

Law Office of Lainey Feingold

DISABILITY RIGHTS LEGAL ADVOCACY

Cinemark Audio Description Settlement Agreement

The settlement agreement posted here is a result of Structured Negotiations between the California Council of the Blind, Cinemark patrons with visual impairments, and Cinemark, a leading domestic and international motion picture exhibitor. [Linda Dardarian](#), of the Oakland, California civil rights firm Goldstein, Demchak, Baller, Borgen and Dardarian, and the Law Office of Lainey Feingold worked with the blind community on this initiative. [Read the press release announcing Cinemark's audio description initiative.](#)

Audio Description provides vocal description of key visual aspects of a movie, such as descriptions of scenery, facial expressions, costumes, action settings, and scene changes, described audibly during natural pauses in dialogue or critical sound elements. Narration of these elements is then woven into the soundtrack of the program or film, so that the finished version is a mix of program audio and descriptive narration. The description, which is provided by movie studios, is available only to members of the audience who choose to receive it via personal headsets and a receiver provided at the theater.

While the settlement agreement posted here involves the company's efforts in California, Cinemark has undertaken a national program to provide audio description (also referred to as video description, or descriptive narration) at theatres across the United States.

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Settlement Agreement") and the related and incorporated document entitled Confidential Addendum to Settlement Agreement (collectively referred to herein as the "Full Agreement") are entered into as of the Effective Date, as defined below in Section 1.10, by and between the following parties: Rio Popper, a minor, through her guardian ad litem, Helen Popper, Alice M. ("Margie") Donovan, Jerry Kuns, Joan ("Joni") Patche, Richard Rueda, Leslie Thom, and the California Council of the Blind ("CCB") (collectively, the "Claimants"), and Cinemark USA, Inc. Claimants and Cinemark are at times referred to collectively herein as the "Parties."

RECITALS

The Full Agreement is based on the following facts:

A.

CCB is a statewide membership organization representing the interests of thousands of blind and visually impaired individuals and others in the state of California. CCB provides an array of services to Californians with visual impairments, including information and referral services, scholarships for blind college students, crisis intervention services, no-interest loans for employment purposes, and advocacy services. The goals of CCB and its members include ensuring the safety of blind and visually impaired persons, protecting the financial security and independence of blind

and visually impaired persons, providing persons who are blind or visually impaired with equal access to programs and services, including entertainment, and fully integrating blind and visually impaired persons into all aspects of public and private life. For many years, CCB has been actively involved in ensuring the accessibility of various technologies to persons with visual impairments. CCB members live, work and visit in all parts of California where Cinemark operates movie theatres, and wish to attend movies that have Audio Description. CCB is incorporated and has its place of business in the State of California.

B.

Claimant Rio Popper, a minor, lives in Redwood City, California, with her mother and guardian ad litem, Helen Popper. Claimant Margie Donovan lives in Folsom, California. Claimant Jerry Kuns lives in San Francisco, California. Claimants Leslie Thom and Joni Patche live in Sacramento, California. Claimant Richard Rueda lives in Union City, California. Claimants are blind and are persons with a disability within the meaning of the Americans with Disabilities Act and the laws of the State of California. Claimants have attended movies at Cinemark theatres and benefit from and enjoy movies with Audio Description.

C.

Cinemark owns and operates movie theatres in California and other states across the United States. Cinemark has informed Claimants that it is presently completing longstanding plans to convert its first-run movie theatres in the State of California from 35 mm film to digital cinema. Cinemark has also informed Claimants that it is presently completing longstanding plans to work with third-party vendors to acquire digital-compatible Audio Description technology and equipment at all auditoriums in its first-run movie theatres in California and other locations when that technology and equipment becomes commercially available to Cinemark.

D.

