

USDC SCAN INDEX SHEET



NMC 1/16/04 7:25

3:04-CV-00096 HUBBARD V. DEL TACO, INC

1


CMP.

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 Plaintiffs

FILED
04 JAN 15 AM 9:56
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY:  DEPUTY

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

LYNN J HUBBARD and
BARBARA J. HUBBARD,

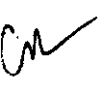
Plaintiffs,
vs.

DEL TACO INC.; DEL'S FOOD-
BARSTOW, INC. dba DEL
TACO; CLAIREMONT RENTAL
PROPERTIES; and DOES 1
through 10,
Defendants.

No. '04 CV 0096 J(AJB)

**COMPLAINT FOR
DECLARATORY, INJUNCTIVE,
AND MONETARY RELIEF:**

- Americans With Disabilities Act
- Disabled Persons Act
- Unruh Civil Rights Act
- Health and Safety Code Part 5.5
- Unfair Business Practices Act
- Negligence



1 I. INTRODUCTION

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

6 DEL TACO
7 3896 Clairemont Drive
8 San Diego, CA 92117

9 (the "Restaurant")

10
11 2. Plaintiffs seek compensatory and punitive damages,
12 injunctive and declaratory relief, attorney fees and costs, against DEL
13 TACO INC.; DEL'S FOOD-BARSTOW, INC. dba DEL TACO;
14 CLAIREMONT RENTAL PROPERTIES; and DOES 1 through 10,
15 ("Defendants") pursuant to:

- 16 • The Americans With Disabilities Act of 1990;¹
- 17 • Health and Safety Code Part 5.5;²
- 18 • The Unruh Act;³
- 19 • The Disabled Persons Act;⁴
- 20 • The Unfair Business Practices Act,⁵ and
- 21 • Negligence.⁶

22
23
24
25
26 ¹ 42 USC §12101 *et seq.*

27 ² California Health and Safety Code §§19955 *et seq.*

³ California Civil Code §§51 *et seq.*

28 ⁴ California Civil Code §§54 *et seq.*

⁵ California Business and Professions Code §§17200 *et seq.*

⁶ California Civil Code §1714.

1 II. JURISDICTION

FILED

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

04 JAN 15 AM 9:56

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

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

DEPUTY

7 5. Plaintiffs claims are authorized by 28 U.S.C. §§2201 and
8 2202.

9 III. VENUE

10 6. All actions complained of herein take place within the
11 jurisdiction of the United States District Court, Southern District of
12 California. Accordingly, venue is invoked pursuant to 28 U.S.C.
13 §1391(b), (c).

14 IV. PARTIES

15 7. Plaintiffs have multiple conditions that affect one or more
16 major life functions. Plaintiffs require the use of motorized
17 wheelchairs and a mobility-equipped vehicle, when traveling about in
18 public.

19 8. Consequently, Plaintiffs are “physically disabled,” as
20 defined by all applicable California and United States laws, and
21 members of the public, whose rights are protected by these laws.

22 9. Defendants are owners, operators, lessors and/or
23 lessees of the Restaurant.

24 10. Defendants are, or consist of, a person or persons, firm
25 or corporation.

26 11. On information and belief, Plaintiffs allege a joint venture
27 and common enterprise by all defendants.

28

1 providing accessible parking spaces, and an accessible route of
2 travel.

3 20. Defendants also violated the law by failing to provide
4 access to those areas of the Restaurant where goods and services
5 are made available to the public. On information and belief, this
6 failure may include, adjusting the layout of display racks, rearranging
7 furniture, adding an accessible check-out counter, and installing
8 ramps.

9 21. On information and belief, Defendants also violated the
10 law by failing to provide access to restroom facilities at the
11 Restaurant. This failure may include removing obstructing furniture
12 or vending machines, installing ramps, providing accessible signage,
13 widening of toilet stalls and installation of grab bars.

14 22. Plaintiffs were denied the full and equal access (as
15 required by United States and California statutes) during each visit to
16 the Restaurant.

17 23. Despite these visits, Plaintiffs were also deterred from
18 visiting the Restaurant, because of actual knowledge that the full and
19 equal enjoyment of the goods, services, facilities, privileges,
20 advantages, or accommodations at the Restaurant was not available
21 to physically disabled patrons.

