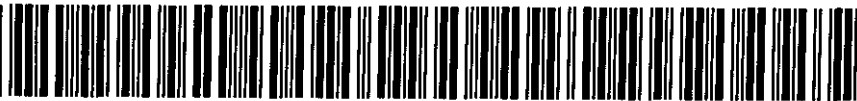
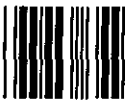


USDC SCAN INDEX SHEET



JRL 8/4/03 9:06

3:03-CV-01528 HUBBARD V. WORLDWIDE AUTO PARTS

1

CMP.

ORIGINAL

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

LYNN HUBBARD, III, SBN 69773
SCOTTLYNN J HUBBARD, IV, SBN 212970
LAW OFFICES OF LYNN HUBBARD
12 WILLIAMSBURG LANE
CHICO, CA. 95926
(530) 895-3252

FILED

03 JUL 31 PM 4:28

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
[Signature]
DEPUTY

Attorney for Plaintiffs

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

LYNN J. HUBBARD and
BARBARA J. HUBBARD,
Plaintiffs,
vs.

03 CV 01528 K LAB
No.

**COMPLAINT FOR
DECLARATORY, INJUNCTIVE,
AND MONETARY RELIEF:**

WORLDWIDE AUTO PARTS,
INC.; ROSS STORES, INC.;
SAM DEUTSCH and HELEN
DEUTSCH, husband and wife;
CYNMIK PROPERTIES, INC.
dba CALSUR MANAGEMENT;
and DOES 1 through 10,
Defendants.

- Americans With Disabilities Act
- Disabled Persons Act
- Unruh Civil Rights Act
- Health and Safety Code Part 5.5
- Unfair Business Practices Act
- Negligence

[Signature]

1 I. INTRODUCTION

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

6 WORLDWIDE AUTO PARTS, #7
7 4796 Clairemont Mesa Blvd.
8 San Diego, CA 92117

9 ROSS
10 4760 Clairemont Mesa Blvd.
11 San Diego, CA 92117

12 (collectively, the "Stores")

13 2. Plaintiffs seek compensatory and punitive damages,
14 injunctive and declaratory relief, attorney fees and costs, against
15 WORLDWIDE AUTO PARTS, INC.; ROSS STORES, INC.; SAM
16 DEUTSCH and HELEN DEUTSCH, husband and wife; CYNMIK
17 PROPERTIES, INC. dba CALSUR MANAGEMENT; and DOES 1
18 through 10, ("Defendants") pursuant to:

- 19
- 20 • The Americans With Disabilities Act of 1990;¹
 - 21 • Health and Safety Code Part 5.5;²
 - 22 • The Unruh Act;³
 - 23 • The Disabled Persons Act;⁴
 - 24 • The Unfair Business Practices Act;⁵ and
 - 25 • Negligence.⁶

26
27 ¹ 42 USC §12101 *et seq.*

² California Health and Safety Code §§19955 *et seq.*

³ California Civil Code §§51 *et seq.*

⁴ California Civil Code §§54 *et seq.*

⁵ California Business and Professions Code §§17200 *et seq.*

1 II. JURISDICTION

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

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

7 5. Plaintiffs claims are authorized by 28 U.S.C. §§2201 and
8 2202.

9 III. VENUE

10 6. All actions complained of herein take place within the
11 jurisdiction of the United States District Court, Southern District of
12 California. Accordingly, venue is invoked pursuant to 28 U.S.C.
13 §1391(b), (c).

14 IV. PARTIES

15 7. Plaintiffs have multiple conditions that affect one or more
16 major life functions. Plaintiffs require the use of motorized
17 wheelchairs and a mobility-equipped vehicle, when traveling about in
18 public.

19 8. Consequently, Plaintiffs are “physically disabled,” as
20 defined by all applicable California and United States laws, and
21 members of the public, whose rights are protected by these laws.

22 9. Defendants are owners, operators, lessors and/or
23 lessees of the Stores.

24 10. Defendants are, or consist of, a person or persons, firm
25 or corporation.

26
27
28

⁶ California Civil Code §1714.

1 installing an entrance ramp, reducing door pressure, providing
2 accessible parking spaces, and an accessible route of travel.

3 20. Defendants also violated the law by failing to provide
4 access to those areas of the Stores where goods and services are
5 made available to the public. On information and belief, this failure
6 may include, adjusting the layout of display racks, rearranging
7 furniture, adding an accessible check-out counter, and installing
8 ramps.

9 21. On information and belief, Defendants also violated the
10 law by failing to provide access to restroom facilities at the Stores.
11 This failure may include removing obstructing furniture or vending
12 machines, installing ramps, providing accessible signage, widening
13 of toilet stalls and installation of grab bars.

14 22. Plaintiffs were denied the full and equal access (as
15 required by United States and California statutes) during each visit to
16 the Stores.

17 23. Despite these visits, Plaintiffs were also deterred from
18 visiting the Stores, because of actual knowledge that the full and
19 equal enjoyment of the goods, services, facilities, privileges,
20 advantages, or accommodations at the Stores was not available to
21 physically disabled patrons.

