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3:03-CV-00135 ORGANIZATION FOR THE V. F STREET CORPORATION

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

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

18 Plaintiffs,

19 v.

20 **'F' STREET CORPORATION; 'F'**  
21 **STREET - SAN DIEGO; 'F'**  
22 **STREET - EL CAJON; 'F' STREET**  
23 **- DOWNTOWN 'F' STREET - CHULA**  
24 **VISTA; ALMA R. VASIC TRUST**  
25 **12-16-97; SMNS & CLARK**  
26 **WILLIAM R, TRUSTEE; ALMA R.**  
27 **VASIC; THE ALMA R VASIC**  
28 **GRANTOR RETAINED ANNUIT; DOES**  
1 THROUGH 10, **Inclusive**

Defendants.

Case No.:

**'03 CV 00135 H (LSP)**

**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

**INTRODUCTION**

Plaintiffs ORGANIZATION FOR THE ADVANCEMENT OF  
MINORITIES WITH DISABILITIES SUING ON BEHALF OF DAVID SINGLETARY

*ca*

1 AND ITS MEMBERS and DAVID SINGLETARY, An Individual, herein  
2 complain, by filing this Civil Complaint in accordance with rule 8  
3 of the Federal Rules of Civil Procedure in the Judicial District  
4 of the United States District Court of the Southern District of  
5 California, that Defendants have in the past, and presently are,  
6 engaging in discriminatory practices against individuals with  
7 disabilities, specifically including minorities with disabilities.  
8 Plaintiffs allege this civil action and others substantial similar  
9 thereto are necessary to compel access compliance because  
10 empirical research on the effectiveness of Title III of the  
11 Americans with Disabilities Act indicates the Title has failed to  
12 achieve full and equal access simply by the executive branch of  
13 the Federal Government funding and promoting voluntary compliance  
14 efforts. Further, empirical research shows when individuals with  
15 disabilities give actual notice of potential access problems to  
16 places of public accommodation without a federal civil rights  
17 civil action, the public accommodations do not remove the access  
18 barriers. Therefore, Plaintiffs make the following allegations in  
19 this federal civil rights action:  
20

21 **JURISDICTION AND VENUE**

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

1 Southern District of California.

2  
3 **SUPPLEMENTAL JURISDICTION**

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

24  
25 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

26 3. Defendants are, and, at all times mentioned herein, were, a  
27 business or corporation or franchise organized and existing and/or  
28 doing business under the laws of the State of California.

1 Defendant 'F' STREET - SAN DIEGO is located at 2004 University  
2 Avenue, San Diego, California, 92104. Defendant 'F' STREET - EL  
3 CAJON is located at 158 Main Street, El Cajon, California.  
4 Defendant 'F' STREET - CHULA VISTA is located at 1141 3<sup>rd</sup> Avenue,  
5 Chula Vista, California. Defendant F STREET - DOWNTOWN is located  
6 at 751-753 4<sup>th</sup> Avenue, San Diego. Plaintiffs are informed and  
7 believe and thereon allege that Defendant 'F' STREET CORPORATION  
8 is the owner, operator, and/or lessor of the 'F' STREET - SAN  
9 DIEGO, 'F' STREET - EL CAJON and 'F' STREET - CHULA VISTA, 'F'  
10 STREET - DOWNTOWN. Defendant 'F' Corporation is located at 2004  
11 University Avenue, San Diego, California, 92104. Plaintiffs are  
12 informed and believe and thereon allege that Defendants ALMA R.  
13 VASIC TRUST 12-16-97; SMNS & CLARK WILLIAM R, TRUSTEE; ALMA R.  
14 VASIC; THE ALMA R VASIC GRANTOR RETAINED ANNUIT are the owners,  
15 operators, and/or lessors of the property located at 2004  
16 University Ave, San Diego, California, Assessor Parcel Number 445-  
17 672-14, 158 Main Street, El Cajon, California, Assessor Parcel  
18 Number 488-083-17, 1141 3<sup>rd</sup> Avenue, Chula Vista, California,  
19 Assessor Parcel Number, 619-121-11-00. Defendants ALMA R. VASIC  
20 TRUST 12-16-97; SMNS & CLARK WILLIAM R, TRUSTEE; ALMA R. VASIC;  
21 THE ALMA R VASIC GRANTOR RETAINED ANNUIT are located at 2004  
22 University Ave, San Diego, California. The words "Plaintiffs" and  
23 "Plaintiff" as used herein specifically include the ORGANIZATION  
24 FOR THE ADVANCEMENT OF MINORITIES WITH DISABILITIES, ORGANIZATION  
25 FOR THE ADVANCEMENT OF MINORITIES SUING ON BEHALF OF DAVID  
26 SINGLETARY, its Members, DAVID SINGLETARY, and persons associated  
27 with its Members who accompanied Members to Defendants'

