

1 THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
3

4 DEMETRIO BARRAGAN) NO. 04CV02254-L
5)
6 PLAINTIFF,) ORER TO SHOW CAUSE
7)
8 VS.)
9)
10 JMJ ENTERTAINMENT, INC.,)
11)
12 DEFENDANT.)

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS
14 BEFORE THE HONORABLE M. JAMES LORENZ

15 APPEARANCES:

16 FOR THE PLAINTIFF: LAW OFFICE OF ROY L. LANDERS
17 BY: ROY L. LANDERS
18 7840 MISSION CENTER COURT
19 SUITE 101
20 SAN DIEGO, CA 92108

21 FOR THE DEFENDANT: NORTON ADAMS AND DOWNEY
22 BY: WILLIAM A. ADAMS
23 525 B STREET
24 SUITE 1500
25 SAN DIEGO, CA 92101

OFFICIAL REPORTER: LORLEIN RAYBURN, RMR
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1 SAN DIEGO, CA; MONDAY, JANUARY 31, 2005, 10:30 A.M.

2 THE CLERK: NUMBER 10 ON THE CALENDAR, CASE
3 NO.04CV2254, BARRAGAN VERSUS JMJ ENTERTAINMENT FOR
4 ORDER TO CHOSE CAUSE HEARING.

5 MR. LANDERS: ROY L. LANDERS FOR THE
6 PLAINTIFF.

7 MR. ADAMS: BILL ADAMS FOR THE DEFENDANT.

8 THE COURT: WE'RE HERE TODAY ON ORDER TO
9 SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED UPON
10 YOU, MR. LANDERS. LET ME WALK THROUGH WHAT I SEE. WE
11 HAVE SERIOUS BREACHES, AND YOU MIGHT MAKE A NOTE IF YOU
12 WANT TO RESPOND. AND BY THE WAY, I MIGHT ADD BECAUSE
13 YOU DON'T HAVE COUNSEL, I'M GOING TO PUT YOU UNDER OATH
14 IF YOU DO RESPOND.

15 I'VE READ THE DECLARATION. BUT, FIRST, AS
16 RELATES TO THE SIGNATURE, YOU INDICATE THAT YOU FORGOT
17 TO SIGN THE DECLARATION GOING OUT OF TOWN, ETC. BUT, I
18 DON'T KNOW IF YOU APPARENTLY DON'T REALIZE THE
19 SERIOUSNESS OF A LAPSE IN JUDGMENT FROM THE STANDPOINT
20 OF HAVING A PARALEGAL SIGN A DOCUMENT UNDER OATH. THIS
21 IS A DOCUMENT THAT NEEDS TO BE SIGNED BY ATTORNEYS IF
22 YOU'RE GOING TO PRACTICE IN FEDERAL DISTRICT COURT.
23 PARALEGALS DON'T SIGN FOR ATTORNEYS. THAT'S NUMBER
24 ONE.

25 NUMBER TWO, THAT, YOU KNOW, MR. LANDERS, THAT THE

1 DEFENDANT WAS REPRESENTED BY COUNSEL. BASED ON AN
 2 INFORMAL REQUEST FOR AN EXTENSION OF TIME WHICH TO FILE
 3 AN ANSWER IN THREE DIFFERENT PHONE CALLS, YOU DON'T
 4 ADDRESS WHY THE NOTICE OF DEFAULT WAS SENT TO THE
 5 DEFENDANT AND NOT TO THE ATTORNEY, BECAUSE THAT, AGAIN,
 6 IS A SERIOUS LAPSE. IF YOU KNOW THAT A PERSON'S
 7 REPRESENTED BY COUNSEL, IT DOESN'T GO TO THE DEFENDANT.

8 NUMBER THREE, IMPROPER DELEGATION OF AUTHORITY.
 9 YOU HAD A PARALEGAL, WHICH APPARENTLY IS YOUR DAUGHTER,
 10 INDICATING IN A LETTER THAT SHE, NOT YOU, SHE COULD NOT
 11 ACCOMMODATE HIS REQUEST FOR AN EXTENSION OF TIME.

