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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED
CLERK U.S. DISTRICT COURT
DEC 13 2004
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

THE HONORABLE EDWARD RAFEEDIE, SENIOR U.S. DISTRICT JUDGE

JAREK MOLSKI, ET AL,

PLAINTIFFS,

VS.

MANDARIN TOUCH RESTAURANT, ET AL.

DEFENDANTS.

CV 04-450-ER

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, NOVEMBER 15, 2004

10:00 A.M.

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APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

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ON BEHALF OF THE DEFENDANTS:

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1 LOS ANGELES, CALIFORNIA; MONDAY, NOVEMBER ¹⁵~~14~~, 2004

2 10:00 A.M.

3 THE CLERK: CALLING CALENDAR ITEM NUMBER 1,
4 JAREK MOLSKI VS. MANDARIN TOUCH RESTAURANT, CV 04-450.
5 COUNSEL, PLEASE STATE YOUR APPEARANCES.

6 MS. KRAEMER: GOOD MORNING, YOUR HONOR.
7 I'M SARAH KRAEMER, COUNSEL FOR PLAINTIFF JAREK MOLSKI
8 AND DISABILITY RIGHTS ENFORCEMENT EDUCATION SERVICES.

9 THE COURT: AND WHO ELSE, COUNSEL? I DIDN'T GET
10 THAT.

11 MS. KRAEMER: IT'S THE ORGANIZATIONAL PLAINTIFF 3,
12 WHICH IS DISABILITY RIGHTS ENFORCEMENT EDUCATION SERVICES,
13 IT'S A CO-PLAINTIFF.

14 THE COURT: ALL RIGHT. THANK YOU.

15 MR. APPERT: GOOD MORNING, YOUR HONOR.
16 ROBERT APPERT APPEARING ON BEHALF OF EVERGREEN DYNASTY CORP
17 DBA MANDARIN TOUCH RESTAURANT.

18 MR. BOON: GOOD MORNING, YOUR HONOR.
19 ALAN BOON, B-O-O-N, APPEARING FOR THE OTHER DEFENDANTS,
20 BRIAN AND KATHY MC INERNEY.

21 THE COURT: WHO DO YOU REPRESENT?

22 MR. BOON: BRIAN AND KATHY MC INERNEY.

23 THE COURT: WHO ARE THEY?

24 MR. BOON: THEY ARE DEFENDANTS. THEY ARE NOT
25 INVOLVED IN THE MOTION, THEY ARE THE OTHER CO-DEFENDANTS.

1 THE COURT: WELL, THIS IS A MOTION FOR A PREFILING
2 ORDER PROHIBITING VEXATIOUS LITIGANT FROM FILING
3 NEW LITIGATION AND FOR RULE 11 SANCTIONS; THAT IS THE
4 RELIEF SOUGHT BY THE MOTION.

5 THE COURT HAS SPENT A GOOD DEAL OF TIME ON THIS
6 CASE INCLUDING DOING CONSIDERABLE RESEARCH IN THE COURT'S
7 OWN DOCKET.

8 I HAVE READ AND CONSIDERED ALL OF THE PAPERS THAT
9 HAVE BEEN FILED, AND THE COURT, AFTER REVIEWING THE RECORD
10 AND CONSIDERING THE PAPERS THAT HAVE BEEN FILED, THE COURT
11 HAS REACHED SOME TENTATIVE CONCLUSIONS ABOUT THIS CASE, AND
12 I WANT TO DISCUSS IT WITH YOU AND EXPLAIN MY REASONS.

13 FIRST, THE COURT HAS AUTHORITY TO SANCTION VEXATIOUS
14 LITIGANTS.

15 THE DISTRICT COURT HAS THE INHERENT POWER TO LEVY
16 SANCTIONS IN RESPONSE TO ABUSIVE LITIGATION PRACTICES THAT
17 IS ESTABLISHED BY THE UNITED STATES SUPREME COURT, IN
18 ROADWAY EXPRESS, INC. V. PIPER.

19 THIS INHERENT POWER IS AUGMENTED BY A LOCAL RULE
20 IN THIS DISTRICT, 83-8.1, WHICH EMPOWERS THE COURT TO
21 CRAFT AN APPROPRIATE SANCTION TO DEFEND AGAINST VEXATIOUS
22 LITIGATION, INCLUDING BUT NOT LIMITED TO A DIRECTIVE TO
23 THE CLERK NOT TO ACCEPT FURTHER FILING FROM THE LITIGANT
24 WITHOUT PAYMENT OF NORMAL FILING FEES AND/OR WITHOUT
25 WRITTEN AUTHORIZATION FROM A JUDGE OF THE COURT OR A

1 MAGISTRATE JUDGE ISSUED UPON SUCH SHOWING OF THE EVIDENCE
2 THAT'S SUPPORTING THE CLAIM AS THE JUDGE MAY REQUIRE.

3 NOW, THAT'S THE AUTHORITY THAT THE COURT HAS.

4 NOW, WHAT IS THE STANDARD FOR A VEXATIOUS LITIGANT:
5 IN DECIDING WHETHER OR NOT TO RESTRICT A LITIGANTS ACCESS
6 TO THE COURTS, ULTIMATELY, THE QUESTION THE COURT MUST
7 ANSWER IS WHETHER A LITIGANT WHO HAS A HISTORY OF VEXATIOUS
8 LITIGATION IS LIKELY TO CONTINUE THE ABUSE THE JUDICIAL
9 PROCESS AND HARASS OTHER PARTIES. THAT'S THE SECOND CIRCUIT
10 SPEAKING IN SAFIR V. UNITED STATES LINES.

