governing newly constructed or altered public accommodations. Section 36.308, which bears the heading "Seating in Assembly Areas," was promulgated in recognition of the fact that "[i]ndividuals who use wheelchairs historically have been relegated to inferior seating" and forced to sit "separate from accompanying family and friends." 56 Fed. Reg. 35544, 35571 (July 26, 1991); see also 28 C.F.R. § 26.203 (public accommodations shall afford goods, services, and accommodations "in the most integrated setting"). To this end, § 36.308 mandates that newly constructed or altered assembly areas "shall be" fully compliant with the standards set forth in the Department of Justice's Standards for Accessible Design, codified as Appendix A to Part 36 of the Code of Federal Regulations [hereinafter "Standards"].

While the Department's Standards set forth comprehensive accessibility requirements for various types and aspects of public accommodations and commercial facilities, the provision that forms the crux of this motion is Standard 4.33.3 -- the regulation governing the placement and location of wheelchair and companion seats in public assembly areas such as movie theaters. Standard 4.33.3 provides, in pertinent part, that

> [*w]heelchair areas shall be an integral part of any fixed seating plan and shall be provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public.* They shall adjoin an accessible route that also serves as a means of egress in case of emergency. At least one companion fixed seat shall be provided next to each wheelchair seating area. When the seating capacity exceeds 300, wheelchair spaces shall be provided in more than one location.

28 C.F.R. Pt. 36, App. A § 4.33.3 (1994) (emphasis added)[hereinafter "Standard 4.33.3"]. Standard 4.33.3's comparability and integration mandates serve as the basis for the United States' instant motion for partial summary judgment.

STATEMENT OF FACTS

In 1995, AMC opened a 24-screen theater complex in Dallas, Texas called the Grand 24. See United States' Statement of Uncontroverted Facts and Conclusions of Law ¶ 3 (served Oct. 25, 2002) [hereinafter "US SJ Facts"]. The Grand 24 employed a new type of theater design whereby, rather than placing rows of seats on a gradually sloping floor as in most "traditional" movie theaters, all but a few rows of seats at the front of each theater nearest the screen were

placed on a series of seating platforms or risers (typically 18 inches in height) to elevate the seats off of the floor. U.S. Facts ¶ 4. Access to these seats on risers was accomplished by climbing stairs, rather than walking up or down sloped aisles. Id. ¶¶ 5-6. This seating configuration on successive tiers of elevated risers is generally referred to in the movie theater industry as "stadium-style seating" or "stadium seating." Id. ¶ 7. At the Grand 24, all but the four largest theaters (with seating capacities over 300 patrons) locate wheelchair and companion seating in the rows on the sloped floor portion of the theater nearest the screen, rather than in the more desirable and heavily-promoted stadium-style seating section. Id. ¶ 19.

AMC's opening of the Grand 24 was followed immediately by the opening of several other AMC stadium-style theater complexes, including the Promenade 16 in Woodland Hills, California and the Norwalk 20 in Norwalk, California. Id. ¶ 10. The majority of theaters at the Promenade 16 and the Norwalk 20 theater complexes employed the same type of stadium-style theater design whereby wheelchair and companion seating was located in the first few rows of the theater low and close to the screen, rather than in the elevated stadium-style seating. Id. ¶¶ 20-22.

Indeed, the Grand's stadium-style seating concept has proven so popular with theater patrons and so profitable, that not only have all but one of AMC's 83 theater complexes constructed or altered since May 1995 incorporated stadium-style seating, but AMC also is closing many of its complexes with only "traditional" sloped-floor theaters. Id. ¶¶ 8, 13-18. In press releases, advertisements, and other publicity, AMC touts its stadium-style theaters as providing enhanced and elevated lines of sight that "change[] the way . . . moviegoers experience the movies," provide "unobstructed viewing," and create the feeling of being "suspend[ed] . . . in front of the wall-to-wall screen." Id. ¶ 11. AMC concedes that the whole point of its stadium-style theaters is to provide patrons with enhanced, unobstructed lines of sight to the screen. Id. ¶¶ 12.

Thus, by any measure, AMC's stadium-style theaters have proven to be a resounding success with its ambulatory patrons. Yet patrons who use wheelchairs (or who have other mobility impairments) cannot climb stairs and are, therefore, unable to enjoy the enhanced sight

lines provided by these theaters. Id. ¶¶ 28-29, 32-34. Instead, in the vast majority of AMC's stadium-style theaters, patrons who use wheelchairs are consigned to seating in the "traditional" sloped-floor portion of the theater that is both directly in front of the wall-to-wall screen and physically separate from the stadium-style section. Id. ¶¶ 4-5, 19-24; see also US SJ App., Vol. 3, Ex. 114 (CD-Rom disk of computer models of six auditoriums at AMC's Promenade 16 and Norwalk 20 theater complexes).[3] Specifically, of the 1,714 auditoria contained in AMC's stadium-style theater complexes, 1,306 auditoria (76.2%) have no wheelchair seating located in the stadium section. Id. ¶¶ 23-24, 26. Moreover, over 17% of the auditoria in AMC's stadium-style theaters have wheelchair seating located in the very first row. Id. at ¶ 27. The non-stadium portions of AMC's stadium-style theaters - with inferior sight lines, and seats located uncomfortably close to the large screen - simply do not provide comparable, let alone popular or usable, seating. Id. ¶¶ 28-29, 32-34, 98-106. In the words of one disabled patron who attended "Amistad" at the AMC Esplanade 14 theater complex in Phoenix, Arizona and who sat in the fourth row of the non-stadium portion of the theater (the only wheelchair seating area in that theater):

> It was very difficult to see, because the[] [screen] was so close that you could not see the whole film. You had to look from side to side. It was almost blurry in a way because you were so close. [¶] After 20, 25 minutes then it became kind of exhausting to keep you head and neck up . . . It became kind of painful after a while to keep your head up at a 45-degree angle . . . After awhile I was moving my neck like this (indicating) and I would have to take a break [back in the lobby] before I go back up [to my seat] and try to watch again. It was rather uncomfortable. Being a film fan, I probably wouldn't have stayed there. I probably should have left, but I toughed it out and watched the film.