12 AGAIN, WHO IS RUNNING THE SHOW? IS THIS YOU OR
 13 YOUR PARALEGAL?

14 NOW, IN VAUGHN VERSUS STATE BAR OF CALIFORNIA, 6
 15 CAL. 3RD, 847, 1972 CASE, THE COURT FOUND THAT A
 16 PETITIONER WHO HAD PERMITTED A SIGNATURE TO BE MADE BY
 17 HIS OFFICE STAFF WAS FOUND TO HAVE ENGAGED IN,
 18 QUOTATION "IN A COURSE OF CONDUCT INVOLVING GROSS
 19 NEGLIGENCE AND CARELESSNESS, TYPE OF MORAL TURPITUDE."
 20 AND HIS NEGLIGENCE RESTS ULTIMATELY UPON COUNSEL'S
 21 RESPONSIBILITY TO SUPERVISE THE WORK OF HIS ASSOCIATE
 22 ATTORNEY AND HIS CLERICAL STAFF. THOSE THREE ISSUES
 23 ARE SERIOUS.

24 NOW, LET'S WALK FURTHER HERE. YOU HAVE FILED A
 25 DECLARATION IN THIS MATTER, AND IN THE DECLARATION YOU

1 STATED THAT THE MATTERS ASSERTED THEREIN ARE COMPLETELY
2 TRUE AND ARE STATEMENTS THAT I PERSONALLY CAUSED TO BE
3 PREPARED AND SUBMITTED TO ME FOR SIGNATURE. AND THIS
4 IS YOUR OSC DECLARATION SIX AND SEVEN. NOW, ALTHOUGH
5 YOUR STATEMENTS ARE TECHNICALLY TRUE, ADMISSIONS,
6 RELEVANT ADMISSIONS IN DECIDING WHETHER A DEFAULT
7 SHOULD BE ENTERED, NUMBER ONE, THE DEFENDANT WAS
8 REPRESENTED BY COUNSEL, AND DEFENDANT'S COUNSEL WAS NOT
9 SERVED WITH A REQUEST FOR ENTRY OF DEFAULT. THAT WAS
10 NOT SERVED.

11 TWO, DEFENDANT'S COUNSEL TIMELY HAD REQUESTED ON
12 THREE OCCASIONS FOR AN EXTENSION OF TIME IN WHICH TO
13 SERVE AN ANSWER. THAT WAS NOT DEALT WITH.

14 THREE, PLAINTIFF'S PARALEGAL SENT A FAX ON
15 DECEMBER 17, 2004, DENYING DEFENDANT'S COUNSELOR
16 REQUEST FOR AN EXTENSION OF TIME. THAT WAS NOT DEALT
17 WITH.

18 THEN, SECONDLY, AND NOW WE'RE TALKING ABOUT YOUR
19 DECLARATION, SUPPORT OF YOUR, IN YOUR POSITION IN THE
20 OSC, YOU HAD THE CONTINGENT SETTLEMENT THAT YOU MADE
21 DISMISSAL OF YOUR CLIENT'S ACTION CONDITIONED UPON
22 WITHDRAWAL OF THE OSC SET BY THE COURT AND THOSE
23 SANCTIONS BEING IMPOSED. YOU'VE SAID IN THE
24 CORRESPONDENCE, "ACCORDINGLY, I HAVE ADVISED MY CLIENT
25 AND HAVE AUTHORITY TO DISMISS THE CASE AGAINST THE

1 DEFENDANT AS PROVIDED THAT THE FOLLOWING CONDITIONS ARE
2 AGREED TO AND MET."

3 NOW, THE "OSC SET FOR JANUARY 31ST," TODAY, "IT
4 SAYS WILL BE TAKEN OFF CALENDAR, AND MY REQUEST FOR
5 SANCTIONS, INCLUDING ATTORNEYS FEES, IS WITHDRAWN
6 IMMEDIATELY." THIS WAS SOMETHING THAT WAS PLACED IN
7 CORRESPONDENCE.

8 NOW, "A FILING WITH THE COURT TO THAT EFFECT IS
9 REQUIRED ON OR ABOUT JANUARY 18, 2005, IN ORDER TO
10 PREVENT MY OFFICE FROM HAVING TO PREPARE FOR THE CASE
11 AND SUPPORTING DOCUMENTS IN THE MATTER, SHOULD A
12 RESPONSE BE REQUIRED FROM THIS OFFICE, TO COMPROMISE
13 THE CASE IS AUTOMATICALLY WITHDRAWN." THIS IS YOUR
14 DECLARATION, EXHIBIT 3, LETTER TO WILLIAM ADAMS.

