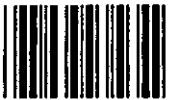
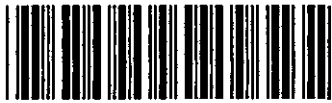


USDC SCAN INDEX SHEET



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3:02-CV-02497 HUBBARD V. RITE AID CORPORATION

91

REQJNTC.

ORIGINAL
ORIGINAL

1 Wayne C. Arnold, Bar No. 103194
 2 Lisa D. Herzog, Bar No. 194123
 3 HART, KING & COLDREN
 4 A PROFESSIONAL CORPORATION
 5 200 East Sandpointe, Fourth Floor
 6 Santa Ana, California 92707
 7 Telephone: (714) 432-8700
 8 Facsimile: (714) 546-7457

FILED
 APR - 8 2005
 CLERK U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 BY

9 Attorneys for Defendants RITE AID CORPORATION and
 10 ARTHUR CIUFFO, JR. and EVELYN EMMERSON,
 11 Trustees of the CIUFFO FAMILY TRUST B erroneously
 12 Sued as THE CIUFFO FAMILY TRUST B, ET AL.

13 UNITED STATES DISTRICT COURT
 14 SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

15 LYNN J. HUBBARD, BARBARA J.
 16 HUBBARD,

Case No.: 02CV2497-WQH (BLM)

Plaintiff,

17 REQUEST FOR JUDICIAL NOTICE OF
 18 PUBLIC RECORD DOCUMENTS
 19 CONTAINED AS EXHIBITS TO
 20 DEFENDANTS' REPLY TO
 21 OPPOSITION TO MOTION FOR PRE-
 22 FILING ORDER PROHIBITING
 23 VEXATIOUS LITIGANTS FROM FILING
 24 NEW LITIGATION WITHOUT LEAVE
 25 OF COURT

v.

26 RITE AID CORPORATION; THE
 27 CIUFFO FAMILY TRUST B, ET AL;
 28 AVOCADO PLAZA, L.L.C. and DOES 1
 through 20,

Date: April 22, 2005
 Time: 3:00 p.m.
 Ctrm.: 4

Defendant.

Complaint Filed: December 18, 2002
 Trial Date: None

29 Defendants RITE AID CORPORATION and ARTHUR CIUFFO, JR. and EVELYN
 30 EMMERSON, Trustees of the CIUFFO FAMILY TRUST B (collectively "RITE AID") by
 31 and through their attorney, hereby request the Court to take judicial notice pursuant to
 32 Federal Rule of Evidence 201 of the following:

- 33 1. Plaintiffs' Complaint filed March 28, 2005 in the case entitled *Lynn J. and*
 34 *Barbara J. Hubbard vs. Vine Ripe Market, Inc. et al*, United States District Court Southern

HART, KING & COLDREN
 A PROFESSIONAL CORPORATION
 200 EAST SANDPOINTE, FOURTH FLOOR
 SANTA ANA, CALIFORNIA 92707

19

1 District Of California, case no. 05 CV 0607 BEN (BLM) a copy of which is attached hereto
2 as Exhibit 1.

3
4 Dated: April 8, 2005

HART, KING & COLDREN

5
6
7 By:

Lisa Herzog

Wayne C. Arnold
Lisa D. Herzog
Attorneys for Defendants RITE AID
CORPORATION and ARTHUR
CIUFFO, JR. and EVELYN
EMMERSON, Trustees of the
CIUFFO FAMILY TRUST B

HART, KING & COLDREN
A PROFESSIONAL CORPORATION
200 EAST BARRISTER STREET, FOURTH FLOOR
SANTA ANA, CALIFORNIA 92707

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EXHIBIT "1"

ORIGINAL

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LYNN HUBBARD, III, SBN 69773
SCOTTLINN J HUBBARD, IV, SBN 212970
LAW OFFICES OF LYNN HUBBARD
12 WILLIAMSBURG LANE
CHICO, CA. 95926
(530) 895-3252

Attorney for Plaintiffs

FILED

05 MAR 28 AM 10:46

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIF.

