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3:03-CV-00139 ORGANIZATION FOR THE V. ADULT WORLD

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1 **PINNOCK & WAKEFIELD**

2 Theodore A. Pinnock, Esq.
3 David C. Wakefield, Esq.
4 Michelle L. Wakefield, Esq.
5 7966 Arjons Drive, Suite 119
6 San Diego, CA 92126
7 Telephone: (858) 689-1750
8 Facsimile: (858) 689-1950

Bar #: 153434
Bar #: 185736
Bar #: 200424

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BY: *Ames Daniel*
DEPUTY

Attorneys for Plaintiffs

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

030V00139J (JAH)

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 **ADULT WORLD; SAN DIEGO WORLD**
17 **VIDEO, INC.; ANDEEL**
18 **FAMILYTRUST (09-03-92) And**
19 **DOES 1 THROUGH 10, Inclusive**

Defendants.

Case No.:

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**

22
23
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
28 of the Federal Rules of Civil Procedure in the Judicial District

cl

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

18 **JURISDICTION AND VENUE**

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

28 **SUPPLEMENTAL JURISDICTION**

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

21
22 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

23 3. Defendants are, and, at all times mentioned herein, were, a
24 business or corporation or franchise organized and existing and/or
25 doing business under the laws of the State of California.
26 Defendant ADULT WORLD is located 3574 UNIVERSITY AVE, SAN DIEGO,
27 CA 92104-2232. Plaintiffs are informed and believe and thereon
28 allege that Defendant SAN DIEGO WORLD VIDEO, INC., is the owner,

1 operator, and/or lessor of the ADULT WORLD. Plaintiffs are
2 informed and believe and thereon allege that Defendant SAN DIEGO
3 WORLD VIDEO, INC., is located at 1157 SWEETWATER RD, SPRING
4 VALLEY, CA 91977. Defendant ANDEEL FAMILYTRUST (09-03-92) is the
5 owner, operator, and/or lessor of the property located at 3572-78
6 UNIVERSITY AVE, SAN DIEGO, CA 92104-2232, Assessor Parcel Number
7 447-402-17. Defendant ANDEEL FAMILYTRUST (09-03-92) is located at
8 1655 MISSION CLIFF DR, SAN DIEGO, CA 92116. The words
9 "Plaintiffs" and "Plaintiff" as used herein specifically include
10 the ORGANIZATION FOR THE ADVANCEMENT OF MINORITIES WITH
11 DISABILITIES, ORGANIZATION FOR THE ADVANCEMENT OF MINORITIES SUING
12 ON BEHALF OF DAVID SINGLETARY, its Members, DAVID SINGLETARY, and
13 persons associated with its Members who accompanied Members to
14 Defendants' facilities. The words "Plaintiff's Member" and
15 "Plaintiff's Member" as used herein specifically include
16 ORGANIZATION FOR THE ADVANCEMENT OF MINORITIES SUING ON BEHALF OF
17 DAVID SINGLETARY, its Members, DAVID SINGLETARY, and persons
18 associated with its Members who accompanied Members to Defendants'
19 facilities.
20

21 4. Defendants Does 1 through 10, were at all times relevant
22 herein subsidiaries, employers, employees, agents, of ADULT WORLD;
23 SAN DIEGO WORLD VIDEO, INC.; and/or ANDEEL FAMILYTRUST (09-03-92).
24 Plaintiffs are ignorant of the true names and capacities of
25 Defendants sued herein as Does 1 through 10, inclusive, and
26 therefore sues these Defendants by such fictitious names.
27 Plaintiffs will pray leave of the court to amend this complaint to
28 allege the true names and capacities of the Does when ascertained.

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

11 **CONCISE SET OF FACTS**

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

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

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

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

19 9. On January 29, 2002, Plaintiff's Member and Plaintiff DAVID
20 SINGLETARY went to Defendants' ADULT WORLD, facilities to rent a
21 car. Further, he had difficulty using the viewing rooms, parking,
22 exterior path of travel, entrance, counter and restroom facilities
23 within the business because they failed to comply with ADAAG
24 and/or California's Title 24 Building Code Requirements.