15 IN YOUR OSC DECLARATION, YOU STATE EMPHATICALLY
16 THAT DISMISSAL WAS BASED UPON INFORMATION HE RECEIVED
17 ABOUT DEFENDANT'S FINANCIAL SITUATION, AND DISMISSAL OF
18 THE CASE HAD ABSOLUTELY NOTHING TO DO WITH THE OSC.
19 NOW THIS IS AN UTTERLY IMPLAUSIBLE STATEMENT BY MAKING
20 DISMISSAL ABSOLUTELY CONDITIONED UPON WITHDRAWAL OF THE
21 OSC, AND AN ESSENTIAL PART OF THE SETTLEMENT HAD
22 NOTHING TO DO WITH THE MERITS OF THE UNDERLYING
23 CONTROVERSY OR WITH THE PLAINTIFF'S CLIENT'S BEST
24 INTEREST. THIS IS A VIOLATION OF ETHICAL CANNONS WHICH
25 REQUIRE THE ABSOLUTE COMPLETE FIDELITY OWED BY THE

1 ATTORNEY TO HIS CLIENT.

2 THERE'S A CASE THAT HOLDS THIS FLATT VERSUS
3 SUPERIOR COURT, F-L-A-T-T, 9 CAL. 4TH, 275, ABA MODEL
4 RULE 1.7. IN QUOTATIONS. "IT'S AN ATTORNEY'S DUTY TO
5 PROTECT HIS CLIENT IN EVERY POSSIBLE WAY, AND IT IS A
6 VIOLATION OF THAT DUTY FOR HIM TO ASSUME A POSITION
7 ADVERSE OR ANTAGONISTIC TO HIS CLIENT WITHOUT THE
8 LATTER'S FREE AND INTELLIGENT CONSENT."

9 SANTA CLARA COUNTY'S ASSOCIATION VERSES WOODSIDE,
10 7 CAL. 4TH 525. "THE DUTY OF LIABILITY IS THE PRIMARY
11 VALUE WHICH STATES IN A CONFLICT OF INTEREST SITUATION,
12 A LAWYER MUST REPRESENT THE CLIENT'S INTEREST WITHOUT
13 BEING INFLUENCED BY THE LAWYER'S PERSONAL INTEREST."
14 BY CONDITIONING DISMISSAL OF THE UNDERLYING ACTION ON
15 THIS OSC WHICH IS AGAINST MR. LANDERS PERSONALLY,
16 MR. LANDERS IS SPECIFICALLY TRYING TO BYPASS THE
17 COURT'S ORDER TO THE DETRIMENT OF HIS CLIENT WHO WILL
18 INCUR ADDITIONAL ATTORNEYS FEES ALLOWING THE CASE IS
19 NOT SETTLED UNDER THE TERMS ADDRESSED TO THE DETRIMENT
20 OF DEFENDANT WHO DOES NOT WANT TO EXPEND ANY ADDITIONAL
21 TIME OR MONEY ON THIS CASE, AND TO THE DETRIMENT OF THE
22 COURT'S ADMINISTRATION OF JUSTICE.

23 SO, IN YOUR ATTEMPT TO EXONERATE YOURSELF,
24 MR. LANDERS, YOU DUG A BIGGER HOLE. YOU CAN'T
25 CONDITION DISMISSAL OF A CASE ON SOMEBODY WITHDRAWING

1 THEIR OSC, PARTICULARLY IF THE TERMS OF THE AGREEMENT
 2 HAVE BEEN AGREED TO AND THOSE TERMS ARE MERITABLE,
 3 WHICH APPARENTLY THEY WERE, AND THE ONLY CONDITION WAS
 4 TO WITHDRAW THE OSC OR I'M GOING TO WITHDRAW THE CASE.
 5 THAT IS WHAT THIS CASE THAT I JUST CITED TO
 6 SPECIFICALLY TALKS ABOUT. THAT IS MY CONCERN,
 7 MR. LANDERS.

8 SO ANYTHING YOU WANT TO SAY YOU CAN, BUT I WANT TO
 9 PUT YOUR UNDER OATH BEFORE YOU DO. ALL RIGHT.

10 THE CLERK: RAISE YOUR RIGHT HAND. DO YOU
 11 SOLEMNLY SWEAR THAT THE EVIDENCE YOU SHALL GIVE IN THE
 12 CAUSE NOW BEFORE THE COURT IS THE TRUTH?

13 MR. LANDERS: YES, I DO.

14 THE COURT: YOU WANT TO GO TO THE MICROPHONE
 15 WHERE I CAN HEAR YOU.

16 MR. LANDERS: WITH RESPECT TO THE ISSUES YOU
 17 BROUGHT OUT, YOUR HONOR, FIRST OF ALL, LET ME ADDRESS
 18 THE LATTER ISSUE.