22 24. Plaintiffs have suffered, or anticipate suffering, emotional
23 and physical harm during each actual visit to the Restaurant, or
24 incident of deterrence.

25 25. Plaintiffs would visit the Restaurant, but for the future
26 threat of discrimination by Defendants.

27
28

1 necessary to afford such goods, services, facilities, or
2 accommodations to individuals with disabilities, unless the entity can
3 demonstrate that making such modifications would fundamentally
4 alter their nature.¹³

5 46. Defendants violated the ADA by failing to make
6 reasonable modifications in policies, practices, or procedures (e.g.—
7 placement of movable displays) when these modifications were
8 necessary to afford, and would not fundamentally alter the nature of,
9 these goods, services, facilities, or accommodations.

10 47. Plaintiffs seek all relief available under the ADA (i.e.—
11 permanent or temporary injunction, restraining order, or other order)
12 to address these violations.¹⁴

13 48. Plaintiffs also seeks a finding from this Court—
14 declaratory relief—that Defendants violated the ADA in order to
15 pursue damages under California's Unruh Civil Rights Act or
16 Disabled Persons Act.

17 49. Plaintiffs also seek attorney fees and costs under the
18 ADA.

19 **VII. SECOND CLAIM**

20 **Disabled Persons Act**

21 **Civil Code §§54 *et seq.***

22 50. Plaintiffs incorporate the allegations contained in
23 paragraphs 1 through 46 for this claim.

24 51. California Civil Code §54 states, in part, that: Individuals
25 with disabilities have the same right as the general public to the full
26
27

28 ¹³ 42 U.S.C. §12182(b)(2)(A)(ii).

¹⁴ 42 U.S.C. §12205 (incorporating the remedies under 42 U.S.C. §2000a-3(a)).

1 and free use of the streets, sidewalks, walkways, public buildings and
2 facilities, and other public places.¹⁵

3 52. California Civil Code §54.1 also states, in part, that:
4 Individuals with disabilities shall be entitled to full and equal access
5 to accommodations, facilities, telephone facilities, places of public
6 accommodation, and other places to which the general public is
7 invited.¹⁶

8 53. Both sections specifically incorporate (by reference) an
9 individual's rights under the ADA.¹⁷

10 54. Defendants discriminated against the physically disabled
11 public (including Plaintiffs) by denying them full and equal access to
12 the Restaurant.

13 55. Thus, Plaintiffs rights under the Disabled Persons Act
14 were infringed upon and/or violated by Defendants.

15 56. Defendants also violated the Disabled Persons Act by
16 infringing upon and/or violating Plaintiffs rights under the ADA.

17 57. For each offense, Plaintiffs seek actual damages and any
18 amount as may be determined by a jury, or the court sitting without a
19 jury, up to a maximum of three times the amount of actual damages
20 but in no case less than one thousand dollars (\$1,000).

21 58. Plaintiffs also seek general and special damages,
22 declaratory relief and any other remedy available under California
23 Civil Code §54.3.

24 59. Plaintiffs also seek to enjoin Defendants from violating
25 the Disabled Persons Act (and ADA) under California Civil Code §55.
26

27
28 ¹⁵ California Civil Code §54(a).

¹⁶ California Civil Code §54.1(a)(1).

¹⁷ Civil Code §54(c), §54.1(d).

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

5 75. On information and belief, Plaintiffs allege the Restaurant
6 was constructed prior to July 1, 1970, and that areas were altered or
7 structurally repaired in a manner that violates Part 5.5 of the Health
8 and Safety Code.

9 76. In the alternative, on information and belief, Plaintiffs
10 allege the Restaurant was constructed after July 1, 1970, in a
11 manner that violates Part 5.5 of the Health and Safety Code or
12 Government Code §4450 (or both).

13 77. The Restaurant is a public accommodation or facility (as
14 defined by Part 5.5 of the Health and Safety Code),²² which is not
15 exempted by Health and Safety Code §19956.

16 78. Defendants' non-compliance with these requirements at
17 the Restaurant aggrieved (or potentially aggrieved) Plaintiffs and
18 other persons with physical disabilities.

