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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JAREK MOLSKI, an individual; and **DISABILITY RIGHTS ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS**, a California public benefit corporation,

Plaintiffs,

vs.

MANDARIN TOUCH RESTAURANT; EVERGREEN DYNASTY CORP., a California corporation; and **BRIAN McINERNEY** and **KATHY S. McINERNEY** as Joint Tenants,

Defendants.

CASE NUMBER CV04-0450 ER (SHx)

Case Assigned for All Purposes to the Honorable Edward Rafeedie

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR A PREFILING ORDER PROHIBITING 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 JAREK MOLSKI AND HIS COUNSEL THOMAS E. FRANKOVICH IN THE SUM OF $16,500.00

Date: October 25, 2004
Time: 10:00 a.m.
Courtroom: 1
Place: 312 N. Spring Street
Los Angeles, CA 90012

Discovery Cut-Off: None Set
Motion Cut-Off: None Set
Trial Date: None Set

Date Action Filed: January 23, 2004

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TO PLAINTIFF JAREK MOLSKI, AND TO HIS COUNSEL OF RECORD:

Defendant EVERGREEN DYNASTY CORPORATION, a California corporation, doing business as MANDARIN TOUCH RESTAURANT (hereinafter referred to as **"MANDARIN TOUCH"**) hereby submits the forthcoming points and accompanying authorities in support of its motion for an order prohibiting Plaintiff JAREK MOLSKI (hereinafter referred to as **"MOLSKI"**) 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 proposed to be filed, and 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 MOLSKI, and for sanctions pursuant to *FRCP Rule 11* as follows:

I. THE COURT IS AUTHORIZED TO ISSUE A PREFILING ORDER AGAINST MOLSKI AS A VEXATIOUS LITIGANT

28 U.S.C. § 1651, known as the All Writs Act, provides as follows:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective j ictions and agreeable to the usages and principles of law.
>
> (B) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction."

Local Rule 83-8 of the United States District Court for the Central District of California provides as follows:

> "L.R. 83-8 Vexatious Litigants
>
> L.R. 83-8.1 Policy. ***It is the policy of the Court to discourage vexatious litigation and to provide persons who are subjected to vexatious litigation with security against the costs of defending against such litigation and appropriate orders to control such litigation. It is the intent of this rule to augment the inherent power of the Court to control vexatious litigation and nothing in this rule shall be construed to limit the Court''s inherent power in that regard***.

L.R. 83-8.2 ***Orders for Security and Control*** . On its own motion or ***on motion of a party***, after opportunity to be heard, ***the Court may, at any time, order a party 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 a vexatious litigant, and may make such other orders as are appropriate to control the conduct of a vexatious litigant. Such orders may include, without limitation, a directive to the Clerk not to accept further filings from the litigant without payment of normal filing fees and/or without written authorization from a judge of the Court or a Magistrate Judge, issued upon such showing of the evidence supporting the claim as the judge may require***

L.R. 83-8.3 Findings . Any order issued under L.R. 83-8.2 shall be based on a finding that the litigant to whom the order is issued has abused the Court's process and is likely to continue such abuse, unless protective measures are taken." [Emphasis added.]

The All Writs Act, *28 U.S.C. § 1651*, vests federal courts with the discretion to enjoin certain litigants from engaging in wasteful litigation. [*Clinton v. United States* (9th Cir.1961) 297 F.2d 899] The courts may exercise their discretion to prevent litigants from subjecting others to "repeated, baseless and vexatious suits at law on some particular subject matter." *[Id.* at 901, quoting *First State Bank v. Chicago R.I. & P.R. Co.* (8th Cir.1933) 63 F.2d 585] Under the statute, a court may restrict litigants with abusive and lengthy histories from submitting future filing of actions or papers provided that it: (1) gives the litigant an opportunity to oppose the order before it is entered; (2) creates an adequate record for review; (3) makes substantive findings as to the frivolous or harassing nature of the litigant's actions; and (4) drafts a sufficiently detailed order. *[De Long v. Hennessey* (9th Cir.1990) 912 F.2d 1144, 1145-48]

