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3:03-CV-01647 DEGROOTE ESTATE V. BURNS PROPERTIES LTD

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FILED
03 05 18 PM 1:20
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: 

DEPUTY

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **ORGANIZATION FOR ACCESSIBLE**
13 **RIGHTS IN THE NEW MILLENIUM**
14 **SUING ON BEHALF OF THE ESTATE**
15 **OF WALTER LEE DEGROOTE,**
16 **DOROTHY DEGROOTE AND ITS**
17 **MEMBERS; THE ESTATE OF WALTER**
18 **LEE DEGROOTE; and DOROTHY**
19 **DEGROOTE, An Individual,**

20 Plaintiffs,

21 v.

22 **BURNS PROPERTIES LTD**
23 **PARTNERSHIP; BURNS DRUGS;**
24 **B.W.W.N.G.C., INC., dba BURNS**
25 **DRUGS; B.W.W.N.G.C., INC., A**
26 **CALIFORNIA CORPORATION;**

27 And

28 **DOES 1 THROUGH 10, Inclusive.**

Defendants.

Case No.: '03 CV 1647L

JAH

CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS

[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1;
HEALTH & SAFETY CODE 19995;
BUSINESS & PROFESSIONS CODE
17200 et. seq.]

NEGLIGENCE
[CIVIL CODE 1714(a), 2338,
3333, 3294; EVIDENCE CODE
669(a)]

DEMAND FOR JURY TRIAL
[F.R.Civ.P. rule 38(b); L.R.
38.1]

INTRODUCTION

Plaintiffs ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE NEW

OR

1 MILLENIUM SUING ON BEHALF OF THE ESTATE OF WALTER LEE DEGROOTE,
2 DOROTHY DEGROOTE AND ITS MEMBERS; THE ESTATE OF WALTER LEE
3 DEGROOTE; and DOROTHY DEGROOTE, An Individual, herein complain, by
4 filing this Civil Complaint in accordance with rule 8 of the
5 Federal Rules of Civil Procedure in the Judicial District of the
6 United States District Court of the Southern District of
7 California, that Defendants have in the past, and presently are,
8 engaging in discriminatory practices against individuals with
9 disabilities, specifically including minorities with disabilities.
10 Plaintiffs allege this civil action and others substantial similar
11 thereto are necessary to compel access compliance because
12 empirical research on the effectiveness of Title III of the
13 Americans with Disabilities Act indicates the Title has failed to
14 achieve full and equal access simply by the executive branch of
15 the Federal Government funding and promoting voluntary compliance
16 efforts. Further, empirical research shows when individuals with
17 disabilities give actual notice of potential access problems to
18 places of public accommodation without a federal civil rights
19 civil action, the public accommodations do not remove the access
20 barriers. Therefore, Plaintiffs make the following allegations in
21 this federal civil rights action:
22

23 **JURISDICTION AND VENUE**

24 1. The federal jurisdiction of this action is based on the
25 Americans with Disabilities Act, 42 United States Code 12101-
26 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
27 District of the United States District Court of the Southern
28 District of California is in accordance with 28 U.S.C. § 1391(b)

1 because a substantial part of Plaintiffs' claims arose within the
2 Judicial District of the United States District Court of the
3 Southern District of California.
4

5 **SUPPLEMENTAL JURISDICTION**

6 2. The Judicial District of the United States District Court of
7 the Southern District of California has supplemental jurisdiction
8 over the state claims as alleged in this Complaint pursuant to 28
9 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
10 in this action is because all the causes of action or claims
11 derived from federal law and those arising under state law, as
12 herein alleged, arose from common nucleus of operative facts. The
13 common nucleus of operative facts, include, but are not limited
14 to, the incidents where DECEASED PLAINTIFF'S MEMBER WALTER LEE
15 DEGROOTE; and PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE
16 were denied full and equal access to Defendants' facilities,
17 goods, and/or services in violation of both federal Defendants'
18 facilities as described within paragraphs 7 through 19 of this
19 Complaint. Defendant BURNS DRUGS is located at 7824 Girard
20 Avenue, La Jolla, California, 92037. Plaintiffs are informed and
21 believe and thereon allege that B.W.W.N.G.C., INC., dba BURNS
22 DRUGS; and B.W.W.N.G.C., INC., A CALIFORNIA CORPORATION are the
23 owners, operators, franchisers, franchisees, and/or lessors of the
24 BURNS DRUGS. Defendant B.W.W.N.G.C., INC., dba BURNS DRUGS; and
25 B.W.W.N.G.C., INC., A CALIFORNIA CORPORATION INC. are located at
26 P.O. Box 1151, La Jolla, California, 992038. Plaintiffs are
27 further informed and believe and thereon allege that Defendant
28

