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3:03-CV-00142 ORGANIZATION FOR THE V. SOUTHBAY FILM CORP

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\*CMP.\*

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Attorneys for Plaintiffs

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

10 **ORGANIZATION FOR THE**  
11 **ADVANCEMENT OF MINORITIES**  
12 **WITH DISABILITIES SUING ON**  
13 **BEHALF OF DAVID SINGLETARY**  
14 **AND ITS MEMBERS; and DAVID**  
15 **SINGLETARY, An Individual,**

Plaintiffs,

v.

16 **SOUTHBAY FILM CORP.; KITTY**  
17 **KAT THEATER; PAUL L. CORRIERE**  
18 **JR; JOANNE H. CORRIERE LIVING**  
19 **TRUST; DOES 1 THROUGH 10,**  
20 **Inclusive**

Defendants.

Case No.: '03CV00142L (JAH)

**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: PERSONAL INJURY**  
[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

21 **INTRODUCTION**

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24 Plaintiffs ORGANIZATION FOR THE ADVANCEMENT OF  
25 MINORITIES WITH DISABILITIES SUING ON BEHALF OF DAVID SINGLETARY  
26 AND ITS MEMBERS and DAVID SINGLETARY, An Individual, herein  
27 complain, by filing this Civil Complaint in accordance with rule 8  
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Cal

1 of the Federal Rules of Civil Procedure in the Judicial District  
2 of the United States District Court of the Southern District of  
3 California, that Defendants have in the past, and presently are,  
4 engaging in discriminatory practices against individuals with  
5 disabilities, specifically including minorities with disabilities.  
6 Plaintiffs allege this civil action and others substantial similar  
7 thereto are necessary to compel access compliance because  
8 empirical research on the effectiveness of Title III of the  
9 Americans with Disabilities Act indicates the Title has failed to  
10 achieve full and equal access simply by the executive branch of  
11 the Federal Government funding and promoting voluntary compliance  
12 efforts. Further, empirical research shows when individuals with  
13 disabilities give actual notice of potential access problems to  
14 places of public accommodation without a federal civil rights  
15 civil action, the public accommodations do not remove the access  
16 barriers. Therefore, Plaintiffs make the following allegations in  
17 this federal civil rights action:  
18

19 **JURISDICTION AND VENUE**

20 1. The federal jurisdiction of this action is based on the  
21 Americans with Disabilities Act, 42 United States Code 12101-  
22 12102, 12181-12183 and 12201, et seq. Venue in the Judicial  
23 District of the United States District Court of the Southern  
24 District of California is in accordance with 28 U.S.C. § 1391(b)  
25 because a substantial part of Plaintiffs' claims arose within the  
26 Judicial District of the United States District Court of the  
27 Southern District of California.  
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**SUPPLEMENTAL JURISDICTION**

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

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**NAMED DEFENDANTS AND NAMED PLAINTIFFS**

3. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Defendant SOUTHBAY FILM CORP., and KITTY KAT THEATER are located at 4652 University Ave, San Diego, California. Plaintiffs are

1 informed and believe and thereon allege that Defendant SOUTHBAY  
2 FILM CORP., is the owner, operator, and/or lessor of the KITTY KAT  
3 THEATER. Plaintiffs are informed and believe and thereon allege  
4 that Defendants PAUL L. CORRIERE JR; JOANNE H. CORRIERE LIVING  
5 TRUST are the owners, operators, and/or lessors of the property  
6 located at 4652 University Ave, San Diego, California, Assessor  
7 Parcel Number 471-491-30. PAUL L. CORRIERE JR and JOANNE H.  
8 CORRIERE LIVING TRUST are located at 640 Coronado Ave, Coronado,  
9 California 92118. The words "Plaintiffs" and "Plaintiff" as used  
10 herein specifically include the ORGANIZATION FOR THE ADVANCEMENT  
11 OF MINORITIES WITH DISABILITIES, ORGANIZATION FOR THE ADVANCEMENT  
12 OF MINORITIES SUING ON BEHALF OF DAVID SINGLETARY, its Members,  
13 DAVID SINGLETARY, and persons associated with its Members who  
14 accompanied Members to Defendants' facilities. The words  
15 "Plaintiff's Member" and "Plaintiff's Member" as used herein  
16 specifically include ORGANIZATION FOR THE ADVANCEMENT OF  
17 MINORITIES SUING ON BEHALF OF DAVID SINGLETARY, its Members, DAVID  
18 SINGLETARY, and persons associated with its Members who  
19 accompanied Members to Defendants' facilities.  
20