BY:  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LYNN J. AND BARBARA J.
HUBBARD

Plaintiffs,

vs.

VINE RIPE MARKET, INC. dba
VINE RIPE MARKET; SAICO
GATEWAY CO, LLC; RANCHO
LAS PALMAS CO, LLC.

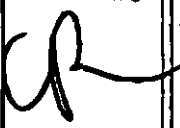
Defendants,

No. 05 CV 0607

BEN (BLM)

Plaintiffs' Complaint

Hubbard v. Vine Ripe Market
Plaintiffs' Complaint



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I. SUMMARY

1. This is a civil rights action by plaintiffs Lynn J. and Barbara J. Hubbard ("the Hubbards") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Vine Ripe Market
8191 Fletcher Parkway
La Mesa, CA 91942
(hereafter "the Store")

2. The Hubbards seek exemplary damages, injunctive and declaratory relief, attorney fees and costs, against Vine Ripe Market, Inc. dba Vine Ripe Market; Saico Gateway Co, LLC; Rancho Las Palmas Co, LLC (collectively "Vine Ripe") pursuant to the Americans with Disabilities Act of 1990,(42 U.S.C. §§ 12101 et seq.), and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. The Hubbards' claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

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IV. PARTIES

7. Vine Ripe owns, operates, or leases the Store, and consists of a person (or persons), firm, or corporation.

8. The Hubbards have multiple conditions that affect one or more major life functions. The Hubbards require the use of motorized wheelchairs and a mobility-equipped vehicle, when traveling about in public. Consequently, the Hubbards are "physically disabled," as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

V. FACTS

9. The Store is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

10. The Hubbards visited the Store and encountered barriers (both physical and intangible) that interfered with—if not outright denied—their ability to use and enjoy the goods, services, privileges, and accommodations offered at the facility. To the extent known by the Hubbards, attached as Exhibit A to this complaint is a true and accurate list (with photos) of barriers that denied their access at the Store.

11. Notwithstanding that visit, the Hubbards were also deterred from visiting the Store, because they knew that the Store's goods, services, facilities, privileges, advantages, and accommodations at the store were unavailable to physically disabled patrons (such as themselves). They still refuse to visit the Store because of the future threats of injury created by these barriers.

12. The Hubbards also encountered barriers at the Store, which violate state and federal law, but were unrelated to their disability; these

1 unrelated barriers were included within Exhibit A, as a courtesy to the
2 defendants, so the defendants can avoid inadvertent acts of discrimination
3 against the disabled. Nothing within this complaint, however, should be
4 construed as an allegation that the Hubbards are seeking to remove barriers
5 unrelated to their disability.

6 13. Vine Ripe knew that these elements and areas of the Store were
7 inaccessible, violate state and federal law, and interfere with (or deny)
8 access to the physically disabled. Moreover, defendants have the financial
9 resources to remove these barriers from the Store (without much difficulty,
10 or expense), and make the facility accessible to the physically disabled. To
11 date, however, defendants refuse to either remove those barriers or seek an
12 unreasonable hardship exemption to excuse non-compliance.

13 VI. FIRST CLAIM

14 Americans with Disabilities Act of 1990

15 Denial of "Full and Equal" Enjoyment and Use

16 14. The Hubbards incorporate the allegations contained in
17 paragraphs 1 through 7 for this claim.

18 15. Title III of the ADA holds as a 'general rule' that no individual
19 shall be discriminated against on the basis of disability in the full and equal
20 enjoyment (or use) of goods, services, facilities, privileges, and
21 accommodations offered by any person who owns, operates, or leases a
22 place of public accommodation. 42 U.S.C. § 12182(a).

23 16. Vine Ripe discriminated against the Hubbards by denying "full
24 and equal enjoyment" and use of the goods, services, facilities, privileges or
25 accommodations of The Store during each visit and each incident of
26 deterrence.