1 BURNS PROPERTIES LTD PARTNERSHIP is the current owner, operator
2 and or lessor of the property located at 7824 Girard Avenue, La
3 Jolla, California 92037, Assessor's Parcel Number 350.082.12.
4 Defendant BURNS PROPERTIES LTD PARTNERSHIP is located at 7824
5 Girard Avenue, La Jolla, California 92037. Plaintiffs are further
6 informed and believe and thereon allege that defendant
7 B.W.W.N.G.C., INC., A CALIFORNIA CORPORATION was the owner of the
8 property on the date in which Plaintiffs visited said property.

9 4. The words "Plaintiffs" and "Plaintiff" as used herein
10 specifically include the ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE
11 NEW MILLENNIUM SUIING ON BEHALF OF THE ESTATE OF WALTER LEE
12 DEGROOTE, DOROTHY DEGROOTE AND ITS MEMBERS; THE ESTATE OF WALTER
13 LEE DEGROOTE; and DOROTHY DEGROOTE, An Individual, and persons
14 associated with its Members who accompanied Members to Defendants'
15 facilities.

16 5. Defendants Does 1 through 10, were at all times relevant
17 herein subsidiaries, employers, employees, and/or agents of BURNS
18 PROPERTIES LTD PARTNERSHIP; B.W.W.N.G.C., INC., dba BURNS DRUGS;
19 and B.W.W.N.G.C., INC., A CALIFORNIA CORPORATION. Plaintiffs are
20 ignorant of the true names and capacities of Defendants sued
21 herein as Does 1 through 10, inclusive, and therefore sues these
22 Defendants by such fictitious names. Plaintiffs will pray leave
23 of the court to amend this complaint to allege the true names and
24 capacities of the Does when ascertained.

25 6. Plaintiffs are informed and believe, and thereon allege,
26 that Defendants and each of them herein were, at all times
27 relevant to the action, the owner, franchisee, lessee, general
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1 partner, limited partner, agent, employee, representing partner,
2 or joint venturer of the remaining Defendants and were acting
3 within the course and scope of that relationship. Plaintiffs are
4 further informed and believe, and thereon allege, that each of the
5 Defendants herein gave consent to, ratified, and/or authorized the
6 acts alleged herein to each of the remaining Defendants.

7 **CONCISE SET OF FACTS**

8 7. DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE had a physical
9 impairment and due to this impairment he has learned to
10 successfully operate a wheelchair.

11 8. On August 18, 2002, DECEASED PLAINTIFF'S MEMBER WALTER LEE
12 DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE went
13 to Defendants' BURNS DRUGS establishment to utilize their goods
14 and/or services.

15 9. When DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
16 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE patronized
17 Defendants' BURNS DRUGS establishment, they had difficulty using
18 the entrance, customer service counter and interior path of travel
19 facilities at Defendants' establishment because they failed to
20 comply with ADA Access Guidelines For Buildings and Facilities
21 (hereafter referred to as "ADAAG") and/or California's Title 24
22 Building Code Requirements. Defendants failed to remove
23 obstructions in the entrance, register counters, check cashing
24 counters, prescription counter, interior path of travel,
25 refrigerator doors, flu shot desk, jewelry counter and payphone
26 facilities at Defendants' establishment.
27
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1 10. DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; and
2 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE personally
3 experienced difficulty with said access barriers in Defendants'
4 BURNS DRUGS. RESTAURANTS establishment. For example, the front
5 entrance to Defendant's facilities fails to be accessible, as
6 there is a loose mat placed in front of the entrance door posing a
7 hazard; the requirement is for mats to securely fastened at all
8 four edges or be removed. Also, the metal frame at the bottom of
9 the entrance doors lack proper clearance; the requirement is for
10 the bottom ten inches (10") of all doors to have a smooth,
11 uninterrupted surface to allow the door to be opened by a
12 wheelchair footrest without creating a trap or hazardous
13 condition. Lastly, there fails to be signage on the doors and/or
14 windows indicating that this facility is accessible; this is
15 required.

