

USDC SCAN INDEX SHEET



GEP 2/24/05 13:15
3:05-CV-00367 HUBBARD V. CLAIM JUMPER
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CMP.

ORIGINAL

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Attorney for Plaintiffs

FILED
FEB 23 2005
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

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12
13 LYNN J. AND BARBARA J.
14 HUBBARD

15 Plaintiffs,

16 vs.

17 CLAIM JUMPER ENTERPRISES,
18 INC. dba CLAIM JUMPER
19 RESTAURANT; PALOMAR & CO.

20 Defendants,

05 CV 0367 W (JFS)

Plaintiff's Complaint

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28 Hubbard v. Claim Jumper, et al
Plaintiff's Complaint

1 I. SUMMARY

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

6 Claim Jumper Restaurant
7 5958 Avenida Encinas
8 Carlsbad, CA 92008
9 (“the Restaurant”)

10 2. The Hubbards seek exemplary damages, injunctive and
11 declaratory relief, attorney fees and costs, against Claim Jumper Enterprises,
12 Inc. dba Claim Jumper Restaurant; Palomar & Co (collectively “Claim
13 Jumper Restaurant”) pursuant to the Americans with Disabilities Act of
14 1990,(42 U.S.C. §§ 12101 et seq.), and related California statutes.

15 II. JURISDICTION

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

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

21 5. The Hubbards claims are authorized by 28 U.S.C. §§ 2201 and
22 2202.

23 III. VENUE

24 6. All actions complained of herein take place within the
25 jurisdiction of the United States District Court, Southern District of
26 California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

1 IV. PARTIES

2 7. Claim Jumper Restaurant owns, operates, or leases the
3 Restaurant, and consists of a person (or persons), firm, or corporation.

4 8. The Hubbards have multiple conditions that affect one or more
5 major life functions. Plaintiffs require the use of motorized wheelchairs and
6 a mobility-equipped vehicle, when traveling about in public. Consequently,
7 the Hubbards are “physically disabled,” as defined by all applicable
8 California and United States laws, and a member of the public whose rights
9 are protected by these laws.

10 V. FACTS

11 9. The Restaurant is an establishment serving food and drink,
12 open to the public, which is intended for nonresidential use and whose
13 operation affects commerce.

14 10. The Hubbards visited the Restaurant and encountered barriers
15 (both physical and intangible) that interfered with—if not outright denied—
16 their ability to use and enjoy the goods, services, privileges, and
17 accommodations offered at the facility. To the extent known by the
18 Hubbards, attached as Exhibit A to this complaint is a true and accurate list
19 (with photos) of barriers that denied their access at the Restaurant.

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

1 facilities, privileges or accommodations of The Restaurant during each visit
2 and each incident of deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

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

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

13 19. Here, the Hubbards allege that Claim Jumper Restaurant can
14 easily remove the architectural barriers at the Restaurant without much
15 difficulty or expense, and that Claim Jumper Restaurant violated the ADA
16 by failing to remove those barriers, when it was readily achievable to do so.

17 20. In the alternative, if it was not “readily achievable” for Claim
18 Jumper Restaurant to remove the Restaurant’s barriers, then Claim Jumper
19 Restaurant violated the ADA by failing to make the required services
20 available through alternative methods, which are readily achievable.

21 Failure to Design and Construct an Accessible Facility

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

25 22. The ADA also prohibits designing and constructing facilities
26 for first occupancy after January 26, 1993, that aren’t readily accessible to,

1 and usable by, individuals with disabilities when it was structurally
2 practicable to do so. 42 U.S.C. § 12183(a)(1).

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

7 Failure to Make an Altered Facility Accessible

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

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

18 26. Here, Claim Jumper Restaurant altered the Restaurant in a
19 manner that violated the ADA and was not readily accessible to the
20 physically disabled public—including the Hubbards—to the maximum
21 extent feasible.

22 Failure to Modify Existing Policies and Procedures

23 27. The ADA also requires reasonable modifications in policies,
24 practices, or procedures, when necessary to afford such goods, services,
25 facilities, or accommodations to individuals with disabilities, unless the
26

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

1 entity can demonstrate that making such modifications would fundamentally
2 alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 28. Here, Claim Jumper Restaurant violated the ADA by failing to
4 make reasonable modifications in policies, practices, or procedures at the
5 Restaurant, when these modifications were necessary to afford (and would
6 not fundamentally alter the nature of) these goods, services, facilities, or
7 accommodations.

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

11 30. The Hubbards also seek a finding from this Court (*i.e.*,
12 declaratory relief) that Claim Jumper Restaurant violated the ADA in order
13 to pursue damages under California's Unruh Civil Rights Act or Disabled
14 Persons Act.