21 4. Defendants Does 1 through 10, were at all times relevant  
22 herein subsidiaries, employers, employees, agents, of SOUTHBAY  
23 FILM CORP.; KITTY KAT THEATER; PAUL L. CORRIERE JR; JOANNE H.  
24 CORRIERE LIVING TRUST. Plaintiffs are ignorant of the true names  
25 and capacities of Defendants sued herein as Does 1 through 10,  
26 inclusive, and therefore sues these Defendants by such fictitious  
27 names. Plaintiffs will pray leave of the court to amend this  
28 complaint to allege the true names and capacities of the Does when

1 ascertained.

2 5. Plaintiffs are informed and believe, and thereon allege,  
3 that Defendants and each of them herein were, at all times  
4 relevant to the action, the owner, franchisee, lessee, general  
5 partner, limited partner, agent, employee, representing partner,  
6 or joint venturer of the remaining Defendants and were acting  
7 within the course and scope of that relationship. Plaintiffs are  
8 further informed and believes, and thereon alleges, that each of  
9 the Defendants herein gave consent to, ratified, and/or authorized  
10 the acts alleged herein to each of the remaining Defendants.  
11

12 **CONCISE SET OF FACTS**

13 6. ORGANIZATION FOR THE ADVANCEMENT OF MINORITIES WITH  
14 DISABILITIES was formed to advocate for the civil rights of  
15 minorities with disabilities; a substantial population with  
16 neither an advocate nor voice in the disability movement. It is  
17 well documented by the federal government and others that the  
18 promises and opportunities afforded by the Americans with  
19 Disabilities Act are not reaching minorities with disabilities.  
20 Further, there is abundance of evidence to show, despite the  
21 federal government's unprecedented and aggressive ADA awareness  
22 and technical assistance drive, businesses in the minority  
23 communities are not complying with the ADA. For example, the  
24 National Council on Disability reported in 1993 that minorities  
25 with disabilities face double discrimination; they are poorer;  
26 they have fewer opportunities than others. Also, the fastest  
27 growing segment of the disability population is from minority  
28 communities because those communities are growing faster than the

1 Anglo communities, and because persons from minority communities  
2 have a higher risk of disability. In fact, studies show the rate  
3 of disability for Whites is 7%, for African-American 13%, and for  
4 Hispanics 9%. Moreover, from 1983 to 1994 the disability non-  
5 White population increased by 50.4% whereas the disability White  
6 population only increased 11.3%. Even more intriguing is the non-  
7 White 18 years older and under population rate of disability  
8 increased by 86.6%. Further, evidence suggests minorities with  
9 disabilities tend to live with their families in conditions of  
10 poverty (61%), and they tend not to advocate for their civil  
11 rights.

12 7. Hence, Members of ORGANIZATION FOR THE ADVANCEMENT OF  
13 MINORITIES WITH DISABILITIES specifically intend to zealously  
14 advocate for minorities with disabilities and desire equal access  
15 to businesses within their community; and these are the reasons  
16 Plaintiffs filed this action.

17 8. Plaintiff's Member and Plaintiff DAVID SINGLETARY has a  
18 physical impairment and due to this impairment he has learned to  
19 successfully operate a wheelchair.

20 9. On January 29, 2002, Plaintiff's Member and Plaintiff DAVID  
21 SINGLETARY went to Defendants' facilities to utilize their goods  
22 and/or services. Further, he had difficulty using the parking,  
23 customer service counter, viewing rooms, and restroom facilities  
24 within the business because they failed to comply with ADAAG  
25 and/or California's Title 24 Building Code Requirements.

26 10. Defendants failed to remove obstructions in the parking,  
27 entrance door, viewing rooms, and restroom facilities in  
28

1 Defendants' establishment.

2 11. Plaintiff's Member and Plaintiff DAVID SINGLETARY personally  
3 experienced difficulty with said access barriers. For example,  
4 there is not appropriate tow-away signage at the entrance to the  
5 parking lot on University Avenue. The requirement is to provide  
6 appropriate driveway signage placed conspicuously at each entrance  
7 to off street parking or immediately adjacent to, and visible  
8 from, each stall or space.

