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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

CV 99-01034 FMC (SHx)

Plaintiff,

vs.

**AMC ENTERTAINMENT, INC.,
AMERICAN MULTI-CINEMA,
INC.**

Defendants.

**ORDER GRANTING THE
GOVERNMENT'S MOTION FOR
PARTIAL SUMMARY
JUDGMENT ON NON-LINE-OF-
SIGHT ISSUES;**

**ORDER DENYING
DEFENDANT'S MOTION FOR
INTERLOCUTORY APPEAL.**

This matter is before the Court on the Government's Motion for Partial Summary Judgment on the Non-Line-of-Sight Issues (docket #379, and on Defendant's Motion for Interlocutory Appeal (docket #409). This matter was heard on January 21, 2003, at which time the parties were in receipt of the Court's tentative Order. For the reasons set forth below, the Court **hereby grants** the Motion for Partial Summary Judgment, and **hereby denies** the Motion for Interlocutory Appeal.

1 In resolving the Motion for Partial Summary Judgment, the Court
2 examines evidence gathered by the Government's expert, Bill Hecker, in
3 two-to-three-day inspections of twelve of Defendant's Theaters. The Court
4 concludes that the uncontroverted evidence establishes that AMC has
5 engaged in a pattern and practice of violating the ADA.

6 7 I. Factual Background¹

8 A. AMC's Theaters

9 Defendant AMC Entertainment, Inc., and American Multi-Cinema,
10 Inc., a wholly owned subsidiary of AMC (collectively referred to as "AMC"),
11 are corporations with principal places of business in Kansas City, Missouri.
12 AMC operates movie theaters throughout the United States.

13 At issue in the current Motion are twelve of AMC's many theater
14 complexes:²

- 15 1) Barrett Commons, Kennesaw, GA, opened for business on July
16 2, 1999;
- 17 2) Barry Woods Center, Kansas City, MO, opened for business on
18 December 19, 1997;
- 19 3) Celebration 2, Celebration, FL, opened for business on
20 December 25, 1996;
- 21 4) The Grand, Dallas, TX, opened for business on May 19, 1995;
- 22 5) Leawood 20, Town Center Plaza, opened for business in
23 December 19, 1997;
- 24 6) Norwalk 20, Norwalk, CA, opened for business on May 10, 1996;

25
26 ¹ The facts set forth below are uncontroverted, except as noted.

27 ² Eleven of the twelve theater complexes at issue were designed and constructed for first
28 occupancy after January 26, 1993; the twelfth, Pleasure Island at Walt Disney World, was
altered after January 26, 1992.

- 1 7) Studio 24, Olathe, KS, opened for business on December 19,
2 1997;
- 3 8) Palm Promenade 24, National City, CA, opened for business on
4 September 17, 1999;
- 5 9) Pleasure Island at Walt Disney World, Orlando, FL, opened for
6 business on July 4, 1997;
- 7 10) Forum 30, Sterling Heights, MI, opened for business on
8 November 19, 1999;
- 9 11) Empire 25, Times Square, New York, NY, opened for business
10 July 2, 1999;
- 11 12) Promenade 16, Woodland Hills, CA, opened for business on
12 March 28, 1996.

13

14 **B. The Government's Expert Report³**

15 The Government has filed the declaration and expert report Bill
16 Hecker ("the Hecker Report"). Hecker is an architect who is licensed in
17 three states. His curriculum vitae establishes that he has extensive
18 experience in the field of ADA compliance sufficient to qualify him as an
19 expert in this field. (See Hecker Report, Appdx. XIII, attached as Exh. 1 to
20 the Government's Appendix of Declarations and Exhibits). Additionally,
21 Hecker has conducted over five hundred building surveys and has reviewed
22 thousands of pages of architectural plans; these activities involved taking or
23 checking measurements. (Hecker Decl., ¶ 5).

24 The Hecker Report catalogs well over one thousand accessibility
25
26
27

28 ³ AMC's objections to the Hecker Report are overruled.

1 violations at the twelve theater complexes he inspected.⁴ For instance, at the
2 Sterling Heights theater complex, Hecker reports the following
3 measurements that are not in compliance with the Americans with
4 Disabilities Act Accessibility Guidelines (“ADAAG”):⁵

5 **Parking Areas and Exterior Egress Routes:**

6 There is only one van-accessible parking space out of 22
7 handicapped spaces and 1274 total spaces. *See* ADAAG
8 4.1.2(5)(b).

