

USDC SCAN INDEX SHEET

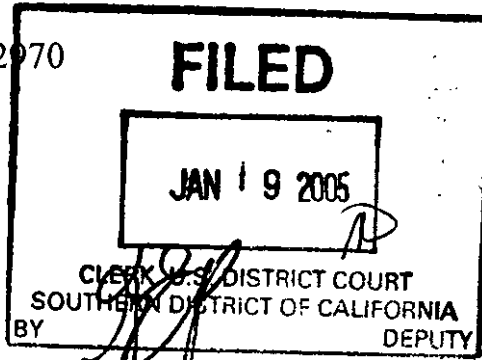


GEP 1/20/05 14:25  
3:05-CV-00100 HUBBARD V. MOER FOODS INC  
\*1\*  
\*CMP.\*

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

7 Attorney for Plaintiff



8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11  
12  
13 LYNN J HUBBARD and  
14 BARBARA J. HUBBARD

15 Plaintiff,

16 vs.

17 MOER FOODS, INC. dba  
18 DENNY'S; PINNACLE  
19 ENCINITAS, LLC.

20 Defendants,

No. '05 CV 0100

BEN (LSE)

Plaintiff's Complaint

ca

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 Denny’s  
7 135 Encinitas Boulevard  
8 Encinitas, CA 92024

9 (The “Restaurant”)  
10

11 2. The Hubbards seek exemplary damages, injunctive and  
12 declaratory relief, attorney fees and costs, against defendants MOER  
13 FOODS, INC. dba DENNY’S; PINNACLE ENCINITAS, LLC (collectively  
14 “Denny’s”) pursuant to the Americans with Disabilities Act of 1990, (42  
15 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).

28

1 IV. PARTIES

2 7. Denny's owns, operates, or leases the Restaurant, and consists  
3 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 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 them access at the Restaurant.

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

26 12. The Hubbards also encountered barriers at the Restaurant,  
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 Denny's, so the defendants can avoid inadvertent acts of discrimination  
2 against the disabled. Nothing within this complaint, however, should be  
3 construed as an allegation that the Hubbards are seeking to remove barriers  
4 unrelated to their disabilities.

5 13. Denny's knew that these elements and areas of the Restaurant  
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 Restaurant (without much  
9 difficulty or expense), and make the facility accessible to the physically  
10 disabled. To date, however, they refuse to either remove those barriers or  
11 seek an 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. Denny's discriminated against the Hubbards by denying "full  
23 and equal enjoyment" and use of the goods, services, facilities, privileges or  
24 accommodations of the Restaurant during each visit and each incident of  
25 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 Denny’s can easily remove the  
9 architectural barriers at the Restaurant without much difficulty or expense,  
10 and that Denny’s violated the ADA by failing to remove those barriers,  
11 when it was readily achievable to do so.

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

#### 16 Failure to Design and Construct an Accessible Facility

17 21. On information and belief, the Restaurant 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, Denny’s violated the ADA by designing or constructing  
25 (or both) the Restaurant in a manner that was not readily accessible to the  
26 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 Restaurant 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, Denny's altered the Restaurant 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, Denny's violated the ADA by failing to make reasonable  
21 modifications in policies, practices, or procedures at the Restaurant, when  
22 these modifications were necessary to afford (and would not fundamentally  
23 alter the nature of) these goods, services, facilities, or accommodations.

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

27           30. The Hubbards also seek a finding from this Court (*i.e.*,  
28 declaratory relief) that Denny's violated the ADA in order to pursue

1 damages under California's Unruh Civil Rights Act or Disabled Persons  
2 Act.

3 **VII. SECOND CLAIM**

4 **Disabled Persons Act**

5 31. The Hubbards incorporate the allegations contained in  
6 paragraphs 1 through 30 for this claim.

7 32. California Civil Code § 54 states, in part, that: Individuals with  
8 disabilities have the same right as the general public to the full and free use  
9 of the streets, sidewalks, walkways, public buildings and facilities, and  
10 other public places.

11 33. California Civil Code § 54.1 also states, in part, that:  
12 Individuals with disabilities shall be entitled to full and equal access to  
13 accommodations, facilities, telephone facilities, places of public  
14 accommodation, and other places to which the general public is invited.