9 12. There are less than 25 parking spaces (approximately 12),  
10 without any accessible spaces. The requirement for a parking lot  
11 with less than 25 spaces is to provide one van accessible parking  
12 space.

13 13. There is not a van accessible space. The requirement is for  
14 one in every eight spaces, but not less than one, to be van  
15 accessible and served by an access aisle 8 foot wide by 18 foot  
16 long painted on the passenger side of the vehicle.

17 14. There is not signage on the doors or in the windows  
18 indicating that this facility is accessible. This is a  
19 requirement.

20 15. The door does not appear to have the appropriate exterior  
21 maneuvering clearances. The requirement is for a level landing 60  
22 inches in length in the direction of the door swing.

23 16. The exterior hardware of the door requires tight grasping to  
24 operate. The requirement is to provide hardware that does not  
25 require tight grasping or twisting of the wrist to operate.

26 17. There is an obstruction on the push side of the door. The  
27 requirement is for the bottom 10 inches of all doors (except  
28



1 automatic and sliding) to have a smooth, uninterrupted surface to  
2 allow the door to be opened by a wheelchair footrest without  
3 creating a trap or hazardous condition.

4 18. There is not signage indicating that assistance for people  
5 with disabilities is available. This signage is recommended for  
6 sites that are not fully accessible.

7 19. The services counter is too high at an estimated 40 inches.  
8 The requirement is to provide a lowered section of the counter  
9 that is a maximum of 34 inches in height for a length of 36  
10 inches.

11 20. Plaintiff could access viewing rooms as said rooms were not  
12 accessible.

13 21. As to the restrooms, there is not any Title 24 or ADA  
14 signage. The requirement is to provide ADA signage to be mounted  
15 at 60 inches to the center (of the sign) on the latch side of the  
16 door.

17 22. There is not any exterior or interior door hardware. The  
18 requirement is to provide hardware that does not require tight  
19 grasping or twisting of the wrist to operate. The sink currently  
20 installed is a cabinet-style sink which does not provide the  
21 appropriate space clearances required. The faucets require tight  
22 grasping and twisting of the wrist to operate. The requirement is  
23 to provide hardware that does not require tight grasping or  
24 twisting of the wrist to operate. The toilet seat is mounted too  
25 low. The requirement is for the rim of the seat to be mounted  
26 between 17 and 19 inches in height. There is not a side grab bar.  
27 The requirement is for a bar 42 inches in length (with the front  
28

1 end positioned 24 inches in front of the toilet) and 33 inches  
2 from the finished floor. There is not a rear grab bar. The  
3 requirement is for a bar not less than 36 inches in length and  
4 between 33 inches to 36 inches from the finished floor. There is  
5 insufficient clear floor space provided for wheelchair clearance.  
6 The requirement is for a size of not less than 60 inches diameter.

7 24. Based on these facts, Plaintiffs allege Plaintiff's Member  
8 and Plaintiff DAVID SINGLETARY was discriminated against each time  
9 he patronized Defendants' establishments.

10 25. Pursuant to federal and state law, Defendants are required  
11 to remove barriers to their existing facilities. Further,  
12 Defendants had actual knowledge of their barrier removal duties  
13 under the Americans with Disabilities Act and the Civil Code  
14 before January 26, 1992. Also, Defendants should have known that  
15 individuals with disabilities are not required to give notice to a  
16 governmental agency before filing suit alleging Defendants failed  
17 to remove architectural barriers. Plaintiffs believes and herein  
18 allege Defendants' facilities have access violations not directly  
19 experienced by Plaintiff's Member and Plaintiff DAVID SINGLETARY  
20 which preclude or limit access by others with disabilities,  
21 including, but not limited to, Space Allowance and Reach Ranges,  
22 Accessible Route, Protruding Objects, Ground and Floor Surfaces,  
23 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,  
24 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,  
25 Entrances, Drinking Fountains and Water Coolers, Water Closets,  
26 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,  
27 Handrails, Grab Bars, and Controls and Operating Mechanisms,  
28

1 Alarms, Detectable Warnings, Signage, and Telephones.

2 Accordingly, Plaintiffs allege Defendants are required to remove  
3 all architectural barriers, known or unknown. Also, Plaintiffs  
4 allege Defendants are required to utilize the ADA checklist for  
5 Readily Achievable Barrier Removal approved by the United States  
6 Department of Justice and created by Adaptive Environments.

