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3:02-CV-02555 ORGANIZATION FOR THE V. JOLAR CINEMA

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COURT REPORTER
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**ORGANIZATION FOR THE
ADVANCEMENT OF MINORITIES
WITH DISABILITIES SUING ON
BEHALF OF VALOIS J. VERA AND
ITS MEMBERS; and VALOIS J.
VERA, An Individual,**

Plaintiffs,

v.

**JOLAR CINEMA a.k.a. JOLAR
CINEMA SHOWGIRLS a.k.a. JOLAR
CINEMA OF SAN DIEGO, LTD.;
JOLAR CINEMA OF SAN DIEGO,
LTD., A California
Corporation; M I C LIMITED
WHICH WILL DO BUSINESS IN
CALIFORNIA AS MICHIGAN
INVESTMENT CORPORATION;**

And

DOES 1 THROUGH 10, Inclusive

Defendants.

Case No. **02 CV 2555 H (NLS)**

CIVIL COMPLAINT:

**DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS**
[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1;
HEALTH & SAFETY CODE 19995;
BUSINESS & PROFESSIONS CODE
17200 et. seq.]

NEGLIGENCE

[CIVIL CODE 1714(a), 2338,
3333, 3294; EVIDENCE CODE
669(a)]

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b); L.R.
38.1

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INTRODUCTION

Plaintiffs ORGANIZATION FOR THE ADVANCEMENT OF
MINORITIES WITH DISABILITIES SUING ON BEHALF OF VALOIS J. VERA AND
ITS MEMBERS and VALOIS J. VERA, An Individual, herein complain, by
filing this Civil Complaint in accordance with rule 8 of the
Federal Rules of Civil Procedure in the Judicial District of the
United States District Court of the Southern District of
California, that Defendants have in the past, and presently are,
engaging in discriminatory practices against individuals with
disabilities, specifically including minorities with disabilities.
Plaintiffs allege this civil action and others substantial similar
thereto are necessary to compel access compliance because
empirical research on the effectiveness of Title III of the
Americans with Disabilities Act indicates the Title has failed to
achieve full and equal access simply by the executive branch of
the Federal Government funding and promoting voluntary compliance
efforts. Further, empirical research shows when individuals with
disabilities give actual notice of potential access problems to
places of public accommodation without a federal civil rights
civil action, the public accommodations do not remove the access
barriers. Therefore, Plaintiffs make the following allegations in
this federal civil rights action:

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JURISDICTION AND VENUE

1. The federal jurisdiction of this action is based on the
Americans with Disabilities Act, 42 United States Code 12101-
12102, 12181-12183 and 12201, et seq. Venue in the Judicial
District of the United States District Court of the Southern

1 District of California is in accordance with 28 U.S.C. § 1391(b)
2 because a substantial part of Plaintiffs' claims arose within the
3 Judicial District of the United States District Court of the
4 Southern District of California.

5 **SUPPLEMENTAL JURISDICTION**

6 2. The Judicial District of the United States District Court of
7 the Southern District of California has supplemental jurisdiction
8 over the state claims as alleged in this Complaint pursuant to 28
9 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
10 in this action is because all the causes of action or claims
11 derived from federal law and those arising under state law, as
12 herein alleged, arose from common nucleus of operative facts. The
13 common nucleus of operative facts, include, but are not limited
14 to, the incidents where Plaintiff's Member and Plaintiff VALOIS J.
15 VERA was denied full and equal access to Defendants' facilities,
16 goods, and/or services in violation of both federal and state laws
17 when he attempted to enter, use, and/or exit Defendants'
18 facilities as described within paragraphs 6 through 21 of this
19 Complaint. Further, due to this denial of full and equal access
20 Plaintiff's Member and Plaintiff VALOIS J. VERA and other
21 minorities with disabilities were injured. Based upon the said
22 allegations the state actions, as stated herein, are so related to
23 the federal actions that they form part of the same case or
24 controversy, and the actions would ordinarily be expected to be
25 tried in one judicial proceeding.
26

27 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

28 3. Defendants are, and, at all times mentioned herein, were, a

1 business or corporation or franchise organized and existing and/or
2 doing business under the laws of the State of California.

3 Defendant JOLAR CINEMA a.k.a. JOLAR CINEMA SHOWGIRLS a.k.a. JOLAR
4 CINEMA OF SAN DIEGO, LTD. is located at 6321 University Avenue,
5 San Diego, California, 92115. Plaintiffs are informed and believe
6 and thereon allege that Defendant JOLAR CINEMA OF SAN DIEGO, LTD.,
7 A California Corporation, is the owner, operator, lessor, or does
8 business as JOLAR CINEMA a.k.a. JOLAR CINEMA SHOWGIRLS a.k.a.