Guttierrez Dep. Tr. 42- 43 (July 16, 2002) (U.S. SJ App., Vol. 1, Ex. 18); see also id. at pp. 19-21, 45. Other patrons who use wheelchairs (and their moviegoing companions) have complained both to AMC and the Department about similar experiences – including neck pain, eye strain, headaches, blurriness, and overly large or grainy screen images – as a result of sitting in

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[3] Indeed, not until two years after the filing of this enforcement action in 1999 did AMC begin constructing and operating theater complexes with "full stadium" seating (i.e. - stadium-style seating for all patrons, rather than, as in prior designs, a hybrid of stadium and sloped-floor seating). Id. ¶ 25.

wheelchair and companion seating located in close proximity to the screen in the traditional, sloped-floor portion of AMC's stadium-style theaters. US SJ Facts ¶¶ 28-30, 32-34.

In light of the inferiority of the sight lines in the non-stadium portion of AMC's stadium-style theaters, it is thus not surprising that the introduction of these theaters was met with a torrent of protest and disappointment from disabled patrons, their moviegoing companions, local building officials, ADA access consultants, and even on occasion, AMC officials themselves. Id. ¶¶ 28-34, 38-42, 106. The following examples serve to illustrate the breadth and nature of the line-of-sight complaints and concerns communicated to, or expressed by, AMC personnel:

- Within six weeks of the opening of the Grand 24 theater complex in 1995, AMC officials acknowledged "receiving many complaints about the handicap [sic] seating." Id. ¶ 29; see also id. at ¶ 30 (Grand complaints).[4] When AMC's in-house architect traveled to the Grand 24 in July 1995 to spend a day investigating problems with this new complex, he observed: "Presentation overall was excellent when seated in the first rows of the [stadium-style] risered seating . . . [¶] ***rows on the sloped floor [among which the wheelchair seating is located] are the last to fill up, everytime***." (Id. ¶ 31) (emphasis added.)

- In November 1996, an AMC official responsible for overseeing AMC's ADA compliance in the Southeast Region expressed his exasperation after sitting through two days of hearings before the Florida Board of Building Codes and Standards concerning AMC's accessibility waiver requests: "All Florida projects need some accessible seating in the stadium area. The '300 seat' rule AMC has been using is irrelevant because we do not offer 'comparable lines of sight.' . . . [¶] ***The accessible seating that we currently offer in stadium houses is an insult to the disabled. How often do you sit in the first, or even fourth row?*** . . . [¶] AMC may be very vulnerable to lawsuits at the stadium houses we have in Florida . . . [¶] I would prefer to not attend any more Florida waiver hearings." (Id. ¶ 42) (Emphasis added.)

Yet despite these concerns, AMC persisted in building stadium-style theater complexes nationwide which, in all but a small percentage of its auditoriums (i.e. - theaters with seating capacities over 300 patrons), relegate patrons who use wheelchairs to seating on the sloped-floor (non-stadium) sections closest to the screen which provide non-comparable lines of sight. Id. ¶¶ 23, 26.

In January 1999, the United States commenced this action against AMC alleging that it had engaged in a pattern or practice of violating Title III of the ADA, 42 U.S.C. §§ 12181-12189, in

[4] Since 1995, AMC has also received numerous complaints regarding the inferiority of its wheelchair seating locations at its other stadium-style theaters nationwide. Id. ¶¶ 32, 106 (surveying patron complaints received by AMC).

the design, construction, and operation of movie theaters with stadium-style seating across the country. See Compl. for Declaratory & Inj. Relief, Compensatory Damages, & Civil Penalties (filed Jan. 29, 1999)(Docket # 1)("Complaint"). Although this Complaint alleges numerous ADA violations, one of several important issues concerns the United States' allegation that AMC has failed to provide patrons who use wheelchairs (and their companions) with seats that are "an integral part of any fixed seating plan and . . . [that provide] lines of sight comparable to those for members of the general public." Standard 4.33.3 See, e.g., Complaint ¶ 3.

ARGUMENT

I. Partial Summary Judgment Is Appropriate Under Rule 56(d) Regarding the Department's Interpretation of Standard 4.33.3's Comparability and Integration Requirements

Summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2509 (1986); Fairbank v. Wunderman Cato Johnson, 212 F.3d 528, 531 (9th Cir. 2000). Here, while the parties dispute many aspects of this case, they do not dispute that there exists a narrow legal issue appropriate for summary judgment regarding the propriety of the Department's interpretation of Standard 4.33.3's requirement that "[w]heelchair areas shall be an integral part of any fixed seating plan . . . and shall provide people with physical disabilities . . . lines of sight comparable to those for members of the general public." See Mem. of Points and Authorities In Support of AMC's Motion for Summary Judgment 6 (filed Sept. 25, 2002) (Docket # 347). In other words, the United States believes that there are no disputed issues of material fact precluding summary adjudication on the legal issues of: (i) whether the Department has reasonably interpreted Standard 4.33.3's comparability mandate, and (ii) whether the Department has reasonably interpreted Standard 4.33.3's integration mandate in the context of stadium-style movie theaters. In addition, the United States believes that there are no disputed issues of material fact precluding summary judgment on the *application* of Standard's 4.33.3's integration requirement

to AMC's stadium-style movie theaters at issue in this litigation.[5] This matter is thus also ripe for summary judgment.

