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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The State of Arizona ex rel. Terry
Goddard, the Attorney General; the Civil
Rights Division of the Arizona Department
of Law,

Plaintiffs,

&

Frederick Lindstrom by and through his
parent, Rachel Lindstrom; and Larry
Wanger,

Plaintiff-Intervenors,

vs.

Harkins Amusement Enterprises, Inc.; et
al.,

Defendants.

No. CV-07-703-PHX-ROS

ORDER

Defendants Harkins Amusement Enterprises, Inc., et al.¹ (“Harkins”) move to dismiss
Plaintiffs and Plaintiff-Intervenors pursuant to Federal Rule of Civil Procedure 12(b)(6).
(Docs. 3, 6.) Harkins’ motions present the issue of whether the Americans with Disabilities

¹ Defendants in this case include Harkins Amusement Enterprises, Inc. and numerous
other Harkins corporations who own and/or operate 21 theaters with 262 screens in Phoenix,
Mesa, Tempe, Chandler, Scottsdale, Avondale, Peoria, Flagstaff, Sedona, Prescott Valley,
and Yuma. (State’s Compl. ¶ 5.)

1 Act (“ADA”) and the Arizonans with Disabilities Act (“AzDA”) require movie theaters to
2 provide captioned movies for the hearing impaired and to provide descriptions for the seeing
3 impaired. The Court concludes that neither the ADA nor the AzDA require movie theaters
4 to provide these services. Accordingly, Harkins’ motions to dismiss will be granted.

5 **BACKGROUND**

6 **I. Statutory Background**

7 The ADA was designed to eliminate “discrimination against individuals with
8 disabilities.” Barden v. City of Sacramento, 292 F.3d 1073, 1077 (9th Cir. 2002). The ADA
9 proclaims:

10 No individual shall be discriminated against on the basis of disability in the
11 full and equal enjoyment of the goods, services, facilities, privileges,
12 advantages, or accommodations of any place of public accommodation by any
person who owns, leases (or leases to), or operates a place of public
accommodation.

13 42 U.S.C. § 12182(a). Discrimination includes:

14 a failure to take such steps as may be necessary to ensure that no individual
15 with a disability is excluded, denied services, segregated or otherwise treated
16 differently than other individuals because of the absence of auxiliary aids and
17 services, unless the entity can demonstrate that taking such steps would
fundamentally alter the nature of the good, service, facility, privilege,
advantage, or accommodation being offered or would result in an undue
burden

18 Id. § 12182(b)(2)(A)(iii) (also referred to herein as “the auxiliary aids and services
19 provision”). The ADA also defines “auxiliary aids and services” to include “effective
20 methods of making aurally delivered materials available to individuals with hearing
21 impairments” and “effective methods of making visually delivered materials available to
22 individuals with visual impairments.” Id. § 12102(1)(A)&(B).

23 The Attorney General is authorized to issue regulations concerning Title III of the
24 ADA (“Title III”).² 42 U.S.C. § 12186(b). The Attorney General’s regulations further define
25 “auxiliary aids and services” to include “open and closed captioning.” 28 C.F.R.
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² Title III includes 42 U.S.C. §§ 12181–12189.

1 § 36.303(b)(1). However, the Appendix to § 36.303 clarifies: “Movie theaters are not
2 required by § 36.303 to present open-captioned films.” 28 C.F.R. Pt. 36, App. B(C) (1992).

3 Congress also authorized the Architectural and Transportation Barriers Compliance
4 Board (“Access Board”)³ to issue “minimum guidelines”—ADA Accessibility Guidelines
5 (“ADAAG”)—for Title III. 42 U.S.C. § 12204(a). The Attorney General’s regulations must
6 be consistent with the ADAAG. *Id.* § 12186(c). In 2004, the Access Board considered new
7 technologies “developed to provide open or closed captioning for movie theaters,” and
8 concluded that theaters are not required to provide “built-in features that can help support the
9 provision of captioning technologies.” ADA Accessibility Guidelines for Buildings and
10 Facilities, 69 Fed. Reg. 44084, 44138 (July 23, 2004).