9 JOLAR CINEMA OF SAN DIEGO, LTD. Defendant JOLAR CINEMA OF SAN
10 DIEGO, LTD., A California Corporation, is located at 6321
11 University Avenue, San Diego, California, 92115. Plaintiffs are
12 further informed and believe and thereon allege that Defendant M I
13 C LIMITED WHICH WILL DO BUSINESS IN CALIFORNIA AS MICHIGAN
14 INVESTMENT CORPORATION is the owner, operator, and/or lessor of
15 the property located at 6321 University Avenue, San Diego,
16 California, 92115, Assessor Parcel Number 473-220-31-00.

17 Defendant M I C LIMITED WHICH WILL DO BUSINESS IN CALIFORNIA AS
18 MICHIGAN INVESTMENT CORPORATION is located at 8252 East Lansing
19 Road, Durand, Michigan, 48429. The words "Plaintiffs" and
20 "Plaintiff" as used herein specifically include the ORGANIZATION
21 FOR THE ADVANCEMENT OF MINORITIES WITH DISABILITIES, ORGANIZATION
22 FOR THE ADVANCEMENT OF MINORITIES SUING ON BEHALF OF VALOIS J.
23 VERA, its Members, VALOIS J. VERA, and persons associated with its
24 Members who accompanied Members to Defendants' facilities. The
25 words "Plaintiff's Members" and "Plaintiff's Member" as used
26 herein specifically include ORGANIZATION FOR THE ADVANCEMENT OF
27 MINORITIES SUING ON BEHALF OF VALOIS J. VERA, its Members, VALOIS
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1 J. VERA, and persons associated with its Members who accompanied
2 Members to Defendants' facilities.

3 4. Defendants Does 1 through 10, were at all times relevant
4 herein subsidiaries, employers, employees, agents, of JOLAR CINEMA
5 a.k.a. JOLAR CINEMA SHOWGIRLS a.k.a. JOLAR CINEMA OF SAN DIEGO,
6 LTD.; JOLAR CINEMA OF SAN DIEGO, LTD., A California Corporation;
7 and/or M I C LIMITED WHICH WILL DO BUSINESS IN CALIFORNIA AS
8 MICHIGAN INVESTMENT CORPORATION. Plaintiffs are ignorant of the
9 true names and capacities of Defendants sued herein as Does 1
10 through 10, inclusive, and therefore sues these Defendants by such
11 fictitious names. Plaintiffs will pray leave of the court to
12 amend this complaint to allege the true names and capacities of
13 the Does when ascertained.

14 5. Plaintiffs are informed and believe, and thereon allege,
15 that Defendants and each of them herein were, at all times
16 relevant to the action, the owner, franchisee, lessee, general
17 partner, limited partner, agent, employee, representing partner,
18 or joint venturer of the remaining Defendants and were acting
19 within the course and scope of that relationship. Plaintiffs are
20 further informed and believes, and thereon alleges, that each of
21 the Defendants herein gave consent to, ratified, and/or authorized
22 the acts alleged herein to each of the remaining Defendants.

23
24 **CONCISE SET OF FACTS**

25 6. ORGANIZATION FOR THE ADVANCEMENT OF MINORITIES WITH
26 DISABILITIES was formed to advocate for the civil rights of
27 minorities with disabilities; a substantial population with
28 neither an advocate nor voice in the disability movement. It is

1 well documented by the federal government and others that the
2 promises and opportunities afforded by the Americans with
3 Disabilities Act are not reaching minorities with disabilities.
4 Further, there is abundance of evidence to show, despite the
5 federal government's unprecedented and aggressive ADA awareness
6 and technical assistance drive, businesses in the minority
7 communities are not complying with the ADA. For example, the
8 National Council on Disability reported in 1993 that minorities
9 with disabilities face double discrimination; they are poorer;
10 they have fewer opportunities than others. Also, the fastest
11 growing segment of the disability population is from minority
12 communities because those communities are growing faster than the
13 Anglo communities, and because persons from minority communities
14 have a higher risk of disability. In fact, studies show the rate
15 of disability for Whites is 7%, for African-American 13%, and for
16 Hispanics 9%. Moreover, from 1983 to 1994 the disability non-
17 White population increased by 50.4% whereas the disability White
18 population only increased 11.3%. Even more intriguing is the non-
19 White 18 years older and under population rate of disability
20 increased by 86.6%. Further, evidence suggests minorities with
21 disabilities tend to live with their families in conditions of
22 poverty (61%), and they tend not to advocate for their civil
23 rights.
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25 7. Hence, Members of ORGANIZATION FOR THE ADVANCEMENT OF
26 MINORITIES WITH DISABILITIES specifically intend to zealously
27 advocate for minorities with disabilities and desire equal access
28 to businesses within their community; and these are the reasons

1 Plaintiffs filed this action.

2 8. Plaintiff's Member and Plaintiff VALOIS J. VERA has a
3 physical impairment and due to this impairment he has learned to
4 successfully operate a wheelchair.

