

USDC SCAN INDEX SHEET



KAJ 2/14/05 8:10

3:04-CV-00370 CARLOCK V. COLLINS MOTOR CO

16

M.

1 DONALD W. DETISCH, ESQ. (SBN 47675)
LAW OFFICES OF DON DETISCH
2 110 West "C" Street, Suite 1803
San Diego, California 92101
3 Tel. 619/515-1140
Fax. 619/235-9100

4 Attorney for Defendants COLLINS MOTOR COMPANY,
5 RICHARD H. COLLINS, SR., RICHARD H. COLLINS, JR.,
6 RITA A. COLLINS, & KRISTEN COLLINS

FILED

05 FEB 10 PM 3:09

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

NUNC PRO TUNC

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

FEB -9.2005

9 GAYNOR CARLOCK,

10 Plaintiff,

11 v.

12 COLLINS MOTOR COMPANY,
13 RICHARD H. COLLINS, SR., RICHARD H.
14 COLLINS, JR., RITA A. COLLINS, &
15 KRISTEN COLLINS, and DOES 1 through 10,
16 Inclusive,

17 Defendants.

) CASE NO. 04 CV 0370 J (RBB)
)
) NOTICE OF MOTION AND
) MOTION FOR A PREFILING
) ORDER PROHIBITING A
) VEXATIOUS LITIGANT FROM
) FILING NEW LITIGATION
) WITHOUT LEAVE OF COURT,
) TO POST SECURITY, AND FOR
) MONETARY SANCTIONS
) PURSUANT TO FEDERAL RULES
) OF CIVIL PROCEDURE RULE 11
) AGAINST PLAINTIFF GAYNOR
) CARLOCK AND/ OR HIS
) COUNSEL

18 Date: March 21, 2005.

19 Time: 10:30 a.m.

20 Courtroom: 12

21 Place: 940 Front Street,
San Diego, CA 92101.

22 Judge: Napoleon A. Jones, Jr.

23 Discovery Cut-Off: 28 February, 2005

24 Motion Cut Off: None Set

25 Trial Date: None Set

26 Date Action Filed: February 4, 2004.

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

TABLE OF CONTENTS

NOTICE OF MOTION 3

INTRODUCTION 4

THE ACTIVITIES OF CARLOCK REVEAL HIM TO BE A PROFESSIONAL PLAINTIFF 5

OTHER FEDERAL ACTIONS FILED BY CARLOCK 7

 CARLOCK v. SAN DIEGO AUTO IMPORT;
 CASE NUMBER - 04 CV 1122 L (AJB) 7

 CARLOCK v. SORKHPOOSH;
 CASE NUMBER - 04 CV 1215 DMS (JFS) 9

 CARLOCK v. KARS TO GO, INC.;
 CASE NUMBER - 04 CV 1216 LAB (WMC) 10

THE INSTANT ACTION 11

PROOF OF SERVICE 14

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

NOTICE OF MOTION

TO PLAINTIFF GAYNOR CARLOCK, AND TO HIS COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on March 21st, 2005, at 10.30 a.m, or as soon thereafter as the matter may be heard, in courtroom 12 of the above-entitled court, located at 940 Front Street, San Diego, CA 92101, Defendant Collins Motor Company, a California Corporation, will move for an order prohibiting plaintiff Gaynor Carlock from filing any new litigation in the Federal Courts without first obtaining leave of the Presiding Judge of the Court in which the Litigation is to be filed, to give security in such amount as the Court determines to be appropriate to secure the payment of any costs, sanctions, or other amounts which may be awarded against Plaintiff Gaynor Carlock, and for the imposition of monetary sanctions against Plaintiff Gaynor Carlock and/ or his counsel, in an amount to be subsequently determined.

The motion will be made on the grounds that Plaintiff Gaynor Carlock is a vexatious litigant, and has engaged in conduct which is harassing to Movant and to the Court, and will be made pursuant to 28 U.S.C. ("All Writs Act"), and Federal Rules of Civil Procedure, Rule 11 .

The motion will be based on this notice of motion, on the declaration of Donald W. Detisch, and the memorandum of points and authorities served and filed herewith, on the records and file herein, and on such evidence as may be presented at the hearing of the motion.