1 facilities. The words "Plaintiff's Member" and "Plaintiff's  
2 Member" as used herein specifically include ORGANIZATION FOR THE  
3 ADVANCEMENT OF MINORITIES SUING ON BEHALF OF DAVID SINGLETARY, its  
4 Members, DAVID SINGLETARY, and persons associated with its Members  
5 who accompanied Members to Defendants' facilities.

6 4. Defendants Does 1 through 10, were at all times relevant  
7 herein subsidiaries, employers, employees, agents, of 'F' STREET  
8 CORPORATION; 'F' STREET - SAN DIEGO; 'F' STREET - EL CAJON; 'F'  
9 STREET - DOWNTOWN; 'F' STREET - CHULA VISTA; ALMA R. VASIC TRUST  
10 12-16-97; SMNS & CLARK WILLIAM R, TRUSTEE; ALMA R. VASIC; THE ALMA  
11 R VASIC GRANTOR RETAINED ANNUIT. Plaintiffs are ignorant of the  
12 true names and capacities of Defendants sued herein as Does 1  
13 through 10, inclusive, and therefore sues these Defendants by such  
14 fictitious names. Plaintiffs will pray leave of the court to  
15 amend this complaint to allege the true names and capacities of  
16 the Does when ascertained.

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

26  
27 **CONCISE SET OF FACTS**

28 6. ORGANIZATION FOR THE ADVANCEMENT OF MINORITIES WITH

1 DISABILITIES was formed to advocate for the civil rights of  
2 minorities with disabilities; a substantial population with  
3 neither an advocate nor voice in the disability movement. It is  
4 well documented by the federal government and others that the  
5 promises and opportunities afforded by the Americans with  
6 Disabilities Act are not reaching minorities with disabilities.  
7 Further, there is abundance of evidence to show, despite the  
8 federal government's unprecedented and aggressive ADA awareness  
9 and technical assistance drive, businesses in the minority  
10 communities are not complying with the ADA. For example, the  
11 National Council on Disability reported in 1993 that minorities  
12 with disabilities face double discrimination; they are poorer;  
13 they have fewer opportunities than others. Also, the fastest  
14 growing segment of the disability population is from minority  
15 communities because those communities are growing faster than the  
16 Anglo communities, and because persons from minority communities  
17 have a higher risk of disability. In fact, studies show the rate  
18 of disability for Whites is 7%, for African-American 13%, and for  
19 Hispanics 9%. Moreover, from 1983 to 1994 the disability non-  
20 White population increased by 50.4% whereas the disability White  
21 population only increased 11.3%. Even more intriguing is the non-  
22 White 18 years older and under population rate of disability  
23 increased by 86.6%. Further, evidence suggests minorities with  
24 disabilities tend to live with their families in conditions of  
25 poverty (61%), and they tend not to advocate for their civil  
26 rights.  
27

28 7. Hence, Members of ORGANIZATION FOR THE ADVANCEMENT OF

1 MINORITIES WITH DISABILITIES specifically intend to zealously  
2 advocate for minorities with disabilities and desire equal access  
3 to businesses within their community; and these are the reasons  
4 Plaintiffs filed this action.

