FROM

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.

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 **SUMMONS IN A CIVIL ACTION**

Case No. **CV** 0104**IEG**

(BLM)

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.

Deputy Clerk

Summons in a Civil Action

Hubbard v. Yardase Town, Inc., et al., Plaintiff's Complaint

Page 1

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I. SUMMARY

1. This is a civil rights action by Plaintiffs, LYNN J HUBBARD and BARBARA J. HUBBARD ("The Hubbards") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Yardage Town 435 Santa Fe Drive Encinitas, CA 92824

(The "Store")

2. The Hubbards seek exemplary damage es, injunctive and declaratory relief, attorney fees and costs, against defendants YARDAGE TOWN, INC. dba YARDAGE TOWN; STANCIL G. JONES (collectively "Yardage Town") 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).

Hubbard v. Yardage Town. Inc., et al., Plaintiff's Complaint

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

Hubbard v. Yardage Town, Inc., et al., Plaintiff's Complaint

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

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

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

- 14. The Hubbards incorporate the allegations contained in paragraphs 1 through 13 for this claim.
- 15. Title III of the ADA holds as a 'general rule' that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
- 16. Yardage Town discriminated against the Hubbards by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Store during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

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

Hubbard v. Yardage Town, Inc., et al., Plaintiff's Complaint

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

- When an entity can demonstrate that removal of a barrier is not 18. readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).
- Here, The Hubbards allege that Yardage Town can easily remove the architectural barriers at the Store without much difficulty or expense, and that Yardage Town violated the ADA by failing to remove those barriers, when it was readily achievable to do so.
- 20. In the alternative, if it was not "readily achievable" for Yardage Town to remove the Store's barriers, then Yardage Town violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

- 21. On information and belief, the Store was designed or constructed (or both) after January 26, 1992—independently triggering access requirements under Title III of the ADA.
- 22. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to. and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).
- 23. Here, Yardage Town violated the ADA by designing or constructing (or both) the Store in a manner that was not readily accessible to the physically disabled public—including the Hubbards—when it was structurally practical to do so.

Failure to Make an Altered Facility Accessible

Hubbard v. Yarping Town, Inc., et al., Plaintiff's Complaint

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

- 25. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires adding making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. Id.
- 26. Here, Yardage Town altered the Store in a manner that violated the ADA and was not readily accessible to the physically disabled public—including the Hubbards—to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

- 27. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 28. Here, Yardage Town violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Store, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.
- 29. The Hubbards seek all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

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

VII. SECOND CLAIM

Disabled Persons Act

- 31. The Hubbards incorporate the allegations contained in paragraphs 1 through 30 for this claim.
- 32. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.
- 33. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.
- 34. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).
- 35. Here, Yardage Town discriminated against the physically disabled public—including the Hubbards—by denying them full and equal access to the Store. Yardage Town also violated The Hubbards rights under the ADA, and, therefore, infringed upon or violated (or both) The Hubbards rights under the Disabled Persons Act.
- 36. For each offense of the Disabled Persons Act, The Hubbards seek actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

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37. He also seeks to enjoin Yardage Town from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

VIII. THIRD CLAIM

Unruh Civil Rights Act

- 38. The Hubbards incorporate the allegations contained in paragraphs 1 through 30 for this claim.
- 39. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.
- 40. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.
- 41. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.
- 42. Yardage Town's aforementioned acts and omissions denied the physically disabled public—including The Hubbards—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).
- 43. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against the Hubbards by violating the Unruh Act.
- 44. The Hubbards were damaged by Yardage Town's wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

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

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

- 46. The Hubbards incorporate the allegations contained in paragraphs 1 through 13 for this claim.
- Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.
- Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.
- 49. The Hubbards allege the Store is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Store was not exempt under Health and Safety Code § 19956.
- 50. Yardage Town's non-compliance with these requirements at the Store aggrieved (or potentially aggrieved) the Hubbards and other persons with physical disabilities. Accordingly, he seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

X. PRAYER FOR RELIEF

WHEREFORE, the Hubbards pray judgment against the Yardage Town for:

- 1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
- 2. Declaratory relief that Yardage Town violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.