16 11. The two (2) register counters are too high to be accessible
17 at forty-two inches (42"); the requirement is to provide a lowered
18 section that does not exceed thirty-four inches (34") in height
19 for a length of thirty-six inches (36").

20 12. The interior path of travel fails to be accessible, as it is
21 less than thirty-six inches wide in some areas; the requirement is
22 to provide a consistent and clear path of travel that is at least
23 thirty-six inches wide.

24 13. Additional violations exist at Defendants' establishment
25 other than those personally experienced by Plaintiffs. For
26 example, the public payphone lacks volume control; this is
27 required. Also, the prescription counter is too high at forty-
28

1 four inches (43"). The jewelry counter is too high at forty
2 inches (40"). There is a chair blocking the clear floor space for
3 the flu shot desk; the requirement is to provide a clear floor
4 space of at least thirty inches by forty-eight inches (36" x 48").

5 Also, the refrigerator doors have hardware that requires tight
6 grasping to operate; the requirement is to install hardware that
7 is "U" or "L" shaped and does not require tight grasping and/or
8 twisting of the wrist to operate. Lastly, the two (2) check
9 cashing counters are too high to be accessible, as they are both
10 forty-three inches high.

11 14. Based on these facts, Plaintiffs allege DECEASED PLAINTIFF'S
12 MEMBER WALTER LEE DEGROOTE; and PLAINTIFF'S MEMBER AND PLAINTIFF
13 DOROTHY DEGROOTE were discriminated against each time they
14 patronized Defendants' establishment.

15 15. Pursuant to federal and state law, Defendants are required
16 to remove barriers to their existing facilities. Further,
17 Defendants had actual knowledge of their barrier removal duties
18 under the Americans with Disabilities Act and the Civil Code
19 before January 26, 1992. Also, Defendants should have known that
20 individuals with disabilities are not required to give notice to a
21 governmental agency before filing suit alleging Defendants failed
22 to remove architectural barriers. Plaintiffs believe and herein
23 allege Defendants' facilities have access violations not directly
24 experienced by DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
25 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE which preclude
26 or limit access by others with disabilities, including, but not
27 limited to, Space Allowance and Reach Ranges, Accessible Route,
28

1 Protruding Objects, Ground and Floor Surfaces, Parking and
2 Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators,
3 Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
4 Drinking Fountains and Water Coolers, Water Closets, Toilet
5 Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
6 Handrails, Grab Bars, and Controls and Operating Mechanisms,
7 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,
8 Plaintiffs allege Defendants are required to remove all
9 architectural barriers, known or unknown. Also, Plaintiffs allege
10 Defendants are required to utilize the ADA checklist for Readily
11 Achievable Barrier Removal approved by the United States
12 Department of Justice and created by Adaptive Environments.

13 18. PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE desire to
14 return to Defendants' place of business in the immediate future.

15 19. DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; and
16 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE were extremely
17 upset due to Defendants' conduct. Further, DECEASED PLAINTIFF'S
18 MEMBER WALTER LEE DEGROOTE experienced pain in his legs, back,
19 arms, shoulders and wrists when he attempted to enter, use, and
20 exit Defendants' establishment.

21 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

22 20. B.W.W.N.G.C., INC., dba BURNS DRUGS; and BURNS DRUGS are the
23 commercial tenants of the subject property. BURNS PROPERTIES LTD
24 PARTNERSHIP is the current commercial landlord. B.W.W.N.G.C.,
25 INC., A CALIFORNIA CORPORATION is the prior commercial landlord of
26 the subject property.

27 21. Plaintiffs aver that the Defendants are liable for the
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1 following claims as alleged below:
2

3 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

4 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Claims Under The**
5 **Americans With Disabilities Act Of 1990**

6 CLAIM I: **Denial Of Full And Equal Access**

7 22. Based on the facts plead at ¶¶ 7-19 above and elsewhere in
8 this complaint, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
9 and PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE were denied
10 full and equal access to Defendants' goods, services, facilities,
11 privileges, advantages, or accommodations. Plaintiffs allege
12 Defendants are a public accommodation owned, leased and/or
13 operated by Defendants. Defendants' existing facilities and/or
14 services failed to provide full and equal access to Defendants'
15 facility as required by 42 U.S.C. § 12182(a). Thus, DECEASED
16 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
17 PLAINTIFF DOROTHY DEGROOTE were subjected to discrimination in
18 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
19 U.S.C. § 12188 because Plaintiffs were denied equal access to
20 Defendants' existing facilities.