5 8. Plaintiff's Member and Plaintiff DAVID SINGLETARY has a  
6 physical impairment and due to this impairment he has learned to  
7 successfully operate a wheelchair.

8 9. Plaintiff's Member and Plaintiff DAVID SINGLETARY went to  
9 Defendants' facilities to utilize their goods and/or services as  
10 follows: 'F' STREET - SAN DIEGO on January 21, 2002 where he had  
11 difficulty with parking, entrance door, counter, viewing rooms, and  
12 restroom; 'F' STREET - EL CAJON on January 29, 2002 where he had  
13 difficulty with entrance door, path of travel, viewing rooms and  
14 restrooms; 'F' STREET - DOWNTOWN on February 6, 2002 where he had  
15 difficulty with entrance and restrooms; 'F' STREET - CHULA VISTA  
16 on February 9, 2002 where he had difficulty with parking,  
17 entrance, ramp, and restroom. Further, he had difficulty these  
18 facilities within these businesses because they failed to comply  
19 with ADAAG and/or California's Title 24 Building Code  
20 Requirements.

21 10. Defendants failed to remove obstructions in the parking,  
22 entrance door, counter, viewing rooms, path of travel, ramp and  
23 restroom facilities in Defendants' establishment.

24 11. Plaintiff's Member and Plaintiff DAVID SINGLETARY personally  
25 experienced difficulty with said access barriers as follows:

26 **'F' STREET - SAN DIEGO**

27 12. There is not a designated van accessible space; the  
28



1 requirement is for one in every eight spaces, but not less than  
2 one, to be van accessible and served by an access aisle 8 foot  
3 wide by 18 foot long painted on the passenger side of the vehicle.  
4 The Designated Accessible Space does not have appropriate signage;  
5 the requirement is to provide appropriate signage permanently  
6 posted immediately adjacent to and visible from each stall or  
7 space. This reflectorized sign must consist of a profile view of  
8 a wheelchair with an occupant in white on a dark blue background  
9 and when appropriate will have additional signage stating "van  
10 accessible" mounted below the symbol of accessibility.

11 The Stairs do not have non-skid material on the steps; the  
12 requirement is to provide a strip of non-skid material at each  
13 riser. The Stairs do not have striping for the visually impaired;  
14 the requirement for stairs *outside* a building is for the upper  
15 approach and all treads to be marked by a two-inch strip of  
16 clearly contrasting color.

17  
18 12. The metal frame area at the bottom of the door does not have  
19 proper clearance; the requirement is for the bottom 10 inches of  
20 all doors (except automatic and sliding) to have a smooth,  
21 uninterrupted surface to allow the door to be opened by a  
22 wheelchair footrest without creating a trap or hazardous  
23 condition.

24 13. There is a loose mat on the exterior and interior side of the  
25 door; the requirement is for loose mats to be secured on all four  
26 sides or be removed. The register counter is too high; the  
27 requirement is to provide a lowered section of the counter that is  
28 a maximum of 34 inches in height for a length of 36 inches. The

1 display counters appear is too high; the requirement is to provide  
2 a lowered section of the counter that is a maximum of 34 inches in  
3 height for a length of 36 inches. The route of travel throughout  
4 the store is less than 36 inches in some areas; the requirement is  
5 to provide a 36-inch route of travel. The Stairs to the Regular  
6 Viewing Rooms do not have handrails. As to the Regular Viewing  
7 Rooms, the door appears to be too narrow; the requirement is for a  
8 clear width opening of 32 inches when the door is opened to a 90  
9 degree angle. The exterior and interior hardware requires tight  
10 grasping and twisting of the wrist to operate; the requirement is  
11 to provide hardware that does not require tight grasping or  
12 twisting of the wrist to operate. As to the restrooms, there is  
13 inappropriate insulation on the drain or hot water pipes of the  
14 sink to protect against contact; the requirement is to provide  
15 appropriate insulation. The bottom edge of the reflecting surface  
16 on the mirror is mounted too high at an estimated 42 inches; the  
17 maximum allowable height is 40 inches from the finished floor.  
18 The soap dispenser is mounted with the operable parts too high at  
19 an estimated 42 inches; the requirement is for fixtures to be  
20 mounted with all operable parts at a maximum of 40 inches from the  
21 finished floor. The toilet paper is mounted too far forward from  
22 the toilet; the requirement is for the toilet tissue to be mounted  
23 below the grab bar within 12 inches of the front lip of the  
24 toilet.