11 IN DOING SO, THE COURT IS TOLD TO LOOK TO FIVE
12 FACTORS: ONE IS THE LITIGANT'S HISTORY OF LITIGATION, AND
13 IN PARTICULAR WHETHER IT ENTAILED VEXATIOUS, HARASSING OR
14 DUPLICATIVE LAWSUITS; SECOND, THE LITIGANT'S MOTIVE IN
15 PURSUING THE LITIGATION, FOR EXAMPLE, DOES THE LITIGANT
16 HAVE AN OBJECTIVE GOOD FAITH EXPECTATION OF PREVAILING;
17 THREE, WHETHER THE LITIGANT IS REPRESENTED BY COUNSEL;
18 FOUR, WHETHER THE LITIGANT HAS CAUSED NEEDLESS EXPENSE TO
19 OTHER PARTIES OR HAS POSED AN UNNECESSARY BURDEN ON THE
20 COURTS AND THEIR PERSONNEL; AND THE FIFTH FACTOR IS
21 WHETHER OTHER SANCTIONS WOULD BE ADEQUATE TO PROTECT THE
22 COURTS AND OTHER PARTIES.

23 THE COURT HAS APPLIED THESE FACTORS TO THE RECORD
24 BEFORE IT, AND CONCLUDES THAT A PREFILING ORDER IS
25 APPROPRIATE IN THIS CASE FOR THE FOLLOWING REASONS:

1 FIRST, THE PLAINTIFF HAS A CONSIDERABLE HISTORY IN FILING
2 VEXATIOUS LAWSUITS.

3 AFTER EXAMINING PLAINTIFF'S EXTENSIVE COLLECTION OF
4 LAWSUITS, THE COURT BELIEVES THAT MOST, OR ALL, WERE FILED
5 FOR THE PURPOSE OF HARASSING AND INTIMIDATING BUSINESS
6 OWNERS INTO AGREEING TO CASH SETTLEMENTS.

7 IT APPEARS TO THE COURT FROM THIS RECORD THAT THIS
8 PLAINTIFF, TOGETHER WITH HIS COUNSEL, IS ENGAGED IN A
9 SYSTEM OF SYSTEMATIC EXTORTION.

10 THE COURT BASIS ITS DETERMINATION ON SEVERAL
11 CONSIDERATIONS. ONE IS THE SHEER VOLUME OF LAWSUITS FILED
12 BY THIS PLAINTIFF, ALTHOUGH LITIGIOUSNESS ALONE IS
13 INSUFFICIENT TO JUSTIFY A RESTRICTION ON FILING ACTIVITIES,
14 AT THE LEAST, THE RECORD NEEDS TO SHOW, IN SOME MANNER,
15 THAT THE LITIGANT'S ACTIVITIES WERE NUMEROUS OR
16 ABUSIVE.

17 ANOTHER CONSIDERATION IS THE FACTUAL SIMILARITY OF
18 THE COMPLAINTS FILED BY THE PLAINTIFF. THIS TOO, WHILE NOT
19 DISPOSITIVE, IS A FACTOR THE COURT CONSIDERS INDICATIVE OF
20 AN INTENT TO HARASS, OR TO EXTORT, AS IT SUGGESTS THAT
21 PLAINTIFF IS FILING BOILERPLATE COMPLAINTS.

22 IN THE CASE OF IN RE POWELL, 851 F.2D 427, THE
23 CIRCUIT STATING THAT THE DISTRICT COURT SHOULD ATTEMPT
24 TO DISCERN WHETHER THE FILING OF SEVERAL SIMILAR TYPES OF
25 ACTIONS CONSTITUTES AN INTENT TO HARASS A DEFENDANT OR THE

1 COURT.

2 MOST IMPORTANTLY, HOWEVER, THE COURT'S CONCLUSION
3 THAT THE ALLEGATIONS CONTAINED IN PLAINTIFF'S COMPLAINTS
4 ARE SIMPLY NOT CREDIBLE. ALTHOUGH IT IS NOT OBVIOUS WHEN
5 LOOKING AT AN INDIVIDUAL COMPLAINT, EXAMINING PLAINTIFF'S
6 COMPLAINTS IN THE AGGREGATE REVEALS A CLEAR INTENT TO
7 HARRASS.

8 FOR EXAMPLE, THE CASE OF MOLSKI, THIS VERY PLAINTIFF,
9 VERSUS EL 7 MARES RESTAURANT, CASE NO. C04-1882, FILED IN
10 THE NORTHERN DISTRICT OF CALIFORNIA IN 2004, MOLSKY CLAIMS
11 THAT, ON MAY 20 OF 2003, HE AND HIS FRIEND, BRYGIDA MOLSKY,
12 ATTENDED THE EL 7 MARES RESTAURANT FOR THE PURPOSE OF
13 DINING OUT.