5 9. On or about January 1, 2002, Plaintiff's Member and
6 Plaintiff VALOIS J. VERA went to Defendants' JOLAR CINEMA a.k.a.
7 JOLAR CINEMA SHOWGIRLS a.k.a. JOLAR CINEMA OF SAN DIEGO, LTD.,
8 facilities to utilize its goods and/or services. When Plaintiff's
9 Member and Plaintiff VALOIS J. VERA patronized Defendants'
10 establishment, he had difficulty using the disabled parking,
11 access ramp, entrance, interior path of travel, customer service
12 counter, video booth, coin deposit, and restroom facilities at
13 Defendants' JOLAR CINEMA a.k.a. JOLAR CINEMA SHOWGIRLS a.k.a.
14 JOLAR CINEMA OF SAN DIEGO, LTD., establishment because they failed
15 to comply with ADA Access Guidelines For Buildings and Facilities
16 (hereafter referred to as "ADAAG") and/or California's Title 24
17 Building Code Requirements.

18 10. Defendants failed to remove obstructions in the disabled
19 parking, access ramp, entrance, interior path of travel, customer
20 service counter, video booth, coin deposit, restroom, paper towel
21 dispenser, and public pay telephone facilities of Defendants'
22 JOLAR CINEMA a.k.a. JOLAR CINEMA SHOWGIRLS a.k.a. JOLAR CINEMA OF
23 SAN DIEGO, LTD., establishment.

24 11. Plaintiff's Member and Plaintiff VALOIS J. VERA personally
25 experienced difficulty with said access barriers. For example,
26 the entrance to the parking lot area fails to have the required
27 disabled signage informing patrons they may be fined or their
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1 vehicles may be towed if they unlawfully park in a disabled
2 parking space. The existing "Van Accessible" disabled parking
3 space fails to have the required disability signage.

4 12. The slope of the access ramp leading from the parking lot to
5 the front entrance is excessive, as the slope is sixteen percent
6 (16%). The front entrance door to Defendants' establishment has
7 an impermissible two inch (2") threshold and fails to have an
8 access ramp to access the interior of the establishment. The
9 entrance also fails to have the proper disability signage. On the
10 date Plaintiff's Member and Plaintiff VALOIS J. VERA patronized
11 Defendants' establishment, the hardware on the front entrance door
12 was inaccessible, as the hardware required tight grasping and/or
13 twisting of the wrist to operate. Additionally, on this date, the
14 entrance door was too heavy to be accessible.

15 13. Within the interior of Defendants' establishment, the
16 interior path of travel is inaccessible, as the interior path of
17 travel is less than the required thirty-six inches (36") in width,
18 and is as narrow as thirty inches (30") in width in some areas.
19 There is an unsecured mat on the interior side of the front
20 entrance door that poses a hazard.

21 14. The customer service counter is inaccessible, as the counter
22 is fifty-three inches (53") high. The video booths are completely
23 inaccessible to members of the disability community who use a
24 wheelchair for mobility, as the entrance doors to the booths are a
25 mere twenty-four inches (24") in width. The "live" booths are also
26 inaccessible to members of the disability community, as the
27 operable parts of the coin deposit are mounted forty-nine inches
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1 (49") above the finished floor.

2 15. The unisex restroom is completely inaccessible to members of
3 the disability community who use a wheelchair for mobility. The
4 restroom entrance door fails to have the proper disability
5 signage. The hardware on the commode stall door fails to be
6 accessible, as the hardware requires tight grasping and/or
7 twisting of the wrist to operate. Also, the commode stall
8 entrance door fails to have the required self-closing mechanism on
9 the door. The toilet paper dispenser is mounted too high to be
10 accessible, as the dispenser is forty-five inches (45") above the
11 finished floor. Also, the toilet paper dispenser is mounted an
12 excessive twenty-five inches (25") from the edge of the commode.
13 The hot water and drainage pipes under the lavatory sink fail to
14 have the required insulation. The operable parts of the soap
15 dispenser, the operable parts of the paper towel dispenser, and
16 the mirror are all mounted too high to be accessible to members of
17 the disability community who use a wheelchair for mobility. The
18 operable parts of the soap dispenser are mounted fifty-two inches
19 (52") above the finished floor and the operable parts of the paper
20 towel dispenser are mounted fifty-six inches (56") above the
21 finished floor. The bottom edge of the mirror is mounted fifty-
22 three inches (53") above the finished floor. The unisex restroom
23 fails to have the required audible and visual alarm system.