11 **II. Factual & Procedural Background**

12 Frederick Lindstrom has profound, bilateral hearing loss. As a result of his disability,
13 Lindstrom cannot hear or discriminate speech and requires textual representations of movie
14 soundtracks. On December 14, 2005, Rachel Lindstrom, the mother of Frederick Lindstrom,
15 called the box office of the North Valley 16 Theatres to find a captioned showing of King
16 Kong for her son. Ms. Lindstrom was told that there were no open-captioned showings of
17 King Kong or auxiliary aids to display closed captioning at any of the theater auditoriums.⁴

18 Larry Wanger is totally blind in his right eye and has corrected visual acuity of less
19 than 20/400 in his left eye. As a result of his disability, he is unable to see visual aspects of
20 a film and requires an audio representation of its visual aspects. In August 2005, Wanger
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22 ³ The Access Board “is comprised of 13 individuals appointed by the president and
23 representatives of 12 government departments or agencies, including the Department of
24 Justice.” Paralyzed Veterans of America v. D.C. Arena L.P., 117 F.3d 579, 581 (D.C. Cir.
1997).

25 ⁴ “Captions are textual descriptions of a film’s soundtrack, comprised of the dialogue
26 and descriptions of other sounds. There are two types of captioning, open and closed. Open
27 captions are similar to subtitles . . . and [are] visible to everyone in the theater. . . . Closed
28 captioning displays the text only to patrons requiring captions, not to everyone in the
theater.” Ball v. AMC Entm’t, Inc., 246 F. Supp. 2d 17, 20 n.9 (D.D.C. 2003).

1 visited the North Valley 16 Theatres to see a movie with descriptive narrations, but was told
2 that the theater did not have such narrations.

3 Captions and descriptions are available in many first-run, wide-release films. Film
4 studios decide which movies will be captioned and/or described and provide the captions and
5 descriptions on separate CDs along with the movies. Movie theaters can purchase and install
6 available technology that enable the sensory impaired to view the captions or to hear the
7 descriptions on headsets. Patrons cannot view or hear the captioning and description features
8 on these movies unless the theaters install auxiliary equipment.

9 On December 15, 2006, the State of Arizona filed this action in Maricopa County
10 Court against Harkins on behalf of Lindstrom, Wanger, and a putative class of similarly
11 situated persons. The State alleges that Harkins violated A.R.S. § 41-1492.02 of the AzDA
12 by failing to provide captions for the hearing impaired and descriptions for the seeing
13 impaired. Subsequently, Lindstrom and Wanger (“Plaintiff-Intervenors”) intervened alleging
14 that the failure to provide captions and descriptions violated both the AzDA and the ADA.⁵

15
16 ⁵ Plaintiff-Intervenors do not claim they have attended or would attend any theater
17 other than the North Valley 16 Theatres. Nevertheless, they argue they have standing to bring
18 claims against the other theaters listed in the complaint citing Doran v. 7-Eleven, Inc., 506
19 F.3d 1191 (9th Cir. 2007). However, Doran is distinguishable.

20 In Doran, Doran visited a particular 7-Eleven store on several occasions, but was
21 deterred from visiting the store due to multiple alleged barriers. Id. at 1194. The court held
22 that Doran could sue for barriers identified by an expert, even though Doran neither
23 encountered nor had personal knowledge of those barriers. Id. at 1194–1202. The barriers
24 which deterred Doran from entering the building also deterred him from discovering the
25 other barriers he had not yet encountered. Id. at 1197. The court was concerned that Doran,
26 who planned to return to the particular store, would have to engage in piecemeal litigation
27 to eliminate all the barriers. Id. at 1198. The court explained: “It makes no sense to require
28 a disabled plaintiff to challenge, in separate cases, multiple barriers *in the same facility*,
controlled by the same entity, all related to the plaintiff's specific disability.” Id. at 1201
(emphasis added). However, unlike Doran, Plaintiff-Intervenors have brought claims against
multiple theaters that they have not entered or ever plan to enter. Thus, the concern in Doran
about piecemeal litigation to access a *particular* building is not present.

Plaintiff-Intervenors lack standing to challenge any theater other than the North
Valley 16 Theatres because they have not alleged they attempted to access any of Harkins’
other theaters or that they would access any of the other theaters if the requested services

1 Plaintiffs make no claim that Lindstrom, Wanger, or the putative class of similarly situated
2 persons have been denied access to services as normally provided by Harkins.