15 VII. SECOND CLAIM

16 Disabled Persons Act

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

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

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



PRELIMINARY SITE ACCESSIBILITY REPORT

***Claim Jumper Restaurant
5958 Avenida Encinas
Carlsbad, California***



CLAIM JUMPER
5958 Avenida Encinas
Carlsbad, 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

1129 B. 4.2 4.1.2 (5) (d)

4. No required van accessible parking space.

1129B.5 4.6.4

5. No separate van accessible sign.

1129 B.4.1 4.6.3

6. Incorrect parking space/access aisle dimensions.

1129 B.5.1&2 4.6.4

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

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

8. Access aisle not striped in white.

1129B.4.1
Fig 11 B-18 A

9. Missing no parking painted in accessible aisle.

1129 B.5 4.7

10. Curb ramp encroaches into accessible aisle.

SEE PHOTO No. 3, 4, and 5

1127 B. 5 4.7

11. Curb ramp slope exceeds accessible limit of 8.33 percent.

1129B.4.4 4.6.3

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

SEE PHOTO Nos. 6 thru' 11

1127 B. 5.8		13. No detectable warnings.
1127 B.5.8	4.29.2	14. Detectable warning not visually contrasting, light on dark or dark on light.
1127 B.	36.304	15. No exterior route of travel from the property border.
1127 B. 3		16. No exterior route of travel signs.
1117 B.5 Fig 11 B-6	4.30	17. Entrance door has no ISA.
1102 B 1114 B.1.2	4.3 4.3.3 Fig 7 (a & b)	18. No accessible route through restaurant. At least one aisle is less than 36 inches wide.
1122 B. 4 Fig11B- 5D and F	4.32.3	19. Bar does not have a section 28 th 34 inches high and 36 inches wide and 24 inches deep maximum to accommodate a wheelchair occupant.
1122 B. 3	4.32.3	20. Bar booths do not have 30 inches between cushions.
1122 B. 3	4.32.2	21. Bar seating does not offer 19 inches before an obstruction to accommodate a wheelchair occupant.
1117 B. 5.8.1 Fig 11 B. – 6	4.30.7 Fig 43	22. Bar seating has no ISA.
1122 B. 3	4.32.3	23. Dining room booths do not have 30 inches between cushions.
1122 B. 3	4.32.2	24. Dining room seating does not offer 19 inches before an obstruction to accommodate a wheelchair occupant.
1117 B. 5.8.1 Fig 11 B. – 6	4.30.7 Fig 43	25. Dining room seating has no ISA.
1117 B. 5.4 1117 B. 5.1.3	4.1.2 (7) (d)	26. No directional signage to the restroom.

- | | | |
|--------------------------------|----------------|---|
| 1117 B. 5.6.3 | 4.1.3 (16) (a) | 27. Restroom signs are not on the wall, latch side. |
| 1117 B. 5.5.3 | 4.30.4 | 28. Restroom door sign has no ISA, wall mounted, latch side. |
| 1117 B. 5.6.3 | 4.30.4 | 29. Restroom door signs do not have a verbal description below the ISA, latch side. |
| 1115 B. 5 | 4.30.4 | 30. Restroom door not identified in Braille, latch side. |
| 1117 B. 5.1.1
1117 B. 5.6.3 | 4.1.2 (7) (d) | 31. Restroom signs are not centered 60 inches from the floor, latch side. |

SEE PHOTO No. 12

- | | | |
|-----------------------------------|------------------|--|
| 1115B. 7.1.4 | | 32. Stall door not self closing. |
| 1133 B. 2.4.2
Fig 11 B. – 26 A | 4.13.6
Fig 25 | 33. Clearance for side strike area on interior doors is not 18 inches on the pull side and 12 inches on the push side. |

SEE PHOTO No. 13

- | | | |
|-------------|--------|---|
| 1115B.7.1.4 | 4.17.5 | 34. Outside stall door does not have accessible handle. |
|-------------|--------|---|

SEE PHOTO No. 14

- | | | |
|---------------|--|--|
| 1115 B. 7.1.4 | | 35. Inside stall door does not have accessible handle. |
| 1115 B.7.1.4 | | 36. Inside stall door handle not mounted below latch. |

SEE PHOTO No. 15

- | | | |
|-----------|--|---|
| 1115B.9.3 | | 37. Toilet tissue dispenser is even with the front of the water closet not required 12 inches in front. |
|-----------|--|---|