II. The Department Has Reasonably Interpreted Standard 4.33.3's "Comparable Lines of Sight" Requirement And This Interpretation Is Entitled to Substantial Deference

A. *The Department's Interpretation of Standard 4.33.3*'s *Comparability Requirement*

As discussed above, Standard 4.33.3's comparability requirement mandates that wheelchair locations in public assembly areas provide persons with physical disabilities "lines of sight comparable to those for members of the general public." The Department of Justice construes this portion of Standard 4.33.3 to require a theater operator to provide wheelchair users with a view of a movie screen -- including such factors as physical obstructions, viewing angles, and distance from the screen -- that is similar or equal to the views offered to most other patrons in the theater. This reading of Standard 4.33.3 not only best comports with the language of the regulation, but also materially advances the anti-discrimination goals underlying Title III of the ADA and its implementing regulations.

The Department's interpretation of Standard 4.33.3's comparability requirement begins with a commonsense reading of the text of the regulation. A "line[] of sight" is "a line from an observer's eye to a distant point toward which he is looking." Webster's Ninth New Collegiate Dictionary 695 (1991). Thus, in the context of the regulatory term "lines of sight" is the collection of the lines extending from the viewer's eye to all the points on the screen where the film is projected. "Comparable" in this context means "equivalent" or "similar." Id. at 267; see also Webster's New Universal Unabridged Dictionary 368 (2d ed. 1979) (defining "comparable" as "being of equal regard"). Taken together, then, the plain language interpretation of Standard

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[5] The United States does not herein move for summary judgment on the *application* of Standard 4.33.3's comparability requirement to AMC's stadium-style theaters since such an inquiry would necessarily raise disputed factual matters, such as the actual "as built" seating configurations of these theaters. Thus, if the Court grants the United States' motion for partial summary judgment on Standard 4.33.3's comparability requirement, a trial will still be necessary on the application of this requirement to AMC's stadium-style theaters absent a settlement agreement by the parties.

4.33.3's comparability requirement is reasonably understood as requiring a qualitative comparison between the view of the screen afforded patrons who use wheelchairs with the views of the screen afforded most other members of the movie audience. In other words, while Standard 4.33.3 does not mandate that patrons who use wheelchairs be provided the best seats in the house, neither can they be relegated categorically to locations with the worst views of the screen, as they are in the overwhelming majority of AMC's stadium-style theaters. See discussion supra pp. 3-6.[6]

The Department's reading of Standard 4.33.3's comparability requirement also fully supports the central goal underlying Title III of the ADA and its implementing regulations of ensuring the accessibility and usability of public accommodations by persons with physical disabilities. As discussed above, see discussion supra pp. 3-6, both Title III and the Department's regulations were intended to combat the long-standing and pervasive problem of persons with physical disabilities either being consigned to inferior seating in theaters or being forced to sit separately from their family and/or companions. See also 42 U.S.C. § 12182(a) (generally prohibiting disability-based discrimination "in the full and equal enjoyment" of goods, services, and facilities). The comparative quality of the viewing experience is thus highly relevant to whether there is "equal enjoyment" of the benefits of a movie theater. For example, a wheelchair user who must watch a movie from an extreme angle that causes significant discomfort and distortion of the picture has not been afforded "equal enjoyment" of the movie if most other patrons in that

[6] The Department does not, however, read Standard 4.33.3 as imposing specific minimum or maximum viewing angles, distances to the screen, or degrees of visual obstruction that a movie theater or other type of assembly area is legally permitted to provide for patrons with physical disabilities. Indeed, it would be virtually impossible for a single regulatory section to set forth design criteria that took into account the nature and type of all assembly areas. For example, were Standard 4.33.3 read to impose a specific maximum viewing angle requirement, it would likely mean that every planetarium – at which celestial images are typically projected on the ceiling above the heads of seated patrons – would "fail" such a viewing angle requirement. Thus, the Department believes that Standard 4.33.3's comparability requirement must be interpreted flexibly in light of the configuration and nature of each assembly area so long as physically disabled patrons are provided comparable views of the screen, stage, or other spectacle being viewed.

theater are able to watch the film at more comfortable angles and without screen distortion. That is why the Department reasonably reads Standard 4.33.3's comparability mandate to require not only an assessment of physical obstructions, but also an analysis of the other critical factors that affect an individual's viewing experience, including viewing angles and distances from the screen.

Thus, because the Department's interpretation of Standard 4.33.3's comparability requirement fully comports with the language of the regulation, and because this interpretation best serves the anti-discrimination principles underlying Title III of the ADA and its implementing regulations, the Department's interpretation is entitled to substantial deference and should be affirmed by this Court. See, e.g., Thomas Jefferson Univ. v. Shalala, 512 U.S. 504, 512, 114 S. Ct. 2381, 2386 (1994) (holding that courts "must give substantial deference to an agency's interpretation of its own regulations;" an agency's interpretation must be given "'controlling weight unless it is plainly erroneous or inconsistent with the regulation'")(quoting Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414 (1945)); accord Auer v. Robbins, 519 U.S. 452, 461, 117 S. Ct. 905, 911 (1997); Barden v. City of Sacramento, 292 F.3d 1073, 1077 (9th Cir. 2002); Klem v. County of Santa Clara, 208 F.3d 1085, 1089 (9th Cir. 2000); Dep't of Health & Human Services v. Chater, 163 F.3d 1129, 1133-34 (9th Cir. 1998).

