

USDC SCAN INDEX SHEET



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3:04-CV-02591 HUBBARD V. GUPTA
1
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

04 DEC 30 PM 12:55



DEPUTY

Attorney for Plaintiff

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

12
13 LYNN J HUBBARD and
14 BARBARA J. HUBBARD

15 Plaintiff,

16 vs.

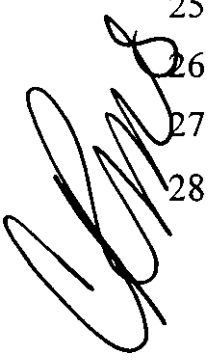
17 ROSHAN L. GUPTA and SHEELA
18 GUPTA dba GAS DEPOT
19 STATION.

20 Defendants,

'04 CV 2591
No.



Plaintiff's Complaint



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 Gas Depot Station
7 199 Broadway
8 Chula Vista, Ca 91910

9 (The “Gas Station”)
10

11 2. The Hubbards seek compensatory and punitive damages,
12 injunctive and declaratory relief, attorney fees and costs, against defendants
13 ROSHAN L. GUPTA and SHEELA GUPTA dba GAS DEPOT STATION
14 (collectively “Gas Depot Station ”) pursuant to the Americans with
15 Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and related
16 California statutes.

17 II. JURISDICTION

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

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

23 5. The Hubbards claims are authorized by 28 U.S.C. §§ 2201 and
24 2202.

25 III. VENUE

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

1 IV. PARTIES

2 7. Gas Depot Station owns, operates, or leases the Gas Station,
3 and consists of a person (or persons), firm, or corporation.

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

10 V. FACTS

11 9. The Gas Station is a service establishment, open to the public,
12 which is intended for nonresidential use and whose operation affects
13 commerce.

14 10. The Hubbards visited the Gas Station 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 them access at the Gas Station.

20 11. Notwithstanding that visit, the Hubbards were also deterred
21 from visiting the Gas Station, because they knew that the Gas Station’s
22 goods, services, facilities, privileges, advantages, and accommodations at
23 the Gas Station were unavailable to physically disabled patrons (such as
24 themselves). They still refuse to visit the Gas Station because of the future
25 threats of injury created by these barriers.

26 12. The Hubbards also encountered barriers at the Gas Station,
27 which violate state and federal law, but were unrelated to their disability;
28 these unrelated barriers were included within Exhibit A, as a courtesy to

1 Gas Depot Station , so the defendants can avoid inadvertent acts of
2 discrimination against the disabled. Nothing within this complaint,
3 however, should be construed as an allegation that the Hubbards are seeking
4 to remove barriers unrelated to their disabilities.

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

13 14. The Hubbards have suffered (or anticipates suffering)
14 emotional and physical harm during each visit to the Gas Station and each
15 incident of deterrence. Moreover, because of Gas Depot Station 's acts and
16 omissions, they suffered physical discomfort and injury, emotional distress,
17 and mental suffering and distress.

18 15. All injuries suffered by the Hubbards are expectedly and
19 naturally associated with Gas Depot Station 's acts and omissions at the Gas
20 Station.

21 VI. FIRST CLAIM

22 **Americans with Disabilities Act of 1990**

23 Denial of "Full and Equal" Enjoyment and Use

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

26 17. Title III of the ADA holds as a 'general rule' that no individual
27 shall be discriminated against on the basis of disability in the full and equal
28 enjoyment (or use) of goods, services, facilities, privileges, and

1 accommodations offered by any person who owns, operates, or leases a
2 place of public accommodation. 42 U.S.C. § 12182(a).

3 18. Gas Depot Station discriminated against the Hubbards by
4 denying “full and equal enjoyment” and use of the goods, services,
5 facilities, privileges or accommodations of the Gas Station during each visit
6 and each incident of deterrence.

7 Failure to Remove Architectural Barriers in an Existing Facility

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

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

17 21. Here, The Hubbards allege that Gas Depot Station can easily
18 remove the architectural barriers at the Gas Station without much difficulty
19 or expense, and that Gas Depot Station violated the ADA by failing to
20 remove those barriers, when it was readily achievable to do so.

