

USDC SCAN INDEX SHEET



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3:05-CV-00054 HUBBARD V. SMART & FINAL STORES

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ORIGINAL

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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

FILED
05 JAN 12 AM 10:01
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: **SD** DEPUTY

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LYNN J HUBBARD and
BARBARA J. HUBBARD

Plaintiff,

vs.

SMART & FINAL STORES, CORP.
dba SMART & FINAL #416;
PETCO ANIMAL SUPPLIES, INC.
dba PETCO #930; JOHN C.
MABEE and BETTY L. MABEE,
Trustees of the MABEE FAMILY
TRUST 10-04-01.

Defendants,

No. '05 CV 0054 L (NLS)

Plaintiff's Complaint

CA

1 I. SUMMARY

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

6 PETCO ANIMAL SUPPLIS #930
7 154 Encinitas Boulevard
8 Encinitas, Ca 92024
9 (hereafter "the Smart & Final facility")

10 Smart & Final #416
11 150 Encinitas Boulevard
12 Encinitas, Ca 92024
13 (hereafter "the Petco facility")

14 Collectively, these properties shall be known as "both facilities."

15 2. The Hubbards seek compensatory and punitive damages,
16 injunctive and declaratory relief, attorney fees and costs, against defendants
17 SMART & FINAL STORES, CORP. dba SMART & FINAL #416("Smart
18 & Final"); PETCO ANIMAL SUPPLIES, INC. dba PETCO #930 ("Petco");
19 JOHN C. MABEE and BETTY L. MABEE, Trustees of the MABEE
20 FAMILY TRUST 10-04-01("Mabee")¹ pursuant to the Americans with
21 Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and related
22 California statutes.

23 II. JURISDICTION

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

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27
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¹ these parties shall be collectively known as "Defendants"

1 12. Likewise, the Petco facility is a sales or rental establishment,
2 open to the public, which is intended for nonresidential use and whose
3 operation affects commerce.

4 13. The Hubbards visited both facilities and encountered barriers
5 (both physical and intangible) that interfered with—if not outright denied—
6 their ability to use and enjoy the goods, services, privileges, and
7 accommodations offered at both facilities. To the extent known by the
8 Hubbards, attached as Exhibit A to this complaint is a true and accurate list
9 (with photos) of barriers that denied them access at both facilities.

10 14. The Hubbards were also deterred from visiting the Smart &
11 Final facility on approximately two occasions, because they knew that the
12 Smart & Final goods, services, facilities, privileges, advantages, and
13 accommodations at the Smart & Final were unavailable to physically
14 disabled patrons (such as themselves). They still refuse to visit the Smart &
15 Final because of the future threats of injury created by these barriers.

16 15. Notwithstanding that visit, the Hubbards were also deterred
17 from visiting the Petco facility on approximately two occasions, because
18 they knew that the Petco goods, services, facilities, privileges, advantages,
19 and accommodations at the Petco were unavailable to physically disabled
20 patrons (such as themselves). They still refuse to visit the Petco because of
21 the future threats of injury created by these barriers.

22 16. The Hubbards also encountered barriers at both facilities,
23 which violate state and federal law, but were unrelated to their disability;
24 these unrelated barriers were included within Exhibit A, as a courtesy to
25 Defendants, so the defendants can avoid inadvertent acts of discrimination
26 against the disabled. Nothing within this complaint, however, should be
27 construed as an allegation that the Hubbards are seeking to remove barriers
28 unrelated to their disabilities.

1 17. Smart & Final knew that these elements and areas of the Smart
2 & Final were inaccessible, violate state and federal law, and interfere with
3 (or deny) access to the physically disabled. Moreover, defendants have the
4 financial resources to remove these barriers from the Smart & Final facility
5 (without much difficulty or expense), and make the facility accessible to the
6 physically disabled. To date, however, they refuse to either remove those
7 barriers or seek an unreasonable hardship exemption to excuse their non-
8 compliance.

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

16 19. The Hubbards have suffered (or anticipate suffering) emotional
17 and physical harm during each visit to the Smart & Final and each incident
18 of deterrence. Moreover, because of Smart & Final's acts and omissions,
19 they suffered physical discomfort and injury, emotional distress, and mental
20 suffering and distress.

21 20. The Hubbards have suffered (or anticipate suffering) emotional
22 harm or personal physical injuries (or both) during each visit to the Petco
23 and each incident of deterrence. Moreover, because of Petco's acts and
24 omissions, they suffered physical discomfort and injury, emotional distress,
25 and mental suffering and distress.

26 21. All injuries suffered by the Hubbards are expectedly and
27 naturally associated with Smart & Final acts and omissions at the Smart &
28 Final Facility.

