

USDC SCAN INDEX SHEET



MEG 3/1/99 14:16
3:99-CV-00340 BOTOSAN V. CALLAHAN

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CMP.

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FILED
99 FEB 26 AM 11:31
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *mgomez* DEPUTY

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 KORNEL BOTOSAN,
12 Plaintiff,

13 v.

14 ROBERT F. CALLAHAN and WANDA E.
CALLAHAN, Trustees of the)
15 CALLAHAN INTERVIVOS TRUST dated)
16 September 24, 1984 CYNTHIA BLAIR,)
an individual; MARTIN BLAIR, an)
17 individual and DOES 1 through 10,)
inclusive)

18 Defendants
19
20

Case No. '99 CV 0340 BTM/POR
Civil Rights
**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR VIOLATIONS
OF: AMERICANS WITH DISABILITIES
ACT OF 1990; UNRUH CIVIL RIGHTS
ACT; CALIFORNIA'S DISABLED PERSON
ACT; COMMON LAW UNFAIR
COMPETITION; NEGLIGENCE;
NEGLIGENCE PER SE; CALIFORNIA'S
UNFAIR BUSINESS PRACTICE ACT;
DECLARATORY RELIEF;**
DEMAND FOR JURY

21 Plaintiff KORNEL BOTOSAN complains of ROBERT F. CALLAHAN, WANDA
22 E. CALLAHAN, CYNTHIA BLAIR, MARTIN BLAIR and DOES 1 through 10,
23 inclusive, and alleges as follows:

24 **INTRODUCTION:**

25 1. This is a Civil Rights action for discrimination against
26 persons with physical disabilities, of which Plaintiff is a member
27 of said class, for failure to remove architectural barriers
28 structural in nature at Defendants' KANSAS CITY BARBEQUE located at

1 190 North Highway 101, Encinitas, California, a place of public
2 accommodation, thereby discriminatorily denying Plaintiff and the
3 class of other similarly situated persons with physical disabilities
4 access to, the full and equal enjoyment of, opportunity to
5 participate in, and benefit from, the goods, facilities, services,
6 and accommodations thereof.

7 2. Plaintiff seeks injunctive relief and damages for
8 violations of civil rights and for damages flowing from such
9 violations.

10 **JURISDICTION AND VENUE:**

11 3. **Jurisdiction:** This Court has jurisdiction of this action
12 pursuant to 28 U.S.C. § 1331 for violations of the Americans with
13 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. Pursuant to
14 supplemental jurisdiction, attendant and related causes of action,
15 arising from the same nucleus of operative facts and arising out of
16 the same transactions, are also brought under California state law.

17 4. **Venue:** Venue is proper in this court pursuant to 28
18 U.S.C. § 1391(b) and is founded on the fact that the improved real
19 property which is the subject of this action is located in this
20 district and that Plaintiff's causes of action arose in this
21 district.

22 **PARTIES:**

23 5. Plaintiff KORNEL BOTOSAN is a California resident with
24 physical disabilities who uses a wheelchair to travel about in
25 public.

26 6. Defendants ROBERT F. CALLAHAN, WANDA E. CALLAHAN, CYNTHIA
27 BLAIR, MARTIN BLAIR and DOES 1 through 10, inclusive (hereinafter
28 alternatively referred to collectively as "Defendants"), are the

1 owners and operators, lessors and/or lessees, or agents of the
2 owners, lessors and/or lessees, and/or alter egos, franchisers
3 and/or franchisees, of the building and/or buildings which
4 constitute a public facility in and of itself, occupied by the above
5 described restaurant, public accommodations, and subject to the
6 requirements of federal and state law requiring full and equal
7 access to public accommodations and facilities.

8 7. Plaintiff KORNEL BOTOSAN does not know the true names of
9 Defendants ROBERT F. CALLAHAN, WANDA E. CALLAHAN, CYNTHIA BLAIR,
10 MARTIN BLAIR and DOES 1 through 10, inclusive, their business
11 capacities, their ownership connection to the property and business,
12 or their relative responsibilities in causing the access violations
13 herein complained of, and alleges a joint venture and common
14 enterprise by all such Defendants. Plaintiff is informed and
15 believes that each of the Defendants herein, including DOES 1
16 through 10, inclusive, is responsible in some capacity for the
17 events herein alleged, or is a necessary party for obtaining
18 appropriate relief. Plaintiff KORNEL BOTOSAN will seek leave to
19 amend when the true names, capacities, connections, and
20 responsibilities of the Defendants ROBERT F. CALLAHAN, WANDA E.
21 CALLAHAN, CYNTHIA BLAIR, MARTIN BLAIR and DOES 1 through 10,
22 inclusive, are ascertained.

