

USDC SCAN INDEX SHEET



NMC 4/4/05 15:25

3:05-CV-00653 HUBBARD V. COCOS RESTAURANTS

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CMP.

ORIGINAL

1 LYNN HUBBARD, III, SBN 69773
2 SCOTTLYNN J HUBBARD, IV, SBN 212970
3 LAW OFFICES OF LYNN HUBBARD
4 12 WILLIAMSBURG LANE
5 CHICO, CA. 95926
6 (530) 895-3252

7 Attorney for Plaintiffs

FILED
APR - 1 2005
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11
12
13 LYNN J HUBBARD and
14 BARBARA J. HUBBARD

15 Plaintiffs,

16 vs.

17 COCO'S RESTAURANTS, INC.;
18 FAR WEST SERVICES, INC.

19 Defendants,

No. '05 CV 0653.

JAH (AJB)

Plaintiffs' Complaint

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28 Hubbard v. Coco's
Plaintiffs' Complaint

CR

1 I. SUMMARY

2 1. This is a civil rights action by plaintiffs LYNN J HUBBARD
3 and BARBARA J. HUBBARD (“the Hubbards”) for discrimination at the
4 building, structure, facility, complex, property, land, development, and/or
5 surrounding business complex known as:

6 Coco's
7 1025 Fletcher Parkway
8 El Cajon, CA 92020
9 (hereafter “the Restaurant”)

10 2. The Hubbards seek exemplary damages, injunctive and
11 declaratory relief, attorney fees and costs, against Coco's Restaurants, Inc. ;
12 Far West Services, Inc. (collectively “Coco's”) pursuant to the Americans
13 with Disabilities Act of 1990,(42 U.S.C. §§ 12101 et seq.), and related
14 California statutes.

15 II. JURISDICTION

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

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

21 5. The Hubbards’ claims are authorized by 28 U.S.C. §§ 2201 and
22 2202.

23 III. VENUE

24 6. All actions complained of herein take place within the
25 jurisdiction of the United States District Court, Southern District of
26 California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).
27
28

1 IV. PARTIES

2 7. Coco's owns, operates, or leases the Restaurant, and consists of
3 a person (or persons), firm, or corporation.

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

10 V. FACTS

11 9. The Restaurant is an establishment serving food and drink,
12 open to the public, which is intended for nonresidential use and whose
13 operation affects commerce.

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

20 11. Notwithstanding that visit, the Hubbards were also deterred
21 from visiting the Restaurant on approximately five occasions (as of the
22 filing of this complaint), because they knew that the Restaurant's goods,
23 services, facilities, privileges, advantages, and accommodations at the
24 restaurant were unavailable to physically disabled patrons (such as
25 themselves). They still refuse to visit the Restaurant because of the future
26 threats of injury created by these barriers.

1 accommodations of The Restaurant during each visit and each incident of
2 deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

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

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

13 19. Here, the Hubbards allege that Coco's can easily remove the
14 architectural barriers at the Restaurant without much difficulty or expense,
15 and that Coco's violated the ADA by failing to remove those barriers, when
16 it was readily achievable to do so.

17 20. In the alternative, if it was not “readily achievable” for Coco's
18 to remove the Restaurant’s barriers, then Coco's violated the ADA by failing
19 to make the required services available through alternative methods, which
20 are readily achievable.

21 Failure to Design and Construct an Accessible Facility

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

25 22. The ADA also prohibits designing and constructing facilities
26 for first occupancy after January 26, 1993, that aren’t readily accessible to,
27

1 and usable by, individuals with disabilities when it was structurally
2 practicable to do so. 42 U.S.C. § 12183(a)(1).

3 23. Here, Coco's violated the ADA by designing or constructing
4 (or both) the Restaurant in a manner that was not readily accessible to the
5 physically disabled public—including the Hubbards—when it was
6 structurally practical to do so.¹

7 Failure to Make an Altered Facility Accessible

8 24. On information and belief, the Restaurant was modified after
9 January 26, 1992, independently triggering access requirements under the
10 ADA.

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

18 26. Here, Coco's altered the Restaurant in a manner that violated
19 the ADA and was not readily accessible to the physically disabled public—
20 including the Hubbards—to the maximum extent feasible.

21 Failure to Modify Existing Policies and Procedures

22 27. The ADA also requires reasonable modifications in policies,
23 practices, or procedures, when necessary to afford such goods, services,
24 facilities, or accommodations to individuals with disabilities, unless the
25
26

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

1 entity can demonstrate that making such modifications would fundamentally
2 alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

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

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

10 30. The Hubbards also seek a finding from this Court (*i.e.*,
11 declaratory relief) that Coco's violated the ADA in order to pursue damages
12 under California's Unruh Civil Rights Act or Disabled Persons 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 Health and Safety Code or Government Code § 4450 (or both), and that the
2 Restaurant was not exempt under Health and Safety Code § 19956.

