

NATO of California/Nevada

PREVIEWS

Information for the California and Nevada Motion Picture Theatre Industry

CALENDAR
of EVENTS &
HOLIDAYS**Yom Kippur begins
at sundown**
October 8**Columbus Day, observed**
October 13**ShowEast in Orlando**
October 13-16**Fall/Winter Film
Product Seminar**
October 28 - So. California
October 30 - No. California**Halloween**
October 31**Daylight Saving
Time ends**
November 2**Election Day**
November 4**Veterans Day, observed**
November 10**Thanksgiving Day**
November 27**Hanukkah begins
at sundown**
December 21**Christmas Day**
December 25**New Year's Eve**
December 31**Sexual Harassment
Prevention Training
Seminars**
January 27 - So. California
January 29 - No. California

National NATO Membership and Board of Directors Meeting

The Annual National NATO General Membership and Board of Directors Meeting was held September 17 and 18 in Austin, Texas.

Many items of mutual interest and concern to the national body and regional units were reviewed in depth in the form of an excellent power point presentation at this very productive session. National NATO has always been most supportive, and the breadth of material covered is a reflection of its continuing efforts on our behalf. A brief recap of many of the items covered in the power point presentation follows.

- **Studios Release Windows:** The industry average from theatrical release to home video release in 2007 was four months and 19 days. During the first two quarters of 2008, the average was four months and 12 days.* Of the total number of features released to date in 2008, 62.79% were released to home video beyond this average window. All of Disney, Summit and Universal releases exceeded this time frame, while Warner Bros. and Paramount were the biggest offenders, meeting the industry average only 27.2% and 30.76%, respectively. *Since the Board meeting, Warner Bros. announced that Star Wars: The Clone Wars will have its DVD release on November 11, 2008 a mere 2 months and 28 days from its August 15, 2008 theatrical release date.* Preservation of a healthy release window is imperative to our industry.
- **Anti-Piracy:** Anti-Camcorder statutes enacted in all but eight states have proven to be an effective deterrent in combating piracy. Also contributing to a decline in piracy has been the strong stance taken by the MPAA in prosecuting offenders. All theatre personnel should be aware of the NATO – MPAA

Take Action! Reward Program. To date, 165 theatre employees have received \$71,775 in Take Action! Rewards, and so far in 2008, \$17,525 has been awarded to 43 employees. Theatres should display Movie theft posters. Above all, the key word is Vigilance.

- **Digital Cinema:** NATO's Cinema Buying Group has selected AccessIT to provide digital cinema equipment and service to over 8,000 independent North American screens. J. Wayne Anderson announced his retirement as Managing Director of Cinema Buying Group effective in March, 2009, and introduced his replacement, Bill Campbell. The next Cinema Buying Group meeting will be held October 16, during ShowEast in Orlando, Fl. It was noted that three 3D features are scheduled for release during the remainder of 2008, and that there are 11 3D features currently scheduled for release in 2009.
- **NATO's Code Task Force** provided an overview on issues pertaining to captioning and closed-captioning, wheelchair seating and disability access. Earlier this year the U.S. Department of Justice proposed comprehensive regulations under the Americans with Disabilities Act. The NATO Codes Task Force has been working with NATO's attorneys to analyze the proposals and help craft the industry's response. Though many issues are involved, NATO has focused their efforts on two particular issues – the possible retroactive application of new wheelchair seating location rules; and possible rulemaking on captioning and video description. NATO's comments are available on their web site (www.NATOonline.org).

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Previews
is published by the
**National Association of
Theatre Owners of
California/Nevada**

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Charlene Sievers
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Special Addition to Fall Film Product Seminar

The NATO of California/Nevada 2008 Fall/Winter seminar will now include a special preview of the feature film *Nothing Like the Holidays* through the courtesy of Overture Films. The PG-13 rated film, which stars Debra Messing, John Leguizamo, Freddie Rodriguez, Alfred Molina and Elizabeth Pena will be shown at the conclusion of the seminar. Pacific Theatres will host the Southern California seminar on October 28th at their Glendale 18 Theatres, located in the elegant, recently opened Americana at Brand and on October 30th the seminar will be hosted by Cinemark in the new 20-screen Century at Tanforan 20 Theatre in San Bruno.

