

PREVIEWS

Information for the California and Nevada Motion Picture Theatre Industry

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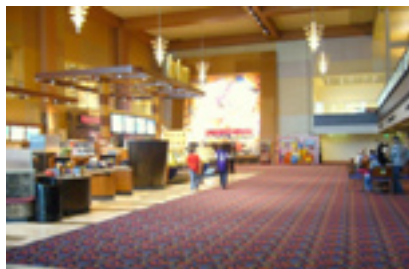
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NATO of CA/NV Summer/Fall Film Product Seminar Set for April

NATO of CA/NV is happy to announce that Regal Entertainment Group's Edwards Long Beach 26 Stadium Theatre will be the setting for the Tuesday, April 13th Southern California 2010 Summer/Fall Film Product Seminar and the Northern California seminar will be hosted by Cinemark at the Century San Francisco Centre 9 Theatre on Thursday, April 15th.

The slate of presenters has expanded further as more studios have signed on to participate. The Marketing Representatives will introduce their upcoming slates for Summer through Fall, 2010 at their formal presentations and will be on hand during the Continental breakfast, lunch and other breaks to meet and mingle with the Association's members

Registration is available to members only and must be made online at the Seminars and Meetings section of the NATO of CA/NV web site at



Pictured above are the spacious lobby of Cinemark's Century San Francisco Centre 9 Theatre and REG Edwards Long Beach 26 Theatre

www.NATOCalNev.org Once there just click on the link to the registration form. Should you have any questions regarding the registration process contact the NATO of CA/NV office and ask to speak with Charlene Sievers. Attendance is limited to employees of member companies, with a limit of two guests per theatre location. There is no charge, but reservations are a must, no walk-ins will be admitted, and no-shows will incur a \$25.00 charge.

Mark your calendars now and visit the Seminars and Meetings section of our web site at www.NATOCalNev.org to register. Registration will close at midnight on Friday, March 26th, no exceptions.

Don't miss the deadline! 2010 Scholarship Applications Are Due on March 12th

All applications for one of twenty \$7,500.00 awards from the 2010 NATO of California/Nevada Scholarships Program *must be postmarked or delivered to the NATO of California/Nevada office by Friday, March 12th*, no exceptions.

The awards are available for secondary or vocational education to qualifying employees of NATO of CA/NV member companies. Visit the scholarship section at www.NATOCalNev.org for more information, or ask for Charlene Sievers at the NATO of CA/NV office at 310/460-2900 with any questions



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Final Lecture in History of Exhibition Series

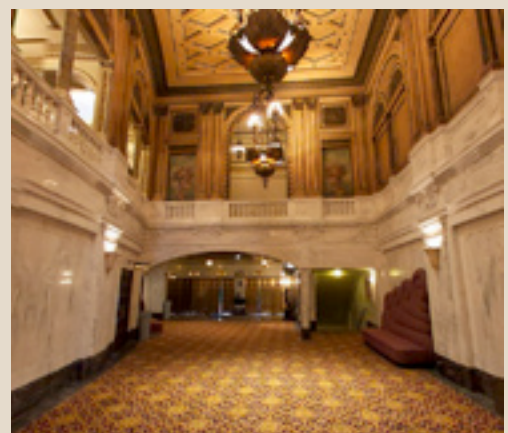
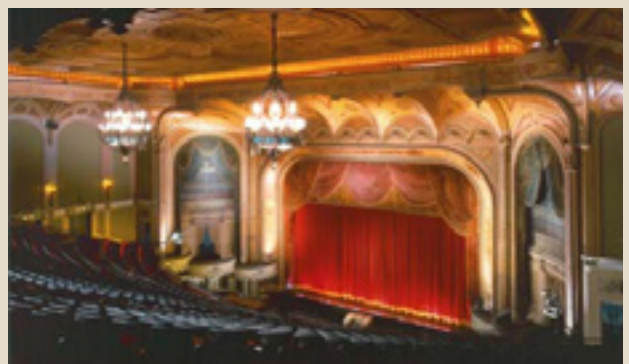
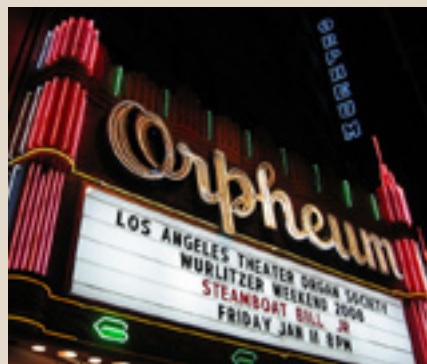
will take place at
The Orpheum Theatre
on **Tuesday, March 9th**

***“Megaplexes, Alternative Content,
and the Digital Age”***

will cover **1995 to the present**

The Orpheum Theatre in downtown Los Angeles has been restored to its original 1926 opening luster. A personal tour of the theatre by its current owner, Mr. Steve Needleman, will precede the lecture by Dr. Ross Melnick.

