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**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF CALIFORNIA**

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| GAYNOR CARLOCK,<br><br>Plaintiff,<br><br>v.<br><br>COLLINS MOTORS, INC., ET AL.,<br><br>Defendants. | Civil No. 04CV0370-J (RBB)<br><br>**ORDER:**<br><br>**(1) GRANTING MOTION TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT; and**<br><br>**(2) ISSUING PRE-FILING INJUNCTION AGAINST PLAINTIFF GAYNOR CARLOCK; and**<br><br>**(3) DENYING REQUEST FOR JUDICIAL NOTICE.** |

On February 10, 2005, Defendants Collins Motors, Inc., et al. ("Defendants") filed a Motion for Order declaring Plaintiff Gaynor Carlock ("Plaintiff") a vexatious litigant and requiring him to obtain a court order and post a security before filing new litigation ("Vexatious Litigant Motion"). (Doc. No. 16.) On March 21, 2005, the Court held a hearing on the matter. On March 22, 2005, the Court requested supplemental briefing from both parties regarding the Vexatious Litigant Motion. (Doc. No. 43.) For the reasons set forth below, the Court **GRANTS** Defendants' Vexatious Litigant Motion and **ISSUES** a pre-filing injunction against Plaintiff Gaynor Carlock.

***Background Facts***

Defendants have submitted the Vexatious Litigant Motion on the grounds that Plaintiff has engaged in harassing conduct toward Defendants and the Court. (Motion at 3.) Defendants argue that Plaintiff is a "professional plaintiff" or "private sheriff" targeting local businesses for alleged violations of the Americans with Disabilities Act ("ADA"), California Disabled Persons Act ("DPA"), California Health and Safety Code, and the Unruh Civil Rights Act. (*Id.* at 5.)

**I. The Present Action**

Defendants are the owners of a small used car dealership located on El Cajon Boulevard in San Diego, CA. (Motion at 12.) According to Plaintiff's Complaint, on or about January 12, 2004, Plaintiff allegedly went to Defendants' business to "utilize goods and/or services offered by defendants." (Compl. at 4.) When Plaintiff attempted to gain access to the goods and services, he allegedly encountered access barriers. (*Id.*) Plaintiff claims the premises failed to comply with federal ADA Access Guidelines for Building and Facilities ("ADAAG"), 28 C.F.R. 36.201, 36.304, and California Title 24 Building Code Requirements ("Title 24"). (*Id.*)

Plaintiff has brought the following six causes of action against Defendants: (1) violation of ADA based on (a) denial of full and equal access, (b) failure to remove architectural barriers, and (c) failure to modify practices, policies and procedures; (2) violation of California Accessibility Laws based on (a) denial of full and equal access and (b) failure to modify practices, policies and procedures; (3) violation of the Unruh Civil Rights Act; (4) negligent infliction of emotional distress; (5) intentional infliction of emotional distress; and (6) declaratory relief. (*See id.*) Plaintiff seeks general damages and special damages, damages under Cal. Civ. Code ($4,000 for each violation), injunctive relief, attorneys' fees, treble damages, punitive damages, costs, and any other relief the court deems proper. (*Id.*)

**II. Litigation History**

Defendant has filed a total of one hundred and twenty (120) ADA lawsuits in the district courts of the Central and Southern Districts of California combined: eighty-five (85) lawsuits were filed in the Southern District of California and thirty-five (35) lawsuits were filed in the Central District of California. (Def.'s Supp. Briefing at 1-2; Pl.'s Supp. Briefing at 1-2.) Twelve

(12) suits were filed in 2002, thirty-three (33) in 2003, seventy-one (71) in 2004, and four (4) thus far in 2005. (*Id.* at 2.) The suits were filed against a variety of businesses, including many restaurants, financial institutions, car dealerships, gas stations, and hotels. (Motion at 5-6.) Defendants have also lodged with the Court five notebooks containing copies of one hundred and fifteen (115) of the complaints previously filed by Plaintiff.