There have been many changes in the marketing departments of the major studios these last couple of months. The seminars provide a great opportunity to meet the new and veteran marketing representatives as they present product reels introducing more than 100 titles that are coming to your theatres in the next few months.

The seminar will begin at 8:30AM with a continental breakfast, the presentations will begin at 9:30AM, conclude at 2:30PM with the distribution of the popular Goodie Bag. The 1 ½ hour film screening is scheduled to begin at 3:00PM.

Reservations are a must, no walk-ins will be admitted and attendance is strictly limited to employees of member companies. The deadline for registrations is October 17th however registrations will be closed once capacity is reached so get your reservations in early. ▼

Registration Form

Fax to 310/460-2901 or email to office@natocalnev.org

Please provide the following information for each attendee, if registering more than one person please list all names and information on *one* sheet or email:

Name and position: _____

Company name: _____

Theatre Name and Address: _____

Email address: _____

Daytime phone number: _____



Check off the session you would like to attend:

October 28th

Pacific's Glendale 18 Theatre

The Americana at Brand
322 Americana Way, Building A1
Glendale, CA 91210

October 30th

Cinemark's Century at Tanforan 20

1188 El Camino Real
San Bruno, CA 94066

Do you plan on staying for the screening?
Please circle: **Yes No**

Do you plan on staying for the screening?
Please circle: **Yes No**

Reservation deadline extended to October 17th

Membership Meeting, continued from page 1

- **Credit Card Task Force:** A report given on the Fair and Accurate Credit Card Transactions act (FACTA) advised that exhibitors should inspect their point-of-sale terminals and, if necessary, remove the expiration date and truncate credit or debit card account numbers on all electronically printed customer receipts. The Federal Trade Commission provides tips on safeguarding sensitive customer data at www.ftc.gov/infosecurity. The report also included information on credit card interchange fees. National NATO is closely monitoring House Judiciary Committee hearings on this important subject.
- **Newspaper directory ads:** There was a discussion regarding growing sentiment in exhibition to reduce or ultimately eliminate completely daily directory newspaper ads, as patrons more and more rely on online sources for feature and showtime information. It was felt that newspapers, at some point, may provide directory listing information as a public service to their readership, much as they already do for daily television listings.
- **Homeland Security:** A presentation by the U.S. Department of Homeland Security addressed vulnerabilities and protective measures. The Department's Protective Security Advisors coordinate with the private sector in providing resources and training requests. That office can be reached at 703-235-5724.
- **Environmental Concerns:** Special attention was paid to the recycling of trailers. Exhibitors are advised to return any and all used trailers with the return shipment of any feature film in its film can to their film shipment center. See separate article, *New Trailer Recycling Program* on page 4.
- **The NATO Annual Encyclopedia of Exhibition** is available to National NATO members online at www.NATOonline.org. The volume provides extensive industry data and statistics never before so readily accessible.
- **Concessions:** A NATO Concessions Task Force has been formed to interact and communicate on issues and standards affecting the management of snack bar operations. NATO of California/Nevada is a member of this Task Force. In California, Senate Bill 1420, mandates that restaurants with 20 or more locations in the state must post food item calorie counts on menus or menu boards. See following article on this page.
- **Mystery Shopper Survey:** The results from a recent Federal Trade Commission Mystery Shopper Survey presented at the meeting can be found at www.ftc.gov/opa/2008/05/secretshop.shtm.
- **NATO Convention and Trade Show:** National NATO announced that beginning in 2011 it will be producing its own annual convention and trade show. To be held in Las Vegas at Caesars Palace Hotel, the dates for the 2011 event are March 28-31; 2012, April 23-26; and 2013, April 15-18.

