

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 97-Z-1586

COLORADO CROSS-DISABILITY COALITION and SHARON BROWN-JODOIN,
LEO D. JODOIN, CAROLYN INAGAKI, COLLEEN GALLOWAY,
CHARLES GALLOWAY, STEVE MERTZ, IAN WATLINGTON, SUSAN WATLINGTON,
ADAM DENNIS, TERI CHRISTOPHER, KEVIN SMITH, LAUREN WINTER, and
KIM KELLER for themselves and all other similarly situated,

Plaintiffs,

v.

FEY CONCERT COMPANY, a Colorado General Partnership, UNIVERSAL CONCERTS,
INC., a California Corporation and General Partner of Fey Concert Company,
EVERY DOG HAS ITS DAY, INC., a Colorado Corporation and General Partner of Fey
Concert Company, and THE MUSEUM OF OUTDOOR ARTS, a Colorado Nonprofit
Corporation,

Defendants.

CLASS SETTLEMENT AGREEMENT

RECITALS

1. Parties. The parties to this Agreement are Universal Concerts Company, f/k/a Fey Concert Company, a Colorado General Partnership ("Fey") Universal Concerts, Inc., a California Corporation and General Partner of Universal Concerts Company ("Universal"), Every Dog Has its Day, Inc. a Colorado corporation and a former General Partner of Fey Concerts, ("Every Dog") and The Museum of Outdoor Arts, a Colorado nonprofit corporation ("MOA"), (collectively "Defendants") on the one hand and Colorado Cross-Disability Coalition, and Sharon Brown-Jodoin, Leo Jodoin, Carolyn Inagaki, Colleen Galloway, Charles Galloway, Steve Mertz, Ian Watlington, Susan Watlington, Adam Dennis, Teri Christopher, Kevin Smith, Lauren Winter and Kim Keller, (collectively "Plaintiffs") and a class of persons further defined below.

2. Nature of litigation. Plaintiffs filed an action in the United States District Court for the District of Colorado as Civil Action No. 97-Z-1586 (the "Litigation") alleging both individual and class action claims. In the complaint, Plaintiffs allege that in connection with the operation of Fiddler's Green Amphitheater ("Fiddler's Green"), Defendants have violated the Americans with Disabilities Act and The Colorado Anti-Discrimination Act ("CADA") as to the class, and that Fey, Universal and Every Dog have violated the Colorado Consumer Protection Act and engaged in common law negligent misrepresentation, fraud and fraudulent concealment as to the individually named Plaintiffs.

3. Denial of Liability. Defendants deny any liability to Plaintiffs or the class and have asserted a number of defenses to the complaint in the Litigation. Nevertheless, Defendants consider it desirable that the Litigation and the claims alleged therein be settled upon the terms and conditions set forth in this Agreement, in order to avoid further expense and burdensome, protracted litigation, and to put to rest all claims that have been or might be asserted by the Plaintiffs or the class arising out of or related to the subject matter of the Litigation.

4. The class desires to settle its claims against Defendants, having taken into account through its counsel the risks, delay and difficulties involved in establishing a right to recovery in excess of that offered by this settlement and the likelihood that the Litigation will be further protracted and expensive.

5. Plaintiffs have made certain representations to counsel for the Defendants concerning the composition of the class. Specifically, it has been represented that the class meets the numerosity and other requirements of Fed. R. Civ. P. 23(b)(3).

6. Counsel for the class have investigated the facts available to them and the law.

7. Based on the foregoing, and upon an analysis of the benefits which this Agreement affords the class, counsel for the class considers it to be in the best interest of the class to enter into this Agreement.

8. In consideration of the foregoing and other good and valuable consideration, it is stipulated and agreed by and between Plaintiffs, counsel for the class, and the Defendants that the claims of the named Plaintiffs and of the class against Defendants be and are hereby compromised and settled, subject to the approval of the Court, upon the following terms and conditions.