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

7 X. PRAYER FOR RELIEF

8 WHEREFORE, the Hubbards pray judgment against Coco's for:

- 9 1. Injunctive relief, preventive relief, or any other relief the Court deems
10 proper.
- 11 2. Declaratory relief that Coco's violated the ADA for the purposes of
12 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 28, 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.





PRELIMINARY SITE ACCESSIBILITY REPORT

***Coco's
1025 Fletcher Parkway
El Cajon, California***

COCO'S
1025 Fletcher Parkway
El Cajon, 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.

1129 B.5

4. Tow away sign uses incorrect verbiage.

ADAAG 111

5. Signage uses the term handicapped.

SEE PHOTO No. 2

1129B.5

4.6.4

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

SEE PHOTO No. 3

1129 B. 4.3

7. Arrangement of accessible parking spaces compels a wheelchair occupant to travel behind other vehicles.

SEE PHOTO Nos. 4 and 5

1129 B.4.1

4.6.3

8. Incorrect parking space/access aisle dimensions.

1129 B.5.1&2

4.6.4

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

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

10. Access aisle not striped in white.

1129B.4.1
Fig 11 B-18 A

11. Missing no parking painted in accessible aisle.

SEE PHOTO Nos. 4, 5, and 6

1129 B. 4.3

12. Accessible parking space has no bumper or curb.

SEE PHOTO No. 6

1102 B.2.6
DSA pg 2D&3D

4.3

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

1127 B. 5.8

14. No detectable warnings.

1127 B.5.8

4.29.2

15. Detectable warning not visually contrasting, light on dark or dark on light.

1127 B.

36.304

16. No exterior route of travel from the property border.

1127 B.

4.3.2

17. No exterior route of travel from parking.

1127 B. 3

18. No exterior route of travel signs.

1117 B.5
Fig 11 B-6

4.30

19. Entrance door has no ISA.

SEE PHOTO No. 7

1124 B.3

4.5.3

20. Floor mats are not attached.

1117 B.2

4.1.3

21. Public telephone not accessible height.

1117 B.2.8

4.1.3 (17) (b)
4.31.5 (2)

22. Public telephone has no volume control.

1117 B. 5.8.3
Fig 11 B.-14C

4.30.7
Fig 43

23. Public telephone has no ISA.

SEE PHOTO No. 8

1122 B. 4 Fig 11B- 5D and F	4.32.3	24. Cashier's 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.
1122 B. 3	4.32.3	25. Dining room booths do not have 30 inches between cushions.
1122 B. 3	4.32.2	26. Dining room seating does not offer 19 inches before an obstruction to accommodate a wheelchair occupant.
1117 B. 5.8.1 Fig 11 B. - 6	4.30.7 Fig 43	27. Dining room seating has no ISA.
1117 B. 5.4 1117 B. 5.1.3	4.1.2 (7) (d)	28. No directional signage to the restroom.
1115 B. Fig 82		29. Restrooms signs incorrect shape, triangle for men, circle for women.
1117 B. 5.6.3	4.1.3 (16) (a)	30. Restroom signs are not on the wall, latch side.
1117 B. 5.5.3	4.30.4	31. Restroom door sign has no ISA, wall mounted, latch side.
1117 B. 5.6.3	4.30.4	32. Restroom door signs do not have a verbal description below the ISA, latch side.
1115 B. 5	4.30.4	33. Restroom door not identified in Braille, latch side.
1117 B. 5.1.1 1117 B. 5.6.3	4.1.2 (7) (d)	34. Restroom signs are not centered 60 inches from the floor, latch side.

SEE PHOTO No. 9

1115B.7.1.4	4.17.5	35. Outside stall door does not have accessible handle.
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SEE PHOTO No. 10

1115 B. 7.1.4

36. Inside stall door does not have accessible handle.

1115 B.7.1.4

37. Inside stall door handle not mounted below latch.

SEE PHOTO No. 11

4.17.3
Fig 30

38. Toilet tissue dispenser leading edge is 40 inches from back wall, not 36 inches maximum.

SEE PHOTO No. 13

1133 B.8.6.1

4.4.1

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

SEE PHOTO No. 14

1115 B. 2.1.2.1
Fig 11 B. -D

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

SEE PHOTO No. 15

1115 B.2.1.2.1
Fig 11 B. -D

4.19.2
Fig 31

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

1115 B. 2.1.2.2

4.19.4

42. Hot water and drainpipes are not insulated.

SEE PHOTO No. 16

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

1.



2.



3.



4.