Hubbard v. Yardage Town, Inc., et al., Plaintiff's Complaint

- 1			
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	Attorneys' fees, litigation expenses, and costs of suit.		
4	Interest at the legal rate from the date of the filing of this action.		
5	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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9	LÝNN HUBBARD, III Attorney for the Hubbards		
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This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

<u>Hubbard v. Yardane Town, Inc., et al.</u>

Plaintiff's Complaint

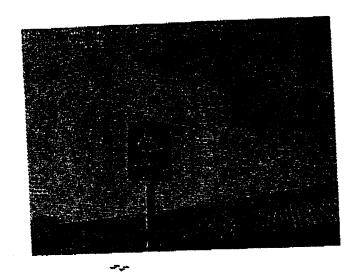
EXHIBIT A

YARDAGE TOWN 435 Santa Fe Drive Encinitas, CA

1. Tow away sign posted at wrong height. DSA pg 2&3 SEE PHOTO No. 1 2. Tow away sign wrong color. **DOT #R100B** 3. Tow away sign uses incorrect verbiage. 1129 B.5 SEE PHOTO No. 2 4. Incorrect parking signage. No separate van 1129B.5 4.6.4 accessible sign. SEE PHOTO No. 3 5. Incorrect location of accessible parking spaces. 1129 B. 4 6. Accessible parking spaces not located the 1129 B.4 4.6.2 shortest accessible route of travel to the entrance. 7. No access aisle for the accessible parking space. 4.6.3 1129 B. SEE PHOTO Nos. 4 and 5 8. Incorrect parking space/access aisle dimensions. 4.6.3 1129 B.4.1 9. Accessible parking space and access aisle not 4.6.4 1129 B.5.1&2 outlined white. 10. Access aisle not striped in white. CVC 21 458(a)(3)(A)

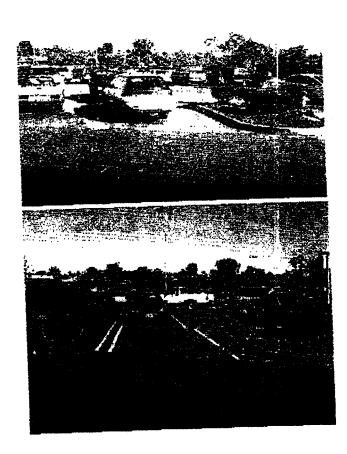
SEE PHOTO Nos. 6 and 7

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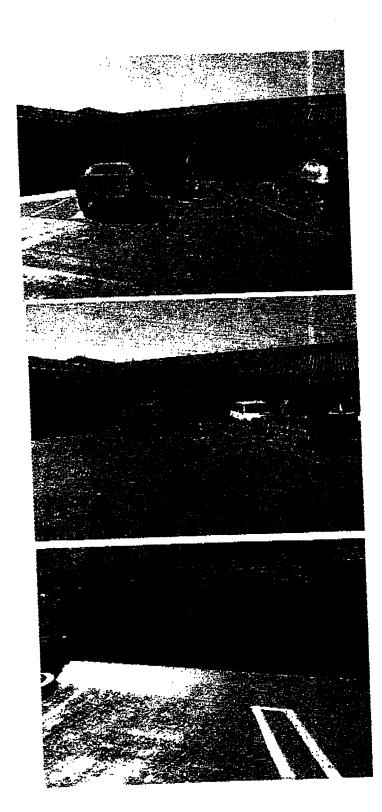
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1122 B. 4

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 5

1102 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

18. Entrance door has no ISA.

1117 B.5 Fig 11 B-6

SEE PHOTO No. 9

1003.3.1.9&10 1117B.5.1-B

19. Emergency exit passage not identified in Braille.

SEE PHOTO No. 10

1122 B. 4

4.32.3

Fig11B-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.