

# PREVIEWS

Information for the California and Nevada Motion Picture Theatre Industry

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## Orange County Authorities Engage Exhibition in Preparedness Exercise In Wake Of Colorado Tragedy

In the wake of the deadly Aurora, Colorado theatre tragedy, authorities in Orange County, California have reached out to the exhibition industry through a pro-active preparedness program to help bolster awareness and emergency response protocols. With the cooperation of NATO of California/Nevada on September 26, under the banner of the Orange County Intelligence Assessment Center (OCIAC), a group of law enforcement agencies, fire and emergency medical services responders, and private sector security professionals engaged members of the local exhibition community in a day-long workshop at the Orange County Sheriff's Academy in Tustin, California.

Approximately 100 people took part in an "Active Shooter Table Top Exercise," in which participants discussed preparations and emergency response plans in the event of an active shooter incident at a theatre. Participants were seated at separate tables in groups of 10-12, each comprised of a mix of exhibitors, law enforcement, fire and emergency medical services responders. Over the course of the workshop, four

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*Pictured above is the Sheriff's workshop where representatives from all Orange County public safety sectors participated in a "table top" format workshop with local theatre management.*

**Film Product Seminar Registration deadline extended. Please see page 2**

## Orange County Preparedness Exercise Draws Praise from Participants

Feedback from those who attended included "It was important, interesting, and more than just a seminar," remarked Regional Director Larry Porricelli, with Regency Theatres. "We sat with law enforcement personnel from all branches. It was interesting they knew so little of theater operation, such as that lighting is tied in with automation, or that a fire alarm instantly raises lights. The presentation was so helpful to identify issues to be aware of, and what to do in every situation. It gave us so much more to be aware of and responsible for, and how to deal with it at each theatre . . . all that came were so glad that they attended. I can't say enough good things about it."

Again, if you have not already reviewed emergency response issues with your local law enforcement agency for a potential incident at your theatre, we encourage you to initiate that dialogue.

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individual active shooter scenarios were presented. Following the four presentations, there was an exchange of information at each table, a discussion of particular needs and questions from the various participants.

The objectives were to highlight security gaps, response protocols, and discuss first responder activity and expectations upon arriving at the scene of an active shooter event.

The program followed a detailed, prepared outline in the form of a 14-page printed guide titled "Theater Response to an Active Shooter Tabletop Exercise Situation Manual." It is extremely well thought out, is self-explanatory and addresses virtually every area of concern with respect to an active shooter incident. A copy of this very valuable tool may be obtained by request from the NATO of California/Nevada office. We strongly encourage you to do so.

What was most apparent was just how desirous those from the public sector were to have this kind of face-to-face dialogue with exhibitors, to discuss areas of mutual concern and how they can support each other's efforts.

This excellent program was prepared and facilitated by Heather Houston, Senior Program Coordinator, Orange County Sheriff's Department, who coordinates the Orange County Intelligence Assessment Center's (OCIAC) private sector outreach program, OC Shield. The September 26 meeting was the first of its kind in Orange County and perhaps in the country.

OC Shield operates under the umbrella of OCIAC, which oversees the county's Homeland Security efforts vetting tips and leads, providing analysis of threats and activity, collecting information on critical infrastructure and developing programs for information sharing, training and awareness. Among the objectives of OC Shield is the coordination of key private sector security personnel with public sector first responders in protecting critical infrastructure, high profile targets, and key county assets.

In recent years tragic events have demonstrated just how vulnerable to attack large, public venues may be. NATO of California / Nevada commends the Orange County Intelligence Assessment Center for taking the lead in not only recognizing this, but in their pro-active approach to mitigating potential consequences should such an incident occur.

We would be very interested to know if any similar such outreach programs, teaming exhibition with first responders, have been initiated in areas outside of Orange County. Please contact Milt Moritz at the NATO of CA/NV office with any information about other programs like this, or any other initiatives from city or county law enforcement or first responder agencies.