21 23. DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE had physical
22 impairments as alleged in ¶ 7 above because his conditions affect
23 one or more of the following body systems: neurological,
24 musculoskeletal, special sense organs, and/or cardiovascular.
25 Further, his said physical impairments substantially limited one
26 or more of the following major life activities: walking. In
27 addition, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE could
28

1 not perform one or more of the said major life activities in the
2 manner, speed, and duration when compared to the average person.
3 Moreover, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE had a
4 history of or was classified as having a physical impairment as
5 required by 42 U.S.C. § 12102(2)(A).

6 CLAIM II: Failure To Make Alterations In Such A Manner That The
7 Altered Portions Of The Facility Are Readily Accessible And Usable
8 By Individuals With Disabilities

9 24. Based on the facts plead at ¶¶ 7-19 above and elsewhere in
10 this complaint, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
11 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE were denied full
12 and equal access to Defendants' goods, services, facilities,
13 privileges, advantages, or accommodations within a public
14 accommodation owned, leased, and/or operated by Defendants.
15 Defendants altered their facility in a manner that affects or
16 could affect the usability of the facility or a part of the
17 facility after January 26, 1992. In performing the alteration,
18 Defendants failed to make the alteration in such a manner that, to
19 the maximum extent feasible, the altered portions of the facility
20 are readily accessible to and usable by individuals with
21 disabilities, including individuals who use wheelchairs, in
22 violation of 42 U.S.C. §12183(a)(2).

23 25. Additionally, the Defendants undertook an alteration that
24 affects or could affect the usability of or access to an area of
25 the facility containing a primary function after January 26, 1992.
26 Defendants further failed to make the alterations in such a manner
27 that, to the maximum extent feasible, the path of travel to the
28

1 altered area and the bathrooms serving the altered area, are
2 readily accessible to and usable by individuals with disabilities
3 in violation 42 U.S.C. §12183(a)(2).

4 26. Pursuant to 42 U.S.C. §12183(a), this failure to make the
5 alterations in a manner that, to the maximum extent feasible, are
6 readily accessible to and usable by individuals with disabilities
7 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

8 Therefore, Defendants discriminated against DECEASED PLAINTIFF'S
9 MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF
10 DOROTHY DEGROOTE in violation of 42 U.S.C. § 12182(a).

11 27. Thus, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
12 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE were subjected
13 to discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
14 §12182(a) and 42 U.S.C. §12188 because said Members and DECEASED
15 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE were denied equal access to
16 Defendants' existing facilities.

17 CLAIM III: **Failure To Remove Architectural Barriers**

18 28. Based on the facts plead at ¶¶ 7-19 above and elsewhere in
19 this complaint, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
20 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE were denied full
21 and equal access to Defendants' goods, services, facilities,
22 privileges, advantages, or accommodations within a public
23 accommodation owned, leased, and/or operated by Defendants.

24 Defendants failed to remove barriers as required by 42 U.S.C. §
25 12182(a). Plaintiffs are informed and believe, and thus allege
26 that architectural barriers which are structural in nature exist
27 at the following physical elements of Defendants' facilities:
28

1 Space Allowance and Reach Ranges, Accessible Route, Protruding
2 Objects, Ground and Floor Surfaces, Parking and Passenger Loading
3 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts
4 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains
5 and Water Coolers, Water Closets, Toilet Stalls, Urinals,
6 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and
7 Controls and Operating Mechanisms, Alarms, Detectable Warnings,
8 Signage, and Telephones. Title III requires places of public
9 accommodation to remove architectural barriers that are structural
10 in nature to existing facilities. [See, 42 United States Code
11 12182(b)(2)(A)(iv).] Failure to remove such barriers and
12 disparate treatment against a person who has a known association
13 with a person with a disability are forms of discrimination. [See
14 42 United States Code 12182(b)(2)(A)(iv).] Thus, DECEASED
15 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
16 PLAINTIFF DOROTHY DEGROOTE were subjected to discrimination in
17 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
18 U.S.C. § 12188 because said Members and DECEASED PLAINTIFF'S
19 MEMBER WALTER LEE DEGROOTE were denied equal access to Defendants'
20 existing facilities.