A limited number of spaces have become available for this final lecture, however attendance is by reservation only. Reservations will be accepted on a first-come, first-served basis. If interested email your name, company affiliation and daytime phone number to office@NATOCalNev.org by 5:00pm on Monday, March 8th.



A New Tool in Defending Access Claims: The Jankey v Lee Opinion on Defendant's Right to Recovery Fees

by Gregory F. Hurley, Principal Shareholder, Greenberg Traurig



California businesses spend more than \$20M a year defending claims for disabled access brought under the ADA and state law. Much of that litigation is fueled by the easy availability of attorneys' fees for the plaintiff. Under Ninth Circuit Federal case law a plaintiff that can establish a violation can recover their fees (as well as a multiplier on those fees.) However, the defendant business had to show that the claim was "frivolous" to recover defense fees. The double standard for the recovery of fees is not only inequitable, it appears to be contrary to the plain language of the California statutes.

The ADA provides that for a defendant business to recover fees from a plaintiff that the business must meet the high standard of showing that the plaintiff's case was frivolous. Congress considered double standard fair under the ADA since "the ADA does not allow for the recovery of damages". However, in California these cases are also brought under California statutes that provide for a minimum of \$4,000 per incident for damages for these ADA plaintiffs. The reason that California businesses spend \$20M a year defending access claims that are unknown in other states is this damage bounty offered under California law. As part of their state law claims many of these plaintiffs include a claim for injunctive relief under California's Disabled Persons Act (Civil Code Section 54, et. Seq.) California's Disabled Persons Act in section 55 clearly provides that the prevailing party *shall* recover fees.

When we prevailed for the businesses in these claims we would point out to the Court that the plaintiff had sued under section 55 of California's Disabled Persons Act, and that we were the prevailing party, which provides that we *shall* get our fees spent in defending the action. For several years we were able to recover our fees, and successfully use the threat of those fees to settle and deter meritless claims. Then in *Summers v. A. Teichert & Son, Inc.* (9th Cir. 1997) 127 F.3d 1150, 1154, and *Hubbard II* (554 F.3d at p. 744) the Ninth Circuit held that a California statute that allowed a prevailing defendant to recover their fees was preempted by the federal ADA statute. While many judges disagreed with the Ninth Circuit re-writing the plain language of California law, most felt compelled to follow that guidance. That changed with the new *Jankey* opinion by the California Court of Appeal last month.

These are the facts of *Jankey v. Lee*: Les Jankey, a person with a disability brought an action against Song Koo Lee, the owner of K & D Market, a small grocery/liquor store in San Francisco's

Mission District. The suit alleges that Lee discriminated against Jankey because architectural barriers denied him entry to the market. Jankey's action sought causes of action for injunctive relief pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq. (ADA)) and the California Disabled Persons Act (Civ. Code, § 54 et seq. (CDPA)). The court entered summary judgment on all causes of action for Lee. The business owner Lee recovered attorney fees in the amount of \$118,458.

In ruling on the fee motion, the parties disagreed whether the trial court should apply the Ninth Circuit's decision in *Hubbard*, supra, 554 F.3d 742, or the California appellate court's decision in *Molski v. Arciero Wine Group* (2008) 164 Cal.App.4th 786 (*Molski*). In *Hubbard*, the federal court used preemption principles to require a prevailing defendant, seeking an award of attorney fees under Section 55, to show that the disabled plaintiff's claims were frivolous, unreasonable, or groundless. (*Hubbard*, supra, at pp. 746-747.) In *Molski* the California Court of Appeal held that attorney fees were automatically available to a prevailing defendant under Section 55, notwithstanding that the disabled plaintiff's claims could not be characterized as frivolous. (*Molski*, supra, 164 Cal.App.4th at p. 791.). Unfortunately, *Molski* did not analyze or address the *Hubbard* opinion, so most courts faced with the question of whether a defendant could get their attorneys' fees felt obligated to follow the Federal *Hubbard* opinion, which reviewed and disregarded the *Molski* analysis. Until the new *Jankey* opinion, *Hubbard* was considered the last word.