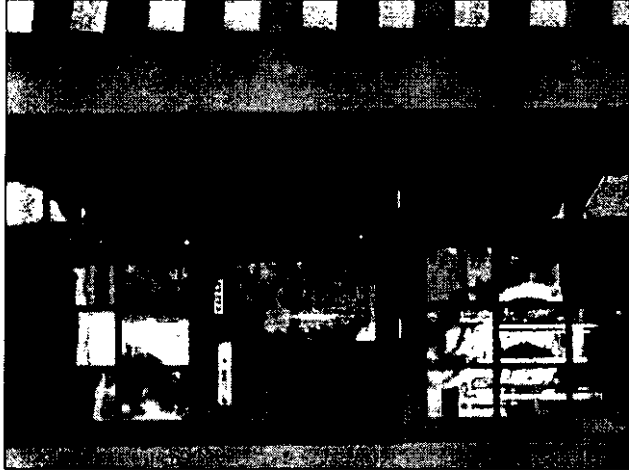
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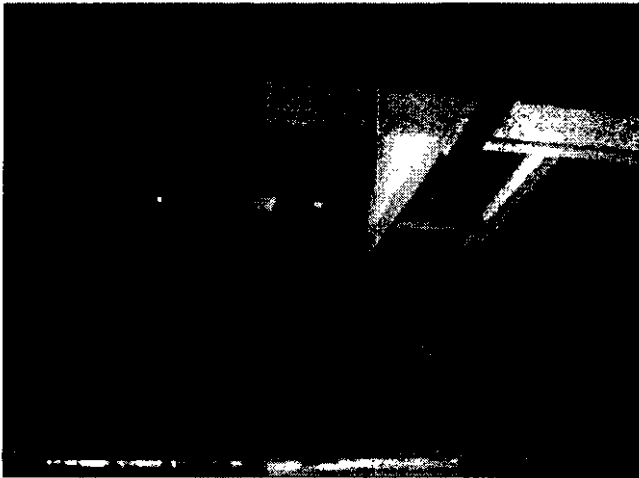
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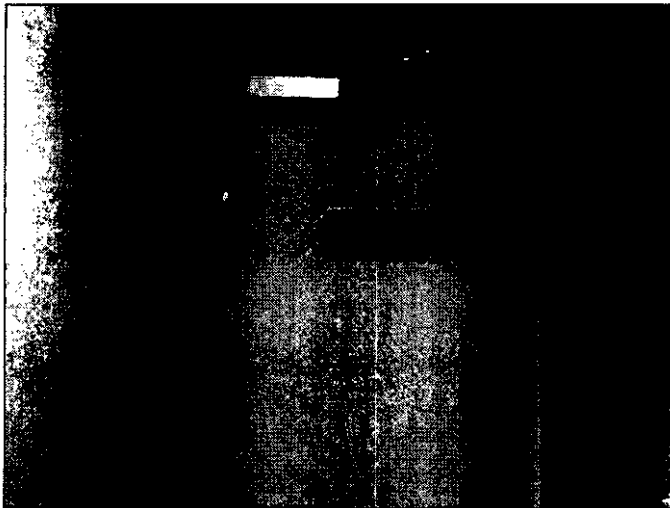
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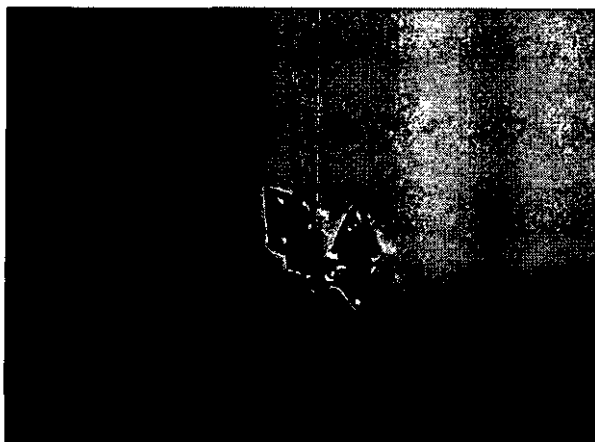
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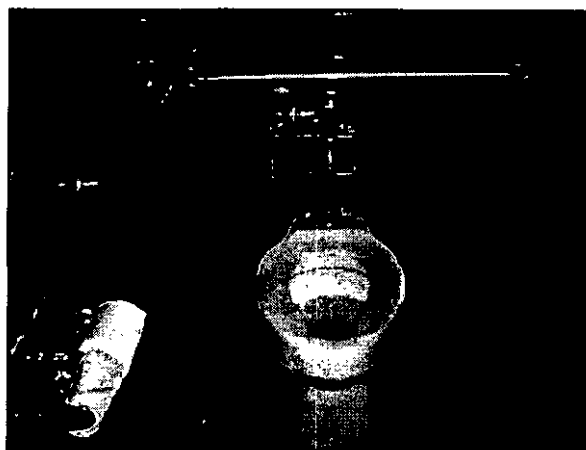
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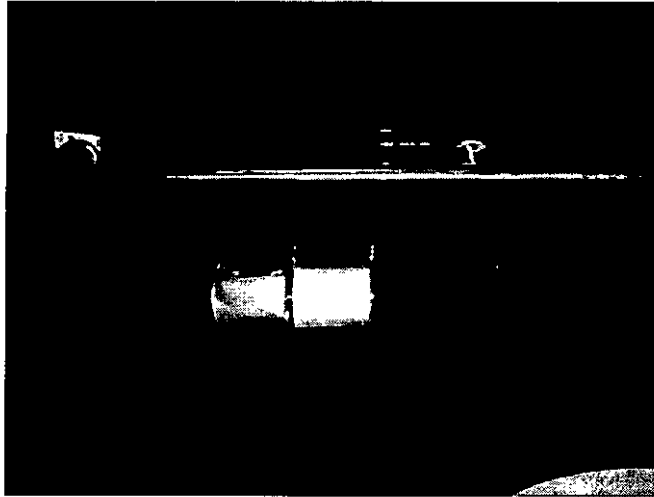
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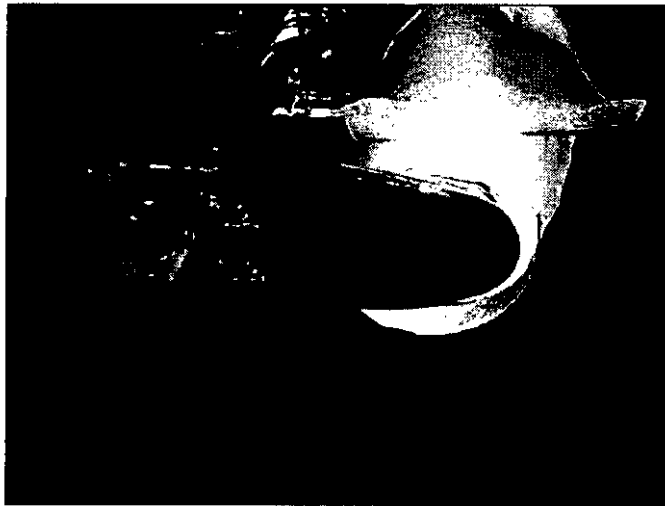
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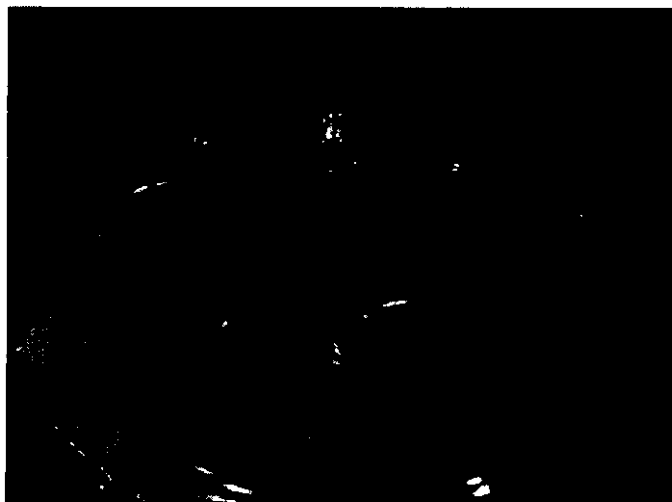
13.