23 **PRELIMINARY FACTUAL ALLEGATIONS:**

24 8. Defendants are the owners and operators of the restaurant,
25 located at 190 North Highway 101, Encinitas, California. The
26 restaurant, its parking, and its other facilities are each a "public
27 accommodation or facility" subject to the requirements of state and
28 federal law. On information and belief, each such facility has,

1 since July 1, 1970, undergone "alterations, structural repairs and
2 additions," each of which has subjected the public accommodations,
3 and each of their facilities to handicapped access requirements per
4 the Americans with Disabilities Act Access Guidelines (ADAAG) and
5 Title 24 of California's Code of Regulations.

6 **9.** In or about February 28, 1998, Plaintiff KORNEL BOTOSAN was
7 an invitee and customer at the subject restaurant.

8 **10.** In February 28, 1998 the subject restaurant did not have
9 any designated disabled accessible parking.

10 **11.** On information and belief, other public facilities were
11 improperly inaccessible for use by persons with physical
12 disabilities.

13 **12.** On information and belief, the facilities continue to the
14 date of filing this complaint to deny equal access to Plaintiff and
15 other persons with physical disabilities.

16 **13.** As a result of the inaccessible facilities, Plaintiff
17 KORNEL BOTOSAN was humiliated, embarrassed and frustrated, suffering
18 emotional injuries. Moreover, as a result of the inaccessible
19 facilities, Plaintiff KORNEL BOTOSAN, suffered bodily and physical
20 injury.

21 **14.** Plaintiff would like to return and use the Defendants'
22 public accommodations but because of Defendants' violations,
23 Plaintiff and other persons with physical disabilities are unable to
24 use public facilities such as those owned and operated by Defendants
25 on a "full and equal" basis unless such facility is in compliance
26 with the provisions of the Americans with Disabilities Act and other
27 accessibility law as pled herein. Plaintiff has, therefore, been
28 deterred from returning and using the Defendants' public

1 accommodations.

2 **15.** Plaintiff KORNEL BOTOSAN is informed and believes and
3 therefore alleges that Defendants and each of them (1) caused the
4 subject improved real properties which constitute the subject KANSAS
5 CITY BARBEQUE to be constructed, altered and maintained in such a
6 manner that persons with physical disabilities were denied full and
7 equal access to, within and throughout said improved real
8 property(s); (2) that the Defendants have had actual and
9 constructive notice that the facilities were not legally accessible
10 to persons with disabilities; (3) that despite being informed of
11 such effect on Plaintiff and other persons with physical
12 disabilities due to the lack of accessible facilities, Defendants,
13 and each of them, knowingly and willfully refused to take any steps
14 to rectify the situation and to provide full and equal access for
15 Plaintiff and other persons with physical disabilities to the
16 subject KANSAS CITY BARBEQUE. Said defendants, and each of them,
17 have continued such practices, in conscious disregard for the rights
18 and safety of Plaintiff and other persons with physical
19 disabilities. Said conduct, with knowledge of the effect it was and
20 is having on Plaintiff and other persons with physical disabilities,
21 constitutes despicable conduct in conscious disregard of the rights
22 and safety of Plaintiff and of other similarly situated persons,
23 justifying the imposition of punitive and exemplary damages per
24 Civil Code section 3294.

25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH**
26 **DISABILITIES ACT OF 1990 (On behalf of Plaintiff and Against**
All Defendants (42 U.S.C. section 12101, et seq.)

27 **16.** As persons who own and operate a place of public
28 accommodation, the Defendants are required to (1) ensure that all

1 construction, alteration, or modification is barrier free and
2 complies with the ADAAG; and (2) remove all existing barriers where
3 such removal is "readily achievable." As alleged above, there are
4 architectural barriers existing on the Defendants' facilities, which
5 barriers are in violation of the Americans with Disabilities Act
6 Accessibility Guidelines, are readily achievably removed, and are
7 unlawful. The Defendants have failed to comply with the ADA and,
8 therefore, discriminated against the Plaintiff.

9 **17.** Further, if it were not "readily achievable" for
10 Defendants to remove each of such barriers, Defendants have failed
11 to make the required services available through alternative methods,
12 that were readily achievable.

13 **18.** Plaintiff would like to return and use the Defendants'
14 facilities but Plaintiff cannot return to or make use of the public
15 facilities complained of herein so long as the premises and
16 Defendants' policies bar full and equal use by persons with physical
17 disabilities.

18 **19.** Wherefore, Plaintiff prays for relief as hereinafter
19 stated.

20 **II. SECOND CAUSE OF ACTION VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**
21 (On behalf of Plaintiff and Against All Defendants) (Cal Civ S
22 51 et seq.)