21 22. In the alternative, if it was not “readily achievable” for Gas
22 Depot Station to remove the Gas Station’s barriers, then Gas Depot Station
23 violated the ADA by failing to make the required services available through
24 alternative methods, which are readily achievable.

25 Failure to Design and Construct an Accessible Facility

26 23. On information and belief, the Gas Station was designed or
27 constructed (or both) after January 26, 1992—independently triggering
28 access requirements under Title III of the ADA.

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

5 25. Here, Gas Depot Station violated the ADA by designing or
6 constructing (or both) the Gas Station in a manner that was not readily
7 accessible to the physically disabled public—including the Hubbards—
8 when it was structurally practical to do so.

9 Failure to Make an Altered Facility Accessible

10 26. On information and belief, the Gas Station was modified after
11 January 26, 1992, independently triggering access requirements under the
12 ADA.

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

20 28. Here, Gas Depot Station altered the Gas Station in a manner
21 that violated the ADA and was not readily accessible to the physically
22 disabled public—including Feezor—to the maximum extent feasible.

23 Failure to Modify Existing Policies and Procedures

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

1 access to the Gas Station. Gas Depot Station also violated The Hubbards
2 rights under the ADA, and, therefore, infringed upon or violated (or both)
3 The Hubbards rights under the Disabled Persons Act.

4 38. For each offense of the Disabled Persons Act, The Hubbards
5 seek actual damages (both general and special damages), statutory minimum
6 damages of one thousand dollars (\$1,000), declaratory relief, and any other
7 remedy available under California Civil Code § 54.3.

8 39. He also seeks to enjoin Gas Depot Station from violating the
9 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
10 recover reasonable attorneys' fees and incurred under California Civil Code
11 §§ 54.3 and 55.

12 VIII. THIRD CLAIM

13 Unruh Civil Rights Act

14 40. The Hubbards incorporate the allegations contained in
15 paragraphs 1 through 32 for this claim.

16 41. California Civil Code § 51 states, in part, that: All persons
17 within the jurisdiction of this state are entitled to the full and equal
18 accommodations, advantages, facilities, privileges, or services in all
19 business establishments of every kind whatsoever.

20 42. California Civil Code § 51.5 also states, in part, that: No
21 business establishment of any kind whatsoever shall discriminate against
22 any person in this state because of the disability of the person.

23 43. California Civil Code § 51(f) specifically incorporates (by
24 reference) an individual's rights under the ADA into the Unruh Act.

25 44. Gas Depot Station's aforementioned acts and omissions denied
26 the physically disabled public—including Feezor—full and equal
27 accommodations, advantages, facilities, privileges and services in a business
28 establishment (because of their physical disability).

1 other persons with physical disabilities. Accordingly, he seeks injunctive
2 relief and attorney fees pursuant to Health and Safety Code § 19953.

3 X. FIFTH CLAIM

4 **Negligence**

5 53. The Hubbards incorporate the allegations contained in
6 paragraphs 1 through 52 for this claim.

7 54. Gas Depot Station had a duty to comply with the
8 aforementioned California and United States laws or regulations (or both).

9 55. These aforementioned laws and regulations, which Gas Depot
10 Station violated, were adopted to protect the class of physically disabled
11 persons—including Feezor—from injury.

12 56. The Hubbards suffered physical and emotional injuries
13 proximately caused by an occurrence that these laws or regulations were
14 designed to prevent.

15 57. Gas Depot Station 's acts and omissions evince oppressive,
16 fraudulent, or malicious conduct in conscious disregard for the rights or
17 safety of the Hubbards (and the physically disabled public).

18 58. Thus, the Hubbards (in addition to the actual damages) seek
19 damages for the sake of example and by way of punishing Gas Depot
20 Station under California Civil Code § 3294 in a sufficient amount to
21 accomplish that purpose.

22 59. The Hubbards also seek interest under California Civil Code §
23 3291, too.