27
28 Hubbard v. Vine Ripe Market
Plaintiffs' Complaint

1 **Failure to Remove Architectural Barriers in an Existing Facility**

2 17. The ADA specifically prohibits failing to remove architectural
3 barriers, which are structural in nature, in existing facilities where such
4 removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term
5 “readily achievable” is defined as “easily accomplishable and able to be
6 carried out without much difficulty or expense.” *Id.* § 12181(9).

7 18. When an entity can demonstrate that removal of a barrier is not
8 readily achievable, a failure to make goods, services, facilities, or
9 accommodations available through alternative methods is also specifically
10 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

11 19. Here, the Hubbards allege that Vine Ripe can easily remove the
12 architectural barriers at the Store without much difficulty or expense, and
13 that Vine Ripe violated the ADA by failing to remove those barriers, when
14 it was readily achievable to do so.

15 20. In the alternative, if it was not “readily achievable” for Vine
16 Ripe to remove the Store’s barriers, then Vine Ripe violated the ADA by
17 failing to make the required services available through alternative methods,
18 which are readily achievable.

19 **Failure to Design and Construct an Accessible Facility**

20 21. On information and belief, the Store was designed or
21 constructed (or both) after January 26, 1992—independently triggering
22 access requirements under Title III of the ADA.

23 22. The ADA also prohibits designing and constructing facilities
24 for first occupancy after January 26, 1993, that aren’t readily accessible to,
25 and usable by, individuals with disabilities when it was structurally
26 practicable to do so. 42 U.S.C. § 12183(a)(1).

1 23. Here, Vine Ripe violated the ADA by designing or constructing
2 (or both) the Store in a manner that was not readily accessible to the
3 physically disabled public—including the Hubbards—when it was
4 structurally practical to do so.¹

5 Failure to Make an Altered Facility Accessible

6 24. On information and belief, the Store was modified after
7 January 26, 1992, independently triggering access requirements under the
8 ADA.

9 25. The ADA also requires that facilities altered in a manner that
10 affects (or could affect) its usability must be made readily accessible to
11 individuals with disabilities to the maximum extent feasible. 42 U.S.C. §
12 12183(a)(2). Altering an area that contains a facility's primary function also
13 requires adding making the paths of travel, bathrooms, telephones, and
14 drinking fountains serving that area accessible to the maximum extent
15 feasible. Id.

16 26. Here, Vine Ripe altered the Store in a manner that violated the
17 ADA and was not readily accessible to the physically disabled public—
18 including the Hubbards—to the maximum extent feasible.

19 Failure to Modify Existing Policies and Procedures

20 27. The ADA also requires reasonable modifications in policies,
21 practices, or procedures, when necessary to afford such goods, services,
22 facilities, or accommodations to individuals with disabilities, unless the
23 entity can demonstrate that making such modifications would fundamentally
24 alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

25
26
27
28 ¹ Nothing within complaint should be construed as an allegation that plaintiffs is bringing this
action as a private attorney general under either state or federal statutes.

1 28. Here, Vine Ripe violated the ADA by failing to make
2 reasonable modifications in policies, practices, or procedures at the Store,
3 when these modifications were necessary to afford (and would not
4 fundamentally alter the nature of) these goods, services, facilities, or
5 accommodations.

6 29. The Hubbards seek all relief available under the ADA (*i.e.*,
7 injunctive relief, attorney fees, costs, legal expense) for these
8 aforementioned violations. 42 U.S.C. § 12205.

9 30. The Hubbards also seek a finding from this Court (*i.e.*,
10 declaratory relief) that Vine Ripe violated the ADA in order to pursue
11 damages under California's Unruh Civil Rights Act or Disabled Persons
12 Act.

13 VII. SECOND CLAIM

14 Disabled Persons Act

15 31. The Hubbards incorporate the allegations contained in
16 paragraphs 1 through 30 for this claim.

17 32. California Civil Code § 54 states, in part, that: Individuals with
18 disabilities have the same right as the general public to the full and free use
19 of the streets, sidewalks, walkways, public buildings and facilities, and
20 other public places.