3 Harkins removed this case to federal court on April 2, 2007, and moved to dismiss
4 the complaints for failure to state a claim. Harkins does not dispute that Lindstrom and
5 Wanger are disabled⁶ or that its theaters are public accommodations⁷ within the meaning of
6 the ADA. Further, at this stage, Harkins does not argue that providing captioning and
7 descriptions would result in an undue burden. Rather, Harkins contends that the requested
8 captions and descriptions would alter the content of its services, and, therefore, fall outside
9 the scope of the ADA. Harkin’s argument requires the Court to interpret the meaning of the
10 requirement in § 12182(b)(2)(A)(iii) that “no individual with a disability is excluded, denied
11 services, segregated or otherwise treated differently than other individuals because of the
12 absence of auxiliary aids and services.”

13 STANDARD

14 “A Rule 12(b)(6) motion tests the legal sufficiency of a claim.” Navarro v. Block, 250
15 F.3d 729, 732 (9th Cir. 2001). When reviewing a motion to dismiss, the Court “must
16 determine whether, assuming all facts and inferences in favor of the nonmoving party, it
17 appears beyond doubt that [Plaintiffs] can prove no set of facts to support [their] claims.”
18 Marder v. Lopez, 450 F.3d 445, 448 (9th Cir. 2006) (internal quotations omitted).

19 DISCUSSION

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21 were provided. See Pickern v. Holiday Quality Foods Inc., 293 F.3d 1133, 1138 (9th Cir.
22 2002) (citing Moreno v. G & M Oil Co., 88 F. Supp. 2d 1116, 1116 (C.D. Cal. 2000), for
23 the proposition that a “disabled plaintiff could not show actual injury with respect to
24 defendant’s other gas stations, because plaintiff ‘[did] not claim he wants to visit the other
stations, or will ever do so”).

25 ⁶ The term “disability” means “a physical or mental impairment that substantially
26 limits one or more of the major life activities of such individual” 42 U.S.C. §
12102(2)(A).

27 ⁷ “Public accommodations” include “a motion picture house, theater, concert hall,
28 stadium, or other place of exhibition or entertainment.” Id. § 12181(7)(1)(C).

1 **I. Americans with Disabilities Act**

2 **A. Statutory Language**

3 A “simple reading” of the ADA does not compel the answer to the issue raised in this
4 case. See Doe v. Mutual of Omaha Ins. Co., 179 F.3d 557, 560 (7th Cir. 1999). However,
5 “[t]he common sense of the statute is that the content of the goods or services offered by a
6 place of public accommodation is not regulated.” Id. The Ninth Circuit has confirmed that
7 the scope of the ADA’s prohibition against discrimination under § 12182(a) is limited to the
8 goods and services offered by an entity. See Weyer v. Twentieth Century Fox Film Corp.,
9 198 F.3d 1104, 1115 (9th Cir. 2000) (“The ordinary meaning of [§ 12182(a)] is that whatever
10 goods or services the place provides, it cannot discriminate on the basis of disability in
11 providing enjoyment of those goods and services.”). In other words, the ADA “does not
12 require provision of different goods or services, just nondiscriminatory enjoyment of those
13 that are provided.” Id.; see also McNeil v. Time Ins. Co., 205 F.3d 179, 186 (5th Cir. 2000)
14 (“a business is not required to alter or modify the goods or services it offers”).

15 Plaintiffs attempt to distinguish Weyer, McNeil, and Doe because (1) they interpreted
16 the ADA’s general prohibition against discrimination under § 12182(a), not the auxiliary aids
17 and services provision under § 12182(b)(2)(A)(iii), and (2) they concerned insurance
18 coverage, rather than the factual situation here. These distinctions are unpersuasive.

19 Section 12182(a) sets forth the ADA’s general prohibition against discrimination.
20 Section 12182(b)(2)(A)(iii), in turn, fleshes out the definition of “discrimination.” Nothing
21 in the law suggests that § 12182(b)(2)(A)(iii) was somehow intended to extend the scope of
22 the ADA. By its own terms, § 12182(b)(2)(A)(iii) has the same coverage as § 12182(a). Its
23 introductory clause states, “[f]or purposes of subsection (a) of this section, discrimination
24 includes” In fact, McNeil rejected the plaintiffs’ argument that its interpretation of
25 § 12182(a) would render § 12182(b)(2)(A)(iii) superfluous. 205 F.3d at 186 n.9. The court
26 explained:

27 The provisions in §§ 12182(b)(1)(A)(i)–(iii) concerning the opportunity to
28 benefit from or to participate in a good or service do not imply that the goods
or services must be modified to ensure that opportunity or benefit. Rather, this

1 section only refers to impediments that stand in the way of a person’s ability
2 to enjoy the goods or services in the form that the establishment normally
provides it.