19 AT NO TIME WAS THERE ANY INTENT TO COMPROMISE
 20 ANYTHING WITH RESPECT TO THE CLIENT. THE CLIENT IS
 21 WELL AWARE OF THE CIRCUMSTANCES, AND I DID NOT DISMISS
 22 THE CASE WHERE IT WASN'T THE INTENT TO DISMISS THE CASE
 23 ON THE SOLE PREMISES OF DISMISSING THE OSC.

24 THE COURT: LET ME ASK YOU THIS THEN. WHY
 25 DID YOU SAY THIS? YOU SAID, YOU SENT A LETTER THAT

1 SAID EITHER DISMISS THE OSC OR I'M NOT GOING TO DISMISS
2 CASE, IN ESSENCE?

3 MR. LANDERS: THAT'S TRUE. I'M STUCK WITH
4 WHAT I SAID. IF THE COURT WILL INDULGE, AS I TRIED TO
5 EXPLAIN TO THE COURT, THERE'S BEEN A HISTORY BETWEEN
6 MR. ADAMS AND I, AND ONE OF WHICH I'M NOT PARTICULARLY
7 FOND OF, BUT WE HAVEN'T HAD A REAL GOOD RELATIONSHIP.
8 AND I DID SPEAK TO MR. ADAMS PRIOR TO SUBMITTING THIS,
9 AND IT WAS MY UNDERSTANDING THAT WE HAD AN AGREEMENT
10 THAT I WOULD, IN FACT, ONCE HE HAD SUBMITTED THE
11 INFORMATION TO ME, I READ THE INFORMATION, IT APPEARED
12 TO ME THAT THIS WAS THE KIND OF CASE THAT REALLY SHOULD
13 BE DISMISSED BECAUSE OF THE FINANCIAL CIRCUMSTANCES AND
14 BECAUSE OF THE POSITION THAT THE DEFENDANT WAS. I'VE
15 DONE THIS WITH MR. ADAMS BEFORE.

16 NOT WITHSTANDING, WE HAVE AN OSC BEFORE, SO THE
17 HISTORY IS THERE. THAT IS THE WAY I HANDLED THE CASE.
18 I TALKED TO THE CLIENT. I SAID, LOOK, THIS IS THE KIND
19 OF CASE THAT IF WE WANT TO TRY AND GET SOMEONE IN
20 COMPLIANCE, WHICH SHOULD BE THE MOTIVATION IN THE FIRST
21 PLACE, LET'S GET THEM IN COMPLIANCE, BUT LET'S GO AHEAD
22 AND DISMISS THE CASE WITH RESPECT TO STATUTORY FEES OR
23 ATTORNEY'S FEES. THAT WAS THE UNDERLYING INTENT IN
24 THIS CASE.

25 MY THINKING WAS IF WE'RE GOING TO DO THAT, THEN GO

1 AHEAD AND TAKE THE OSC OFF. I WOULD ADMIT THAT IT'S
 2 PROBABLY A MISTAKE, AND IN MY ZEAL TO TRY TO BE AS
 3 STIFF AS I COULD WITH MR. ADAMS, BECAUSE HE'S BEEN THE
 4 SAME WITH ME, I MADE THE MISTAKE. IT'S A CLEAR
 5 MISTAKE.

6 THE COURT: AT THIS POINT, MR. ADAMS IS OUT
 7 OF IT. I MEAN, HE WITHDREW.

8 MR. LANDERS: I UNDERSTAND.

9 THE COURT: I'M THE ONE WHO IS PROCEEDING
 10 WITH THIS BECAUSE I'M JUST NOT GOING TO COUNTENANCE
 11 SLOPPY OR UNETHICAL CONDUCT. SO THAT'S WHY WE'RE HERE.
 12 IT'S NOT BECAUSE OF MR. ADAMS AT THIS POINT.

13 MR. LANDERS: I UNDERSTAND, YOUR HONOR, BUT
 14 I'M SIMPLY TRYING TO GIVE THE COURT SOME BACKGROUND IN
 15 TERMS OF -- IT'S NOT AN EXCUSE -- BUT I'M TRYING TO
 16 GIVE THE COURT SOME BACKGROUND IN TERMS OF WHAT MY
 17 THINKING PROCESS WAS.

18 AND YOUR HONOR, I WOULD, ALTHOUGH I'M EMBARRASSED
 19 TO SAY IT, I HAVE NOT BEEN IN THE BEST OF CONDITION.
 20 I'VE PRESENTLY BEEN DIAGNOSED AS DEPRESSED. I AM UNDER
 21 DOCTOR'S CARE NOW WITH MEDICATION, ETC. MY THINKING
 22 HAS NOT BEEN THE BEST.