14 MOLSKI ALLEGES THAT THE RESTAURANT LACKS ADEQUATE
15 HANDICAP PARKING, AND THAT THE FOOD COUNTER WAS TOO HIGH.

16 AFTER THE MEAL, MOLSKI ATTEMPTED TO USE THE RESTROOM,
17 BUT BECAUSE THE TOILET'S GRAB BARS WERE IMPROPERLY INSTALLED,
18 HE INJURED HIS SHOULDERS IN THE PROCESS FROM TRANSFERRING
19 HIMSELF FROM HIS WHEELCHAIR TO THE TOILET. THEREAFTER, HE
20 WAS UNABLE TO WASH HIS HANDS BECAUSE OF THE LAVATORY'S
21 DESIGN. THAT'S THE CLAIM IN THAT CASE.

22 ALTHOUGH THIS COMPLAINT APPEARS CREDIBLE STANDING
23 ALONE, ITS VALIDITY IS UNDERMINED WHEN VIEWED ALONGSIDE
24 MOLSKI'S OTHER COMPLAINTS.

25 IN MOLSKI V. CASA DE FRUTA., CASE NO. C04-1981,

1 FILED IN THE NORTHERN DISTRICT OF CALIFORNIA IN 2004,
2 MOLSKI ALLEGED NEARLY IDENTICAL INJURIES ON THE EXACT SAME
3 DAY, MAY 20TH OF 2003. IN CASA DE FRUTA, MOLSKI ALLEGES
4 THAT HE AND HIS FRIEND, BRYGIDA MOLSKI, PATRONIZED CASA DE
5 FRUTA FOR THE PURPOSE OF WINE TASTING.

6 ON ARRIVAL, MOLSKI WAS AGAIN UNABLE TO LOCATE VAN
7 ACCESSIBLE PARKING.

8 UPON ENTRY, MOLSKI AGAIN FOUND THE COUNTER TO BE
9 TOO HIGH. AFTER WINE TASTING, MOLSKI AGAIN DECIDED TO USE
10 THE RESTROOM, AND, AGAIN, INJURED HIS UPPER EXTREMITIES
11 ATTEMPTING TO TRANSFER HIMSELF TO THE TOILET. THEREAFTER,
12 HE WAS ONCE AGAIN UNABLE TO WASH HIS HANDS DUE TO THE
13 DESIGN OF THE LAVATORY.

14 THIS WAS APPARENTLY, NOT THE END OF MR. MOLSKI'S
15 DAY. IN MOLSKI V. RAPAZZINI WINERY, CASE NO. C04-1881,
16 NORTHERN DISTRICT OF CALIFORNIA, FILED IN 2004, MOLSKI ONCE
17 AGAIN ALLEGES NEARLY IDENTICAL INJURIES ON THE EXACT SAME
18 DAY, MAY 20, 2003, MOLSKI, AGAIN ACCOMPANIED BY
19 BRYGIDA MOLSKI, VISITED THE RAPAZZINI WINERY FOR THE PURPOSE
20 OF WINE TASTING.

21 AGAIN, MOLSKI COMPLAINED THAT THE PARKING LOT
22 LACKED ADEQUATE HANDICAP VAN ACCESSIBLE PARKING.

23 UPON ENTERING THE ESTABLISHMENT, HE DISCOVERED THAT
24 THE THE COUNTER WAS TOO HIGH. AFTER TASTING WINE, HE
25 ATTEMPTED TO USE THE RESTROOM. WHEN HE ATTEMPTED TO

1 TRANSFER HIMSELF FROM HIS WHEELCHAIR TO THE TOILET, HE
2 INJURED HIMSELF YET AGAIN.

3 THEREAFTER, HE WAS AGAIN UNABLE TO WASH HIS HANDS
4 DUE TO THE LAVATORY'S DESIGN.

5 THIS IS ONE BAD DAY FOR MR. MOLSKI, APPARENTLY.
6 AND THESE WERE NOT ISOLATED INCIDENTS. MR. MOLSKI FILED
7 13 SEPARATE COMPLAINTS FOR ESSENTIALLY IDENTICAL INJURIES
8 SUSTAINED BETWEEN MAY 19TH, 2003 AND MAY 23RD, 2003.

9 THE COURT SIMPLY DOES NOT BELIEVE THAT MOLSKI SUFFER-
10 ED 13 IDENTICAL INJURIES GENERALLY TO THE SAME PART OF HIS
11 BODY, IN THE COURSE OF PERFORMING THE SAME ACTIVITY, OVER
12 A FIVE-DAY PERIOD.

13 THIS IS TO SAY NOTHING OF THE HUNDREDS OF OTHER
14 LAWSUITS MR. MOLSKI HAS FILED OVER THE LAST THREE YEARS
15 WHICH MAKE NEARLY IDENTICAL ALLEGATIONS. THE RECORD BEFORE
16 THIS COURT LEADS IT TO CONCLUDE THAT THESE SUITS WERE FILED
17 MALICIOUSLY IN ORDER TO CARRY OUT A SYSTEM OF EXTORTION,
18 TO OBTAIN A CASH SETTLEMENT.