For additional information on the NATO General Membership and Board of Directors Meeting, please contact the NATO of California/Nevada office. ▼

Excerpts courtesy of BoxOffice Magazine

** Updated since Board Meeting.*

California Governor Signs Menu Nutritional Information Legislation



*By: Janet Grumer,
Davis, Wright,
Tremaine LLP*

On September 24, 2008, Governor Schwarzenegger signed Senate Bill 1420 into law, making California the first state in the nation to require disclosure of nutritional information by chain restaurants on menus and menu boards. NATO of California/Nevada opposed this bill on behalf of its members, but was ultimately unable to defeat it or garner an exemption for movie theatres. The new legislation poses challenges for theatre owners whose menu boards are small or not designed to handle the additional information required.

SB 1420 applies to "food facilities" with 20 or more locations in California, whether franchised or under the same ownership. For the period from July 1, 2009 through December 31, 2010, food facilities with menu boards have two disclosure options: (1) disclose total calorie count information next to each item on the menu board in "clear and conspicuous" type, or (2) disclose nutritional information (including calories, grams of carbohydrates, grams of saturated fat, and milligrams of sodium) in a "clear and conspicuous manner" on a brochure available at the point of sale. Brochures also must state the recommended limits for a 2,000 calorie daily diet for saturated fat and sodium. When an item is intended to serve more than one person, the number of persons intended to be served and the calorie count per serving should be noted instead of the total calorie count. On or after January 1, 2011, food facilities with menu boards must comply with the first option.

Nutrition, continued on page 4

Nutrition, continued from page 3

Businesses are permitted to and should consider adding a disclaimer on menu boards that states that there may be variations in calorie counts across servings, based on variations in overall size and quantities of ingredients, and based on special orders. The bill excludes from the posting and display requirements all prepackaged foods already subject to regulation under the Nutrition Labeling and Education Act, so menu boards and brochures need not include any information for such prepackaged foods. One bright spot is that the bill preempts local legislation concerning disclosure of nutritional information by covered businesses, thereby eliminating the need for California businesses subject to SB 1420 to also comply with city and county laws with differing requirements.

NATO will keep you posted on developments related to this new law. ▼

Janet Grumer is an attorney in the law firm of Davis Wright Tremaine LLP and a former movie theatre executive whose practice focuses on theatre and retail clients, including employment and general litigation issues. She can be reached at 213/633-6866 or janetgrumer@dwt.com.

No Meal Period Waiver Available for Working Lunches

“We conduct monthly working lunches to inform staff of progress and pending items of interest. Can the meal period requirement be waived for this working lunch? We do provide, at no cost to the staff, a nice catered lunch!”

A working lunch is considered hours worked for non-exempt employees because they are not relieved of all duty. The time must be paid and an extra hour's wage must be paid to the employee for the meal period violation. Premium pay of time-and-a-half must be paid for hours worked in excess of eight per day.

For example, an employee works from 8 a.m. to 5 p.m. with a working lunch. He/she has worked nine hours, eight of which are paid at straight time and one hour at time-and-a-half. The additional hour is paid at the employee's regular rate of pay for the meal period violation. No waiver is available for working lunches.

On-Duty Meal Periods

Within the Industrial Welfare Commission Wage Orders there is provision for an “on-duty” meal period. The elements required to justify an “on-duty” meal period are covered by Wage Order 4 in Section 11 as shown below.

“Meal Periods,” states in pertinent part:

“Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on-duty’ meal period and counted as time worked.

“An ‘on-duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

“The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

A written agreement is required, signed by both employee and employer and must cover the elements mentioned in Section 11 above.

This is not a waiver, but an agreement for an “on-duty” meal period allowed under special circumstances. A working lunch does not appear to meet the criteria necessary to justify an “on-duty” meal period.