23 **20.** Plaintiff repleads and incorporates by reference, as if
24 fully set forth again herein, the allegations contained in all prior
25 paragraphs of this complaint.

26 **Count One:**

27 **21.** The Defendants have not ensured that their facilities
28 comply with Title 24 of the California Code of Regulations, the
California Building Code as it applies to physical access for

1 persons with disabilities and failed to ensure that disabled persons
2 have "full and equal accommodations, advantages, facilities,
3 privileges, or services" to the facilities identified above.

4 **Count Two:**

5 **22.** The Defendants have not complied with the Americans with
6 Disabilities Act of 1990.

7 **III. THIRD CAUSE OF ACTION VIOLATION OF CALIFORNIA'S DISABLED**
8 **PERSONS ACT, (On Behalf of Plaintiff and Against All**
9 **Defendants) (California Civil Code § 54 et seq.)**

10 **23.** Plaintiff repleads and incorporates by reference as if
11 fully set forth again herein, the allegations contained in all prior
12 paragraphs of this complaint and incorporates them herein as if
13 separately repled.

14 **Count One:**

15 **24.** The Defendants have not ensured that their facilities
16 comply with Title 24 of the California Code of Regulations, the
17 California Building Code as it applies to physical access for
18 persons with disabilities and have failed to ensure that disabled
19 persons have full and equal access to public accommodations and/or
20 other places that the general public is invited and that disabled
21 persons enjoy the same accommodations, advantages, facilities, and
22 privileges to the facilities identified above.

23 **Count Two:**

24 **25.** The Defendants have not complied with the Americans with
25 Disabilities Act of 1990.

26 **26.** Wherefore, Plaintiff prays for relief and damages as
27 hereinafter stated.

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1 **IV. FOURTH CAUSE OF ACTION VIOLATION OF COMMON LAW UNFAIR**
2 **COMPETITION (On Behalf of Plaintiff and Against All**
3 **Defendants)**

4 27. Plaintiff repleads and incorporates by reference, as if
5 fully set forth again herein, the allegations contained in all prior
6 paragraphs of this complaint.

7 28. Defendants advertise to the public by various means,
8 including but not limited to, their on-site signage that the
9 facilities are open to and accessible by the general public. No
10 signage is posted indicating that the facilities are restricted only
11 to fully-ambulatory persons or that persons with disabilities are
12 not welcome or will have problems with physical accessibility.

13 29. Persons with disabilities are invited just as the general
14 public but the invitation, as delivered by the Defendants'
15 advertising, is deceptive, defective, and damaging. Persons with
16 disabilities attempt to access the Defendants' facilities at their
17 own peril.

18 30. Plaintiff has been damaged by the Defendants' advertising
19 activities.

20 31. Wherefore, Plaintiff prays for relief and damages and
21 relief as hereinafter stated.

22 **V. FIFTH CAUSE OF ACTION: NEGLIGENCE**
23 **(On behalf of the Public and Against All Defendants)**

24 32. Plaintiff repleads and incorporates by reference, as if
25 fully set forth again herein, the allegations contained in all prior
26 paragraphs of this complaint.

27 33. Defendants had a duty to exercise ordinary care.

28 34. Defendants failed to exercise ordinary care.

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1 **35.** As the actual and proximate result of Defendants' failure
2 to exercise ordinary care, Plaintiff suffered damages in an amount
3 to be determined by proof.

4 **36.** Wherefore, Plaintiff prays for relief and damages and
5 relief as hereinafter stated.

6 **VI. SIXTH CAUSE OF ACTION: NEGLIGENCE PER SE**
7 (On behalf of the Public and Against All Defendants)

8 **37.** Plaintiff repleads and incorporates by reference, as if
9 fully set forth again herein, the allegations contained in all prior
10 paragraphs of this complaint.

11 **38.** At all times relevant hereto, there was in effect the
12 Americans with Disabilities Act; the Unruh Civil Rights Act,
13 California's Disabled Person Act, Title 24 of the California Code of
14 Regulations; and California Health and Safety Code, sections 19955
15 et seq., all of which require that public accommodations and
16 facilities provide services to people with physical disabilities
17 which are equal to, and are not inferior to, the services provided
18 patrons who are not physically disabled.

19 **39.** Plaintiff is a member of class which these statutes are
20 designed to protect.

21 **40.** Defendants' acts and omissions alleged herein are a
22 violation of statutory requirements and, therefore, constitute
23 negligence per se.

24 **41.** As a result of the actions taken by Defendants, the
25 Plaintiff has suffered the harm which these statutes are designed to
26 prevent.

27 **42.** Wherefore, Plaintiff prays for relief and damages and
28 relief as hereinafter stated.