21
22 CLAIM IV: **Failure To Modify Practices, Policies And Procedures**

23 29. Based on the facts plead at ¶¶ 7-19 above and elsewhere in
24 this complaint, Defendants failed and refused to provide a
25 reasonable alternative by modifying its practices, policies and
26 procedures in that they failed to have a scheme, plan, or design
27 to assist Plaintiff's Members and DECEASED PLAINTIFF'S MEMBER
28 WALTER LEE DEGROOTE and/or others similarly situated in entering

1 and utilizing Defendants' services, as required by 42 U.S.C. §
2 12188(a). Thus, said Members and DECEASED PLAINTIFF'S MEMBER
3 WALTER LEE DEGROOTE were subjected to discrimination in violation
4 of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188
5 because said Members and DECEASED PLAINTIFF'S MEMBER WALTER LEE
6 DEGROOTE were denied equal access to Defendants' existing
7 facilities.

8 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
9 CALIFORNIA ACCESSIBILITY LAWS

10 CLAIM I: Denial Of Full And Equal Access

11 30. Based on the facts plead at ¶¶ 7-19 above and elsewhere in
12 this complaint, Plaintiff's Members and DECEASED PLAINTIFF'S
13 MEMBER WALTER LEE DEGROOTE were denied full and equal access to
14 Defendants' goods, services, facilities, privileges, advantages,
15 or accommodations within a public accommodation owned, leased,
16 and/or operated by Defendants as required by Civil Code Sections
17 54 and 54.1. Defendants' facility violated California's Title 24
18 Accessible Building Code by failing to provide access to
19 Defendants' facilities due to violations pertaining to the Space
20 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
21 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
22 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
23 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
24 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
25 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
26 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
27 Telephones.
28

1 31. These violations denied DECEASED PLAINTIFF'S MEMBER WALTER
2 LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE
3 full and equal access to Defendants' facility. Thus, said Members
4 and DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE were subjected
5 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
6 because Plaintiffs were denied full, equal and safe access to
7 Defendants' facility, causing severe emotional distress.

8 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

9 32. Based on the facts plead at ¶¶ 7-19 above and elsewhere
10 herein this complaint, Defendants failed and refused to provide a
11 reasonable alternative by modifying its practices, policies, and
12 procedures in that they failed to have a scheme, plan, or design
13 to assist Plaintiff's Members and DECEASED PLAINTIFF'S MEMBER
14 WALTER LEE DEGROOTE and/or others similarly situated in entering
15 and utilizing Defendants' services as required by Civil Code §
16 54.1. Thus, said Members and DECEASED PLAINTIFF'S MEMBER WALTER
17 LEE DEGROOTE were subjected to discrimination in violation of
18 Civil Code § 54.1.

19 **CLAIM III: Violation Of The Unruh Act**

20 33. Based on the facts plead at ¶¶ 7-19 above and elsewhere
21 herein this complaint and because Defendants violated the Civil
22 Code § 51 by failing to comply with 42 United States Code
23 12182(b)(2)(A)(iv), Defendants did and continue to discriminate
24 against DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
25 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE and persons
26 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

27 **Treble Damages Pursuant To Claims I, II, III Under The California**

1 Accessibility Laws

2 34. Defendants, each of them, at times prior to and including
3 during the month of August, 2002, respectively, and continuing to
4 the present time, knew that persons with physical disabilities
5 were denied their rights of equal access to all portions of this
6 public facility. Despite such knowledge, Defendants, and each of
7 them, failed and refused to take steps to comply with the
8 applicable access statutes; and despite knowledge of the resulting
9 problems and denial of civil rights thereby suffered by DECEASED
10 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
11 PLAINTIFF DOROTHY DEGROOTE and other similarly situated persons
12 with disabilities. Defendants, and each of them, have failed and
13 refused to take action to grant full and equal access to persons
14 with physical disabilities in the respects complained of
15 hereinabove. Defendants, and each of them, have carried out a
16 course of conduct of refusing to respond to, or correct complaints
17 about, denial of disabled access and have refused to comply with
18 their legal obligations to make the subject BURNS DRUGS facility
19 accessible pursuant to the Americans With Disability Act Access
20 Guidelines (ADAAG) and Title 24 of the California Code of
21 Regulations (also known as the California Building Code). Such
22 actions and continuing course of conduct by Defendants, and each
23 of them, evidence despicable conduct in conscious disregard of the
24 rights and/or safety of DECEASED PLAINTIFF'S MEMBER WALTER LEE
25 DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE and of
26 other similarly situated persons, justifying an award of treble
27 damages pursuant to sections 52(a) and 54.3(a) of the California
28