"The equity power of a court to give injunctive relief against vexatious litigation is

an ancient one which has been codified in the All Writs Statute, 28 U.S.C. § 1651(a)." [*Matter of Hartford Textile Corp.* (2nd Cir. 1982) 681 F.2d 895, 897]

"Under the All Writs Statute, 28 U.S.C. § 1651(a), the court may enjoin vexatious litigation." [*Safir v. United States Lines, Inc.* (D.C.N.Y. 1985) 613 F.Supp. 613, 617]

In *De Long, supra*, at Page 1147 the Ninth Circuit Court of Appeal held and stated:

> "We recognize that '[t]here 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.' *Tripati v. Beaman,* 878 F.2d 351, 352 (10th Cir.1989). ***Under the power of 28 U.S.C. §§ 1651(a) (1988), enjoining litigants with abusive and lengthy histories is one such form of restriction that the district court may take.*** *Id. See also In re Oliver,* 682 F.2d 443, 445 (3d Cir.1982) (scope of All Writs Act includes district court's issuance of order restricting meritless cases); *In re Hartford Textile Corp.,* 681 F.2d 895, 897 (2d Cir.1982) ***(§§ 1651(a) empowers court to give injunctive relief against vexatious litigant)***, *cert. denied* 459 U.S. 1206, 103 S.Ct. 1195, 75 L.Ed.2d 439 (1983)." [Emphasis added.]

In *Galeska v. Duncan* (DC Cal 1995) 894 F.Supp 1375, the District Court for the Central District of California held that the All Writs Act, *Federal Rules of Civil Procedure Rule 11*, and the Court's Local Rule formerly Local Rule 27A [now 83-8] authorizes the Court to issue a prefiling order against a vexatious litigant.

II MOLSKI'S FILINGS ARE NUMEROUS, ABUSIVE, AND DEMONSTRATE AN INTENT TO HARASS THE COURT AND DEFENDANT MANDARIN TOUCH, AND THEREFORE, THE COURT SHOULD ISSUE A PRE-FILING ORDER AGAINST MOLSKI RESTRICTING HIS RIGHT TO FILE SIMILAR ACTIONS IN THE FUTURE

In the infamous case of *In Re Green* (DC Cir 1981) 669 F.2d 779, leave to appeal was

sought by a prison inmate with respect to orders of the United States District Court whereby the District Court ordered that Mr. Green would be permitted to file claims in the District Court only upon payment of all filing fees plus $100 cash deposit as security for costs. The Court of Appeals held that the District Court's order violated the statute governing proceedings *in forma pauperis* and unduly impaired Mr. Green's constitutional right of access to the courts. However, the Court of Appeal further held that in light of fact that Mr. Green, while in prison over the period of ten years, had filed between 600 and 700 complaints in federal and state courts, with a pattern of repetitive, frivolous and malicious filings, the District Court would be directed to order that Mr. Green could not file any civil action without leave of court, that in seeking leave of court Mr. Green would have to certify that the claims he wished to present were new claims never before raised and disposed of on the merits, including dismissal as frivolous, by any federal court, and that upon failure to certify or upon false certification, Mr. Green could be found in contempt of court and punished accordingly. The *Green* Court held and stated as follows:

> "[It is] conceded that '[i]t is axiomatic that no . . . person shall ever be denied his right to the processes of the court.' That right of access to the courts, however, is neither absolute nor unconditional." [Words in brackets added.] [*Id* at 785]

In the instant action, conditions should be imposed on MOLSKI before he is allowed to file any subsequent action in federal court. MOLSKI has filed THREE-HUNDRED-THIRTY-FOUR (334) lawsuits in the federal courts since 1998, with one suit filed in 1998, seven (7) suits in 2001, twenty four (24) suits in 2002, one-hundred-twenty-six (126) suits in 2003, and an additional ONE-HUNDRED-SEVENTY-FIVE (175) from January 2, 2004 through September 14, 2004. [See Exhibit "A" attached to the Declaration of Robert H. Appert filed concurrently herewith, and Appendix of Exhibits, Volume 1, Exhibit "1."] This conduct evidences an abuse of the judicial system such that MOLSKI should be deemed a vexatious litigant.

