



Michigan, to individuals who are deaf or hard of hearing. Plaintiffs bring this lawsuit to compel the defendant to cease its unlawful discriminatory practices and to implement captioning that will ensure effective communication and a full and equal opportunity to participate in and benefit from all that the defendant has to offer the public. Plaintiffs seek declaratory and injunctive relief, compensatory damages, and attorneys' fees and costs.

### **PARTIES**

1. Plaintiff, the National Association of the Deaf (hereinafter "NAD") is a Maryland nonprofit corporation. It is a membership civil rights organization of, by and for deaf and hard of hearing individuals throughout the United States, including but not limited to the estimated 137,702 deaf and hard of hearing individuals between the ages of 18-64 that live in Michigan.<sup>1</sup>

2. Plaintiff, Graham Forsey, resides at 2214 S. State Street, Unit 203, St. Joseph, MI 49085.

3. Defendant Loeks Theatre, Inc., also known as Celebration! Cinema, owns, operates, and/or leases movie theaters in Michigan, including in Benton Harbor at 1468 Cinema Way, Benton Harbor, MI 49022. Defendant's headquarters are located at 2121 Celebration Drive, NE, Grand Rapids, MI 49525.

4. Defendant's registered agent is John D. Loeks, Jr. at 2121 Celebration Drive, NE, Grand Rapids, MI 49525.

---

<sup>1</sup> Gallaudet University Library, Deaf Statistics, <http://libguides.gallaudet.edu/content.php?pid=119476&sid=1029190> (last visited August 2, 2016).

## **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

6. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. § 1391 because: (i) the National Association of the Deaf has members who reside in the District; (ii) Mr. Forsey resides within the District; (iii) Defendant operates movie theaters within the District, including in Benton Harbor, Michigan, and has sufficient contacts within this District to subject it to personal jurisdiction at the time this action is commenced; and (iv) the acts and omissions giving rise to this Complaint have occurred within this District.

## **FACTUAL ALLEGATIONS**

7. The NAD is a membership civil rights organization comprised of individuals who are deaf or hard of hearing from all fifty states and Washington, D.C.

8. The NAD's members include individuals who are substantially limited in the major life activities of hearing and/or speaking.

9. The NAD advocates, *inter alia*, for the full and equal participation of its members in all aspects of society. The organization is devoted to the goal of full inclusion, equality, and civil rights for its members, who are deaf and hard of hearing individuals and whose lives are directly affected by hearing loss, including family members and professional service providers. The organization's work is based on a close association with its members. There are deaf and hard of hearing members who are unable to access Defendant's movie theater in Benton Harbor, Michigan, and have standing in their own right to sue Defendant. Accordingly, the interests that the NAD

seeks to protect through this litigation are germane to its mission and purpose. None of the NAD members are required to participate in this action because the NAD is seeking declaratory and injunctive relief, and not an individualized remedy for its members.

10. Graham Forsey is deaf. He is substantially limited in the major life activities of hearing and speaking.

11. Mr. Forsey is a member of the NAD.

12. Celebration Cinemas operates a number of movie theaters in Michigan, including in Benton Harbor, Michigan.

13. The Benton Harbor theater is the nearest location to Mr. Forsey.

14. The Benton Harbor theater does not display captioning for any movies.

15. Mr. Forsey requested in writing that Defendant provide captioning for movie theaters in Benton Harbor, Michigan.

16. Despite knowledge of Mr. Forsey's inability to understand the aural content of the movies at Benton Harbor and his repeated requests for captioning, Defendant has not provided captioning at the Benton Harbor theater. The movies that Defendant displays at Celebration Cinemas are capable of being displayed with captioning and are so displayed with captioning at other movie theater locations.

17. Technologies are available for movie theaters to provide a textual representation of the dialogue and soundtrack in the form of either captioning on-screen or through an individual caption display system.

18. Captioning can be displayed on the screen.

19. Individual captioning systems allow individual users to view captions through an auxiliary device at the moviegoer's seat.

20. Assistive listening devices that merely amplify the dialogue and the soundtrack do not provide an effective accommodation for persons who are deaf or hard of hearing individuals who (1) do not use hearing aids; (2) use hearing aids not equipped to receive inductive transmissions; or (3) use hearing aids or cochlear implants but still have significant hearing loss such that they cannot comprehend aural information through assistive listening devices.