9 Two of the accessible spaces have no post-mounted sign.
10 *See* ADAAG 4.6.4.

11 There is an abrupt vertical level change (½”) just in front
12 of the curb ramp leading from the central walkway to the
13 entrance. *See* ADAAG 4.5.2.

14 There are curb ramps with slopes of 25.5% and 22.7%. *See*
15 ADAAG 4.7.2.

16 At exterior egress routes, there are a number of cross slopes that
17 exceed the maximum 2%. *See* ADAAG 4.3.7.

18 **Lobby:**

19 The lowest pay phone is higher than 48”. *See* ADAAG
20 4.1.3(17)(a).

21 At auditorium entrance doors off this lobby, there are no
22 raised letter and braille room identification signs mounted 60”

23 _____
24 ⁴ As set forth below, a number of Hecker’s measurements are factually disputed by
25 AMC. However, the vast majority of Hecker’s measurements are not challenged factually.
26 Although it appears that Pennington (an AMC official who is not an expert in this area)
27 conducted a limited inspection of three of the theater complexes at issue, there is no evidence
28 that AMC has undertaken a review of its theaters similar to that performed by Hecker.

⁵ These examples are by no means an exhaustive list of the measurements noted by
Hecker in his Report. The Hecker Report details these measurements at Appdx. I - XII.

1 high on the wall to the latch side of the entrance doors. *See*
2 ADAAG 4.1.3(16)(a).

3 The retractable tape barricades used to cordon off the
4 concession area are higher than 27” and are not detectable to
5 cane users. *See* ADAAG 4.4.1.

6 **Circulation Issues:**

7 A number of objects protrude up to 23” into the
8 circulation corridors at a height below 80.” *See* ADAAG 4.4.1

9 **Auditoriums:**

10 Wheelchair seating areas are less than 33” wide in 21 of the
11 30 auditoriums. *See* ADAAG 4.33.2.

12 Handrails are too large in diameter. *See* ADAAG 4.8.5.

13 Ramps have slopes in excess of 8.3% in 26 of the 30
14 theaters.⁶ *See* ADAAG 4.8.2.

15 The fire alarm pull box cover projects more than 4”
16 (typically 5 ½”) into the circulation route. 4.4.1.

17 There is no edge protection on the central platform ramps
18 in 18 of the 30 auditoriums. 4.8.7

19 The companion fixed seats are not provided next to each
20 wheelchair seating area so as to allow “shoulder to shoulder”
21 seating in 26 of the 30 auditoriums. 4.33.3.

22 **Restrooms:**

23 A number of handicapped stalls in the men’s and women’s
24 restrooms had toilets that were not centered properly. 4.17.3.

25 _____
26 ⁶Hecker states that he took all slope measurements using a two-foot long digital “Smart
27 Level.” (Hecker Decl., ¶ 6). He placed the level at the steepest observed part of the ramps,
28 and measured there. (*Id.*). He checked the calibration of the digital level and recalibrated it
as necessary, at the beginning of each day of each theater survey. (*Id.*).

1 The men's restrooms had urinals that were placed too
2 high. 4.18.2.

3 Ambulatory stalls were too wide and toilet seats were too
4 low. 4.22.4.

5 Stall doors were not self-closing. 4.22.4.

6 No visible alarm strobes were located in single-user
7 restrooms. 4.1.3(14).

8 These measurements are representative of those taken at the other eleven
9 theater complexes.

10

11 **C. AMC's Expert Report**

12 AMC has offered the opinion of its own expert, Michael P. Gibbens.⁷

13 The Gibbens Report represents a review of the Hecker Report. Gibbens does
14 not give an opinion as to whether the measurements set forth in Hecker's
15 Report are accurate.

16 Gibbens criticizes the Hecker Report in the following manner:

17 The Report fails to establish that the twelve theater complexes are
18 subject to the ADA;

19 the Report does not detail how the improvements were measured or
20 provide information regarding the accuracy of the measurements;

21 the Report does not indicate if the improvements are accessible to and
22 useable by individuals with disabilities through equivalent facilitation;

23 the Report does not appear to consider equivalent facilitation or
24 dimensional tolerances in construction;

25

26 ⁷ This report is signed by Cheryl L. Beverage for Michael P. Gibbens. The Court is
27 troubled by the fact that Mr. Gibbens did not sign his report in light of the requirement of
28 Fed. R. Civ. P. 26(a)(2)(B) that expert witness reports be signed. *See* Hurley Decl., Exh. O;
Fed. R. Civ. P. 26(a)(2)(B).