The court in *Jankey v Lee* determined that the *Molski* court's analysis controlled, and that Lee was entitled to a mandatory award of attorney fees under Section 55. The court made no finding on whether Jankey's lawsuit could be characterized as frivolous. The court awarded Lee \$118,458 in attorney fees and \$3,544.54 in costs. The California Court of Appeals upheld this stating: "We respectfully disagree with the *Hubbard II* court's preemption analysis, and conclude that attorney fees were properly awarded to Lee as a prevailing defendant under Section 55. We further find that the amount of attorney fees and costs was well within the trial court's discretion. Consequently, we affirm."

IMPLICATIONS

It would appear that after *Jankey* that California state trial courts will now allow businesses that defeat claims under Civil Code Section 55 to recovery their attorneys' fees. While

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the federal trial courts will not. How this plays out in practice will be interesting. But for now we have a new tool to discourage and curb many non- meritorious access claims.

Mr. Hurley is a principal shareholder and chair of the litigation department for GT's Orange County office. He can be reached at Hurleyg@GTLaw.com or (949) 732- 6614. He specializes in defending class action claims under the ADA and state civil rights laws. He is a 2009 Southern California Super Lawyer and was named one of Southern California's "Best Lawyers" by the LA Times. Greenberg Traurig is an international law firm with more than 1800 lawyers in 36 U.S. and international offices.

ShoWest 2010 Events of Note

as of Thursday, March 4, 2010

(Please refer to the official ShoWest program for the complete events schedule)

Monday, March 15 th	
Time	Event and Venue
1:00 pm	Opening Day Luncheon, "A Virtual Look at ShoWest 2010" <i>Paris Ballroom, Paris Hotel</i>
3:00 pm	Seminar: "Exhibition Speaks Out: New Challenges and Best Practices" <i>Le Theatre Des Arts, Paris Hotel</i>
6:00 pm	An Evening of Independent Film <i>Cinemark Orleans18 Theatres, Orleans Hotel</i>
Tuesday, March 16 th	
Time	Event and Venue
9:15 am	ShoWest 2010 Opening Ceremonies and a Salute to the \$100 Million Films of 2009 <i>Le Theatre Des Arts, Paris Hotel</i>
10:45 am & 11:15 am	Screening of Disney/Pixar's "Toy Story 3" <i>Jubilee Theatre, Bally's Hotel & Le Theatre Des Arts, Paris Hotel</i>
1:00 pm	Lunch Hosted by Walt Disney Studios and masterImage 3-D <i>Paris Ballroom, Paris Hotel</i>
2:00 pm	ShoWest Trade Show Opens <i>Grand Ballroom and Events Center, Bally's Hotel</i>
2:00 pm	ShoWest University Topic: Theatre & Booth Preparation for Digital Cinema <i>Las Vegas Ballroom #1, South Tower, Bally's Hotel</i>
3:30 pm	ShoWest University Topic: "Increase Profits Through Menu Expansion and Renovation" <i>Las Vegas Ballroom #1, South Tower, Bally's Hotel</i>
6:00 pm	Screening of Summit Entertainment "Letters to Juliet" <i>Le Theatre Des Arts, Paris Hotel</i>
8:00 – 10:00 pm	Dinner Reception Hosted by Summit Entertainment <i>Champagne Ballroom, Paris Hotel</i>

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Wednesday, March 17 th	
Time	Event and Venue
7:45 am	ShoWest Breakfast Presentation of Marketing Achievement Awards followed by a Marketing Panel discussion “Marketing A Film on The Grass Roots Level: Exhibition and Distribution Share Their Thoughts” <i>Champagne Ballroom, Paris Hotel</i>
9:45 am	Seminar: Topic: “Green Screen: Environmental Advances In the World of Cinema” <i>Le Theatre Des Arts, Paris Hotel</i>
10:00 am	ShoWest University Mini-Trade Show featuring “Accessibility Products for Digital Cinema” <i>Las Vegas Ballroom #1, South Tower, Bally’s Hotel</i>
11:30 am	Technicolor 3D Demonstration Solution for 35mm Projectors <i>Jubilee Theatre, Bally’s Hotel</i>
12:30 pm	Lunch Sponsored by Sony Entertainment <i>Paris Ballroom, Paris Hotel.</i>
2:45 pm & 3:15 pm	Sony Entertainment Screening (Title to be announced) <i>Le Theatre Des Arts, Paris Hotel & Jubilee Theatre, Bally’s Hotel</i>
6:00 - 8:00 pm	Dinner Hosted by Lionsgate
8:30 pm	Screening of Lionsgate’s “Kick-Ass” <i>Le Theatre Des Arts, Paris Hotel</i>
Thursday, March 18 th	
Time	Event and Venue
10:00 am & 10:15 am	Screening of CBS Films’ “The Back-up Plan” <i>Le Theatre Des Arts, Paris Hotel & Jubilee Theatre, Bally’s Hotel</i>
12:15 pm	Luncheon Hosted by CBS Films <i>Paris Ballroom, Paris Hotel</i>
2:00 pm	Warner Bros. Presents “The Big Picture 2010” <i>Le Theatre Des Arts, Paris Hotel & Jubilee Theatre, Bally’s Hotel</i>
4:15 pm & 4:30 pm	Screening of Walt Disney Pictures’ and Jerry Bruckheimer Films’ “Prince of Persia: The Sands of Time” <i>Le Theatre Des Arts, Paris Hotel & Jubilee Theatre, Bally’s Hotel</i>
7:30 pm	Final Night Banquet and Awards Ceremony <i>Paris Ballroom, Paris Hotel</i>