23 I DON'T KNOW IF THE COURT KNOWS ANYTHING ABOUT MY
 24 HISTORY, BUT I'VE HAD A VERY GOOD REPUTATION IN THIS
 25 COMMUNITY. I'VE NEVER HAD ANY PROBLEMS WITH THE

1 PRACTICE OF LAW. MORE RECENTLY, THERE'S BEEN A SERIES
2 OF EVENTS THAT I'VE UNDERGONE, AND I HAVE HAD SOME
3 LAPSES. I'LL BE THE FIRST ONE TO ADMIT THAT. I'M IN A
4 POSITION WHERE I'VE NEVER BEEN. IT'S NOT ONE THAT
5 FEELS GOOD.

6 THE COURT CAN CERTAINLY REQUIRE ME TO PROVIDE ANY
7 MEDICAL DOCUMENTATION, WHICH I'LL BE HAPPY TO DO, BUT I
8 WOULD LIKE THE COURT TO CONSIDER THAT.

9 WITH RESPECT TO THE ASPECTS OF THE SIGNING OF THE
10 SIGNATURE, I'M NOT GOING TO LIE TO THE COURT. I DID
11 IT. IT WAS CLEARLY A LAPSE IN JUDGMENT. FRANKLY, I
12 WAS JUST, FRANKLY, WANTED TO BE AWAY. THE DEPRESSION
13 HAS TAKEN ITS TOLL, AND I'VE GONE AND I'VE GOTTEN SOME
14 HELP AND I'M UNDER CARE NOW.

15 BUT, THIS OSC WAS NEVER INTENDED TO USE IT AS A
16 MEASURE OR HAMMER OF ANY SORT TO TRY AND GET AN EXCUSE
17 TO DO SO. I SIMPLY WANTED IT TO GO AWAY, AND THAT
18 MR. ADAMS AND I, HOPEFULLY, GET THAT TO GO FORWARD AND
19 HAVE A GOOD RELATIONSHIP, NOT WITHSTANDING THE FACT
20 THAT CERTAINLY LOOKS REAL BAD TO THE COURT AND APPEARS
21 THAT I'M AN ATTORNEY THAT HAS NO REGARD FOR ANYTHING.
22 BUT THAT'S CERTAINLY NOT THE CASE, YOUR HONOR. THAT'S
23 CERTAINLY NOT THE CASE AT ALL.

24 IF THE COURT DID ANY BACKGROUND RESEARCH TO CHECK
25 WITH ANY OF THE MAGISTRATES OR ANYBODY ELSE AROUND.

1 THEY WOULD FIND THAT I'VE BEEN THE HIGHEST ETHICAL
2 PRACTICING ATTORNEY AS ANYONE ELSE. I'VE HAD SOME
3 LAPSES IN JUDGMENT IN THIS PARTICULAR INSTANCE, AND I
4 STAND BEFORE THE COURT. I DON'T OFFER ANY EXCUSES. IT
5 HAPPENED. IT IS NOT SOMETHING THAT I'M PROUD OF. IT
6 IS NOT SOMETHING THAT SHOULDN'T HAVE HAPPENED, AS I
7 LOOK BACK AT IT, YOUR HONOR. BUT IT HAPPENED. IT DID
8 HAPPEN. AND I DIDN'T DO IT TO THE DETRIMENT OF THE
9 CLIENT. CLIENT'S BEEN NOTIFIED. TALKED TO THE CLIENT.
10 AND I HAVE A HISTORY OF DOING THOSE KIND OF THINGS,
11 DISMISSING THESE KIND OF CASES.

12 THE COURT: WELL, WHAT'S THE STATUS OF THE
13 CASE NOW?

14 MR. LANDERS: THE STATUS OF THE CASE IS,
15 MR. ADAMS AND I HAVE ALREADY AGREED THAT THE CASE WOULD
16 BE DISMISSED. AT ANY RATE, I WANTED TO COME TO THE
17 COURT AND SHARE WITH ME, SHARE WITH THE COURT TODAY
18 WHAT THE CIRCUMSTANCES ARE.

19 I'VE TALKED TO THE CLIENT. FRANKLY, THIS IS THE
20 KIND OF CASE, YOUR HONOR, THAT SHOULD BE DISMISSED. HE
21 SHARED WITH ME THE FINANCIAL CIRCUMSTANCES. HE'S
22 INDICATED THAT THE CLIENT IS WILLING TO GET INTO
23 COMPLIANCE, WHICH IS THE PRIMARY MOTIVATION. I NEVER
24 WANTED TO DO -- I ASSUME THEY'RE GOING TO DO THAT.