25  
26 **'F' STREET - EL CAJON**

27 14. There is a lack of signage on the doors or in the windows  
28 indicating that this facility is accessible; this is a

1 requirement. There is not level landing on the exterior side of  
2 the door; the requirement is for a level landing 60 inches in  
3 length in the direction of the door swing. The metal frame area at  
4 the bottom of the door does not have proper clearance. There is a  
5 loose mat on the exterior side of the door; the requirement is for  
6 loose mats to be secured on all four sides or be removed.

7 There is a lowered section of the reception counter, but it is not  
8 long enough; the requirement is for a clear space a minimum of 36  
9 inches in length. The route of travel throughout the store is less  
10 than 36 inches in some areas; the requirement is to provide a 36-  
11 inch route of travel. As to the Accessible Viewing Room, the  
12 exterior hardware requires tight grasping and twisting of the  
13 wrist to operate; the requirement is to provide hardware that does  
14 not require tight grasping or twisting of the wrist to operate.

15  
16 15. As to the Regular Viewing Rooms, the door is too narrow in  
17 width; the requirement is for a clear width opening of 32 inches  
18 when the door is opened to a 90 degree angle. The exterior  
19 hardware requires tight grasping to operate. As to the Restrooms,  
20 the exterior and interior door lock requires tight grasping and  
21 twisting of the wrist to operate. There is inappropriate  
22 insulation on the drain or hot water pipes of the sink to protect  
23 against contact. The Toilet Stall flush valve mechanism on the  
24 toilet is mounted on the wrong side; the requirement is for the  
25 flush valve mechanism to be mounted on the wide side of the toilet  
26 areas no more than 44 inches above the finished floor.

27 **'F' STREET - DOWNTOWN**

28 16. There is not a level landing on the exterior side of the

1 door. There is an estimated 1½ inch beveled threshold; the  
2 requirement is a maximum of ½ inch with a beveled edge or ¼ inch  
3 not beveled. The interior hardware requires tight grasping to  
4 operate. Plaintiff had difficulty with restrooms.

5 **'F' STREET - CHULA VISTA**

6 17. The Designated Accessible Space (Van) has a slope that is in  
7 excess of 2%; the requirement is to provide the minimum surface  
8 slope possible, not to exceed a 2% slope in any direction.

9 18. As to the front door, the metal frame area at the bottom of  
10 the door does not appear to have the proper clearance. The door  
11 appears to require too much force to open; the requirement is a  
12 maximum of 8.5 lbf (for exterior doors).

13 19. There is a loose mat on the exterior side of the door.

14 As to the rear door, the exterior hardware requires tight grasping  
15 to operate.

16 20. The register counter is too high at an estimated 53 inches.  
17 The route of travel throughout the store is less than 36 inches in  
18 some areas.

19 21. The ramp to the DVD rental area appears to be too steep; the  
20 requirement is for the slope of a ramp to be no more than 8.33%.  
21 This ramp exceeds 5% and does not have handrails; the requirement  
22 is for all slopes exceeding 5% to have appropriate handrails.

23 22. As to the restrooms, the ADA signage is posted where the  
24 Title 24 signage should be; the requirement is to provide ADA  
25 signage to be mounted at 60 inches to the center (of the sign) on  
26 the latch side of the door. There is not any Title 24 signage;  
27 the requirement is to provide Title 24 signage to be mounted at 60  
28

1 inches to the center (of the sign) from the floor in the middle of  
2 the door.

3 23. There is inappropriate insulation on the drain or hot water  
4 pipes of the sink to protect against contact.