21 33. California Civil Code § 54.1 also states, in part, that:
22 Individuals with disabilities shall be entitled to full and equal access to
23 accommodations, facilities, telephone facilities, places of public
24 accommodation, and other places to which the general public is invited.

25 34. Both sections specifically incorporate (by reference) an
26 individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

1 42. Vine Ripe's aforementioned acts and omissions denied the
 2 physically disabled public—including the Hubbards—full and equal
 3 accommodations, advantages, facilities, privileges and services in a business
 4 establishment (because of their physical disability).

5 43. These acts and omissions (including the ones that violate the
 6 ADA) denied, aided or incited a denial, or discriminated against the
 7 Hubbards by violating the Unruh Act.

8 44. The Hubbards were damaged by Vine Ripe's wrongful conduct,
 9 and seek statutory minimum damages of four thousand dollars (\$4,000) for
 10 each offense.

11 45. The Hubbards also seek to enjoin Vine Ripe from violating the
 12 Unruh Act (and ADA), and recover reasonable attorneys' fees and costs
 13 incurred under California Civil Code § 52(a).

14 IX. FOURTH CLAIM

15 Denial of Full and Equal Access to Public Facilities

16 46. The Hubbards incorporate the allegations contained in
 17 paragraphs 1 through 13 for this claim.

18 47. Health and Safety Code § 19955(a) states, in part, that:
 19 California public accommodations or facilities (built with private funds)
 20 shall adhere to the provisions of Government Code § 4450.

21 48. Health and Safety Code § 19959 states, in part, that: Every
 22 existing (non-exempt) public accommodation constructed prior to July 1,
 23 1970, which is altered or structurally repaired, is required to comply with
 24 this chapter.

25 49. The Hubbards allege the Store is a public accommodation
 26 constructed, altered, or repaired in a manner that violates Part 5.5 of the
 27

28 Hubbard v. Vine Ripe Market
Plaintiffs' Complaint

1 Health and Safety Code or Government Code § 4450 (or both), and that the
2 Store was not exempt under Health and Safety Code § 19956.

3 50. Vine Ripe's non-compliance with these requirements at the
4 Store aggrieved (or potentially aggrieved) the Hubbards and other persons
5 with physical disabilities. Accordingly, they seek injunctive relief and
6 attorney fees pursuant to Health and Safety Code § 19953.

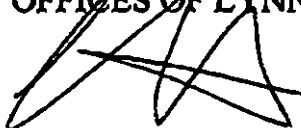
7 X. PRAYER FOR RELIEF

8 WHEREFORE, the Hubbards pray judgment against Vine Ripe for:

- 9 1. Injunctive relief, preventive relief, or any other relief the Court deems
10 proper.
- 11 2. Declaratory relief that Vine Ripe violated the ADA for the purposes
12 of Unruh Act or Disabled Persons Act damages.
- 13 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of
14 the California Civil Code (but not both) according to the proof.
- 15 4. Attorneys' fees, litigation expenses, and costs of suit.²
- 16 5. Interest at the legal rate from the date of the filing of this action.
- 17 6. Punitive damages pursuant to Civil Code § 3294.

18
19 DATED: March 24, 2005

LAW OFFICES OF LYNN HUBBARD

20
21 

22 _____
23 LYNN HUBBARD, III
24 Attorney for the Hubbards
25
26
27

28 ² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
Hubbard v. Vine Ripe Market
Plaintiffs' Complaint



PRELIMINARY SITE ACCESSIBILITY REPORT

***Vine Ripe Market
8191 Fletcher Parkway
San Diego, California***

VINE RIPE MARKET
8191 Fletcher Parkway
San Diego, CA

DSA pg 2&3

1. Tow away sign posted at wrong height.

SEE PHOTO No. 1

1129 B
Fig 21

2. Tow away sign has no phone number.

DOT #R100B

3. Tow away sign wrong color.

SEE PHOTO No. 2

1129B.5 4.6.4

4. Incorrect parking signage. No separate van accessible sign.

SEE PHOTO No. 3

1129 B.4.1 4.6.3

5. Incorrect parking space/access aisle dimensions.

1129 B.5.1&2 4.6.4

6. Accessible parking space and access aisle not outlined white.

CVC 21 458(a)(3)(A)