24 16. In addition to the violations personally experienced by
25 Plaintiffs' Member and Plaintiff VALOIS J. VERA, additional
26 violations of federal and state disability law exist at
27 Defendants' JOLAR CINEMA a.k.a. JOLAR CINEMA SHOWGIRLS a.k.a.
28

1 JOLAR CINEMA OF SAN DIEGO, LTD., establishment. For example, the
2 snack machine is inaccessible to members of the disability
3 community, as the dollar bill deposit mechanism is mounted fifty-
4 nine inches (59") above the finished floor. Additionally, the
5 change machine is inaccessible, as the coin deposit is mounted
6 fifty-seven inches (57") above the finished floor. The paper
7 towel dispenser located in the booth area is inaccessible, as the
8 dispenser is mounted fifty-seven inches (57") above the finished
9 floor.

10 17. The public pay telephone fails to have the required volume
11 control. The public pay telephone also fails to have the required
12 disability signage.

13 18. Based on these facts, Plaintiffs allege Plaintiff's Member
14 and Plaintiff VALOIS J. VERA was discriminated against each time
15 he patronized Defendants' establishment.

16 19. Pursuant to federal and state law, Defendants are required
17 to remove barriers to their existing facilities. Further,
18 Defendants had actual knowledge of their barrier removal duties
19 under the Americans with Disabilities Act and the Civil Code
20 before January 26, 1992. Also, Defendants should have known that
21 individuals with disabilities are not required to give notice to a
22 governmental agency before filing suit alleging Defendants failed
23 to remove architectural barriers. Plaintiffs believes and herein
24 allege Defendants' facilities have access violations not directly
25 experienced by Plaintiff's Member and Plaintiff VALOIS J. VERA
26 which preclude or limit access by others with disabilities,
27 including, but not limited to, Space Allowance and Reach Ranges,
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1 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
2 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
3 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
4 Entrances, Drinking Fountains and Water Coolers, Water Closets,
5 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
6 Handrails, Grab Bars, and Controls and Operating Mechanisms,
7 Alarms, Detectable Warnings, Signage, and Telephones.

8 Accordingly, Plaintiffs allege Defendants are required to remove
9 all architectural barriers, known or unknown. Also, Plaintiffs
10 allege Defendants are required to utilize the ADA checklist for
11 Readily Achievable Barrier Removal approved by the United States
12 Department of Justice and created by Adaptive Environments.

13 20. Plaintiffs and Plaintiff's Member and Plaintiff VALOIS J.
14 VERA desire to return to Defendants' places of business in the
15 immediate future.

16 21. Plaintiff's Member and Plaintiff VALOIS J. VERA was
17 extremely upset due to Defendants' conduct. Further, Plaintiff's
18 Member and Plaintiff VALOIS J. VERA experienced pain in his legs,
19 back, arms, shoulders and wrists when he attempted to enter, use,
20 and exit Defendants' establishment.

21 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

22 22. JOLAR CINEMA a.k.a. JOLAR CINEMA SHOWGIRLS a.k.a. JOLAR
23 CINEMA OF SAN DIEGO, LTD., and JOLAR CINEMA OF SAN DIEGO, LTD., A
24 California Corporation, are the commercial tenants of the subject
25 property. M I C LIMITED WHICH WILL DO BUSINESS IN CALIFORNIA AS
26 MICHIGAN INVESTMENT CORPORATION is the commercial landlord of the
27 subject property.
28

1 23. Plaintiffs aver that the Defendants are liable for the
2 following claims as alleged below:

3 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

4 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Claims Under The**
5 **Americans With Disabilities Act Of 1990**

6 CLAIM I: **Denial Of Full And Equal Access**

7 24. Based on the facts plead at ¶¶ 6-21 above and elsewhere
8 in this complaint, Plaintiff's Member and Plaintiff VALOIS J. VERA
9 was denied full and equal access to Defendants' goods, services,
10 facilities, privileges, advantages, or accommodations. Plaintiffs
11 allege Defendants are a public accommodation owned, leased and/or
12 operated by Defendants. Defendants' existing facilities and/or
13 services failed to provide full and equal access to Defendants'
14 facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's
15 Member and Plaintiff VALOIS J. VERA was subjected to
16 discrimination in violation of 42 United States Code
17 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiffs were
18 denied equal access to Defendants' existing facilities.

19 25. Plaintiff's Member and Plaintiff VALOIS J. VERA has physical
20 impairments as alleged in ¶ 8 above because his conditions affect
21 one or more of the following body systems: neurological,
22 musculoskeletal, special sense organs, and/or cardiovascular.
23 Further, his said physical impairments substantially limits one or
24 more of the following major life activities: walking. In
25 addition, Plaintiff's Member and Plaintiff VALOIS J. VERA cannot
26 perform one or more of the said major life activities in the
27 manner, speed, and duration when compared to the average person.
28

1 Moreover, Plaintiff's Member and Plaintiff VALOIS J. VERA has a
2 history of or has been classified as having a physical impairment
3 as required by 42 U.S.C. § 12102(2)(A).