24 XII. PRAYER FOR RELIEF

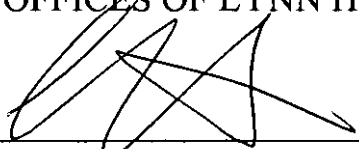
25 WHEREFORE, the Hubbards pray judgment against the Gas Depot Station
26 for:

27 1. Injunctive relief, preventive relief, or any other relief the Court deems
28 proper.

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2. Declaratory relief that Gas Depot Station violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to the proof.
4. General and special damages in the amount of \$100,000.00;
5. Attorneys' fees, litigation expenses, and costs of suit.¹
6. Interest at the legal rate from the date of the filing of this action.
7. Punitive damages pursuant to Civil Code § 3294.
8. Prejudgment interest pursuant to Civil Code § 3291.
9. Such other and further relief as the court may deem proper.

DATED: December 27, 2004 LAW OFFICES OF LYNN HUBBARD



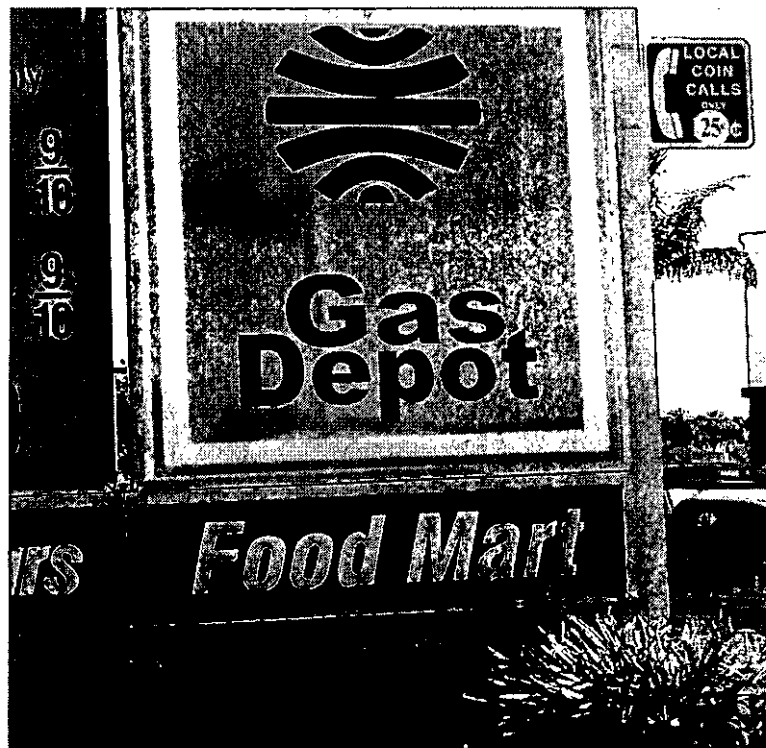
LYNN HUBBARD, III
Attorney for the Hubbards

¹ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
Hubbard v. Gas Depot Station, et al.,
Plaintiff's Complaint



PRELIMINARY SITE ACCESSIBILITY REPORT

***Gas Depot Station
199 Broadway
Chula Vista, California***



GAS DEPOT STATION
199 Broadway
Chula Vista, 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

1129 B.5 4.6.4

4. Incorrect placement of parking signage. Sign hidden behind vending machine.

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
Fig 11 B-18 A

8. Missing no parking painted in accessible aisle.

SEE PHOTO No. 4

1117 B.5 4.30
Fig 11 B-6

9. Entrance door has no ISA.

SEE PHOTO No. 4

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.

1117 B.2

4.1.3

13. Public telephone not accessible height.

1117 B.2.8

4.1.3 (17) (b)
4.31.5 (2)

14. Public telephone has no volume control.

1117 B. 5.8.3
Fig 11 B.-14C

4.30.7
Fig 43

15. Public telephone has no ISA.

SEE PHOTO Nos. 6 and 7

1122 B. 4

4.30.7

16. This location does not have an accessible check stand.

1122 B. 4
Fig 11B- 5D and F

4.32.3

17. 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.