25 IT'S THE KIND OF CASE THAT SHOULD BE DISMISSED. I HAVE

1 NO INTEREST.

2 THE COURT: AND THERE'S NO REASON WHY IT
3 SHOULDN'T BE DISMISSED BASED ON -- YOU'VE MADE IT VERY
4 CLEAR THAT THIS WAS GOING TO BE DISMISSED, EXCEPT FOR
5 THIS OSC. SO I THINK IT'S VERY CLEAR NOW THAT THE OSC
6 CANNOT BE A BASIS, IF IT WAS JUSTIFIED TO BE DISMISSED
7 BEFORE THE OSC WAS FILED, IT'S JUSTIFIED TO BE
8 DISMISSED AT THIS POINT. SO I'M JUST GOING TO ASSUME
9 THAT THAT'S GOING TO HAPPEN.

10 HAVE ANY TERMS BEEN AGREED TO?

11 MR. LANDERS: YES, THEY HAVE BEEN, AS FAR AS
12 I'M CONCERNED.

13 THE COURT: SO WHAT'S HOLDING IT UP?

14 MR. ADAMS: ARE YOU ASKING ME, YOUR HONOR?

15 THE COURT: EITHER ONE OF YOU.

16 MR. LANDERS: THERE'S NOTHING HOLDING IT UP.
17 THIS CASE IS GOING TO BE DISMISSED.

18 THE COURT: OKAY. ALL RIGHT. ANYTHING ELSE
19 YOU WANT TO SAY?

20 MR. LANDERS: NO, YOUR HONOR. I JUST WANTED
21 THE COURT, TO GIVE AN OPPORTUNITY, TO EXPLAIN TO THE
22 COURT WHAT MY POSITION IS. THAT'S IT. I DON'T HAVE AN
23 EXCUSE, YOUR HONOR. I, FRANKLY, DON'T HAVE AN EXCUSE,
24 OTHER THAN WHAT I'VE TOLD YOU.

25 I'M SICK. I HAVE TO ADMIT THAT I'VE BEEN THE KIND

1 OF PERSON IN MY LIFE, I HAVE ALL ALWAYS BEEN STRONG.

2 THE COURT: I'LL TELL YOU WHAT I WANT YOU TO
3 DO. I WANT YOU TO PROVIDE ME WITH YOUR DOCTOR'S REPORT
4 AND WHAT YOU'RE DOING TO TAKE CARE OF, YOU KNOW, WHAT
5 MEDICAL STEPS YOU'RE DOING TO ENSURE THAT WHATEVER YOU
6 PROBLEM IS, THESE KIND OF LAPSES DON'T TAKE PLACE
7 AGAIN. I'M NOT -- I'M GUESS I'M SAYING I'M WITHHOLDING
8 MY RULING UNTIL I SEE THE DOCTOR'S REPORT.

9 BUT, I DO EXPECT THIS CASE TO BE DISMISSED WITH
10 PREJUDICE ALONG THE TERMS, APPARENTLY, YOU HAVE AGREED
11 TO BECAUSE IT'S TOTALLY UNJUSTIFIED TO HOLD IT UP
12 BECAUSE OF THE OSC. PARTICULARLY IN LIGHT OF THE FACT
13 THAT MR. ADAMS FELT UNCOMFORTABLE TO GO FORWARD TRYING
14 TO REPRESENT HIS CLIENT, DIDN'T WANT TO CAUSE HIS
15 CLIENT ANY FURTHER PROBLEMS. SO I CAN UNDERSTAND THAT.
16 BUT I WAS NOT GOING TO ACCEPT THAT AS A WAY OF NOT
17 BRINGING YOU BEFORE THE COURT, MR. LANDERS, BECAUSE IT
18 WAS A NUMBER OF THINGS. PLUS, YOUR DECLARATION JUST
19 DIGS A BIGGER HOLE.

20 YOU'RE DEFINITELY NOT THINKING CLEARLY, BECAUSE
21 YOU WOULD HAVE KNOWN YOU CANNOT CONDITION THE DISMISSAL
22 OF THE CASE ON AN OSC FOR THE REASONS I PREVIOUSLY SET
23 FORTH. IN ADDITION, WHETHER THAT'S WHAT YOU MEANT OR
24 NOT, THAT'S WHAT YOU SAID.

