

Summons in a Civil Action (Rev 11/97)

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

LYNN J HUBBARD and BARBARA J.
HUBBARD,

Plaintiffs,

ORIGINAL

vs.

SUMMONS IN A CIVIL ACTION

Case No.

'05 CV 0104IEG

(BLM)

YARDAGE TOWN, INC. dba YARDAGE TOWN;
STANCIL G. JONES.

Defendants.

TO: (Name and Address of Defendant)

Yardage Town Inc. dba Yardage Town
c/o Rubin Recht
907 Plaza Boulevard
National City, CA 92050

Stancil G. Jones
c/o
2608 Cove Street
Corona Del Mar, CA 92625

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and
serve upon PLAINTIFF'S ATTORNEY

Lynn Hubbard III, SBN 69773
Scottlynn J Hubbard IV, SBN 212970
LAW OFFICES OF LYNN HUBBARD
12 Williamsburg Lane
Chico, CA 95926

An answer to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment
by default will be taken against you for the relief demanded in the complaint.

CLERK W. Samuel Hamrick, Jr.

DATE 1/19/05

By [Signature] Deputy Clerk

COPY

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

Attorney for Plaintiff

FILED
JAN 19 2005
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY
BY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LYNN J HUBBARD and
BARBARA J. HUBBARD

Plaintiff,

vs.

YARDAGE TOWN, INC. dba
YARDAGE TOWN; STANCIL G.
JONES.

Defendants,

No. '05 CV 0104IEG (BLM)

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 Yardage Town
7 435 Santa Fe Drive
8 Encinitas, CA 92824

9 (The "Store")
10

11 2. The Hubbards seek exemplary damages, injunctive and
12 declaratory relief, attorney fees and costs, against defendants YARDAGE
13 TOWN, INC. dba YARDAGE TOWN; STANCIL G. JONES (collectively
14 "Yardage Town") pursuant to the Americans with Disabilities Act of 1990,
15 (42 U.S.C. §§ 12101 et seq.), and related California statutes.

16 II. JURISDICTION

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

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

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

24 III. VENUE

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

7. Yardage Town 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 rental 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 them access at the Store.

11. Notwithstanding that visit, the Hubbards were also deterred from visiting the Store on approximately two occasions, 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 unrelated barriers were included within Exhibit A, as a courtesy to Yardage

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

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

12 VI. FIRST CLAIM

13 Americans with Disabilities Act of 1990

14 Denial of "Full and Equal" Enjoyment and Use

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

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

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

26 Failure to Remove Architectural Barriers in an Existing Facility

27 17. The ADA specifically prohibits failing to remove architectural
28 barriers, which are structural in nature, in existing facilities where such

1 removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term
2 “readily achievable” is defined as “easily accomplishable and able to be
3 carried out without much difficulty or expense.” Id. § 12181(9).

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

8 19. Here, The Hubbards allege that Yardage Town can easily
9 remove the architectural barriers at the Store without much difficulty or
10 expense, and that Yardage Town violated the ADA by failing to remove
11 those barriers, when it was readily achievable to do so.

12 20. In the alternative, if it was not “readily achievable” for Yardage
13 Town to remove the Store’s barriers, then Yardage Town violated the ADA
14 by failing to make the required services available through alternative
15 methods, which are readily achievable.

16 Failure to Design and Construct an Accessible Facility

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

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

24 23. Here, Yardage Town violated the ADA by designing or
25 constructing (or both) the Store in a manner that was not readily accessible
26 to the physically disabled public—including the Hubbards—when it was
27 structurally practical to do so.

28 Failure to Make an Altered Facility Accessible

1 24. On information and belief, the Store was modified after
2 January 26, 1992, independently triggering access requirements under the
3 ADA.

4 25. The ADA also requires that facilities altered in a manner that
5 affects (or could affect) its usability must be made readily accessible to
6 individuals with disabilities to the maximum extent feasible. 42 U.S.C. §
7 12183(a)(2). Altering an area that contains a facility's primary function also
8 requires adding making the paths of travel, bathrooms, telephones, and
9 drinking fountains serving that area accessible to the maximum extent
10 feasible. Id.

11 26. Here, Yardage Town altered the Store in a manner that violated
12 the ADA and was not readily accessible to the physically disabled public—
13 including the Hubbards—to the maximum extent feasible.

14 Failure to Modify Existing Policies and Procedures

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

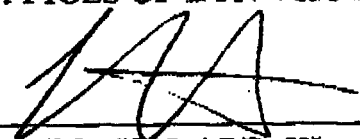
20 28. Here, Yardage Town violated the ADA by failing to make
21 reasonable modifications in policies, practices, or procedures at the Store,
22 when these modifications were necessary to afford (and would not
23 fundamentally alter the nature of) these goods, services, facilities, or
24 accommodations.

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

28

- 1 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of
- 2 the California Civil Code (but not both) according to the proof.
- 3 4. Attorneys' fees, litigation expenses, and costs of suit.¹
- 4 5. Interest at the legal rate from the date of the filing of this action.
- 5 6. Such other and further relief as the court may deem proper.

6 DATED: January 17, 2005 LAW OFFICES OF LYNN HUBBARD

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10 _____
11 LYNN HUBBARD, III
12 Attorney for the Hubbards
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¹ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
Hubbard v. Yardside Town, Inc. et al.
Plaintiff's Complaint

FROM : _____

FAX NO. :

Feb. 23 2005 10:58AM P2

EXHIBIT A

YARDAGE TOWN
435 Santa Fe Drive
Encinitas, CA

DSA pg 2&3

- 1. Tow away sign posted at wrong height.