1 the Report does not indicate if all the improvements detailed are on
2 required accessible routes or are in fact required to be accessible; and
3 the Report assumes "shoulder to shoulder" companion seating is
4 required when the ADAAG requires only that one companion seat be placed
5 in each wheelchair seating area.⁸

6
7 **D. AMC's Substantive Controverting Evidence⁹**

8 AMC has submitted the declaration of Philip Pennington, AMC's
9 Vice-President of Administration and Special Projects to controvert the
10 evidence set forth in the Hecker Report.

11 Pennington states that each of the twelve theater complexes were
12 inspected and approved by state building code compliance officials at the
13 design stage and during and after construction. (Pennington Decl. at ¶ 4-5).

14 Pennington also states that, based upon his review of the plans and
15 specifications for the twelve theater complexes, all the ramps in all the
16 auditoriums were designed to have a slope of 1:12 or less.¹⁰

17 Pennington performed his own inspection of the slopes of the ramps in
18 three of the twelve theaters inspected: Barry Woods, Olathe, and Leawood.

19 _____
20 ⁸ This distinction is related to AMC's argument that it is significant when the ADAAG
21 uses the term "wheelchair space" versus "wheelchair area." This argument is discussed more
22 fully below.

23 ⁹ The Court has not considered paragraphs 21-24 of the Hurley Declaration. Once
24 again, defense counsel, Gregory F. Hurley, has submitted a declaration in which he purports
25 to controvert certain measurements of the Hecker Report. As clearly explained to defense
26 counsel on a previous occasion, counsel of record is not competent to give evidence on
27 substantive matters at issue in this case. *See United States of America v. AMC Entertainment,*
28 *Inc.*, __ F. Supp. 2d __, No. 99-01034 FMC (SHx), 2002 WL 31649984 at *24, n.13, 14, 16 (C.D.
Cal., Nov. 20, 2002).

¹⁰ As set forth in the ADAAG, a slope of 1:12 is created when a one-foot vertical rise is
accomplished over twelve feet of floor space. This ratio is sometimes expressed as "rise over
run." The resulting percent grade created by such a slope is 8.3333...%.

1 Pennington used a four-foot long smart level, which he calibrated before
2 taking the measurements. Pennington's measurements differed from those
3 set forth in the Hecker Report.¹¹

4 Pennington measured the wheelchair spaces at Barry Woods, and
5 states that all spaces measured 66" or greater at every point except the very
6 front of the spaces. The space measures 66" or greater even at the very front
7 if the companion seat armrest is raised.

8 Pennington states that all auditoriums provide at least one companion
9 seat next to each wheelchair seating area.

10 Pennington states that AMC does not own the pay phones that the
11 DOJ contends are not in compliance; Pennington also states that he
12 measured the telephones at the Barry Woods Theater, and found them to be
13 in compliance.

14 Pennington states that AMC does not own any of the parking lots or
15 exterior paths of travel at the following theaters: Barrett Commons, Barry
16 Woods, Celebration, Norwalk, Olathe, Pleasure Island, and Woodland Hills.
17 The Empire 25 in New York has no parking.

18 Pennington states that all of the "common areas"¹² of the theaters
19 contain alarm systems that comply with the state laws and the ADAAG.

20 Pennington also states that AMC has a policy of repairing features of
21 its facilities that affect the accessibility of AMC's theaters and that have

22
23 ¹¹ Unlike Hecker, Pennington did not set forth any measurements for the ramps in the
24 following auditoriums (Hecker's measurements are noted in parentheses): Leawood #12
25 (9.3%); Barry Woods #2 (8.5%), #12(9.1%), #15(9.1%), #17 (8.7%), #21 (8.5%), #24 (8.7% and
26 9.8%). A number of Pennington's own measurements are higher than 8.333...%: Barry Woods:
#3 (8.6%), #8 (8.6%); Olathe: #4 (8.4%), #19 (8.7%), #29 (8.5% and 8.7%), and #30 (8.4%);
Leawood: #8 (8.6%).

