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October 15, 2003

David Warren Peters
Lawyers Against Lawsuit Abuse, APC
402 West Broadway, Fourth Floor
San Diego, CA 92101

RE: Collins vs. Mock Brothers
USDC, Central District of California, #EDCV-02-1343 SGL

Dear Mr. Peters:

I have received your letter dated October 15, 2003 and respond to same.

Regarding Plaintiff's settlement conference brief, it was served some time ago on Defendant's prior counsel. We assumed Ms. Heinz would have provided you a complete copy of the file. She apparently did not. Please find a copy of the brief enclosed. I would appreciate that you reciprocate and provide a copy of Defendant's brief.

Next, Defendant's obligation under the Local Rules, when requested to meet and confer and draft a Joint Statement regarding the discovery dispute, is not to second guess the propriety of Plaintiff's demand or think up excuses why the material need not be produced. The obligation is to *participate and draft the joint statement*.

I will address some of the issues you have raised, but be advised, if you fail to participate to draft the joint statement, and promptly, the motion to compel will be filed together with a declaration explaining your lack of cooperation.

The financial information requested by Plaintiff is relevant on several levels. First, Plaintiff has sought relief under California law. California still follows the catalyst theory of prevailing party status. California law also provides that any violation of the ADA is a violation of California law. As pertinent to Plaintiff's fee petition based upon California law, which in turn incorporates the federal readily achievable standard, Plaintiff desires to establish the remediation effected (due to the within suit) was in fact readily achievable. One might assume that to the extent the work was done, it was readily achievable, but Defendant could well argue that the work was done even though it was not readily achievable.

Next, we believe that certain aspects of the remediation attempted by Defendant to be in violation of access standards. The injunctive relief is still very much at issue. Moreover, as I clearly explained when providing Mr. Minoers report, the draft you

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received was produced within a day or two of the inspection, and was rushed so as to be available for the settlement conference. It was expressly stated it likely contained errors and indeed you were not to open the file unless you agreed not to use it in any context in Defendant's case in chief. The report has since been amended.

The new report recommends removal of barriers not disclosed in the initial draft. Particularly, it is a patent act of discrimination to require people with disabilities to enter only through a rear entrance. People with disabilities are entitled to enter an establishment through the main entrance just like everyone else. If and when Defendant provides the report of their own expert, Plaintiff will consider providing Plaintiff's current report.

Instead of exposing your client to thousands of dollars in fees and costs dickering over whether Defendant will produce its financial information, Defendant may resolve the dispute making entering into a stipulation that it will make no argument barrier removal is not readily achievable based upon the economic resources (or lack thereof) of Defendant. In this manner Plaintiff's concerns are addressed, and Defendant can maintain privacy over his financial data.

Finally, I have prepared a deposition notice to take Mr. Mock's deposition. It is after the telephone settlement conference. If this date is inconvenient, Plaintiff will gladly reschedule to a new date as soon as Defendant provides several candidate dates in that same time frame.

I have handled many hundreds of access cases. In fact, I have taken no other matters for over four years. Very large casinos in Nevada, the state of California, several counties and cities, as well as other very large corporate chains have attempted to defense some of my clients. All have failed. Your client has seriously miscalculated in choosing to litigate an access case. I believe he will be very disappointed with the result. Maybe to the point of making a claim against his own counsel.

I look forward to hearing from you.

Sincerely,

Jason K. Singleton

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