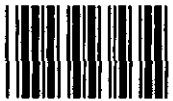
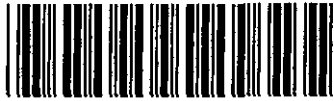


USDC SCAN INDEX SHEET



LMH 3/16/05 15:21

3:02-CV-02497 HUBBARD V. RITE AID CORPORATION

\*81\*

\*AMDM.\*

1 Wayne C. Arnold, Bar No. 103194  
 2 Lisa D. Herzog, Bar No. 194123  
 3 HART, KING & COLDREN  
 4 A PROFESSIONAL CORPORATION  
 5 200 East Sandpointe, Fourth Floor  
 6 Santa Ana, California 92707  
 7 Telephone: (714) 432-8700  
 8 Facsimile: (714) 546-7457

05 MAR 15 AM 11:18  
 CLERK U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 [Signature]

NUONG PRO TUNG  
 MAR 11 2005

9 Attorneys for Defendants RITE AID CORPORATION and  
 10 ARTHUR CIUFFO, JR. and EVELYN EMMERSON,  
 11 Trustees of the CIUFFO FAMILY TRUST B erroneously  
 12 Sued as THE CIUFFO FAMILY TRUST B, ET AL.

13 UNITED STATES DISTRICT COURT  
 14 SOUTHERN DISTRICT OF CALIFORNIA

15 BY FAX

16 LYNN J. HUBBARD, BARBARA J.  
 17 HUBBARD,

18 Case No.: 02CV2497-WQH (BLM)

19 Plaintiff,

20 DEFENDANTS' MODIFICATION OF ITS  
 21 MOTION FOR PRE-FILING ORDER  
 22 PROHIBITING VEXATIOUS LITIGANTS  
 23 FROM FILING NEW LITIGATION  
 24 WITHOUT LEAVE OF COURT AND TO  
 25 POST SECURITY AGAINST  
 26 PLAINTIFFS LYNN J. HUBBARD AND  
 27 BARBARA J. HUBBARD (ONLY  
 28 WITHDRAWING REQUEST FOR RULE  
 11 SANCTIONS)

29 v.

30 RITE AID CORPORATION; THE  
 31 CIUFFO FAMILY TRUST B, ET AL;  
 32 AVOCADO PLAZA, L.L.C. and DOES 1  
 33 through 20,

34 Defendant.

35 Date: April 1, 2005  
 36 Time: 11:00 a.m.  
 37 Ctrm.: 4

38 Complaint Filed: December 18, 2002  
 39 Trial Date: None

40 TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

41 PLEASE TAKE NOTICE that Defendants RITE AID CORPORATION and  
 42 ARTHUR CIUFFO, JR. and EVELYN EMMERSON, Trustees of the CIUFFO FAMILY  
 43 TRUST B (collectively "RITE AID"), respectfully withdraw only their request for Rule 11  
 44 sanctions as contained in their Notice of Motion and Motion For Pre-Filing Order

HART, KING & COLDREN  
 A PROFESSIONAL CORPORATION  
 200 EAST SANDPOINTE, FOURTH FLOOR  
 SANTA ANA, CALIFORNIA 92707

1 Prohibiting Vexatious Litigants From Filing New Litigation Without Leave Of Court, To  
 2 Post Security and For Monetary Sanctions. All remaining requests and arguments contained  
 3 in RITE AID's Motion are not withdrawn, including but not limited to, RITE AID's  
 4 request that plaintiffs Lynn J. Hubbard and Barbara Hubbard ("plaintiffs") are deemed  
 5 vexatious and requiring them to obtain leave of court in order to file new litigation<sup>1</sup>, request  
 6 that plaintiffs be required to post security and request for monetary sanctions pursuant to the  
 7 Court's own inherent power. RITE AID's requested relief from the Court remains unchanged  
 8 and is permissible under other grounds, including this Court's own inherent power.<sup>2</sup>

9  
 10 Dated: March 10, 2005

HART, KING & COLDREN

11  
 12  
 13 By: 

Wayne C. Arnold

Lisa D. Herzog

Attorneys for Defendants RITE AID  
 CORPORATION and ARTHUR  
 CIUFFO, JR. and EVELYN  
 EMMERSON, Trustees of the  
 CIUFFO FAMILY TRUST B

14  
 15  
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 18  
 19 <sup>1</sup> See *DeLong v. Hennessey* (9<sup>th</sup> Cir. 1990) 912 F.2d 1144, 1147 (stating that there is strong  
 20 precedent establishing the inherent power of the federal courts to regulate the activities of abusing  
 21 litigants by imposing carefully tailored restrictions under the power of 28 USC § 1651(a)). See  
 22 also *Clinton v. United States* (9<sup>th</sup> Cir. 1961) 297 F. 2d 899; *Fischer v. United States* (C.D. Cal.  
 2003) 2003 U.S. Dist. Lexis 9029; *Sims-Eiland v. Detroit Bd. Of Educ.* (E.D. Mich. 2001) 173 F.  
 23 Supp. 2d 682.