1 28. Here, The Hubbards allege that Smart & Final Defendants can
2 easily remove the architectural barriers at the Smart & Final facility without
3 much difficulty or expense, and that Smart & Final violated the ADA by
4 failing to remove those barriers, when it was readily achievable to do so.

5 29. In the alternative, if it was not “readily achievable” for Smart &
6 Final Defendants to remove the Smart & Final facility barriers, then they
7 violated the ADA by failing to make the required services available through
8 alternative methods, which are readily achievable.

9 Failure to Design and Construct an Accessible Facility

10 30. On information and belief, the Smart & Final facility was
11 designed or constructed (or both) after January 26, 1992—independently
12 triggering access requirements under Title III of the ADA.

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

17 32. Here, Smart & Final Defendants violated the ADA by
18 designing or constructing (or both) the Smart & Final facility in a manner
19 that was not readily accessible to the physically disabled public—including
20 the Hubbards—when it was structurally practical to do so.

21 Failure to Make an Altered Facility Accessible

22 33. On information and belief, the Smart & Final facility was
23 modified after January 26, 1992, independently triggering access
24 requirements under the ADA.

25 34. The ADA also requires that facilities altered in a manner that
26 affects (or could affect) its usability must be made readily accessible to
27 individuals with disabilities to the maximum extent feasible. 42 U.S.C. §
28 12183(a)(2). Altering an area that contains a facility’s primary function also

1 requires adding making the paths of travel, bathrooms, telephones, and
2 drinking fountains serving that area accessible to the maximum extent
3 feasible. Id.

4 35. Here, Smart & Final Defendants altered the Smart & Final
5 facility in a manner that violated the ADA and was not readily accessible to
6 the physically disabled public—including the Hubbards—to the maximum
7 extent feasible.

8 Failure to Modify Existing Policies and Procedures

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

14 37. Here, Smart & Final Defendants violated the ADA by failing to
15 make reasonable modifications in policies, practices, or procedures at the
16 Smart & Final facility, when these modifications were necessary to afford
17 (and would not fundamentally alter the nature of) these goods, services,
18 facilities, or accommodations.

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

22 39. The Hubbards also seek a finding from this Court (*i.e.*,
23 declaratory relief) that Smart & Final Defendants violated the ADA in order
24 to pursue damages under California's Unruh Civil Rights Act or Disabled
25 Persons Act.

1 VII. SECOND CLAIM

2 **Disabled Persons Act**

3 (The Smart & Final facility)

4 40. The Hubbards incorporate the allegations contained in
5 paragraphs 1 through 37 for this claim.

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

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

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

16 44. Here, Smart & Final Defendants discriminated against the
17 physically disabled public—including the Hubbards—by denying them full
18 and equal access to the Smart & Final facility. They also violated the
19 Hubbards rights under the ADA, and, therefore, infringed upon or violated
20 (or both) the Hubbards rights under the Disabled Persons Act.

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

25 46. They also seek to enjoin Smart & Final Defendants from
26 violating the Disabled Persons Act (and ADA) under California Civil Code
27 § 55, and to recover reasonable attorneys' fees and incurred under
28 California Civil Code §§ 54.3 and 55.

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VIII. THIRD CLAIM
Unruh Civil Rights Act
(The Smart & Final facility)

47. The Hubbards incorporate the allegations contained in paragraphs 1 through 37 for this claim.

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

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

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

51. Smart & Final Defendants aforementioned acts and omissions denied the physically disabled public—including The Hubbards—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

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

53. The Hubbards were damaged by Smart & Final Defendants wrongful conduct, and seeks all available relief under Civil Code § 52. This relief includes actual damages and statutory minimum damages of four thousand dollars (\$4,000) for each offense.

54. The Hubbards also seek to enjoin Smart & Final Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

1 IX. FOURTH CLAIM

2 **Denial of Full and Equal Access to Public Facilities**

3 (The Smart & Final facility)

4 55. The Hubbards incorporate the allegations contained in
5 paragraphs 1 through 22 for this claim.

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

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

13 58. The Hubbards allege the Smart & Final facility is a public
14 accommodation constructed, altered, or repaired in a manner that violates
15 Part 5.5 of the Health and Safety Code or Government Code § 4450 (or
16 both), and that the Complex was not exempt under Health and Safety Code
17 § 19956.

18 59. Smart & Final Defendants non-compliance with these
19 requirements at the Smart & Final facility aggrieved (or potentially
20 aggrieved) the Hubbards and other persons with physical disabilities.
21 Accordingly, they seek injunctive relief and attorney fees pursuant to Health
22 and Safety Code § 19953.

23 X. FIFTH CLAIM

24 **Negligence**

25 (The Smart & Final Facility)

26 60. The Hubbards incorporate the allegations contained in
27 paragraphs 1 through 59 for this claim.