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III EVEN THOUGH MOLSKI HAS BEEN REPRESENTED BY COUNSEL IN ALL 334 LAWSUITS, HE MAY STILL BE DECLARED A VEXATIOUS LITIGANT SUBJECT TO A PREFILING ORDER

Local Rule 83-8 of the United States District Court for the Central District of California provides in pertinent part as follows:

> "L.R. 83-8.4 Reference to State Statute . Although nothing in this rule shall be construed to require that such a procedure be followed, the Court may, at its discretion, proceed by reference to the Vexatious Litigants statute of the State of California, Cal. Code Civ. Proc. §§§§ 391 - 391.7."

In the *Matter of Hartford Textile Corp.* (2nd Cir. 1982) 681 F.2d 895, the Plaintiff was represented by counsel in the various suits filed by the Plaintiff against the Hartford Textile Corporation. The Court of Appeals held and stated as follows:

> "***We stated then that we did not condone the course of conduct that appellant's counsel had pursued.*** . .
>
> ***We warned appellant and her attorney then that further frivolous, vexatious, or repetitious motions might result in the issuance of injunctive restraint.*** *Id.* We affirmed the order appealed from and awarded appellees double costs.
>
> As of the date of the instant opinion, by actual count, we find that ***Shuffman during the past three years has inundated this Court with more than a hundred motions, petitions, requests, appeals and other filings***, virtually all of which have been utterly frivolous, totally devoid of merit, obviously repetitive and demonstrably vexatious.
>
> As we stated in our prior holdings, the proceedings initiated and pursued by appellant and her attorney have been meritless and frivolous. ***They have***

resulted in vexation, harassment and needless expense to the appellees and have placed an unnecessary burden on the courts and their supporting personnel. We are convinced that, unless precluded from so doing, appellant and her attorney will continue to make similar groundless and vexatious claims in the future and that, therefore, an injunction should issue to prevent the continuance of such harassment." [Emphasis added.] [*Id* at pages 896-897.

IV EVEN THOUGH SOME OF MOLSKI'S CLAIMS MAY HAVE SOME MERIT, MANDARIN TOUCH IS STILL ENTITLED TO A PREFILING ORDER

In *Safir v. United States Lines, Inc.* (D.C.N.Y. 1985) 613 F.Supp. 613, the owner of unsubsidized shipping corporation brought suit against subsidized shippers alleging private right of action under Merchant Marine Act. The District Court held that the owner would be enjoined from further vexatious litigation in federal court in connection with defendants' 1965-1966 pricing practices. The *Safir* Court held and stated as follows:

> "*Not all of the suits against the defendants have been unsuccessful. The anti-trust action for treble damages resulted in a $2.5 million settlement with the bankruptcy trustee of Sapphire Lines. Moreover, plaintiff succeeded in his suit to compel the Maritime Administration to recover subsidies paid to some defendants.* . . .
>
> [Plaintiff] has boasted that his sole occupation is being the 'world's foremost litigator.'
>
> . . .
>
> Litigious affinity alone does not support the grant of an injunction. *But the court may issue an injunction when it becomes clear that 'the courts are being used as a vehicle of harassment by a "knowledgeable and articulate experienced pro se litigant" who asserts the same claims repeatedly in*

lightly altered guise.' [Citations omitted.]

. . .

If plaintiff's objective is not success on the merits but hope of a settlement, such a benefit is 'not even the sort that a decent system of law should tolerate.' [Citation omitted.]" [Emphasis added] [*Id* at pages 617-619]

In *In Re Powell* (D.C. Cir. 1988) 851 F.2d 427, appeals were taken from orders of the United States District Court enjoining pro se federal prisoners from filing claims without leave of court. From September 1985 to December 1987, Powell had filed 16 civil actions in the District Court. When Powell attempted to file 2 more complaints, the District Court issued an order enjoining Powell from filing new claims without leave of the court. The Court of Appeals found that many of the Freedom of Information Act [FOIA] complaints filed by Powell were not frivolous and held and stated as follows:

> "In making a determination as to the frivolousness of numerous actions, however, the district court should be careful not to review pending cases. While it may be appropriate to review a pending action for the limited purpose of determining whether the litigant has filed similar claims or for analyzing the prospective effect of the claims, it would be inappropriate to characterize pending claims as frivolous except to the extent that they are similar to ones already so characterized. ***In this way, the district court will be able to discern if the litigant is filing numerous, similar complaints, and whether the litigant is attempting to harass a particular adversary***.
>
> Similarly, the district court should make findings as to any pattern constituting harassment. Again, the district court should be careful not to conclude that particular types of actions filed repetitiously, i.e., FOIA actions, in and of themselves warrant a finding of harassment. Instead, the district court should attempt to discern whether the filing of several similar types of actions constitutes an intent to harass the defendant or the court. ***Overall, the district***

court should look to both the number and content of the filings as indicia of frivolousness and harassment.

Having established a few basic guidelines for issuing an injunction in cases such as these, we now turn to the two cases before us.

The district court has concluded anew, however, that these actions 'on their face...represent a form of harassment designed to impose excessive burdens of time and inconvenience not only on the executive agencies to whom the FOIA requests are directed, but also on the courts which are called up to process plaintiff's complaints.' *In re Thomas D. Pow-7 ell,* Misc. No.87-199, Order at 4 (D.D.C. Jan. 7, 1988). ***Thus, the question turns to one of harassment, rather than frivolousness***.

As the district court correctly observed, Powell appears to be well versed in FOIA litigation, exhausting his administrative remedies; requesting a *Vaughn* index and seeking appropriate relief. *Id.* at 3-4. Viewed in the 'totality of circumstances,' the district court concluded that these FOIA actions were, in fact, harassment. *Id.* at 4. Examined within the context of 'sixteen (16) filings in a period of seven (7) months,' the district court concluded that Powell's last filing 'may well be a clear abuse of the judicial process which threatens "the integrity of the courts and the orderly and expeditious administration of justice."' *Id.* (quoting *Urban,* 768 F.2d at 1500)

The framework for our analysis of the ***harassment issue*** must be the ***number and content*** of Powell's filings and the effect of those filings on the agencies and the district court. . . .

We are also unable to conclude that ***Powell's sixteen filings*** are so clearly harassment of the district court as to warrant issuing an injunction. It appears from our review that ***Powell's sixteen filings spanned a twenty-eight month period*** (from September, 1985 until December, 1987), ***not a seven month frenzy***. Not unlike those of Brown, the complaints filed by Powell, though repetitious to the extent that many are FOIA actions, have not been found by the district court to be 'irrational[],' 'incoheren[t]," or to evidence a 'complete lack of any substantive allegations,' as were the complaints in *Urban*. ***As in Brown, no complaint has yet to be dismissed as frivolous pursuant to Section 1915(d). Instead, as we have mentioned, Powell has had some limited success in his litigation, which suggests that there is some merit to his claims.***13 Consequently, these factors do not warrant a finding of harassment.

Powell's filings do suggest a litigious propensity, about which we are duly concerned, but on the present record we must conclude that the filings fall far short of the level of abuse of process manifested in *Urban* and *Green*. Although a litigant's litigiousness need not reach that level to trigger an injunction, the record here does not suggest a case in which the 'orderly and expeditious administration of justice' has been so impeded as to require such an extreme sanction. *Urban*, 768 F.2d at 1500.