1 **VII. SEVENTH CAUSE OF ACTION:** VIOLATION OF CALIFORNIA'S UNFAIR
2 BUSINESS PRACTICES ACT (On behalf of the Public and Against All
3 Defendants) (Cal. Bus. & Prof. § 17200 et seq.)

4 **43.** Plaintiff repleads and incorporates by reference, as if
5 fully set forth again herein, the allegations contained in all prior
6 paragraphs of this complaint.

7 **44.** In addition to the access violations described above,
8 Defendants' facilities are in violation of California and Federal
9 law in that they do not provide required access for disabled
10 persons.

11 **45.** Defendants' acts and omissions alleged herein are a
12 violation of both statutory requirements and public policy and,
13 therefore, constitute a violation of Business and Professions Code
14 sections 17200 et seq.

15 **46.** Plaintiff, on behalf of himself and the general public,
16 seeks injunctive relief requiring Defendants to remedy the
17 disability access violations present at their facilities. Ancillary
18 to this injunctive relief, Plaintiff also requests restitution for
19 any amounts received by the Defendants from additional business they
20 received as a result of not complying with the disability access
21 laws.

22 **47.** Wherefore, Plaintiff prays for relief and damages and
23 relief as hereinafter stated.

24 **VIII. EIGHTH CAUSE OF ACTION** DECLARATORY RELIEF

25 **48.** Plaintiff repleads and incorporates by reference, as if
26 fully set forth again herein, the allegations contained in all prior
27 paragraphs of this complaint.

28 **49.** A judicial declaration is necessary and appropriate at
this time in order that each of the parties may know their

1 respective rights and duties and act accordingly.

2 **50.** Plaintiff contends that the facilities identified above
3 fail to comply with applicable laws prohibiting discrimination
4 against persons with disabilities and is in violation of statutes
5 including, but not limited to, the Americans with Disabilities Act
6 of 1990; the Unruh Civil Rights Act, and California's Disabled
7 Person Act.

8
9 **PRAYER:**

10 Wherefore, Plaintiff prays that this court award damages and
11 provide relief as follows:

12 **1.** For injunctive relief, compelling Defendants to comply with
13 the Americans with Disabilities Act of 1990, the Unruh Civil Rights
14 Act; and California's Disabled Person Act, which order will include
15 the removal of barriers and the implementation of reasonable
16 modifications in policies, practice, eligibility criteria and
17 procedures so as to afford full access to the goods, services,
18 facilities, privileges, advantages and accommodations being offered.

19 **2.** A declaration that the facilities are designed and operated
20 in a manner that discriminates against persons with physical
21 disabilities and that fails to provide full and equal access for
22 persons with disabilities as required by law;

23 **3.** General and Special damages in an amount to be determined by
24 proof;

25 **4.** Treble damages pursuant to Cal. Civ. Code § 52 and 54.3;

26 **5.** Restitution;

27 **6.** Punitive Damages;

28 **7.** Reasonable attorneys' fees, litigation expenses and costs of

1 suit;


2 8. For such other and further relief as the court may deem
3 proper.

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5 Dated: February 21, 1999 CENTER FOR DISABILITY ACCESS, LLP

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By: 
MARK D. POTTER
RUSSELL C. HANDY
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

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Plaintiff hereby demands a jury for all claims for which a jury
is permitted.


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Dated: February 21, 1999 CENTER FOR DISABILITY ACCESS, LLP

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By: 
MARK D. POTTER
RUSSELL C. HANDY
Attorneys for Plaintiff

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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 REVERSE OF THE FORM.)

I (a) PLAINTIFFS

KORNEL BOTOSAN

DEFENDANTS

ROBERT F. CALLAHAN and WANDA E. CALLAHAN, Trustees of the CALLAHAN INTERVIVOS TRUST dated September 24, 1984, CYNTHIA BLAIR, an individual, MARTIN BLAIR, an individual, and DOES 1 through 10, inclusive

FILED

98 FEB 26 AM 11:12
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
MARK D. POTTER (Bar # 166317) (619) 232-4982
CENTER FOR DISABILITY ACCESS,
LLP
2535 Kettner Blvd., Suite 2A5
San Diego, California 92101

ATTORNEYS (IF KNOWN)

99 cv 0340 BTM

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 checked="" type="checkbox"/> 1	<input checked="" 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

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Title III of the Americans with Disabilities Act, 42 U.S.C.A. Section 12101, 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"/> 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	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"/> 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 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 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 (1395H) <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 RS1 (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			

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

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. REMARKS

In response to is not a refiling of a previously dismissed action

General Rule 2.21 D(2) this case is a refiling of case number _____ of Judge _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

February 25, 1999

#046628 150.-