1 Civil Code.

2 35. Defendants', and each of their, actions have also been
3 oppressive to persons with physical disabilities and of other
4 members of the public, and have evidenced actual or implied
5 malicious intent toward those members of the public, such as
6 Plaintiffs and other persons with physical disabilities who have
7 been denied the proper access to which they are entitled by law.
8 Further, Defendants', and each of their, refusals on a day-to-day
9 basis to correct these problems evidence despicable conduct in
10 conscious disregard for the rights of DECEASED PLAINTIFF'S MEMBER
11 WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY
12 DEGROOTE and other members of the public with physical
13 disabilities.

14 36. Plaintiffs pray for an award of treble damages against
15 Defendants, and each of them, pursuant to California Civil Code
16 sections 52(a) and 54.3(a), in an amount sufficient to make a more
17 profound example of Defendants and encourage owners and operators
18 of other public facilities from willful disregard of the rights of
19 persons with disabilities. Plaintiffs do not know the financial
20 worth of Defendants, or the amount of treble damages sufficient to
21 accomplish the public purposes of section 52(a) of the California
22 Civil Code and section 54.3 of the California Civil Code.

23 37. Wherefore, Plaintiffs pray for damages and relief as
24 hereinafter stated.
25

26
27 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS - Violation of**
28 **Business and Professions Code section 17200 et seq.**

1 38. Plaintiffs incorporate by reference herein the facts plead
2 at ¶¶ 7-19 above and elsewhere in this complaint.

3 39. Defendants failed to remove obstructions in the entrance,
4 interior path of travel, cashier counters, check cashing counters,
5 prescription counter, flu shot desk, jewelry counter, refrigerator
6 and payphone facilities in Defendants' BURNS DRUGS establishment.

7 Pursuant to federal law, Defendants are required to remove
8 barriers to their existing facilities. Title III of the Americans
9 With Disabilities Act requires places of public accommodation to
10 remove architectural barriers that are structural in nature to
11 existing facilities. [42 United States Code 12182(b)(2)(A)(iv).]
12 Failure to remove such barriers and disparate treatment against a
13 person who has a known association with a person with a disability
14 are forms of discrimination. [See 42 United States Code
15 12182(b)(2)(A)(iv).] Thus, DECEASED PLAINTIFF'S MEMBER WALTER LEE
16 DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE were
17 subjected to discrimination in violation of 42 United States Code
18 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Members and
19 DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE were denied equal
20 access to Defendants' existing facilities. Also, Defendants'
21 facilities failed to provide full and equal access to Defendants'
22 facility as required by 42 U.S.C. § 12182(a). Thus, DECEASED
23 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
24 PLAINTIFF DOROTHY DEGROOTE was subjected to discrimination in
25 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
26 U.S.C. § 12188 because DECEASED PLAINTIFF'S MEMBER WALTER LEE
27 DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE were
28

1 denied equal access to Defendants' existing facilities.
2 Additionally, as a result of said access barriers, Defendants
3 failed and refused to provide a reasonable alternative by
4 modifying its practices, policies and procedures in that they
5 failed to have a scheme, plan, or design to assist DECEASED
6 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
7 PLAINTIFF DOROTHY DEGROOTE and/or others similarly situated in
8 entering and utilizing Defendants' services, as required by 42
9 U.S.C. § 12188(a). Thus, said Members and DECEASED PLAINTIFF'S
10 MEMBER WALTER LEE DEGROOTE were subjected to discrimination in
11 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
12 U.S.C. § 12188 because said Members and DECEASED PLAINTIFF'S
13 MEMBER WALTER LEE DEGROOTE were denied equal access to Defendants'
14 existing facilities.