1115B. 9 2
Fig 11B-1A

41. Seat cover dispenser mounted over the grab bar.

SEE PHOTO No. 17

1115 B. 2.1.2.1
Fig 11 B. -D

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

SEE PHOTO No. 18

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

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

1115 B. 2.1.2.2 4.19.4

44. Hot water and drainpipes are not insulated.

SEE PHOTO No. 19

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

#1



#2



#3



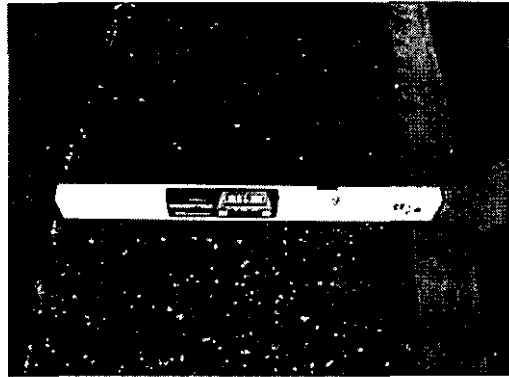
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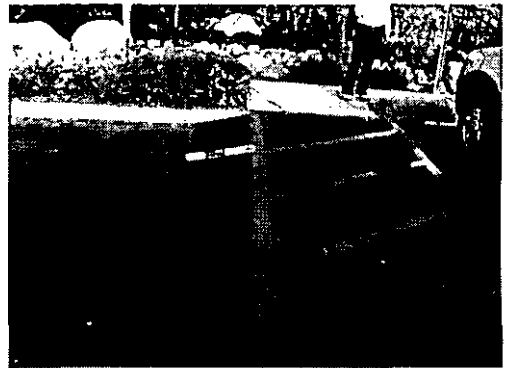
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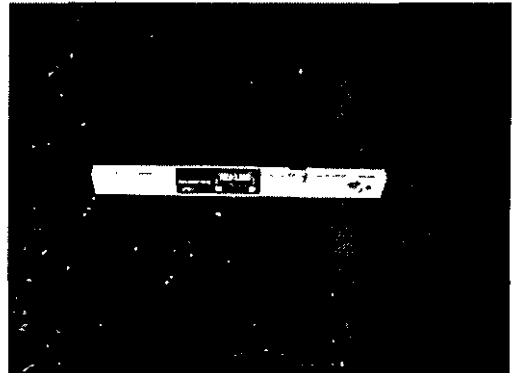
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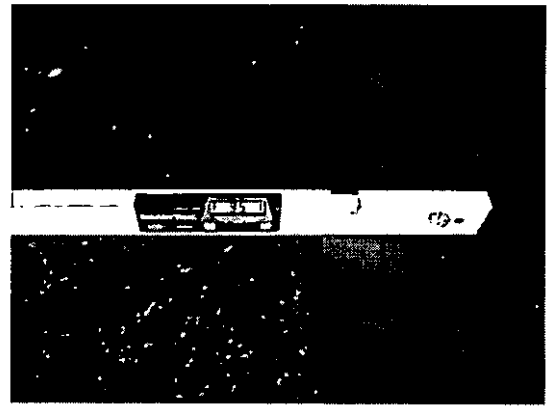
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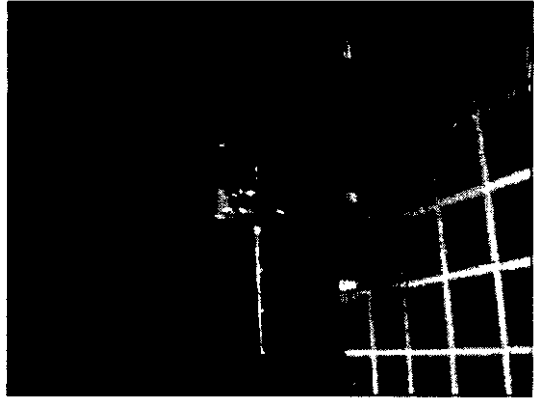
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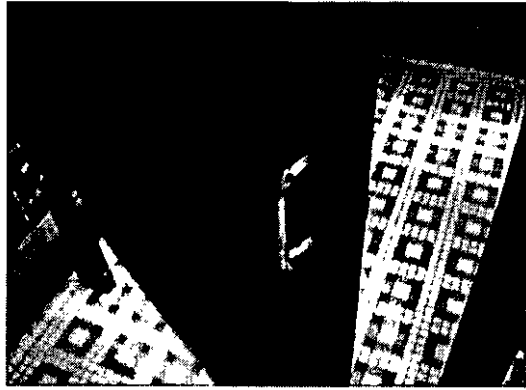
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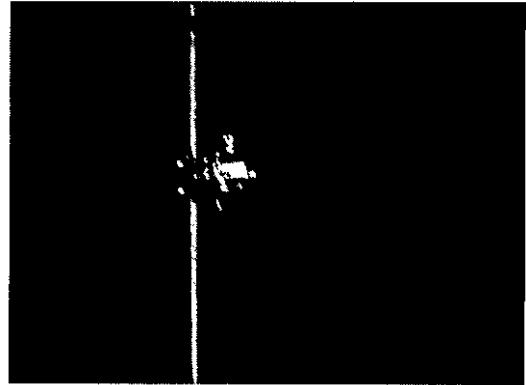
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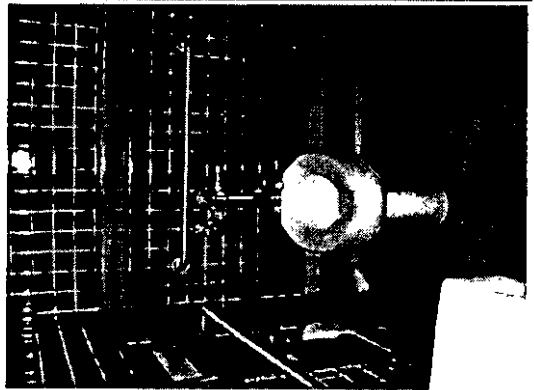
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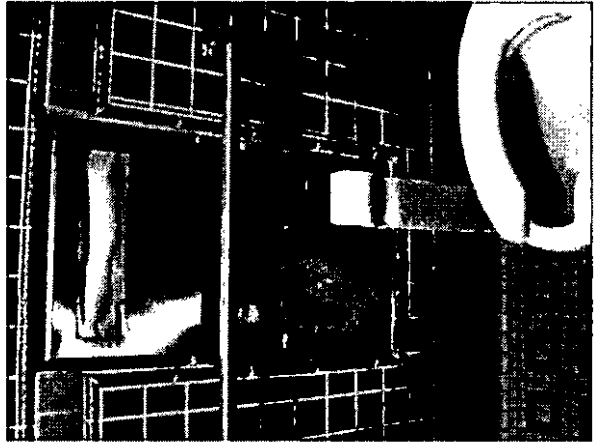
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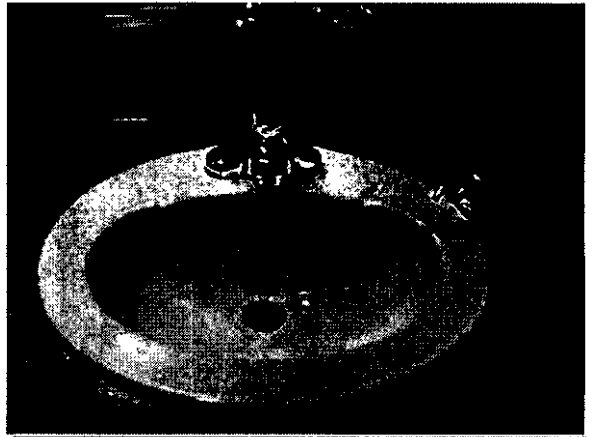
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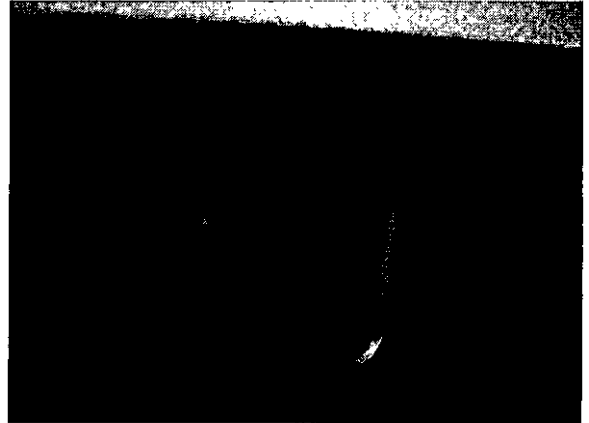
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CIVIL COVER SHEET