7. Access aisle not striped in white.

1129B.4.1
1129B.4.4 4.6.3

8. Surface of parking space or access aisle exceeds 2.0% grade in any direction.

SEE PHOTO No. 4

1102 B.2.6 4.3
DSA pg 2D&3D

9. No accessible route of travel from parking. Stop signs not painted for crossing vehicular path.

SEE PHOTO No. 5

- 1127 B. 36.304 10. No exterior route of travel from the property border.
- 1127 B. 4.3.2 11. No exterior route of travel from parking.
- 1127 B. 3 12. No exterior route of travel signs.
- 1124 B.3 4.5.3 13. Floor mats are not attached.
- 1117 B.5 4.30 14. Entrance door has no ISA.
Fig 11 B-6

SEE PHOTO No. 6

- 1122 B. 4 4.30.7 15. This location does not have an accessible check stand.
- 1122 B. 4 4.32.3 16. Check out counter does not have a section 28 to 34 inches high and 36 inches wide and 24 inches deep maximum to accommodate a wheelchair occupant.
Fig 11B- 5D and F
- 1102 B 4.3 17. No accessible route through store. At least one aisle is less than 36 inches wide.
1114 B.1.2 4.3.3
Fig 7 (a & b)
- 1117 B.1.1 4.1.3(10) (a) 18. Water fountain not hi-lo design.
- 1115 B.2.1.5.1 4.15.5 19. Water fountain does not have a 27 inch minimum knee clearance.

SEE PHOTO No. 7

- 1114 B. 1.2 20. No accessible route to the restroom.
- 1117 B. 5.4 21. No directional signage to the restroom.
1117 B. 5.1.3 4.1.2 (7) (d)
- 1117 B. 5.6.3 4.1.3 (16) (a) 22. Restroom signs are not on the wall, latch side.

- 1117 B. 5.5.3 4.30.4 23. Restroom door sign has no ISA, wall mounted, latch side.
- 1117 B. 5.6.3 4.30.4 24. Restroom door signs do not have a verbal description below the ISA, latch side.
- 1115 B. 5 4.30.4 25. Restroom door not identified in Braille, latch side.
- 1117 B. 5.1.1 4.1.2 (7) (d)
1117 B. 5.6.3 26. Restroom signs are not centered 60 inches from the floor, latch side.

SEE PHOTO No. 8

- 1115B. 7.1.4 27. Stall door not self closing.
- 1133 B. 2.4.2 4.13.6
Fig 11 B. - 26 A Fig 25 28. Clearance for side strike area on interior doors is not 18 inches on the pull side and 12 inches on the push side.
- 1115B.7.1.4 4.17.5 29. Outside stall door does not have accessible handle.

SEE PHOTO No. 9

- 1115 B. 7.1.4 30. Inside stall door does not have accessible handle.
- 1115 B.7.1.4 31. Inside stall door handle not mounted below latch.
- 1117 B. 6.4 4.27.4 32. Coat hook 45 inches from the floor.

SEE PHOTO No. 10

- 1115B. 92
Fig 11B-1A 33. Seat cover dispenser operable part 46 inches from floor, and mounted over the grab bar.