14.



15.



16.



CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED
APR 20 2005
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

I. (a) PLAINTIFFS

LYNN J HUBBARD and BARBARA J. HUBBARD

ORIGINAL

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

COCO'S RESTAURANTS, INC.; FAR WEST SERVICES, INC.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Lynn Hubbard, III, Esq.
Law Offices of Lynn Hubbard, 12 Williamsburg Lane,
Chico, CA 95926

ATTORNEYS (IF KNOWN)

'05 CV 0653 JAH (AJB)

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

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 382 Personal Injury - Med. Malpractice <input type="checkbox"/> 385 Personal Injury - Product Liability <input type="checkbox"/> 386 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 881 HIA (1395ff) <input type="checkbox"/> 882 Black Lung (923) <input type="checkbox"/> 883 DIWC/DIWW (405(g)) <input type="checkbox"/> 884 SSID Title XVI <input type="checkbox"/> 885 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL UNLESS DIVERSITY.)

42 U.S.C. Section 12101, et seq.
Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

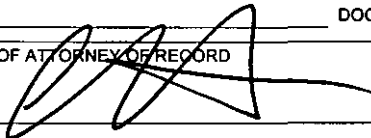
DEMAND \$ Excess \$75,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE: March 28, 2005 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # 112440 AMOUNT \$150,000.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CR