Such deference is particularly appropriate where, as here, the Department of Justice has principal authority for administering and enforcing the provisions of the ADA that govern the design and construction of new facilities. See 42 U.S.C. §§ 12186(b), 12183(a)(1), 12188(b)(1)(B). As the Supreme Court has emphasized, "the [Justice] Department's views are entitled to deference" in interpreting Title III of the ADA because it is the agency "directed by Congress to issue implementing regulations . . ., to render technical assistance explaining the responsibilities of covered individuals and institutions . . , and to enforce Title III in court." Bragdon v. Abbott, 524 U.S. 624, 646, 118 S. Ct. 2196, 2207 (1998). Both this Circuit and other courts have applied this deferential standard when upholding the Department's interpretations of its Title III regulations. See Botosan v. Paul McNally Realty, 216 F.3d 827, 833-34 (9th Cir. 2000) (granting substantial deference to Department's interpretation of another Title III

regulation set forth in technical assistance manual); Paralyzed Veterans of Am. v. D.C. Arena, L.P., 117 F.3d 579, 584-585 (D.C. Cir. 1997) (deferring to Department's reading of Standard 4.33.3 on the issue of lines of sight over standing spectators), cert. denied, 523 U.S. 1003 (1998); Johnson v. Gambrinus Co./Spoetzl Brewery, 116 F.3d 1052, 1060-61 (5th Cir. 1997) (deferring to Department of Justice's interpretations of Title III of the ADA); Fiedler v. American Multi-Cinema, Inc., 871 F. Supp. 35, 36 & n.4 (D.D.C. 1994) (granting deference to Department's interpretation of Standard 4.33.3's "clustering" exception); see also Barden, 292 F.3d at 1077 (affording deference to Department's interpretation of ADA and Title II regulations).

B. "Lines of Sight" Is A Well-Established Term of Art in the Context of Theater Design That Encompasses Several Factors, Including Viewing Angles

The Department, moreover, did not regulate on a blank slate when promulgating Standard 4.33.3 In the context of theater design, the phrase "lines of sight" is a well-established term of art that encompasses factors affecting the nature and quality of the viewing experience -- including visual obstructions, viewing angles, and distances from the screen. The Department thus properly relied on this well understood and accepted meaning of this phrase when promulgating and interpreting this regulation. Cf. Morissette v. United States, 342 U.S. 246, 263, 72 S. Ct. 240, 250 (1952) ("[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken[.]")

It is not happenstance that, in any particular assembly area, there is a certain angular and spatial relationship between the spectacle being viewed (i.e. - movie screen or stage) and the seated spectators. See, e.g., Jacobson Depo Tr., pp. 17-123 (dated June 20, 2002) (discussing the development of AMC's design criteria and the design of the Grand 24); see also US SJ App., Vol. 3, Ex. 107 (copy of Jacobson speech to theater equipment suppliers in 1993 entitled "Designing for the Comfort Zone"); Expert Report of Peter H. Frink 1-3, 6-14, 17-18 (dated Aug. 22, 2002) (U.S. SJ App., Vol. 3, Ex. 112) (discussing theater design considerations and principles). This is because theater designers (including those working for AMC, see infra pp.

15, 18-20) know, for example: that a seat too close to a movie screen may make the projected image appear overwhelmingly large, distorted, or cause the spectator to look upward at a vertical viewing angle that causes physical discomfort; that, conversely, a seat too far from the screen may make images on the screen appear overly small and thus fail to "immerse" the patron in the film experience; that a seat placed at an extreme horizontal viewing angle off to the side of the screen may make images appear distorted and cause the spectator to have to turn his or her head from side-to-side to take in the entire screen as if watching a tennis match; and, that certain floor slopes (or elevated risers) are necessary to minimize the likelihood that any patron's view of the screen will be obstructed by the head of persons seated in the preceding row(s).

The foregoing principles are set forth in numerous treatises, articles, and other guidelines on theater design published long before the Department's promulgation of Standard 4.33.3 Ranging from the seminal "Treatise on Sightlines and Seating" published by Scottish engineer John Scott Russell in the 1830s, to the archetypal architectural reference manual *Architectural Graphics Standards*, to guidelines issued by the Society of Motion Picture and Television Engineers ("SMPTE"), there is a wealth of industry references that discuss seating and sightlines in theaters in terms of well-established design principles governing the angular and spatial relationships of the spectators and the screen or stage. See, e.g., SMPTE Engineering Guideline EG 18-1989: *Design of Effective Cine Theaters* (June 1990); C.G. Ramsey and H.R. Sleeper, "Theater Design Criteria," Architectural Graphics Standards 33-39 (Peter H. Frink 8th ed., 1988); Ernst Neufert, Architect's Data (2nd Intl. ed. 1980); George C. Izenour, Theater Design (1977); Harold Burris-Meyer & Edward C. Cole, Theaters and Auditoriums (2d ed. 1964); John Scott Russell, "Treatise on Sightlines and Seating," Edinburgh New Philosophical Journal, Vol. 27 (1838) (reprinted in George C. Izenour, Theater Design at 71 & App. 3 (1977)). Relevant portions of these treatises and articles are summarized in the United States' statement of uncontroverted facts and are attached as exhibits. See US SJ Facts ¶¶ 43-58; US SJ App., Vol. 3, Exs. 82-92. It also bears emphasis that both AMC officials and one of its primary "outside" architects admitted in deposition that they relied on several of these treatises -- including the Architectural Graphics

Standards and the SMPTE guidelines -- when designing, or developing criteria for, AMC's stadium-style theaters. See US SJ Facts ¶¶ 50-52, 55.

In light of this common usage of the term "lines of sight" in the context of theater design, the Department has thus reasonably concluded that factors in addition to physical obstructions – such as viewing angles and distance from the screen – affect whether the views of the movie screen for patrons who use wheelchairs are equivalent to those of the majority of other patrons. Indeed, even before the construction of AMC's first stadium-style theater complex (the Grand 24) in 1995, the Department took the position, in enforcing Title III, that viewing angles were relevant in determining whether a public assembly area complied with the comparable-lines-of-sight requirement of Standard 4.33.3 See Independent Living Res. v. Oregon Arena Corp., 982 F. Supp. 698, 709 n.9 (D. Or. 1997) (noting that the Department stated in 1994 that "[i]n order to fulfill the requirement that comparable lines of sight and admission prices be provided in new construction," wheelchair seating locations must be provided "in each price range, level of amenities, and *viewing angle*.") (emphasis added).