15 34. Both sections specifically incorporate (by reference) an  
16 individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

17 35. Here, Denny's discriminated against the physically disabled  
18 public—including the Hubbards—by denying them full and equal access to  
19 the Restaurant. Denny's also violated The Hubbards rights under the ADA,  
20 and, therefore, infringed upon or violated (or both) The Hubbards rights  
21 under the Disabled Persons Act.

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

26 37. He also seeks to enjoin Denny's from violating the Disabled  
27 Persons Act (and ADA) under California Civil Code § 55, and to recover  
28

1 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3  
2 and 55.

### 3 VIII. THIRD CLAIM

#### 4 Unruh Civil Rights Act

5 38. The Hubbards incorporate the allegations contained in  
6 paragraphs 1 through 30 for this claim.

7 39. California Civil Code § 51 states, in part, that: All persons  
8 within the jurisdiction of this state are entitled to the full and equal  
9 accommodations, advantages, facilities, privileges, or services in all  
10 business establishments of every kind whatsoever.

11 40. California Civil Code § 51.5 also states, in part, that: No  
12 business establishment of any kind whatsoever shall discriminate against  
13 any person in this state because of the disability of the person.

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

16 42. Denny's aforementioned acts and omissions denied the  
17 physically disabled public—including the Hubbards—full and equal  
18 accommodations, advantages, facilities, privileges and services in a business  
19 establishment (because of their physical disability).

20 43. These acts and omissions (including the ones that violate the  
21 ADA) denied, aided or incited a denial, or discriminated against the  
22 Hubbards by violating the Unruh Act.

23 44. The Hubbards were damaged by Denny's wrongful conduct,  
24 and seeks statutory minimum damages of four thousand dollars (\$4,000) for  
25 each offense.

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

1 IX. FOURTH CLAIM

2 Denial of Full and Equal Access to Public Facilities

3 46. The Hubbards incorporate the allegations contained in  
4 paragraphs 1 through 13 for this claim.

5 47. Health and Safety Code § 19955(a) states, in part, that:  
6 California public accommodations or facilities (built with private funds)  
7 shall adhere to the provisions of Government Code § 4450.

8 48. Health and Safety Code § 19959 states, in part, that: Every  
9 existing (non-exempt) public accommodation constructed prior to July 1,  
10 1970, which is altered or structurally repaired, is required to comply with  
11 this chapter.

12 49. The Hubbards allege the Restaurant is a public accommodation  
13 constructed, altered, or repaired in a manner that violates Part 5.5 of the  
14 Health and Safety Code or Government Code § 4450 (or both), and that the  
15 Restaurant was not exempt under Health and Safety Code § 19956.

16 50. Denny’s non-compliance with these requirements at the  
17 Restaurant aggrieved (or potentially aggrieved) the Hubbards and other  
18 persons with physical disabilities. Accordingly, he seeks injunctive relief  
19 and attorney fees pursuant to Health and Safety Code § 19953.

20 X. PRAYER FOR RELIEF

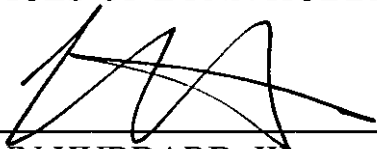
21 WHEREFORE, the Hubbards pray judgment against the Denny’s for:

- 22 1. Injunctive relief, preventive relief, or any other relief the Court deems
- 23 proper.
- 24 2. Declaratory relief that Denny’s violated the ADA for the purposes of
- 25 Unruh Act or Disabled Persons Act damages.
- 26 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of
- 27 the California Civil Code (but not both) according to the proof.

- 1 4. Attorneys' fees, litigation expenses, and costs of suit.<sup>1</sup>  
2 5. Interest at the legal rate from the date of the filing of this action.  
3 6. Such other and further relief as the court may deem proper.