25 10. Defendants failed to remove obstructions in the viewing
26 rooms, parking, exterior path of travel, entrance, counter and
27 restroom facilities in Defendants' establishment.
28

1 11. Plaintiff's Member and Plaintiff DAVID SINGLETARY personally
2 experienced difficulty with said access barriers. For example,
3 there is a lack of properly marked van accessible parking. There
4 is a 2 inch change in level that is not beveled at the front door.

5 12. There is a lack of signage on the doors or in the windows
6 indicating that this facility is accessible; this is a
7 requirement.

8 13. The door requires too much force to open.

9 14. The services counter is too high; the requirement is to
10 provide a lowered section of the counter that is a maximum of 34
11 inches in height for a length of 36 inches. As to the viewing
12 rooms, the doors are too narrow for a wheelchair, the door
13 hardware requires tight grasping or twisting, and the interior of
14 the rooms is too small.

15 15. Regarding the Restrooms, there is a lack of compliant
16 insulation on the sink pipes.

17 16. Based on these facts, Plaintiffs allege Plaintiff's Member
18 and Plaintiff DAVID SINGLETARY was discriminated against each time
19 he patronized Defendants' establishments.

20 17. Pursuant to federal and state law, Defendants are required
21 to remove barriers to their existing facilities.

22 18. Further, Defendants had actual knowledge of their barrier
23 removal duties under the Americans with Disabilities Act and the
24 Civil Code before January 26, 1992.

25 19. Also, Defendants should have known that individuals with
26 disabilities are not required to give notice to a governmental
27 agency before filing suit alleging Defendants failed to remove
28

1 architectural barriers.

2 20. Plaintiffs believes and herein allege Defendants' facilities
3 have access violations not directly experienced by Plaintiff's
4 Member and Plaintiff DAVID SINGLETARY which preclude or limit
5 access by others with disabilities, including, but not limited to,
6 Space Allowance and Reach Ranges, Accessible Route, Protruding
7 Objects, Ground and Floor Surfaces, Parking and Passenger Loading
8 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts
9 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains
10 and Water Coolers, Water Closets, Toilet Stalls, Urinals,
11 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and
12 Controls and Operating Mechanisms, Alarms, Detectable Warnings,
13 Signage, and Telephones.

14 21. Accordingly, Plaintiffs allege Defendants are required to
15 remove all architectural barriers, known or unknown.

16 22. Also, Plaintiffs allege Defendants are required to utilize
17 the ADA checklist for Readily Achievable Barrier Removal approved
18 by the United States Department of Justice and created by Adaptive
19 Environments.

20 23. Plaintiff's Member and Plaintiff DAVID SINGLETARY was
21 extremely upset due to Defendants' conduct.

22 24. Plaintiff's Member and Plaintiff DAVID SINGLETARY desires to
23 return to the Defendants' facilities.

24
25 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

26 25. ADULT WORLD and SAN DIEGO WORLD VIDEO, INC., are the
27 commercial tenants of the subject property.

1 26. ANDEEL FAMILYTRUST (09-03-92) is the commercial landlord of
2 the subject property.

3 27. Plaintiffs aver that the Defendants are liable for the
4 following claims as alleged below:

5 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

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

15 29. Defendants' existing facilities and/or services failed to
16 provide full and equal access to Defendants' facility as required
17 by 42 U.S.C. § 12182(a).

18 30. Thus, Plaintiff's Member and Plaintiff DAVID SINGLETARY was
19 subjected to discrimination in violation of 42 United States Code
20 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiffs were
21 denied equal access to Defendants' existing facilities.

22 31. Plaintiff's Member and Plaintiff DAVID SINGLETARY has
23 physical impairments as alleged in ¶ 8 above because his
24 conditions affect one or more of the following body systems:
25 neurological, musculoskeletal, special sense organs, and/or
26 cardiovascular. Further, his said physical impairments
27 substantially limits one or more of the following major life
28

1 activities: walking.

