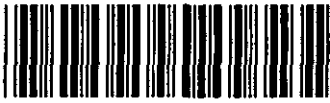


USDC SCAN INDEX SHEET



AJG 4/12/05 14:34
3:02-CV-02497 HUBBARD V. RITE AID CORPORATION
89
RPLY.

ORIGINAL

1 Wayne C. Arnold, Bar No. 103194
 2 Lisa D. Herzog, Bar No. 194123
 3 HART, KING & COLDREN
 4 A PROFESSIONAL CORPORATION
 5 200 East Sandpointe, Fourth Floor
 6 Santa Ana, California 92707
 7 Telephone: (714) 432-8700
 8 Facsimile: (714) 546-7457

FILED
 APR 8 2005
 CLERK OF DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 DEPUTY

9 Attorneys for Defendants RITE AID CORPORATION and
 10 ARTHUR CIUFFO, JR. and EVELYN EMMERSON,
 11 Trustees of the CIUFFO FAMILY TRUST B erroneously
 12 Sued as THE CIUFFO FAMILY TRUST B, ET AL.

13 UNITED STATES DISTRICT COURT
 14 SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

15 LYNN J. HUBBARD, BARBARA J.
 16 HUBBARD,

Case No.: 02CV2497-WQH (BLM)

Plaintiff,

DEFENDANTS' REPLY TO
 OPPOSITION TO MOTION FOR PRE-
 FILING ORDER PROHIBITING
 VEXATIOUS LITIGANTS FROM FILING
 NEW LITIGATION WITHOUT LEAVE
 OF COURT, TO POST SECURITY, AND
 FOR MONETARY SANCTIONS

v.

17 RITE AID CORPORATION; THE
 18 CIUFFO FAMILY TRUST B, ET AL;
 19 AVOCADO PLAZA, L.L.C. and DOES 1
 20 through 20,

Date: April 22, 2005
 Time: 3:00 p.m.
 Ctrm.: 4

Defendant.

Complaint Filed: December 18, 2002
 Trial Date: None

21 RITE AID CORPORATION and ARTHUR CIUFFO, JR. and EVELYN
 22 EMMERSON, Trustees of the CIUFFO FAMILY TRUST B (collectively "RITE AID")
 23 hereby submit their Reply To Opposition For Pre-Filing Order Prohibiting Vexatious
 24 Litigants From Filing New Litigation Without Leave Of Court, To Post Security, And For
 25 Monetary Sanctions Against Plaintiffs Lynn J. Hubbard And Barbara J. Hubbard And His
 26 Counsel.

I. INTRODUCTION:

27 Plaintiffs have admitted filed a large number of lawsuits. See Plaintiff's Opposition,
 28 page 13. The real issue is whether Plaintiffs have litigated these cases in such a way that

HART, KING & COLDREN
 A PROFESSIONAL CORPORATION
 200 EAST SANDPOINTE, FOURTH FLOOR
 SANTA ANA, CALIFORNIA, 92707

HART, KING & COLDREN
A PROFESSIONAL CORPORATION
200 EAST SANDPONT, FOURTH FLOOR
SANTA ANA, CALIFORNIA 92707

1 shows that their intent is not to bring lawsuits to remedy violations of the ADA but to extort
2 cash settlements. *Molski v. Mandarin Touch Restaurant* (C.D. Cal 2004) 347 F.Supp 2d
3 860. While Plaintiffs and their counsel claim to be "advocates for the disabled," their
4 opposition does not ring true and supports the conclusion that these litigants are clearly
5 vexatious litigants and their opposition only exemplifies this more clearly. Besides being
6 jumbled with their opposition to RITE AID's Motion to Dismiss, plaintiffs make assertions,
7 treating them as fact without any admissible evidence to support the assertions.¹

8 **II. PLAINTIFFS ARE NOT LEGITIMATE PLAINTIFFS**

9 Plaintiffs' claims that they are disabled persons seeking redress under the ADA is
10 questionable at best. Plaintiffs respond by referring to the Court's ruling denying their
11 motion for summary judgment and stating that there is a triable issue of fact on this point.
12 See Plaintiffs' Opposition, page 21. This is not a motion for summary judgment. The
13 evidence presently before the Court, along with the admissions in Plaintiffs' opposition,
14 support the conclusion that Plaintiffs are not sufficiently disabled to be legitimate ADA
15 litigants.

16 The starting point is the video submitted by RITE AID. It clearly depicts that while
17 the Plaintiffs may be aged, they engage in physical activity inconsistent with their claim of
18 disability. Mr. Hubbard's does not seem to be the same person who motors around the
19 courthouse bound to his wheelchair. But the most telling observation comes from Mrs.
20 Hubbard. Although she appears to be less active than Mr. Hubbard, she climbs the steps into
21 her home -- a home which Plaintiff's counsel admits is not ADA compliant. See Plaintiffs'
22 Opposition, page 21. One would think that a couple who had filed 181 to date ADA lawsuits

23 ¹ Plaintiffs support their opposition with unsupported allegations. Plaintiffs also state "Plaintiffs'
24 counsel, Lynn Hubbard, will execute a declaration under the penalty of perjury that the facts
25 contained within this opposition are true, at the court's behest." See plaintiffs' opposition, pg. 6,
26 fn.1. Why didn't Mr. Hubbard just include this within his declaration already submitted to the
27 court if he wanted evidence admitted? Furthermore, plaintiffs state "Unless identified otherwise,
28 the evidence supporting this brief history of the Hubbards' claim is found in the declarations
offered to support plaintiffs' motion for partial summary judgment (Docket Nos. 34, 35, 36, 37).
And, in the interest of judicial economy, the Hubbards will avoid specific cites to those
declarations." See plaintiffs' Opposition, pg. 7, fn. 1 [sic]. It is now up to the Court and opposing
counsel to search through old documents to find any evidence of plaintiffs' assertion.

1 would live in an ADA compliant home – particularly when their lawyers are their own
2 family members who claim to be “ADA advocates.”

3 Plaintiffs’ counsel claims that his parents are impoverished and he cannot afford to
4 put them in an ADA compliant home. This does not ring true.

5 Between 2000 and 2004 (a five year period), Plaintiffs filed 169 lawsuits. A review
6 of the Court’s records with the Pacer system shows that 147 settled (87%).² None were
7 tried.³ See Exhibit B, Declaration of Melanie Knupp, ¶¶ 2-3. See also Exhibit C, chart of
8 plaintiffs’ cases. In order to have standing, Plaintiffs must have visited the location at least
9 once and presumably each of these cases settled for at least one visit – having a value of
10 \$4,000 in statutory damages. See Exhibit C. Obviously, the settlements would allow for
11 attorneys fees and costs, but presumably Plaintiffs’ counsel is allowing his own parents the
12 statutory minimum as a recovery.

13 Giving Plaintiffs credit for one visit or \$4,000 in each of these settlements generates
14 the sum of \$588,000 or \$117,600 per year in this five year period. Such a sum does not lead
15 own to conclude that Plaintiffs are impoverished. The cost of building a compliant ramp into
16 their home is no more than \$2,500. See Exhibit D, Declaration of David Musser, ¶ 2.
17 Given the kind of resources that one would expect from this volume of settlements, one
18 would also expect that the Plaintiffs would have a compliant ramp into their home and
19 perhaps even a vehicle that they did not have to climb in and out of. That fact that they
20 admittedly don’t live in a compliant environment leads to the conclusion that they are not
21 disabled – and therefore can have no proper reason to bring an ADA claim much less
22 hundreds of them.

23 Plaintiffs’ counsel assertion that he cannot provide a compliant environment for his

24 ² The number of settlements does not bear on the merits of these suits. It is common
25 knowledge that Defendants frequently settle to avoid the cost of litigation.

26 ³ Plaintiffs opposition also states (without a declaration as evidence) that “The Hubbards have
27 never tried a case because they stay close to home (i.e., the Southern District of California).”
28 Plaintiffs’ opposition, pg. 12. Besides being an assertion not based on a declaration from
plaintiffs, this statement makes no sense because 176 of plaintiffs cases have been or are located
in the Southern District (close to home) and they have not had one trial.