4 DATED: January 17, 2005

LAW OFFICES OF LYNN HUBBARD

5  
6   
7 \_\_\_\_\_  
8 LYNN HUBBARD, III  
9 Attorney for the Hubbards  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

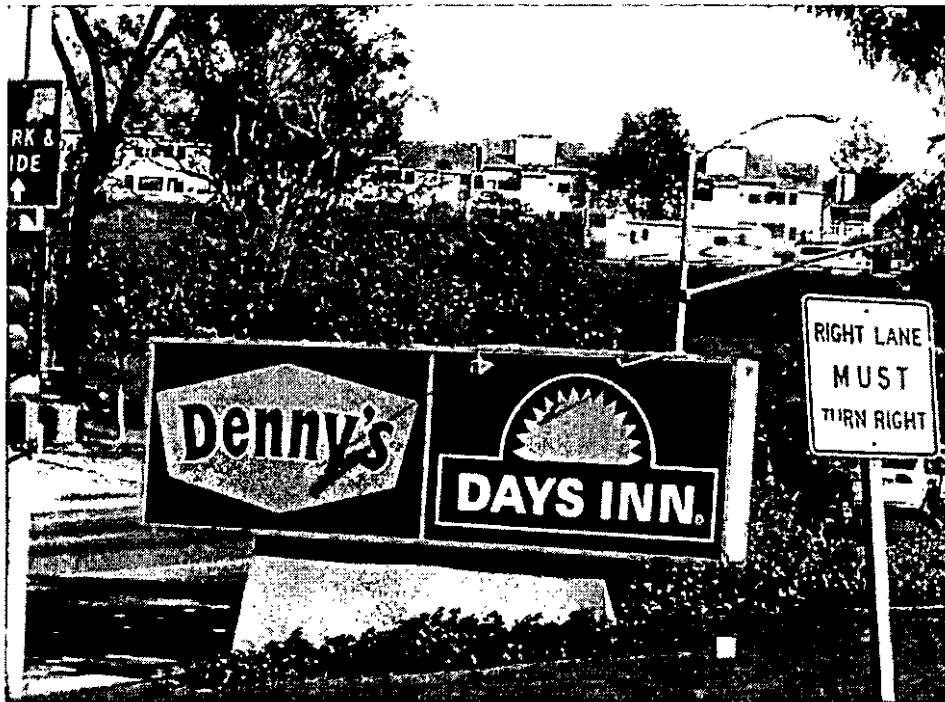
---

<sup>1</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.  
Hubbard v. Moer Foods, Inc., et al.  
Plaintiff's Complaint



**PRELIMINARY SITE ACCESSIBILITY REPORT**

*Denny's  
135 Encinitas Boulevard  
Encinitas, California*



DENNY'S  
135 Encinitas Blvd.  
Encinitas, CA

DSA pg 2&3

1. Tow away sign posted at wrong height.

1129 B  
Fig 21

2. Tow away sign has no phone number.

DOT #R100B

3. Tow away sign wrong color.

ADAAG 111

4. Signage uses the term handicapped.

***SEE PHOTO No. 1***

1129B.5

4.6.4

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

***SEE PHOTO No. 2***

1129 B.4

4.6.2

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

***SEE PHOTO No. 3***

1129 B.4.1

4.6.3

7. Incorrect parking space/access aisle dimensions.

1129 B.5.1&2

4.6.4

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

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

9. Access aisle not striped in white.

1129B.4.1  
Fig 11 B-18 A

10. Missing no parking painted in accessible aisle.

***SEE PHOTO Nos. 3, 4, and 5***

1129B.4.4

4.6.3

11. Surface of parking space or access aisle exceeds 2.0% grade in any direction. Photo not available. Parking lot built on slope greater than 2%

1102 B.2.6  
DSA pg 2D&3D

4.3

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

**SEE PHOTO No. 6**

- |                        |        |   |
|------------------------|--------|---|
| 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.                    |
| 1117 B.5<br>Fig 11 B-6 | 4.30   | 16. Entrance door has no ISA.                             |

**SEE PHOTO No. 7**

- |                                |                              |   |
|--------------------------------|------------------------------|---|
| 1117 B.2                       | 4.1.3                        | 17. Public telephone not accessible height. |
| 1117 B.2.8                     | 4.1.3 (17) (b)<br>4.31.5 (2) | 18. Public telephone has no volume control. |
| 1117 B. 5.8.3<br>Fig 11 B.-14C | 4.30.7<br>Fig 43             | 19. Public telephone has no ISA.            |