The Parties entered into Structured Negotiations to resolve their dispute regarding Cinemark's legal obligation, if any, to provide Audio Description in Cinemark movie theatres ("Dispute"). Since entering into Structured Negotiations, the Parties have been working in good faith to resolve their Dispute. During the negotiations, the Parties participated in testing Audio Description Equipment, including Head Sets and Receivers. In addition, during the Structured Negotiations, Cinemark installed Audio Description Equipment in the Century Downtown 20 movie theatre in Redwood City, which Claimant Popper and her family have enjoyed on multiple occasions.

E.

The Parties enter into the Full Agreement in order to resolve the Dispute and to avoid the burden, expense, and risk of potential litigation. In entering into the Full Agreement, Cinemark does not admit, and specifically denies, that it has violated or failed to comply with any provisions of any Access Laws (as defined below). Neither the Full Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Cinemark of any such violation or failure to comply with any applicable law. Neither the Full Agreement nor any of its terms and provisions shall be offered or received as evidence for any purpose whatsoever against Cinemark in any action or proceeding, other than a proceeding to enforce the terms of the Full Agreement.

NOW, THEREFORE, the Parties hereby agree to the following provisions:

1. Definitions.

As used in the Full Agreement, the following terms shall be as defined below:

1.1.

Access Laws means the Americans with Disabilities Act (as defined below) and any applicable laws of any state, county or municipality relating to accessibility for persons with disabilities to places of public accommodation, any regulations or

guidelines promulgated pursuant to those statutes, or any other applicable disability laws, regulations, or legal requirements, including, without limitation, California Civil Code §§ 51, et seq. and 54, et seq., and California Government Code § 11135.

1.2.

Americans with Disabilities Act or ADA means the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Title III implementing regulations, 28 C.F.R., Part 36.

1.3.

Audio Description Equipment means the technology necessary to allow movie patrons who are blind or visually impaired to listen to Audio Description by Head Set. Audio Description Equipment includes transmission equipment as well as Head Sets and Receivers. Audio Description Equipment and Audio Description are also known as descriptive narration, audio description, or video description.

1.4.

Audio Description means information about key visual aspects of a movie, such as descriptions of scenery, facial expressions, costumes, action settings, and scene changes, described audibly during natural pauses in dialogue or critical sound elements. The Parties recognize that Audio Description is created and provided by third-party movie studios, not Cinemark. The Parties further recognize that Cinemark does not control which motion pictures are described or otherwise enabled for Audio Description, and Cinemark makes no representations concerning the present or anticipated availability of motion pictures with Audio Description. The Doremi Fidelio Audio Description Equipment tested by Claimants in August 2011 meets all criteria for Audio Description Equipment set forth in this Agreement.

1.5.

Auditorium means a room with a movie screen on which movies are shown to the public within each Cinemark Theatre.

1.6.

Cinemark Theatres means movie theatres owned and operated by Cinemark in the State of California. This definition encompasses all Auditoriums at each movie theatre location.

1.7.

Counsel means Goldstein, Demchak, Baller, Borgen and Dardarian, The Law Office of Lainey Feingold, and the attorneys practicing law therein.

1.8.

Digital Projector or Projection refers to the use of digital technology to project motion pictures, and is distinct from conventional 35 mm film projectors.

1.9.

Doremi Audio Description Equipment means the Fidelio wireless audio system that delivers Audio Description, supplied and sold by Doremi, consisting of a compact audio receiver with a plug-in head set, and an audio transmitter, among other things.

1.10.

Effective Date means September 1, 2012.

1.11.

Existing Cinemark Theatre means a first-run Cinemark Theatre that has been converted to digital cinema and is open to the public on the Effective Date. These theatres are listed on "Attachment A" to this Agreement.

1.12.

Head Set means standard headphones or ear buds that privately deliver Audio Description to movie theatre patrons' ears. Head Sets includes those provided by Cinemark as well as the patron's personal head sets.

1.13.

New Cinemark Theatre means a Cinemark Theatre that is acquired by Cinemark or first opened to the public after the Effective Date.

1.14.

Receiver means a hand-held, wireless device that receives the Audio Description and plays it, via Head Sets, to movie theatre patrons. Receivers shall have the following

features: (i) adjustable volume control that can be independently operated by people who are blind or visually impaired, and (ii) private transmission of Audio Description to Head Sets provided by Cinemark or a movie patron.