4 CLAIM II: Failure To Remove Architectural Barriers

5 26. Based on the facts plead at ¶¶ 6-21 above and elsewhere in
6 this complaint, Plaintiff's Member and Plaintiff VALOIS J. VERA
7 was denied full and equal access to Defendants' goods, services,
8 facilities, privileges, advantages, or accommodations within a
9 public accommodation owned, leased, and/or operated by Defendants.
10 Defendants failed to remove barriers as required by 42 U.S.C. §
11 12182(a). Plaintiffs are informed and believe, and thus allege
12 that architectural barriers which are structural in nature exist
13 at the following physical elements of Defendants' facilities:
14 Space Allowance and Reach Ranges, Accessible Route, Protruding
15 Objects, Ground and Floor Surfaces, Parking and Passenger Loading
16 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts
17 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains
18 and Water Coolers, Water Closets, Toilet Stalls, Urinals,
19 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and
20 Controls and Operating Mechanisms, Alarms, Detectable Warnings,
21 Signage, and Telephones. Title III requires places of public
22 accommodation to remove architectural barriers that are structural
23 in nature to existing facilities. [See, 42 United States Code
24 12182(b)(2)(A)(iv).] Failure to remove such barriers and
25 disparate treatment against a person who has a known association
26 with a person with a disability are forms of discrimination. [See
27 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff's
28

1 Member and Plaintiff VALOIS J. VERA was subjected to
2 discrimination in violation of 42 United States Code
3 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member and
4 Plaintiff VALOIS J. VERA was denied equal access to Defendants'
5 existing facilities.

6 CLAIM III: **Failure To Modify Practices, Policies And Procedures**

7 27. Based on the facts plead at ¶¶ 6-21 above and elsewhere in
8 this complaint, Defendants failed and refused to provide a
9 reasonable alternative by modifying its practices, policies and
10 procedures in that they failed to have a scheme, plan, or design
11 to assist Plaintiff's Member and Plaintiff VALOIS J. VERA and/or
12 others similarly situated in entering and utilizing Defendants'
13 services, as required by 42 U.S.C. § 12188(a). Thus, said Member
14 and Plaintiff VALOIS J. VERA was subjected to discrimination in
15 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
16 U.S.C. § 12188 because said Member and Plaintiff VALOIS J. VERA
17 was denied equal access to Defendants' existing facilities.

18 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS UNDER**
19 **CALIFORNIA ACCESSIBILITY LAWS**

20 CLAIM I: **Denial Of Full And Equal Access**

21 28. Based on the facts plead at ¶¶ 6-21 above and elsewhere in
22 this complaint, Plaintiff's Member and Plaintiff VALOIS J. VERA
23 was denied full and equal access to Defendants' goods, services,
24 facilities, privileges, advantages, or accommodations within a
25 public accommodation owned, leased, and/or operated by Defendants
26 as required by Civil Code Sections 54 and 54.1. Defendants'
27 facility violated California's Title 24 Accessible Building Code
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1 by failing to provide access to Defendants' facilities due to
2 violations pertaining to the Space Allowance and Reach Ranges,
3 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
4 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
5 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
6 Entrances, Drinking Fountains and Water Coolers, Water Closets,
7 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
8 Handrails, Grab Bars, and Controls and Operating Mechanisms,
9 Alarms, Detectable Warnings, Signage, and Telephones.

10 29. These violations denied Plaintiff's Member and Plaintiff
11 VALOIS J. VERA full and equal access to Defendants' facility.
12 Thus, said Member and Plaintiff VALOIS J. VERA was subjected to
13 discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because
14 Plaintiffs were denied full, equal and safe access to Defendants'
15 facility, causing severe emotional distress.

16 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

17 30. Based on the facts plead at ¶¶ 6-21 above and elsewhere
18 herein this complaint, Defendants failed and refused to provide a
19 reasonable alternative by modifying its practices, policies, and
20 procedures in that they failed to have a scheme, plan, or design
21 to assist Plaintiff's Member and Plaintiff VALOIS J. VERA and/or
22 others similarly situated in entering and utilizing Defendants'
23 services as required by Civil Code § 54.1. Thus, said Member and
24 Plaintiff VALOIS J. VERA was subjected to discrimination in
25 violation of Civil Code § 54.1.

26 **CLAIM III: Violation Of The Unruh Act**

27 31. Based on the facts plead at ¶¶ 6-21 above and elsewhere
28

1 herein this complaint and because Defendants violated the Civil
2 Code § 51 by failing to comply with 42 United States Code
3 12182(b)(2)(A)(iv), Defendants did and continue to discriminate
4 against Plaintiff's Member and Plaintiff VALOIS J. VERA and
5 persons similarly situated in violation of Civil Code §§ 51, 52,
6 and 54.1.