**SEE PHOTO No. 8**

- |                                |                  |  |
|--------------------------------|------------------|--|
| 1122 B. 4<br>Fig11B- 5D and F  | 4.32.3           | 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. |
| 1122 B. 3                      | 4.32.3           | 21. Dining room booths do not have 30 inches between cushions.   |
| 1122 B. 3                      | 4.32.2           | 22. Dining room seating does not offer 19 inches before an obstruction to accommodate a wheelchair occupant.   |
| 1117 B. 5.8.1<br>Fig 11 B. - 6 | 4.30.7<br>Fig 43 | 23. Dining room seating has no ISA.  |
| 1117 B. 5.4<br>1117 B. 5.1.3   | 4.1.2 (7) (d)    | 24. No directional signage to the restroom.  |
| 1117 B. 5.6.3                  | 4.1.3 (16) (a)   | 25. Restroom signs are not on the wall, latch side.  |

- |                                |               |   |
|--------------------------------|---------------|---|
| 1117 B. 5.5.3                  | 4.30.4        | 26. Restroom door sign has no ISA, wall mounted, latch side.                        |
| 1117 B. 5.6.3                  | 4.30.4        | 27. Restroom door signs do not have a verbal description below the ISA, latch side. |
| 1115 B. 5                      | 4.30.4        | 28. Restroom door not identified in Braille, latch side.                            |
| 1117 B. 5.1.1<br>1117 B. 5.6.3 | 4.1.2 (7) (d) | 28. Restroom signs are not centered 60 inches from the floor, latch side.           |

***SEE PHOTO No. 9***

- |                                   |                  |  |
|-----------------------------------|------------------|--|
| 1115B. 7.1.4                      |                  | 30. Stall door not self closing.   |
| 1133 B. 2.4.2<br>Fig 11 B. – 26 A | 4.13.6<br>Fig 25 | 31. Clearance for side strike area on interior doors is not 18 inches on the pull side and 12 inches on the push side. |

***SEE PHOTO No. 10***

- |             |        |   |
|-------------|--------|---|
| 1115B.7.1.4 | 4.17.5 | 32. Outside stall door does not have accessible handle. |
|-------------|--------|---|

***SEE PHOTO No. 11***

- |               |  |  |
|---------------|--|--|
| 1115 B. 7.1.4 |  | 33. Inside stall door does not have accessible handle. |
| 1115 B.7.1.4  |  | 34. Inside stall door handle not mounted below latch.  |

***SEE PHOTO No. 12***

- |               |        |  |
|---------------|--------|--|
| 1115B.2.1.1.2 | 4.16.5 | 35. Water closet flush control not on wide side of stall.          |
| 1115B.2.1.1.2 | 4.27.4 | 36. Flush control requires greater than 5 lbs pressure to operate. |