5  
6 24. Based on these facts, Plaintiffs allege Plaintiff's Member  
7 and Plaintiff DAVID SINGLETARY was discriminated against each time  
8 he patronized Defendants' establishments.

9 25. Pursuant to federal and state law, Defendants are required  
10 to remove barriers to their existing facilities. Further,  
11 Defendants had actual knowledge of their barrier removal duties  
12 under the Americans with Disabilities Act and the Civil Code  
13 before January 26, 1992. Also, Defendants should have known that  
14 individuals with disabilities are not required to give notice to a  
15 governmental agency before filing suit alleging Defendants failed  
16 to remove architectural barriers. Plaintiffs believes and herein  
17 allege Defendants' facilities have access violations not directly  
18 experienced by Plaintiff's Member and Plaintiff DAVID SINGLETARY  
19 which preclude or limit access by others with disabilities,  
20 including, but not limited to, 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.  
28

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

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

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

11 27. 'F' STREET CORPORATION; 'F' STREET - SAN DIEGO; 'F' STREET  
12 - EL CAJON; 'F' STREET - DOWNTOWN; 'F' STREET - CHULA VISTA are  
13 the commercial tenants of the subject property. SMNS & CLARK  
14 WILLIAM R, TRUSTEE; ALMA R. VASIC; THE ALMA R VASIC GRANTOR  
15 RETAINED ANNUIT are the commercial landlords of the subject  
16 property.

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

19 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

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

1 leased and/or operated by Defendants.

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

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

16 32. In addition, Plaintiff's Member and Plaintiff DAVID  
17 SINGLETARY cannot perform one or more of the said major life  
18 activities in the manner, speed, and duration when compared to the  
19 average person. Moreover, Plaintiff's Member and Plaintiff DAVID  
20 SINGLETARY has a history of or has been classified as having a  
21 physical impairment as required by 42 U.S.C. § 12102(2)(A).  
22

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

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

1 Defendants failed to remove barriers as required by 42 U.S.C. §  
2 12182(a). Plaintiffs are informed and believe, and thus allege  
3 that architectural barriers which are structural in nature exist  
4 at the following physical elements of Defendants' facilities:  
5 Space Allowance and Reach Ranges, Accessible Route, Protruding  
6 Objects, Ground and Floor Surfaces, Parking and Passenger Loading  
7 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts  
8 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains  
9 and Water Coolers, Water Closets, Toilet Stalls, Urinals,  
10 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and  
11 Controls and Operating Mechanisms, Alarms, Detectable Warnings,  
12 Signage, and Telephones.

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

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

26 35. Based on the facts plead at ¶¶ 6-26 above and elsewhere in  
27 this complaint, Defendants failed and refused to provide a  
28 reasonable alternative by modifying its practices, policies and



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

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

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

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

13 37. Based on the facts plead at ¶¶ 6-26 above and elsewhere in  
14 this complaint, Plaintiff's Member and Plaintiff DAVID SINGLETARY  
15 was denied full and equal access to Defendants' goods, services,  
16 facilities, privileges, advantages, or accommodations within a  
17 public accommodation owned, leased, and/or operated by Defendants  
18 as required by Civil Code Sections 54 and 54.1. Defendants'  
19 facility violated California's Title 24 Accessible Building Code  
20 by failing to provide access to Defendants' facilities due to  
21 violations pertaining to the 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 38. These violations denied Plaintiff's Member and Plaintiff  
3 DAVID SINGLETARY full and equal access to Defendants' facility.  
4 Thus, said Member and Plaintiff DAVID SINGLETARY was subjected to  
5 discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because  
6 Plaintiffs were denied full, equal and safe access to Defendants'  
7 facility, causing severe emotional distress.