SEE PHOTO No. 12

4.17.3
Fig 30

34. Toilet tissue dispenser leading edge is 44 inches from back wall, not 36 inches maximum.

SEE PHOTO No. 13

1133 B.8.6.1 4.4.1

35. Toilet tissue dispenser protrudes more than 4 inches from wall.

SEE PHOTO No. 14

1115 B. 2.1.2.1
Fig 11 B. -D

36. Center of lavatory 9 inches from the wall not 18 inch minimum.

SEE PHOTO No. 15

1115 B.2.1.2.1 4.19.2
Fig 11 B. -D Fig 31

37. Drainpipes under lavatory 9 inches from the wall not 6 inch maximum.

1115 B. 2.1.2.2 4.19.4

38. Hot water and drainpipes are not insulated.

SEE PHOTO No. 16

1115B.9.1.1 4.19.2
1115 B.9.2

39. Towel dispenser operable part 52 inches from floor, not required 40 inches.

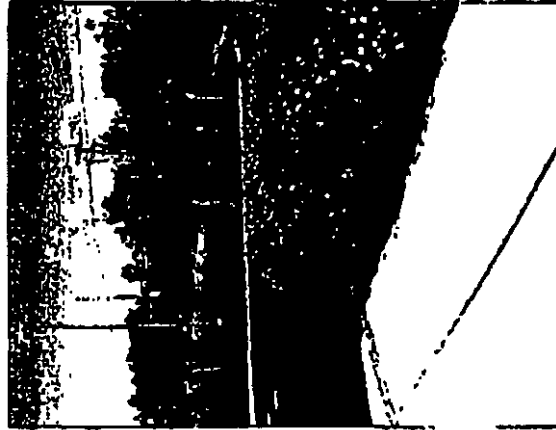
1102 B 4.3

40. Trash can is an obstruction to towel dispenser.

SEE PHOTO No. 17

THESE VIOLATIONS WERE FOUND IN THE WOMEN'S RESTROOM. ADDITIONAL VIOLATIONS MAY BE FOUND IN THE MEN'S RESTROOM.