Moreover, mere litigiousness alone does not support the issuance of an injunction. *See Ruderer v. United States*, 462 F .2d 897, 899 (8th Cir.) (per curiam), cert. denied, 409 U.S. 1031, 93 S.Ct. 540, 34 L.Ed.2d 482 (1972). ***Both the number and content of the filings bear on a determination of frivolousness or harassment***. Such a determination must be made with care; like the First Circuit, '[w]e expect that injunctions against litigants will remain

very much the exception to the general rule of in free access to the courts.' *Pavilonis,* 626 01 F.2d at 1079. An injunction is an extreme sanction and should be imposed in only the most egregious cases. On this record, such a case is not before us. Accordingly, we grant Powell's motions for expedition M and for reversal of the district court's order." [Emphasis added.] [*Id* at Pages 431-434]

Unlike the Plaintiff in the *Powell* Case [16 complaints filed in 26 months], MOLSKI in the instant action has filed 276 Complaints, all for alleged violations of the ADA and similar California law, and of the 276 Complaints filed, 110 of the Complaints [43%] were filed against Restaurants such as the Defendant MANDARIN TOUCH. MOLSKI's *modus operandi* appears to be that every place he visits in a given day is scrutinized as a potential defendant. Even the purported slightest violation of the ADA opens the door for MOLSKI to obtain a quick settlement from some unsuspecting and unaware Defendant. MOLSKI needs to be stopped. Enough should be enough.

V DEFENDANT MANDARIN TOUCH HAS MADE AN ADEQUATE SHOWING FOR ISSUANCE OF THE PREFILING ORDER

Before a district court issues a pre-filing order: (1) the plaintiff must be given notice and the opportunity to oppose the order; (2) the district court must provide an adequate record for review; (3) the district court must make substantive findings regarding the frivolous or harassing nature of a litigant's filings; and (4) the order must be narrowly tailored to curb the abuses of the particular litigant. [*De Long, supra*, 912 F.2d at 1147-48] An adequate record for review should list all of the cases and motions leading the district court to conclude that a vexatious litigant order was necessary. [*De Long, supra,* citing *Martin-Trigona v. Lavien* (2d Cir.1984) 737 F.2d 1254, 1270-74). Minimally, the record must show that the litigant's activities were numerous or abusive.

Further, before a district court issues a pre-filing order against a litigant, it is incumbent on the court to make "substantive findings as to the frivolous or harassing nature of the litigant's actions." *[Powell,* 851 F.2d at 431] To make such findings, the district court

must consider "both the number and content of the filings as indicia of frivolousness and harassment." [*Id. See also Moy v. United States* (9th Cir.1990) 906 F.2d 470 (holding pre-filing order cannot issue merely upon a showing of litigiousness.")]

In this case, MANDARIN TOUCH has made an adequate showing for the Court to issue the prefiling order. MANDARIN TOUCH has provided the Court with a listing of all cases, including the case name, case number and date filed. Furthermore, MANDARIN TOUCH has also detailed for the Court the THIRTY-ONE (31) cases out of TWO-HUNDRED-SEVENTY SIX filed which have been decided adversely to MOLSKI. FIVE (5) out of the THIRTY-ONE (31) cases were dismissed by the Court for lack of prosecution, and THREE (3) out of the THIRTY-ONE (31) cases were dismissed by the Court for MOLSKI's violation of Court Orders. [See Appendix of Exhibits, Volume 1, Exhibits "2" through "32" which are made a part hereof by this reference.]

As the Court is well aware, a voluntary dismissal with prejudice, even one based on an agreed or stipulated judgment, operates as an adjudication on the merits. [See *Semtek International Inc. v. Lockheed Martin Corp.* (2001) 531 U.S. 497, 505, 121 St. Ct. 1021, 149 L.Ed.2d 32; and *Baker v. Internal Revenue Service* (9th Cir 1996) 74 F.3d 906, 910][See *Semtek International Inc. v. Lockheed Martin Corp.* (2001) 531 U.S. 497, 505, 121 St. Ct. 1021, 149 L.Ed.2d 32; and *Baker v. Internal Revenue Service* (9th Cir 1996) 74 F.3d 906, 910] FOURTEEN (14) out of the THIRTY-ONE (31) cases determined adversely to MOLSKI were voluntarily dismissed by MOLSKI with prejudice. [See Appendix of Exhibits, Volume 1, Exhibits "2" through "32" which are made a part hereof by this reference.] [The Court should further note that the California Statutes, *Code of Civil Procedure §§ 391 - 391.7*, only require five (5) litigations determined adversely to the Plaintiff in seven (7) years before the Plaintiff can be declared a vexatious litigant.]