HART, KING & COLDREN
A PROFESSIONAL CORPORATION
200 EAST SAN JOAQUIN, FOURTH FLOOR
SANTA ANA, CALIFORNIA 92707

1 parents also does not ring true. Attorney Lynn Hubbard has commented on many occasions
 2 to RITE AID'S counsel about his trips to Europe for vacations, sometimes just for a few
 3 days. See Exhibit A, Declaration of Lisa Herzog, ¶ 4. He has talked about going to Europe
 4 to by chocolate for his work staff. See Exhibit A, Declaration of Herzog, ¶ 4. He has spoken
 5 about flying to Hawaii for weekend sporting events, season tickets to professional sports
 6 teams in San Francisco and having his suits custom made overseas. See Exhibit A, Decl. of
 7 Herzog, ¶¶ 5-7. Mr. Hubbard has made similar statements to RITE AID's expert David
 8 Musser including telling Mr. Musser he had recently been on a trip to China while looking
 9 through his wallet for Mr. Musser's expert check and sorting through foreign currency and
 10 also telling Mr. Musser that he has his suits made in Hong Kong. See Exhibit D, Decl. of
 11 Musser, ¶ 3.

12 Presumably one would not lead this kind of lifestyle while his disabled parents
 13 labored in an impoverished uncompliant living environment. Indeed, these Plaintiffs live as
 14 they do because they are not disabled and have no business bringing ADA suits.

15 **III. PLAINTIFFS' LITIGATION TACTICS SUPPORT THE CONCLUSION**
 16 **THAT THEY ARE VEXATIOUS**

17 **A. Plaintiffs' Lack of Knowledge Of Their Own Cases.**

18 These lawsuits are not about ADA compliance, but about attorneys fees being
 19 generated by vexatious litigants.

20 Plaintiffs have filed so many lawsuits that they cannot keep track of them. In Lynn
 21 Hubbard's deposition testimony he states:

22 Q Mr. Hubbard, I'm going to hand this back to you. But before I
 23 do, I'll represent to you that this was a list of cases that was printed off
 24 of the computer from the Pacer service, putting in a search for Lynn J.
 25 Hubbard as a party. And according to this service, there were 146
 26 matching cases found. And with that background, let me let you take
 27 another look at it.

28 And my first question is, Do you recognize the cases on this list as
 cases which you filed as a Plaintiff?

HART, KING & COLDREN
A PROFESSIONAL CORPORATION
200 EAST SANDROUNTE, FOURTH FLOOR
SANTA ANA, CALIFORNIA 92707

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

A I have to assume that this is right, but I don't know anything at all about this kind of stuff. It's not my - - it's not what I do. So if you need that kind of an answer, I'm sure that Lynn could - - my son could give you the right answer for it. But I don't - - I really don't know. I don't keep track of this kind of thing.

Q I understand that. But let's look at the list. For example, the first entry up there is - - looks like Hubbard versus El - - is it El Torito?

A Uh-huh.

Q Is that a yes?

A Yes.

Q Do you recall filing a lawsuit against El Torito Restaurants?

A No, I don't recall that. I don't file anything.

Q Well, do you recall having someone file a lawsuit against El Torito Restaurant on your behalf?

A No. What I do recall is I was at a ENE meeting with El Torito Restaurant with my attorney. That's all I know.

Q Do you recall that you had litigation pending against El Torito Restaurants?

A Just what I told you.

Q And that was ENE an Early Neutral Evaluation conference? Did it relate to accessibility issues?

A Yes.

Q Have you been a plaintiff in any lawsuits in which accessibility was not an issue?

A I don't know.

Q May I see the exhibit again.
Do you recall having a lawsuit with Best 99 Cent Stores regarding accessibility?

HART, KING & COLDREN
A PROFESSIONAL CORPORATION
200 EAST SANDRIDGE, FOURTH FLOOR
SANTA ANA, CALIFORNIA 92707

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

A No.

Q Do you recall having a lawsuit with Play Company Toys regarding accessibility issues?

A No, I don't

Q How about Stuart Anderson's? Do you recall having a lawsuit with them regarding accessibility issues?

A Yes.

Q How about Burger King?

MR. BEAUCHANE: I would object just as to vagueness and ambiguity. Any specific Burger King or - - talking about accessibility issues.

MR. ARNOLD: Again, yes, we'

THE WITNESS: This is four years ago

BY MR. ARNOLD:

Q At any time.

A What do you mean, "At any time"? It says right here 5/18/2000? Is that what that means?

Q That's what this means, yes.

A Yeah. Which Burger King is that?

Q I don't know. I'm just asking - - my question is if you recall having a lawsuit with Burger King on accessibility issues.

A No, I don't recall.

Q How about McDonalds?

A No. I don't know anything about this kind of thing.

Q I'm sorry. I'm a little perplexed by your answer. And so when you say you don't know anything about this kind of thing, what do you mean by that?

1 A Well, because my son handles all this - - this sort of thing. He
2 does all the filing or whatever you call it, and he calls and tells me we
3 have a meeting. And when you ask me a question, if I can place that
4 meeting with what he told me, why, then, I - - that's what I know
about it.

5 See Exhibit E, excerpts from deposition of Lynn Hubbard dated April 28, 2004.

6 Similarly, Barbara Hubbard testifies in her deposition her lack of recollection of the
7 lawsuits she has filed. See Exhibit F, excerpts from deposition of Barbara Hubbard dated
8 April 28, 2004.

9 Having so many lawsuits and not even having a real understanding of what they are
10 about or what damages they suffered in a particular case certainly seems to be vexatious and
11 duplicative. If the motive was truly removing barriers that these plaintiffs had actually
12 encountered, it seems that they would have had a better recollection of the experiences in
13 each business establishment.

14 In their opposition, plaintiffs' counsel claims that his clients always send a letter
15 before filing a lawsuit. "Barbara Hubbard even wrote a letter to Rite Aid (before filing a
16 lawsuit) on December 8, 2002, but never received a reply." See plaintiffs' opposition, pg.
17 15. See also Decl. of Hubbard, ¶ 17(c) in support of plaintiffs' opposition. What plaintiffs
18 fail to point out, however, is that plaintiffs' complaint was signed by their counsel on
19 December 17, 2002 and filed the following day. Nine days hardly leaves time for RITE AID
20 to respond to their complaint letter before plaintiffs move on to the litigation phase making a
21 person wonder why they sent the letter - as an exhibit down the road in litigation or to push
22 for compliance before litigation is necessary.

23 These lawsuits are not about the Plaintiffs, but what fees Plaintiffs' counsel can
24 generate.

25 **B. Plaintiffs' Counsel Use Of Form Pleadings.**

26 Plaintiffs attempt to argue that RITE AID's reliance on an "old version of a complaint
27 to prove vexatious litigant status is misplaced", however, the complaint in this case and the
28 complaint in the previous Hubbard case were both "form style" boilerplate complaints. This

HART, KING & COLDREN
A PROFESSIONAL CORPORATION
200 EAST SANDWICH, FOURTH FLOOR
SANTA ANA, CALIFORNIA 92707

1 complaint was never amended. Furthermore, each complaint that plaintiffs' counsel has
2 served on RITE AID (for any plaintiff) has been a basic version of this same boilerplate
3 complaint. This boilerplate complaint is analogous to the complaint cited in *Molski* as
4 indicating "serial plaintiffs with improper motive."

5 Plaintiffs then go on to state, "as Rite Aid is aware⁴, the generic, hypothetical
6 allegations of the Hubbards' complaint were based on plaintiffs' counsel's misunderstanding
7 of Rule 8(a)" See plaintiffs' opposition, pg. 15. It seems most disingenuous that plaintiffs'
8 counsel claims to be an ADA advocate, ADA expert and a "true litigator" and at the same
9 time claim a misunderstanding of the basic pleading requirements of the Federal Rules of
10 Civil Procedure – procedures that all lawyers admitted to the United States District Courts
11 are charged with knowing and understanding.

12 It seems more likely that plaintiffs' counsel only changed their boilerplate complaint
13 (apparently successful at hiding alleged barriers and dates of visits) after they were criticized
14 by the court in *Pickern v. Pier 1 Imports, Inc.* (E.D. Cal. 2004) 339 F. Supp. 2d 1081. While
15 this change may have been forced by the court, it does not diminish plaintiffs' propensity and
16 desire to file boilerplate complaints, like the operative complaint in this case.

17 Indeed, in the "new" style of complaint filed by Plaintiff's counsel, he still does not
18 allege the number or date of Plaintiffs visits to the Defendants' locations. Nor does he allege
19 the barriers encountered by Plaintiffs. He simply attaches a preliminary site report prepared
20 by someone (presumably an "expert") listing all the alleged problems in the store. See
21 Exhibit G, Plaintiffs' complaint filed in the case of *Lynn J. Hubbard and Barbara J.*
22 *Hubbard v. Vine Ripe Market, Inc., et al.* This is an insignificant departure from the
23 practices criticized in *Pickern* and *Molski*.