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

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

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

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

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

1 41. Defendants, each of them, at times prior to and including  
2 during the months of January and February, 2002, respectively, and  
3 continuing to the present time, knew that persons with physical  
4 disabilities were denied their rights of equal access to all  
5 portions of this public facility. Despite such knowledge,  
6 Defendants, and each of them, failed and refused to take steps to  
7 comply with the applicable access statutes; and despite knowledge  
8 of the resulting problems and denial of civil rights thereby  
9 suffered by Plaintiff's Member and Plaintiff DAVID SINGLETARY and  
10 other similarly situated persons with disabilities. Defendants,  
11 and each of them, have failed and refused to take action to grant  
12 full and equal access to persons with physical disabilities in the  
13 respects complained of hereinabove. Defendants, and each of them,  
14 have carried out a course of conduct of refusing to respond to, or  
15 correct complaints about, denial of disabled access and have  
16 refused to comply with their legal obligations to make the subject  
17 facilities accessible pursuant to the Americans With Disability  
18 Act Access Guidelines (ADAAG) and Title 24 of the California Code  
19 of Regulations (also known as the California Building Code). Such  
20 actions and continuing course of conduct by Defendants, and each  
21 of them, evidence despicable conduct in conscious disregard of the  
22 rights and/or safety of Plaintiff's Member and Plaintiff DAVID  
23 SINGLETARY and of other similarly situated persons, justifying an  
24 award of treble damages pursuant to sections 52(a) and 54.3(a) of  
25 the California Civil Code.  
26

27 42. Defendants', and each of their, actions have also been  
28 oppressive to persons with physical disabilities and of other

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

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

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

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

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

26 46. Defendants failed to remove obstructions in the parking,  
27 entrance door, counter, viewing rooms, and restroom of Defendants'  
28 establishments. Pursuant to federal law, Defendants are required

1 to remove barriers to their existing facilities. Title III of the  
2 Americans With Disabilities Act requires places of public  
3 accommodation to remove architectural barriers that are structural  
4 in nature to existing facilities. [42 United States Code  
5 12182(b)(2)(A)(iv).] Failure to remove such barriers and  
6 disparate treatment against a person who has a known association  
7 with a person with a disability are forms of discrimination. [See  
8 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff's  
9 Member and Plaintiff DAVID SINGLETARY was subjected to  
10 discrimination in violation of 42 United States Code  
11 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member and  
12 Plaintiff DAVID SINGLETARY was denied equal access to Defendants'  
13 existing facilities. Also, Defendants' facilities failed to  
14 provide full and equal access to Defendants' facility as required  
15 by 42 U.S.C. § 12182(a). Thus, Plaintiff's Member and Plaintiff  
16 DAVID SINGLETARY was subjected to discrimination in violation of  
17 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188  
18 because Plaintiff's Member and Plaintiff DAVID SINGLETARY was  
19 denied equal access to Defendants' existing facilities.  
20 Additionally, as a result of said access barriers, Defendants  
21 failed and refused to provide a reasonable alternative by  
22 modifying its practices, policies and procedures in that they  
23 failed to have a scheme, plan, or design to assist Plaintiff's  
24 Member and Plaintiff DAVID SINGLETARY and/or others similarly  
25 situated in entering and utilizing Defendants' services, as  
26 required by 42 U.S.C. § 12188(a). Thus, said Member and Plaintiff  
27 DAVID SINGLETARY was subjected to discrimination in violation of  
28

1 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188  
2 because said Member and Plaintiff DAVID SINGLETARY was denied  
3 equal access to Defendants' existing facilities.

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

1 Plaintiff DAVID SINGLETARY and persons similarly situated in  
2 violation of Civil Code §§ 51, 52, and 54.1. Further, Defendants  
3 had actual knowledge of their barrier removal duties under the  
4 Americans with Disabilities Act, the California Civil Code, and  
5 the California Health & Safety Code before January 26, 1992.  
6 48. Business and Professions Code section 17200 defines "unfair  
7 competition" and prohibited activities as, ". . . **any unlawful,**  
8 **unfair or fraudulent business act or practice** and unfair,  
9 deceptive, untrue or misleading advertising and any act prohibited  
10 by Chapter 1 (commencing with Section 17500) of Part 3 of Division  
11 7 of the Business and Professions Code." (emphasis added).  
12 Defendants' acts and omissions alleged herein are violations of  
13 the above-enumerated federal and state statutory requirements and  
14 public policy and therefore constitute unfair competition and/or  
15 prohibited activities as such violations are *unlawful, unfair or*  
16 *fraudulent business acts or practices*. Defendants' alleged  
17 unlawful, unfair, or fraudulent business acts or practices are  
18 specifically prohibited by the specific introductory language of  
19 B&P section 17200 that is stated in the conjunctive.  
20 Consequently, Plaintiffs allege that Defendants' acts and  
21 omissions constitute a violation specifically of this section  
22 17200 of the Business and Professions Code.  
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