Plaintiff has filed these prior suits with "nearly identical" allegations and legal bases to the present action, differing only in the names of the defendants and the number of alleged deficiencies. (*See* Def.'s Lodgments 1-5.) Many of the lawsuits also involve injuries to Plaintiff on the same day, or within a closely related time period, at different locations and resulting in the filing of multiple complaints. (Def.'s Supp. Briefing at 2-5.) Defendants contend that all of Plaintiff's lawsuits were brought primarily to pressure the defendant businesses into lump sum settlement agreements. (Motion at 4-5.)

Plaintiff concedes that his counsel, Mr. Landers, has "used generic language to textually layout [sic] the statutory and regulatory language and jurisdictional basis for the lawsuit." (Pl.'s Supp. Briefing at 3.) Plaintiff admits that sixty-nine (69) of the prior lawsuits have resulted in settlement. (Pl.'s Supp. Briefing at 6.) However, both Plaintiff and Mr. Landers, who has represented Plaintiff in all of the suits, insist that none of the suits were filed with the intent to vex or annoy defendants. (Supp. Decl. of Landers ¶ 12; Supp. Decl. of Carlock ¶ 8.) Plaintiff contends that before filing an ADA lawsuit, Plaintiff hires an ADA consultant to investigate the site and determine whether significant violations exist. (Pl. Opp'n at 2; Decl. of Carlock at 2; Decl. of Landers at 1-2.)

***Discussion***

**I. Applicable Law**

**A. Background on the Americans with Disabilities Act ("ADA")**

The ADA was enacted with the express purpose of eliminating discrimination against disabled individuals. 42 U.S.C. § 12101(b). Title III of the ADA provides that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, and facilities, privileges, advantages, or accommodations of any place of public

accommodation." 42 U.S.C. § 12182(a). One such form of discrimination is the "failure to remove architectural barriers...in existing facilities...where such removal is readily achievable." *Id.* at (b)(2)(A)(iv). If removal of architectural barriers is not readily achievable, the owner or lessor of a public accommodation must make the "goods, services, facilities, privileges, or accommodations available through alternative methods if such methods are readily achievable." *Id.* at (v). "Readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." 42 U.S.C. § 12181(9).

The ADA specifically provides for two different methods of enforcement, one public and one private. In the public sphere, the Attorney General may file suit seeking monetary damages on behalf of an aggrieved party. 42 U.S.C. § 12188(b)(2)(B). In contrast, a private plaintiff is limited to seeking injunctive relief and attorney's fees and costs. 42 U.S.C. § 12188(a)(1); 42 U.S.C. § 2000a-(3)(a). In creating this remedial scheme, Congress clearly demonstrated an intent to prevent private plaintiffs from recovering money damages under the ADA. *Amer. Bus. Ass'n v. Slater*, 231 F.3d 1, 5 (D.C. Cir. 2000).

However, a violation of the ADA also constitutes a violation of the California Unruh Act, Cal. Civ. Code § 51(f), and the California Disabled Persons Act, Cal. Civ. Code § 54(c). As a result, some plaintiffs have made a practice of filing suit in federal court under the ADA, and also attaching related state law claims seeking damages, giving rise to a veritable "cottage industry" of ADA and related state law claims. *See Molski v. Mandarin Touch Restaurant,* 347 F. Supp. 2d 860, 862-63 (C.D. Cal. 2004) (internal citations omitted). Under this scheme, attorneys find "professional" plaintiffs who visit numerous small businesses and report ADA violations, then file suit seeking large amounts in state law damages, in order induce quick cash settlements from targeted businesses. *See id.* at 863 (citing *Rodriguez v. Investo, LLC*, 305 F.Supp. 2d 1278, 1280-81, (M.D. Fla. 2004); *see also Brother v. Tiger Partner, LLC*, 331 F.Supp. 2d 1368, 1375 (M.D. Fla. 2004)). The court in *Molski* found that such "shotgun litigation" undermined the spirit and purpose of the ADA. *Id.* at 867.