If an employee is required by the employer to attend a luncheon, dinner or other work-related meal or training accompanied by a meal, the employer must pay for the cost of the meal.

Limited Waiver

A limited waiver of meal period requirements is possible in two situations:

- If a work period of not more than six hours will complete the day's work, the meal period may be waived by mutual consent of the employer and employee.
- An employer may not require an employee to work more than 10 hours in a workday without providing a second meal period. This second meal period may be waived if there are no more than 12 hours worked.

Neither of these waivers requires a written waiver — only mutual consent of employer and employee. ▼

Source: California Chamber of Commerce Alert, Labor Law Corner

New Trailer Recycling Program

To eliminate the burden on theatres, the film studios are now accepting trailers for recycling regardless of source and without sorting. The theatre simply places *any* trailers from *any* Studio in *any* film can, gray or orange, for regular pickup by Deluxe or Technicolor, all at *no cost to the theatre*.

Exhibitors are urged to adopt this plan with a commitment to 100% trailer recycling. With the support of exhibition, the industry can achieve 100% trailer recycling, again with no sorting and at no cost to theatres, and to the benefit of our environment. ▼



LABOR ISSUES & Updates

Keeping Employees Safe in Emergencies

Covering the Basics

By law, every California employer must put an Emergency Action Plan (EAP) in place, and the plan must specify:

- The person(s) responsible for implementation
- How to communicate with employees during emergencies
- Emergency Evacuation procedures
- Personnel assigned to provide first aid

California law also requires employers to conduct EAP training when they implement or change an EAP, and upon hiring new employees.

The EAP is separate from the Illness and Injury Prevention Program (IIPP), which is essentially a broader program for protecting employees. Every California employer is required to have an IIPP, and if you have more than 10 employees, the IIPP must be in writing. The IIPP requires employers to, among other things, create a company safety policy statement, a system to evaluate workplace hazards and to implement plans for periodic training, inspections and for dealing with employee injuries.

Beside the EAP and IIPP, California employers must create other emergency-related plans, such as a Fire Prevention Plan and a Hazard Communication Plan.

Minding the Details

First, examine your workforce and assign employees emergency roles consistent with their positions and personalities. An employee with a strong personality should be trained to assume the role of leader. This person should be prepared to shout at his or her co-workers, ordering them out of any paralysis and to the appropriate route to safety.

Other employees' natural talents should be tapped: Natural nurturers may assist people with injuries and well-organized types can direct people to the closest exits. If you frequently have customers or clients in your workplace, assume that they will react passively and wait for instructions. Employees should also be instructed to lead visitors to safety.

Even the best EAP is useless if employees aren't aware of it and aren't trained. Experts find that the best way to prepare people for an emergency is to practice – randomly, consistently and mandatorily.

• SAFETY •

In an article for *Time* magazine, author Amanda Ripley explained just how important training can be. Prior to the attacks on Sept. 11, 2001, the chief of security at Morgan Stanley (which occupied 22 of the upper floors of New York's World Trade Center Tower 2) religiously conducted fire drills, ordering all employees to march two-by-two down the stairs. Employees found the drills disruptive, costly and annoying.

But when the first plane hit Tower 1, employees knew exactly what to do: they followed the well-established procedures, evacuating calmly and orderly. When the tower collapsed, only 13 Morgan Stanley employees were inside – the other 2,687 made it out safely.

Hopefully, California employers will never face disasters equal to the magnitude of the World Trade Center attacks, but the lessons learned are the same: Employees, when properly trained, can perform exceptionally well under stress. The best way to ensure it is to regularly conduct emergency drills.

To be most effective, the drills should be random and unexpected. After the drill, employers should evaluate and adjust for any problems: Did any disabled employees require special assistance? Were any exits blocked? Did employees ignore the warnings and continue working? By evaluating potential problems up front, employers can better ensure that all employees remain safe in an emergency. ▼

Source: California Employer Update

All employees should know the location of a phone with emergency numbers posted adjacent to each phone. The emergency notice should state the phone numbers of the closest ambulance service, fire/rescue unit, police and hospital. The location of first aid equipment and rescue equipment should also be posted prominently. In an emergency time is of the essence and can make a big difference to an injured or sick person.