28

1 69. Petco and Mabee discriminated against the Hubbards by
2 denying “full and equal enjoyment” and use of the goods, services,
3 facilities, privileges or accommodations of the Petco facility during each
4 visit and each incident of deterrence.

5 Failure to Remove Architectural Barriers in an Existing Facility

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

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

15 72. Here, the Hubbards allege that Petco Defendants can easily
16 remove the architectural barriers at the Petco facility without much
17 difficulty or expense, and that Petco violated the ADA by failing to remove
18 those barriers, when it was readily achievable to do so.

19 73. In the alternative, if it was not “readily achievable” for Petco
20 Defendants to remove the Petco facility barriers, then they violated the
21 ADA by failing to make the required services available through alternative
22 methods, which are readily achievable.

23 Failure to Design and Construct an Accessible Facility

24 74. On information and belief, the Petco facility was designed or
25 constructed (or both) after January 26, 1992—independently triggering
26 access requirements under Title III of the ADA.

27 75. The ADA also prohibits designing and constructing facilities
28 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 76. Here, Petco Defendants violated the ADA by designing or
4 constructing (or both) the Petco facility 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.

7 Failure to Make an Altered Facility Accessible

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

11 78. 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 79. Here, Petco Defendants altered the Petco facility in a manner
19 that violated the ADA and was not readily accessible to the physically
20 disabled public—including the Hubbards—to the maximum extent feasible.

21 Failure to Modify Existing Policies and Procedures

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

27 81. Here, Petco Defendants violated the ADA by failing to make
28 reasonable modifications in policies, practices, or procedures at the Petco

1 facility, when these modifications were necessary to afford (and would not
2 fundamentally alter the nature of) these goods, services, facilities, or
3 accommodations.

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

7 83. The Hubbards also seek a finding from this Court (*i.e.*,
8 declaratory relief) that Petco Defendants violated the ADA in order to
9 pursue damages under California's Unruh Civil Rights Act or Disabled
10 Persons Act.

11 XII. SEVENTH CLAIM

12 **Disabled Persons Act**

13 (The Petco facility)

14 84. The Hubbards incorporate the allegations contained in
15 paragraphs 1 through 22 and 67 through 81 for this claim.

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

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

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

26 88. Here, Petco Defendants discriminated against the physically
27 disabled public—including the Hubbards—by denying them full and equal
28 access to the Petco facility. They also violated the Hubbards rights under

1 the ADA, and, therefore, infringed upon or violated (or both) The Hubbards
2 rights under the Disabled Persons Act.

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

7 90. They also seek to enjoin Petco Defendants from violating the
8 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
9 recover reasonable attorneys' fees and incurred under California Civil Code
10 §§ 54.3 and 55.

11 XIII. EIGHTH CLAIM

12 **Unruh Civil Rights Act**

13 (The Petco facility)

14 91. The Hubbards incorporate the allegations contained in
15 paragraphs 1 through 22 and 67 through 81 for this claim.

16 92. California Civil Code § 51 states, in part, that: All persons
17 within the jurisdiction of this state are entitled to the full and equal
18 accommodations, advantages, facilities, privileges, or services in all
19 business establishments of every kind whatsoever.

20 93. California Civil Code § 51.5 also states, in part, that: No
21 business establishment of any kind whatsoever shall discriminate against
22 any person in this state because of the disability of the person.


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

25 95. Petco Defendants aforementioned acts and omissions denied
26 the physically disabled public—including The Hubbards—full and equal
27 accommodations, advantages, facilities, privileges and services in a business
28 establishment (because of their physical disability).

- 1 1. Injunctive relief, preventive relief, or any other relief the Court deems
- 2 proper.
- 3 2. Declaratory relief that Defendants violated the ADA for the purposes
- 4 of Unruh Act or Disabled Persons Act damages.
- 5 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of
- 6 the California Civil Code (but not both) according to the proof.
- 7 4. General and special damages in the amount of \$100,000.00;
- 8 5. Attorneys' fees, litigation expenses, and costs of suit.²
- 9 6. Interest at the legal rate from the date of the filing of this action.
- 10 7. Punitive damages pursuant to Civil Code § 3294.
- 11 8. Prejudgment interest pursuant to Civil Code § 3291.
- 12 9. Such other and further relief as the court may deem proper.