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**B. Authority to Issue Pre-filing Order**

"There is strong precedent establishing the inherent power of federal courts to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances." *De Long v. Mansfield*, 912 F.2d 1144, 1147 (9th Cir. 1990) (quoting *Tripati v. Beaman*, 878 F.2d 351, 351 (10th Cir. 1989)). This inherent power, under the All Writs Act, 28 U.S.C. § 1651(a), allows district courts to restrict abusive litigants from filing harassing or frivolous lawsuits, including enjoining a plaintiff from filing suit. *De Long*, 912 F.2d at 1147. However, because a pre-filing order restricts access to the court system, "this extraordinary remedy ... should be narrowly tailored and rarely used." *Moy v. United States*, 906 F.2d 467, 470 (9th Cir. 1990); *see also De Long*, 912 F.2d at 1147; *see also In re Oliver*, 682 F.2d 443, 444, 446 (3rd Cir. 1982).

**C. Vexatious Litigant Standard**

The Ninth Circuit in *De Long* acknowledged the need to balance weighty, competing interests in the exercise of the Court's inherent authority to regulate the activities of litigants:

> Flagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Nonetheless, orders restricting a person's access to the courts must be based on adequate justification supported in the record and narrowly tailored to address the abuse perceived.

*Id.* at 1148. To balance these competing interests, the Ninth Circuit has determined that district courts must (1) provide the Plaintiff with an opportunity to oppose the order before it is entered; (2) create a record showing at least that the Plaintiff's activities are numerous or abusive; (3) make findings that the Plaintiff's actions are frivolous or harassing; and (4) narrowly tailor the order to "closely fit the specific vice encountered." *Id.* at 1147-48. The *De Long* case determined that the required "adequate record for review" should include a listing of all the cases and motions that lead the court to find the plaintiff is a vexatious litigant. *Id.* at 1147.

In addition, the Second Circuit has employed a more specific test, with substantive factors for determining whether a plaintiff is vexatious. *Safir v. United States Lines, Inc.* 792 F.2d 19,

23 (2nd Cir. 1986), *cert. denied*, 479 U.S. 1099 (1987).[1] Recently, the district court for the Central District of California adopted this test in determining a litigant to be vexatious. *See Molski*, 347 F.Supp. 2d at 863-64.[2] This test consists of the following five factors: (1) the litigant's history, in particular whether the litigant engaged in vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, including whether the litigant has a good faith expectation of prevailing; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties. *Safir*, 792 F.2d at 23.[3]

In *Molski* [4], the district court held that a pre-filing injunction was justified and necessary to prevent further vexatious complaints based on ADA violations and state law claims for damages. *Molski*, 347 F. Supp. 2d at 867. The plaintiff in *Molski* was physically disabled and

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[1] The Court recognizes that the *Safir* decision, from the Second Circuit Court of Appeals, is not controlling authority within this district. However, the Court finds the reasoning behind the case to be relevant and sound persuasive authority.

[2] Defendants have submitted a Request for Judicial Notice ("Request") of the *Molski* case. Federal Rule of Evidence 201 provides that a court may take judicial notice of any "adjudicative fact." Fed. R. Evid. 201. The Advisory Committee Notes define "adjudicative facts" as those "facts concerning the immediate parties-who did what, where, when, how, and with what motive or intent." Since the *Molski* case does not involve the parties in the present matter, it is not an "adjudicative fact." Moreover, since *Molski* is a published opinion, the Court is free to consider the *Molski* case without taking judicial notice. Accordingly, the Court denies Defendants' Request.

[3] Plaintiff argues that vexatious litigant orders are only applicable to pro se plaintiffs, citing *Weissman v. Quail Lodge, Inc.*, 179 F.3d 1194 (9th Cir. 1999) in support. *Weissman* determined that a vexatious litigant order could not apply to an attorney, who by definition is not a litigant. *Weissman,* 179 F. 3d at 1197. However, that is not the issue presented here. In the present case, Defendants seeks to have Plaintiff, the *litigant*, ordered vexatious. *Weissman* did *not* hold that a litigant who is represented by counsel cannot be found to be vexatious. In fact, the court in *Molski* found the fact that plaintiff was represented by counsel weighed in favor of finding plaintiff vexatious. *See Molski*, 347 F. Supp. 2d at 863-64.