In 1998, however, the United States learned that a movie theater operator, Cinemark USA, Inc., was advocating -- as a litigating position in a private ADA action involving one of its stadium-style theater complexes in Texas -- an interpretation of the phrase "lines of sight" that conflicted with the long-standing, common usage of that term in the field of theater design. Cinemark argued in that action that the "lines of sight" language in Standard 4.33.3 had nothing to do with viewing angles and simply meant that the spectators' view of the screen must be unobstructed. See Lara v. Cinemark, U.S.A., C.A. No. EP-97-CA-502-H, 1998 WL 1048497, (W.D. Tex. Aug. 21, 1998) (US SJ App., Vol. 3, Ex. 111). In response to Cinemark's novel interpretation, the Department of Justice filed an *amicus* brief confirming that Standard 4.33.3's comparability requirement refers not only to visual obstructions but also to spectators' viewing angles. See Brief of Amicus Curiae United States on Summary Judgment Issues, Lara v. Cinemark USA, Inc., C.A. No. EP-97-CA-502-H (W.D. Tex. July 24, 1998) (copy attached as Exhibit A to AMC's motion for summary judgment). The Department's *amicus* brief in Lara stated, in pertinent part:

> 'lines of sight' are described by the movie industry itself, and this concept provides a way of measuring the quality of the movie viewing experience [citation omitted]. The vertical field of vision (to the top and bottom of the screen), horizontal field of vision, and other similar factors are measured to ensure that the viewer has a line of sight that approaches an optimal viewing zone. [citation omitted]. These same factors are used to determine whether the viewer has a line of sight that results in physical discomfort. . . Once measured, the lines of sights provided to wheelchair users must be comparable to those provided to members of the general public. "Comparable" is an ordinary word used in everyday parlance . . . . Wheelchair locations should not be relegated to the worst sight lines in the building, but neither do they categorically have to be the best. Instead, consistent with the overall intent of the ADA, wheelchair users should be provided equal access so that their experience equates that of members of the general public.

Id. at 7-8. The Department's position in Lara, therefore, simply reaffirmed the well-established understanding of the term "lines of sight" that has prevailed for years among theater designers.

C. *Both the Movie Theater Industry and AMC Admit That Standard 4.33.3's Comparability Requirement Includes Viewing Angles*

Consistent with the architectural principles discussed above, both the movie theater industry generally, and AMC in particular, have long agreed (at least until the Lara litigation began in 1997) that Standard 4.33.3's comparability requirement should be read as encompassing viewing angles. Indeed, if there is anything approaching a "smoking gun" in this case (as discussed on pp. 19-20), it is AMC's own admission in January 1995 -- nearly five months ***prior*** to the opening of its first stadium-style theater complex -- that Standard 4.33.3 should be interpreted such that ***"[l]ines of sight for a patron in an auditorium are measured with reference to the horizontal and vertical angles of view the eye must encompass in seeing the screen."*** See US SJ App., Vol. 3, Ex. 108 (emphasis added). Such evidence stands as a powerful testament to the propriety of the Department's reading of Standard 4.33.3

First, between 1991 and 1997, the National Association of Theater Owners ("NATO"), a trade organization whose members include the owners and operators of over 10,000 motion picture screens across the country (including AMC until 2000), took the position in writing on more than ten separate occasions that lines of sight should be measured in degrees, that seats in the front of a movie theater are the "least desirable," and that seating in the rear portion of most theaters provides lines of sight that are the "most favored" and the "best in the house." See U.S. SJ Facts ¶¶ 59-73. The movie industry thus plainly understood that lines of sight within the

context of Standard 4.33.3 not only included viewing angles, but also that it was possible to make qualitative comparisons as between the views afforded patrons seated in various parts of a theater.[7]

AMC and its architects, moreover, have similarly acknowledged that views of the screen from different seats in an auditorium can be qualitatively compared and that the phrase "lines of sight" encompasses multiple factors, including viewing angles. For example, AMC's former-Senior Vice President for Design, Development & Facilities (Mr. Larry Jacobson), testified that he established AMC's design criteria to take into account such factors as head clearances (obstructions), horizontal and vertical viewing angles, distance from the screen, and screen distortion in order to maximize patrons' viewing experience and comfort. See US SJ Facts ¶ 82; see also US SJ App., Vol. 3, Ex. 107 (copy of Jacobson speech to theater equipment suppliers in 1993 entitled "Designing for the Comfort Zone"). Mr. Jacobson further testified that the Grand 24 – AMC's first stadium-style theater complex – was designed based on the foregoing architectural principles. US SJ Facts ¶ 83. Lastly, Mr. Jacobson recounted some of the myriad problems raised when these criteria were not followed. For example, he stated that seats located too close to the screen with consequently large horizontal or vertical viewing angles would: "make it difficult to sit back and look at the entire image"; make screen images appear distorted and overwhelmingly large "like children sitting close to the TV set"; cause patrons to "break their necks"; and, would make watching the movie "like a tennis match, [because] you are looking right and left to see the edges of the picture, to see the entire picture." Id. at ¶ 84; see also id. at ¶ 85. Indeed, Mr. Jacobson pejoratively characterized the seats in the front of many of AMC's theaters as "booker seats" – i.e., the "extra" seats added or put in the front of the theater only for revenue purposes that have less than optimal (and non-comparable) views of the screen.