Now playing at local theaters - Dinner with your movie

Dinner and a movie - you can do both under one roof at a few local theaters. And we're talking about casual upscale fare, not popcorn, candy and hot dogs.

Food in theaters is not new, notes Patrick Corcoran, director of media and research, National Association of Theatre Owners, in North Hollywood.

A wide range of food like pizza, chicken fingers and beer has been popular for years at cinema pubs in Texas and the Northeast.

"One of the things that led to an increase in the number of movie theaters offering food service was that beginning in the mid-'90s (all) movie theaters were able to get and show first-run films (not available before)."

The studios thought food service would detract from the experience of seeing the movie and would cut into ticket sales, Corcoran says. What happened was just the opposite. Now you're seeing all kinds of variations on the food or dinner-and-a-movie theme.

"In the future I think you will see more of this," he adds. "A couple of the larger movie chains, Regal and AMC, are experimenting with in-theater food service ... in other parts of the county. Regal's concept is called Cinebarre and AMC's program is labeled Fork & Screen."

Movie theater attendance was up 5.4 percent in 2009 over 2008 while the dollar amount of box office tickets was up 10.1 percent. Corcoran notes that movies have done well in these tough economic times because "people have turned to lower-cost options for entertainment - and movie theaters are the least expensive form of out-of-home entertainment. Also, the movies were more attractive to people this past year."

Some of these dinner-and-a-movie concepts have moved into the L.A. market. Enter Gold Class Cinemas in Pasadena, Muvico in Thousand Oaks, ArcLight Hollywood and Sherman

Oaks and The Bridge: Cinema de Lux near Los Angeles International Airport

Here's what they offer.

GOLD CLASS CINEMAS

Opened in December in Pasadena, the menu here offers about 35 selections ranging in price from \$8 (beignets) to \$19 (strip steak sandwich). Table service is available in a lounge or bar lobby area (reminiscent of a nice bar or hotel lobby) prior to entering one of the six theaters with 24-40 seats. Or the food can be served during the film by a waiter. Oval tables have been placed between two or four comfortable luxury, recliner seats in the auditoriums.

The experience, although convenient, isn't inexpensive. But then neither is dining at some chic restaurants.

"This is something everyone can afford really," says Mark Mulcahy, vice president of marketing. You can get out of Gold Class for the same amount of money that it'll cost if you go to a traditional multiplex and a casual upscale restaurant.

"The only difference is that you'll save time and have a better and more relaxing experience," he adds.

You park in one place and don't have to rush through a meal. You pay the bill after the movie.

"This is dinner and a movie under one roof and it is the ultimate escape for the serious movie lover. Our customers, ranging in age from 18 to 60, often compare this to flying first class," says Mulcahy.

Movie tickets are \$22 each on weekdays (and anytime if you're a Gold Class member; no fee to join) or \$29 each on weekends (Friday-Sunday nights). Advance ticket purchase is recommended.

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Dinner With Your Movie, continued from page 5

An average of \$24 per person is spent for food and beverage. Food is freshly made in an on-site kitchen run by Chicago-based Levy Restaurants and includes popular selections like blue cheese potato chips, Kobe beef sliders, lobster rolls, Chinois chicken salad rolls (wrapped in rice paper), a charcuterie platter (with assorted salamis and cheeses) and beignets with chocolate sauce.

While a couple of dishes (like the vegetarian pasta and house salad) on the menu require cutlery, most are finger foods.