22 24. Plaintiffs have suffered, or anticipate suffering, emotional
23 and physical harm during each actual visit to the Stores, or incident
24 of deterrence.

25 25. Plaintiffs would visit the Stores, but for the future threat of
26 discrimination by Defendants.

27
28

1 **Policy and Practices**

2 42 U.S.C. §12182(b)(2)(A)(ii)

3 45. The ADA also specifically prohibits: A failure to make
4 reasonable modifications in policies, practices, or procedures, when
5 necessary to afford such goods, services, facilities, or
6 accommodations to individuals with disabilities, unless the entity can
7 demonstrate that making such modifications would fundamentally
8 alter their nature.¹³

9 46. Defendants violated the ADA by failing to make
10 reasonable modifications in policies, practices, or procedures (e.g.—
11 placement of movable displays) when these modifications were
12 necessary to afford, and would not fundamentally alter the nature of,
13 these goods, services, facilities, or accommodations.

14 47. Plaintiffs seek all relief available under the ADA (i.e.—
15 permanent or temporary injunction, restraining order, or other order)
16 to address these violations.¹⁴

17 48. Plaintiffs also seeks a finding from this Court—
18 declaratory relief—that Defendants violated the ADA in order to
19 pursue damages under California's Unruh Civil Rights Act or
20 Disabled Persons Act.

21 49. Plaintiffs also seek attorney fees and costs under the
22 ADA.

23
24
25
26
27
28 ¹³ 42 U.S.C. §12182(b)(2)(A)(ii).

¹⁴ 42 U.S.C. §12205 (incorporating the remedies under 42 U.S.C. §2000a-3(a)).

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

VII. SECOND CLAIM
Disabled Persons Act
Civil Code §§54 *et seq.*

50. Plaintiffs incorporate the allegations contained in paragraphs 1 through 46 for this claim.

51. California Civil Code §54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.¹⁵

52. California Civil Code §54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.¹⁶

53. Both sections specifically incorporate (by reference) an individual's rights under the ADA.¹⁷

54. Defendants discriminated against the physically disabled public (including Plaintiffs) by denying them full and equal access to the Stores.

55. Thus, Plaintiffs rights under the Disabled Persons Act were infringed upon and/or violated by Defendants.

56. Defendants also violated the Disabled Persons Act by infringing upon and/or violating Plaintiffs rights under the ADA.

57. For each offense, Plaintiffs seek actual damages and any amount as may be determined by a jury, or the court sitting without a

¹⁵ California Civil Code §54(a).
¹⁶ California Civil Code §54.1(a)(1).
¹⁷ Civil Code §54(c), §54.1(d).

1 jury, up to a maximum of three times the amount of actual damages
2 but in no case less than one thousand dollars (\$1,000).

3 58. Plaintiffs also seek general and special damages,
4 declaratory relief and any other remedy available under California
5 Civil Code §54.3.

6 59. Plaintiffs also seek to enjoin Defendants from violating
7 the Disabled Persons Act (and ADA) under California Civil Code §55.

8 60. Plaintiffs also seek recovery for all reasonable attorneys'
9 fees incurred under California Civil Code §54.3, and §55.

10 61. Finally, this lawsuit will benefit the public by compelling
11 Defendants to make the Stores accessible to the physically disabled
12 public—thus, justifying attorneys' fees under California Code of Civil
13 Procedure §1021.5.

14 VIII. THIRD CLAIM

15 **Unruh Civil Rights Act**

16 Civil Code §§51 *et seq.*

17 62. Plaintiffs incorporate the allegations contained in
18 paragraphs 1 through 46 for this claim.

19 63. The Unruh Act states, in part, that: All persons within the
20 jurisdiction of this state are entitled to the full and equal
21 accommodations, advantages, facilities, privileges, or services in all
22 business establishments of every kind whatsoever.¹⁸

23 64. The Unruh Act also states, in part, that: No business
24 establishment of any kind whatsoever shall discriminate against any
25 person in this state because of the disability of the person.¹⁹

26
27
28 ¹⁸ California Civil Code §51.

¹⁹ California Civil Code §51.5.

1 65. The Unruh Act also specifically incorporates (by
2 reference) an individual's rights under the ADA.²⁰

3 66. Defendants' aforementioned acts and omissions denied
4 the physically disabled public (including Plaintiffs) full and equal
5 accommodations, advantages, facilities, privileges and services in a
6 business establishment (because of their physical disability) in
7 violation of the Unruh Act.

8 67. These aforementioned acts and omissions (including the
9 ones that violate the ADA) denied, aided or incited a denial, or
10 discriminated against Plaintiffs by violating the Unruh Act.

11 68. Plaintiffs were damaged by Defendants' wrongful
12 conduct, and seek all available relief under Civil Code §52.

13 69. This relief includes actual damages and any amount as
14 may be determined by a jury, or the court sitting without a jury, up to
15 a maximum of three times the amount of actual damages but in no
16 case less than four thousand dollars (\$4,000) for each offense.²¹

17 70. Plaintiffs also seek to enjoin Defendants from violating
18 the Unruh Act (and ADA), and recover reasonable attorneys' fees
19 and costs incurred under California Civil Code §52(a).