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[7] Indeed, it was not until the commencement of the Lara litigation concerning stadium-style theaters in 1997 that NATO and its members reversed course and began claiming that the term "lines of sight" relates only to obstructions. Compare, e.g., US SJ Facts ¶¶ 59-72 with US SJ Facts ¶ 74; see also AMC 30(b)(6) Dep. (Pennington) Tr. 240:16-21 (Oct. 2, 2002) ("Candidly, the discussions I recall . . . where unobstructed view of the screen first became a topic, if you will, was after the Lara decision.").

Id. at ¶¶ 86-88; see also id. at ¶ 81 (discussing how the majority of wheelchair locations at the Norwalk 20, Promenade 16, Mission Valley 20, Arrowhead 14, and Grand 24 theater complexes were "outside the comfort zone").[8]

Second, a representative from one of AMC's primary "outside" architectural firms, STK Architecture, Inc., acknowledged that, consistent with his prior testimony in other theater litigation arising under the ADA, "there's many components of a sight line. Direct angle to your focal point, the left to right head motion, the up to down head motion, the clearance in front of the patron in front of you, those are all components of the sight line [¶] . . . . I believe they all can be components of sight line, yes." Troutman Dep. Tr., pp. 179-81 (July 10, 2002) (US SJ App., Vol. 1, Ex. 30); see also US SJ Facts ¶¶ 77-78 (admissions by other AMC officials and architects that lines of sight include viewing angles).

Finally, and perhaps most tellingly, AMC itself argued in the first case involving the application of Standard 4.33.3 to movie theaters – Fiedler v. American Multi-Cinema, Inc. – that this regulation's comparability requirement should be read to include viewing angles. In Fiedler, a private ADA action filed by a quadriplegic movie-goer who uses a wheelchair for mobility, the private plaintiff alleged that AMC had violated the ADA by relegating him to inferior seating at the back of its traditional-style Avenue Grand Theater at Union Station in Washington, D.C., and by failing to disperse wheelchair locations throughout the seating area. See Fiedler v. American Multi-Cinema, Inc., 871 F. Supp. 25, 36 (D.D.C. 1994).[9] AMC moved for summary judgment on several grounds contending that, inter alia, the ADA was inapplicable to the Grand Avenue Theater since AMC leased the property from the federal government (which is exempt from ADA requirements), and that, in any event, it was not required to disperse wheelchair locations

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[8] Other AMC officials have also admitted that seating in the front of their theaters was decidedly less popular and/or provided inferior views of the screen. See US SJ Facts ¶¶ 89-94.

[9] Because AMC's Avenue Grand Theater opened for business prior to January 1993, Title III's barrier removal requirements for readily achievable barrier removal in existing structures applied in that case, rather than the more stringent new construction requirements applicable in this action. See Fiedler, 871 F. Supp. at 38.

based on an exception to Standard 4.33.3 permitting "clustering" of accessible seating in certain circumstances. Id. at 36. The United States filed an *amicus* brief opposing AMC's motion for summary judgment. Id. The district court denied AMC's motion, holding that AMC's Avenue Grand Theater was indeed subject to the ADA and finding that Standard 4.33.3's "clustering" exception "affords AMC no warrant to consign its wheelchair patrons to the back of the Avenue Grand Theater." Id. at 37-39. AMC subsequently moved for a stay of the court's summary judgment order so it could pursue an interlocutory appeal. In this stay memorandum, AMC asserted that, in the context of Standard 4.33.3:

> [l]ines of sight for a patron in an auditorium are measured with reference to the horizontal and vertical angles of view the eye must encompass in seeing the screen. For vertical sight lines, the angular measurement extends from the horizontal line of sight vertically to the sight line directed to the top of the screen . . . It is self evident . . . that . . . . sight lines are steepest in the front and flatten out in moving to the rear[.]"

[AMC's] Memorandum of Points and Authorities In Support of Motion for Order of Certification and Stay 4-5 (dated Jan. 31, 1995) (U.S. SJ App., Vol. 3, Ex. 108). Given this statement, AMC cannot now credibly claim that the Department's reading of Standard 4.33.3's comparable-line-of-sight requirement is unreasonable or contrary to the language of the regulation when AMC itself believed – at least prior to this litigation – that "lines of sight" included viewing angles.

D. *The Most Recent Court Decision Addressing Standard 4.33.3 In the Context of Stadium-style Movie Theaters Supports the Department's Interpretation that "Lines of Sight" Include Viewing Angles and that This Regulation Requires A Qualitative Comparison of the Viewing Experience of Disabled Patrons and Other Members of the General Public*

Since the advent of stadium-style theaters in 1995 by AMC and other theater chains, there has been much litigation concerning the interpretation and application of Standard 4.33.3 to these new types of movie theaters. See, e.g., Meineker v. Hoyts Cinemas Corp., 216 F. Supp.2d 14 (N.D.N.Y. 2002), appeal docketed, No. 02-9034 (2nd Cir. Aug. 26, 2002); United States v. Cinemark USA, Inc., Case No. 1:99 CV-705 (N. D. Ohio Nov. 19, 2001), appeal docketed, No. 02-3100 (6th Cir. Jan. 24, 2002); Oregon Paralyzed Veterans of America v. Regal Cinemas, Inc., 142 F. Supp.2d 1293 (D. Or. 2001), appeal docketed, No. 01-35554 (9th Cir. June 13, 2001); Lara v. Cinemark, U.S.A., C.A. No. EP-97-CA-502-H, 1998 WL 1048497 (W.D. Tex. Aug. 21, 1998) ("Lara I") (US SJ App., Vol. 3, Ex. 111), revs'd, 207 F.3d 783 (5th Cir. 2000) ("Lara II").