19 IT IS POSSIBLE, PERHAPS, EVEN LIKELY, THAT MANY OF
20 THE BUSINESSES SUED WERE NOT IN TECHNICAL COMPLIANCE WITH
21 THE A.D.A. HOWEVER, FOR THE PURPOSES OF IMPOSING SANCTIONS
22 UNDER THE INHERENT POWER OF THE COURT, A FINDING OF BAD
23 FAITH DOES NOT REQUIRE THAT THE LEGAL AND FACTUAL BASIS FOR
24 THE ACTION PROVE TOTALLY FRIVOLOUS; WHERE A LITIGANT IS
25 SUBSTANTIALLY MOTIVATED BY VINDICTIVENESS, OBDURACY, OR

1 EXTORTION OR OTHER BAD PURPOSE, MALA FIDES.

2 THE ASSERTION OF A COLORABLE CLAIM WILL NOT BAR THE
3 ASSESSMENT OF SANCTIONS. SO EVEN IF THE BUSINESSES SUED
4 BY MOLSKI WERE IN VIOLATION OF THE A.D.A., THIS FACT IS
5 OUTWEIGHED BY THE COURT'S FINDING THAT HE ACTED IN BAD
6 FAITH. THE COURT CONCLUDES FROM THIS THAT, YOU KNOW, THE
7 A.D.A. WAS TO PROTECT THE CASUAL CONSUMER GOING TO A PLACE
8 OF BUSINESS WHO BECAUSE OF HIS DISABILITY IS UNABLE TO BE
9 ACCOMMODATED. IT WAS NOT INTENDED TO BE USED AS A VEHICLE
10 FOR EXTORTION BY SOMEONE WHO IS SET OUT TO GO LOOKING FOR
11 PLACES LIKE THAT WHO PROBABLY WOULD NOT PATRONIZE THESE
12 PLACES BUT FOR THE FACT TO SET UP A PHONY CLAIM.

13 THE COURT THEREFORE FINDS THAT MR. MOLSKI HAS A
14 CONSIDERABLE HISTORY OF VEXATIOUS LITIGATION.

15 THE NEXT FACTOR TO BE CONSIDERED IS THE LITIGANT'S
16 MOTIVE IN BRINGING THE LAWSUIT. I THINK I'VE ALREADY
17 TOUCHED ON THAT. THE COURT BELIEVES THAT THE MOTIVATION
18 WAS TO EXTRACT CASH SETTLEMENTS FROM THESE DEFENDANTS THAT
19 HE HAS SUED.

20 PLAINTIFF'S CLAIM THAT HIS MOTIVATION WAS TO OBTAIN
21 INJUNCTIVE RELIEF AND THAT THE FUNDS RECOVERED WERE LARGELY
22 USED TO OFFSET HIS LEGAL EXPENSES. THIS EXPLANATION IS
23 BELIED BY HIS COURSE OF ACTION.

24 THE A.D.A. ITSELF ALLOWS PLAINTIFFS, PRIVATE
25 PLAINTIFFS, TO SUE FOR INJUNCTIVE RELIEF AND TO RECOVER

1 THEIR ATTORNEY'S FEES AND COSTS. IT DOES NOT ALLOW FOR
2 ANY AWARD OF MONEY DAMAGES TO A PRIVATE PLAINTIFF.

3 IF THE PLAINTIFF'S ONLY MOTIVATION WAS FOR INJUNC-
4 TIVE RELIEF AND TO RECOVER HIS LEGAL COSTS, HE COULD SUE
5 ENTIRELY UNDER THE A.D.A., BUT HE DOES NOT DO THAT. INSTEAD,
6 MR. MOLSKI ALMOST ALWAYS RAISES ADDITIONAL CLAIMS UNDER
7 THE CALIFORNIA CIVIL CODE, HEALTH & SAFETY CODE, THE UNRUH
8 CIVIL RIGHTS ACT , AND THE CALIFORNIA BUSINESS AND
9 PROFESSIONS CODE, SECTION 17200, WHICH ALLOW FOR THE
10 RECOVERY OF MONEY DAMAGES.

11 THE COURT ALSO NOTES THAT MR. MOLSKI HAS NEVER
12 LITIGATED A CASE ON ITS MERITS. EVERY ACTION THAT HE HAS
13 FILED IN THIS DISTRICT HAS EITHER BEEN SETTLED OR BEEN
14 DISMISSED FOR A VIOLATION OF COURT ORDER OR LACK OF
15 PROSECUTION. THIS FURTHER SUGGESTS TO THE COURT THAT THE
16 MOTIVE HERE IS TO INTIMIDATE BUSINESSES INTO AGREEING TO
17 A QUICK CASH SETTLEMENT.

18 THE NEXT FACTOR THE COURT IS TO CONSIDER IS WHETHER
19 OR NOT MR. MOLSKI IS REPRESENTED BY COUNSEL. MOLSKI HAS
20 BEEN REPRESENTED BY COUNSEL -- BY COUNSEL IN EVERY LAWSUIT
21 THAT THIS COURT IS AWARE OF, ALTHOUGH THE COURTS ARE
22 GENERALLY PROTECTIVE OF PRO SE LITIGANTS, THIS SAME PRO-
23 TECTION DOES NOT APPLY TO LITIGANTS REPRESENTED BY COUNSEL,
24 AND THUS, THIS FACTOR WEIGHS AGAINST THE PLAINTIFF.