***SEE PHOTO No. 13***

- |        |  |  |
|--------|--|--|
| 4.17.3 |  |  |
|--------|--|--|

Fig 30

37. Toilet tissue dispenser leading edge is 46 inches from back wall, not 36 inches maximum.

***SEE PHOTO No. 14***

1133 B.8.6.1

4.4.1

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

***SEE PHOTO No. 15***

1115B. 9 2  
Fig 11B-1A

39. Seat cover dispenser operable part 54 inches from floor, and mounted over the grab bar.

***SEE PHOTO No. 16***

1115 B. 2.1.2.1  
Fig 11 B. -D

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

1115 B. 2.1.2.1

4.27.4

41. Lavatory faucet controls require manual dexterity.

1115 B.2.1.2.1

4.27.4

42. Faucet controls require more than 5 lbs of force to activate.

***SEE PHOTO No. 17***

1115 B.2.1.2.1  
Fig 11 B. -D

4.19.2  
Fig 31

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

1115 B. 2.1.2.2

4.19.4

44. Hot water and drainpipes are not insulated.

***SEE PHOTO No. 18***

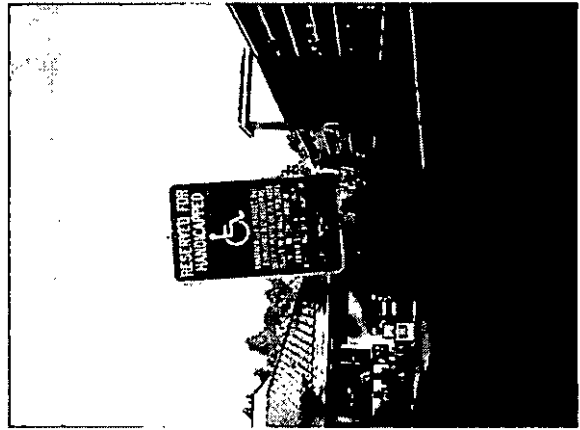
1115B.9.2

45. Soap dispenser operable part 44 inches from floor, not required 40 inches.

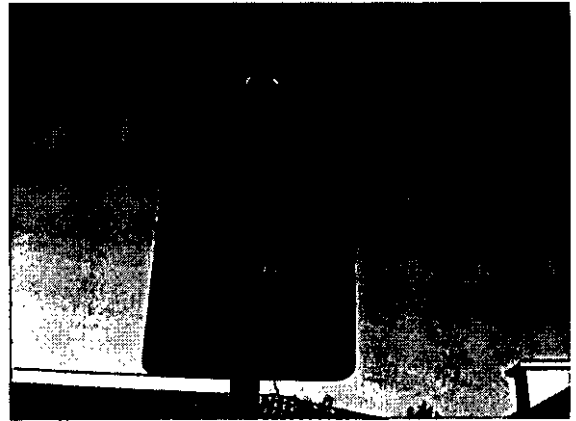
***SEE PHOTO No. 19***

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

#1



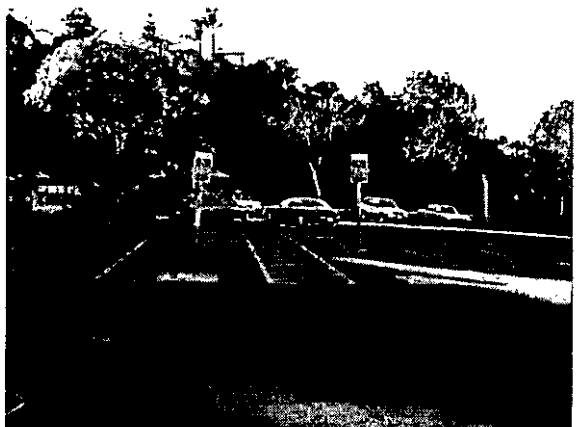
#2



#3



#4



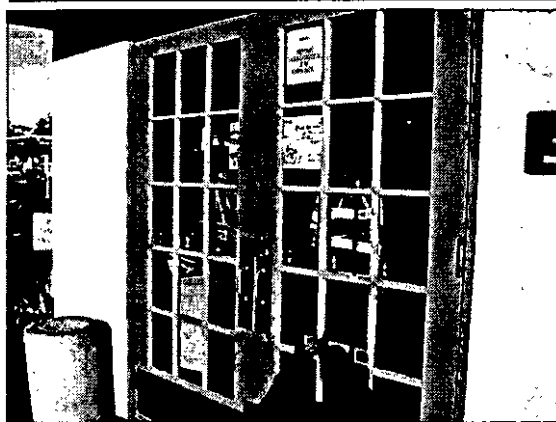
#5



#6



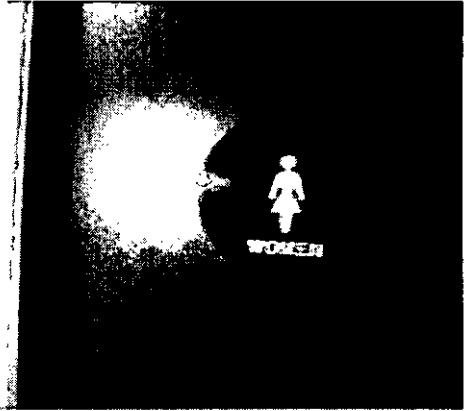
#7



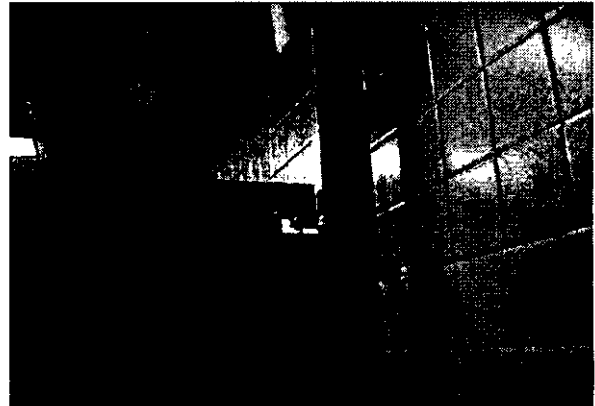
#8



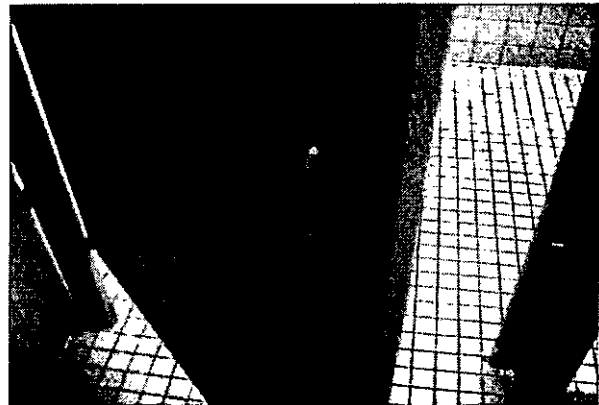
#9



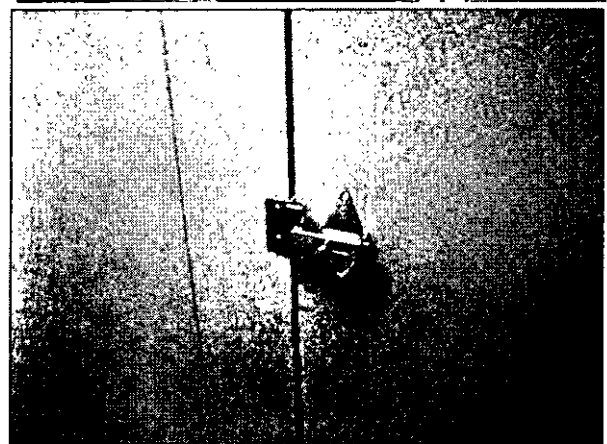
#10



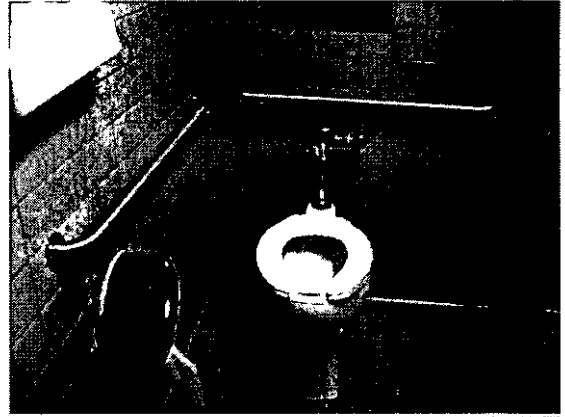
#11



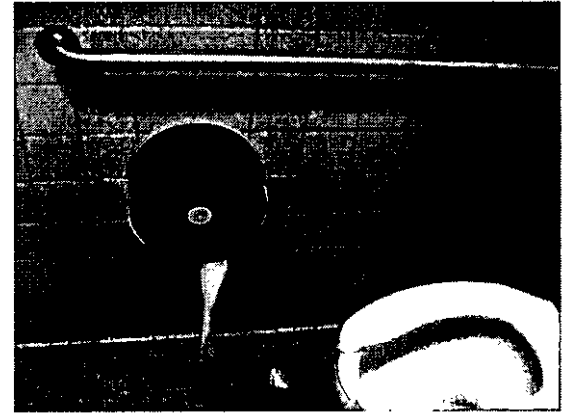
#12



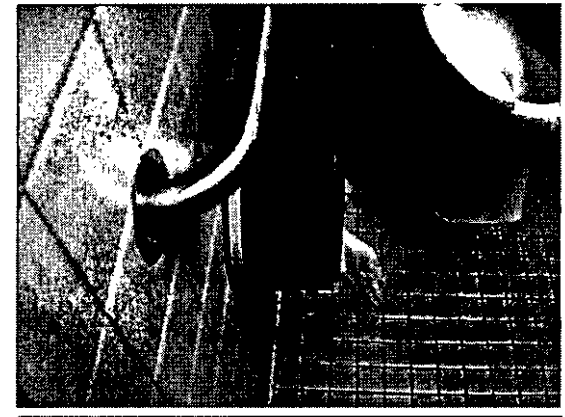
#13



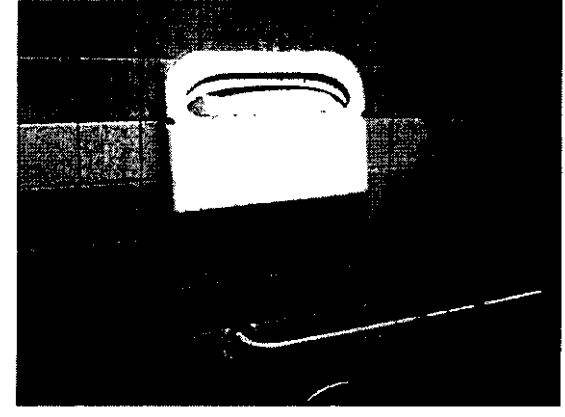
#14



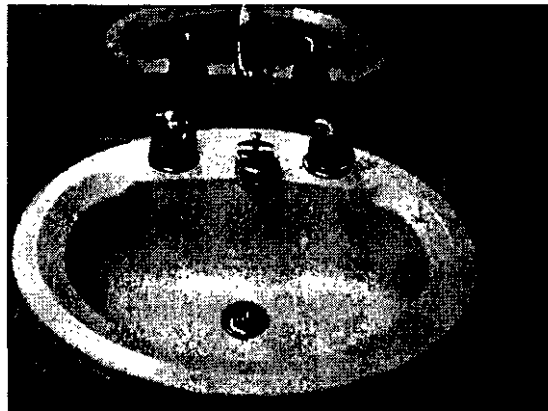
#15



#16



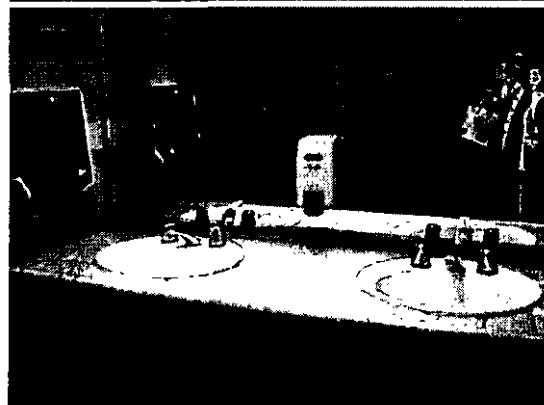
#17



#18



#19



# CIVIL COVER SHEET FILED

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.)

JAN 19 2005

### I. (a) PLAINTIFFS

LYNN J HUBBARD and BARBARA J. HUBBARD

ORIGINAL

### DEFENDANTS

MOER FOODS, INC. dba DENNY'S; PINNACLE ENCINITAS, LLC.

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

(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)

'05 CV 0100 BEN (LSP)

### 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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standard's 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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <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 JURISDICTION 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 UNDER F.R.C.P. 23

CLASS ACTION

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 17, 2005

SIGNATURE OF ATTORNEY OF RECORD

### FOR OFFICE USE ONLY

RECEIPT # 110410 AMOUNT 150.00 APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

1/20/05 JB