13 DATED: January 6, 2005

LAW OFFICES OF LYNN HUBBARD


LYNN HUBBARD, III
Attorney for the Hubbards

28 _____
² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
Hubbard v. Smart & Final Stores, Corp.
Plaintiff's Complaint



PRELIMINARY SITE ACCESSIBILITY REPORT

*Smart and Final
150 Encinitas Blvd.
Encinitas, California*



SMART AND FINAL
150 Encinitas Blvd.
Encinitas, CA

1129 B
Fig 21

1. Tow away sign has no phone number.

DOT #R100B

2. Tow away sign wrong color.

ADAAG 111

3. Signage uses the term handicapped.

SEE PHOTO No. 1

DSA pg 2&3

4. Tow away sign posted at wrong height.

1129B.5

4.6.4

5. Incorrect parking signage. 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.

1129B.4.4

4.6.3

10. Surface of parking space or access aisle exceeds 2.0% grade in any direction. Photo not available.

1129 B.5

4.7

11. Curb ramp encroaches into accessible aisle.

SEE PHOTO No. 2

1127 B.

36.304

12. No exterior route of travel from the property border.

1127 B. 3

13. No exterior route of travel signs.

1117 B.5
Fig 11 B-6

4.30

14. Entrance door has no ISA.

SEE PHOTO No. 3

1122 B. 4

4.30.7

15. This location does not have an accessible check stand.

1122 B. 4

4.32.3

Fig 11B- 5D and F

16. Check out counter does not have a section 28 th 34 inches high and 36 inches wide and 24 inches deep maximum to accommodate a wheelchair occupant.

1110 B.1.4

1117B.7

17. Card reader height 46 inches from the floor, not required 34 to 44 inches.

1102 B

4.3

1114 B.1.2

4.3.3

Fig 7 (a & b)

18. No accessible route through store. At least one aisle is less than 36 inches wide.

SEE PHOTO Nos. 4 and 5

1117 B. 5.4

1117 B. 5.1.3

4.1.2 (7) (d)

19. No directional signage to the restroom.

1117 B. 5.6.3

4.1.3 (16) (a)

20. Restroom signs are not on the wall, latch side.

1117 B. 5.5.3

4.30.4

21. Restroom door sign has no ISA, wall mounted, latch side.

1117 B. 5.6.3

4.30.4

22. Restroom door signs do not have a verbal description below the ISA, latch side.

1115 B. 5

4.30.4

23. Restroom door not identified in Braille, latch side.

1117 B. 5.1.1

4.1.2 (7) (d)

1117 B. 5.6.3

24. Restroom signs are not centered 60 inches from the floor, latch side.

SEE PHOTO No. 6

THIS LOCK IS TECHNICALLY A SLIDER, IT WAS VERY AWKWARD AT BEST TO USE BY SOMEONE WITH LITTLE MANUAL DEXTERITY.