TERMS

9. Certification of settlement class. For purposes of settlement only, Defendants stipulate to the certification of a class ("the class") under Fed. R. Civ. P. 23(b)(3), which class shall consist of persons who satisfy either of the following subclass criteria:

- a. All persons with permanent disabilities who use wheelchairs or electric carts for mobility who have been denied full and equal enjoyment of the services, facilities, privileges, advantages and accommodations of Fiddler's Green on the basis of disability and;
- b. All persons with a relationship or association with members of the foregoing subclass who, as a result of such relationship or association, have been denied full and equal enjoyment of the services, facilities, privileges, advantages and accommodations of Fiddler's Green.

10. This stipulation is for purposes of settlement only. If this settlement is not approved by the Court or does not become effective for any reason, Defendants retain the right to object to the maintenance of the action as a class action.

11. Relief to class. Defendants agree to provide relief to the class as follows:

- a. Defendants shall cause capital improvements to be made to Fiddler's Green as set forth in Exhibit A hereto according to the time frames set forth in Exhibit A hereto. The Defendants will not place equipment or other obstructions in the designated wheelchair seating areas.
- b. Defendants pledge to contribute five cents (\$0.05) per paid admission for all outlet and telephone ticket sales from each concert at Fiddler's Green produced and promoted by Universal Concerts Company during the 1998 concert season, to a fund which shall not be less than Fifteen Thousand Dollars (\$15,000.00), with such funds to be used to pay each class member a maximum of One Hundred

Seventy-Five Dollars (\$175.00). In the event that the total amount payable to the class members is less than the amount in the fund the balance of the fund shall be paid to The Colorado Cross-Disability Coalition.

c. Each class member shall receive payment by check of the appropriate amount not to exceed One Hundred Seventy-Five Dollars (\$175.00) pursuant to paragraph 11(b) above, depending on the number of members of the class and the size of the fund.

12. Subject to approval of the Court, the payments to class members from the settlement fund shall be made within 60 days of the end of the 1998 concert season at Fiddler's Green, or within 60 days after final approval by the Court of the settlement and any appeal, whichever is later. The funds for such payments shall be paid to Plaintiffs' counsel by Defendants by a check payable to Plaintiffs' counsel's trust account. Plaintiffs' counsel shall disburse the payments to the class members who submit a completed and notarized Claim Form attached hereto as Exhibit B. If any such settlement funds remain in the trust account after all class members have been paid, such monies shall be paid to the Colorado Cross-Disability Coalition. Plaintiffs' counsel will confer with Defendants' counsel before checks are issued to the class members. Defendants shall be entitled to a copy, at their expense of the Claim Forms received by Plaintiffs' counsel. In the event that a class member who is entitled to a check is deceased, Defendants shall be released if Plaintiffs' counsel has sent a check to the person whom they reasonably believe to have been the class member, notwithstanding the failure to comply with laws relating to probate and marital property. If any check is not cashed within ninety (90) days the monies represented thereby shall be returned to the fund described in paragraph 11(b) above and Defendants shall not have any further payment obligation to the payee. If any check is returned by the United States Postal Service indicating "address unknown" or otherwise indicating that the check cannot be delivered, Defendants shall not have any further payment obligation to that class member.

13. Subject to approval of the Court, Defendants will pay named Plaintiffs, Sharon Brown-Jodoin, Leo Jodoin, Carolyn Inagaki, Colleen Galloway, Charles Galloway, Steve Mertz, Ian Watlington, Susan Watlington, Adam Dennis, Teri Christopher, Kevin Smith, Lauren Winter and Kim Keller, the sum of One Thousand Seven Hundred Fifty Dollars (\$1,750.00) each as an incentive award. In the event that a named Plaintiffs is deceased, Defendants shall be released if Plaintiffs' counsel has sent a check to the person whom they reasonably believe to be the named Plaintiff, notwithstanding the failure to comply with laws relating to probate and marital property. If any check is not cashed within ninety (90) days, the monies represented thereby shall be returned to the Defendants and the Defendants shall not have any further obligation to the payee. The incentive payments referenced in paragraph 18 below shall be made within 60 days after final approval by the Court of the settlement and any appeal. The funds for such payments shall be paid to Plaintiffs' counsel by Defendants by a check payable to Plaintiffs' counsel's trust account. Plaintiffs' counsel shall disburse the incentive payments to the named Plaintiffs from such trust account and shall account to Defendants for all such disbursements. If it is not possible for any of the named Plaintiffs to receive his or her incentive payment, any funds remaining in such trust account shall be reimbursed to the Defendants.