Dated: Feb 9 2005

LAW OFFICES OF DON DETISCH

By: 

Donald W. Detisch, Esq.,
Attorney for Plaintiffs COLLINS MOTOR COMPANY, INC. RICHARD H. COLLINS, SR. (DECEASED), RICHARD H. COLLINS, JR., RITA A. COLLINS, and KRISTEN COLLINS

1 INTRODUCTION

2
3 *Business and Professions Code § 17200* prohibits businesses from engaging in “unfair
4 competition” and it allows both public prosecutors and private attorneys to seek civil penalties
5 and damages. It is, however, much more than simply another law. It is an industry that
6 employs, directly and indirectly, thousands of attorneys and generates untold millions of
7 dollars in legal fees and damage payments. Simply put, any lawyer can file a suit against any
8 business alleging unfair competition because the standards of what constitutes the practice are
9 very broad. The defendant must decide whether to contest the suit, which is costly and runs the
10 risk of an adverse verdict, or reach an out-of-court settlement.

11 Personal injury attorneys say it’s a valuable tool to rein in rogue businesses that fleece
12 the public or hurt legitimate competitors. But at some level, §17200 lawsuits constitute an ill-
13 disguised extortion game, especially when they target small businesses whose owners are
14 immigrants afraid of losing economic security.

15 That’s precisely what appears to be happening in California’s major urban areas.
16 Auto repair shops, nail salons, and restaurants owned by recent immigrants from Asia and
17 Latin America are being hit with law suits ostensibly filed on behalf of consumer groups with
18 lofty-sounding names.

19 What seems to be happening is that the lawyers are mining state consumer protection
20 records for even the tiniest of regulatory violations and then suing any businesses mentioned in
21 the records. The owners of the businesses are then notified of the suits and told that they can
22 buy their way out of liability by paying some set fee, such as \$8,000, or \$10,000. Typical is
23 the notice sent by a San Diego law firm on behalf of Plaintiff herein, to small car dealerships
24 in Southern California. After telling the car dealerships that they could incur many thousands
25 of dollars in legal costs and damages, it adds that they will compromise the action for a lump
26 sum payment.

27 The present case is akin to the actions of the “Consumer Enforcement Watch
28 Corporation” which was formed by State Bar Disciplined Attorney Damien Trevor to create a
plaintiff for lawsuits that he filed against immigrant auto repair shops, nail salons, and

1 restaurants. "Consumer Enforcement" had no other business, and claimed standing to file
2 actions in the California state courts "*on behalf of the general public*" under the private
3 attorney general provisions of the California Unfair Competition Law. [*California Business*
4 *and Professions Code* §§17200. *et seq.*] Lawyers at the Trevor Law Group, Damien Trevor and
5 Allan C. Hendrickson, riled California's automotive repair industry by filing 2,000 suits
6 against garage owners, accusing them of unfair business practices. The automotive industry
7 said the lawsuits were frivolous and intended to shake down business owners for quick cash
8 settlements. The suits accused garage owners of a variety of unfair business practices, from
9 failing to file government forms to passing off used parts as new.

10 The Trevor Law Group used a similar approach in lawsuits filed against restaurants
11 citing health code violations issued by the County of Los Angeles. The restaurant suits were
12 filed on behalf of "Helping Hands for the Blind", and also claimed unfair business practices.
13 These shake-down actions of the Trevor Law Group led to charges, and ultimately voluntary
14 resignations with charges pending, by the State Bar of California against Damien Trevor and
15 Allan C. Hendrickson, and a finding by the State Bar that the actions of these two attorneys
16 posed irreparable injury to the public.

17 **THE ACTIVITIES OF CARLOCK REVEAL HIM**
TO BE A "PROFESSIONAL PLAINTIFF"

18 Just like the activities of the Trevor Law Group and its' "clients" the "Consumer
19 Enforcement" and "Helping Hands for the Blind" the Plaintiffs in the instant action, Gaynor
20 Carlock, an individual, similarly and apparently targets restaurants, fast food outlets, gas
21 stations, car dealerships, and other business establishments using alleged violations of the
22 American with Disabilities Act of 1990 ("ADA"), the California Disabled Persons Act
23 ("DPA") [Civil Code §54, *et seq.*], California Health and Safety Code §19955, *et seq.*, the
24 Unruh Civil Rights Act [California Civil Code § 51, *et seq.*] and the Unfair Business Practices
25 Act [Business and Professions Code B&P Code § 17200, *et seq.*]

26 Since 2002, Carlock, acting as an alleged "Private Sheriff" has filed EIGHTY THREE
27 (83) lawsuits in the Southern District of the United States Court alone. Carlock filed twelve
28 (12) suits in 2002, thirty three (33) suits in 2003, and thirty seven (37) suits in 2004. He has

1 apparently also filed numerous suits in other federal court districts including Riverside and San
2 Bernadino.