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

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

9 33. Based on the facts plead at ¶¶ 6-26 above and elsewhere in
10 this complaint, Plaintiff's Member and Plaintiff DAVID SINGLETARY
11 was denied full and equal access to Defendants' goods, services,
12 facilities, privileges, advantages, or accommodations within a
13 public accommodation owned, leased, and/or operated by Defendants.
14 Defendants failed to remove barriers as required by 42 U.S.C. §
15 12182(a). Plaintiffs are informed and believe, and thus allege
16 that architectural barriers which are structural in nature exist
17 at the following physical elements of Defendants' facilities:
18 Space Allowance and Reach Ranges, Accessible Route, Protruding
19 Objects, Ground and Floor Surfaces, Parking and Passenger Loading
20 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts
21 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains
22 and Water Coolers, Water Closets, Toilet Stalls, Urinals,
23 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and
24 Controls and Operating Mechanisms, Alarms, Detectable Warnings,
25 Signage, and Telephones.

26
27 34. Title III requires places of public accommodation to remove
28 architectural barriers that are structural in nature to existing

1 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
2 Failure to remove such barriers and disparate treatment against a
3 person who has a known association with a person with a disability
4 are forms of discrimination. [See 42 United States Code
5 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member and Plaintiff DAVID
6 SINGLETARY was subjected to discrimination in violation of 42
7 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188
8 because said Member and Plaintiff DAVID SINGLETARY was denied
9 equal access to Defendants' existing facilities.

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

11 35. Based on the facts plead at ¶¶ 6-26 above and elsewhere in
12 this complaint, Defendants failed and refused to provide a
13 reasonable alternative by modifying its practices, policies and
14 procedures in that they failed to have a scheme, plan, or design
15 to assist Plaintiff's Member and Plaintiff DAVID SINGLETARY and/or
16 others similarly situated in entering and utilizing Defendants'
17 services, as required by 42 U.S.C. § 12188(a).

18 36. Thus, said Member and Plaintiff DAVID SINGLETARY was
19 subjected to discrimination in violation of 42 United States Code
20 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member and
21 Plaintiff DAVID SINGLETARY was denied equal access to Defendants'
22 existing facilities.

23 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS UNDER**
24 **CALIFORNIA ACCESSIBILITY LAWS**

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

26 37. Based on the facts plead at ¶¶ 6-26 above and elsewhere in
27 this complaint, Plaintiff's Member and Plaintiff DAVID SINGLETARY
28

1 was denied full and equal access to Defendants' goods, services,
2 facilities, privileges, advantages, or accommodations within a
3 public accommodation owned, leased, and/or operated by Defendants
4 as required by Civil Code Sections 54 and 54.1. Defendants'
5 facility violated California's Title 24 Accessible Building Code
6 by failing to provide access to Defendants' facilities due to
7 violations pertaining to the Space Allowance and Reach Ranges,
8 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
9 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
10 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
11 Entrances, Drinking Fountains and Water Coolers, Water Closets,
12 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
13 Handrails, Grab Bars, and Controls and Operating Mechanisms,
14 Alarms, Detectable Warnings, Signage, and Telephones.

15 38. These violations denied Plaintiff's Member and Plaintiff
16 DAVID SINGLETARY full and equal access to Defendants' facility.
17 Thus, said Member and Plaintiff DAVID SINGLETARY was subjected to
18 discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because
19 Plaintiffs were denied full, equal and safe access to Defendants'
20 facility, causing severe emotional distress.

21
22 CLAIM II: **Failure To Modify Practices, Policies And Procedures**

23 39. Based on the facts plead at ¶¶ 6-26 above and elsewhere
24 herein this complaint, Defendants failed and refused to provide a
25 reasonable alternative by modifying its practices, policies, and
26 procedures in that they failed to have a scheme, plan, or design
27 to assist Plaintiff's Member and Plaintiff DAVID SINGLETARY and/or
28 others similarly situated in entering and utilizing Defendants'

1 services as required by Civil Code § 54.1. Thus, said Member and
2 Plaintiff DAVID SINGLETARY was subjected to discrimination in
3 violation of Civil Code § 54.1.

4 CLAIM III: Violation Of The Unruh Act

5 40. Based on the facts plead at ¶¶ 6-26 above and elsewhere
6 herein this complaint and because Defendants violated the Civil
7 Code § 51 by failing to comply with 42 United States Code
8 12182(b)(2)(A)(iv), Defendants did and continue to discriminate
9 against Plaintiff's Member and Plaintiff DAVID SINGLETARY and
10 persons similarly situated in violation of Civil Code §§ 51, 52,
11 and 54.1.