In the instant action, MOLSKI should be deemed a vexatious litigant subject to a pre-filing order because he has filed THREE-HUNDRED-THIRTY-FOUR (334) lawsuits in the federal courts since 1998, with one suit filed in 1998, seven (7) suits in 2001, twenty four (24) suits in 2002, one-hundred-twenty-six (126) suits in 2003, and an additional ONE-

HUNDRED-SEVENTY FIVE (175) from January 2, 2004 through September 14, 2004. Based on MOLSKI's history as a prolific litigant who consistently fails to meet deadlines [see Appendix of Exhibits, Volume 1, Exhibits "2" through "32" which are made a part hereof by this reference, detailing the suits dismissed by the Federal Court for lack of prosecution and for violation of Court Orders] and acts in a "vexatious and harassing" manner, the Court should exercise its power to regulate MOLSKI's litigation activities through the imposition of pre-filing conditions.

VI DEFENDANT MANDARIN TOUCH IS ENTITLED TO MONETARY SANCTIONS AGAINST PLAINTIFF MOLSKI AND HIS COUNSEL THOMAS E. FRANKOVICH

Federal Rules of Civil Procedure Rule 11 provides in pertinent part as follows:

> "(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party.. . .
>
> (b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

. . .

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other

expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned."

Rule 11 expressly authorizes both monetary and non-monetary sanctions. [*Federal Rules of Civil Procedure Rule 11(c)(2)*] A court may enter an order prohibiting a litigant (particularly a vexatious litigant) from filing further lawsuits without leave of court. [*Schramek v. Jones* (MD FL 1995) 161 FRD 119, 122; see also *Visser v. Supreme Court of California* (9th Cir. 1990) 919 F.2d 113, 114]

For the reasons herein set forth, MANDARIN TOUCH seeks an award of monetary sanctions pursuant to *Rule 11* for all attorney's fees and costs incurred in the preparation and filing of the instant action, as well as the court appearance thereon, as more fully detailed in the Declaration of Robert H. Appert filed concurrently herewith, in the sum of $16,500.00 against MOLSKI and his counsel, Thomas E. Frankovich, jointly and severally for their abusive and harassive conduct.

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CONCLUSION

For the reasons herein set forth, MANDARIN TOUCH respectfully requests that this Court issue a prefiling order against MOLSKI prohibiting him from filing any new litigation in the Federal Courts without first obtaining leave of Court, to give security in such amount as the Court determines to be appropriate, and for sanctions in the sum of $16,500.00 pursuant to *Rule 11* against MOLSKI and his counsel, Thomas E. Frankovich, jointly and severally.

DATED: September 24, 2004

Respectfully submitted,

ROBERT H. APPERT
Attorney for Defendant
EVERGREEN DYNASTY
CORPORATION, a California corporation,
doing business as MANDARIN TOUCH
RESTAURANT

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within pending action. My business address is 1208 S. San Gabriel Boulevard, San Gabriel, California 91776.

On September 24, 2004, I served the foregoing document described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR A PREFILING ORDER PROHIBITING 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 JAREK MOLSKI AND HIS COUNSEL THOMAS E. FRANKOVICH IN THE SUM OF $16,500.00** upon the interested parties in this action addressed as follows:

THOMAS E. FRANKOVICH, ESQ. THOMAS E. FRANKOVICH, A.P.C. 2806 Van Ness Avenue San Francisco, CA 94109 Tel (415) 674-8600 Fax (415) 674-9900	Attorney for Plaintiffs
ALAN H. BOON, ESQ. BERGER KAHN,ALC P.O. Box 19694 Irvine, CA 92623-9694	Attorneys for Defendants BRIAN McINERNEY and KATHY S. McINERNEY

(X) **By Mail:** I placed such envelope with postage thereon fully prepaid in the United States Mail at San Gabriel, California.

() **By Personal Service:** I caused such envelope to be hand delivered to each of the addressees.

Executed on September 24, 2004, at San Gabriel, California.

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

LISA CHEN