7
8 **Treble Damages Pursuant To Claims I, II, III Under The California**
9 **Accessibility Laws**

10 32. Defendants, each of them, at times prior to and including
11 during the months of January, 2002, respectively, and continuing
12 to the present time, knew that persons with physical disabilities
13 were denied their rights of equal access to all portions of this
14 public facility. Despite such knowledge, Defendants, and each of
15 them, failed and refused to take steps to comply with the
16 applicable access statutes; and despite knowledge of the resulting
17 problems and denial of civil rights thereby suffered by
18 Plaintiff's Member and Plaintiff VALOIS J. VERA and other
19 similarly situated persons with disabilities. Defendants, and
20 each of them, have failed and refused to take action to grant full
21 and equal access to persons with physical disabilities in the
22 respects complained of hereinabove. Defendants, and each of them,
23 have carried out a course of conduct of refusing to respond to, or
24 correct complaints about, denial of disabled access and have
25 refused to comply with their legal obligations to make the subject
26 JOLAR CINEMA a.k.a. JOLAR CINEMA SHOWGIRLS a.k.a. JOLAR CINEMA OF
27 SAN DIEGO, LTD., facility accessible pursuant to the Americans
28

1 With Disability Act Access Guidelines (ADAAG) and Title 24 of the
2 California Code of Regulations (also known as the California
3 Building Code). Such actions and continuing course of conduct by
4 Defendants, and each of them, evidence despicable conduct in
5 conscious disregard of the rights and/or safety of Plaintiff's
6 Member and Plaintiff VALOIS J. VERA and of other similarly
7 situated persons, justifying an award of treble damages pursuant
8 to sections 52(a) and 54.3(a) of the California Civil Code.

9 33. Defendants', and each of their, actions have also been
10 oppressive to persons with physical disabilities and of other
11 members of the public, and have evidenced actual or implied
12 malicious intent toward those members of the public, such as
13 Plaintiffs and other persons with physical disabilities who have
14 been denied the proper access to which they are entitled by law.
15 Further, Defendants', and each of their, refusals on a day-to-day
16 basis to correct these problems evidence despicable conduct in
17 conscious disregard for the rights of Plaintiff's Member and
18 Plaintiff VALOIS J. VERA and other members of the public with
19 physical disabilities.
20

21 34. Plaintiffs pray for an award of treble damages against
22 Defendants, and each of them, pursuant to California Civil Code
23 sections 52(a) and 54.3(a), in an amount sufficient to make a more
24 profound example of Defendants and encourage owners and operators
25 of other public facilities from willful disregard of the rights of
26 persons with disabilities. Plaintiffs do not know the financial
27 worth of Defendants, or the amount of treble damages sufficient to
28 accomplish the public purposes of section 52(a) of the California

1 Civil Code and section 54.3 of the California Civil Code.

2 35. Wherefore, Plaintiffs pray for damages and relief as
3 hereinafter stated.

4 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS - Violation of**
5 **Business and Professions Code section 17200 et seq.**

6 36. Plaintiffs incorporate by reference herein the facts plead
7 at ¶¶ 6 - 21 above and elsewhere in this complaint.

8 37. Defendants failed to remove obstructions in the disabled
9 parking, access ramp, entrance, interior path of travel, customer
10 service counter, video booth, coin deposit, restroom, paper towel
11 dispenser, and public pay telephone facilities of Defendants'
12 JOLAR CINEMA a.k.a. JOLAR CINEMA SHOWGIRLS a.k.a. JOLAR CINEMA OF
13 SAN DIEGO, LTD., establishment. Pursuant to federal law,
14 Defendants are required to remove barriers to their existing
15 facilities. Title III of the Americans With Disabilities Act
16 requires places of public accommodation to remove architectural
17 barriers that are structural in nature to existing facilities. [42
18 United States Code 12182(b)(2)(A)(iv).] Failure to remove such
19 barriers and disparate treatment against a person who has a known
20 association with a person with a disability are forms of
21 discrimination. [See 42 United States Code 12182(b)(2)(A)(iv).]
22 Thus, Plaintiff's Member and Plaintiff VALOIS J. VERA was
23 subjected to discrimination in violation of 42 United States Code
24 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member and
25 Plaintiff VALOIS J. VERA was denied equal access to Defendants'
26 existing facilities. Also, Defendants' facilities failed to
27 provide full and equal access to Defendants' facility as required
28

1 by 42 U.S.C. § 12182(a). Thus, Plaintiff's Member and Plaintiff
2 VALOIS J. VERA was subjected to discrimination in violation of 42
3 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188
4 because Plaintiff's Member and Plaintiff VALOIS J. VERA was denied
5 equal access to Defendants' existing facilities. Additionally, as
6 a result of said access barriers, Defendants failed and refused to
7 provide a reasonable alternative by modifying its practices,
8 policies and procedures in that they failed to have a scheme,
9 plan, or design to assist Plaintiff's Member and Plaintiff VALOIS
10 J. VERA and/or others similarly situated in entering and utilizing
11 Defendants' services, as required by 42 U.S.C. § 12188(a). Thus,
12 said Member and Plaintiff VALOIS J. VERA was subjected to
13 discrimination in violation of 42 United States Code
14 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member and
15 Plaintiff VALOIS J. VERA was denied equal access to Defendants'
16 existing facilities.