25 THE FOURTH FACTOR IS WHETHER THE PLAINTIFF HAS

1 CAUSED NEEDLESS EXPENSE TO OTHER PARTIES OR UNNECESSARILY
2 BURDENED THE COURTS. BECAUSE THE PLAINTIFF HAS FILED A
3 HUGE QUANTITY OF VAXATIOUS CLAIMS, THE COURT BELIEVES THIS
4 FACTOR WEIGHS HEAVILY AGAINST HIM. HE APPARENTLY HAS FILED
5 HUNDREDS OF CASES BOTH IN THE NORTHERN DISTRICT AND IN THIS
6 DISTRICT. I'M CONCERNED ABOUT THIS DISTRICT.

7 THE FINAL FACTOR IS WHETHER SANCTIONS, OTHER THAN A
8 PREFILING ORDER, COULD EFFECTIVELY PROTECT THE COURT AND
9 OTHER PARTIES.

10 FOR THE REASONS ALREADY DISCUSSED, THE COURT BELIEVES
11 THAT ANSWER IS NO. AS THE COURT NOTED, PLAINTIFF'S FILINGS
12 APPEAR MERITORIOUS WHEN EXAMINED INDIVIDUALLY. IT IS ONLY
13 WHEN THEY ARE VIEWED IN THE AGGREGATE THAT THEY APPEAR TO
14 BE FRIVOLOUS AND MOTIVATED BY BAD FAITH AND FOR A PURPOSE
15 NOT INTENDED BY THE STATUTE.

16 THUS ALL THE ADEQUATE WAY TO PUT A REVIEWING JUDGE
17 ON NOTICE OF A PLAINTIFF'S HISTORY IS TO REQUIRE MOLSKI,
18 IF HE SHOULD EVER BE A PLAINTIFF AGAIN, TO FILE A COPY OF
19 THIS ORDER WITH EVERY NEW COMPLAINT THAT HE SEEKS TO FILE.
20 THIS WOULD ALLOW THE REVIEWING JUDGE TO ASSESS WHETHER
21 MOLSKI HAS RAISED A VALID CLAIM UNDER THE A.D.A. OR WHETHER
22 HE WAS MERELY BRINGING ANOTHER FRIVOLOUS CLAIM IN ORDER
23 TO EXTRACT A QUICK SETTLEMENT.

24 A PREFILING REQUIREMENT HAS BEEN HELD TO BE
25 APPROPRIATE WHERE PETITIONER WAS ABLE TO CONSTANTLY DRESS UP

1 FRIVOLOUS CLAIMS SO THAT, ON THE FACE OF THE COMPLAINT,
2 THEY APPEARED TO BE MERITORIOUS. THAT IS WHAT HAS HAPPENED
3 HERE.

4 THEREFORE, IT IS THE COURT'S INTENTION TO ISSUE AN
5 ORDER REQUIRING THE PLAINTIFF, JAREK MOLSKI, TO SEEK LEAVE
6 OF THIS COURT BEFORE FILING ANY NEW CLAIM ALLEGED UNDER
7 THE A.D.A. AND THAT APPLICATION OR LEAVE TO FILE MUST BE
8 ACCOMPANIED BY A COPY OF THIS COURT'S ORDER.

9 NOW, SINCE THAT DOES NOT RESOLVE THE PROBLEM, SINCE
10 I THINK MR. MOLSKI IS ONLY HALF THE PROBLEM, HIS COUNSEL IS
11 THE OTHER HALF.

12 THIS COUNSEL, THE FRANKOVICH GROUP, IS THAT WHO
13 YOU REPRESENT, MA'AM?

14 MS. KRAEMER: THAT'S CORRECT, YOUR HONOR.

15 THE COURT: IT APPEARS TO ME TO BE BETTER CALLED
16 THE TREVOR GROUP BECAUSE THEY ARE ENGAGED IN THE SAME TYPE
17 OF LEGAL ACTIVITIES WHICH I CONSIDER TO BE UNETHICAL,
18 DISHONEST AND SHYSTERISM, AND, THEREFORE, I'M ISSUING AN
19 ORDER TO SHOW CAUSE TO YOUR FIRM, TODAY, WHY YOU SHOULD
20 NOT ALSO BE REQUIRED TO FILE -- BECAUSE IT'S EASY TO
21 CHANGE AND FIND SOMEBODY ELSE OTHER THAN MR. MOLSKI -- WHY
22 YOUR FIRM SHOULD NOT, WHENEVER IT FILES A CLAIM UNDER THE
23 AMERICAN DISABILITIES ACT -- AND BY THE WAY, I NOTICE THAT
24 YOUR FIRM HAS REPRESENTED MR. MOLSKI ON A GREAT NUMBER OF
25 CASES, INCLUDING MANY THAT I HAVE CITED -- WHY THEY SHOULD

1 NOT ALSO BE REQUIRED TO SEEK FROM THE COURT THAT THEY
2 SHOULD BE SUBJECT TO THE SAME ORDER THAT THEIR CLIENT IS,
3 AND, IN FACT, WHY YOU SHOULD NOT BE DISBARRED FROM THE
4 U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
5 FOR VIOLATING THE PROFESSIONAL ETHICS.

