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PRESIDENT

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6 June 2006

Mr. Theodore Pinnock, Esq.
Pinnock & Wakefield, APC
3033 Fifth Avenue, Suite 410
San Diego, CA 92103-5873

BY BOTH FACSIMILE TO (619) 858-3571 AND BY EMAIL TO PINNOCK99@AOL.COM

Re: Case : AWWD [Azevedo], et. al. v. Mulubrhan, et. al.
Case No. : 06 cv 0553 H CAB
Court : USDC San Diego

Dear Mr. Pinnock:

Responding to your letter of 30 May 2006 to James Mason as well as your follow up conversations with him, please allow this letter to confirm all of the following:

1. **The conversations**: As I understand it, you have indicated to Jim Mason that "this means war" [presumably between our firms] and that you intended to try every case with us [or take some other action] in the future if we did not withdraw the pleadings discussed below. While I am not privy to most of your conversations with Jim, I understand that you intended for him to communicate this message to me.

   I am somewhat concerned by your position— at least as I understand it— in that you have probably noticed that, almost without exception, our clients have always agreed, at the outset of each matter, to more comprehensive access renovations than you have sought. Accordingly, your position, if I understand it correctly, this suggests to me that you would be advancing litigation in these matters for an improper purpose; you might find that many in the disabled and judicial communities would

object to this. If I have not summarized your contention(s) correctly, please allow this letter to serve as my request that you please confirm them in writing so that I may better respond.

2. **The class action threat**: As I understand it, you have indicated that if we do not withdraw the pleadings mentioned herein, you will amend your complaint to include class action claims against my clients. Since my clients have already committed to making all "readily achievable" access renovations at this location (and we invite you to bring to our attention any "readily achievable" modifications, other than those identified in the Declaration of Mulubhran which you believe to be appropriate), I need to ask you, again, to please confirm your position in writing. I'd like to think that I received inaccurate information about it and need to be sure that I understand it completely for purposes of communicating it to, *inter alia*, my clients.

3. **The short response deadlines**: I understand that on Friday, 2 June 2006, you told Jim Mason that if you did not receive a response by Monday, 5 June 2006, you would be taking some action. As I've mentioned to you before, it is nearly impossible for me to provide a meaningful response within such short, self-imposed deadlines. I would remind you that we are on the "same team" in that I honestly believe that we are working for access at least as hard as you and your clients are. If you will look over the cases our firms have handled together, I believe you will have to conclude that our firm has more aggressively persuaded clients to make access renovations than nearly any of law firm representing defendants in these matters (if there is a firm with a more proactive approach, I'd like to learn about it so that we can apply it).

4. **The Motion to Dismiss**: You have asked that I withdraw the Motion to Dismiss because: (a) discovery has not commenced, and (b) [you contend] extrinsic evidence is not admissible. It seems to me that a similar motion was granted under similar circumstances in Singletary v. Brick Oven; however, if you have specific legal authority which supports your position, I will be happy to review it. I have always preferred to resolve questions like this informally whenever possible so as not to take up limited court resources.

   As I understand it, FRCP 11 would have required you to determine that it was "readily achievable" for defendants to modify the entry ramp at this property to resolve Ms. Azevedo's slope concerns. If you have information about a "readily achievable" solution to this issue, I'd welcome it, as I personally spent a great deal of time pondering how we

might improve the situation under these very unique circumstances; I believe my clients would be eager to consider it as well.

5. The Cross-Claim: You indicate that the cross-claim is without merit and polarizes the parties. First of all, if you have factual or legal support for your contention that any document I have filed is without merit, I urge you to provide it and stand ready to withdraw it if I am mistaken as to any matter on which it is based. Without receiving any such support, I can only tell you that it is the result of my very best effort to discharge my duties to the Court, my clients and all parties in the case.

   It is certainly not my intention to polarize the parties; the cross-complaint seeks two things— declaratory relief and injunctive relief. Taking them one-by-one:

   a. The Declaratory Relief: Paragraphs 14 a-f relates to questions about whether there is anything else that is readily achievable to do at the property; accordingly, I assume you don't object to a party attempting to obtain good legal advice about their access obligations under these unique circumstances. Paragraphs 14 g-I relates to the posting of a public solicitation for properties with access problems for which, the posting suggests a commission will be paid— that's either wrong or it's not. If it's wrong, you and I should, once again, be on the "same team" and want appropriate clarification and action taken. If it's not wrong, I have egg on my face. Are you suggesting that the conduct described in Paragraphs 14 g-i is not wrong?

   b. The Injunctive Relief: All of the injunctive relief issues are ethical issues. Basically, the injunctive relief will not, and cannot be awarded unless the Court concludes that the party in question has violated relevant ethical standards (such as the Rules of Professional Conduct). If that has happened, I'm sure you agree that the injunctive relief is appropriate. If not, I have egg on my face. Once again, if you have facts or law which can confirm that no ethical standards have been violated or that injunctive relief is inappropriate, I stand ready to review, amend, withdraw, as appropriate. However, I'm sure you can appreciate my concern that it is ethically inappropriate for me to withdraw the request without appropriate documentary support.

6. The State Bar "Complaint": First of all, I don't think we made a "complaint" to the State Bar; rather, we forwarded the information simply

suggesting that they review the situation. I usually try to do this within about 24 hours of receiving such information so as to avoid any appearance of noncompliance with RPC 5-100; in this case, this occurred before I ever met the clients or learned of their case.

Although I have not researched the matter (and we probably both should):

a. I believe it may not be appropriate for you to ask that I withdraw this submission;

b. I believe that any attempt to withdraw it would not be effective anyway;

c. I believe that it would be inappropriate for me to attempt to withdraw it;

d. To the extent your statement "[t]he above requests are crucial to keeping our professional [sic] amicable" refers to the withdrawal of the information submitted to the Bar, I believe that this request is inappropriate and that it would be unethical for me to accommodate it.

7. Duty to preserve evidence: David Wakefield indicated in his attached email message to me of 24 May 2006 that he would forward you my email of 24 May 2006 with regard to the need to preserve the internet postings re both Tania Azevedo and the Association of Women Advocating Access. In the email, I reminded him of your firm's duty to preserve relevant evidence in cases. While I had not personally intended to take any action(s) with regard to this evidence, if you have directed your client to remove the postings, it does compromise, if not destroy, highly critical evidence. Before sending this letter, I tried to find the postings again and it appears they have been removed. Particularly after I wrote to your firm about the need to preserve this data, it appears that this is a deliberate attempt to destroy highly relevant evidence. While I have not discussed this matter with my client, please allow this letter to confirm my strongest possible objection and request that you restore any data so revised.

I will wait to discuss these matters with my clients until you have responded to the issues raised above.

Very truly yours,

David W. Peters,
CEO and General Counsel