[4] The Court recognizes that the *Molski* case, decided by the district court in the Central District of California, is not controlling authority within this district. However, finding much of the reasoning behind the decision to be sound and relevant, the Court cites to the case as persuasive authority.

reliant on a wheelchair, and had filed more than three hundred (300) lawsuits in the federal court system over a six year period. *Id.* at 861. Nearly every complaint involved a visit to a restaurant or winery, where the plaintiff allegedly encountered the architectural barriers and suffered an injury in the bathroom, usually to the upper extremities. *Id.* Plaintiff consistently alleged humiliation and emotional distress, and sought injunctive relief and damages in the amount of $4,000 for each day of non-compliance with the ADA. *Id.* Additionally, several of the suits were for alleged injuries that occurred at different places on the same day. *Id.* at 865.

**II. Factual Application**

After examining all the relevant factors, the Court finds that Plaintiff is a vexatious litigant and a pre-filing injunction is appropriate .

**A. Opportunity to Oppose the Order**

As a preliminary matter, in *De Long*, the Ninth Circuit required courts to give plaintiffs an opportunity to oppose a potential vexatious litigant order. *De Long*, 912 F.2d at 1147-48.

Plaintiff has had ample opportunity to oppose the vexatious litigant order. Plaintiff filed an Opposition to the Vexatious Litigant Motion. (Doc. No. 26.) The Court also held a hearing on the matter on Monday, March 21, 2005, where Plaintiff's counsel presented oral argument. Plaintiff has also filed Supplemental Briefing and a Reply to Defendants' Supplemental Briefing. (Doc. Nos. 48, 59.)

**B. Substantive Factors**

**1. Plaintiff's History of Litigation and Adequate Record for Review**

The Court's substantive analysis begins with plaintiff's history of litigation, including whether plaintiff has engaged in vexatious, harassing or duplicative lawsuits. *Safir*, 792 F.2d at 23. In analyzing this factor, the *Molski* court considered the sheer volume of suits filed by the plaintiff, the textual and factual similarities of the complaints, and most importantly, the court's finding that the plaintiff's claims were contrived and not credible.

In the present case, Defendants argue that the number and content of Plaintiff's complaints show a pattern of harassment and intent to harass federal courts and local businesses. (Motion at 12-13.) For the reasons set forth below, the Court finds that Plaintiff's history of

filing ADA lawsuits does indicate an improper motive to harass businesses and extract cash settlements.

First, the Court considers the sheer volume of suits filed by Plaintiff. Although litigiousness alone is insufficient to deem a plaintiff vexatious, the number and content of a plaintiff's filings may be considered as factors indicating an intent to harass. *De Long*, 912 F.2d at 1148 (citing *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988) (per curiam)). Plaintiff's one hundred and twenty (120) lawsuits, filed over a mere three-year period, constitute a sizable volume of lawsuits and indicate an intent to harass. *See Molski*, 347 F.Supp. 2d at 864 (finding plaintiff who filed over 300 lawsuits in six years to be vexatious); *see also Wood v. Santa Barbara Chamber of Commerce*, 705 F.2d 1515, 1526 (9th Cir. 1983) (affirming a pre-filing injunction based on 35 related complaints).

Second, the Court considers whether the prior lawsuits are textually and factually similar. *See Molski*, 347 F.Supp. at 864; *see also In re Powell*, 851 F.2d at 431 (stating "the district court should discern whether the filing of several similar types of actions constitutes an attempt to harass the defendant or the court"). Virtually all of Plaintiff's one hundred and twenty (120) complaints contain the following similarities: (1) Plaintiff uses identical language in the factual descriptions of the General Allegations, except for the date on which Defendant allegedly visited the premises; (2) Plaintiff alleges at least five of the exact same causes of action and particular allegations within the causes of action, namely: (a) violation of ADA, (b) violation of California Accessibility Law, (c) violation of the Unruh Act, (d) negligent infliction of emotional distress, and (e) intentional infliction of emotional distress; (3) Plaintiff uses identical language to describe the six causes of action; and (4) Plaintiff requests the exact same remedies of general damages, special damages, $4,000 for each offense of Cal. Civ. Code § 51, Title 24 of the Cal. Building Code, and the ADA, injunctive relief, declaratory relief, attorneys' fees, treble damages, punitive damages, and costs. (*See* Compl.; *see* Def.'s Lodgment's 1-5.) As with the present action, none of the cases allege specific factual details of Plaintiff's personal experience entering or using the facilities. Rather, Plaintiff merely alleges the same specific violations of ADAAG, C.F.R., and Title 24, although varying in the number of those violations.