6 YOU MAY BE SURE THAT I'M GOING TO BRING THIS INFOR-
7 MATION THAT I HAVE FOUND TO THE ATTENTION OF THE STATE
8 BAR OF CALIFORNIA AND TO THE ATTORNEY GENERAL OF THE
9 STATE OF CALIFORNIA FOR APPROPRIATE ACTION.

10 DO YOU WISH TO BE HEARD, COUNSEL?

11 MS. KRAEMER: YES, I DO, YOUR HONOR.

12 THE COURT: ALL RIGHT. LET'S HEAR YOU.

13 MS.KRAEMER: TO BEGIN WITH, YOUR HONOR, I HAVE
14 ACTUALLY BROUGHT A LETTER FROM THE ATTORNEY GENERAL OF THE
15 STATE OF CALIFORNIA IN RESPONSE TO A CORRESPONDENCE FROM
16 THE DEFENDANT IN ONE OF OUR CASES.

17 MAY I APPROACH AND GIVE IT TO YOU?

18 THE COURT: HAVE YOU SHOWN IT TO COUNSEL?

19 MR. KRAEMER: YES, I HAVE, AND I HAVE ALSO BROUGHT
20 COPIES.

21 THE COURT: (REFERRING TO DOCUMENT SHOWN TO THE
22 COURT) THIS IS A LETTER REGARDING ONE OF YOUR CASES?

23 MS. KRAEMER: IT WAS FROM A DEFENDANT IN ONE OF
24 OUR CASES, BUT HE ALSO SPEAKS GENERALLY ABOUT PRIVATE
25 ATTORNEYS BRINGING SUCH ACTIONS, AND SPECIFICALLY REFERS TO

1 OUR FIRM, AND IN FACT WE HAVE OTHER LETTERS FROM HIM.

2 THE COURT: WELL, HE'S GOING TO GET ANOTHER SHOT
3 AT IT, GIVEN THE HISTORY THAT I HAVE RELATED HERE.

4 MS. KRAEMER: ONE THING I WANTED TO ADDRESS THAT
5 YOU MENTIONED IS THAT YOU FELT THAT OUR CLIENT WOULDN'T
6 BE FREQUENT THESE PLACES OTHERWISE, AND I THINK PERHAPS
7 THAT CAME IN PART FROM OUR COMMENT IN DEFENDANT'S REPLY
8 BRIEF WHERE HE STATED THAT OUR CLIENT WAS A QUADRAPLEGIC,
9 AND, THEREFORE, DOESN'T FALL. THAT'S INACCURATE.

10 IN OUR COMPLAINT IT SAYS THAT HE'S A PARAPLEGIC --

11 THE COURT: THAT HAS NOTHING TO DO WITH THE COURT'S
12 CONCLUSION. IT'S THE SEQUENCE OF CASES, THE DATES OF THE
13 CASES. IT JUST SIMPLY DEFIES COMMON SENSE AND REASON THAT
14 THIS MAN IS VISITING THESE PLACES WITH THE FREQUENCY AND
15 REGULARITY THAT HE CLAIMS TO BE.

16 MS. KRAEMER: WELL, HE HAS RECEIPTS AND EVIDENCE
17 IN EACH CASE --

18 THE COURT: WELL, I HAVE NO DOUBT THAT HE WAS
19 THERE, BUT THE PURPOSE OF HIS BEING THERE IS WHAT'S
20 TROUBLESOME.

21 MS. KRAEMER: WELL, IN EACH WE'VE HAD AN INSPECTOR
22 GO OUT AND INSPECT THE PREMISES TO MAKE SURE THAT THERE IS
23 IN FACT VIOLATIONS BEFORE WE FILED THE CLAIM SO THAT WE
24 WOULDN'T BE FILING FRIVOLOUS COMPLAINTS, AND WHILE THERE IS
25 IN FACT A PHYSICAL INJURY ALLEGED IN ALMOST ALL OF THE

1 COMPLAINTS, THE PRIMARY GOAL OF OUR LAWSUITS IS THE
2 INJUNCTIVE RELIEF, AND IN FACT THERE'S BEEN INJUNCTIVE
3 AGREEMENTS FOR FIXES IN EVERY CASE WE'VE SETTLED, AND IN
4 THE MAJORITY OF THOSE CASES --

5 THE COURT: DID YOU SETTLE ANY CASES WITHOUT THE
6 PAYMENT OF MONEY TO YOU?

7 MS. KRAEMER: THERE HAS BEEN SEVERAL WHERE HE HAS
8 WAIVED PAYMENT AND HE'S ALSO WAIVED ACTUAL DAMAGES IN
9 SEVERAL CASES.

10 AND, FURTHERMORE, IN THE MAJORITY OF THESE CASES
11 THE DEFENDANTS HAVE BEEN REPRESENTED BY COUNSEL. IT'S NOT
12 A QUICK LITIGATION WHERE WE'RE INTIMIDATING SOMEBODY
13 UNREPRESENTED. MANY TIMES THERE'S BEEN BACK AND FORTH
14 NEGOTIATIONS FOR A NUMBER OF MONTHS AND MOTIONS AND SO
15 FORTH WHICH IS WHY WE HAVE ACCRUED THE ATTORNEY'S FEES
16 WHICH WE'VE ACCRUED.