2. Duration and Geographic Scope of Agreement.

The Full Agreement shall apply to Cinemark Theatres in the State of California. The terms of the Full Agreement shall remain in effect from the Effective Date until December 31, 2012.

3. Provisions Regarding Audio Description Equipment.

3.1. Installation of Audio Description Equipment in Cinemark Theatres in California.

3.1.1. By no later than September 30, 2012, Cinemark will install Audio Description Equipment in all Auditoriums in all Existing Cinemark Theatres in California that have been converted to digital cinema.

3.1.2. Cinemark will install Audio Description Equipment in all Auditoriums in all New Cinemark Theatres in California that have Digital Projectors either prior to or within a reasonable time from the date on which those theatres are opened to the public.

3.1.3. In each Cinemark Theatre that completes conversion from 35 mm to Digital Projection after the Effective Date, Cinemark will install Audio Description Equipment no later than 60 days after it installs the Digital Projector.

3.2. Unanticipated Delay.

The Parties recognize that Cinemark may encounter unforeseen complications in meeting the installation timeline set forth in this Section. Therefore, in the event that Cinemark determines that it is necessary to extend any deadline(s) set forth herein for a period of sixty (60) days or less, Cinemark shall notify Counsel of the new deadline in writing. If Cinemark proposes to extend any of those deadlines for a period of more than sixty (60) days, Cinemark will provide Counsel with the new proposed deadline(s), and the reason(s) for the extension in writing, and the Parties will negotiate about the new deadline in good faith. If the Parties cannot reach agreement, then either party can initiate the dispute resolution process set forth in Section 7 herein.

3.3.

Number of Head Sets and Receivers in Cinemark Theatres in Which Audio Description Equipment Is Installed.

3.3.1. Cinemark will provide Head Sets and Receivers at each Cinemark Theater in which Audio Description Equipment has been installed. Cinemark will determine the number of Head Sets and Receivers that is sufficient to meet market needs, but no fewer than four to eight Headsets and four to eight Receivers will be provided at each such Theater, depending on the number of auditoriums in the Theater, market demand for Audio Description Equipment, and other relevant factors. If demand exceeds supply in a particular location, Cinemark will make reasonable adjustments to meet local demand (including large groups attending the theatre upon seven days advanced notice) in that particular location.

3.3.2. Breach of Section 3.3.1 shall occur only where Claimants can establish that Cinemark has engaged in a pattern or practice of non-compliance with that subsection. The Parties agree that the fact that Cinemark fails to have four to eight Head Sets and four to eight Receivers available on a given day at a particular theater shall not constitute a breach of this Agreement. However the Parties recognize that such failure may be evidence of a pattern or practice of non-compliance.

3.4. Installation and Usage Information to Claimants.

No later than 30 days after the dates set forth in Section 3.1 herein, Cinemark will provide written confirmation to Claimants that the required Audio Description Equipment has been installed and made available on request to customers with visual impairments. The confirmation provided in connection with Section 3.1 will also include the locations of Cinemark Theatres at which Audio Description Equipment has

been installed during the reporting period.

3.5. Maintenance of Audio Description Equipment.

Cinemark will reasonably maintain all Audio Description Equipment installed and provided pursuant to this Agreement in operable, working, and sufficiently charged condition. Isolated or temporary interruptions in service due to maintenance or repairs will not breach this Agreement.

4. Training of Cinemark Personnel.

4.1.

Cinemark will train appropriate theatre personnel to ensure effective implementation of this Agreement, including how to use and operate the Audio Description Equipment, how to instruct customers with visual impairments on the use of Headsets and Receivers, and how to provide a sufficient number of Head Sets and Receivers when there has been advance notice of a large group needing Audio Description Equipment.

4.2.