In addition, at least fifty (50) of the complaints, filed between February 2004 and February 2005, allege the exact same six causes of action as the present Complaint. The remaining complaints allege at least five (5) of the six (6) causes of action in the present case.[5] The Court finds that the striking textual and factual similarities of Plaintiff's numerous prior complaints weigh heavily in favor of finding that Plaintiff acted with the improper purpose of harassing businesses. *See Molski*, 347 F.Supp. 2d at 864; *see also In re Powell*, 851 F.2d at 431.

Third and most importantly, the Court finds that Plaintiff's complaints when viewed in the aggregate are contrived and incredible, manifesting bad faith and the improper motive of extracting quick cash settlements. On many different occasions Plaintiff has alleged the exact same emotional injuries arising from different incidents, occurring on or around the same day, and resulting in multiple lawsuits. (*Id.* at 7, Ex. A; Pl.'s Supp. Briefing at 2-6.) On at least eleven (11) different occasions, Plaintiff claims to have been injured at two different premises on or around the same day, resulting in two different lawsuits filed. (*See* Def.'s Supp. Briefing at 3-5.) For instance, on or around April 5, 2004, Plaintiff claims that he first was injured in Victorville, California, and on that same day, then was injured approximately one hundred and fifty (150) miles away in Spring Valley, California. (*Id.* at 4.) Moreover, in the week spanning from March 31, 2004 until April 5, 2004, Plaintiff claims he was injured seven different times, resulting in seven different lawsuits. (*Id.*) The Court finds that Plaintiff's claims of this many alleged injuries, within a short period of time and spanning such wide distances, are simply not credible. *See Molski*, 347 F.2d at 856 (finding plaintiff's allegations of three injuries in one day,

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[5] Over the course of the last three years, Plaintiff has developed a few slightly different versions of the complaint with respect to the causes of action pleaded. First, between June 2002 and August 2003, Plaintiff filed over twenty complaints differing from the present action because they allege two additional claims under 42 U.S.C. § 1991 and California Unfair Business Practices Act ("CUBPA"), and lack the claim for declaratory relief. Then, between August 2003 and April 2004, Plaintiff filed over twenty complaints which omitted the claim under 42 U.S.C. § 1991 but kept the claim under CUBPA. From February 2004 to February 2005, Plaintiff filed over fifty complaints nearly identical to the present Complaint, omitting the CUPBA claim and adding a claim for declaratory relief. Most recently, since February 2005, Plaintiff has filed a few complaints which omit the intentional infliction of emotional distress claim. Other than these minor discrepancies, all of the complaints contain boilerplate allegations.

resulting in three lawsuits, and thirteen (13) injuries over a four day period, resulting in thirteen (13) lawsuits, showed bad faith and an improper purpose of extorting a settlement).

Furthermore, in virtually every complaint, Plaintiff's alleged injuries are always exactly the same: "Plaintiff was shocked, discouraged, embarrassed, and outraged at the callousness and disregard of Defendants...Plaintiff did suffer emotional and mental distress and pain and suffering...Plaintiff has suffered severe emotional distress and mental distress[.]" Interestingly, Plaintiff never alleges any physical manifestation of injury, despite being subjected to such frequent and continual severe emotional and mental distress. The Court finds that Plaintiff's claims of visiting one hundred and twenty (120) businesses at varying locations in past three years, constantly experiencing shock and severe distress at every visit, yet never experiencing any physical manifestation of such distress, truly "defy belief and common sense." *See Molski*, 347 F.Supp. 2d at 867. Thus, the Court finds that "examining [P]laintiff's complaints in the aggregate reveals a clear intent to harass businesses" and induce a quick cash settlement. *Id.* at 864.