## Registration Deadline Extended for Film Product Seminars

Registration for the NATO of CA/NV Winter/Spring Film Product seminars has been extended to Wednesday, October 10<sup>th</sup> at midnight. The seminars will take place on October 23<sup>rd</sup> in Southern California at the Rave L.A. 18 +IMAX and in Northern California on October 25<sup>th</sup> at Cinemark's Century San Francisco Centre 9 Theatre. Just click on the correct link to register for the seminar in your area. Click to register for either the [SOUTHERN](#) California seminar, or for the [NORTHERN](#) California seminar.

The full day seminars will begin with check-in (9:00am in Southern California and 8:30am in Northern California) and a continental breakfast, the program will begin one hour later. The full day seminar will include lunch, previews and special footage from winter, holiday and spring films; along with time for networking with other managers and studio representatives. The seminars will conclude about 3:00pm with the distribution of Goodie Bags full of promotional items.

The seminars are free to employees of NATO of California/Nevada corporate offices and member theatres. Reservations are now being accepted through October 10<sup>th</sup> in the Seminars and Meetings section of the Association's web site at [www.NATOCalNev.org](http://www.NATOCalNev.org)

## Applications Available for NATO of CA/NV 2013 Scholarships on October 15th

*Will you be one of the lucky 25?*

**Applications for the 2013 National Association of Theatre Owners of California/Nevada (NATO of CA/NV) Scholarship Program will be available on the Associations web site on October 15<sup>th</sup>.**

The scholarship program has been a great member benefit since its inception in 1996. The generous awards have eased the financial burden and improved the college experience for many of our winners as shown in these excerpts from two 2012 thank you notes. Vivian Martin, AMC Orange 30 Theatre... "It has been a dream of mine since high school to attend UCLA and it has become a reality because of every single one of you (*members of the scholarship committee – ed.*)" .... "I am incredibly grateful for this and I hope you all know that this truly has made a difference in my life. Please continue your scholarship program for many, many years to come because the help it provides families and students is enormous." Nicholas Stalder who works at Coming Attractions Theatres' Mt. Shasta Cinemas acknowledged his

job and the program.... "By accepting this scholarship I am not only receiving a monetary award but also the ability to focus on succeeding in my education and learning the skills necessary to be a productive part of our dynamic and challenging world." ... "I have learned a wide array of skills and life lessons from my experience working in a cinema, and it has been a tremendous opportunity for personal growth. I have developed respect for hard work, and realized the importance of dedication to what I do, and pride in all tasks that I attempt. I also have learned invaluable techniques to help work with other people, a skill that I know I will cherish for my entire life. For these reasons, I am very honored and grateful to have been recognized for my work in the cinemas industry."

**Visit the Scholarship Section at [www.NATOCalNev.org](http://www.NATOCalNev.org) after October 15th to begin your journey to a NATO of CA/NV \$10,000.00 scholarship award. The application deadline is March 8, 2013.**

## Michigan Judge Tosses Theatre Snacks Lawsuit

*Customer alleged price gouging on snacks*

*Reprint from Lansing State Journal*

A Wayne County judge made short work of dismissing Jason Thompson's lawsuit that accused a Livonia movie theatre of gouging customers on the price of popcorn and other snacks.

The lawsuit made headlines worldwide when it was filed in March.

Circuit Judge Kathleen Macdonald told Thompson's lawyer during a 45-minute hearing that the Michigan Consumer Protection Act, under which Thompson filed his suit, doesn't apply to businesses that are regulated by other laws.

"There's not much hope that the Court of Appeals or the Michigan Supreme Court will wake up and say their previous rulings have completely eviscerated the Michigan Consumer Protection Act," Thompson's lawyer, Kerry Morgan of Wyandotte, told the *Free Press* on Friday.

He said his client likely would not appeal Macdonald's ruling.

Attorney Bruce Sendek of Detroit, who represented American Multi Cinema, told Macdonald that consumers routinely and voluntarily pay different prices for similar products at various venues. He said the price of beer varies greatly at grocery stores, bars, restaurants and sporting events.