19 79. Accordingly, Plaintiffs seeks injunctive relief under Health
20 and Safety Code §19953.

21 80. Plaintiffs also incurred legal expenses in order to enforce
22 Government Code §§4450 *et seq.* or Health & Safety Code §§19955
23 *et seq.*

24 81. Therefore, Plaintiffs seeks attorneys' fees under to Health
25 and Safety Code §19953.

26
27
28

²² Health and Safety Code §19955(a).

1 XI. SIXTH CLAIM

2 **Negligence Per Se**

3 California Civil Code §1714

4 89. Plaintiffs incorporate the allegations contained in
5 paragraphs 1 through 88 for this claim.

6 90. Defendants had a duty to comply with the aforementioned
7 California and United States laws or regulations (or both).

8 91. These aforementioned laws and regulations, violated by
9 Defendants, were adopted to protect the class of physically disabled
10 persons (including Plaintiffs) from injury.

11 92. This violation was the proximate cause of Plaintiffs
12 aforementioned injuries.

13 93. Plaintiffs suffered physical and emotional injuries
14 resulting from an occurrence (the nature of which) these laws or
15 regulations were designed to prevent.²⁴

16 94. Defendants knew (or should have known) that the
17 physically disabled individuals (including Plaintiffs) were denied full
18 and equal access to the Restaurant.

19 95. Despite this knowledge, Defendants refused to comply
20 with the aforementioned laws and regulations to make the
21 Restaurant accessible.

22 96. Defendants' acts and omissions evince oppressive,
23 fraudulent, or malicious conduct in conscious disregard for the rights
24 or safety of Plaintiffs (and the physically disabled public).

25 97. Thus, Plaintiffs, in addition to the actual damages, seek
26 damages for the sake of example and by way of punishing Defendant
27

28 _____
²⁴ Hudge v. Seiler, 558 F.2d 284 (5th Cir. 1977).

1 under California Civil Code §3294 in a sufficient amount to
2 accomplish that purpose.

3 98. Plaintiffs seek interest under California Civil Code §3291
4 too.

5 XII. PRAYER FOR RELIEF

6 WHEREFORE, Plaintiffs pray judgment against the Defendants for:

- 7 1. Injunctive relief, preventive relief, or any other relief the Court
8 deems proper under:
 - 9 • 42 U.S.C. §12205;
 - 10 • California Civil Code §52;
 - 11 • California Civil Code §55; and
 - 12 • California Health and Safety Code §19953;
- 13 2. Declaratory relief that Defendants violated the ADA for the
14 purposes of Unruh Act or Disabled Persons Act damages;
- 15 3. Statutory minimum damages under either California Civil Code
16 §52(a) or California Civil Code §54.3(a), but not both, for each
17 actual visit or incident of deterrence (according to the proof);
- 18 4. General and special damages in the amount of \$100,000.00;
- 19 5. For attorneys' fees, litigation expenses and costs of suit
20 pursuant to:
 - 21 • 42 U.S.C. §12205;
 - 22 • California Civil Code §52;
 - 23 • California Civil Code §54.3;
 - 24 • California Civil Code §55;
 - 25 • California Code of Civil Procedure §1021.5; and
 - 26 • California Health and Safety Code §19953;
- 27 6. Interest at the legal rate from the date of the filing of this action;
- 28 7. Punitive damages pursuant to Civil Code §3294;

- 1 8. Prejudgment interest pursuant to Civil Code §3291; and
2 9. Such other and further relief as the court may deem proper.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: January 14, 2004 LAW OFFICES OF LYNN HUBBARD



LYNN HUBBARD, III
Attorney for Plaintiffs

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 1977, is prepared 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

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Lynn Hubbard, III, Law Offices of
Lynn Hubbard, 12 Williamsburg
Lane, Chico, CA 95926

DEFENDANTS

DEL TACO INC.; DEL'S FOOD BARSTOW, INC. d/b/a DEL TACO; CLAIREMONT RENTAL PROPERTIES; and DOES 1 through 10

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

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.

ATTORNEYS (IF KNOWN)

'04 CV 0096 - J (AJB)

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

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 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	<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"/> 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	<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	<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: January 14, 2004 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # 10262 AMOUNT 150.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ca