As in *Molski*, the Court finds that the sheer volume of lawsuits, their striking similarities, and the finding that Plaintiff's contrived claims were made in bad faith and for the improper motive of harassing defendants and extorting cash settlements, reveal that Plaintiff has a history of vexatious litigation.[6] *See Molski*, 347 F.Supp. 2d at 864-64. Furthermore, since Defendants have provided the Court with the docket report and the copies of one hundred and fifteen (115) complaints, (Supp. Decl. of Detisch, Ex. A; Def.'s Notebooks 1-5), the Court finds that there is an "adequate record for review" under the Ninth Circuit test. *See De Long,* 912 F.2d at 1147.

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[6] Although Plaintiff's claims viewed individually may not be frivolous, the Court need not find that the individual claims are frivolous in order to find bad faith and impose sanctions on Plaintiff. *See Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir. 2001) (stating "where a litigant is substantially motivated by vindictiveness, obduracy, or mala fides, the assertion of a colorable claim will not bar the imposition of [sanctions]"); *see also Vollmer v. Selden*, 350 F.2d 656, 660 (7th Cir. 2003) (finding that a non-frivolous filing for the improper purpose of extortion constitutes bad faith and allows for sanctions).

**2. Litigant's Motive**

The second factor to consider is the plaintiff's motive and whether the litigant has an objective good faith expectation of prevailing on the merits. *Safir,* 792 F.2d at 23; *Molski*, 347 F. Supp. 2d at 865. The Court finds that Plaintiff's history of litigation and the nature of his lawsuits indicate an improper motive of extracting cash settlements from defendants, without a good faith expectation of litigating the claims on the merits.

First, as explained above, the sheer number and proximity in time of the alleged injuries, the high volume of resulting lawsuits, and the similarity of the complaints, all indicate an improper purpose of harassing defendants in order to induce a quick cash settlement.

In addition, the fact that Plaintiff always alleges state law claims seeking damages undermines any genuine motivation merely to enforce the ADA. *See Molski* at 866 (finding the fact that plaintiff always alleged state law claims along with his ADA claim undercut plaintiff's claim that his motivation was to obtain injunctive relief.). Besides attorneys' fees, Plaintiff always seeks significant damages, including general damages, special damages, $4,000 for each offense under Cal. Civ. Code § 51, treble damages, and punitive damages. As the *Molski* court reasoned, a plaintiff seeking such widespread damages is more likely to induce a plaintiff to quickly settle a case. *Id.* at 866.

Furthermore, the Court finds that Plaintiff's sheer volume of quick settlements and dismissals are strongly indicative of an improper motive. *Id.* Plaintiff concedes that sixty-nine (69) lawsuits have resulted in settlements and that not a single case has gone to trial. (Pl.'s Supp. Briefing at 6). The Court has discovered that at least ninety-six (96) complaints have been dismissed. (*See* Def.'s Lodgments 1-5.) At least seventy-six (76) complaints were dismissed within six months of filing the complaint. (*See id.*) Moreover, the vast majority of the dismissals were pursuant to a settlement agreement reached by the parties. (*See id.*) The Court finds that this large number of quick settlements and dismissals belies any true intent to litigate the claims on their merits. *See Molski*, 347 F. Supp. 2d at 866 (finding that where an "overwhelming majority" of plaintiff's claims were dismissed or settled, plaintiff did not appear to have a good faith expectation of litigating the claims on their merits).

**3. Representation By Counsel**

Next, the Court considers whether Plaintiff was represented by counsel in his lawsuits. *Safir*, 792 F.2d at 23. In general, Courts are more protective of *pro se* litigants than litigants represented by counsel. *See Powell*, 851 F.2d at 431. Since Plaintiff was represented by the same attorney, Mr. Landers, for all of the prior lawsuits, (*See* Pl.'s Supp. Briefing at 6), the Court finds that this factor weighs in favor of finding Plaintiff vexatious. *See Molski*, 347 F.Supp. 2d at 866.