14. Release. The named Plaintiffs, and each class member not opting out, shall, as of the effective date of this settlement, be deemed to release and discharge forever Defendants and their current and former officers, directors, successors, predecessors, partners, joint venturers, sister companies, executors, administrators, assigns, shareholders, affiliated companies, parents, subsidiaries, employees, attorneys and agents ("Released Parties"), from all claims, known and unknown, irrespective of legal theory, that have been or could have been asserted by Plaintiffs or the class including but not limited to claims or causes of action arising from or under the American with Disabilities Act or the CADA whether in contract or tort, arising under or by virtue of any existing regulation or judicial decision, including but not limited to actual damages,

exemplary and punitive damages, penalties of any kind and prejudgment and post judgment interest (collectively "Claims") which have accrued or may ever accrue to Plaintiffs, their successors or assigns based upon, in connection with or arising out of the allegations and causes of action as set forth in the Litigation, including but not limited to Claims arising from or under the Americans with Disabilities Act or the CADA as related to Fiddler's Green and/or the capital improvements set forth above in paragraph 11(a) existing at any time prior to the date hereof.

15. Effective date. This Agreement shall become effective upon the occurrence or happening of all of the following events:

- a. The Court's entry of a final judgment approving this Agreement as fair, reasonable and adequate to the class; finding that this agreement is fair and made in good faith, thereby barring any potential claims for contribution against Defendants by other persons and entities; dismissing the claims of Plaintiffs and the class against Defendants with prejudice and without cost; and directing entry of judgment approving the settlement.
- b. The expiration of ten days after the time the final judgment becomes a final order not subject to appeal, or, if an appeal has been sought, the expiration of five days after the final disposition of any such appeal, which disposition approves the Court's final judgment, the transactions contemplated therein, and the consummation of the settlement in accordance with the terms and provisions of this Agreement.

16. If this Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to any right of any party hereto and shall not be used in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.

17. Attorney's Fees and Costs through February 17, 1998. In addition to the benefits described above, Defendants will pay counsel for the class the sum of \$25,000.00 to cover all fees, costs and expenses up to and including February 17, 1998. Defendant will not oppose or cause to be opposed an application for such amount for such time period.

18. Attorney's Fee, Costs and Related Matters post- February 17, 1998. Defendants will also pay class counsel an amount to cover counsel for the class's reasonable fees, costs and expenses from February 18, 1998 up to and including the date of this Agreement and an amount to cover their reasonable fees, costs and expenses for post-Agreement work, including but not limited to, application for approval of the settlement, administering the settlement, and related matters. The parties have not been able to agree, to date, on such amounts. They parties will submit such unresolved issues to the Court.

19. Notice. Counsel for the class will give notice by publication to the class members, as further described below.

20. Maximum liability of Defendants. In no event shall the total liability of Defendants under this Agreement exceed the total of: the settlement fund described in paragraph 11(b) plus the incentive payments to the named Plaintiffs described in paragraph 13, plus attorney's fees and costs described in paragraphs 17 and 18 plus the cost of capital improvements to Fiddler's Green described in paragraph 11(a) and the costs for notice.

21. Class Members' Right of Exclusion. Any class member may seek to be excluded from this Agreement and from the class within the time and in the manner provided by Court order. Any class member so excluded shall not be bound by the terms of this Agreement nor entitled to any of its benefits. In the event five percent (5%) or more of the class members elect to be excluded from this Agreement, it may be declared null and void, at the sole election of the Defendants.

22. Preliminary approval. As soon as practical after execution of this Agreement, the parties shall make application to the Court for an order which:

- a. Preliminarily approves this Agreement;
- b. Certifies for purposes of settlement only that the class claims may be maintained on behalf of the class defined above;

- c. Schedules a hearing for final approval of this agreement by the Court;
- d. Approves the form of notice to the class, to be made by publication by Plaintiffs' counsel at Defendants' expense for two successive weeks in two publications of general circulation of the class members, e.g., The Denver Post and The Rocky Mountain News;
- e. Finds that such class notice is the only notice required and that such notice satisfies the requirements of due process and Fed. R. Civ. P. 23.