"You know what you're getting, and you voluntarily pay for it," he said.

Thompson, a 20-something security technician from Livonia, sued the AMC theatre in Livonia in hopes of forcing theatres statewide to dial down snack prices. He said in the suit that he used to take his own pop and candy to the Livonia theatre until it posted a sign banning the practice.

On Dec. 26, he paid \$8 for a Coke and a package of Goobers at the theatre — nearly three times the price he paid at a nearby restaurant and drugstore.

The suit accused the AMC theatres of violating the state consumer protection act by charging grossly excessive prices for snacks. It sought refunds for customers who were overcharged.

Consumer experts predicted the suit would fail because of Michigan Supreme Court rulings in 1999 and 2007 that exempted most businesses regulated by other laws. A theatre owner told the *Free Press* that movie houses rely on concession prices to pay for the theatre upkeep.

Morgan said consumers have an option.

"I told my client to buy a subscription to Netflix for the price of a bag of popcorn and a drink and vote with his feet and his pocket-book," he said.

## New Sanitization Law Takes Effect January 1, 2013

AB 1427 signed by California Governor Jerry Brown will take effect on January 1, 2013 and will amend Section 114099.6 of the Health and Safety Code, relating to food sanitization.

### The Section is amended to read:

114099.6. Manual sanitization shall be accomplished in the final sanitizing rinse by one of the following:

- (a) Immersion for at least 30 seconds where the water temperature is maintained at 171 degrees Fahrenheit or above.
- (b) The application of sanitizing chemicals by immersion, manual swabbing, or brushing, using one of the following solutions:
  - (1) Contact with a solution of 100 ppm available chlorine solution for at least 30 seconds.
  - (2) Contact with a solution of 25 ppm available iodine for at least one minute.
  - (3) Contact with a solution of 200 ppm quaternary ammonium for at least one minute.
  - (4) Contact with a solution of ozone that meets the requirements of Section 180.940 of Title 40 of the Code of Federal Regulations and that is generated by a device located onsite at the food facility.

Go to [this link](#) for the full amended bill.

## Take Action Against Illegal Camcording in Theatres

It is estimated that more than 90% of the illegal movies sold around the world are copies of movies that were illegally camcording in a theatre. Like stealing a DVD from the store, stealing a movie off the screen is illegal. Do you know what to do if you find someone camcording in a theatre?

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**If the police do not respond before the movie ends, theatre management and/or theatre security should STOP or INTERFERE with the recording, but NEVER touch the suspect or grab the recording device.**

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First, you should know that recording movies within theatres violates California and Nevada state laws.

In California, Section 653(z) of the Penal Code states:

“Every person who operates a recording device in a motion picture theatre while a motion picture is being exhibited, for the purpose of recording a theatrical motion picture and without the express written authority of the owner of the motion picture theatre, is guilty of a public offense.”

In Nevada, Revised Statutes Chapter 205 states:

“It is unlawful for a person to, without the consent of the owner or lessee of a motion picture theatre, knowingly operate an audiovisual recording function of any device in the motion picture theatre with the intent to record a motion picture that is being exhibited in that theatre.”

If at any time you or fellow theatre employee witnesses a person operating a video camera or other recording device to copy a movie, you should immediately follow the procedures in your

employer’s anti-camcording policy. If your employer does not have a policy, here is a list of steps that you should take:

- Advise your theatre manager immediately.
- Your theatre manager should call the local police immediately and provide as much information and assistance as possible. Advise police that patron is in violation of the respective penal code.
- Call the MPAA Anti-Camcording Hotline ((800) 371-9884) immediately after calling the police so that the MPAA can liaise with the police on legal issues, if necessary.
- If the police do not respond before the movie ends, theatre management and/or theatre security should STOP or INTERFERE with the recording, but NEVER touch the suspect or grab the recording device. Theatre management or security should politely but firmly ask the suspect to accompany them to wait in the lobby.
- Get the person’s name and ask to see ID (copy it or write down the key information).
- Get a good physical description.
- Ask the suspect to hand over the recording device and the actual recording.
- NEVER PUT YOURSELF OR YOUR PATRONS AT RISK; NEVER USE PHYSICAL FORCE TO STOP THE ACTIVITY OR TO DETAIN THE SUSPECT.