24 **C. Plaintiff's Settlement Negotiations.**

25 Plaintiffs' counsels' litigation tactics are consistent with a finding that these cases are
26 vexatious -- starting with Plaintiffs' counsel's uniform boilerplate demand of \$40,000 and
27

28 ⁴ RITE AID is unaware of any such misunderstanding by counsel for plaintiffs. See Exhibit A,
Decl. of Herzog, ¶ 8.

1 continuing on with his refusal to settle even the most recent of cases for less than \$16,000
2 regardless of his fees and costs to date.

3 The fact that prior settlements with RITE AID have injunctive relief do not change
4 this conclusion. That only shows that RITE AID is willing to ensure that its stores are
5 compliant – particularly since some of those settlements come by way of offer of judgment.
6 This conclusion should be supported by RITE AID'S conduct in this case in making
7 modifications to its store.

8 Plaintiffs' counsels' style of litigation is not about ADA compliance, but fees. RITE
9 AID has constantly stated its intent to make sure that its store is compliant. Mr. Sorrell still
10 seems intent on catching RITE AID in a "gotcha" technical violation as is apparent in the
11 tirade he attached as a declaration. The use of an undisclosed violation found by his expert
12 in order to force RITE AID and this Court into trial is about nothing but higher attorneys
13 fees. Mr. Sorrells would rather hide barriers found by his expert than ensure that the RITE
14 AID store is compliant.

15 Settlement always involves compromise, but it is interesting that Mr. Sorrell's letter
16 offered compromise on compliance, not compromise on dollars. The letter speaks for itself
17 in spite of his defensive comments in his declaration. Mr. Sorrells cannot diminish the
18 meaning of the letter by attacking RITE AID's counsel or misinforming the Court that he
19 "recently got on board and am not intimately aware of the complete history of the litigation
20 itself." See plaintiffs' opposition, Declaration of Adam Sorrells, ¶ 4. Mr. Sorrell first made
21 an appearance at the August 27, 2004 Pre-Trial Conference and had filed a Notice of
22 Unavailability of Counsel on August 16, 2004. Certainly eight months should have been
23 time for him to familiarize himself with the case. Additionally, because Mr. Sorrells
24 apparently shares office space with the Law Offices of Lynn Hubbard, he should be
25 intimately aware of this office's practices.

26 **IV. MOLSKI II INVOLVES A DIFFERENT CIRCUMSTANCE:**

27 Plaintiffs attempt to imply that the decision in *Molski v. Arby's Huntington Beach*
28 ("*Molski II*") (C.D. Cal. March 14, 2005) Case. No. SACV 04-0038 CJC (AJWx) reached

HART, KING & COLDREN
A PROFESSIONAL CORPORATION
200 EAST SANDPINE, FOURTH FLOOR
SANTA ANA, CALIFORNIA 92707

1 the opposite conclusion from *Molski v. Mandarin Touch Rest.* (C.D. Cal. 2004) 347 F. Supp.
2 2d 860, however this is not the case. In *Molski II*, plaintiff had already been declared
3 vexatious and the trial court was issuing an order to show cause regarding subject matter
4 jurisdiction. *Molski II* acknowledges that plaintiff has been deemed vexatious by the court,
5 but held that the Court could not dismiss his case for lack of subject matter jurisdiction at an
6 early stage in the case.

7 The fact that plaintiff *Molski* has been declared vexatious does not preclude him from
8 filing cases in the federal courts, but it does require him to file a motion for leave to file a
9 complaint. As stated in *Molski*, "For the purposes of imposing sanctions under the inherent
10 power of the court, a finding of bad faith does not require that the legal and factual basis for
11 the action prove totally frivolous. *Molski v. Mandarin Touch*, supra, 347 F. Supp. 2d at 865.
12 The pre-filing order in *Molski*, like the pre-filing order requested in this case is narrowly
13 tailored to relieve the burden on the courts and defendants while allowing plaintiffs to file
14 meritorious cases after seeking leave of court. Based on the factors outlined in *Molski* and
15 discussed in RITE AID's motion, plaintiffs in this case are clearly vexatious litigants.

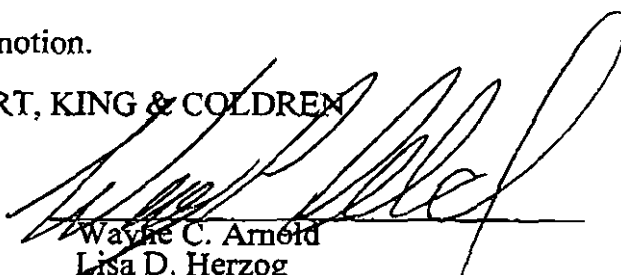
16 **V. CONCLUSION**

17 This case is not about whether Plaintiffs' counsel is a true litigator. It is about
18 whether Plaintiffs are truly disabled persons seeking redress under the law for real injury. A
19 review of the record leads to a contrary conclusion. These are not disabled persons bringing
20 claims about their injuries, but vexatious litigants who file lawsuit after lawsuit seeking
21 settlements to fund the attorneys fees claimed by their son's law firm. RITE AID
22 respectfully requests that this Court grant its motion.

23 Dated: April 8, 2005

HART, KING & COLDREN

24 By:



Wayne C. Arnold
Lisa D. Herzog
Attorneys for Defendants RITE AID
CORPORATION and ARTHUR
CIUFFO, JR. and EVELYN
EMMERSON, Trustees of the CIUFFO
FAMILY TRUST B

EXHIBIT "A"

//

EXHIBIT "A"

1 **Wayne C. Arnold, Bar No. 103194**
 2 **Lisa D. Herzog, Bar No. 194123**
 3 **HART, KING & COLDREN**
 4 **A PROFESSIONAL CORPORATION**
 5 **200 East Sandpointe, Fourth Floor**
 6 **Santa Ana, California 92707**
 7 **Telephone: (714) 432-8700**
 8 **Facsimile: (714) 546-7457**

9 **Attorneys for Defendants RITE AID CORPORATION and**
 10 **ARTHUR CIUFFO, JR. and EVELYN EMMERSON,**
 11 **Trustees of the CIUFFO FAMILY TRUST B erroneously**
 12 **Sued as THE CIUFFO FAMILY TRUST B, ET AL.**

13 **THE UNITED STATES DISTRICT COURT**
 14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 **LYNN J. HUBBARD, BARBARA J.**
 16 **HUBBARD,**

17 **Plaintiff,**

18 **v.**

19 **RITE AID CORPORATION; THE CIUFFO**
 20 **FAMILY TRUST B, ET AL; AVOCADO**
 21 **PLAZA, L.L.C. and DOES 1 through 20,**

22 **Defendants.**

Case No.: 02CV2497-WQH (BLM)

DECLARATION OF LISA D. HERZOG
IN SUPPORT OF DEFENDANTS' REPLY
TO OPPOSITION TO MOTION FOR
PRE-FILING ORDER PROHIBITING
VEXATIOUS LITIGANTS FROM FILING
NEW LITIGATION WITHOUT LEAVE
OF COURT, TO POST SECURITY, AND
FOR MONETARY SANCTIONS

Date: April 22, 2005
 Time: 3:00 p.m.
 Ctrm.: 4

Complaint Filed: December 18, 2002
 Trial Date: None

23 I, LISA D. HERZOG declare as follows:

24 1. I am an attorney duly licensed to practice law before all courts of the State of
 25 California and in the United States District Court for the Southern District of California, and
 26 am an attorney with the law firm of Hart, King & Coldren, attorneys of record for
 27 Defendants RITE AID CORPORATION and ARTHUR CIUFFO, JR. and EVELYN
 28 EMMERSON, Trustees of the CIUFFO FAMILY TRUST B (collectively "RITE AID") in

200 EAST SANDPOINTE, FOURTH FLOOR
 SANTA ANA, CALIFORNIA 92707

1 this matter. The facts set forth herein are true of my own personal knowledge and if called
2 as a witness I could and would competently testify thereto

3 2. I have represented RITE AID CORPORATION in many matters against the
4 Law Offices of Lynn Hubbard, including this case at issue.

5 3. In my conversations with attorney Lynn Hubbard at depositions and/or before
6 or after court appearances, Mr. Hubbard has made many statements to me about his travel
7 and recreational activities.