15
16 40. Pursuant to state law, Defendants are also required to remove
17 barriers to their existing facilities. These violations denied
18 DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S
19 MEMBER AND PLAINTIFF DOROTHY DEGROOTE full and equal access to
20 Defendants' facilities. Thus, said Members and DECEASED
21 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE were subjected to
22 discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because
23 DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S
24 MEMBER AND PLAINTIFF DOROTHY DEGROOTE were denied full, equal and
25 safe access to Defendants' facility. Further, Defendants'
26 facility, and other goods, services, and/or facilities provided to
27 the public by Defendants are not accessible to and usable by
28 persons with disabilities as required by Health and Safety Code §

1 19955 which requires private entities to make their facility
2 accessible before and after remodeling, and to remove
3 architectural barriers on and after AB 1077 went into effect.
4 Additionally, Defendants failed and refused to provide a
5 reasonable alternative by modifying its practices, policies, and
6 procedures in that they failed to have a scheme, plan, or design
7 to assist DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
8 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE and/or others
9 similarly situated in entering and utilizing Defendants' services
10 as required by Civil Code § 54.1. Thus, said Members and DECEASED
11 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE were subjected to
12 discrimination in violation of Civil Code § 54.1. Also, under the
13 Unruh Act, Defendants violated the Civil Code § 51 by failing to
14 comply with 42 United States Code 12182(b)(2)(A)(iv), Defendants
15 did and continue to discriminate against DECEASED PLAINTIFF'S
16 MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF
17 DOROTHY DEGROOTE and persons similarly situated in violation of
18 Civil Code §§ 51, 52, and 54.1. Further, Defendants had actual
19 knowledge of their barrier removal duties under the Americans with
20 Disabilities Act, the California Civil Code, and the California
21 Health & Safety Code before January 26, 1992.

22 41. Business and Professions Code section 17200 defines "unfair
23 competition" and prohibited activities as, ". . . **any unlawful,**
24 **unfair or fraudulent business act or practice** and unfair,
25 deceptive, untrue or misleading advertising and any act prohibited
26 by Chapter 1 (commencing with Section 17500) of Part 3 of Division
27 7 of the Business and Professions Code." (emphasis added).
28

1 Defendants' acts and omissions alleged herein are violations of
2 the above-enumerated federal and state statutory requirements and
3 public policy and therefore constitute unfair competition and/or
4 prohibited activities as such violations are *unlawful, unfair or*
5 *fraudulent business acts or practices*. Defendants' alleged
6 unlawful, unfair, or fraudulent business acts or practices are
7 specifically prohibited by the specific introductory language of
8 B&P section 17200 that is stated in the conjunctive.

9 Consequently, Plaintiffs allege that Defendants' acts and
10 omissions constitute a violation specifically of this section
11 17200 of the Business and Professions Code.

12 42. Plaintiffs seek injunctive relief requiring Defendants to
13 remedy the disabled access violations present at the Defendants'
14 facilities. Ancillary to this injunctive relief, Plaintiffs also
15 request restitution for amounts paid by DECEASED PLAINTIFF'S
16 MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF
17 DOROTHY DEGROOTE who attempted to visit and patronize Defendants'
18 facilities during the time period that the subject premises have
19 been in violation of the disabled access laws of the State of
20 California.

21 43. Plaintiffs seek, on behalf of the general public, injunctive
22 relief requiring Defendants to comply with the disabled access
23 laws of the State of California at facilities throughout the State
24 of California built, owned, operated, and/or controlled by
25 Defendants.

26 44. WHEREFORE, Plaintiffs pray for judgment as hereinafter set
27 forth.
28

1 FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS- Negligence

2 45. Based on the facts plead at ¶¶ 7-19 above and elsewhere in
3 this complaint, Defendants owed DECEASED PLAINTIFF'S MEMBER WALTER
4 LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE a
5 statutory duty to make their facility accessible and owed DECEASED
6 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
7 PLAINTIFF DOROTHY DEGROOTE a duty to keep DECEASED PLAINTIFF'S
8 MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF
9 DOROTHY DEGROOTE reasonably safe from known dangers and risks of
10 harm. This said duty arises by virtue of legal duties proscribed
11 by various federal and state statutes including, but not limited
12 to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
13 California Administrative Code and applicable 1982 Uniform
14 Building Code standards as amended.

15 46. Title III of the ADA mandates removal of architectural
16 barriers and prohibits disability discrimination. As well,
17 Defendants' facility, and other goods, services, and/or facilities
18 provided to the public by Defendants are not accessible to and
19 usable by persons with disabilities as required by Health and
20 Safety Code § 19955 which requires private entities to make their
21 facility accessible before and after remodeling, and to remove
22 architectural barriers on and after AB 1077 went into effect.