3 Id. Moreover, the ordinary meaning of the words “excluded,” “denied,” “segregated”, and
4 “treated differently” in § 12182(b)(2)(A)(iii) supports an interpretation which requires public
5 accommodations to ensure persons with disabilities have access to the same services that are
6 offered, but does not require public accommodations to offer different services. See
7 Webster’s Third New International Dictionary of the English Language Unabridged 603,
8 630, 793, 2057 (2002) (defining “deny” as “to refuse to grant” and “to withhold admittance
9 to”; defining “different” as “partly or totally unlike in nature, form, or quality” and “not the
10 same”; defining “exclude” as “to shut out: restrain or hinder the entrance of” and “to bar
11 from participation, enjoyment, consideration, or inclusion”; defining “segregate” as “to
12 separate or set apart from others”).

13 The courts’ reasoning also expressly extends beyond the context of insurance
14 coverage. See, e.g., Weyer, 198 F.3d at 1115 (“a bookstore cannot discriminate against
15 disabled people in granting access, but need not assure that the books are available in Braille
16 as well as print”); Doe, 179 F.3d at 562 (rejecting plaintiffs’ interpretation because it would
17 imply that § 12182(a) “regulates the content not only of insurance policies but also of all
18 other products and services”). In addition, the courts’ language expressly encompasses the
19 provision of services, as well as the provision of goods. See, e.g., Weyer, 198 F.3d at 1115
20 (the ADA “does not require provision of different goods *or services*”) (emphasis added).
21 Thus, the reasoning in Weyer, McNeil, and Doe applies to § 12182(b)(2)(A)(iii). Public
22 accommodations must ensure that persons with disabilities have access to the services they
23 provide (utilizing auxiliary aids and services if necessary), but are not required to alter or
24 modify the content of those services.

25 Plaintiffs next argue that the provision of captions and descriptions would not alter
26 the content of Harkins’ services. Plaintiffs explain that (1) Harkins would not be required
27 to show any movie that it would not otherwise show at its theater; (2) the auxiliary aids
28 requested would only require Harkins to provide “a functionally equivalent service for people

1 with sensory disabilities”; and (3) film studios provide captions and descriptions with select
2 movies at no additional cost on a separate CD-ROM disk.

3 First, merely because Harkins would not be required to show movies it would not
4 otherwise offer does not mean that providing captions and descriptions would not change the
5 content of its services. Movie theaters offer motion pictures to the public in a specific format
6 which combines audio and visual elements. However, Plaintiffs’ request would require
7 Harkins to alter the form in which it normally provides its services. See McNeil, 205 F.3d
8 at 186 n.9 (Section 12182(b)(1)(A)(i)–(iii) “only refers to impediments that stand in the way
9 of a person’s ability to enjoy the goods or services in the form that the establishment
10 normally provides it.”). Captioning changes audio elements into a visual format. (See
11 Compl. ¶ 12 (captions “provide a textual representation of the sound track of a movie either
12 in [an] open-captioned or closed captioned format”).) Descriptions change visual elements
13 into an audio format. (See id. ¶ 21 (“The descriptive narration provides information about
14 key visual aspects of a movie by describing scenery, facial expressions and costumes, action
15 settings and scene changes during natural pauses in dialogue”).) Persons with sensory
16 disabilities are not “excluded, denied services, segregated or otherwise treated differently
17 than other individuals” because they are offered the same form of services as other members
18 of the public. See 42 U.S.C. § 12182(b)(2)(A)(iii).