1102 B
1114 B.1.2

4.3
4.3.3
Fig 7 (a & b)

18. No accessible route through store. At least one aisle is less than 36 inches wide.

Bus. And Prof. Code #13660

19. No emergency call button on pump islands.

1101 C

20. Gas pump card reader height 56 inches from the ground.

Bus and Prof. Code 13660(3)

21. No sign stating no refueling for disabled persons.

SEE PHOTO Nos. 8 thru' 11

13651(b)(1)

22. This location does not provide public restrooms.

Bus and Prof. Code #13651(a)(1)

23. This location charges a fee for customers compressed air and water.

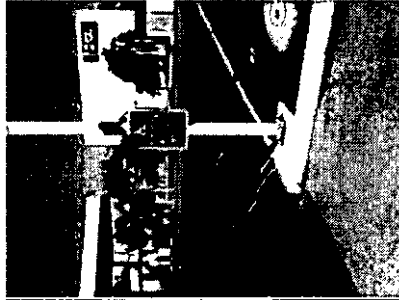
Bus and Prof Code #13651(2)

24. No sign stating compressed air and water are free to customers.

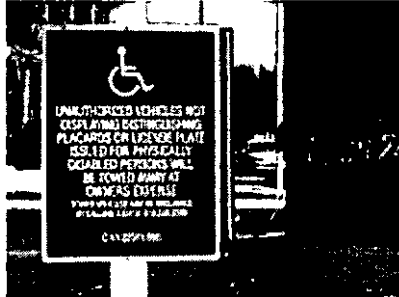
SEE PHOTO Nos. 12 and 13

THERE ARE NO PUBLIC RESTROOMS AT THIS LOCATION.

#1



#2



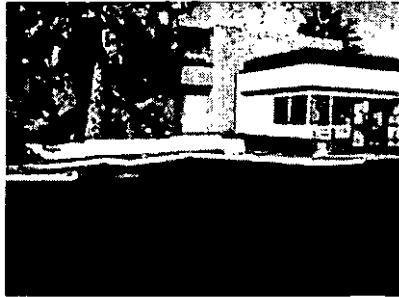
#3



#4



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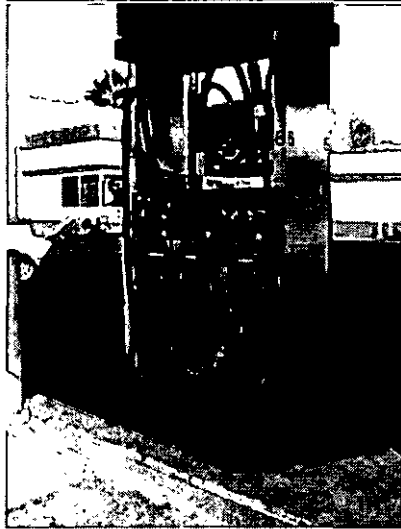
#6



#7



#8



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#10



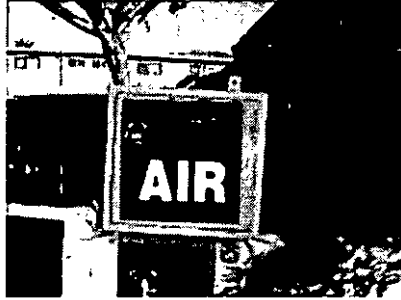
#11



#12



#13



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.)

I. (a) PLAINTIFFS

LYNN J HUBBARD and BARBARA J. HUBBARD

ORIGINAL

DEFENDANTS

ROSHAN L. GUPTA and SHEELA GUPTA dba GAS DEPOT STATION.

U4 DEC 30 PM 12:54

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

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)

04 CV 2591 LAB (POR)

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 STATUTES
<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"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 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"/> 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"/> 990 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	<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	<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"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 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	

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: December 27, 2004 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # 109885 AMOUNT 150.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

12/30/04 RD