25 AND IN ADDITION, THERE WAS THESE OTHER ISSUES THAT

1 WEREN'T ADDRESSED THAT, APPARENTLY, YOU DIDN'T CONSIDER
 2 AS BEING SERIOUS ENOUGH TO ADDRESS IT. THAT IS SENDING
 3 MATTERS, SENDING CORRESPONDENCE TO A DEFENDANT AND NOT
 4 TO THE COUNSEL AND, AGAIN, HAVING YOUR PARALEGAL, YOUR
 5 DAUGHTER, WHOEVER, SENDING A FAX AND BEING THE ONE TO
 6 INDICATE THAT EXTENSIONS OF TIMES ARE NOT GRANTED. NOT
 7 YOU, BUT THE PARALEGAL. IT DIDN'T SAY ATTORNEY LANDERS
 8 IS, I'M WRITING ON BEHALF OF HIM. IT WAS JUST FLAT OUT
 9 THAT LETTER.

10 SO YOU DIDN'T RESPOND TO THOSE IN YOUR
 11 DECLARATIONS. APPARENTLY, YOU DIDN'T REALIZE OR SEE
 12 THOSE AS DIFFICULT ISSUES, BUT THEY ARE.

13 IN ANY CASE, YOU NEED TO BE AWARE OF THOSE, AND
 14 I'LL AWAIT THE DOCTOR'S REPORT BEFORE I MAKE ANY
 15 RULINGS.

16 MR. LANDERS: MAY I JUST ADD A FEW OTHER
 17 THINGS, YOUR HONOR?

18 THE COURT: YES.

19 MR. LANDERS: AND THANK YOU FOR POINTING
 20 THAT OUT TO ME. MY DAUGHTER, THAT LETTER WAS WRITTEN
 21 AFTER SHE SPOKE TO ME, SO WHEN SHE, "SAYS I CANNOT,"
 22 THAT REALLY WAS ME, FOR CLARIFICATION PURPOSES. I
 23 UNDERSTAND THE WAY IT LOOKS. I WANT THE COURT TO
 24 UNDERSTAND THE BACKGROUND.

25 THE OTHER THING IS SIMPLY A MISTAKE THAT THE

1 MATTER WAS SENT TO THE DEFENDANT INSTEAD OF THE
2 COUNSEL. AND I THINK IT'S PROBABLY REFLECTION OF WHAT
3 I'VE BEEN GOING THROUGH. BUT IF THE COURT WOULD JUST
4 INDULGE ME A FEW MORE MINUTES, I'D LIKE THE COURT TO
5 KNOW ON THE RECORD WHAT HAS HAPPENED AND THE REASON
6 WHY.

7 I ULTIMATELY ACCEPT THE FACT THAT I DO NEED SOME
8 HELP. I PRACTICED IN THIS COMMUNITY FOR ALMOST THIRTY
9 YEARS, AND I'M, VERY, VERY, VERY CONCERNED ABOUT
10 CERTAIN SECTIONS OF THE COMMUNITY, PARTICULARLY THE
11 DISABLED COMMUNITY. I'VE BEEN, NATURALLY, ZEALOUS IN
12 REPRESENTING THEM, YOUR HONOR. I THINK THAT THEY ARE
13 WORTHY. I THINK THAT THAT LAW IS A GOOD LAW.

14 HOWEVER, THERE'S BEEN AN ONSLAUGHT OF PRESSURE,
15 INTIMIDATION, THREATS. I STILL HAVE COPIES OF VOICE
16 MAILS THAT ARE ON MY VOICE MAIL THAT ALLUDES TO MY
17 RACIAL BACKGROUND, TELLING ME WHAT A PIECE OF BLANK
18 BLANK I AM. MY DAUGHTER AND MY STAFF HAVE BEEN
19 CONSTANTLY UNDER ATTACK. SHE'S BEEN CALLED BLACK
20 BITCHES AND A NUMBER OF THINGS. THE MEDIA HAS HOUNDED
21 US. THEY'VE EVEN FOLLOWED US AROUND GOING TO COURT.
22 AND THERE'S A GENTLEMEN EVEN IN COURT TODAY RIGHT NOW
23 THAT'S BEEN A PART OF THIS THAT'S HERE IN THIS
24 AUDIENCE. AT LEAST I THINK -- IN FACT, I KNOW THAT'S
25 HIM.

1 AND SO WE'VE BEEN UNDER SIEGE, YOUR HONOR. I'M
2 NOT HERE ASKING FOR ANY SYMPATHY. I SIMPLY WANT THE
3 COURT TO KNOW WHAT HAS BEEN HAPPENING. THERE'S BEEN
4 THREATS AND INNUENDOS THAT I WON'T EVEN LIVE VERY LONG.
5 THIS HAS BEEN GOING ON FOR APPROXIMATELY FIVE MONTHS
6 NOW.