7 26. Plaintiff's Member and Plaintiff DAVID SINGLETARY was  
8 extremely upset due to Defendants' conduct. Plaintiff's Member  
9 and Plaintiff DAVID SINGLETARY desires to return to the  
10 Defendants' facilities.

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

12 27. **SOUTHBAY FILM CORP., and KITTY KAT THEATER** are the  
13 commercial tenants of the subject property. **PAUL L. CORRIERE JR**  
14 **and JOANNE H. CORRIERE LIVING TRUST** are the commercial landlords  
15 of the subject property.

16 28. Plaintiffs aver that the Defendants are liable for the  
17 following claims as alleged below:

18 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

22 29. Based on the facts plead at ¶¶ 6-26 above and elsewhere  
23 in this complaint, Plaintiff's Member and Plaintiff DAVID  
24 SINGLETARY was denied full and equal access to Defendants' goods,  
25 services, facilities, privileges, advantages, or accommodations.  
26 Plaintiffs allege Defendants are a public accommodation owned,  
27 leased and/or operated by Defendants.  
28

1 30. Defendants' existing facilities and/or services failed to  
2 provide full and equal access to Defendants' facility as required  
3 by 42 U.S.C. § 12182(a). Thus, Plaintiff's Member and Plaintiff  
4 DAVID SINGLETARY was subjected to discrimination in violation of  
5 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188  
6 because Plaintiffs were denied equal access to Defendants'  
7 existing facilities.

8 31. Plaintiff's Member and Plaintiff DAVID SINGLETARY has  
9 physical impairments as alleged in ¶ 8 above because his  
10 conditions affect one or more of the following body systems:  
11 neurological, musculoskeletal, special sense organs, and/or  
12 cardiovascular. Further, his said physical impairments  
13 substantially limits one or more of the following major life  
14 activities: walking.

15 32. In addition, Plaintiff's Member and Plaintiff DAVID  
16 SINGLETARY cannot perform one or more of the said major life  
17 activities in the manner, speed, and duration when compared to the  
18 average person. Moreover, Plaintiff's Member and Plaintiff DAVID  
19 SINGLETARY has a history of or has been classified as having a  
20 physical impairment as required by 42 U.S.C. § 12102(2)(A).  
21

22 CLAIM II: **Failure To Remove Architectural Barriers**

23 33. Based on the facts plead at ¶¶ 6-26 above and elsewhere in  
24 this complaint, Plaintiff's Member and Plaintiff DAVID SINGLETARY  
25 was denied full and equal access to Defendants' goods, services,  
26 facilities, privileges, advantages, or accommodations within a  
27 public accommodation owned, leased, and/or operated by Defendants.  
28 Defendants failed to remove barriers as required by 42 U.S.C. §

1 12182(a). Plaintiffs are informed and believe, and thus allege  
2 that architectural barriers which are structural in nature exist  
3 at the following physical elements of Defendants' facilities:  
4 Space Allowance and Reach Ranges, Accessible Route, Protruding  
5 Objects, Ground and Floor Surfaces, Parking and Passenger Loading  
6 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts  
7 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains  
8 and Water Coolers, Water Closets, Toilet Stalls, Urinals,  
9 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and  
10 Controls and Operating Mechanisms, Alarms, Detectable Warnings,  
11 Signage, and Telephones.

12 34. Title III requires places of public accommodation to remove  
13 architectural barriers that are structural in nature to existing  
14 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]  
15 Failure to remove such barriers and disparate treatment against a  
16 person who has a known association with a person with a disability  
17 are forms of discrimination. [See 42 United States Code  
18 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member and Plaintiff DAVID  
19 SINGLETARY was subjected to discrimination in violation of 42  
20 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188  
21 because said Member and Plaintiff DAVID SINGLETARY was denied  
22 equal access to Defendants' existing facilities.