SEE PHOTO No. 7

1115B.2.1.1.2

4.16.5

25. Water closet flush control not on wide side of stall.

1115B.2.1.1.2

4.27.4

26. Flush control requires greater than 5 lbs pressure to operate.

1115B.8.1

4.17.6

Fig 30

27. Side grab bar 35 inches from floor, not 33 inch maximum.

SEE PHOTO No. 8

4.17.3

Fig 30

28. Toilet tissue dispenser leading edge is 45 inches from back wall, not 36 inches maximum.

1115B. 9 2

Fig 11B-1A

29. Seat cover dispenser mounted over the grab bar.

SEE PHOTO No. 9

1133 B.8.6.1

4.4.1

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

SEE PHOTO No. 10

1115 B. 2.1.2.1

Fig 11 B. -D

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

SEE PHOTO No. 11

1115 B.2.1.2.1

4.19.2

Fig 11 B. -D

Fig 31

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

SEE PHOTO No. 12

1115B.9.1.2

4.19.6

Fig 31

33. Mirror 45 inches from the floor not required 40 inches.

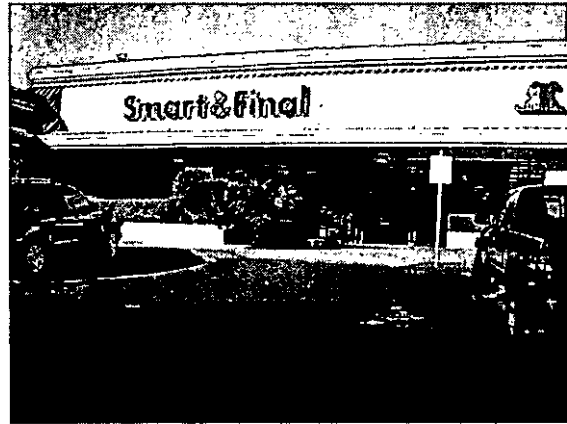
SEE PHOTO No. 13

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

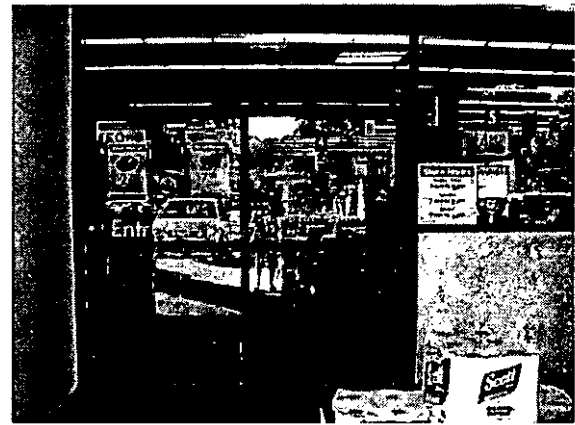
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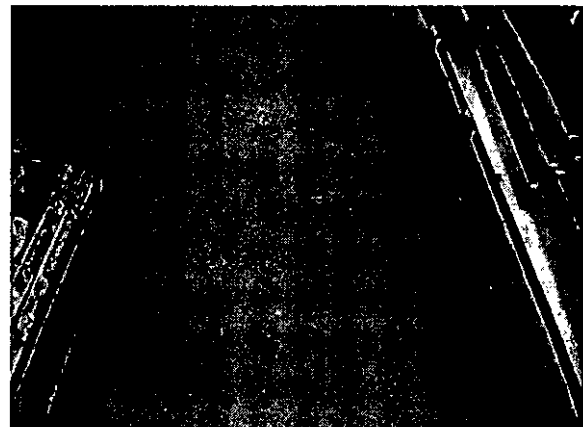
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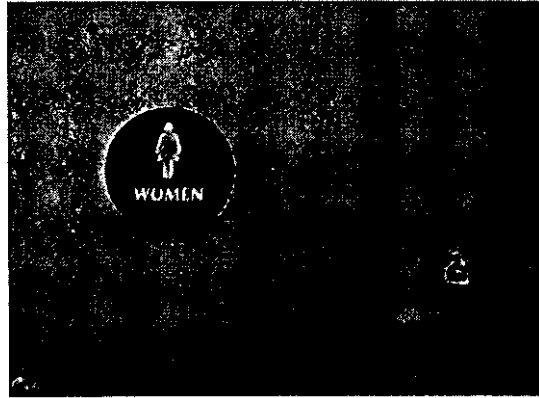
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#5



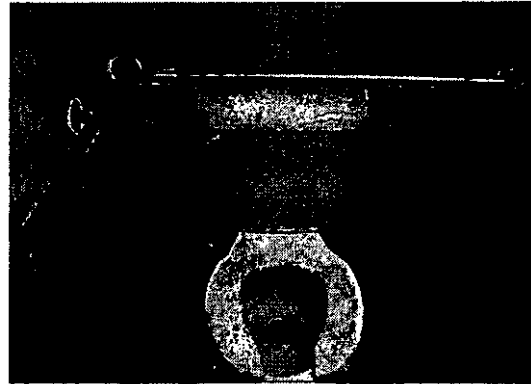
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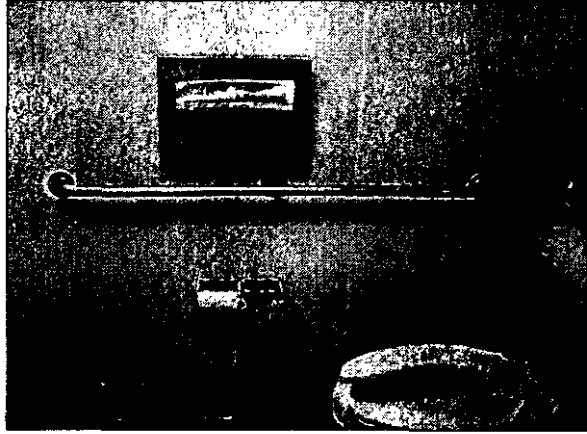
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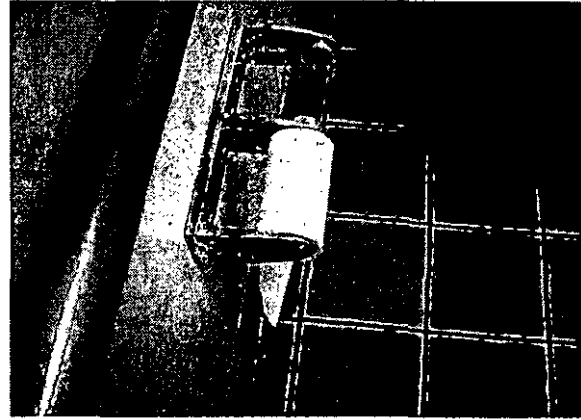
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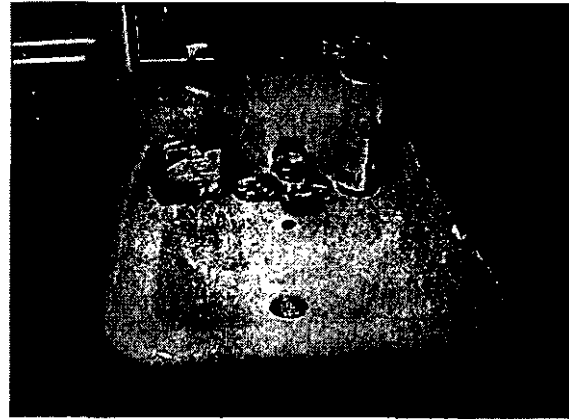
#9