Web Access for the Disabled Under the ADA- *What the settlement of the Target case means*

by Gregory F. Hurley, Principal Shareholder, Greenberg Traurig

A Federal Court in California has found that Target can be sued under the ADA for having a web page that is inaccessible to individuals with visual impairments. In *National Federation of the Blind v. Target Corporation*, the District Court in the Northern District of California determined that certain websites were subject to the Americans with Disabilities Act (the ADA) when it allowed a lawsuit against Target.com to survive a motion to dismiss. This decision marks a dramatic shift and requires websites with a nexus to physical stores to comply with the ADA, much like brick and mortar facilities. Recently Target settled with the NFB. The settlement was widely published and it is certain to result in more ADA claims against on line retailers.



Gregory F. Hurley

The ADA and its regulations were adopted in 1990 before anyone considered “accessible” web pages. Today protocols for designing an accessible website use “alternative text” -invisible code embedded beneath the graphics. A visually impaired individual can use screen reader software that vocalizes the alternative text and describes the content of the webpage. Many of these readers convert the screen text to something either audible or tactile. For example, if there is a button to push to advance to the next screen, the screen readers say “NEXT-BUTTON”. If presented with a form in which to enter a name and address, the screen reader will say “NAME” in the name field, or “COMBO BOX” to move through the choices until the numeric or alpha abbreviation desired is found. Some of these protocols were missing from Target’s online retail web pages resulting in the suit by the NFB.

Terms of Target’s settlement

Target has agreed to pay \$6 million and revamp its Web site to settle a lawsuit brought by the National Federation of the Blind. It will make its site friendlier to vision-impaired people who access the Web via screen readers. Among other changes, the site will include more alt text tags along with images. These tags are invisible to users, but screen readers rely on them to convert the contents of a page into speech. Target also will make it easier to navigate its site using just a keyboard, rather than a mouse. The company will implement the changes by next February. In addition, California residents who unsuccessfully attempted to use Target’s site can claim \$3,500 in damages--or, if there was more than one incident, \$7,000 total. California has an estimated 10,000 blind people, while the country overall has around 1.3

million, according to a spokesperson for the National Federation of the Blind.

Target created and agreed to comply with its own Target Online Assistive Technology Guidelines. We expect that with the Target settlement there will be increased demand for web pages that allow for navigation by keyboard, and on line image to speech conversion for web pages.

National Federation of the Blind v. Target Corp

In *National Federation of the Blind v. Target Corporation*, Case No. C 0601802 MHP (N.D. Cal. Sep. 6, 2006), the Plaintiffs alleged that Target.com lacked features that would make it compatible with screen reader software; hence it was inaccessible to the blind. Defendant, Target Corporation, claimed that Target.com is not a “place of public accommodation” within the meaning of the ADA, therefore the lawsuit should be dismissed. Specifically, Target claimed that the Plaintiffs failed to state a case because they did not allege that any individual was denied access to a physical, or “brick and mortar” store. Previous Ninth Circuit law required a plaintiff to allege a “nexus” between the challenged service and the place of public accommodation. However National Federation of the Blind argued that unequal access to the website, Target.com, denied the blind full enjoyment of the goods and services offered at the “brick and mortar” target stores, which are places of public accommodation.

The court unequivocally rejected the argument that the ADA applies only to services *in* a physical place. The court observed that the statute applies, by its literal language, to services *of* any place of public accommodation and therefore applies to online goods and services as well. The court did, however, reason that the discrimination from the online services still must in some way deny physical access to a store.

ADA plaintiffs are already claiming that the Target settlement represents a business’s obligations for providing access for ALL web pages - not just web pages that support commerce or are used for sales.