While the results of these cases have been mixed, the most recent case to address this issue (Meineker) concluded that, consistent with the Department's interpretation of Standard 4.33.3's comparability requirement, the phrase "lines of sight" includes viewing angles, and that this regulation demands a qualitative comparison of views afforded disabled and ambulatory movie patrons.

As discussed previously, see discussion supra pp. 16-17, the Lara action was the first federal case to address the interpretation and application of Standard 4.33.3 to stadium-style movie theaters. At issue in Lara was Cinemark's placement of wheelchair locations at its Tinseltown theater complex within rows close to the screen and outside the elevated stadium-style seating section. Lara I, slip op. at *1. Plaintiffs alleged that such locations did not afford comparable lines of sight to patrons who used wheelchairs because they were too close to, and far below the level of, the screen, thus making viewing the movie screen an awkward and uncomfortable experience. Id. Ruling on cross-motions for summary judgment, the district court held that the Tinseltown theaters violated Standard 4.33.3 because they did not offer disabled patrons comparable lines of sight to the screen, in large part due to excessive vertical viewing angles. Lara I, slip op. at 2. In short, the Court concluded that the wheelchair locations at the Tinseltown theaters turned the movie experience into "Headache City."[10]

On appeal, the Fifth Circuit reversed, holding that Standard 4.33.3's comparable-line-of-sight requirement mandated only that patrons who use wheelchairs be afforded "unobstructed" views of the screen. See Lara II, 207 F.3d at 788-89; accord Cinemark, slip op. at 11-14 (adopting Lara

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[10] Specifically, the district court stated in Lara I:

> [T]he present configuration of the eighteen Tinseltown theaters does not afford wheelchair patrons comparable lines of sight. Either the row designated for wheelchair-bound patrons is too close to the screen or the screen is too high off the ground, or a combination of both. The average viewing angle from this row is above thirty-five degrees, which the Plaintiffs' expert witness has properly described as 'well into the discomfort zone'. . . . It should be stressed that this is not some abstract scientific theory which is difficult for the lay person to comprehend . . . . For the disabled patron, therefore, 'Tinseltown' becomes 'Headache City.'
>
> Slip op. at 2.

II); Regal, 142 F. Supp.2d at 1297-98 (same). The United States believes that the Fifth Circuit's reasoning in Lara II is seriously flawed for several reasons. In summary, the Department believes that the court in Lara II erred by: (i) imposing an improper and overly narrow construction on the phrase "lines of sight"; (ii) ignoring Standard 4.33.3's plain language mandating that patrons who use wheelchairs be afforded "comparable," not just unobstructed, views of the screen; and (iii) misconstruing, and placing undue reliance on, certain statements in the Access Board's 1999 notice of proposed rulemaking that post-dated the Department's issuance of Standard 4.33.3 by several years.[11]

More recently, in August 2002, the district court in Meineker addressed the interpretation and application of Standard 4.33.3 to a stadium-style theater complex operated by the Hoyts Cinema theater chain in Albany, New York. The theater complex at issue in Meineker featured a combination of seating on a sloped floor near the screen and seating on elevated stadium-style risers relatively farther back from the screen. See 216 F. Supp. 2d. at 15. After surveying the foregoing federal caselaw interpreting Standard 4.33.3 in the context of stadium-style movie theaters (including Lara II), the district court found these "obstruction only" decisions unpersuasive. Focusing only on obstructions, the court noted, defies commonsense since it would permit theater operators to relegate patrons who use wheelchairs to "the absolute worst seats" with "truly inferior viewing angles." 216 F. Supp. 2d at 18 & n.4. To read Standard 4.33.3 as mandating only that disabled patrons be provided "unobstructed" views of the screen, the court reasoned, would do violence to the regulation's comparability mandate:

> The [Standard 4.33.3] requirement that lines of sight be 'comparable' requires more than that lines of sight for wheelchair patrons be unobstructed. The requirement that a line of sight be 'comparable' clearly imposes a qualitative requirement that the sight line be 'similar' and not merely 'similarly unobstructed.' As such it is held that it would not be

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[11] An expanded discussion of the Department's views with respect to Lara II and its progeny will be provided in the United States' memorandum opposing AMC's recently-filed motion for summary judgment that is due to be filed on November 4, 2002 pursuant to the Court's recent scheduling order. See Order Re: continuance of Hearing on Defendant AMC's Motion for Summary Judgment (filed Oct. 1, 2002) (Docket # 355); see also [AMC's] Notice of Motion and Motion for Summary Judgment (filed Sept. 25, 2002) (Docket # 346).

> sufficient for defendant [Hoyts] to merely provide lines of sight to the screen that are unobstructed.

216 F. Supp. 2d. at 18.[12] Like Meineker, this court should reject Lara II and its progeny as inconsistent with both the language and purpose of Standard 4.33.3's comparability requirement.

III. The Department Has Reasonably Interpreted Standard 4.33.3's Integration Requirement To Mandate that Wheelchair Locations Be Placed Among Fixed Seating Used By Other Members of The General Public

In addition to mandating that patrons with physical disabilities be afforded comparable lines of sight, Standard 4.33.3 also requires that such wheelchair seating locations "shall be an integral part of any fixed seating plan[.]" In the context of stadium-style movie theaters, the Department reasonably reads this integration language as requiring theater operators to provide seating for physically disabled patrons that is among the seats where a majority of the other patrons actually sit during the movie. Under well-established administrative law principles, this interpretation is entitled to substantial deference. See discussion supra pp. 13-14. This Court should, therefore, affirm the Department's interpretation and grant partial summary judgment in favor of the United States on the integration issue.