24 <sup>2</sup> Courts may issue sanctions under their inherent power. "The inherent power of a court can be  
 25 invoked even if procedural rules exist which sanction the same conduct. *Chambers v. NASCO,*  
 26 *Inc.* (1991) 501 U.S. 32, 39, 111 S.Ct. 2123 "A court may assess attorneys fees when a party has  
 27 acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.* at 45-46. "Thus as the  
 28 Court of Appeals for the Ninth Circuit has recognized, Rule 11 does not repeal or modify existing  
 authority of federal courts to deal with abuses . . . under the court's inherent power." *Id.* at 48-49  
 The Court's prior cases have indicated that the inherent power of a court can be invoked even if  
 procedural rules exist which sanction the same conduct. *Id.* at 49. Sanctions under the court's  
 inherent power may be imposed either on a motion of a party or by the court sua sponte. W.  
 Schwarzer, A. Tashima, J. Wagstaffe, *California Practice Guides: Federal Civil Procedure*  
*Before Trial* (Rutter 2004) § 17:170.

**PROOF OF SERVICE**  
*Hubbard v. Rite Aid Corporation, et al.*  
Court Case No. 02CV2497-WQH (BLM)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 200 East Sandpointe, Fourth Floor, Santa Ana, California 92707-0507. On March 11, 2005, I caused the foregoing documents(s) described as **DEFENDANTS' MODIFICATION OF ITS MOTION FOR PRE-FILING ORDER PROHIBITING VEXATIOUS LITIGANTS FROM FILING NEW LITIGATION WITHOUT LEAVE OF COURT AND TO POST SECURITY AGAINST PLAINTIFFS LYNN J. HUBBARD AND BARBARA J. HUBBARD (ONLY WITHDRAWING REQUEST FOR RULE 11 SANCTIONS)** to be served on the interested parties in this action as follows:

by placing  the original  a true copy thereof enclosed in sealed envelopes addressed as follows:

Lynn Hubbard, III                      Tel: (530) 895-3252  
Law Offices of Lynn Hubbard       Fax: (530) 894-8244  
12 Williamsburg Lane  
Chico, CA 95926

**BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

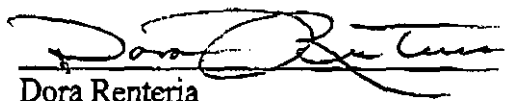
**BY OVERNIGHT COURIER:** I caused such envelope to be placed for collection and delivery on this date in accordance with standard Overnite Express delivery procedures.

**BY FACSIMILE:** I caused such document(s) to be transmitted by facsimile transmission from a facsimile transmission machine, at Santa Ana, California, with the telephone number, (714) 546-7457 to the parties and/or attorney for the parties at the facsimile transmission number(s) shown above. The facsimile transmission was reported as complete without error by a transmission report, issued by the facsimile transmission machine upon which the transmission was made. A true and correct copy of the transmission report is attached hereto and incorporated herein by reference.

**BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the above-referenced person(s).

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 11, 2005, at Santa Ana, California.

  
Dora Renteria

A PROFESSIONAL CORPORATION  
200 EAST SANDPOINTE, FOURTH FLOOR  
SANTA ANA, CALIFORNIA 92707

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Facsimile Transmission Cover Sheet

DATE: March 11, 2005 PAGES (incl. cover sheet): 5  
 TO: Scott Hubbard, IV  
 COMPANY: Law Offices of Lynn Hubbard  
 FAX NO.: (530) 894-8244 PHONE: (530) 895-3252  
 FROM: Wayne C. Arnold  
 FILE NO.: 55001.038/220  
 RE: Hubbard v. Rite Aid  
 MESSAGE: Please see attached. Thank you.

- ORIGINAL WILL NOT FOLLOW
- ORIGINAL WILL FOLLOW BY:  
(U.S. MAIL)

If there are any questions regarding this FAX transmittal, please call Dora at (714) 432-8700.

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300 East San Francisco, Fourth Floor, San Francisco, California 94111-1625

TX RESULT REPORT

NAME:HART KING COLDREN  
 TEL :7145467457  
 DATE:MAR.11'2005 11:05

SESSION	FUNCTION	NO.	DESTINATION STATION	DATE	TIME	PAGE	DURATION	MODE	RESULT
3284	TX	01	5001036*915308948244	MAR.11	11:04	005	00H00'53"	ECM	OK