FILED
FEB 23 2005
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

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

I. (a) PLAINTIFFS

LYNN J HUBBARD and BARBARA J HUBBARD

ORIGINAL

DEFENDANTS

CLAIM JUMPER ENTERPRISES, INC. dba.CLAIM.JUMPER RESTAURANT; PALOMAR & CO.

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Lynn Hubbard, III, Esq.
Law Offices of Lynn Hubbard, 12 Williamsburg Lane,
Chico, CA 95926

ATTORNEYS (IF KNOWN)

'05 CV 0367 W (JFS)

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

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Rags.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	PRISONER PETITIONS	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 190 Other Contract	CIVIL RIGHTS	<input type="checkbox"/> 310 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 441 Voting	HABEAS CORPUS:	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land		<input type="checkbox"/> 555 Prison Condition			<input type="checkbox"/> 900 Constitutionalality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability					<input type="checkbox"/> 950 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property					

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL UNLESS DIVERSITY.)

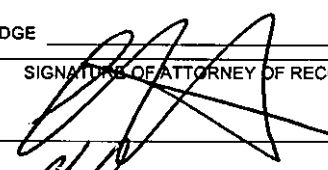
42 U.S.C. Section 12101, et seq.
Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** Excess \$75,000.00 **CHECK YES only if demanded in complaint: JURY DEMAND:** YES NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE February 16, 2005 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # 111379 AMOUNT \$250.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____