3 Of the Eighty three (83) lawsuits filed by Carlock in this Federal Court alone, eighteen
4 (18) lawsuits have been filed against various restaurants, six (6) lawsuits have been filed
5 against investment/ financial institutions, six (6) lawsuits have been filed against car
6 dealerships, five (5) have been filed against gas stations, and forty eight (48) lawsuits have
7 been filed against other types of business establishments.

8 In the Complaints filed in these actions against Car Dealerships in particular by
9 Carlock, Carlock alleges violations of the ADA and analogous California Law. Carlock alleges
10 that he was a "physically handicapped" person who required use of a wheelchair for mobility
11 and was usually unable to enter the office on site. Carlock contends that the dealerships refuse
12 to provide disabled access to their premises and discriminated against him in violation of the
13 ADA and California law, by owning, building, altering, and maintaining facilities inaccessible
14 to handicapped persons, and offering facilities and services to the public which were blocked
15 by architectural barriers, so that the facilities could not be used by physically disabled persons,
16 especially those in wheelchairs. In addition, Carlock alleges that the car dealerships failed to
17 provide handicapped parking spaces, signage, and that the restrooms are usually inaccessible to
18 disabled persons. Carlock then seeks general and punitive damages from the date of the alleged
19 visit until the date of compliance, injunctive relief, and attorney fees and costs for these alleged
20 violations.

21 In many of the Complaints, there appear to be precise measurements given concerning
22 the alleged deficiencies such that you are given the impression that Carlock hires people to
23 revisit these businesses and take precise measurements of the width of steps, entryways,
24 bathrooms etc. It is interesting to note that each of the Complaints is nearly identical with the
25 only change being the names of the Defendants and the alleged deficiencies.

26 Furthermore, a review of the Dockets in each of the eighty three (83) cases filed by
27 Carlock reveal that many of them have been settled. Carlock is apparently earning quite a
28 lucrative living from merely filing a federal action against every business establishment that
crosses his path on any given day, without ever actually having to go to work. A further

1 examination of the dockets reveal that on multiple occasions, several lawsuits were filed
2 simultaneously on the same day. Typical examples appear on 07, April 2003, when three (3)
3 lawsuits were filed that did not involve the same transaction or occurrence, and on September
4 26, 2003, when again three (3) lawsuits were filed that did not involve the same transaction or
5 occurrence. Also note that Mr Carlock, at his deposition on February 8, 2005, testified that he
6 had filed at least 100 lawsuits or more.

7 **OTHER FEDERAL ACTIONS FILED BY CARLOCK**
8 **CARLOCK V. SAN DIEGO AUTO IMPORT CENTER -**
9 **CASE NO. 04 CV 1122 L (AJB)**

10 Carlock alleges in the Complaint that he patronized the premises of the Defendants, on
11 or about April 20, 2004 to "utilize goods and/or services offered by Defendant". The
12 Defendant, San Diego Auto Import Inc., is a small used car dealership located on El Cajon
13 Boulevard. Carlock did not sustain any personal injuries from the alleged patronization of the
14 premises, nor does he allege such.

15 Carlock alleges that when he " attempted to gain access to the goods and/or services
16 offered by the Defendants he encountered access barriers because the premises failed to comply
17 with federal ADA Access Guidelines For Buildings and Facilities [hereinafter referred to as
18 "ADAAG"]; Department of Justice [DOJ] regulations at 28 CFR. 36.201; 36.304 and/or the
19 State of California's Title 24 Building Code Requirements."

20 The Plaintiff further alleges in the Complaint that the specific difficulty he had "in
21 entering and utilizing Defendants' facility and which amount to a violation of the ADAAG,
22 DOJ Regulations and Title 24 of the California Building Code are:

(Total Number of Violations alleged is forty two (42))

- 23 1. Site Entrance Signage (Does not exist)
- 24 2. Site Entrance Signage (Not filled Out - Reclaim at:)
- 25 3. Site Entrance Signage (Not Filled Out - Telephone Number:)
- 26 4. Site Entrance Signage (Size not less that 17" x22")
- 27 5. Site Entrance Signage (Lettering not less than 1" in Height)
- 28 6. Site Entrance Signage (Warning Information)