8 4. Mr. Hubbard has informed me on more than one occasion that he frequently
9 travels to Europe (particularly Amsterdam) and on one occasion told me that when he goes
10 to Europe he brings back chocolate for his staff at Christmas, even prompting me to ask
11 where my Christmas candy was prior to a deposition.

12 5. Mr. Hubbard has informed me that he frequently travels to Hawaii for sporting
13 events.


14 6. Mr. Hubbard has also informed me that he has season tickets to a San
15 Francisco based professional sports team (either the Giants or the 49ers).

16 7. Mr. Hubbard has also told me that he has his suits custom made in England.

17 8. I am not aware of any misunderstanding that the Law Offices of Lynn Hubbard
18 may have had regarding Rule 8 of the Federal Rules of Civil Procedure.

19
20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on this 8 day of April 2005 at Santa Ana, California.

22
23 
24 Lisa D. Herzog, Declarant

A PROFESSIONAL CORPORATION
200 EAST SANDPONT, FOURTH FLOOR
SANTA ANA, CALIFORNIA 92707

EXHIBIT "B"

14

EXHIBIT "B"

1 **Wayne C. Arnold, Bar No. 103194**
 2 **Lisa D. Herzog, Bar No. 194123**
 3 **HART, KING & COLDREN**
 4 **A PROFESSIONAL CORPORATION**
 5 **200 East Sandpointe, Fourth Floor**
 6 **Santa Ana, California 92707**
 7 **Telephone: (714) 432-8700**
 8 **Facsimile: (714) 546-7457**

9 **Attorneys for Defendants RITE AID CORPORATION and**
 10 **ARTHUR CIUFFO, JR. and EVELYN EMMERSON,**
 11 **Trustees of the CIUFFO FAMILY TRUST B erroneously**
 12 **Sued as THE CIUFFO FAMILY TRUST B, ET AL.**

13 **THE UNITED STATES DISTRICT COURT**
 14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 **LYNN J. HUBBARD, BARBARA J.**
 16 **HUBBARD,**

17 **Plaintiff,**

18 **v.**

19 **RITE AID CORPORATION; THE CIUFFO**
 20 **FAMILY TRUST B, ET AL; AVOCADO**
 21 **PLAZA, L.L.C. and DOES 1 through 20,**

22 **Defendant.**

Case No.: 02CV2497-WQH (BLM)

DECLARATION OF MELANIE A. KNUPP IN SUPPORT OF REPLY TO OPPOSITION TO MOTION FOR A PREFILING ORDER PROHIBITING VEXATIOUS LITIGANTS FROM FILING NEW LITIGATION WITHOUT LEAVE OF COURT, TO POST SECURITY, AND FOR MONETARY SANCTIONS

Date: April 22, 2005
 Time: 3:00 p.m.
 Courtroom: 4

Complaint Filed: December 18, 2002
 Trial Date: None

23 I, MELANIE A. KNUPP declare as follows:

24 1. I am a paralegal with the law firm of Hart, King & Coldren, attorneys of record
 25 for Defendants RITE AID CORPORATION and ARTHUR CIUFFO, JR. and EVELYN
 26 EMMERSON, Trustees of the CIUFFO FAMILY TRUST B (collectively "RITE AID") in
 27 this matter. I am over 18 years of age and the facts set forth herein are true of my own
 28 personal knowledge and if called as a witness I could and would competently testify thereto.

HART, KING & COLDREN
 A PROFESSIONAL CORPORATION
 200 EAST SANDPOINTE, FOURTH FLOOR
 SANTA ANA, CALIFORNIA 92707

HART, KING & COLDREN
A PROFESSIONAL CORPORATION
200 EAST SANDROUNTE, FOURTH FLOOR
SANTA ANA, CALIFORNIA 92707

1 2. Attached to this Reply to Plaintiffs' Opposition to RITE AID's Motion as
2 Exhibit C is a true and correct copy of the Notice of Bankruptcy Case Filing, USBC
3 Southern District Case No. 99-01046-LA, and Pacer printout of the case docket showing
4 what documents were filed, date of filing, date of creditor's hearing and Order Discharging
5 Debtors (filed 5/12/99). I obtained these printouts from PACER, the court's electronic
6 public access service.

7 3. Attached as Exhibit C to RITE AID's Reply is a chart that I created based on
8 my research of all cases filed by Lynn and Barbara Hubbard in Southern District. I
9 performed my research using PACER and reviewing the docket and terminating document
10 filed in each and every case. If a Stipulation for Dismissal was filed without stating
11 anywhere in the docket text that the case was settled, I opened and reviewed that particular
12 .pdf document. If the Stipulation was "pursuant to a settlement agreement between the
13 parties" or it was noted "case settled" anywhere in the docket text, then I counted that case
14 as settled. The majority of the Stipulations for Dismissal were prepared by attorney Lynn
15 Hubbard's office. Based on my research, I manually calculated the percentages of cases
16 that settled, were voluntarily dismissed, ongoing and case result unknown.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on this 8th day of April, 2005 at Santa Ana, California.

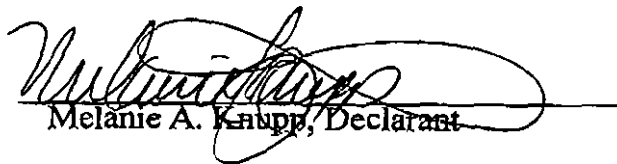
19
20 
21 Melanie A. Knupp, Declarant
22
23
24
25
26
27
28

EXHIBIT "C"

17

EXHIBIT "C"

LYNN AND BARBARA HUBBARD BREAKDOWN OF CASES FILED SINCE 5/18/00 IN SOUTHERN DISTRICT ¹ (as of 4/6/05)			
Year	Total Filings	Settled	Other
2000	19	16	3 dismissed
2001	20	17	1-ongoing 2-unknown
2002	73	66	4-dismissed 1-all dfts defaulted 1-ongoing 1-unknown
2003	28	25	3-dismissed
2004	29	23	6-ongoing
2005	7 (as of 4/6/05)	1	6-ongoing
TOTAL	176	148	28

From 2000 to 2004 (169 filed):

86.9% of cases have settled. (147)

5.9% were voluntarily dismissed (10)

4.7% are ongoing (8)

1.7% are unknown (unable to discern from Stip for Dismissal filed – most likely the case was settled) (2)

¹ Rite Aid's Exhibit F to its Motion shows 178 total cases filed by Lynn Hubbard in all districts in California (173 of which were filed in Southern District). Since the date Rite Aid filed its Motion, the Hubbards have filed three more cases in Southern District.

EXHIBIT "D"

19

EXHIBIT "D"

1 **Wayne C. Arnold, Bar No. 103194**
Lisa D. Herzog, Bar No. 194123
2 **HART, KING & COLDREN**
A PROFESSIONAL CORPORATION
3 **200 East Sandpointe, Fourth Floor**
Santa Ana, California 92707
4 **Telephone: (714) 432-8700**
Facsimile: (714) 546-7457

5 **Attorneys for Defendants RITE AID CORPORATION and**
6 **ARTHUR CIUFFO, JR. and EVELYN EMMERSON,**
Trustees of the CIUFFO FAMILY TRUST B erroneously
7 **Sued as THE CIUFFO FAMILY TRUST B, ET AL.**

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **LYNN J. HUBBARD, BARBARA J.**
HUBBARD,

12 **Plaintiff,**

13 **v.**

14 **RITE AID CORPORATION; THE**
15 **CIUFFO FAMILY TRUST B, ET AL;**
16 **AVOCADO PLAZA, L.L.C. and DOES 1**
through 20,

17 **Defendant.**

Case No.: 02CV2497-WQH (BLM)

Judge: William Q. Hayes

DECLARATION OF DAVID C. MUSSER
IN SUPPORT OF DEFENDANTS' REPLY
TO OPPOSITION TO MOTION FOR
PRE-FILING ORDER PROHIBITING
VEXATIOUS LITIGANTS FROM FILING
NEW LITIGATION WITHOUT LEAVE
OF COURT, TO POST SECURITY, AND
FOR MONETARY SANCTIONS

Date: April 22, 2005

Time: 3:00 p.m.

Ctrlm.: 4

Complaint Filed: December 18, 2002

Trial Date: None

22 I, DAVID C. MUSSER declare as follows:

23 1. I am a licensed architect familiar with the ADA, Title 24 and accessibility
24 requirements. I have been an architect for 20 years and I am the president of Musser
25 Architects, Inc. I have also been retained as an expert in the above-captioned matter. The
26 facts set forth herein are true of my own personal knowledge and if called as a witness I
27 could and would competently testify thereto.