19 Second, the ADA cannot be interpreted to require Harkins to change the format in
20 which it offers movies to provide “a functionally equivalent service” to persons with sensory
21 disabilities. While the ADA prohibits discrimination “on the basis of disability in the full
22 and equal enjoyment” of services, id. § 12182(a), this language must “be interpreted to have
23 some practical, common sense boundaries.” McNeil, 205 F.3d at 187. “The unvarnished and
24 sober truth is that in many, if not most, cases, the disabled simply will not have the capacity
25 or ability to enjoy the goods and services of an establishment ‘fully’ and ‘equally’ compared
26 to the non-disabled.” Id. There would seem to be no statutory boundary if the ADA
27 regulated the content of services. Id. (providing examples of impractical results from a
28 contrary construction); see also Doe, 179 F.3d at 560 (explaining that “a movie theater’s

1 refusal to provide a running translation into sign language of the movie’s soundtrack” would
2 be an acceptable refusal to “configure a service to make it as valuable to a disabled as to a
3 nondisabled customer”). Simply stated, “[e]qual access does not mean equal enjoyment.”
4 Todd v. American Multi-Cinema, Inc., No. Civ.A. H-02-1944, 2004 WL 1764686, at *4
5 (S.D. Tex. Aug. 5, 2004) (finding that a movie theater was not required to provide open or
6 closed captioning for the hearing impaired).

7 Finally, a movie theater is not required to change the content of the services it offers
8 merely because additional content is offered to theaters free of charge.⁸ The expense a public
9 accommodation incurs to provide auxiliary aids and service goes to the undue burden
10 limitation in § 12182(b)(2)(A)(iii), not the scope of the ADA’s prohibition against
11 discrimination in § 12182(a). Thus, the ADA does not require Harkins to provide captions
12 and descriptions because doing so would alter the content of its services.

13 **B. Legislative History**

14 The legislative history of the ADA also confirms that movie theaters are not required
15 to provide captioning. The House Committee Report states: “Open-captioning, for example,
16 of feature films playing in movie theaters, is not required by this legislation. Filmmakers,
17 are, however, encouraged to produce and distribute open-captioned versions of films, and
18 theaters are encouraged to have at least some pre-announced screenings of a captioned
19 version of feature films.” H.R. Rep. No. 101-485(II), at 108 (1990), as reprinted in 1990
20 U.S.C.C.A.N. 303, 391.

21 Plaintiffs argue that this passage is inapplicable because the House Committee Report
22 also states that Congress expected the obligations under the ADA to keep pace with
23 improvements in technology:

24 The Committee wishes to make it clear that technological advances can
25 be expected to further enhance options for making meaningful and effective
opportunities available to individuals with disabilities. Such advances may

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27 ⁸ Theaters must still “purchase and install available technology in their theater
28 auditoriums” to enable persons with disabilities to view the captions or hear the descriptions.
(Compl. ¶ 12.)

1 require public accommodations to provide auxiliary aids and services in the
2 future which today would not be required because they would be held to
impose undue burdens on such entities.

3 Indeed, the Committee intends that the types of accommodation and
4 services provided to individuals with disabilities, under all of the titles of this
5 bill, should keep pace with the rapidly changing technology of the times. This
6 is a period of tremendous change and growth involving technology assistance
7 and the Committee wishes to encourage this process.

8 H.R. Rep. No. 101-485(II), at 108. It was primarily upon this passage that the district court
9 in Ball v. AMC Entertainment, Inc., 246 F. Supp. 2d 17 (D.D.C. 2003), relied to dismiss the
10 Attorney General’s regulations and to conclude that a movie theater could be required to
11 provide closed-captioning services. Yet, this passage of legislative history merely restates
12 what was already made express by the ADA—what was once too burdensome may become
13 practical as technology advances. See 42 U.S.C. § 12182(b)(2)(A)(iii) (defining
14 discrimination to include the failure to provide auxiliary aids and services unless doing so
15 “would result in an undue burden”). This passage did not, however, change the scope of the
16 ADA.⁹

17 **C. ADA Regulations and Guidelines**

18 Finally, the ADA regulations and guidelines support an interpretation that Harkins is
19 not required to provide captioning for the hearing impaired and descriptions for the seeing
20 impaired. The language in 28 C.F.R. § 36.303(a) mirrors the language in 42 U.S.C.
21 § 12182(b)(2)(A)(iii). In the appendix to this regulation, the Attorney General explained:
22 “Movie theaters are not required by § 36.303 to present open-captioned films.” 28 C.F.R.
23 Pt. 36, App. B(C).

24 An agency’s interpretation of its own regulations are owed substantial deference when
25 the meaning of regulatory language is ambiguous and the agency’s interpretation is

26 ⁹ The district court in Ball noted that, “[i]t is difficult, if not impossible, to reconcile
27 the requirement that public accommodations provide captioning aids, see 28 C.F.R. § 36.303,
28 with DOJ’s statement that open captioning of movies is not required, see 28 C.F.R. §
36.307.” 246 F. Supp. 2d at 23 n.16. However, the apparent conflict between these two
regulations is easily resolved if providing open captioning of movies is viewed as changing
the content of services offered by theaters, and, therefore, falling outside the scope of the
ADA.