- 1 7. Designated Disabled "VAN ACCESSIBLE" Parking - Space
- 2 8. Designated Disabled "VAN ACCESSIBLE" Parking Space - Width
- 3 9. Designated Disabled "VAN ACCESSIBLE" Parking Space - Length
- 4 10. Designated Disabled "VAN ACCESSIBLE" Parking Space - Signage
- 5 11. Designated Parking Stalls - Correct Number of Stalls
- 6 12. Warning - Access Aisle - (NO PARKING)
- 7 13. Warning - Access Aisle - (12" High Minimum)
- 8 14. Regular Access Aisle - Exist/Improper
- 9 15. Regular Access Aisle - Width
- 10 16. Regular Access Aisle - Width
- 11 17. Van Accessible Aisle - Exist/Improper
- 12 18. Van Accessible Aisle - Width
- 13 19. Van Accessible Aisle - Length
- 14 20. Van Accessible Aisle - (Passenger Side)
- 15 21. Signage Installed - (Each Space)
- 16 22. Additional Signage - (Van Accessible)
- 17 23. Access Route - A Visible Route of Travel
- 18 24. Shortest Route of Travel to Accessible Entrance
- 19 25. Designated Disabled Parking Space Signage - Proper Height
- 20 26. Parking Space Emblem - Proper Size
- 21 27. Handrails - Both Sides of Stairway (2 Violations)
- 22 28. Handrail - Minimum Length 250 lb Point Load (2 Violations)
- 23 29. Handrail - Fittings (2 Violations)
- 24 30. Handrail - Extension Beyond Nosing 12" Min. (2 Violations)
- 25 31. Handrail - Ends (2 Violations)
- 26 32. Stairway - Warning (2 Violations)
- 27 33. Entrance - Proper Directional Signage
- 28 34. Entrance - Signage At Every Entrance, Exit/ Accessibility
35. Wheelchair - Access To Each Type of Functional Activity

- 1 h. Lack of access route
- 2 i. Lack of shortest route of travel
- 3 j. Lack of designated disabled parking signage
- 4 k. Threshold violation
- 5 l. Lack of stairway warning
- 6 m. Lack of entrance signage
- 7 n. Lack of wheelchair access to each type of functional activity
- 8 o. Lack of access to office area.”

9 Carlock alleges that based on these facts “Plaintiff has been discriminated against and
10 will continue to be discriminated against unless and until Defendants are enjoined and forced to
11 cease and desist from continuing to discriminate against Plaintiff and others similarly situated”.
12 Carlock further states in the complaint that “Defendants also knew or should have known that
13 individuals such as Plaintiff with a disability are not required to give notice to a governmental
14 agency prior to filing suit alleging Defendant’s failure to remove architectural barriers.”

15 **CARLOCK V. KARS TO GO. -**

16 **CASE NO. 04 CV 1216 LAB (WMC)**

17 Carlock alleges in the Complaint that he patronized the premises of the Defendants on
18 or about May 7, 2004, “to utilize goods and/or services offered by Defendant”. The
19 Defendant, Kars to Go, Inc., is a small used car dealership located on El Cajon Boulevard. It
20 is adjacent to the property occupied by Premier Auto Group and is clearly visible from such
21 property. Carlock allegedly patronized these premises just one day after patronizing the
22 neighboring premises occupied by Premier Auto Group. Carlock did not sustain any personal
23 injuries from the alleged patronization of the premises, nor does he allege such.

24 Carlock alleges that when he “attempted to gain access to the good and/or services
25 offered by the Defendants he encountered access barriers because the building failed to comply
26 with federal ADA Access Guidelines For Buildings and Facilities [hereinafter referred to as
27 “ADAAG”]; Department of Justice [DOJ] regulations at 28 CFR. 36.201; 36.304 and/or the
28 State of California’s Title 24 Building Code Requirements.”

The Plaintiff further alleges in the Complaint that the specific difficulty he had “in

1 entering and utilizing Defendants' facility and which amount to a violation of the ADAAG,
2 DOJ Regulations and Title 24 of the California Building Code are:

- 3 a. Site entrance signage does not comply with CA Title 24;
- 4 b. Lack of van accessible parking;
- 5 c. Lack of access aisle signage;
- 6 d. Lack of regular access aisle;
- 7 e. Lack of van accessible aisle;
- 8 f. Lack of appropriate signage;
- 9 g. Lack of access route;
- 10 h. Lack of proper designated parking space;
- 11 i. Lack of proper parking emblem;
- 12 j. Disabled parking stall is incorrectly positioned;
- 13 k. Threshold does not meet requirements;
- 14 l. Stairway is in violation;
- 15 m. Entrance signage is not proper;
- 16 n. Lack of wheelchair access to each type of functional activity
- 17 o. Lack of access to office area."

18 Carlock alleges that based on these facts "Plaintiff has been discriminated against and
19 will continue to be discriminated against unless and until Defendants are enjoined and forced to
20 cease and desist from continuing to discriminate against Plaintiff and others similarly situated".