17 WE RESPECT THE COURT AND WE WOULD NOT FILE -- IN
18 FACT THERE'S MANY CASES THAT WE'VE REFUSED TO FILE. THERE
19 ARE CLIENTS WHO HAVE SUGGESTED THAT WE FILE BECAUSE WE
20 DON'T BELIEVE THERE'S AN ACTUAL CLAIM, AND IN SOME CASES
21 WE WRITE LETTERS TO THE PERSON AND LET THEM KNOW THAT
22 THEY'RE IN VIOLATION. IT'S UNFORTUNATE THAT THE PROBLEM
23 IS AS PERVASIVE AS IT IS, AND VERY FEW BUSINESSES THAT
24 SPONTANEOUSLY COMPLY WITH THE ACT. AND THE REASON WHY IT'S
25 WRITTEN THE WAY IT IS IS TO ENABLE THE PUBLIC TO ENFORCE

1 IT BECAUSE THE GOVERNMENT DOESN'T HAVE THE FUNDS TO
2 ENFORCE IT ON ITS OWN.

3 AND, IN ADDITION TO MAKING THE PLACES ACCESSIBLE
4 FOR HIMSELF AND HIS OWN ENJOYMENT, THERE'S ALSO DEGREES --

5 THE COURT: WHERE DOES YOUR CLIENT LIVE?

6 MS. KRAEMER: HE LIVES IN WOODLAND HILLS, CALIFORNIA.

7 THE COURT: WHY IS HE SUING THESE PEOPLE IN THE
8 NORTHERN DISTRICT. WHY IS HE SPENDING SO MUCH TIME UP
9 THERE?

10 MS. KRAEMER: HE TRAVELS AROUND. HE TRAVELS THIS
11 STATE, HE TRAVELS THE GLOBE. HE'S AN ACTIVE INDIVIDUAL
12 DESPITE THE FACT THAT HE'S DISABLED, AND I MEAN, FOR
13 EXAMPLE, SOMETHING THAT'S TREATED LIKE A SMALL PROBLEM IN
14 THE EYES OF THE DEFENDANT, A RESTROOM, SOMEBODY WITH A
15 LEGBAG FOR URINE, CAN BECOME A VICTIM OF AUTOTOMIC
16 DYSREFLEXIA WHICH COULD RESULT IN EITHER SEVERE MIGRAINE
17 OR EVEN A STROKE IF HE IS NOT ABLE TO RELIEVE HIMSELF
18 WITHIN THE NECESSARY PERIOD, SO IT'S NOT JUST A MINOR
19 VIOLATION THAT WE'RE TALKING ABOUT WHICH IS SPECIFICALLY
20 THE CASE IN THIS MATTER. THERE WAS NO AVAILABLE RESTROOMS.

21 THE OTHER THING I WOULD LIKE TO POINT OUT IS THAT
22 WE'VE NEVER FILED TORT CLAIMS OR NEGLIGENCE ACTIONS IN
23 THE PROCESS OF THAT, IT'S NOT PRIMARILY A PERSONAL INJURY
24 CASE. WE NEVER TRY AND ARGUE IT THAT WAY.

25 IF THE DEFENDANTS ASK US WE ULTIMATELY TELL THEM

1 THAT THERE'S NOT MEDICAL RECORDS THAT WE'RE TRYING TO,
2 YOU KNOW, GET COMPENSATION FOR. HE DOES EXPERIENCE THE
3 INJURIES.

4 THE COURT: WELL, HE ALLEGES THAT IN THE COMPLAINT.

5 MS. KRAEMER: WELL, AND IF HE DOES IN FACT SUFFER
6 FROM A REPETATIVE STRESS INJURY, IT'S AGGRAVATED IN EACH OF
7 THESE INSTANCES. IT'S NOT THAT IT'S FALSE. BUT IT'S NOT
8 THE PRIMARY CRUX OF OUR CLAIM NOR PRIMARILY WHAT WE RECOVER
9 DAMAGES FOR.

10 AND GENERALLY SPEAKING, OUR SETTLEMENTS ARE USUALLY
11 BASED ON STATUTORY DAMAGES.

12 THE COURT: WHAT STATUTORY DAMAGES?

13 MS. KRAEMER: WELL, AS PROVIDED FOR BY THE
14 CALIFORNIA STATUTES WHICH YOU'VE STATED, THE UNRUH CIVIL
15 RIGHTS ACT AND THE CALIFORNIA DISABLED PERSONS ACT.