For more information on anti-camcording laws and to learn about the *Take Action!* Reward Program, please visit [www.fightfilmtheft.com](http://www.fightfilmtheft.com).

## Analysis of SB1186, New ADA Legislation

by Gregory F. Hurley, Principal Shareholder, Greenberg Traurig

On September 19<sup>th</sup> the Governor signed SB 1186. This bill enacts several reforms to California's access laws (Unruh Act, Disabled Persons Act, Civ. Code sections 52, et. Seq. & 54, et. Seq.). This is not the bill we had hoped for. This bill does not have an "opportunity to cure provision" that would have curtailed much of this litigation. The real benefit of this bill is that it should eliminate class actions for damages. The bill allows the analysis of the details of each plaintiff's encounter with each barrier. That individual analysis should be enough to discourage courts from finding there is any benefit or "commonality" among each plaintiff's unique encounter with barriers to warrant certifying a class action. The full text of the law can be found here:

<http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml>

### **Background**

For the last 10 years I have been working with trade organizations and the legislature to try to revise the California's Unruh and Disabled Persons Act (Civil Codes 52, and 54, et. Seq.) to prevent the "drive by" extortion style lawsuits that have plagued businesses. Our efforts have included SB 1608, SB 783, SB 242, and the legislation that led to the CASP program. None of those attempts have had any real impact on limiting these access suits. The number of plaintiff's firms specializing in these claims has increased as have the number of claims.

The problem in California has grown beyond simply curbing the availability of damages for ADA plaintiffs. What drives these cases now is a well-developed, coordinated ADA plaintiffs' bar with more than 20 firms that specialize in filing hundreds of these suits each year. These plaintiffs' ADA firms can recover more than \$100,000 in fees on a recovery of less than \$2,000 in damages. These claims are usually as trivial as a ½ inch of insulation on a drain pipe being pulled down, or a door that has a pull pressure of 6 pounds rather than 5 pounds. As I see it there are only two solutions: 1) to require a pre-litigation notice and opportunity to cure before allowing a lawsuit; or 2) to change the attorney fee incentives for these cases, so that plaintiffs' firms can be liable for attorney's fees if they do not prevail. This bill does neither of these.

The new SB 1186 does offer some new tactics for businesses defending these claims.

### **Expansion of the CASP provisions and pre litigation stay**

The bill expands the ability of a defendant to get a stay of

litigation if they have done a CASP survey. These provisions that reduce damages based on CASP surveys are really meaningless since the great majority of what a business pays to get out of these suits is not "damages" but fees. This stay cannot be used in federal court actions; and nothing about it limits the plaintiff's recovery of fees. Generally, the longer a case goes on (even if it is stayed) the more fees plaintiff's demand. The longer a case goes on the more fees a business incurs also.

The best resource for surveys and evaluations of existing facilities is usually the licensed architects and contractors that know their facilities and understand their operations doing surveys under the direction of counsel.

### **Using SB 1186 to force the Plaintiff to disclose the details of claims.**

The drafters of this bill were aware of our recent win in the Ninth Circuit opinion in *Oliver v Ralphs Grocery Store* (holding that a plaintiff is limited to the allegations and locations stated in the Complaint), and we worked with them on expanding *Oliver* by creating a provision whereby a business can bring a motion to force a Plaintiff to plead the specifics of their claims. The bill requires an allegation of a construction-related accessibility claim in a complaint to state facts sufficient to allow a reasonable person to identify the basis for the claim. The bill would require any complaint alleging a construction-related accessibility claim to be verified by the plaintiff, and would make any complaint filed without verification subject to a motion to strike. Unless the plaintiff is allowed to amend the complaint they are limited to those claims under *Oliver*. Hopefully this provision will prevent plaintiffs from filing vague allegations of non-compliance and then expanding the scope of their claims after they have actually visited and surveyed the facility.