HART, KING & COLDREN
A PROFESSIONAL CORPORATION
200 EAST SANDPOINTE, FOURTH FLOOR
SANTA ANA, CALIFORNIA 92707

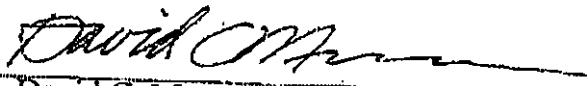
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Based upon my knowledge of the ADA laws, building and codes, current labor rates and material costs, I estimate that the expense to build and install and ADA complaint ramp leading to the entrance of the plaintiffs' trailer would be approximately \$2,500 or less.

3. I have been deposed several times by attorney Lynn Hubbard in cases in which I have been retained as an expert by RITE AID. During one of these depositions, Mr. Hubbard searched through his wallet to locate his check to give to me for my expert fee. While doing so, he told me that he had recently been on a trip to China and had to sort through foreign currency to find my check. He went on further to tell me that he has his suits made in Hong Kong.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of April 2005, at Costa Mesa, California.



David C. Musser, Declarant

HART KING & COLDREN
A PROFESSIONAL CORPORATION
200 EAST SAVANNAH AVENUE, SUITE 100
COSTA MESA, CALIFORNIA 92627

55001.036/297

2 21

DECLARATION OF DAVID C. MUSSE IN SUPPORT OF REPLY TO OPPOSITION TO

EXHIBIT "E"

22

EXHIBIT "E"

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

LYNN J. HUBBARD, BARBARA J. HUBBARD,)	
)	
)	
Plaintiffs,)	
)	
v.)	CASE NO. 02 CV 2497
)	WQH (JFS)
RITE AID CORPORATION; THE)	
CIUFFO FAMILY TRUST B, ET AL;)	
AVACADO PLAZA, L.L.C., and DOES)	
1 THROUGH 10,)	
)	
Defendants.)	

DEPOSITION OF LYNN J. HUBBARD

SAN DIEGO, CALIFORNIA

APRIL 28, 2004

Reported by R. Denise Marlow, CSR No.. 11631
PRS Job No. 1-205195A

P
A
U
L
S
O
N

REPORTING
& LITIGATION
SERVICES

LYNN J. HUBBARD - 4/28/04

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

Appearances:

For Plaintiffs:

Law Offices of Lynn Hubbard
By: Medy F. Beauchane, Specially Appearing
12 Williamsburg Lane
Chico, California 95926
(530) 895-3252

For Rite Aid Corporation:

Hart, King & Coldren
By: Wayne C. Arnold
200 East Sandpointe, Fourth Floor
Santa Ana, California 92707
(714) 432-8700

Also Present:

Barbara J. Hubbard

DEPOSITION OF LYNN J. HUBBARD, taken at
555 West Beech Street, Suite 111, San Diego, California,
on Thursday, April 28, 2004, at 10:27 a.m., before R.
Denise Marlow, Certified Shorthand Reporter, in and for
the State of California.

LYNN J. HUBBARD - 4/28/04

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

SAN DIEGO, CALIFORNIA,
THURSDAY, APRIL 28, 2004; 10:27 A.M.

LYNN J. HUBBARD,
having been first duly sworn, testifies as follows:

EXAMINATION

BY MR. ARNOLD:

Q Would you state your name for the record,
please.

A Lynn Hubbard.

Q And your address, Mr. Hubbard?

A Is Post Office Box 66, Imperial Beach,
California 91933.

Q Is your residence also in Imperial Beach,
California?

A No. It's in San Diego.

Q Your age, Mr. Hubbard?

A I'm 83.

Q Have you ever had your deposition taken before?

A Yes.

Q Approximately how many times?

A I don't remember.

Q More than a dozen?

A I don't think so, not that much.

25

LYNN J. HUBBARD - 4/28/04

1 MR. ARNOLD: And first of all, let me apologize
2 to counsel. I don't have an extra copy for you to look
3 at, so I'll let you look at it now.

4 BY MR. ARNOLD:

5 Q But, Mr. Hubbard, I'm going to hand you what
6 I've marked as Exhibit No. 1, let you and your counsel
7 take a look at it. After both of you have had a chance
8 to look at it, when you're ready to talk about it, let
9 me know, and I'll ask questions.

10 (Exhibit 1 marked)

11 MR. BEAUCHANE: Counsel, before you ask
12 questions regarding this document, are you going to lay
13 some foundation as to what it is and where it came from?

14 MR. ARNOLD: Yes. I just wanted you to see it
15 first so you weren't surprised.

16 BY MR. ARNOLD:

17 Q Mr. Hubbard, I'm going to hand this back to
18 you. But before I do, I'll represent to you that this
19 was a list of cases that was printed off of the computer
20 from the Pacer service, putting in a search for Lynn J.
21 Hubbard as a party. And according to this service,
22 there were 146 matching cases found. And with that
23 background, let me let you take another look at it.

24 And my first question is, Do you recognize the
25 cases on this list as cases which you filed as a

26

LYNN J. HUBBARD - 4/28/04

1 plaintiff?

2 A I have to assume that this is right, but I
3 don't know anything at all about this kind of stuff.
4 It's not my -- it's not what I do. So if you need that
5 kind of an answer, I'm sure that Lynn could -- my son
6 could give you the right answer for it. But I don't --
7 I really don't know. I don't keep track of this kind of
8 thing.

9 Q I understand that. But let's look at the list.
10 For example, the first entry up there is -- looks like
11 Hubbard versus El -- is it El Torito?

12 A Uh-huh.

13 Q Is that a yes?

14 A Yes.

15 Q Do you recall filing a lawsuit against El
16 Torito Restaurants?

17 A No, I don't recall that. I don't file
18 anything.

19 Q Well, do you recall having someone file a
20 lawsuit against El Torito Restaurant on your behalf?

21 A No. What I do recall is I was at a ENE meeting
22 with El Torito Restaurant with my attorney. That's all
23 I know.

24 Q Do you recall that you had litigation pending
25 against El Torito Restaurants?

1 A Just what I told you.

2 Q And that was ENE an Early Neutral Evaluation
3 conference? Did it relate to accessibility issues?

4 A Yes.

5 Q Have you been a plaintiff in any lawsuits in
6 which accessibility was not an issue?

7 A I don't know.

8 Q May I see the exhibit again.

9 Do you recall having a lawsuit with Best 99
10 Cent Stores regarding accessibility?

11 A No.

12 Q Do you recall having a lawsuit with Play
13 Company Toys regarding accessibility issues?

14 A No, I don't.

15 Q How about Stuart Anderson's? Do you recall
16 having a lawsuit with them regarding accessibility
17 issues?

18 A Yes.

19 Q How about Burger King?

20 MR. BEAUCHANE: I would object just as to
21 vagueness and ambiguity. Any specific Burger King or --
22 talking about accessibility issues.

23 MR. ARNOLD: Again, yes, we're talking about
24 accessibility issues --

25 THE WITNESS: This is four years ago.

28

LYNN J. HUBBARD - 4/28/04

1 BY MR. ARNOLD:

2 Q At any time.

3 A What do you mean, "At any time"? It says right
4 here 5/18/2000? Is that what that means?

5 Q That's what this means, yes.

6 A Yeah. Which Burger King is that?

7 Q I don't know. I'm just asking -- my question
8 is if you recall having a lawsuit with Burger King on
9 accessibility issues.

10 A No, I don't recall.

11 Q How about McDonalds?

12 A No. I don't know anything about this kind of
13 thing.

14 Q I'm sorry. I'm a little perplexed by your
15 answer. And so when you say you don't know anything
16 about this kind of thing, what do you mean by that?

17 A Well, because my son handles all this -- this
18 sort of thing. He does all the filing or whatever you
19 call it, and he calls and tells me we have a meeting.
20 And when you ask me a question, if I can place that
21 meeting with what he told me, why, then, I -- that's
22 what I know about it.

23 Q Okay. I recall your earlier answer. But in an
24 effort to help refresh your recollection, this search
25 came up with 146 matching case records for Lynn J.

29

LYNN J. HUBBARD - 4/28/04

1 Hubbard. Does that appear to be roughly correct in
2 terms of the number of accessibility cases that have you
3 filed?

4 A According to that, why, let's talk about this.
5 If that's what they say, why, then, that's -- I have to
6 go along with it. But I don't know if that's any more
7 or any less, so I can't really give you an honest
8 answer.