16 THE COURT: ALL RIGHT. THAT'S YOUR STORY?

17 MS. KRAEMER: THAT IS, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 IT DOES NOT CHANGE MY MIND ABOUT THESE CASES, ABOUT
20 THIS PLAINTIFF AND ABOUT THE REQUIREMENTS OF PREFILING,
21 AND I'M ISSUING AN ORDER TO SHOW CAUSE TO YOUR LAW FIRM
22 TO SHOW CAUSE WHY YOU SHOULD NOT ALSO BE SUBJECT TO A
23 PREFILING ORDER OF ANY CASE WHICH YOU FILE INVOLVING ANY
24 PLAINTIFF UNDER THE AMERICANS WITH DISABILITIES ACT,
25 AND WHY YOU SHOULD NOT BE CONSIDERED FOR DISBARRMENT FROM

1 THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT
2 OF CALIFORNIA.

3 AND I WILL ISSUE A FORMAL ORDER TO SHOW CAUSE SETTING
4 FORTH WHAT YOU ARE REQUIRED TO DO.

5 YOU WILL ANSWER IT IN WRITING AND APPEAR AT THE TIME
6 STATED IN THE ORDER TO SHOW CAUSE.

7 MS. KRAEMER: WHO IS THE ORDER SPECIFICALLY DIRECTED
8 TO? WOULD THAT BE MYSELF OR MR. FRANKOVICH.

9 THE COURT: TO THE FRANKOVICH GROUP. THEY ARE THE
10 ATTORNEYS OF RECORD. I DON'T KNOW WHO THAT INCLUDES --
11 AND ANY ATTORNEY EMPLOYED THEREBY, ANYBODY THAT COMES UNDER
12 THAT UMBRELLA. THE FRANKOVICH GROUP AND ALL ATTORNEYS
13 ASSOCIATED WITH THE FRANKOVICH GROUP ARE ORDERED TO
14 COLLECTIVELY AND SINGLY SHOW CAUSE WHY THE COURT SHOULD
15 NOT TAKE THAT ACTION.

16 MS. KRAEMER: WE'LL RESPOND TO THE ORDER THEN,
17 YOUR HONOR. THANK YOU.

18 THE COURT: THE ORDER WILL BE SPECIFIC AND YOU CAN
19 RESPOND TO IT.

20 MS. KRAEMER: THANK YOU, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 DO YOU WISH TO SAY ANYTHING FURTHER?

23 MR. APPERT: I'M WILLING TO SUBMIT ON THE TENTATIVE,
24 YOUR HONOR. I WAS JUST WONDERING IF THE COURT SOUGHT FIT
25 TO AWARD ANY SANCTIONS IN THIS ACTION.

1 THE COURT: WHY DIDN'T YOU NAME THE ATTORNEYS IN
2 THIS MOTION AS WELL.

3 IT'S EASY ENOUGH TO CHANGE PLAINTIFFS, AND FROM
4 THAT THERE HAVE BEEN A NUMBER OF PLAINTIFFS FILING THESE
5 NUMEROUS LAWSUITS.

6 THIS ONE HAS BEEN THE MOST PROLIFIC. HE FILED
7 334 SUITS SINCE 1998 AND THERE'S AN INDICATION THAT MAYBE
8 IT'S 500 SINCE 2001.

9 DO YOU KNOW HOW MANY CASES THAT HAVE BEEN FILED
10 BY MR. MOLSKI, COUNSEL?

11 MS. KRAEMER: I DON'T KNOW THE EXACT NUMBER, YOUR
12 HONOR. I THINK IT'S CLOSER TO FOUR HUNDRED.

13 THE COURT: ONE HUNDRED?

14 MS. KRAEMER: NO. I SAID 400.

15 THE COURT: FOUR HUNDRED. ALL RIGHT.

16 MR. KRAEMER: I DON'T KNOW IF MR. BOON CARES TO
17 OFFER ANY INSIGHT, BUT HE'S ALSO A DEFENDANT IN A NUMBER
18 OF CASES WHICH WE'VE TRIED, AND IT'S BEEN OUR EXPERIENCE
19 IN REACHING SETTLEMENTS THAT THERE HAS BEEN AN ACKNOWLEDGE-
20 MENT THAT THERE'S BEEN MERITORIOUS COMPLAINTS OF A.D.A
21 VIOLATIONS.

22 THE COURT: WELL, I'M SURE THAT THERE ARE SOME
23 A.D.A. VIOLATIONS, BUT THE MANNER IN WHICH THEY'RE SOUGHT
24 OUT HERE APPEARS TO ME TO BE A SYSTEMATIC EXTORTION RATHER
25 THAN AN AGGRIEVED INDIVIDUAL WHO HAPPENS TO PATRONIZE THE

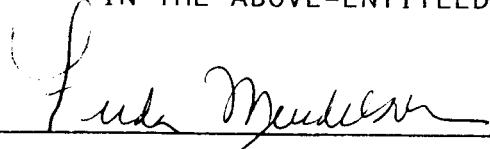
1 PLACE OF BUSINESS TO FIND IT. IT CEASES TO BE CREDIBLE
2 WHEN YOU'RE TALKING ABOUT FOUR HUNDRED CASES. THAT APPEARS
3 TO BE A PERSON ENGAGED IN THIS FULL TIME ACTIVITY LOOKING
4 FOR PLACES TO SUE.

5 ALL RIGHT. THAT WILL BE ALL.

6 MS. KRAEMER: THANK YOU, YOUR HONOR.

7 (PROCEEDINGS CONCLUDED.)
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20 I CERTIFY THAT THE FOREGOING IS A CORRECT
21 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS
22 IN THE ABOVE-ENTITLED MATTER.

23 
24 _____
25 FREDA MENDELSON
COURT REPORTER, C.S.R. #3922

12/10/04
