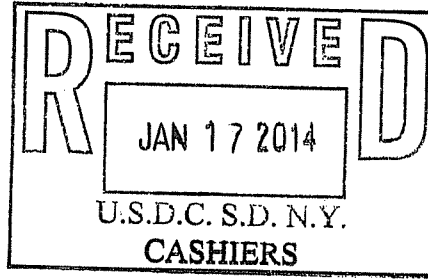


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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA, :  
 :  
 Plaintiff, : **COMPLAINT**  
 :  
 v. : 14 Civ. \_\_\_\_\_ (\_\_\_\_)  
 :  
 NEDERLANDER ORGANIZATION, INC., :  
 :  
 Defendant. :  
 :  
 ----- X

The United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, alleges as follows:

1. This is a civil action brought to redress discrimination on the basis of disability in violation of Title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181 et seq., and its implementing regulation, 28 C.F.R. Part 36 (the “Regulation”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 12188(b)(1)(B)

and 28 U.S.C. §§ 1331 and 1345.

3. Venue lies in this District pursuant to 28 U.S.C. § 1391(b), as all of defendant's acts of discrimination alleged in this complaint occurred in this District.

#### THE PARTIES

4. Plaintiff is the United States of America.

5. Defendant is Nederlander Organization (the "Nederlander" or "Defendant"), a New York corporation, with a principal place of business at 1450 Broadway, New York, New York, and that owns and operates the following theaters:

(a) the Brooks Atkinson Theater, built in 1926, and located at 256 West 47th Street;

(b) the Gershwin Theater, opened in 1972, and located at 222 West 51st Street;

(c) the Lunt-Fontanne Theater, built in 1910, remodeled in 1958, and located at 205 West 46th Street;

(d) the Marquis Theater, opened in 1986, and located at 211 West 45th Street;

(e) the Minskoff Theater, opened in 1973, and located at 1515 Broadway;

(f) the Nederlander Theater, built in 1921, and located at 208 West 41st Street;

(g) the Neil Simon Theater, built in 1927, and located at 250 West 52nd Street;

(h) the Palace Theater, opened in 1913, and located at 1564 Broadway; and

(i) the Richard Rodgers Theater, opened in 1924, and located at 226 West 46th Street;

all in New York, New York (collectively, the "Theaters," and each individual theater being the "Theater");

6. The Theaters are places of public accommodation within the meaning of the ADA, 42 U.S.C. § 12181(7) (C), because each Theater is a "theater, . . . or other place of

exhibition or entertainment.” Each Theater includes, among other things, a lobby, ticket window, ticket office, stages, orchestra pits, seating on orchestra, mezzanine and/or balcony levels, lounges, and toilet rooms.

7. The seating capacity of the Theaters ranges from approximately 1,050 (the Brooks Atkinson) and 1,900 (the Gershwin) persons, not including standing room positions.

#### ENFORCEMENT BY ATTORNEY GENERAL

8. There are persons with disabilities who have been injured by Defendant’s failure to remove barriers to access for persons with disabilities where removal is readily achievable.

9. There is reasonable cause to believe that Defendant has engaged in a pattern or practice of discrimination under the ADA and that this action raises an issue “of general public importance.” 42 U.S.C. § 12188(b)(1)(B)(i), (ii).

#### FACTS

10. There are numerous architectural barriers that have prevented or restricted access to the Theaters by individuals with disabilities. It is readily achievable for Defendant to remove these barriers to accessibility of its services, features, elements, and spaces for individuals with disabilities, as specified by the regulations promulgated under the ADA. *See* 1991 ADA Standards for Accessible Design, 28 C.F.R. Part 36, App. D (the “1991 Standards”)

11. Architectural barriers to access which have existed, and /or continue to exist, at the Theaters include, but are not limited to, the following:

a. The Theaters do not have the required number of wheelchair seating locations that are accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs, and have not provided companion seating next to the wheelchair seating

locations. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. §§ 36.304 and 36.308; 28 C.F.R. Part 36, App. A, §§ 4.1.3(19)(a) and 4.33.

b. The Theaters do not have wheelchair seating locations that are accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs, that are located so that they are dispersed throughout the seating areas. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. §§ 36.304 and 36.308; 28 C.F.R. Part 36, App. A, §§ 4.1.3(19)(a) and 4.33.

c. The Theaters do not have the required number of seats that have no armrests or that are equipped with folding or removable armrests that are suitable for transfer from a wheelchair (“aisle transfer seating”). 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. §§ 36.304 and 36.308; 28 C.F.R. Part 36, App. A, § 4.1.3(19)(a).

d. A variety of barriers to accessibility exist at the restrooms and lounge areas in the Theaters. 42 U.S.C. § 12182(b)(2)(A)(iv).

12. There are readily achievable alternatives to barrier removal that Defendant could have undertaken and must undertake in order to make the goods, services and facilities offered at the Theaters accessible to individuals with disabilities. 42 U.S.C. § 12182(b)(2)(A)(v); 28 C.F.R. §§ 36.305 and 36.308.