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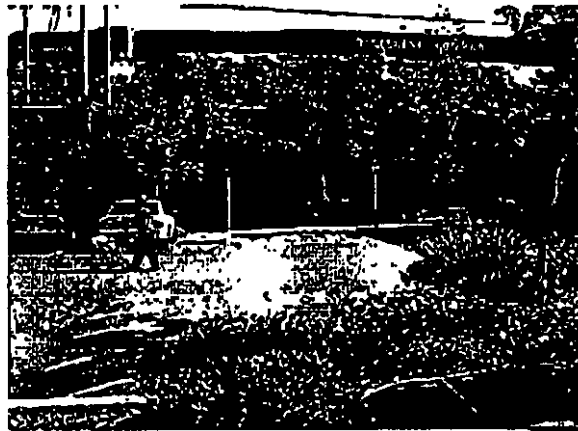
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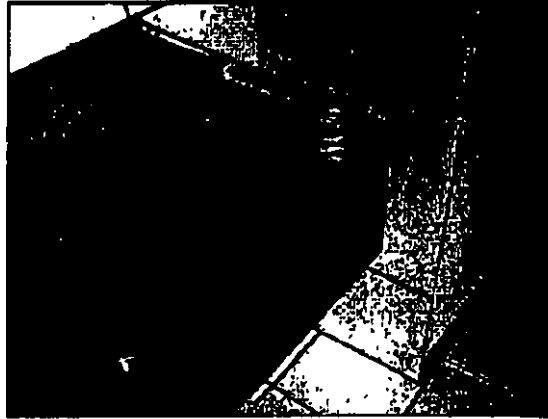
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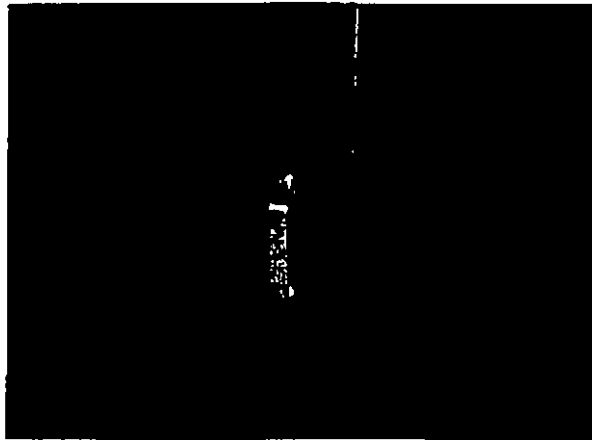
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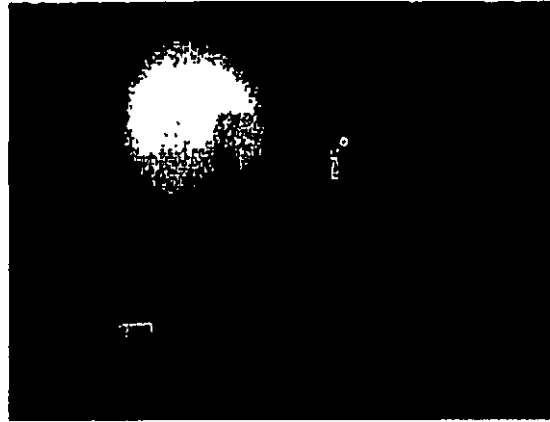
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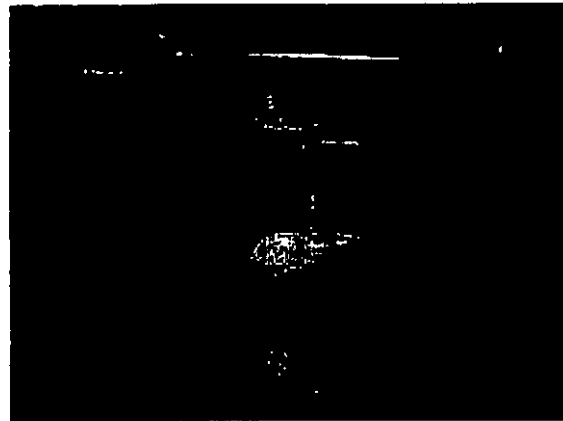
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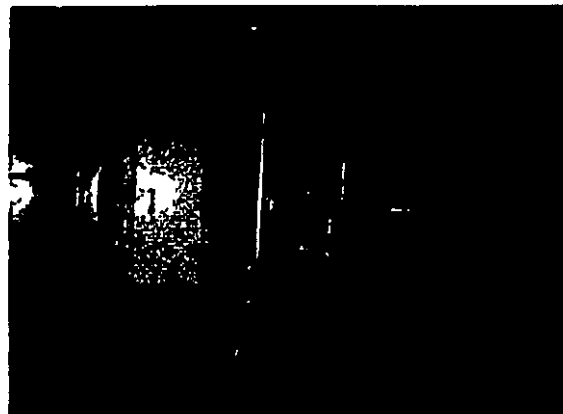
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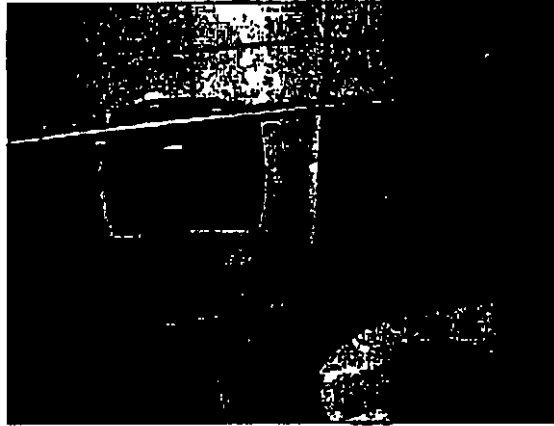
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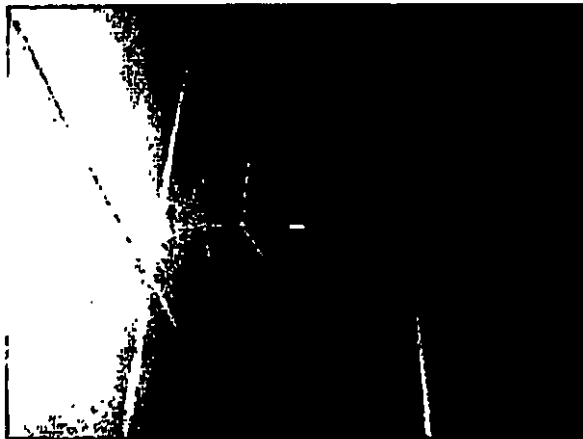
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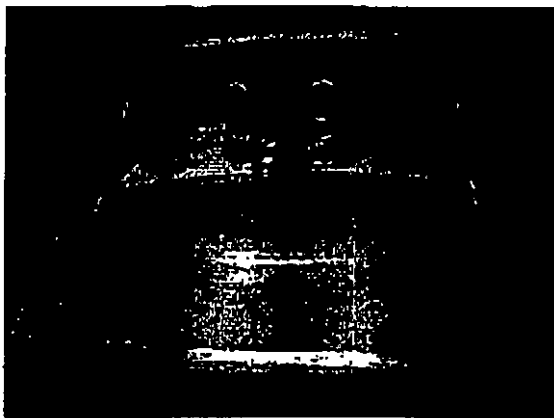
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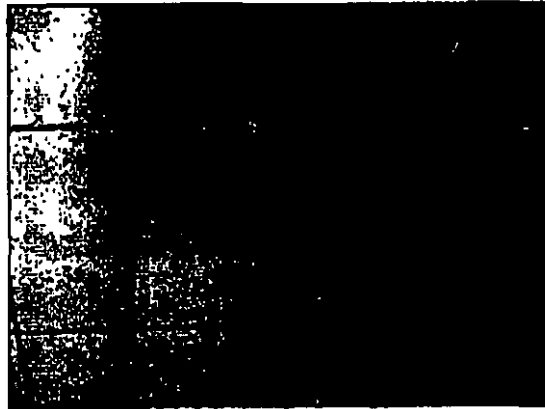
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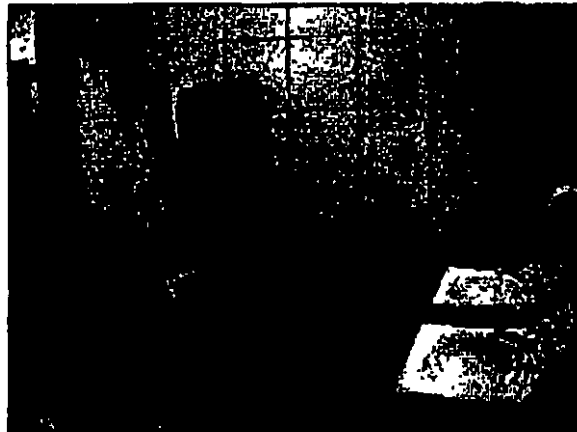
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17.