21. Assistive listening devices do not provide Plaintiffs with access to aurally-delivered information. As a result of the severity of their hearing loss, Plaintiffs cannot enjoy a significant portion of the movies: the dialogue and soundtrack.

22. While Defendant offers the service of showing movies to the public, it does not provide access at the Benton Harbor theater location for deaf and hard of hearing patrons such as Plaintiffs. It has no auxiliary aids or services to make aural information presented in the movies visually accessible for those who are deaf or hard of hearing.

23. Whenever Plaintiffs want to enjoy the full benefits of a movie at a theater, they require captioning - that convey auditory information onto text. Since the Benton Harbor theater does not provide captioning, Plaintiffs are unable to benefit fully from the services provided there.

24. For instance, on August 2, 2016, the Benton Harbor theater offered different first-run movies. Out of these 7, at least 5 of them – “Friends with Benefits”, “Harry Potter and the Deathly Hallows Part 2”, “Horrible Bosses”, “Bad Teacher”, and “Bridesmaids” – were available in captioned format from the movie studios. However,

none of these films were shown in an accessible format for deaf and hard of hearing individuals at the Benton Harbor theater.

25. Due to Defendant's refusal to show captioning at the Benton Harbor theater, Mr. Forsey must drive approximately an hour to another company's theater if he wants to watch movies made accessible with captioning.

26. Due to the driving distance, Mr. Forsey is often unable to see the movies that he would like to see with his friends.

27. Defendant has and will continue to discriminate against individuals who are deaf or hard of hearing, including Mr. Forsey and other members of the National Association of the Deaf, on the basis of disability by refusing to display captioning at its theaters including at the Benton Harbor theater.

28. Mr. Forsey plans to attend movies at the Benton Harbor theater if the movies are captioned.

#### **COUNT I: TITLE III OF THE AMERICANS WITH DISABILITIES ACT**

29. Plaintiffs repeat and re-allege the foregoing paragraphs in support of this claim.

30. Members of the National Association of the Deaf, including Graham Forsey, are substantially limited in the major life activities of hearing and speaking. Accordingly, they are considered individuals with a disability as defined under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12102(2).

31. Defendant owns, leases, and/or operates movie theaters, which are place of public accommodation as defined under Title III of the ADA, 42 U.S.C. § 12181(7)(C).

32. Title III of the ADA prohibits discrimination on the basis of disability “in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodations . . .” 42 U.S.C. § 12182(a).

33. Pursuant to Title III of the ADA and its implementing regulations, a public accommodation cannot deny participation or offer unequal or separate benefit to individuals with disabilities. A public accommodation is required to administer its programs and activities in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities. 42 U.S.C. § 12182(b)(1)(A) and (B); 28 C.F.R. §§ 36.202; 36.203.

34. Pursuant to Title III of the ADA and its implementing regulations, a public accommodation shall furnish the auxiliary aids and services necessary for effective communication with individual with disabilities. This includes “open and closed captioning.” 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303(1).

35. The dialogue and soundtrack of a movie are essential parts of the service being offered by Defendant’s theaters.

36. Auxiliary aids and services are commercially available for Defendant to purchase and install in its theater, which would allow for full and equal enjoyment of its services through textual representations of the film by Plaintiffs.

37. Defendant’s theater does not provide captioning. Accordingly, Plaintiffs are unable to understand the dialogue and soundtrack of the movies.

38. Defendant has failed to take such steps as are necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals. Because of absence of captioning, Defendant is

discriminating, and will continue to discriminate, against Plaintiffs and is violating Title III of the ADA. 42 U.S.C. § 12182(b)(2)(A)(iii).

39. Defendant has discriminated and will continue to discriminate against Plaintiffs because Defendant has denied and is denying Plaintiffs an equal opportunity to achieve the same benefits that other patrons achieve by visiting Defendant's Benton Harbor theater for its services.

40. Plaintiffs are entitled to declaratory and injunctive relief and reasonable attorneys' fees and costs incurred in bringing this action.