What to do:

There are several great resources for evaluating the accessibility of your web portals. For information on the Federal Section 508 requirements see www.section508.gov. For information and a survey of state laws see www.ittatc.org. For the details on creating accessible web pages see the Web Content Accessibility Guidelines

Target Case, continued on page 7

Target Case, continued from page 6

or WCAG (www.w3.org). The most recent WCAG Guidelines were published for comment in April of 2008.

There has been criticism that these new accessibility guidelines have not been properly vetted for coordination with security and privacy laws and practices. This can put the on line business in a difficult position facing class actions for “violations” of the ADA or facing class actions for “violations” on the myriad privacy requirements for online commerce (for example, the Fair Credit Reporting Act, and FACTA).

Many retailers have found that upgrading their web pages to meet the newest WCAG standards can be prohibitively expensive, or disable their sales procedures. We have been drafting agreements on web accessibility in class settlements for several of our clients facing these upgrade problems. Below is part of a recent class settlement for a national retailer we represent. This retailer could not bring their current on line commerce site into immediate compliance with the current guidelines without substantial time and expense. We got the Court’s approval for the following phased compliance:

“Maintenance of Internet Website located at URL www.XXXXXX.com. Within 1 year of the Final Judgment being entered by the Court, Xxxxx.com will be modified to comply with (i) WCAG Priority 1 and (ii) WCAG Priority 2 Guidelines 3.5 (HTML headings) and 12.4 (explicit form labels). If a substantial alteration to the website architecture of Xxxxx.com occurs, then the website will comply with WCAG Priorities 1 and 2.”

The National Federation of the Blind has committed to suing businesses whose web pages they believe do not provide full access. Given the attention that the recent Target settlement has gotten, and the amount of money that settlement made available to class members and their counsel, more class litigation is inevitable. It is incumbent on business to review their web pages and online commerce to confirm at least the basic elements of accessibility for individuals with visual impairments. Even if immediate compliance with the most recent WCAG standards is not possible a commitment and timeline by the business to improve web access can help defeat these claims. ▼

Mr. Hurley is a principal shareholder and chair of the litigation department for Greenberg Traurig’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.

NATO of CA/NV congratulates Mr. Hurley on his selection by *Super Lawyers* magazine as a 2009 Southern California Super Lawyer and for being named as one of Southern California’s “Best Lawyers” by the *LA Times*.

We Need Your Eyes and Your Ears

Your presence in the field can serve as a valuable resource in keeping NATO of California/Nevada aware of various regulatory and legislative developments in your area which could potentially impact our industry.

Please inform this office and your own district office whenever there is local news or discussion of issues that could affect exhibition. Such things as sales taxes, health issues, property taxes, land use restrictions, and matters related to the Americans With Disabilities Act, are just some areas we would like to be kept informed of. Your help in passing along this type of information as soon as you become aware of it will be very helpful and much appreciated. ▼

Save Time and Trees – Register for Digital Previews



Register for your digital copy of *Previews* by sending your email address to PREVIEWS@NATOCalNev.org. Once registered an email will be sent to you, as *Previews* is going to press, with a PDF attachment and a link to the Previews Reading Room section on our web site where you can read the most current and re-visit past issues of our monthly newsletter.

Please make sure you add our address to your email program’s address book. Since many e-mail providers will categorize any new or unknown source, as “Spam,” this will ensure that you receive the newsletter without interruption. ▼

National Association of Theatre Owners
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Health Tip
**Air bags are
lifesavers, but.....**

ADDRESS SERVICE REQUESTED

Health Tip

Air bags are lifesavers, but they can cause injuries when they deploy in a crash – and the risk increases when passengers are not wearing seat belts. This is especially true for eye injuries, according to a recent study from Rhode Island, which found that unrestrained people were more than twice as likely to suffer severe eye injuries caused by the air bags than those wearing seat belts. ▼