**4. Needless Expense to Parties and Burden on the Courts**

The Court also considers whether Plaintiff has caused needless expense to the parties and whether Plaintiff has been a burden on the courts. *Safir*, 792 F.2d at 23. As in *Molski*, the Court finds that the sheer number of ADA lawsuits filed by Plaintiff, for the improper purpose of extracting quick cash settlements, constitutes a needless expense on defendants and a burden on the courts. *See Molski*, 347 F.Supp. 2d at 866.

**5. Adequacy of Other Sanctions**

Finally, the Court finds that sanctions other than a pre-filing order will not remedy the present wrongs. As in *Molski*, Plaintiff's lawsuits do not appear to be without merit or otherwise improper when considered individually. It is only when Plaintiff's one hundred and twenty (120) lawsuits and their accompanying boilerplate complaints are viewed in the aggregate that a court becomes aware of Plaintiff's vexatious history. Thus, only a pre-filing order would alert the court to Plaintiff's improper motives. *See id.* at 866-67.

Although imposing a pre-filing order is an extraordinary remedy, based on the foregoing analysis, the Court finds that the remedy is appropriate to prevent harassment of defendant businesses in the future. Accordingly, the Court **GRANTS** Defendants' Vexatious Litigant Motion.

**C. Appropriate Remedy**

Pursuant to the Ninth Circuit standard, the Court must narrowly tailor a remedy to "closely fit the vice encountered," in order to prevent unnecessary infringement of a litigant's right to access to the courts. *De Long*, 912 F.2d at 1147-48. In the present case, the vice

encountered is Plaintiff's filing suit based on the bad faith motive of harassing businesses in order to induce cash settlements. A narrowly tailored remedy would prevent Plaintiff from filing suits in bad faith, while still allowing Plaintiff access to courts to file those suits which genuinely seek to enforce the ADA through injunctive relief, as contemplated by Congress.

***Conclusion and Order***

Plaintiff Gaynor Carlock, and his attorney, Roy Landers, have actively engaged in the lucrative "cottage industry" of filing ADA claims with related state law claims for damages to harass businesses into quickly entering into cash settlements. This type of conduct clearly undermines the spirit and purpose of the ADA and abuses the federal court system. Pursuant to the Court's inherent power to regulate abusive litigants, and based on the foregoing analysis, the Court: (1) **GRANTS** Defendants' Vexatious Litigant Motion and (2) **ORDERS** that, prior to filing a complaint which alleges a ***violation of Title III of the ADA along with state law claims seeking damages,***[7] within the United States District Court for the Southern District of California:

**(1) Plaintiff Gaynor Carlock must provide the potential defendant with written notice of the alleged ADA violations and the intent to file a lawsuit, received by the potential defendant at least thirty (30) days before Plaintiff Gaynor Carlock files an "Application for Leave to File a Complaint";**

**(2) After the thirty (30) days have expired, Plaintiff Gaynor Carlock must file with the district court an Application for Leave to File a Complaint alleging a violation of Title III of the ADA along with state law claims seeking damages. The Application for Leave to File a Complaint must include: (a) a copy of the thirty (30) day written notice provided to defendant; (b) a copy of this Order; and (c) a declaration by an ADA consultant stating**

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[7] Plaintiff claims that "even if there was only injunctive relief available to me I would still file the lawsuits because my primary purpose is to bring forth compliance." (Supp. Decl. of Carlock ¶ 5.) The Court's present Order is in line with Plaintiff's stated position; the Order does not restrict Plaintiff's access to the courts for any lawsuit alleging only a violation of Title III of the ADA and seeking injunctive relief and attorneys' fees as the sole remedies.

**that ADA violations continue to exist at defendant business at the time of the filing of the Application for Leave to File a Complaint;**

**(3) Any Application for Leave to File a Complaint which fails to include the documents described above in paragraph (2) shall be summarily denied**; and

**(4) Only after Plaintiff Gaynor Carlock has complied with paragraphs (1) and (2) in the manner described above, and the Application for Leave to File a Complaint is granted by the district court, may Plaintiff Gaynor Carlock file a complaint alleging a claim under Title III of the ADA along with state law claims seeking damages.**

**IT IS SO ORDERED.**

Dated: May 6, 2005

NAPOLEON A. JONES, JR.
United States District Judge

cc: Magistrate Judge Brooks
All Counsel of Record