27 ¹² Pennington defines "common areas" as lobbies, public restrooms, and auditoriums.
28 Pennington explicitly excludes from this definition those areas that are intended only for use
by AMC employees.

1 become out of compliance by wear, use, or other means.

2 Finally, Pennington states that the DOJ inspection counted only the
3 number of listening devices located at the “guest service counters.”

4 Additional devices are available, but are store in managers’ offices or other
5 locations in these theaters.

6 7 **II. Summary Judgment Standard**

8 Summary judgment is proper only where “the pleadings, depositions,
9 answers to interrogatories, and admissions on file, together with the
10 affidavits, if any, show that there is no genuine issue as to any material fact
11 and that the moving party is entitled to judgment as a matter of law.” Fed.
12 Rule Civ. Pro. 56(c); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
13 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

14 The moving party bears the initial burden of demonstrating the
15 absence of a genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477
16 U.S. 242, 256, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Whether a fact is
17 material is determined by looking to the governing substantive law; if the
18 fact may affect the outcome, it is material. *Id.* at 248, 106 S.Ct. 2505.

19 If the moving party meets its initial burden, the “adverse party may
20 not rest upon the mere allegations or denials of the adverse party's pleading,
21 but the adverse party's response, by affidavits or as otherwise provided in this
22 rule, must set forth specific facts showing that there is a genuine issue for
23 trial.” Fed. R. Civ. P. 56(e). Mere disagreement or the bald assertion that a
24 genuine issue of material fact exists does not preclude the use of summary
25 judgment. *Harper v. Wallingford*, 877 F.2d 728 (9th Cir. 1989).

26 The Court construes all evidence and reasonable inferences drawn
27 therefrom in favor of the non-moving party. *Anderson*, 477 U.S. at 255;
28 *Brookside Assocs. v. Rifkin*, 49 F.3d 490, 492-93 (9th Cir. 1995).

III. The ADA and ADAAG

1
2 Congress passed the ADA in 1990, based upon factual findings that the
3 disabled suffered from discrimination, isolation, segregation, and lack of
4 physical access to certain facilities. 42 U.S.C. § 12101(a)(1)-(3), (5). Congress
5 found that the disabled were often politically powerless and were left without
6 legal recourse to remedy discrimination against them. 42 U.S.C.
7 § 12101(a)(4), (7). Congress also found that discrimination against the
8 disabled left them severely disadvantaged socially, vocationally,
9 economically, and educationally, and denied them the opportunity to achieve
10 independent living and economic self-sufficiency. 42 U.S.C. § 12101(a)(6),
11 (8), (9).

12 Congress' stated purpose in enacting the ADA was "to provide a clear
13 and comprehensive national mandate for the elimination of discrimination
14 against individuals with disabilities" and to "to provide clear, strong,
15 consistent, enforceable standards addressing discrimination against
16 individuals with disabilities." 42 U.S.C. § 12101(b)(1)-(2).

17 Title III of the ADA prohibits discrimination in public
18 accommodations. 42 U.S.C. § 12181 - 12189. Specifically, the ADA provides
19 that "[n]o individual shall be discriminated against on the basis of disability
20 in the full and equal enjoyment of the goods, services, facilities, privileges,
21 advantages, or accommodations of any place of public accommodation by
22 any person who owns, leases (or leases to), or operates a place of public
23 accommodation." 42 U.S.C. § 12182(a).

24 Movie theaters are considered "public accommodations" under the
25 ADA. 42 U.S.C. § 12181(7)(C) (defining "public accommodation" as
26 including "motion picture houses"). All twelve theater complexes at issue in
27 this Motion are "motion picture houses" as defined by 42 U.S.C. §
28 12181(7)(C) and 28 C.F.R. § 36.104. The theater complexes are also "public

1 accommodations” within the meaning of 42 U.S.C. § 12181(7), and “places of
2 public accommodation” within the meaning of 28 C.F.R. § 36104.

3 The ADA applies to newly constructed public accommodations (those
4 designed or constructed after January 26, 1993) 42 U.S.C. § 12183(a)(1).

5 Eleven of the twelve theater complexes were designed and constructed for
6 first occupancy after January 26, 1993.

7 The ADA also applies to public accommodations that were altered
8 after January 26, 1992. 42 U.S.C. § 12183(a)(2). The Paradise Island theater
9 complex was altered after January 26, 1992.