More than 75 percent of the moviegoers order food inside the cinema - from one to several items, points out Mulcahy. Gold Class offers an 80-bottle wine list, 24 wines by the glass, 14 beers on tap and eight bottled beers along with a variety of cocktails and other drinks. On Tuesdays, half-price bar and food menus are offered.

The food service does not disturb other guests as the chairs are large and spread out. Pillows and blankets are also available if needed.

So far, business has exceeded expectations. "Our projections for Pasadena in first month were 7,000 admissions and we ended up with 14,000," Mulcahy says.

Although people may be hesitant to try the place at first, "our membership shows us Gold Class Cinemas is addicting," he says. "It is unlike anything you've ever experienced - and our increase in membership - 25,000 members in Pasadena today - speaks to that.

"Our Gold Class Cinemas membership is up 20 percent a year annually since it (the concept) started in Australia 11 years ago. There are four U.S. locations. Three more sites are anticipated to open this year - two in Texas and one in Arizona."

ARCLIGHT

At ArcLight Hollywood (opened in 2002) and ArcLight Sherman Oaks (opened in December 2007), where movie tickets range from \$13.50 to \$15.50 each, you can dine in the movie-theater-adjacent Cafe Bar before or after the movie on American casual fare including pasta dishes, salad, burgers, shared plates turned out and served on china plates by the full on-site kitchens. Steven Ramskill, food and beverage manager at Los Angeles-based ArcLight Cinemas, says selections range from \$5.50 to \$13.25.

You can't take food, other than from the concession stands - candy, popcorn, gourmet hot dogs, sodas and caramel corn - inside the theaters, due to odor issues and to avoid disturbing the guests, continues Ramskill. "We really want people to enjoy the movie with limited/no distractions."

However, for specific 21-plus screenings in the licensed theater, purchased alcoholic drinks can be taken inside.

THE BRIDGE: CINEMA DE LUX

At The Bridge: Cinema de Lux, Los Angeles, opened in 2001, you'll find the 12 Lounge (and bar) where it's possible to drink and dine. According to a manager, it's also feasible to get the food packed in a disposable takeaway container to take into the 17 movie theaters along with concession items like candy, churros, pretzels, nachos, chicken tenders and mozzarella sticks.

A variety of items on the lounge menu, ranging from \$9 to \$15.25, are available including burgers, appetizers, salads, pizzas and desserts. Alcoholic beverages can only be ordered in a satellite bar inside a theater during 21 (years) and over shows.

MUVICO

Muvico in Thousand Oaks opened a year ago with 14 screens and 2,600 seats. It has a sit-down restaurant - Bogart's Bar & Grill - on the second floor where moviegoers (or the public without movie tickets) can dine. In addition, any menu selection can be purchased to carry into the theater. The food is made-to-order and packed in black coated paper-based containers (a vibrating pager notifies premier seat moviegoers when food is ready for pickup).

The average per-person food check is \$28, notes James Herd, vice president, operations, Muvico Theaters, Fort Lauderdale, Fla., adding that "usually 30 percent of people going to any theater order food. Our prices are competitive with the casual restaurants around us - i.e., The Cheesecake Factory, Lazy Dog Cafe, etc., in Thousand Oaks."

Popular offerings include marinated steak skewers with chimichuri sauce, mini crab cakes, buffalo chicken salad, caprese salad, poached pear salad in a Parmesan bowl and baked goat cheese.

Movie tickets are \$8.50 to \$20 each, depending on age and showtime. A \$20 premier ticket includes popcorn, a \$3 food voucher and reserved seating (in one of three auditoriums with 338 seats total) for those 21 and over (allowing you to bring alcoholic beverages purchased in the restaurant into the theater).

Unlike Gold Class, there is no waiter service in the auditorium. "But we want you to have a great dining and movie experience," says Herd, adding that Muvico currently has nine locations around the country, the majority in Florida and Illinois. "We launched this concept in 2000. Our research, even before we opened showed that 80 percent of theatergoers would either dine prior or after the movie and that's one of the decisions that initiated the concept."

Reprinted from: *Los Angeles Daily News*, Natalie Haughton, Food Editor

CALENDAR of EVENTS & HOLIDAYS

**82nd
Academy
Awards®
Show**
March 7



**Daylight Saving
Time Begins**
March 14

ShoWest
March 15-18

St. Patrick's Day
March 17

Spring begins
March 20



**Passover begins
at sundown**
March 29

Easter
April 4

**Southern California
Film Product
Seminar**
April 13

**Northern California
Film Product
Seminar**
April 15