SEE PHOTO No. 1

DOT #R100B

- 2. Tow away sign wrong color.

1129 B.5

- 3. Tow away sign uses incorrect verbiage.

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

- 5. Incorrect location of accessible parking spaces.

1129 B.4

4.6.2

- 6. Accessible parking spaces not located the shortest accessible route of travel to the entrance.

1129 B.

4.6.3

- 7. No access aisle for the accessible parking space.

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

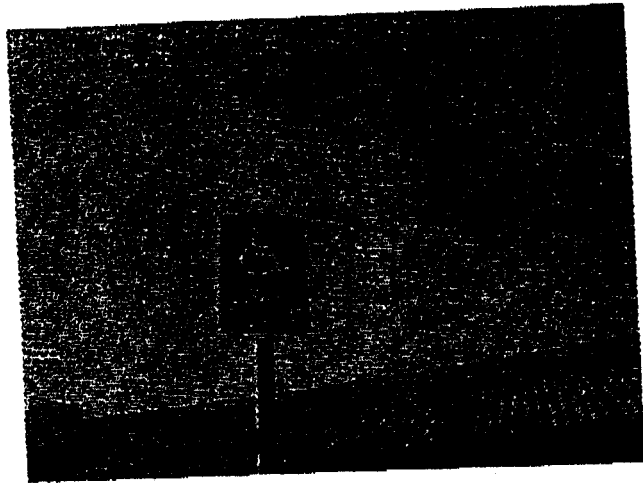
- 9. Accessible parking space and access aisle not outlined white.

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

- 10. Access aisle not striped in white.

SEE PHOTO Nos. 6 and 7

#3



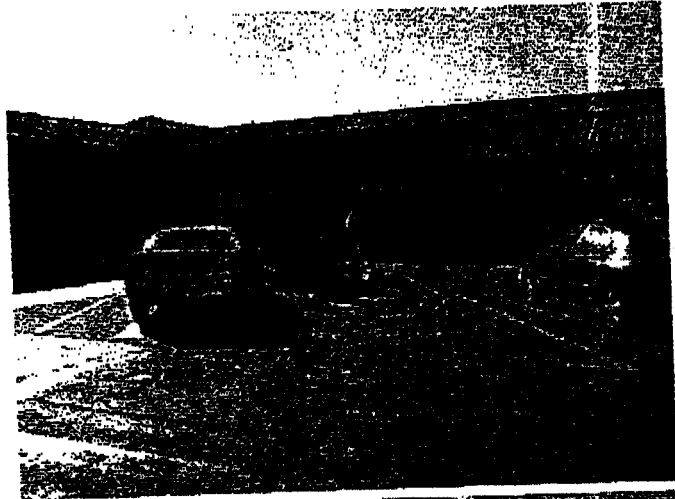
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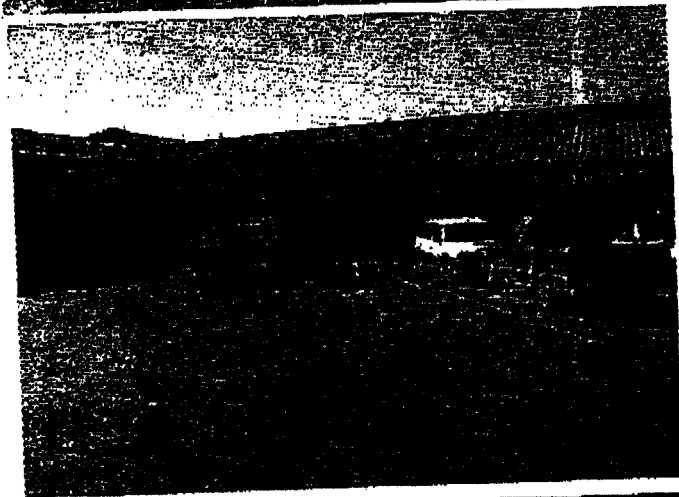
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#7



#8



1122 B. 4 4.32.3
Fig11B- 5D and F

21. Measuring 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 4.3
1114 B.1.2 4.3.3
Fig 7 (a & b)

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

13651(b)(1)

23. This location does not provide public restrooms.

THIS LOCATION DOES NOT HAVE PUBLIC RESTROOMS.

#1



#2



1129 B. 4.3

11. Accessible parking space has no bumper or curb.

SEE PHOTO Nos. 4 and 51102 B.2.6 4.3
DSA pg 2D&3D

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

SEE PHOTO No. 8

1127 B. 36.304

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

1127 B. 4.3.2

14. No exterior route of travel from parking.

1127 B. 3

15. No exterior route of travel signs.

ACI 117R-90 Section 12
See Tolerances

16. Level surface at entrance is greater than 1/4 inch in 10 feet, variance allowed.

1124 B.3 4.5.3

17. Floor mats are not attached.

1117 B.5 4.30
Fig 11 B-6

18. Entrance door has no ISA.

SEE PHOTO No. 91003.3.1.9&10
1117B.5.1-B

19. Emergency exit passage not identified in Braille.

SEE PHOTO No. 101122 B. 4 4.32.3
Fig 11B- 5D and F

20. 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.