PROOF OF SERVICE

Hubbard v. Rite Aid Corporation, et al.
Court Case No. 02CV2497-WQH (BLM)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 200 East Sandpointe, Fourth Floor, Santa Ana, California 92707-0507. On April 8, 2005, I caused the foregoing document(s) described as **REQUEST FOR JUDICIAL NOTICE OF PUBLIC RECORD DOCUMENTS CONTAINED AS EXHIBITS TO DEFENDANTS' REPLY TO OPPOSITION TO MOTION FOR PRE-FILING ORDER PROHIBITING VEXATIOUS LITIGANTS FROM FILING NEW LITIGATION WITHOUT LEAVE OF COURT** to be served on the interested parties in this action as follows:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

Lynn Hubbard, III	Tel: (530) 895-3252
Law Offices of Lynn Hubbard	Fax: (530) 894-8244
12 Williamsburg Lane	
Chico, CA 95926	

BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.


BY OVERNIGHT COURIER: I caused such envelope to be placed for collection and delivery on this date in accordance with standard Overnite Express delivery procedures.

BY ELECTRONIC SERVICE (E-MAIL): to: LawOfChaos@aol.com

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the above-referenced person(s).

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 8, 2005, at Santa Ana, California.



Dora Renteria

HART, KING & COLDREN
A PROFESSIONAL CORPORATION
200 EAST SANDPOINTE, FOURTH FLOOR
SANTA ANA, CALIFORNIA 92707

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