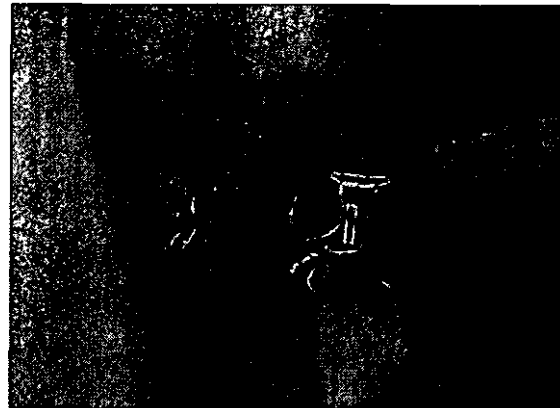
#10



#11



#12

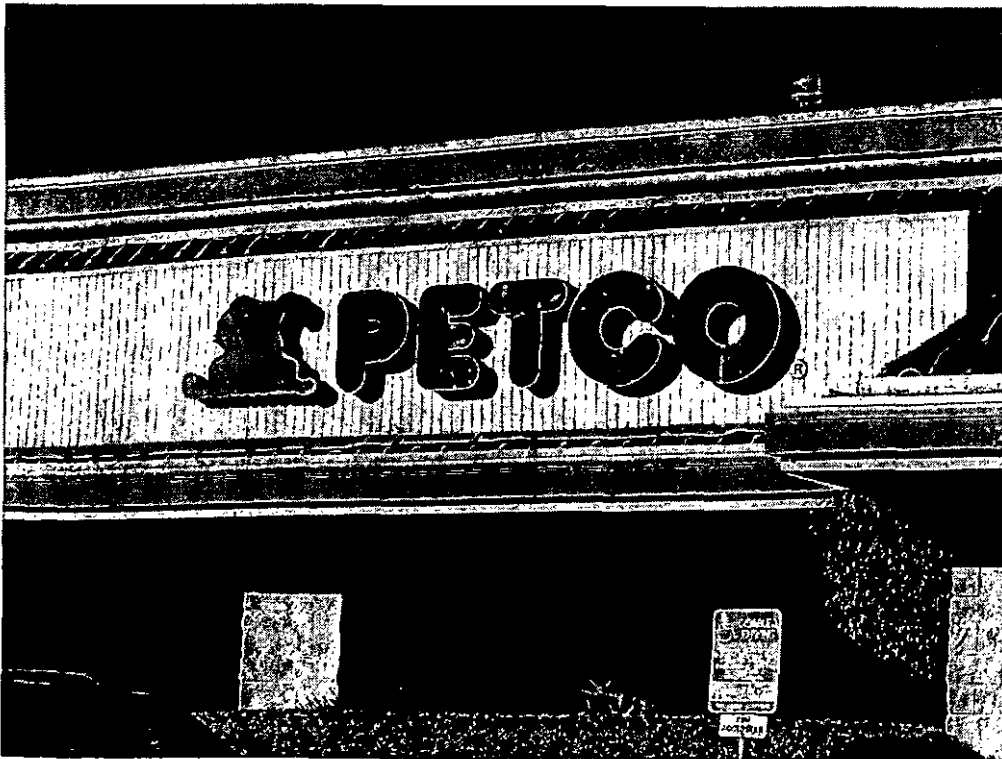


#13



PRELIMINARY SITE ACCESSIBILITY REPORT

Petco
154 Encinitas Blvd.
Encinitas, California



PETCO
154 Encinitas Blvd.
Encinitas, 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.