13. Defendant has afforded, and continues to afford, individuals with disabilities who wish to purchase tickets to wheelchair seating locations an opportunity to purchase tickets that is unequal to that afforded to others, by utilizing administrative methods that have the effect of discriminating on the basis of a disability. 42 U.S.C. §§ 12182(b)(1)(A)(ii) and 12182(b)(1)(D)(i); 28 C.F.R. §§ 36.202(b) and 36.204.

CLAIMS FOR RELIEF

CLAIM I

READILY ACHIEVABLE BARRIER REMOVAL

14. It is readily achievable for Defendant to remove the architectural barriers to access identified in paragraph 11. By failing to remove barriers to access to the extent it is readily achievable to do so, Defendant has violated Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(iii), (iv) and 28 C.F.R. § 36.304.

CLAIM II

READILY ACHIEVABLE ALTERNATIVES TO BARRIER REMOVAL

15. In the alternative, if it is not readily achievable to remove all of the barriers to access set forth in paragraph 11, Defendant must provide readily achievable alternatives to barrier removal as required by 42 U.S.C. § 12182(b)(2)(A)(v) and 28 C.F.R. § 36.305.

16. By failing to undertake alternatives to barrier removal to the extent it is readily achievable to do so, Defendant has violated Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(v) and 28 C.F.R. § 36.305.

CLAIM III

REASONABLE MODIFICATIONS TO POLICIES, PRACTICES, AND PROCEDURES

17. Defendant has failed to make reasonable modifications to its policies, practices and procedures to make the goods, services, and facilities of the Theaters available to individuals with disabilities, as specified by Title III of the ADA and the Regulations. 42 U.S.C. §§ 12182(b)(1)(A)(ii) and 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a).

18. Defendant's non-compliant policies, practices and procedures include, but are not

limited to, failing to modify their sales policies and practices to ensure that wheelchair and companion seating afford an equal opportunity to participate in or benefit from the Theaters' goods and services. 28 C.F.R. §§ 36.308(a)(ii)(A) & (B), Part 36, App. A, § 4.33.3.

PRAAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter judgment that:

A. Declares that Defendant has violated Title III of the ADA, 42 U.S.C. § 12182, at the Theaters (1) by failing to provide wheelchair, companion and aisle transfer seating pursuant to 28 C.F.R. § 36.308; (2) by failing to remove architectural barriers to access pursuant to 28 C.F.R. § 36.304; (3) by failing to provide alternatives to barrier removal pursuant to 28 C.F.R. § 36.305; (4) by failing to modify policies, practices and procedures when necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities pursuant to 28 C.F.R. § 36.302; (5) by failing to utilize administrative methods that afford people with disabilities who wish to purchase tickets to accessible seating locations an opportunity to purchase tickets that is equal to that afforded to others pursuant to 42 U.S.C. § 12182; 28 C.F.R. §§ 36.202, 36.204; and (6) by failing to provide people with disabilities seats that have lines of sight comparable to those offered to members of the general public pursuant to 28 C.F.R. § 36.308;

B. Orders Defendant to provide a readily achievable number of accessible wheelchair locations, aisle transfer seating locations and companion seating locations that are dispersed throughout the seating area pursuant to 42 U.S.C. §§ 12182(b)(2)(A)(iv), 12188(b)(2)(A); 28 C.F.R. § 36.308;

C. Orders Defendant to remove all architectural barriers pursuant to 42 U.S.C. §§

12182(b)(2)(A)(iv), 12188(b)(2)(A); 28 C.F.R. § 36.304 and 28 C.F.R. Part 36, App. D, including, but not limited to, removing the architectural barriers to access set forth in paragraph 11, where it is readily achievable to do so;

D. Orders Defendant to provide readily achievable alternatives to barrier removal in all instances, if any, where it is not readily achievable to remove architectural barriers pursuant to 42 U.S.C. §§ 12182(b)(2)(a)(v), 12188(b)(2)(A); 28 C.F.R. § 36.305;


E. Orders Defendant to make reasonable modifications to its policies, practices and procedures, including ticketing policies, practices and procedures, when necessary to afford people with disabilities equal access to the goods, services, facilities, privileges, advantages or accommodations provided at the Theaters pursuant to 42 U.S.C. §§ 12182(b)(2)(A)(ii), 12188(b)(2)(A); 28 C.F.R. §§ 36.302, 36.308;

F. Awards monetary damages to persons who have been injured by Defendant pursuant to 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2);

G. Assesses a civil penalty against the Defendant in an amount authorized by 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3), to vindicate the public interest; and

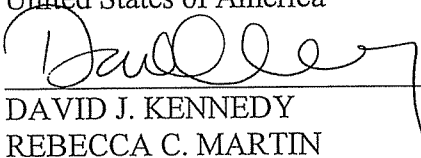
H. Orders such other appropriate relief as the interest of justice may require.

ERIC H. HOLDER, JR.  
Attorney General

By:   
JOCELYN SAMUELS  
Acting Assistant Attorney General  
Civil Rights Division

Dated: New York, New York  
January 16, 2018  
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