12
13 Treble Damages Pursuant To Claims I, II, III Under The California
14 Accessibility Laws

15 41. Defendants, each of them, at times prior to and including
16 during the month of January, 2002, respectively, and continuing to
17 the present time, knew that persons with physical disabilities
18 were denied their rights of equal access to all portions of this
19 public facility. Despite such knowledge, Defendants, and each of
20 them, failed and refused to take steps to comply with the
21 applicable access statutes; and despite knowledge of the resulting
22 problems and denial of civil rights thereby suffered by
23 Plaintiff's Member and Plaintiff DAVID SINGLETARY and other
24 similarly situated persons with disabilities. Defendants, and
25 each of them, have failed and refused to take action to grant full
26 and equal access to persons with physical disabilities in the
27 respects complained of hereinabove. Defendants, and each of them,
28 have carried out a course of conduct of refusing to respond to, or

1 correct complaints about, denial of disabled access and have
2 refused to comply with their legal obligations to make the subject
3 ADULT WORLD, facilities accessible pursuant to the Americans With
4 Disability Act Access Guidelines (ADAAG) and Title 24 of the
5 California Code of Regulations (also known as the California
6 Building Code). Such actions and continuing course of conduct by
7 Defendants, and each of them, evidence despicable conduct in
8 conscious disregard of the rights and/or safety of Plaintiff's
9 Member and Plaintiff DAVID SINGLETARY and of other similarly
10 situated persons, justifying an award of treble damages pursuant
11 to sections 52(a) and 54.3(a) of the California Civil Code.

12 42. Defendants', and each of their, actions have also been
13 oppressive to persons with physical disabilities and of other
14 members of the public, and have evidenced actual or implied
15 malicious intent toward those members of the public, such as
16 Plaintiffs and other persons with physical disabilities who have
17 been denied the proper access to which they are entitled by law.
18 Further, Defendants', and each of their, refusals on a day-to-day
19 basis to correct these problems evidence despicable conduct in
20 conscious disregard for the rights of Plaintiff's Member and
21 Plaintiff DAVID SINGLETARY and other members of the public with
22 physical disabilities.
23

24 43. Plaintiffs pray for an award of treble damages against
25 Defendants, and each of them, pursuant to California Civil Code
26 sections 52(a) and 54.3(a), in an amount sufficient to make a more
27 profound example of Defendants and encourage owners and operators
28 of other public facilities from willful disregard of the rights of

1 persons with disabilities. Plaintiffs do not know the financial
2 worth of Defendants, or the amount of treble damages sufficient to
3 accomplish the public purposes of section 52(a) of the California
4 Civil Code and section 54.3 of the California Civil Code.

5 44. Wherefore, Plaintiffs pray for damages and relief as
6 hereinafter stated.

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

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

11 46. Defendants failed to remove obstructions in the viewing
12 rooms, parking, exterior path of travel, entrance, counter and
13 restroom of Defendants' ADULT WORLD, establishments. Pursuant to
14 federal law, Defendants are required to remove barriers to their
15 existing facilities. Title III of the Americans With Disabilities
16 Act requires places of public accommodation to remove
17 architectural barriers that are structural in nature to existing
18 facilities. [42 United States Code 12182(b)(2)(A)(iv).] Failure
19 to remove such barriers and disparate treatment against a person
20 who has a known association with a person with a disability are
21 forms of discrimination. [See 42 United States Code
22 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member and Plaintiff DAVID
23 SINGLETARY was subjected to discrimination in violation of 42
24 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188
25 because said Member and Plaintiff DAVID SINGLETARY was denied
26 equal access to Defendants' existing facilities. Also, Defendants'
27 facilities failed to provide full and equal access to Defendants'
28

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

17 47. 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 DAVID SINGLETARY full and equal
20 access to Defendants' facilities. Thus, said Member and Plaintiff
21 DAVID SINGLETARY was subjected to discrimination pursuant to Civil
22 Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff
23 DAVID SINGLETARY 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 DAVID SINGLETARY 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 DAVID SINGLETARY 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 DAVID SINGLETARY 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 48. 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

26 Defendants' acts and omissions alleged herein are violations of
27 the above-enumerated federal and state statutory requirements and
28 public policy and therefore constitute unfair competition and/or

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 49. 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 DAVID SINGLETARY 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 50. 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 51. WHEREFORE, Plaintiffs pray for judgment as hereinafter set
23 forth.