17 38. Pursuant to state law, Defendants are also required to remove
18 barriers to their existing facilities. These violations denied
19 Plaintiff's Member and Plaintiff VALOIS J. VERA full and equal
20 access to Defendants' facilities. Thus, said Member and Plaintiff
21 VALOIS J. VERA was subjected to discrimination pursuant to Civil
22 Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff
23 VALOIS J. VERA was denied full, equal and safe access to
24 Defendants' facility. Further, Defendants' facility, and other
25 goods, services, and/or facilities provided to the public by
26 Defendants are not accessible to and usable by persons with
27 disabilities as required by Health and Safety Code § 19955 which
28

1 requires private entities to make their facility accessible before
2 and after remodeling, and to remove architectural barriers on and
3 after AB 1077 went into effect. Additionally, Defendants failed
4 and refused to provide a reasonable alternative by modifying its
5 practices, policies, and procedures in that they failed to have a
6 scheme, plan, or design to assist Plaintiff's Member and Plaintiff
7 VALOIS J. VERA and/or others similarly situated in entering and
8 utilizing Defendants' services as required by Civil Code § 54.1.
9 Thus, said Member and Plaintiff VALOIS J. VERA was subjected to
10 discrimination in violation of Civil Code § 54.1. Also, under the
11 Unruh Act, Defendants violated the Civil Code § 51 by failing to
12 comply with 42 United States Code 12182(b)(2)(A)(iv), Defendants
13 did and continue to discriminate against Plaintiff's Member and
14 Plaintiff VALOIS J. VERA and persons similarly situated in
15 violation of Civil Code §§ 51, 52, and 54.1. Further, Defendants
16 had actual knowledge of their barrier removal duties under the
17 Americans with Disabilities Act, the California Civil Code, and
18 the California Health & Safety Code before January 26, 1992.
19 39. Business and Professions Code section 17200 defines "unfair
20 competition" and prohibited activities as, ". . . **any unlawful,**
21 **unfair or fraudulent business act or practice** and unfair,
22 deceptive, untrue or misleading advertising and any act prohibited
23 by Chapter 1 (commencing with Section 17500) of Part 3 of Division
24 7 of the Business and Professions Code." (emphasis added).
25 Defendants' acts and omissions alleged herein are violations of
26 the above-enumerated federal and state statutory requirements and
27 public policy and therefore constitute unfair competition and/or
28

1 prohibited activities as such violations are *unlawful, unfair or*
2 *fraudulent business acts or practices*. Defendants' alleged
3 unlawful, unfair, or fraudulent business acts or practices are
4 specifically prohibited by the specific introductory language of
5 B&P section 17200 that is stated in the conjunctive.

6 Consequently, Plaintiffs allege that Defendants' acts and
7 omissions constitute a violation specifically of this section
8 17200 of the Business and Professions Code.

9 40. Plaintiffs seek injunctive relief requiring Defendants to
10 remedy the disabled access violations present at the Defendants'
11 facilities. Ancillary to this injunctive relief, Plaintiffs also
12 request restitution for amounts paid by Plaintiff's Member and
13 Plaintiff VALOIS J. VERA who attempted to visit and patronize
14 Defendants' facilities during the time period that the subject
15 premises have been in violation of the disabled access laws of the
16 State of California.

17 41. Plaintiffs seek, on behalf of the general public, injunctive
18 relief requiring Defendants to comply with the disabled access
19 laws of the State of California at facilities throughout the State
20 of California built, owned, operated, and/or controlled by
21 Defendants.

22 42. WHEREFORE, Plaintiffs pray for judgment as hereinafter set
23 forth.

24
25 FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Negligence**

26 43. Based on the facts plead at ¶¶ 6-21 above and elsewhere in
27 this complaint, Defendants owed Plaintiff's Member and Plaintiff
28 VALOIS J. VERA a statutory duty to make their facility accessible

1 and owed Plaintiff's Member and Plaintiff VALOIS J. VERA a duty to
2 keep Plaintiff's Member and Plaintiff VALOIS J. VERA reasonably
3 safe from known dangers and risks of harm. This said duty arises
4 by virtue of legal duties proscribed by various federal and state
5 statutes including, but not limited to, ADA, ADAAG, Civil Code 51,
6 52, 54, 54.1 and Title 24 of the California Administrative Code
7 and applicable 1982 Uniform Building Code standards as amended.