23  
24 CLAIM III: **Failure To Modify Practices, Policies And Procedures**

25 35. Based on the facts plead at ¶¶ 6-26 above and elsewhere in  
26 this complaint, Defendants failed and refused to provide a  
27 reasonable alternative by modifying its practices, policies and  
28 procedures in that they failed to have a scheme, plan, or design

1 to assist Plaintiff's Member and Plaintiff DAVID SINGLETARY and/or  
2 others similarly situated in entering and utilizing Defendants'  
3 services, as required by 42 U.S.C. § 12188(a).

4 36. Thus, said Member and Plaintiff DAVID SINGLETARY was  
5 subjected to discrimination in violation of 42 United States Code  
6 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member and  
7 Plaintiff DAVID SINGLETARY was denied equal access to Defendants'  
8 existing facilities.

9 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER  
10 CALIFORNIA ACCESSIBILITY LAWS

11 CLAIM I: Denial Of Full And Equal Access

12 37. Based on the facts plead at ¶¶ 6-26 above and elsewhere in  
13 this complaint, Plaintiff's Member and Plaintiff DAVID SINGLETARY  
14 was denied full and equal access to Defendants' goods, services,  
15 facilities, privileges, advantages, or accommodations within a  
16 public accommodation owned, leased, and/or operated by Defendants  
17 as required by Civil Code Sections 54 and 54.1. Defendants'  
18 facility violated California's Title 24 Accessible Building Code  
19 by failing to provide access to Defendants' facilities due to  
20 violations pertaining to the Space Allowance and Reach Ranges,  
21 Accessible Route, Protruding Objects, Ground and Floor Surfaces,  
22 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,  
23 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,  
24 Entrances, Drinking Fountains and Water Coolers, Water Closets,  
25 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,  
26 Handrails, Grab Bars, and Controls and Operating Mechanisms,  
27 Alarms, Detectable Warnings, Signage, and Telephones.  
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1 38. These violations denied Plaintiff's Member and Plaintiff  
2 DAVID SINGLETARY full and equal access to Defendants' facility.  
3 Thus, said Member and Plaintiff DAVID SINGLETARY was subjected to  
4 discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because  
5 Plaintiffs were denied full, equal and safe access to Defendants'  
6 facility, causing severe emotional distress.

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

8 39. Based on the facts plead at ¶¶ 6-26 above and elsewhere  
9 herein this complaint, Defendants failed and refused to provide a  
10 reasonable alternative by modifying its practices, policies, and  
11 procedures in that they failed to have a scheme, plan, or design  
12 to assist Plaintiff's Member and Plaintiff DAVID SINGLETARY and/or  
13 others similarly situated in entering and utilizing Defendants'  
14 services as required by Civil Code § 54.1. Thus, said Member and  
15 Plaintiff DAVID SINGLETARY was subjected to discrimination in  
16 violation of Civil Code § 54.1.

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

18 40. Based on the facts plead at ¶¶ 6-26 above and elsewhere  
19 herein this complaint and because Defendants violated the Civil  
20 Code § 51 by failing to comply with 42 United States Code  
21 12182(b)(2)(A)(iv), Defendants did and continue to discriminate  
22 against Plaintiff's Member and Plaintiff DAVID SINGLETARY and  
23 persons similarly situated in violation of Civil Code §§ 51, 52,  
24 and 54.1.

25  
26 **Treble Damages Pursuant To Claims I, II, III Under The California**  
27 **Accessibility Laws**