### **Proof of actual denial of access**

Under the current law plaintiffs have been able to recover damages for barriers to access that they did not encounter or knew to have existed. This bill should result in newer jury instructions that will make it harder for plaintiffs to recover damages for these hypothetical encounters. Plaintiffs now should have to show actual knowledge of a barrier and intent to use and to actually be deterred on a particular occasion. Depending on plaintiff's responses to discovery and deposition testimony many damage barriers may be able to be knocked out of the case by pretrial motions too.

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### **Stacking of claims (sequential encounters with the same barrier)**

Existing law provides statutory damages in a construction-related accessibility claim against a place of public accommodation if a violation of construction-related accessibility standards denied the plaintiff full and equal access to that site on a particular occasion. A plaintiff is denied full and equal access only if, on a particular occasion, the plaintiff personally encountered the violation or was deterred from accessing the site. The bill says:

“The Legislature finds and declares all of the following: ..This bill would require the court, in assessing liability in any action alleging multiple claims for the same construction-related accessibility violation on different particular occasions, **to consider the reasonableness of the plaintiff’s conduct in light of the plaintiff’s obligation, if any, to mitigate damages.**”

A plaintiff’s requirement to mitigate damages is a broad concept. If a plaintiff alleges that they visited a facility more than once, businesses now have ammunition to inquire why a plaintiff visited their facility, used a feature, etc. Businesses now have a basis to introduce evidence that questions a

plaintiff’s credibility in driving 2 hours, past numerous closer facilities, to repeatedly patronize a specific location.

### **Intent of business**

The new subdivision (f) to be added to Civil Code Section 55.56, provides the potential for reduced statutory damages and certain procedural benefits to certain defendants for non-intentional violations. A person who had new construction or an improvement approved by the local building department on or after January 1, 2008, would be liable for minimum statutory damages of \$1,000 per offense, instead of \$4,000 per offense, when the defendant corrects the alleged construction related accessibility violation within 60 days of being sued.

This well meaning provision could prove to be a problem for businesses. The potential reduction in damages not significant because the real exposure is not damages but plaintiff’s fees. I predict that Plaintiffs will latch onto this provision as a basis for undertaking broad discovery on a business’s “intent”, including deposing high ranking employees on general policy and other claims. This could result in the business having to acknowledge that it does not intend to seek reduced statutory damages, or to use this defense, or require the plaintiff to prove intent.

*Mr. Hurley is chair of the litigation department for GT’s Orange County office. He can be reached at [Hurleyg@GTLaw.com](mailto:Hurleyg@GTLaw.com) or (949) 732- 6614 He specializes in defending class action claims under the ADA and state civil rights laws.*

## Jerry Brown Signed Two Social Media Privacy Laws

*Reprint from The Sacramento Bee [sacbee.com](http://sacbee.com)*

Gov. Jerry Brown signed two measures to block California universities and employers from seeking access to applicants’ social media accounts.

“The Golden State is pioneering the social media revolution and these laws will protect all Californians from unwarranted invasions of their personal social media accounts,” the Democratic governor said in a prepared statement.

[Assembly Bill 1844](#), by Assemblywoman Nora Campos, D-San Jose, prohibits employers from demanding user names or passwords from employees and job applicants.

[Senate Bill 1349](#), by Sen. Leland Yee, D-San Francisco, prohibits public and private universities from requiring students or prospective students to disclose their user names or passwords.

The legislation comes amid growing questions about the legal and privacy implications of employee and student presences on social media. In a release, Brown’s office said SB 1349 “is designed to stop a growing trend of colleges and universities snooping into student social media accounts, particularly those of student athletes.”



# CALENDAR of EVENTS & HOLIDAYS

**Columbus Day observed**  
October 8

**Halloween**  
October 31



**NATO of CA/NV  
Film Product Seminars**

October 23  
Southern California

October 25  
Northern California

**Daylight Saving  
Time Ends**  
November 4



**Veterans Day**  
November 11