8 44. Title III of the ADA mandates removal of architectural
9 barriers and prohibits disability discrimination. As well,
10 Defendants' facility, and other goods, services, and/or facilities
11 provided to the public by Defendants are not accessible to and
12 usable by persons with disabilities as required by Health and
13 Safety Code § 19955 which requires private entities to make their
14 facility accessible before and after remodeling, and to remove
15 architectural barriers on and after AB 1077 went into effect.

16 45. Therefore, Defendants engaged in discriminatory conduct in
17 that they failed to comply with known duties under the ADA, ADAAG,
18 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
19 should have known that their acts of nonfeasance would cause
20 Plaintiff's Member and Plaintiff VALOIS J. VERA emotional, bodily
21 and personal injury. Plaintiffs allege that there was bodily
22 injury in this matter because when Plaintiff's Member and
23 Plaintiff VALOIS J. VERA attempted to enter, use, and exit
24 Defendants' establishment, Plaintiff's Member and Plaintiff VALOIS
25 J. VERA experienced pain in his legs, back, arms, shoulders, and
26 wrists. Plaintiffs further allege that such conduct was done in
27 reckless disregard of the probability of said conduct causing
28

1 Plaintiff's Member and Plaintiff VALOIS J. VERA to suffer bodily
2 or personal injury, anger, embarrassment, depression, anxiety,
3 mortification, humiliation and distress. Plaintiffs additionally
4 allege that such conduct caused Plaintiff's Member and Plaintiff
5 VALOIS J. VERA to suffer damages as a result of these injuries.
6
7

8 DEMAND FOR JUDGMENT FOR RELIEF:

9 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
10 3281, and 3333;

11 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
12 each and every offense of Civil Code § 51, Title 24 of the
13 California Building Code, ADA, and ADA Accessibility Guidelines;

14 C. In the alternative to the damages pursuant to Cal. Civil
15 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
16 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
17 54.1, Title 24 of the California Building Code, ADA, and ADA
18 Accessibility Guidelines;

19 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
20 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
21 Defendants to remove all architectural barriers in, at, or on
22 their facilities related to the following: Space Allowance and
23 Reach Ranges, Accessible Route, Protruding Objects, Ground and
24 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
25 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
26 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
27
28

1 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
2 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
3 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

4 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
5 § 12205, and Cal. Civil Code § 55;

6 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),
7 and 54.3(a);

8 G. For Restitution pursuant to Business and Professions section
9 17200;

10 H. A Jury Trial and;

11 I. For such other further relief as the court deems proper.

12
13
14 Respectfully submitted:

15
16 PINNOCK & ASSOCIATES

17
18 Dated: December 26, 2001

19 By: _____
20 THEODORE A. PINNOCK, ESQ.
21 DAVID C. WAKEFIELD, ESQ.
22 MICHELLE L. WAKEFIELD, ESQ.
23 Attorneys for Plaintiffs
24
25
26
27
28

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

ORGANIZATION FOR THE ADVANCEMENT OF MINORITIES WITH DISABILITIES SUING ON BEHALF OF VALOIS J. VERA AND ITS MEMBERS; and VALOIS J. VERA, An Individual

DEFENDANTS

PLEASE SEE ATTACHMENT

FILED

02 DEC 27 PM 3:56

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) San Diego

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OR PLANT INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Theodore A. Pinnock, Esq. SBN: 153434
David C. Wakefield, Esq. SBN: 185736
Michelle L. Wakefield, Esq. SBN 200424
Pinnock & Associates; 7966 Arjons Drive, Suite 119
San Diego, California 92126
Telephone: (858) 689-1750; Facsimile: (858) 689-1950

ATTORNEYS (IF KNOWN)

02 CV 2555H (NLS)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PT DEF 1 Incorporated or Principal Place of Business in This State
PT DEF 2 Incorporated and Principal Place of Business in Another State
PT DEF 3 Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PERSONAL INJURY, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removal from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

TO BE DETERMINED AT TRIAL

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE December 26, 2002

SIGNATURE OF ATTORNEY OF RECORD

pd \$150.00

12/27/02 489910 vb

ATTACHMENT TO CIVIL COVER SHEET

DEFENDANTS;

JOLAR CINEMA a.k.a. JOLAR CINEMA SHOWGIRLS a.k.a. JOLAR
CINEMA OF SAN DIEGO, LTD.; JOLAR CINEMA OF SAN DIEGO, LTD.,
A California Corporation; M I C LIMITED WHICH WILL DO
BUSINESS IN CALIFORNIA AS MICHIGAN INVESTMENT CORPORATION;
And DOES 1 THROUGH 10, Inclusive