23. The parties agree to request Court approval of the form of notice by publication and the form of notice to persons who request information pursuant to the notice by publication that are attached hereto as Exhibit C and D respectively, and the form of Preliminary Approval Order attached hereto as Exhibit E. The fact that the Court may require changes in the notices or order shall not invalidate this Agreement so long as such changes do not materially conflict with its terms.

24. Final approval. At the conclusion of, or as soon as practicable after the closing of the hearing on the fairness, reasonableness and adequacy of this Agreement, counsel for the class and Defendants shall request that the court enter a Final Judgment approving the terms of this Agreement as fair, reasonable and adequate, providing for the implementation of those terms and provisions, finding that the notice given to the class satisfies the requirements of due and process and Fed. R. Civ. P. 23, dismissing the claims of the class and the named Plaintiffs with prejudice and without costs, directing the entry of judgment, and retaining jurisdiction to enforce the provisions of this Agreement.

25. The parties agree to request Court approval of the form of Judgment attached hereto as Exhibit F. The fact that the Court may require changes in the Judgment shall not invalidate this Agreement so long as such changes do not materially conflict with its terms.

26. Release of Attorney's Lien. In consideration of this Agreement, Plaintiffs' counsel hereby waive, discharge and release Defendants, their officers, directors, shareholders, agents, employees, attorneys, successors, beneficiaries, parents, subsidiaries, representatives, divisions,

affiliates and assigns of and from any and all claims for attorney's fees, by lien or otherwise, for legal services rendered by Plaintiffs' counsel in connection with this case. Plaintiffs' counsel further represent and certify that no other person is entitled to any sum for attorney's fees in connection with same, and the undersigned attorneys agree to indemnify and to save harmless Defendants and their officers, directors, shareholders, agents, employees, attorneys, successors, beneficiaries, parents, subsidiaries, representatives, divisions, affiliates and assigns, if any person shall assert any claim for attorney's fees in connection with the foregoing matter.

27. Miscellaneous Provisions. Whether or not this Agreement and the settlement contemplated hereunder are consummated, this Agreement and the proceedings had in connection herewith shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of Defendants of (a) any liability or wrongdoing whatsoever or (b) the appropriateness of class treatment of the claims and matters raised in the complaint in the Litigation.

28. The parties and their attorneys agree to cooperate fully with one another in seeking Court approval of this Agreement, and to use their best efforts to effect the consummation of this Agreement and the settlement provided for herein.

29. Notices regarding this Agreement directed to the class shall be sent to:

Timothy P. Fox, Esq.
Fox & Robertson, P.C.
1675 Larimer Street
Suite 610
Denver, CO 80202

Notices regarding this Agreement directed to the Defendants shall be sent to:

Daniel S. Hoffman, Esq.
Barbara Z. Blumenthal, Esq.
McKenna & Cuneo, L.L.P.
370 Seventeenth Street
Suite 4800

Denver, CO 80202

and

Adam Friedman
V.P. Business Affairs
Universal Concerts, Inc.
100 Universal City Plaza/SC24
Universal City, CA 91608

The persons and addresses designated in this paragraph may be changed by any signatory hereto by written notice to the other signatories hereto.

30. The foregoing constitutes the entire agreement between the parties with regard to the subject matter hereof and may only be modified or amended in a writing signed by all parties hereto.

31. This Agreement may be executed in counterparts, in which case the various counterparts shall be and constitute one instrument for all purposes. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

32. Each and every term of this Agreement shall be binding upon and inure to the benefit of Plaintiffs, the members of the class, and any of their successors and personal representatives, and shall bind and shall inure to the benefit of the Released Parties, all of which persons and entities are intended to be beneficiaries of this Agreement.

33. This Agreement and the exhibits annexed hereto shall be governed by and interpreted in accordance with the laws of the State of Colorado, except to the extent that the laws of the State of Colorado are pre-empted by the laws of the United States.