ADAAG 111

4. Signage uses the term handicapped.

SEE PHOTO No. 2

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

Fig 11 B-18 A

8. Missing no parking painted in accessible aisle.

SEE PHOTO Nos. 3 and 4

1102 B

4.3

9. Shopping cart is an obstruction to the accessible parking space.

1129B.4.4

4.6.3

10. Surface of parking space or access aisle exceeds 2.0% grade in any direction. Photo not available.

1129 B.5

4.7

11. Curb ramp encroaches into accessible aisle.

SEE PHOTO No. 4

1127 B. 5.8

12. No detectable warnings.

1127 B.5.8	4.29.2	13. Detectable warning not visually contrasting, light on dark or dark on light.
1127 B.	36.304	14. No exterior route of travel from the property border.
1127 B. 3		15. No exterior route of travel signs.
1117 B.5 Fig 11 B-6	4.30	16. Entrance door has no ISA.

SEE PHOTO No. 5

1122 B. 4	4.30.7	17. This location does not have an accessible check stand.
1122 B. 4 Fig11B- 5D and F	4.32.3	18. Check out counter does not have a section 28 th 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)	19. No accessible route through store. At least one aisle is less than 36 inches wide. Aisles in the photo were 31 inches or less.

SEE PHOTO Nos. 6 and 7

1117 B. 5.4 1117 B. 5.1.3	4.1.2 (7) (d)	20. No directional signage to the restroom.
1115 B. Fig 82		21. Restrooms signs incorrect shape, triangle for men, circle for women.
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. |
| 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. |

SEE PHOTO No. 8

- | | | |
|-------------|--------|---|
| 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. |

SEE PHOTO No. 10

- | | | |
|---------------|------------------|---|
| 1115 B.7.1.4 | 4.17.3
Fig 30 | 32. Accessible stall not minimum 60 inches wide. |
| | 4.17.3
Fig 30 | 33. Water closet center 31 inches from the wall or other partition, not 42 inch minimum. |
| 1115 B. 7.1.3 | | 34. Side of water closet 25 inches from the wall or other partition not 32 inch minimum. |
| 1115.B 8.1 | 4.17.6
Fig 30 | 35. Back grab bar does not extend minimum 12" beyond the water closet tank, on the wide side. |

1115B.8.1 4.17.6
Fig 30 36. Side grab bar 35 inches from floor, not 33 inch maximum.

SEE PHOTO No. 11

1115 B. 7.1.3 4.17.3
Fig 28 – 30 37. Front of water closet to the wall 43 inches, not 48 inch minimum.

1115B.9.3 38. Toilet tissue dispenser is even with the front of the water closet not required 12 inches in front.

1115B.9.3 4.17.3 39. Toilet tissue dispenser not mounted below grab bar.

SEE PHOTO No. 12

1115 B.9.3 4.16.6 40. Toilet paper dispenser does not allow for a continuous flow.

SEE PHOTO No. 13

1133 B.8.6.1 4.4.1 41. Toilet tissue dispenser protrudes more than 4 inches from wall.

1115B. 9 2
Fig 11B-1A 42. Seat cover dispenser operable part 59 inches from floor, and mounted over the grab bar.

SEE PHOTO No. 14

1115 B. 2.1.2.1
Fig 11 B. -D 43. Center of lavatory 9 inches from the wall not 18 inch minimum.

1115 B. 2.1.2.1 4.27.4 44. Lavatory faucet controls require manual dexterity.

1115 B.2.1.2.1 4.27.4 45. Faucet controls require more than 5 lbs of force to activate.

SEE PHOTO No. 15

- | | | |
|--------------------------------|------------------|--|
| 1115 B.2.1.2.1
Fig 11 B. -D | 4.19.2
Fig 31 | 46. Drainpipes under lavatory 9 inches from the wall not 6 inch maximum. |
| 1115 B. 2.1.2.2 | 4.19.4 | 47. Hot water and drainpipes are not insulated. |

SEE PHOTO No. 16

- | | | |
|-------------|------------------|---|
| 1115B.9.1.1 | 4.19.2
Fig 31 | 48. Not a 30 by 48 inch minimum clear space in front of lavatory. |
| 1102 B | 4.3 | 49. Trash can and cleaning supplies are an obstruction to the lavatory. |

SEE PHOTO No. 17

- | | | |
|------------|--|---|
| 1115 B.9.2 | | 50. Towel dispenser operable part 60 inches from floor, not required 40 inches. |
|------------|--|---|