28 41. Defendants, each of them, at times prior to and including

1 during the month of February, 2002, respectively, and continuing  
2 to the present time, knew that persons with physical disabilities  
3 were denied their rights of equal access to all portions of this  
4 public facility. Despite such knowledge, Defendants, and each of  
5 them, failed and refused to take steps to comply with the  
6 applicable access statutes; and despite knowledge of the resulting  
7 problems and denial of civil rights thereby suffered by  
8 Plaintiff's Member and Plaintiff DAVID SINGLETARY and other  
9 similarly situated persons with disabilities. Defendants, and  
10 each of them, have failed and refused to take action to grant full  
11 and equal access to persons with physical disabilities in the  
12 respects complained of hereinabove. Defendants, and each of them,  
13 have carried out a course of conduct of refusing to respond to, or  
14 correct complaints about, denial of disabled access and have  
15 refused to comply with their legal obligations to make the subject  
16 facilities accessible pursuant to the Americans With Disability  
17 Act Access Guidelines (ADAAG) and Title 24 of the California Code  
18 of Regulations (also known as the California Building Code). Such  
19 actions and continuing course of conduct by Defendants, and each  
20 of them, evidence despicable conduct in conscious disregard of the  
21 rights and/or safety of Plaintiff's Member and Plaintiff DAVID  
22 SINGLETARY and of other similarly situated persons, justifying an  
23 award of treble damages pursuant to sections 52(a) and 54.3(a) of  
24 the California Civil Code.

25  
26 42. Defendants', and each of their, actions have also been  
27 oppressive to persons with physical disabilities and of other  
28 members of the public, and have evidenced actual or implied



1 malicious intent toward those members of the public, such as  
2 Plaintiffs and other persons with physical disabilities who have  
3 been denied the proper access to which they are entitled by law.  
4 Further, Defendants', and each of their, refusals on a day-to-day  
5 basis to correct these problems evidence despicable conduct in  
6 conscious disregard for the rights of Plaintiff's Member and  
7 Plaintiff DAVID SINGLETARY and other members of the public with  
8 physical disabilities.

9 43. Plaintiffs pray for an award of treble damages against  
10 Defendants, and each of them, pursuant to California Civil Code  
11 sections 52(a) and 54.3(a), in an amount sufficient to make a more  
12 profound example of Defendants and encourage owners and operators  
13 of other public facilities from willful disregard of the rights of  
14 persons with disabilities. Plaintiffs do not know the financial  
15 worth of Defendants, or the amount of treble damages sufficient to  
16 accomplish the public purposes of section 52(a) of the California  
17 Civil Code and section 54.3 of the California Civil Code.

18 44. Wherefore, Plaintiffs pray for damages and relief as  
19 hereinafter stated.

20  
21 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS - Violation of**  
22 **Business and Professions Code section 17200 et seq.**

23 45. Plaintiffs incorporate by reference herein the facts plead  
24 at ¶¶ 6 - 26 above and elsewhere in this complaint.

25 46. Defendants failed to remove obstructions in the parking,  
26 customer service counter, viewing rooms, and restroom of  
27 Defendants' establishments. Pursuant to federal law, Defendants  
28 are required to remove barriers to their existing facilities.

1 Title III of the Americans With Disabilities Act requires places  
2 of public accommodation to remove architectural barriers that are  
3 structural in nature to existing facilities. [42 United States  
4 Code 12182(b)(2)(A)(iv).] Failure to remove such barriers and  
5 disparate treatment against a person who has a known association  
6 with a person with a disability are forms of discrimination. [See  
7 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff's  
8 Member and Plaintiff DAVID SINGLETARY was subjected to  
9 discrimination in violation of 42 United States Code  
10 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member and  
11 Plaintiff DAVID SINGLETARY was denied equal access to Defendants'  
12 existing facilities. Also, Defendants' facilities failed to  
13 provide full and equal access to Defendants' facility as required  
14 by 42 U.S.C. § 12182(a). Thus, Plaintiff's Member and Plaintiff  
15 DAVID SINGLETARY was subjected to discrimination in violation of  
16 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188  
17 because Plaintiff's Member and Plaintiff DAVID SINGLETARY was  
18 denied equal access to Defendants' existing facilities.  
19 Additionally, as a result of said access barriers, Defendants  
20 failed and refused to provide a reasonable alternative by  
21 modifying its practices, policies and procedures in that they  
22 failed to have a scheme, plan, or design to assist Plaintiff's  
23 Member and Plaintiff DAVID SINGLETARY and/or others similarly  
24 situated in entering and utilizing Defendants' services, as  
25 required by 42 U.S.C. § 12188(a). Thus, said Member and Plaintiff  
26 DAVID SINGLETARY was subjected to discrimination in violation of  
27 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188  
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1 because said Member and Plaintiff DAVID SINGLETARY was denied  
2 equal access to Defendants' existing facilities.