Cinemark will instruct its managers to conduct periodic equipment audits to ensure that the Head Sets and Receivers are properly stored in their designated compartments or drawers and in working order, and that the Audio Description Equipment in each Auditorium is in working order and transmitting the correct Audio Description. Cinemark will also instruct its managers and other appropriate staff on how to track market needs for the purpose of providing a sufficient number of Head Sets and Receivers, as set forth in Section 3.4.

4.3.

All Cinemark managers, cashiers, ushers and other appropriate personnel will receive the above-referenced training prior to the date on which the Audio Description Equipment is offered to the public in their respective theatres.

5. Advertisement of the Audio Description Equipment.

Cinemark will advertise the availability of motion pictures with Audio Description at its California multiplex theatres on site and on the Cinemark website. Within a reasonable time period after Audio Description Equipment is installed and operational at each California multiplex theatre, Cinemark will state that the theatre offers Audio Description Equipment, identify the showtimes and movies for which Audio Description is available, and include a symbol next to the movie title with a description of the symbol explaining that it means that Audio Description is available.

6. Joint Press Release.

The Claimants and Cinemark will jointly issue a press release announcing the terms of this Agreement, a draft of which is attached hereto as Exhibit A.

7. Procedures in the Event of Disputes.

7.1. Notice of Non-Compliance.

If a Party believes that the other Party has not complied with any provision of the Full Agreement, that party shall provide the other Party with Notice of Non-compliance containing the following information:

7.1.1. the alleged act of non-compliance;

7.1.2. a reference to the specific provision(s) of the Settlement Agreement or Confidential Addendum that are involved;

7.1.3. a statement of the remedial action sought by the initiating party; and

7.1.4. a brief statement of the specific facts, circumstances and legal argument supporting the position of the initiating party.

7.2. Response.

Within sixty (60) days of receipt of a Notice provided pursuant to Section 7.1, the

non-initiating Party shall respond to the initiating Party in writing.

7.3. Meet and Confer.

Within thirty (30) days after the response described above, the Parties shall informally meet and confer and attempt to resolve the issues raised in the Notice.

7.4. Submission to Mediation.

If the Parties are unable to resolve the dispute through the meet and confer process, the Parties agree to engage in mediation before a mediator affiliated with JAMS, or such other mediator as the Parties may jointly agree to use.

7.5. Forum Selection for Dispute Resolution.

If the Parties are unable to resolve the dispute through mediation, the Parties agree to that the United States District Court for the Northern District of California shall have jurisdiction to resolve the dispute.

8. Notice or Communication to Parties.

Any notice or communication required or permitted to be given to the Parties hereunder shall be given in writing by email and United States mail, addressed as follows:

To Claimants:

Linda M. Dardarian
Jason Tarricone
c/o Goldstein, Demchak, Baller, Borgen & Dardarian
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
[email address omitted]

Lainey Feingold
Law Office of Lainey Feingold
1524 Scenic Avenue
Berkeley, CA 94708
[email address omitted]

To Cinemark:

Michael D. Cavalier
General Counsel
Cinemark USA, Inc.
3900 Dallas Parkway, Suite 500
Plano, Texas 75093-7865
Telephone: 972/665-1108
[email address omitted]

Laura M. Franze
M. Brett Burns
Hunton & Williams
550 South Hope Street, Ste. 2000
Los Angeles, CA 90071
[email address omitted]

9. Acquired Theatres.

As to any theatre acquired by Cinemark after the date this Agreement is executed, Cinemark shall equip such theatres with Audio Description Equipment and otherwise comply with the terms in this Agreement as to such theatres within one hundred eighty (180) days after (i) the date of acquisition of such theatre if such theatre is equipped with digital projection systems or (ii) within sixty (60) days of the date that such theatre is converted from a 35 mm platform to a digital projection system.

10. Sub-Run Theatres.

As to any sub-run theatre (including discount, non-first-run, or "dollar" theatres), whether operational or acquired by Cinemark after the Effective Date, nothing in this Agreement requires Cinemark to equip these theatres with Audio Description technology or otherwise comply with the terms of this Agreement as to these theatres. If Cinemark converts auditoriums within sub-run theatres to digital projection systems with at least 2K resolution, Cinemark shall install Audio Description Equipment in such auditoriums in accordance with the terms of this Agreement within sixty (60) days of converting the auditoriums.