9 Q Let's talk about honest answers. We don't want
10 you to speculate or guess. What we want is your
11 recollection. However, if your recollection is not
12 specific, I am entitled to your best estimate. And so I
13 don't want you to guess. I don't want you to just pull
14 something out of the dark and respond to me.

15 But so in this case what I am looking for is at
16 least an estimate of the number of cases that you
17 recall. And I was not asking you to verify this
18 particular piece of paper, because I understand you
19 haven't seen it before today. But I'm just throwing out
20 the number that they have on this piece of paper and
21 asking you if that helps refresh your recollection about
22 the number or the approximate number or the estimated
23 number of lawsuits that you have filed regarding
24 accessibility.

25 A I'm a little surprised.

30

LYNN J. HUBBARD - 4/28/04

1 Q And why are you surprised?

2 A Well, they say 146. It doesn't -- you know, it
3 doesn't seem like that many to me, but I don't know.

4 Q Now, you've mentioned your son a couple times.
5 That's Lynn Hubbard also?

6 A Yes.

7 Q That's Lynn Hubbard, Jr.?

8 A No. That's Lynn Hubbard, III. I'm junior.

9 Q Third. Okay.

10 With respect to any lawsuits that you've been
11 involved in in which accessibility has been an issue,
12 has he always been your lawyer?

13 A No matter what I'm in, he's my lawyer.

14 Q In many of these cases that you have filed, or
15 the records would indicate that you've filed, regarding
16 accessibility issues, it would appear that your wife is
17 also a plaintiff with you. Is that your recollection?

18 A She and I do everything together.

19 Q It would also appear that she's not always a
20 plaintiff with you, that there are some cases in which
21 you're a plaintiff by yourself. Can you tell me why
22 there are some cases filed with the two of you and some
23 cases where it's only you?

24 A I have no idea.

25 MR. BEAUCHANE: Argumentative. Objection.

LYNN J. HUBBARD - 4/29/04

1 BY MR. ARNOLD:

2 Q My understanding is that, at least with respect
3 to the list that's in Exhibit 1, these are all cases in
4 the San Diego area. Have you participated in any
5 litigation regarding accessibility in places other than
6 San Diego?

7 A I don't recall.

8 Q Have any of the cases in which you've been
9 involved relating to accessibility gone to trial?

10 A I don't know -- I don't know.

11 MR. BEAUCHANE: I just -- you might want to
12 clarify in terms of what "trial" is.

13 MR. ARNOLD: Good point.

14 BY MR. ARNOLD:

15 Q I know you know what an ENE is because you just
16 mentioned one to me a minute ago.

17 A Yes.

18 Q A trial, of course, is where you have a hearing
19 in front of a judge and you actually testify. You're
20 sworn and testify and so forth. Do you understand what
21 a trial is?

22 A All right. Yes.

23 Q Have you participated in a trial before?

24 A None that I know of.

25 Q Mr. Hubbard, do you consider yourself disabled?

32

LYNN J. HUBBARD - 4/28/04

1 A Yes.

2 Q Can you describe for me the nature of your
3 disability?

4 A Yeah. I fell and cracked my back, and I have
5 sore knees. I wear a pacemaker, had open heart surgery.
6 I fell on a -- coming out on my cart, bumped my head, so
7 I got a blood clot on my brain. They told me at the
8 hospital if I was 30 years younger it probably would
9 have killed me.

10 MR. BEAUCHANE: Jeez, what's holding you
11 together?

12 THE WITNESS: Yeah, I'm holding together all
13 right.

14 BY MR. ARNOLD:

15 Q I don't want to cut you off. Have you
16 completed what you were going to tell me?

17 A Yeah. I'd have to get into conference with my
18 wife and see if I left anything out, but that's the best
19 of my knowledge.

20 Q You indicated you cracked your back. When did
21 that occur? Estimate.

22 A About three or four years ago.

23 Q And how did that happen?

24 A I was walking backwards and measuring a patio
25 in a mobile home park, and I -- my heel caught, and I

33

DEPONENT'S CHANGES OR CORRECTIONS

Deponent: Lynn J. Hubbard
 Date of Deposition: April 28, 2004
 PRS Job No.: 1-205195A

Note: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify with "Add" or "Delete" and sign below.

<u>Page</u>	<u>Line</u>	<u>Change/Add/Delete</u>
13	13	Delete: "No matter what I'm in, he's my lawyer." Add: "No."
19	9	Delete: "deal," Add: "lift on my van,"
19	9-10	Delete: "I had a malfunction, and half of it went down." Add: "the lift malfunctioned and it only went half way down."
23	18	Delete: "I don't remember." Add: "Yes, self-employed."
28	15	Delete: "anybody" Add: "everybody"
30	12-13	Delete: "I don't - I don't really know. Don't remember." Add: "To look at a scooter or van, I don't remember which."
38	10	Delete: "don't know"
40	15-16	Delete: "Went to Mercy Hospital at the trauma section. And, no, he never come and see me." Add: "I went to UCSD Medical Center- Trauma Unit. No he never came to see me."
40	20	Delete: "Mercy." Add: "UCSD Medical Center."
40-41	25-1	Delete: "No. I started with - you're going to have to ask my wife on that." Add: "No."

42

21

Delete:
Add:

"Dr. Stoil"
"The D.M.V., at Dr. Soit's request."

Pursuant to Section 2025(q)(1) of the Code of Civil Procedure of the State of California, I hereby certify that I have read my deposition transcript, made those changes and corrections that I deem necessary, and approve the same as now true and correct.

Date:

6/10/04

Signature:

Lynn J. Hubbard
Lynn J. Hubbard

EXHIBIT "F"

36

EXHIBIT "F"

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

LYNN J. HUBBARD, BARBARA J.
HUBBARD,

Plaintiffs,

v.

RITE AID CORPORATION; THE
CIUFFO FAMILY TRUST B, ET AL;
AVACADO PLAZA, L.L.C., and DOES
1 THROUGH 10,

Defendants.

CASE NO. 02 CV 2497
WQH (JFS)

DEPOSITION OF BARBARA J. HUBBARD

SAN DIEGO, CALIFORNIA

APRIL 28, 2004

Reported by R. Denise Marlow, CSR No. 11631
PRS Job No. 1-205195B

P
A
U
L
S
O
N

REPORTING
LITIGATION
SERVICES

1 Appearances:

2 For Plaintiffs:

3 Law Offices of Lynn Hubbard
4 By: Medy F. Beauchane, Specially Appearing
5 12 Williamsburg Lane
6 Chico, California 95926
7 (530) 895-3252

8 For Rite Aid Corporation:

9 Hart, King & Coldren
10 By: Wayne C. Arnold
11 200 East Sandpointe, Fourth Floor
12 Santa Ana, California 92707
13 (714) 432-8700

14 Also Present:

15 Lynn J. Hubbard
16
17
18
19
20

21 DEPOSITION OF BARBARA J. HUBBARD, taken at
22 555 West Beech Street, Suite 111, San Diego, California,
23 on Thursday, April 28, 2004, at 11:52 a.m., before
24 R. Denise Marlow, Certified Shorthand Reporter, in and
25 for the State of California.

BARBARA J. HUBBARD - 4/04

1 a computer runoff of the Pacer service which a search
2 was made for cases that had been filed with the name
3 Barbara Hubbard as one of the parties. And I'll let you
4 and your counsel take a look at this, and then you let
5 me know when you are ready to talk about it.

6 A Well, we can talk about it.

7 (Exhibit 1 marked)

8 BY MR. ARNOLD:

9 Q Exhibit No. 1 seems to indicate that there were
10 a hundred matching case records for the name Barbara
11 Hubbard. Would that be approximately correct in terms
12 of the number of lawsuits that you've filed regarding
13 accessibility issues?

14 A I really don't know.

15 Q Looking at Exhibit No. 1, do you recognize the
16 names of any companies or businesses which you have sued
17 regarding accessibility issues?

18 A I don't recognize Ronald Cohn; Madlain,
19 Incorporated; Salmos, Incorporated; GMRI, Incorporated;
20 Jenson and Jenson; Stram; Johnson -- I don't know who
21 Johnson is -- Cardinal Management --

22 MR. BEAUCHANE: I think it's fair to state that
23 she's not going to recognize some of these defendants on
24 here. I mean, do you want to go through each and every
25 single one on the list?