21 Carlock further states in the complaint that "Defendants also knew or should have known that
22 individuals such as Plaintiff with a disability are not required to give notice to a governmental
23 agency prior to filing suit alleging Defendant's failure to remove architectural barriers."

24 In this case a stipulation was entered into between the Defendant tenant Kars to Go and
25 Plaintiff, whereby Plaintiff would dismiss Defendant Kars to Go, if Defendant would testify
26 against his landlord, Esmail Sorkhpoosh.

27 THE INSTANT ACTION

28 In the present action, Carlock alleges in the Complaint that he patronized the premises
of the Defendants, on or about January 12, 2004, to "utilize goods and/or services offered by

1 Defendant.” The Defendant, Collins Motor Company, Inc., is a small used car dealership
2 located on El Cajon Boulevard. Carlock did not sustain any personal injuries from the alleged
3 patronization of the premises, nor does he allege such.

4 Carlock alleges that when he “ attempted to gain access to the goods and/or services
5 offered by the Defendants he encountered access barriers because the premises failed to comply
6 with federal ADA Access Guidelines For Buildings and Facilities [hereinafter referred to as
7 “ADAAG”]; Department of Justice [DOJ] regulations at 28 CFR. 36.201; 36.304 and/or the
8 State of California’s Title 24 Building Code Requirements.”

9 The Plaintiff further alleges in the Complaint that the specific difficulty he had “in
10 entering and utilizing Defendants’ facility and which amount to a violation of the ADAAG,
11 DOJ Regulations and Title 24 of the California Building Code are:

- 12 a. Site entrance signage is lacking;
- 13 b. Site lacks designated van accessible parking;
- 14 c. Site does not comply with Title 24;
- 15 d. Site lacks designated van accessible parking;
- 16 e. Parking space emblem does not comply;
- 17 f. Threshold does not meet requirements;
- 18 g. Handrails do not meet requirements;
- 19 h. Stairway does not comply;
- 20 i. Facility entrance does not comply;
- 21 j. Facility hardware does not comply;;
- 22 k. Facility lacks access to office area.”

23 Carlock alleges that based on these facts “Plaintiff has been discriminated against and
24 will continue to be discriminated against unless and until Defendants are enjoined and forced to
25 cease and desist from continuing to discriminate against Plaintiff and others similarly situated”.
26 Carlock further states in the complaint that “Defendants also knew or should have known that
27 individuals such as Plaintiff with a disability are not required to give notice to a governmental
28 agency prior to filing suit alleging Defendant’s failure to remove architectural barriers.”

As the Court can clearly see, the allegations in the instant action are nearly identical

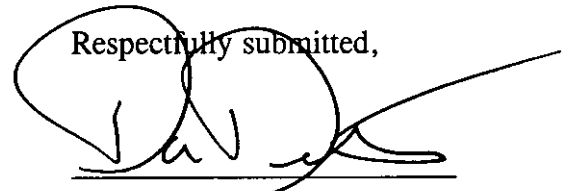
1 with the facts alleged in each of the above-detailed other federal actions filed by Carlock.
2 Defendant Collins Motor Company contends that Carlock is a vexatious litigant in that the
3 filings by Carlock show a pattern of harassment of the Federal Courts and against small car
4 dealerships, of which Defendant Collins Motor Company is a member. A pattern of
5 harassment is shown when the filings of similar types of actions constitutes an intent to harass
6 the Defendant or the Court. As noted above, Carlock has repeatedly asserted the same or
7 similar facts in each of the filings. Thus, the sheer number and content of the Complaints
8 indicates an intent to harass.

9 To preclude future harassment against Defendant Collins Motor Company, and other
10 unknown Defendants in the same location or vocation, a pre-filing order preventing Carlock
11 from filing future similar actions in the future is merited. And the imposition of monetary
12 sanctions under Rule 11 may be mandated against Carlock and/ or his counsel, in an amount to
13 be determined.

14 The Court, the Honorable Edward Rafeedie, when faced with a similar fact pattern
15 found that plaintiff Jarek Molski was a vexatious litigant. Defendants hereby make a request
16 for judicial notice of Judge Rafeedie's Order.

17 Dated: Feb 9 2005

Respectfully submitted,



Donald W. Detisch, Esq.,
Attorney for Plaintiffs COLLINS MOTOR
COMPANY, INC. RICHARD H.
COLLINS, SR. (DECEASED), RICHARD
H. COLLINS, JR., RITA A. COLLINS,
and KRISTEN COLLINS