1 Defendants' facilities during the time period that the subject  
2 premises have been in violation of the disabled access laws of the  
3 State of California.

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

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

11 FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS- Negligence

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

26 53. Title III of the ADA mandates removal of architectural  
27 barriers and prohibits disability discrimination. As well,  
28



1 Defendants' facility, and other goods, services, and/or facilities  
2 provided to the public by Defendants are not accessible to and  
3 usable by persons with disabilities as required by Health and  
4 Safety Code § 19955 which requires private entities to make their  
5 facility accessible before and after remodeling, and to remove  
6 architectural barriers on and after AB 1077 went into effect.

7 54. Therefore, Defendants engaged in discriminatory conduct in  
8 that they failed to comply with known duties under the ADA, ADAAG,  
9 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or  
10 should have known that their acts of nonfeasance would cause  
11 Plaintiff's Member and Plaintiff DAVID SINGLETARY emotional,  
12 bodily and personal injury. Plaintiffs further allege that such  
13 conduct was done in reckless disregard of the probability of said  
14 conduct causing Plaintiff's Member and Plaintiff DAVID SINGLETARY  
15 to suffer bodily or personal injury in the form of **a strained back**  
16 **and legs**, anger, embarrassment, depression, anxiety,  
17 mortification, humiliation and distress. Plaintiffs allege that  
18 such conduct caused Plaintiffs' Member and Plaintiff to suffer the  
19 injuries of mental and emotional distress, including, but not  
20 limited to, anger, embarrassment, depression, anxiety,  
21 mortification, humiliation, distress, and fear of physical injury.

22 Plaintiffs additionally allege that such conduct caused  
23 Plaintiff's Member and Plaintiff DAVID SINGLETARY to suffer  
24 damages as a result of these injuries.  
25

26 DEMAND FOR JUDGMENT FOR RELIEF:

27 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,  
28

1 3281, and 3333;

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

5 C. In the alternative to the damages pursuant to Cal. Civil  
6 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to  
7 Cal. Civil Code § 54.3 for each and every offense of Civil Code §  
8 54.1, Title 24 of the California Building Code, ADA, and ADA  
9 Accessibility Guidelines;  
10

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

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

27 G. For Restitution pursuant to Business and Professions section  
28

1 17200;

2 H. A Jury Trial and;

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

4

5 Respectfully submitted:

6

PINNOCK & WAKEFIELD

7

8 Dated: January 16, 2003

9

By: \_\_\_\_\_

10

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

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

DEFENDANTS

F' STREET CORPORATION; F' STREET - SAN DIEGO; F' STREET - EL CAJON; F' STREET - DOWNTOWN; F' STREET - CHULA VISTA; ALMA R. VASIC TRUST 12-16-97; SMNS & CLARK WILLIAM R, TRUSTEE; ALMA R. VASIC; THE ALMA R VASIC GRANTEE RETAINED ANNUIT

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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 San Diego (IN U.S. PLAINTIFF CASES ONLY)

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

(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 00135H (LSP)

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

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

- 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)

- PT DEF Citizen of This State
PT DEF Citizen of Another State
PT DEF Citizen or Subject of a Foreign Country
1 Incorporated or Principal Place of Business in This State
2 Incorporated and Principal Place of Business in Another State
3 Foreign Nation
4
5
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, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, 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

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 and number: 090646 \$150.00

Handwritten signature