39

13

1 BY MR. ARNOLD:

2 Q No. Actually --

3 A There's a lot of them on there that I don't
4 recognize, all through there.

5 Q But my question was, Are there ones that you do
6 recognize?

7 A There are a few, yes.

8 Q Okay. Could you point out -- and I don't
9 necessarily want you to go through every one of them.
10 But just point out a few that you recognize as ones that
11 you have litigation or have had litigation against
12 regarding accessibility issues.

13 A Okay. Toys R Us, Ralphs, Sizzler, Dennys, Del
14 Taco, Marshalls; Applebees, Mervin's, Pep Boys, Earl
15 Scheib -- I remember those on this page. Did you want
16 me to do any more?

17 Q No. That's fine.

18 If I recall, the list that we used in your
19 husband's deposition earlier today, there were 146
20 matching entries on the search for his name --

21 A Yes.

22 Q -- and a hundred entries on the search that we
23 ran on your name, so that there's a difference in the
24 number of --

25 A Yes.

40

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

REPORTER'S CERTIFICATION

I, R. Denise Marlow, Certified Shorthand Reporter, in and for the State of California, do hereby certify:

That the witness named in the foregoing deposition was, before the commencement of the deposition, duly administered an oath in accordance with the Code of Civil Procedure Section 2094; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 30th day of April, 2004.

R. Denise Marlow
R. Denise Marlow, CSR No. 11631

41

DEPONENT'S CHANGES OR CORRECTIONS

Deponent: Barbara J. Hubbard
Date of Deposition: April 28, 2004
PRS Job No.: 1-205195B

Note: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify with "Add" or "Delete" and sign below.

<u>Page</u>	<u>Line</u>	<u>Change/Add/Delete</u>
14	13-16	Delete: "Okay. Toys R Us, Ralphs, Sizzler, Dennys, Del Taco, Marshalls; Applebees, Mervin's, Pep Boys, Earl Scheib - I remember those on this page. Did you want me to do any more?"
		Add: "If any of those apply to your question, the matters have been settled and I cannot comment further on them."

Pursuant to Section 2025(q)(1) of the Code of Civil Procedure of the State of California, I hereby certify that I have read my deposition transcript, made those changes and corrections that I deem necessary, and approve the same as now true and correct.

Date: 6-10-04

Signature: *Barbara J. Hubbard*
Barbara J. Hubbard

EXHIBIT "G"

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

05 MAR 28 AM 10:46

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

BY:  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LYNN J. AND BARBARA J.
HUBBARD

Plaintiffs,

vs.

VINE RIPE MARKET, INC. dba
VINE RIPE MARKET; SAICO
GATEWAY CO, LLC; RANCHO
LAS PALMAS CO, LLC.

Defendants,

No. 05 CV 0607

BEN (BLM)

Plaintiffs' Complaint

Hubbard v. Vine Ripe Market
Plaintiffs' Complaint

1 44



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

I. SUMMARY

1. This is a civil rights action by plaintiffs Lynn J. and Barbara J. Hubbard ("the Hubbards") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Vine Ripe Market
8191 Fletcher Parkway
La Mesa, CA 91942
(hereafter "the Store")

2. The Hubbards seek exemplary damages, injunctive and declaratory relief, attorney fees and costs, against Vine Ripe Market, Inc. dba Vine Ripe Market; Saico Gateway Co, LLC; Rancho Las Palmas Co, LLC (collectively "Vine Ripe") 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).

1
2
3
4
5
6
7
8
9
10

IV. PARTIES

11 7. Vine Ripe owns, operates, or leases the Store, and consists of a
12 person (or persons), firm, or corporation.

13 8. The Hubbards have multiple conditions that affect one or more
14 major life functions. The Hubbards require the use of motorized
15 wheelchairs and a mobility-equipped vehicle, when traveling about in
16 public. Consequently, the Hubbards are "physically disabled," as defined
17 by all applicable California and United States laws, and a member of the
18 public whose rights are protected by these laws.

V. FACTS

19 9. The Store is a sales or retail establishment, open to the public,
20 which is intended for nonresidential use and whose operation affects
21 commerce.

22 10. The Hubbards visited the Store and encountered barriers (both
23 physical and intangible) that interfered with—if not outright denied—their
24 ability to use and enjoy the goods, services, privileges, and accommodations
25 offered at the facility. To the extent known by the Hubbards, attached as
26 Exhibit A to this complaint is a true and accurate list (with photos) of
27 barriers that denied their access at the Store.

28 11. Notwithstanding that visit, the Hubbards were also deterred
from visiting the Store, 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

1 unrelated barriers were included within Exhibit A, as a courtesy to the
 2 defendants, so the defendants can avoid inadvertent acts of discrimination
 3 against the disabled. Nothing within this complaint, however, should be
 4 construed as an allegation that the Hubbards are seeking to remove barriers
 5 unrelated to their disability.

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

13 VI. FIRST CLAIM

14 Americans with Disabilities Act of 1990

15 Denial of "Full and Equal" Enjoyment and Use

16 14. The Hubbards incorporate the allegations contained in
 17 paragraphs 1 through 7 for this claim.

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

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

27
 28

Hubbard v. Vine Ripe Market
 Plaintiffs' Complaint

47

1 **Failure to Remove Architectural Barriers in an Existing Facility**

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

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

11 19. Here, the Hubbards allege that Vine Ripe can easily remove the
12 architectural barriers at the Store without much difficulty or expense, and
13 that Vine Ripe violated the ADA by failing to remove those barriers, when
14 it was readily achievable to do so.

15 20. In the alternative, if it was not “readily achievable” for Vine
16 Ripe to remove the Store’s barriers, then Vine Ripe violated the ADA by
17 failing to make the required services available through alternative methods,
18 which are readily achievable.

19 **Failure to Design and Construct an Accessible Facility**

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

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

1 23. Here, Vine Ripe violated the ADA by designing or constructing
 2 (or both) the Store in a manner that was not readily accessible to the
 3 physically disabled public—including the Hubbards—when it was
 4 structurally practical to do so.¹

5 Failure to Make an Altered Facility Accessible

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

9 25. The ADA also requires that facilities altered in a manner that
 10 affects (or could affect) its usability must be made readily accessible to
 11 individuals with disabilities to the maximum extent feasible. 42 U.S.C. §
 12 12183(a)(2). Altering an area that contains a facility's primary function also
 13 requires adding making the paths of travel, bathrooms, telephones, and
 14 drinking fountains serving that area accessible to the maximum extent
 15 feasible. Id.

16 26. Here, Vine Ripe altered the Store in a manner that violated the
 17 ADA and was not readily accessible to the physically disabled public—
 18 including the Hubbards—to the maximum extent feasible.

19 Failure to Modify Existing Policies and Procedures

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

25
 26
 27
 28 ¹ Nothing within complaint should be construed as a allegation that plaintiffs is bringing this
 action as a private attorney general under either state or federal statutes.

49

1 Health and Safety Code or Government Code § 4450 (or both), and that the
2 Store was not exempt under Health and Safety Code § 19956.

3 50. Vine Ripe's non-compliance with these requirements at the
4 Store aggrieved (or potentially aggrieved) the Hubbards and other persons
5 with physical disabilities. Accordingly, they seek injunctive relief and
6 attorney fees pursuant to Health and Safety Code § 19953.

7 X. PRAYER FOR RELIEF

8 WHEREFORE, the Hubbards pray judgment against Vine Ripe for:

- 9 1. Injunctive relief, preventive relief, or any other relief the Court deems
10 proper.
- 11 2. Declaratory relief that Vine Ripe violated the ADA for the purposes
12 of Unruh Act or Disabled Persons Act damages.
- 13 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of
14 the California Civil Code (but not both) according to the proof.
- 15 4. Attorneys' fees, litigation expenses, and costs of suit.²
- 16 5. Interest at the legal rate from the date of the filing of this action.
- 17 6. Punitive damages pursuant to Civil Code § 3294.