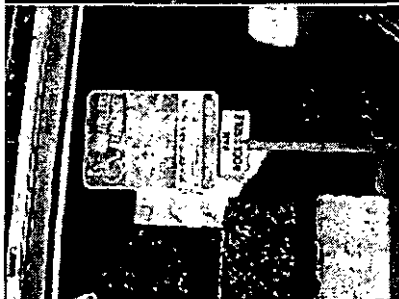
SEE PHOTO No. 18

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

#1



#2



#3



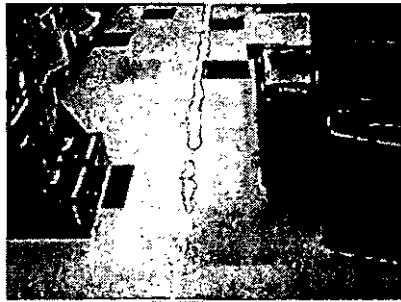
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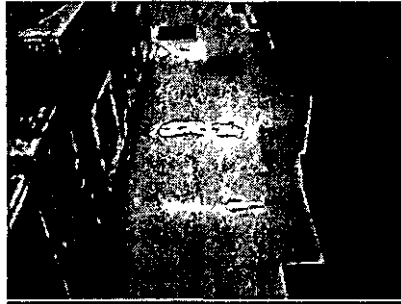
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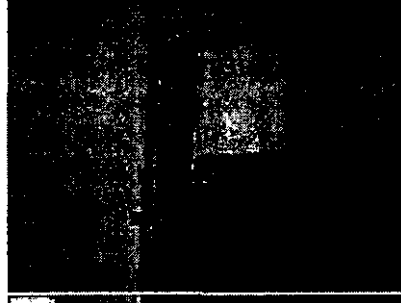
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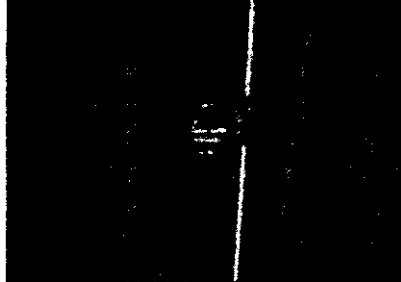
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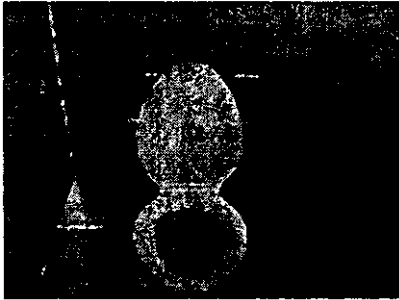
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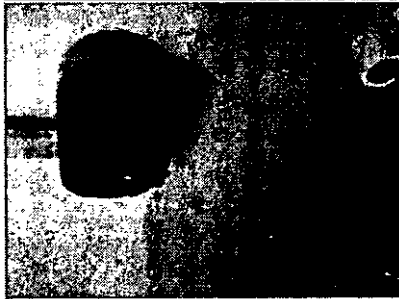
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#11



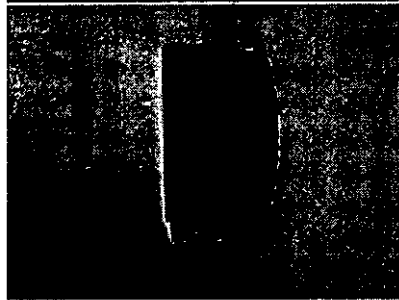
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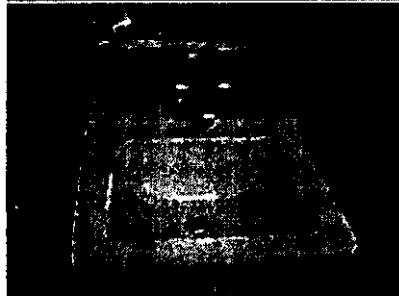
#13



#14



#15



#16



#17



#18



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 REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

LYNN J HUBBARD and BARBARA J. HUBBARD

ORIGINAL

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

DEFENDANTS

05 JAN 12 AM 10:01

SMART & FINAL STORES, CORP. dba SMART & FINAL #416; PETCO ANIMAL SUPPLIES, INC. dba PETCO #930; JOHN C. MABEE JR. dba BETTY L. MABEE, Trustees of the MABEE FAMILY TRUST 10-04-01.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ DEPUTY _____
(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 0054 L (NLS)

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

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

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

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

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability Marine <input type="checkbox"/> 340 Marine Product Liability <input type="checkbox"/> 345 Motor Vehicle <input type="checkbox"/> 350 Motor Vehicle Product Liability <input type="checkbox"/> 355 Other Personal Injury <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 550 Securities/Commodities/Exchange <input type="checkbox"/> 575 Customer Challenge 12 USC 3410 <input type="checkbox"/> 591 Agricultural Acts <input type="checkbox"/> 592 Economic Stabilization Act <input type="checkbox"/> 593 Environmental Matters <input type="checkbox"/> 594 Energy Allocation Act <input type="checkbox"/> 595 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	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	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609

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

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

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ Excess \$75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: YES NO

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

JUDGE _____

DOCKET NUMBER _____

DATE: January 6, 2005 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # 110177 AMOUNT 150- APPLYING IFP MS JUDGE _____ MAG. JUDGE _____