23 47. Therefore, Defendants engaged in discriminatory conduct in
24 that they failed to comply with known duties under the ADA, ADAAG,
25 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
26 should have known that their acts of nonfeasance would cause
27 DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S
28

1 MEMBER AND PLAINTIFF DOROTHY DEGROOTE emotional, bodily and
2 personal injury. Plaintiffs allege that there was bodily injury
3 in this matter because when DECEASED PLAINTIFF'S MEMBER WALTER LEE
4 DEGROOTE attempted to enter, use, and exit Defendants'
5 establishment, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE
6 experienced pain in his legs, back, arms, shoulders, and wrists.
7 Plaintiffs further allege that such conduct was done in reckless
8 disregard of the probability of said conduct causing DECEASED
9 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE to suffer bodily or
10 personal injury, anger, embarrassment, depression, anxiety,
11 mortification, humiliation and distress. Plaintiffs allege that
12 such conduct caused DECEASED PLAINTIFF'S MEMBER WALTER LEE
13 DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE to
14 suffer the injuries of mental and emotional distress, including,
15 but not limited to, anger, embarrassment, depression, anxiety,
16 mortification, humiliation, distress, and fear of physical injury.

17 Plaintiffs additionally allege that such conduct caused DECEASED
18 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
19 PLAINTIFF DOROTHY DEGROOTE to suffer damages as a result of these
20 injuries.
21

22 DEMAND FOR JUDGMENT FOR RELIEF:

23 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
24 3281, and 3333;

25 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
26 each and every offense of Civil Code § 51, Title 24 of the
27 California Building Code, ADA, and ADA Accessibility Guidelines;
28

1 C. In the alternative to the damages pursuant to Cal. Civil
2 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
3 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
4 54.1, Title 24 of the California Building Code, ADA, and ADA
5 Accessibility Guidelines;

6 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
7 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
8 Defendants to remove all architectural barriers in, at, or on
9 their facilities related to the following: Space Allowance and
10 Reach Ranges, Accessible Route, Protruding Objects, Ground and
11 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
12 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
13 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
14 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
15 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
16 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

17 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
18 § 12205, and Cal. Civil Code § 55;

19 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),
20 and 54.3(a);

21 G. For Restitution pursuant to Business and Professions section
22 17200;

23 H. A Jury Trial and;

24 I. For such other further relief as the court deems proper.

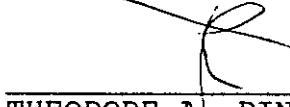
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27
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1 Respectfully submitted:

PINNOCK & WAKEFIELD

2
3 Dated: August 18, 2003

4 By:



THEODORE A. PINNOCK, ESQ.
MICHELLE L. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE NEW MILLENNIUM SUING ON BEHALF OF THE ESTATE OF WALTER LEE DEGROOTE, DOROTHY DEGROOTE, AND ITS MEMBERS; THE ESTATE OF WALTER LEE DEGROOTE and DOROTHY DEGROOTE, An Individual

DEFENDANTS
BURNS PROPERTIES LTD PARTNERSHIP; BURNS DRUGS; B.W.W.N.G.C., INC., dba BURNS DRUGS; B.W.W.N.G.C., INC., A CALIFORNIA CORPORATION; And DOES 1 Through 10, Inclusive.

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego
(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)
Theodore A. Pinnock, Esq. SBN: 153434
Michelle L. Wakefield, Esq. SBN 200424
Pinnock & Wakefield
3033 Fifth Avenue, Suite 410
San Diego, California 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)
'03 CV 1647L JAH

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)
(For Diversity Cases Only)

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> Incorporated and Principal Place of Business in Another State	<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

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

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"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> 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 Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 180 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 168 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395b) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 460 State Reappointment <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"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC <input type="checkbox"/> 691 Agricultural Acts <input type="checkbox"/> 692 Economic Stabilization Act <input type="checkbox"/> 693 Environmental Matters <input type="checkbox"/> 694 Energy Allocation Act <input type="checkbox"/> 695 Freedom of Information Act <input type="checkbox"/> 690 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

1 Original Proceeding 2 Removal 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

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND \$** Check YES only if demanded in complaint: **JURY DEMAND:** YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE August 18, 2003
CR# 096531 \$150.00 BLD

SIGNATURE OF ATTORNEY OF RECORD