24
25 FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS- Negligence

26 52. Based on the facts plead at ¶¶ 6-26 above and elsewhere in
27 this complaint and the fact that when **Plaintiff's Member and**
28 **Plaintiff DAVID SINGLETARY attempted to enter Defendants' adult**

1 **video viewing room, he strained his back and legs in a futile**
2 **attempt to enter said room,** Defendants owed Plaintiff's Member and
3 Plaintiff DAVID SINGLETARY a statutory duty to make their facility
4 accessible and owed Plaintiff's Member and Plaintiff DAVID
5 SINGLETARY a duty to keep Plaintiff's Member and Plaintiff DAVID
6 SINGLETARY reasonably safe from known dangers and risks of harm.
7 This said duty arises by virtue of legal duties proscribed by
8 various federal and state statutes including, but not limited to,
9 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
10 California Administrative Code and applicable 1982 Uniform
11 Building Code standards as amended.

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

20 54. Therefore, Defendants engaged in discriminatory conduct in
21 that they failed to comply with known duties under the ADA, ADAAG,
22 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
23 should have known that their acts of nonfeasance would cause
24 Plaintiff's Member and Plaintiff DAVID SINGLETARY emotional,
25 bodily and personal injury. Plaintiffs further allege that such
26 conduct was done in reckless disregard of the probability of said
27 conduct causing Plaintiff's Member and Plaintiff DAVID SINGLETARY
28

1 to suffer bodily or personal injury in the form of a **strained back**
2 **and legs**, anger, embarrassment, depression, anxiety,
3 mortification, humiliation and distress. Plaintiffs allege that
4 such conduct caused Plaintiffs' Member and Plaintiff to suffer the
5 injuries of mental and emotional distress, including, but not
6 limited to, anger, embarrassment, depression, anxiety,
7 mortification, humiliation, distress, and fear of physical injury.

8 Plaintiffs additionally allege that such conduct caused
9 Plaintiff's Member and Plaintiff DAVID SINGLETARY to suffer
10 damages as a result of these injuries.
11

12 DEMAND FOR JUDGMENT FOR RELIEF:

13 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
14 3281, and 3333;

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

18 C. In the alternative to the damages pursuant to Cal. Civil
19 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
20 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
21 54.1, Title 24 of the California Building Code, ADA, and ADA
22 Accessibility Guidelines;

23 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
24 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
25 Defendants to remove all architectural barriers in, at, or on
26 their facilities related to the following: Space Allowance and
27
28

1 Reach Ranges, Accessible Route, Protruding Objects, Ground and
2 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
3 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
4 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
5 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
6 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
7 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

8
9 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
10 § 12205, and Cal. Civil Code § 55;

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

13 G. For Restitution pursuant to Business and Professions section
14 17200;

15 H. A Jury Trial and;

16 I. For such other further relief as the court deems proper.
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1 Respectfully submitted:

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PINNOCK & WAKEFIELD

3 Dated: January 22, 2003

4

By: 

THEODORE A. PINNOCK, ESQ.
DAVID C. WAKEFIELD, ESQ.
MICHELLE L. WAKEFIELD, ESQ.

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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 SUIING ON BEHALF OF DAVID SINGLETARY AND ITS MEMBERS; and DAVID SINGLETARY, An Individual.

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

(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

DEFENDANTS

ADULT WORLD; SAN DIEGO WORLD VIDEO, INC.; ANDEEL FAMILY TRUST (09-03-92)

FILED 03 JAN 22 PM 4:05

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

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

ATTORNEYS (IF KNOWN) ST. DEPUTY

03 CV 00139 J (JAH)

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
2 Incorporated and Principal Place of Business in Another State
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, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 210 Land Condemnation, 302 Personal Injury, etc.

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 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 notes: Pd \$150.00 1/22/03 #90660 VD