1 reasonable. Or. Paralyzed Veterans of Am. v. Regal Cinemas, Inc., 339 F.3d 1126, 1131 (9th
2 Cir. 2003). As stated above, a “simple reading” of this language does not compel an answer
3 to the issue raised in this case and an interpretation that theaters are not required to provide
4 open-captioning is reasonable. Accordingly, the Attorney General’s interpretation is entitled
5 to deference.

6 Nevertheless, Plaintiffs argue that this regulations is not conclusive because it only
7 addresses open-captioning, not closed captioning or descriptions. However, Plaintiffs offer
8 no reason why the Attorney General would distinguish closed captioning or descriptions
9 from open captioning in determining what is covered under the ADA. In addition, the Access
10 Board has specifically concluded that the ADAAG does not require theaters to provide
11 closed captioning. ADA Accessibility Guidelines for Buildings and Facilities, 69 Fed. Reg.
12 at 44138. The ADAAG was “made in pursuance of official duty, based upon more
13 specialized experience and broader investigations and information than is likely to come to
14 a judge in a particular case.” See Skidmore v. Swift & Co., 323 U.S. 134, 139 (1944). As
15 such, and in the absence of a contrary interpretation by the Attorney General, the Court is
16 persuaded that the ADAAG’s interpretation represents “a body of experience and informed
17 judgment to which courts and litigants may properly resort for guidance.” See id. The
18 Attorney General’s interpretation and the ADAAG confirm that Harkins is not required to
19 provide captions or descriptions.

20 Thus, given the language of § 12182(b)(2)(A)(iii), the reasoning in Weyer, McNeil,
21 and Doe, the legislative history, and the ADA regulations and guidelines, the Court
22 concludes that the ADA does not require Harkins to provide captions or descriptions.
23 Section 12182(b)(2)(A)(iii) requires public accommodations to ensure that persons with
24 disabilities have access to the services they provide (utilizing auxiliary aids and services if
25 necessary), but does not require public accommodations to alter or modify the content of
26 their services. The requested captions and descriptions would modify the content of the
27 services Harkins offers.

28 **II. Arizonans with Disabilities Act**

1 Plaintiffs argue that the AzDA requires Harkins to provide captions and descriptions.
2 Harkins argues that the provision of the AzDA upon which Plaintiffs rely, A.R.S. § 41-
3 1492.02, is “completely unintelligible and therefore unenforceable.” Plaintiffs concede that
4 the provision at issue is “ambiguous” and suggest that the AzDA be interpreted to be
5 consistent with the ADA. Plaintiffs cite the historical and statutory notes to the AzDA which
6 states that the Arizona Legislature “intended that [the AzDA] be consistent with the
7 Americans with Disabilities Act of 1990 (42 United States Code §§ 12101 through 12213
8 and 47 United States Code §§ 225 and 611) or its implementing regulations.” 1992 Ariz.
9 Sess. Laws Ch. 224, § 1(C). The Court need not address Harkins’ vagueness argument. The
10 ADA does not require movie theaters to provide captions or descriptions, and Plaintiffs make
11 no argument that the AzDA is broader than the ADA.¹⁰ Thus, the AzDA does not require
12 Harkins to provide captions or descriptions for its movies.

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14 Accordingly,

15 **IT IS ORDERED** Defendants’ Motion to Dismiss Complaint of Plaintiff-Intervenors
16 (Doc. 3) is **GRANTED**.

17 **IT IS FURTHER ORDERED** Defendants’ Motion to Dismiss (Doc. 6) is
18 **GRANTED**.


19 **IT IS FURTHER ORDERED** Plaintiff’s Motion for Leave to File First Amended
20 Complaint (Doc. 30) is **DENIED as MOOT**.

21 **IT IS FURTHER ORDERED** the Clerk of the Court shall close this case.
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23 DATED this 28th day of March, 2008.
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27 _____
28 ¹⁰ If anything, the problems identified by Harkins would limit, not expand the scope
of the AzDA.

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Roslyn O. Silver
United States District Judge