3 47. Pursuant to state law, Defendants are also required to remove  
4 barriers to their existing facilities. These violations denied  
5 Plaintiff's Member and Plaintiff DAVID SINGLETARY full and equal  
6 access to Defendants' facilities. Thus, said Member and Plaintiff  
7 DAVID SINGLETARY was subjected to discrimination pursuant to Civil  
8 Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff  
9 DAVID SINGLETARY was denied full, equal and safe access to  
10 Defendants' facility. Further, Defendants' facility, and other  
11 goods, services, and/or facilities provided to the public by  
12 Defendants are not accessible to and usable by persons with  
13 disabilities as required by Health and Safety Code § 19955 which  
14 requires private entities to make their facility accessible before  
15 and after remodeling, and to remove architectural barriers on and  
16 after AB 1077 went into effect. Additionally, Defendants failed  
17 and refused to provide a reasonable alternative by modifying its  
18 practices, policies, and procedures in that they failed to have a  
19 scheme, plan, or design to assist Plaintiff's Member and Plaintiff  
20 DAVID SINGLETARY and/or others similarly situated in entering and  
21 utilizing Defendants' services as required by Civil Code § 54.1.  
22 Thus, said Member and Plaintiff DAVID SINGLETARY was subjected to  
23 discrimination in violation of Civil Code § 54.1. Also, under the  
24 Unruh Act, Defendants violated the Civil Code § 51 by failing to  
25 comply with 42 United States Code 12182(b)(2)(A)(iv), Defendants  
26 did and continue to discriminate against Plaintiff's Member and  
27 Plaintiff DAVID SINGLETARY and persons similarly situated in  
28

1 violation of Civil Code §§ 51, 52, and 54.1. Further, Defendants  
2 had actual knowledge of their barrier removal duties under the  
3 Americans with Disabilities Act, the California Civil Code, and  
4 the California Health & Safety Code before January 26, 1992.

5 48. Business and Professions Code section 17200 defines "unfair  
6 competition" and prohibited activities as, ". . . **any unlawful,**  
7 **unfair or fraudulent business act or practice** and unfair,  
8 deceptive, untrue or misleading advertising and any act prohibited  
9 by Chapter 1 (commencing with Section 17500) of Part 3 of Division  
10 7 of the Business and Professions Code." (emphasis added).

11 Defendants' acts and omissions alleged herein are violations of  
12 the above-enumerated federal and state statutory requirements and  
13 public policy and therefore constitute unfair competition and/or  
14 prohibited activities as such violations are *unlawful, unfair or*  
15 *fraudulent business acts or practices*. Defendants' alleged  
16 unlawful, unfair, or fraudulent business acts or practices are  
17 specifically prohibited by the specific introductory language of  
18 B&P section 17200 that is stated in the conjunctive.

19 Consequently, Plaintiffs allege that Defendants' acts and  
20 omissions constitute a violation specifically of this section  
21 17200 of the Business and Professions Code.  
22

23 49. Plaintiffs seek injunctive relief requiring Defendants to  
24 remedy the disabled access violations present at the Defendants'  
25 facilities. Ancillary to this injunctive relief, Plaintiffs also  
26 request restitution for amounts paid by Plaintiff's Member and  
27 Plaintiff DAVID SINGLETARY who attempted to visit and patronize  
28 Defendants' facilities during the time period that the subject

1 premises have been in violation of the disabled access laws of the  
2 State of California.

3 50. Plaintiffs seek, on behalf of the general public, injunctive  
4 relief requiring Defendants to comply with the disabled access  
5 laws of the State of California at facilities throughout the State  
6 of California built, owned, operated, and/or controlled by  
7 Defendants.

8 51. WHEREFORE, Plaintiffs pray for judgment as hereinafter set  
9 forth.

10 FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS- Negligence

11 52. Based on the facts plead at ¶¶ 6-26 above and elsewhere in  
12 this complaint and the fact that when **Plaintiff's Member and**  
13 **Plaintiff DAVID SINGLETARY attempted to enter Defendants' adult**  
14 **video viewing room, he strained his back and legs in a futile**  
15 **attempt to enter said room,** Defendants owed Plaintiff's Member and  
16 Plaintiff DAVID SINGLETARY a statutory duty to make their facility  
17 accessible and owed Plaintiff's Member and Plaintiff DAVID  
18 SINGLETARY a duty to keep Plaintiff's Member and Plaintiff DAVID  
19 SINGLETARY reasonably safe from known dangers and risks of harm.  
20 This said duty arises by virtue of legal duties proscribed by  
21 various federal and state statutes including, but not limited to,  
22 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the  
23 California Administrative Code and applicable 1982 Uniform  
24 Building Code standards as amended.