### **COUNT II: PERSONS WITH DISABILITIES CIVIL RIGHTS ACT**

41. Plaintiffs repeat and re-allege the foregoing paragraphs in support of this claim.

42. Members of the National Association of the Deaf, including Graham Forsey, are substantially limited in the major life activities of hearing and speaking. Accordingly, they are considered individuals with a disability as defined under the Persons with Disabilities Civil Rights Act.

43. Defendant owns, leases, and/or operates movie theaters, which are place of public accommodation as defined under Mich. Comp. Laws § 37.1301.

44. The Persons with Disabilities Civil Rights Act prohibits places of public accommodation from "[d]eny[ing] an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation or public service because of a disability that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges,

advantages, or accommodations or because of the use by an individual of adaptive devices or aids.” Mich. Comp. Laws § 37.1302(a).

45. The dialogue and soundtrack of a movie are essential parts of the service being offered by Defendant’s theaters.

46. Auxiliary aids and services are commercially available for Defendant to purchase and install in its theater, which would allow for full and equal enjoyment of its services through textual representations of the film by Plaintiffs.

47. Defendant’s theater does not provide captioning. Accordingly, Plaintiffs are unable to understand the dialogue and soundtrack of such movies.

48. Defendant has failed to take such steps as are necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals. Because of absence of captioning, Defendant is discriminating, and will continue to discriminate, against Plaintiffs and is violating the Persons with Disabilities Civil Rights Act.

49. Defendant has discriminated and will continue to discriminate against Plaintiffs because Defendant has denied and is denying Plaintiffs an equal opportunity to achieve the same benefits as hearing patrons who attend the movies that Defendant screens.

50. Plaintiffs are entitled to declaratory and injunctive relief, compensatory damages, and reasonable attorneys’ fees and costs incurred in bringing this action.

### **RELIEF**

Plaintiffs respectfully request that this Court provide the following relief:

a. issue a declaratory judgment that Defendant's policies, procedures, and practices subjected Graham Forsey and members of the National Association of the Deaf to discrimination in violation of Title III of the Americans with Disabilities Act and the Persons with Disabilities Civil Rights Act;

b. enjoin Defendant from implementing or enforcing any policy, procedure, or practice that denies individuals who are deaf or hard of hearing, such as Plaintiffs, full and equal enjoyment to and an equal opportunity to participate in and benefit from Defendant's services or programs;

c. enjoin Defendant from implementing or enforcing any policy, procedure, or practice that limits or restricts individuals who are deaf or hard of hearing, such as Plaintiffs, from the full and equal enjoyment of Defendant's movie theaters;

d. order Defendant to develop and comply with written policies, procedures, and practices to ensure that Defendant does not discriminate in the future against Plaintiffs and other similarly situated individuals who are deaf, hard of hearing, or have speech impairments;

e. order Defendant to make accessible to individuals who are deaf or hard of hearing all movies at its movie theaters, including by displaying captioning for all movies shown at its theaters.

f. order Defendant to train all representatives and employees about Plaintiffs' rights and the rights of individuals who are deaf, hard of hearing, as well as provide training on Defendant's policies and procedures on making Defendant's movie theaters accessible;

h. award Plaintiff Graham Forsey compensatory damages;

- i. award Plaintiffs their attorneys' costs and fees;
- j. award any and all other relief that this Court finds necessary and appropriate.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs by and through their undersigned counsel, hereby demand a trial by jury on all issues and counts deemed so triable.

Respectfully submitted,

By:  /s/ Angie Martell \_\_\_\_\_  
Angie Martell (P75839)  
Iglesia Martell Law Firm, PLLC  
117 North First Street, Suite 111  
Ann Arbor, MI 48104  
Phone: (734) 369-2331  
Fax: (734) 369-9188  
angie@iglesiamartell.com

Michael Stein\*  
Mary Vargas\*  
Stein & Vargas, LLP  
1155 F Street, NW, Suite 1050  
Washington, DC 20004  
Phone: (202) 559-8609  
Fax: (888) 778-4620  
michael.stein@steinvargas.com

Marc Charmatz\*  
Debra Patkin\*  
National Association of the Deaf  
Law and Advocacy Center  
8630 Fenton Street, Suite 820  
Silver Spring, MD 20910  
Phone: (301) 587-7732  
Fax: (301) 587-1791  
marc.charmatz@nad.org

*\* pro hac vice pending  
Attorneys for Plaintiffs*