11. Implementation Meeting.

Prior to the expiration of the Agreement, Counsel and Cinemark's counsel will meet by telephone to discuss the implementation of this Agreement.

12. No Admission of Liability.

The parties to this Agreement understand and agree that nothing in this Agreement shall be construed as an admission of liability, and that all allegations of liability are expressly denied.

13. Amendment or Modification.

The Full Agreement may be modified only by means of a written agreement, signed by all Parties hereto.

14. Governing Law.

The Full Agreement shall be governed in all respects by the law of the State of California.

15. Entire Agreement.

The Full Agreement contains the entire understanding and agreement between the Parties regarding the matters set forth in it. No representations, warranties, or promises have been made or relied upon by any Party to this Agreement. The Full Agreement supersedes any and all other prior agreements or drafts, either written or oral, between the Parties with respect to the subject matter addressed herein.

16. Full Agreement Has Been Read With Advice of Counsel.

The Full Agreement has been carefully read by each of the Parties, or their responsible officers, with advice of legal counsel, and its contents are known and understood by each of the Parties. The Full Agreement is signed freely by each party executing it.

17. No Assignment.

No Party to the Full Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by the Full Agreement.

18. Agreement Binding on Assigns and Successors.

The Full Agreement shall bind any assigns and successors of the Parties.

19. Force Majeure.

The performance of Cinemark under this Full Agreement shall be excused during the period and to the extent that such performance is rendered impossible, impracticable or unduly burdensome due to acts of God, strikes or lockouts, or unavailability of operable parts, equipment or materials through normal supply sources. If Cinemark seeks to invoke this Section, it shall notify Counsel in writing as soon as reasonably possible, specifying the particular action that could not be performed and the specific reason for the non-performance. Counsel and Cinemark will thereafter meet and confer regarding an alternative schedule for completion of the action that could not be performed, or an alternative action. Any dispute regarding the applicability of this Section, or any future action to be taken, that remains after the meet and confer session will be handled as a dispute pursuant to Section 6 of this Agreement.

20. Power and Authority to Execute.

Each of the Parties hereto represent that they have the power and the authority to execute and deliver the Full Agreement and to perform the obligations hereunder, and that each person executing the Full Agreement on behalf of an organizational Party has been authorized to sign on behalf of the respective Party and to bind each to the terms of the Full Agreement.

21. Integrated Agreement.

The Full Agreement constitutes the entire agreement relating to the subject matters addressed therein.

22. Rules of Construction.

Each party and its legal counsel have reviewed and participated in the drafting of the Full Agreement; and any rule of construction to the effect that ambiguities are construed against the drafting party shall not apply in the interpretation or construction of the Full Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Full Agreement. The Recitals are integral to the construction and interpretation of the Full Agreement and are therefore incorporated into the Agreement in their entirety.

23. Triplicate Originals/Execution in Counterparts.

All Parties and their respective counsel shall sign three copies of this document and each such copy shall be considered an original. This document may be executed in counterparts.

APPROVED AS TO FORM:

- **HUNTON & WILLIAMS LLP**

By: Laura M. Franze, Esq.

M. Brett Burns, Esq.

- **GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN**

By: Linda M. Dardarian, Esq.

Jason Tarricone, Esq.

- **LAW OFFICE OF LAINEY FEINGOLD**

By: Lainey Feingold, Esq.

PARTIES

- **CINEMARK USA, INC.**

By: Michael D. Cavalier, Esq.

- **CALIFORNIA COUNCIL OF THE BLIND**

By: Donna Pomerantz, President

- Alice M. Donovan
- Jerry Kuns
- Joan Patche
- Helen Popper (Guardian ad litem for Rio Popper)
- Richard Rueda
- Leslie Thom