20 71. Finally, Plaintiffs lawsuit is intended to compel
21 Defendants to make the Stores accessible to all members of the
22 physically disabled public—justifying attorneys' fees under California
23 Code of Civil Procedure §1021.5.

24
25
26
27 ²⁰ California Civil Code §51.

28 ²¹ California Civil Code §52(a); this relief includes statutory minimum damages for each actual visit and incident of deterrence.

1 IX. FOURTH CLAIM

2 **Denial of Full and Equal Access to a Person with Physical**
3 **Disabilities in a Public Facilities**

4 Health and Safety Code Part 5.5

5 72. Plaintiffs incorporate the allegations contained in
6 paragraphs 1 through 27 for this claim.

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

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

14 75. On information and belief, Plaintiffs allege the Stores
15 were constructed prior to July 1, 1970, and that areas were altered or
16 structurally repaired in a manner that violates Part 5.5 of the Health
17 and Safety Code.

18 76. In the alternative, on information and belief, Plaintiffs
19 allege the Stores were constructed after July 1, 1970, in a manner
20 that violates Part 5.5 of the Health and Safety Code or Government
21 Code §4450 (or both).

22 77. The Stores are a public accommodation or facility (as
23 defined by Part 5.5 of the Health and Safety Code),²² which is not
24 exempted by Health and Safety Code §19956.

25
26
27
28

²² Health and Safety Code §19955(a).

1 78. Defendants' non-compliance with these requirements at
2 the Stores aggrieved (or potentially aggrieved) Plaintiffs and other
3 persons with physical disabilities.

4 79. Accordingly, Plaintiffs seeks injunctive relief under Health
5 and Safety Code §19953.

6 80. Plaintiffs also incurred legal expenses in order to enforce
7 Government Code §§4450 *et seq.* or Health & Safety Code §§19955
8 *et seq.*

9 81. Therefore, Plaintiffs seeks attorneys' fees under to Health
10 and Safety Code §19953.

11 82. Finally, Plaintiffs lawsuit is intended to compel
12 Defendants to make the Stores accessible to all members of the
13 physically disabled public—justifying attorneys' fees under California
14 Code of Civil Procedure §1021.5.

15 16 X. FIFTH CLAIM

17 **Unfair Business Practices Act**

18 Business and Professions Code §§17200 *et seq.*

19 83. Plaintiffs incorporate the allegations contained in
20 paragraphs 1 through 82 for this claim.

21 84. California Business and Professions Code §17203 states,
22 in part, that: Any person who engages, has engaged, or proposes to
23 engage in unfair competition may be enjoined in any court of
24 competent jurisdiction.

25 85. "Unfair competition" includes any unlawful business act or
26 practice.²³

27
28

²³ California Business and Professions Code §17200.

1 86. Defendants' business practices were "unlawful" in that
2 they violated applicable California and United States laws (identified
3 above).

4 87. Defendants' unlawful business practices denied the
5 physically disabled public (including Plaintiffs) full and equal access
6 to the Stores.

7 88. Accordingly, Plaintiffs seek an order for injunctive relief
8 and restitution to end Defendants' unlawful business practices.

9
10 **XI. SIXTH CLAIM**

11 **Negligence Per Se**

12 **California Civil Code §1714**

13 89. Plaintiffs incorporate the allegations contained in
14 paragraphs 1 through 88 for this claim.

15 90. Defendants had a duty to comply with the aforementioned
16 California and United States laws or regulations (or both).

17 91. These aforementioned laws and regulations, violated by
18 Defendants, were adopted to protect the class of physically disabled
19 persons (including Plaintiffs) from injury.

20 92. This violation was the proximate cause of Plaintiffs
21 aforementioned injuries.

22 93. Plaintiffs suffered physical and emotional injuries
23 resulting from an occurrence (the nature of which) these laws or
24 regulations were designed to prevent.²⁴

25
26
27
28

²⁴ Hudge v. Seiler, 558 F.2d 284 (5th Cir. 1977).

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.)

ORIGINAL

I. (a) PLAINTIFFS

LYNN J. HUBBARD and BARBARA J. HUBBARD

DEFENDANTS

03 JUN 2003 PM 4:26
WORLDWIDE AUTO PARTS, INC; ROSS STORES, INC.; SAM DEUTSCH and HELEN DEUTSCH, husband and wife; CYNMIK PROPERTIES, INC. dba CALSUR MANAGEMENT; and DOES

(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, Law Office of Lynn Hubbard, 12 Williamsburg Lane, Chico, CA 95926

ATTORNEYS (IF KNOWN)

03 JUN 01 5 28 K LAB

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

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

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

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

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	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	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability 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"/> 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 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 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<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	<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	<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		

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:

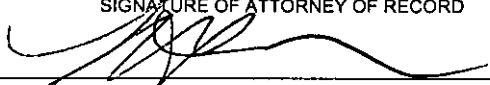
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

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: July 28, 2003 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # 096104 AMOUNT \$75,000.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____