Standard 4.33.3's integration requirement must be read in the context of the historic patterns of discrimination against persons who use wheelchairs that forced them to sit in inferior seating "separate from accompanying family members and friends." 56 Fed. Reg. at 35571. Like the requirement for comparable lines of sight, the integration requirement was thus intended to promote integration and equality in assembly area seating. Id. In stadium-style theaters, most members of the general public can, and do, sit in stadium-style seats. See discussion supra pp. 7-8. When wheelchair locations are placed only in the non-stadium-style section of the theater, the

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[12] Based on the particular facts of that case, the Meineker court went on to conclude that the wheelchair seating at Hoyts' Crossgates theater complex provided comparable lines of sight "because it is located amongst seating for the general public and affords viewing angles comparable to those afforded to a significant portion of the general public." 216 F. Supp. 2d at 18. Notably, Hoyts had relocated the wheelchair locations at the Crossgates theater after the commencement of the litigation to positions farther from the screen and with better viewing angles. Id. Had Hoyts not done so, the district court noted that "[Hoyt's] would unquestionably have been in violation of the ADA." 216 F. Supp. 2d at 18 n.4.

result is segregation and isolation of persons who use wheelchairs. Therefore, to be "integrated" into the fixed seating plan, a wheelchair space must not only be located in a theater and next to another seat, it must be part of the fixed seating in the theater where members of the general public routinely sit. Any other interpretation of Standard 4.33.3 would result in the very segregation and inequality that this regulation was intended to prevent.

There can be no dispute, moreover, that the vast majority of AMC's stadium-style theaters consign patrons who use wheelchairs (and their moviegoing companions who sit with them) to the sloped-floor, "traditional" section of these theaters where hardly any other ambulatory patrons ever choose to sit. During the discovery phase of this action, the United States conducted court-ordered inspections of several of AMC's stadium-style theater complexes nationwide. See, e.g, Order Granting in Part and Denying in Part the United States' Motion for Order Establishing Conditions for the United States' Inspection of AMC Theaters (filed June 16, 2000) (Docket # 137). As part of these inspections, the United States videotaped patrons taking their seats in a representative sample of theaters selected by an expert statistician in order to analyze audience seating preferences. See Expert Report of Linda Fidell, Ph.D. 2-8 (dated April 9, 2002) (U.S. SJ App., Vol. 3, Ex. 108). Statistical analysis of these inspection videotapes established, not surprisingly, that AMC theater patrons overwhelmingly preferred seats in the stadium-style section to seats outside the stadium section (on either the sloped-floor or on so-called "mini-risers") where the majority of wheelchair spaces are located. Id. at 3, 11-19; see also US SJ Facts ¶¶ 95-104. Indeed, across all surveyed AMC theater complexes, at least one-half of the wheelchair spaces were located in areas where only 5-6% of patrons chose to sit. Id. at ¶ 101.

The findings of this statistical evidence are also mirrored in the words of both AMC officials and disabled movie patrons. As noted above, numerous AMC officials admit that the seats on the sloped-floor close to the screen are the least preferred and the "last to fill up." See discussion supra p. 9; see also US SJ Facts ¶¶ 42, 94, 105. Disabled patrons, moreover, have expressed concerns about not only their inferior viewing experiences but also their profound sense of isolation, loneliness, and embarrassment when consigned to wheelchair locations on the sloped-floor near the screen when virtually the entirety of the rest of the movie audience is sitting behind

them in the separate and elevated stadium-style section of the theater. See, e.g., Molina Dep. Tr., pp. 54-55, 76-77, 109-110 (describing feeling of "embarrassment" when forced to sit in sloped-floor section of theater at AMC Promenade 16 when "nobody else was sitting in those seats") (US SJ App., Vol. 1, Ex. 23); Gutierrez Dep. Tr., pp. 37, 43-44 (noting that he and his companion "were the only two [movie patrons] sitting in that whole [sloped-floor] section" and describing his anger and resentment at such inferior seating); see also US SJ Facts ¶¶ 106.

Against this backdrop, it is plain that summary judgment should be granted in favor of the United States with respect to the interpretation and application of Standard 4.33.3's integration requirement to AMC's stadium-style theaters. It is undisputed that: (i) from 1995 to 2001, AMC maintained a pattern and practice of placing wheelchair locations outside the stadium-style seating sections in theaters with seating capacities of 300 or fewer patrons (AMC 30(b)(6) (Pennington) Dep. Tr. pp. 339, 404); US SJ Facts ¶¶ 23-24, 26-27; US SJ App., Vol. 2, Ex. 33, Attachment 2 (chart summarizing seating layouts of, and placement of wheelchairs within, AMC's stadium-style theater complexes); (ii) members of the moviegoing public overwhelmingly prefer to sit in the stadium-style section of AMC's stadium-style theaters; and (iii) most members of the moviegoing public do not routinely choose to sit outside the stadium-style section (on the sloped-floor or on "mini-risers" in front of the stadium section). Taken together, these facts conclusively establish that AMC has a pattern and practice of placing wheelchair and companion seating in the "traditional" sloped-floor section of its small and mid-sized stadium-style theaters with seating capacities under 300 patrons. This Court should not permit AMC to segregate its patrons who use wheelchairs into the cinematic equivalent of the "back of the bus."

CONCLUSION

Based on the foregoing, the United States respectfully requests that, pursuant to Fed. R. Civ. P. 56(c) and (d), partial summary judgment be granted in favor of the United States on the legal issues set forth in the United States' accompanying conclusions of law. See United States' Statement of Uncontroverted Facts and Conclusions of Law In Support of Plaintiff United States' Motion for Partial Summary Judgment Re: Line of Sight Issues, Conclusions of Law, ¶¶ 1-5.

DATED: October 25, 2002

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this __ day of October, 2002, true and correct copies of **Memorandum In Support of Plaintiff United States' Motion for Partial Summary Judgment Re: Line of Sight Issues** were served by Federal Express, postage pre-paid, on the following parties:

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