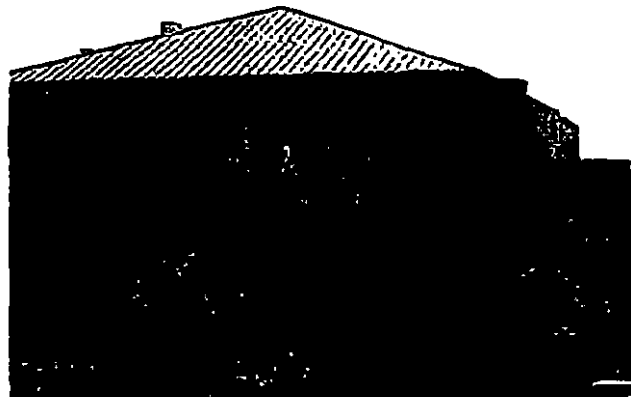
18
19 DATED: March 24, 2005

LAW OFFICES OF LYNN HUBBARD

20
21 

22 _____
23 LYNN HUBBARD, III
24 Attorney for the Hubbards
25
26
27

28 ² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
Hubbard v. Vine Ripe Market
Plaintiffs' Complaint



PRELIMINARY SITE ACCESSIBILITY REPORT

***Vine Ripe Market
8191 Fletcher Parkway
San Diego, California***

VINE RIPE MARKET
8191 Fletcher Parkway
San Diego, 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

1129B.5 4.6.4

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

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
1129B.4.4 4.6.3

8. Surface of parking space or access aisle exceeds 2.0% grade in any direction.

SEE PHOTO No. 4

1102 B.2.6 4.3
DSA pg 2D&3D

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

SEE PHOTO No. 5

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.
1124 B.3	4.5.3	13. Floor mats are not attached.
1117 B.5 Fig 11 B-6	4.30	14. Entrance door has no ISA.

SEE PHOTO No. 6

1122 B. 4	4.30.7	15. This location does not have an accessible check stand.
1122 B. 4 Fig 11B- 5D and F	4.32.3	16. 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.
1102 B 1114 B.1.2	4.3 4.3.3 Fig 7 (a & b)	17. No accessible route through store. At least one aisle is less than 36 inches wide.
1117 B.1.1	4.1.3(10) (a)	18. Water fountain not hi-lo design.
1115 B.2.1.5.1	4.15.5	19. Water fountain does not have a 27 inch minimum knee clearance.

SEE PHOTO No. 7

1114 B. 1.2		20. No accessible route to the restroom.
1117 B. 5.4 1117 B. 5.1.3	4.1.2 (7) (d)	21. No directional signage to the restroom.
1117 B. 5.6.3	4.1.3 (16) (a)	22. Restroom signs are not on the wall, latch side.

- | | | |
|--------------------------------|---------------|---|
| 1117 B. 5.5.3 | 4.30.4 | 23. Restroom door sign has no ISA, wall mounted, latch side. |
| 1117 B. 5.6.3 | 4.30.4 | 24. Restroom door signs do not have a verbal description below the ISA, latch side. |
| 1115 B. 5 | 4.30.4 | 25. Restroom door not identified in Braille, latch side. |
| 1117 B. 5.1.1
1117 B. 5.6.3 | 4.1.2 (7) (d) | 26. Restroom signs are not centered 60 inches from the floor, latch side. |

SEE PHOTO No. 8

- | | | |
|-----------------------------------|------------------|--|
| 1115B. 7.1.4 | | 27. Stall door not self closing. |
| 1133 B. 2.4.2
Fig 11 B. - 26 A | 4.13.6
Fig 25 | 28. Clearance for side strike area on interior doors is not 18 inches on the pull side and 12 inches on the push side. |
| 1115B.7.1.4 | 4.17.5 | 29. Outside stall door does not have accessible handle. |

SEE PHOTO No. 9

- | | | |
|---------------|--------|--|
| 1115 B. 7.1.4 | | 30. Inside stall door does not have accessible handle. |
| 1115 B.7.1.4 | | 31. Inside stall door handle not mounted below latch. |
| 1117 B. 6.4 | 4.27.4 | 32. Coat hook 45 inches from the floor. |

SEE PHOTO No. 10

- | | | |
|-------------------------|--|---|
| 1115B. 92
Fig 11B-1A | | 33. Seat cover dispenser operable part 46 inches from floor, and mounted over the grab bar. |
|-------------------------|--|---|

SEE PHOTO No. 12

4.17.3
Fig 30

34. Toilet tissue dispenser leading edge is 44 inches from back wall, not 36 inches maximum.

SEE PHOTO No. 13

1133 B.8.6.1 4.4.1

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

SEE PHOTO No. 14

1115 B. 2.1.2.1
Fig 11 B. -D

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

SEE PHOTO No. 15

1115 B.2.1.2.1 4.19.2
Fig 11 B. -D Fig 31

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

1115 B. 2.1.2.2 4.19.4

38. Hot water and drainpipes are not insulated.

SEE PHOTO No. 16

1115B.9.1.1 4.19.2
1115 B.9.2

39. Towel dispenser operable part 52 inches from floor, not required 40 inches.

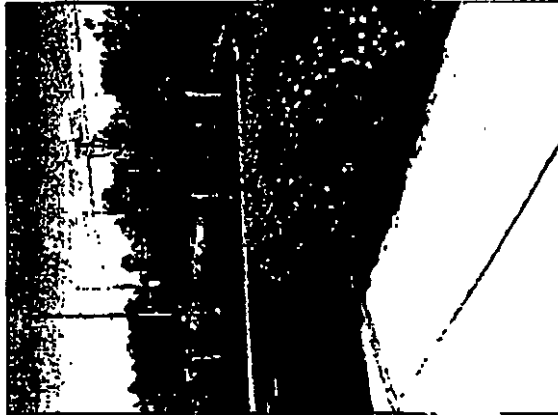
1102 B 4.3

40. Trash can is an obstruction to towel dispenser.

SEE PHOTO No. 17

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

1.



2.



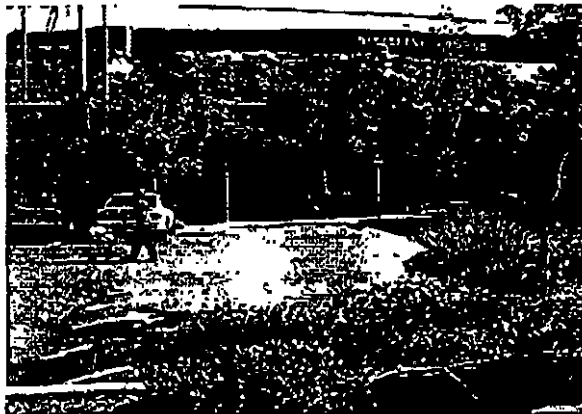
3.



4.



5.



6.



7.



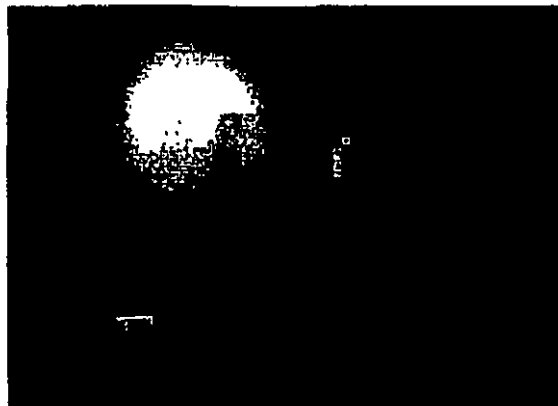
8.



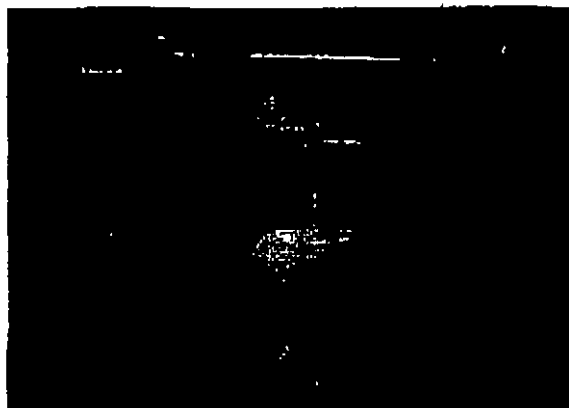
9.



10.



11.



12.



13.



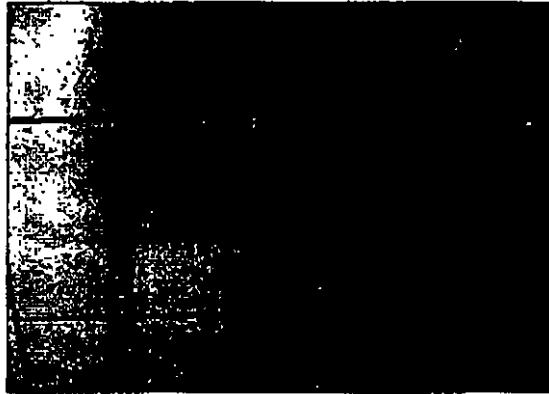
14.



15.



16.



17.