10 The Department of Justice (“DOJ”), through the Attorney General, is
11 charged with enforcing Title III. The DOJ is also responsible for
12 promulgating regulations implementing Title III, issuing technical
13 assistance materials, and filing suit to enforce compliance with the ADA and
14 the implementing regulations. 42 U.S.C. §§12186(b), 12188(b), 12206.

15 In promulgating regulations, the DOJ is required to adopt regulations
16 that meet the minimum guidelines and requirements issued by the Access
17 Board in accordance with 42 U.S.C. § 12204. After a notice-and-comment
18 period, in July 1991, the DOJ promulgated regulations implementing Title
19 III of the ADA. *See generally* 28 C.F.R., Pt. 36; 56 F.R. 35544 (July 26, 1991).

20 Those regulations include a requirement that individuals with
21 disabilities be afforded goods, services, facilities, privileges, advantages, and
22 accommodations in the most integrated setting appropriate to the needs of
23 the individual. 28 C.F.R. § 36.203(a). As “new constructions”, eleven of the
24 twelve theater complexes at issue here are subject to the ADA Accessibility
25 Guidelines, or ADAAG. *See* 28 C.F.R. § 36.406. As a theater altered after
26 January 26, 1992, the altered portions of the Paradise Island theater complex
27 are also subject to the ADAAG. *See* 28 C.F.R. § 36.402(b)(2). The ADAAG
28 can be found at Appendix A to 28 C.F.R., pt. 36.

IV. Analysis

1
2 The Hecker Report establishes hundreds of ADAAG violations at the
3 twelve theater complexes. Pennington's Declaration, at best, creates a triable
4 issue of fact as to only a small subset of these violations. Therefore, the
5 Court has no trouble concluding that, based on the uncontroverted evidence,
6 AMC has violated numerous sections of the ADAAG in each of the twelve
7 theaters surveyed. Moreover, the Court concludes that AMC has engaged in
8 a pattern and practice of discrimination against the disabled in violation of
9 Title III of the ADA. *See International Brotherhood of Teamsters v. United*
10 *States*, 431 U.S. 324, 97 S. Ct. 1843 (1977) (in Title VII case, noting that a
11 pattern or practice exists "where the denial of rights consists of something
12 more than an isolated, sporadic incident, but is repeated, routine, or of a
13 generalized nature"); *see also* 42 U.S.C. § 12188(b)(1)(B)(i) (authorizing civil
14 action by DOJ to redress pattern and practice violations under Title III of
15 the ADA).

16 AMC has advanced a number of arguments in its opposition, many of
17 which are worthy of note. AMC argues that the majority of the violations
18 documented by the DOJ deviate from the standards set forth in the ADAAG
19 by small amounts. This "small deviation" argument is related to AMC's
20 position regarding building industry tolerances. *See* ADAAG § 3.2 ("All
21 dimensions are subject to conventional building industry tolerances for field
22 conditions.") However, AMC has provided no evidence regarding any
23 applicable conventional building industry tolerances, which seems to the
24 Court to be a subject for expert testimony. Moreover, many standards set
25 forth in the ADAAG speak in terms of minimums that must be provided.
26 AMC's argument suggests that the Court should shave half an inch or an
27 inch off these articulated minimums. Additionally, the Hecker Report
28 documents a multitude of violations that are not merely half an inch or an

1 inch off. This argument is simply not persuasive. In any event, arguments
2 regarding building industry tolerances are better suited to the remedies
3 phase of this litigation.¹³

4 AMC criticizes the accuracy of the measurements reported in the
5 Hecker Report and the accuracy of the tools Hecker used. The Court has
6 already noted that Hecker qualifies as an expert on accessible design. Cases
7 such as this require that the Court rely on the opinions of qualified experts.¹⁴
8 AMC may not sit idly by and merely criticize Hecker without gathering
9 evidence to rebut his conclusions.

10 Along these same lines, AMC argues that the ramps at issue should
11 have been measured as “rise over run” rather than as a percent grade because
12 the ADAAG standard is expressed as a ratio of 1:12. However, as
13 acknowledged by both parties, a 1:12 ratio results in a percent grade of
14 8.3333...%. Employing relatively simple geometry, the Court concludes that
15 percent grade is probative evidence of whether a given ramp meets the 1:12
16 standard.¹⁵

17 AMC argues that it has provided equivalent facilitation pursuant to
18 ADAAG § 2.2, which states:

19 Departures from particular technical and scoping requirements
20 of this guideline by the use of other designs and technologies are

21
22 ¹³ The Court reads the Government’s Motion as stopping short of requesting that the
23 Court order a remedy for AMC’s documented ADA violations at this time.