25 53. Title III of the ADA mandates removal of architectural  
26 barriers and prohibits disability discrimination. As well,  
27 Defendants' facility, and other goods, services, and/or facilities  
28

1 provided to the public by Defendants are not accessible to and  
2 usable by persons with disabilities as required by Health and  
3 Safety Code § 19955 which requires private entities to make their  
4 facility accessible before and after remodeling, and to remove  
5 architectural barriers on and after AB 1077 went into effect.  
6 54. Therefore, Defendants engaged in discriminatory conduct in  
7 that they failed to comply with known duties under the ADA, ADAAG,  
8 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or  
9 should have known that their acts of nonfeasance would cause  
10 Plaintiff's Member and Plaintiff DAVID SINGLETARY emotional,  
11 bodily and personal injury. Plaintiffs further allege that such  
12 conduct was done in reckless disregard of the probability of said  
13 conduct causing Plaintiff's Member and Plaintiff DAVID SINGLETARY  
14 to suffer bodily or personal injury in the form of **a strained back**  
15 **and legs**, anger, embarrassment, depression, anxiety,  
16 mortification, humiliation and distress. Plaintiffs allege that  
17 such conduct caused Plaintiffs' Member and Plaintiff to suffer the  
18 injuries of mental and emotional distress, including, but not  
19 limited to, anger, embarrassment, depression, anxiety,  
20 mortification, humiliation, distress, and fear of physical injury.  
21 Plaintiffs additionally allege that such conduct caused  
22 Plaintiff's Member and Plaintiff DAVID SINGLETARY to suffer  
23 damages as a result of these injuries.  
24

25 DEMAND FOR JUDGMENT FOR RELIEF:

26 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,  
27 3281, and 3333;  
28

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

4 C. In the alternative to the damages pursuant to Cal. Civil  
5 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to  
6 Cal. Civil Code § 54.3 for each and every offense of Civil Code §  
7 54.1, Title 24 of the California Building Code, ADA, and ADA  
8 Accessibility Guidelines;

9  
10 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and  
11 Cal. Civil Code § 55. Plaintiffs request this Court enjoin  
12 Defendants to remove all architectural barriers in, at, or on  
13 their facilities related to the following: Space Allowance and  
14 Reach Ranges, Accessible Route, Protruding Objects, Ground and  
15 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,  
16 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),  
17 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,  
18 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,  
19 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating  
20 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

21  
22 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.  
23 § 12205, and Cal. Civil Code § 55;

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

26 G. For Restitution pursuant to Business and Professions section  
27 17200;  
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1 H. A Jury Trial and;

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

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Respectfully submitted:

PINNOCK & WAKEFIELD

Dated: January 15, 2003

By: 

THEODORE A. PINNOCK, ESQ.  
DAVID C. WAKEFIELD, ESQ.  
MICHELLE L. WAKEFIELD, ESQ.  
Attorneys for Plaintiffs



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 DAVID SINGLETARY AND ITS MEMBERS; and DAVID SINGLETARY, An Individual,

DEFENDANTS

SOUTHBAY FILM CORP.; KITTY KAT THEATER; PAUL L. CORRIERE JR; JOANNE H. CORRIERE LIVING TRUST;

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(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 OF LAND INVOLVED BY:

(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 & Wakefield; 7966 Arjons Drive, Suite 119 San Diego, California 92126 Telephone: (858) 689-1750; Facsimile: (858) 689-1950

ATTORNEYS (IF KNOWN)

030V 00142L (JAH)

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

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
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
PT DEF 4
PT DEF 5
PT DEF 6

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, PERSONAL INJURY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, 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 January 21, 2003

SIGNATURE OF ATTORNEY OF RECORD

[Handwritten signature]

PO \$152.00 1/22/03 #90659 VB