24 ¹⁴ AMC argues that the Hecker Report is inconclusive as to whether the variances
25 reported were the result of routine wear. Again, the Court relies on the opinions of qualified
experts to report accurate measurements.

26 ¹⁵ Hecker acknowledges that he observed what he believed to be the steepest part of a
27 given ramp, and measured that portion. Although it is possible, as AMC argues, that a given
28 part of the ramp is slightly more sloped than another portion, this argument is not supported
by any evidence that the ramps noted in the Hecker Report have a conforming “rise over run”.

1 permitted where the alternative designs and technologies used
2 will provide substantially equivalent or greater access to and
3 usability of the facility.

4 There is no evidence that the documented violations were the result of
5 designs and technologies that were implemented in order to provide
6 substantially equivalent or greater access to and usability of the facility. Nor
7 is there evidence that any of the documented violations have resulted in
8 greater access to the theaters.

9 AMC argues that there is no requirement in the ADAAG that
10 companion seats sit “shoulder to shoulder” with wheelchair spaces. AMC
11 argues that at least one companion seat is in each wheelchair area (which
12 may contain more than one wheelchair space), and that this is sufficient.
13 The evidence is unclear as to why the companion seats are not “shoulder to
14 shoulder.” This issue is better resolved in the remedies phase of the
15 litigation.

16 Finally, AMC argues that the theaters in Washington, Texas, Maine,
17 and Florida comply with state building codes that are certified by the DOJ as
18 providing protection to the disabled that is equal to or greater than the ADA.
19 This creates a rebuttable presumption of compliance with the ADA.
20 However, the Court concludes that, based on the Hecker Report, the DOJ
21 has sufficiently rebutted this presumption.

22 Accordingly, the Court **hereby grants** the Government’s Motion for
23 Partial Summary Judgment.

24 25 **V. Interlocutory Appeal**

26 AMC has requested interlocutory appeal of the Court’s November 20,
27 2002, Order that granted summary judgment in favor of the DOJ on the line-
28 of-sight issue. Interlocutory appeal may be ordered under the following

1 circumstances:

2 When a district judge, in making in a civil action an order
3 not otherwise appealable under this section, shall be of the
4 opinion that such order involves a controlling question of law as
5 to which there is substantial ground for difference of opinion
6 and that an immediate appeal from the order may materially
7 advance the ultimate termination of the litigation, he shall so
8 state in writing in such order. The Court of Appeals which
9 would have jurisdiction of an appeal of such action may
10 thereupon, in its discretion, permit an appeal to be taken from
11 such order, if application is made to it within ten days after the
12 entry of the order

13 28 U.S.C. § 1292(b). Although the Court agrees with AMC that the issue is
14 otherwise appropriate for interlocutory appeal, the Court is persuaded by the
15 Government’s argument that an immediate appeal will not materially
16 advance the ultimate termination of this litigation. Both parties
17 acknowledge that the Ninth Circuit has currently pending before it a case
18 involving the same issue presented in the Court’s November 20, 2002, Order.
19 The case has been fully briefed on appeal, and oral argument was heard in
20 early December 2002. Therefore, the Ninth Circuit is likely to rule on this
21 issue in the coming months. An interlocutory appeal of this Court’s order
22 would be unlikely to be resolved for well over a year. Therefore, the Court
23 believes a better course of action would be to await the Ninth Circuit’s
24 decision in *Oregon Paralyzed Veterans of America v. Regal Cinemas, Inc.*, No.
25 01-35554. This matter is set for status conference April 10, 2003, at 3:00 p.m.

26 Accordingly, the Court **hereby denies** the Motion for Interlocutory
27 Appeal.

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VI. Conclusion

For the reasons set forth above, the Court **hereby grants** the Motion for Partial Summary Judgment (docket #379), and **hereby denies** the Motion for Interlocutory Appeal (docket #409).

5-0-0-0-0

Date: January 15, 2003


FLORENCE-MARIE COOPER, Judge
UNITED STATES DISTRICT COURT