7 I WILL ALSO INDICATE TO THE COURT THAT MY FAMILY
8 HAS BEEN SUGGESTED THERE'S SOMETHING GOING TO HAPPEN TO
9 MY FAMILY. SO, YES, I AM DEPRESSED. AND, YES, I HAVE
10 NOT BEEN ACTING THE WAY, PERHAPS, I SHOULD HAVE BEEN.
11 BUT IT'S BECAUSE OF ALL OF THE HISTORY. AND I'M
12 GETTING HELP. I INTEND TO GET THROUGH THIS, BUT I WANT
13 THE COURT TO KNOW ALL OF THE CIRCUMSTANCES. AND, YOUR
14 HONOR, YOU WILL MAKE YOUR DECISION HOWEVER YOU FEEL
15 IT'S MOST APPROPRIATE, BUT I WANT YOU TO KNOW THE
16 BACKGROUND AS YOU DO THAT.

17 NOW, I'LL GET THE DOCUMENTATION FROM THE DOCTOR,
18 AND I'LL SUBMIT IT TO YOU DIRECTLY.

19 THE COURT: ALL RIGHT. ALL RIGHT. I DON'T
20 THINK I NEED TO GET ANY RESPONSE FROM MR. ADAMS
21 BECAUSE, REALLY, HE'S NOT INVOLVED, OR HIS CLIENT'S
22 REALLY NOT INVOLVED IN THIS MATTER, OTHER THAN THAT THE
23 MATTER WILL BE DISMISSED.

24 DO YOU KNOW WHEN THE DISMISSAL IS GOING TO BE
25 FILED?

1 MR. LANDERS: IT WILL BE FILED THIS WEEK.

2 THE COURT: OKAY. ALL RIGHT. THANK YOU.

3 MR. LANDERS: WHAT'S THAT TIME PERIOD THAT
4 YOU'RE REQUESTING ME TO?

5 THE COURT: WELL, YOU KNOW, MAYBE -- HOW
6 LONG DOES IT TAKE? A COUPLE WEEKS? WEEK?

7 MR. LANDERS: I JUST NEED TO GET TO MY
8 DOCTOR AND TELL HIM WHAT IS NEEDED.

9 THE COURT: ABOUT A WEEK?

10 MR. LANDERS: YOU WANT HIM TO SUBMIT IT
11 DIRECTLY TO ME?

12 THE COURT: YEAH. JUST SUBMIT IT DIRECTLY
13 HERE.

14 MR. ADAMS: YOUR HONOR, MY CLIENT HAS
15 INCURRED ABOUT \$2000 IN ADDITIONAL ATTORNEY'S FEES FROM
16 THE POINT IN TIME THAT HE THOUGHT THIS MATTER WAS GOING
17 TO BE DISMISSED, BECAUSE OF REFUSAL TO DISMISS THIS
18 INSTANCE ON GOING THROUGH WITH THE OSC.

19 THE COURT: ALL RIGHT. I WILL CONSIDER THAT
20 ALONG WITH -- WHEN I GET THE REPORT, I WILL CONSIDER
21 THAT. BUT WHAT I NEED TO DO IS, YOU NEED TO SEND ME
22 YOUR TIME SHEETS.

23 MR. ADAMS: YOUR HONOR, I HAVE THEM HERE
24 WITH ME, IF YOU'D LIKE TO REVIEW THEM IN CAMERA.

25 THE COURT: WHY DON'T YOU MAKE A COPY OF

1 THEM AND THEN SUBMIT THEM TO ME AND I'LL SUBMIT THEM TO
2 COUNSEL TOO. BUT I GUESS THE BEST THING, YOU HAVE THE
3 ORIGINAL WITH YOU, RIGHT?

4 MR. ADAMS: YES. IT'S DONE AS A PRINT-OUT
5 FROM TIME SLIPS.

6 THE COURT: ALL RIGHT. WELL, WHY DON'T YOU
7 PUT THEM ON A PLEADING FORM WITH THE CLERK'S OFFICE.

8 MR. ADAMS: OKAY.

9 THE COURT: AND REQUEST THAT, AND THAT WAY
10 MR. LANDERS IS SERVED AND REQUEST THE PAYMENTS BASED ON
11 WHAT YOU'VE REPRESENTED.

12 MR. ADAMS: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT. THANK YOU.

14 MR. LANDERS: THANK YOU, YOUR HONOR.

15 (ADJOURNED.)
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C E R T I F I C A T I O N

I HEREBY CERTIFY THAT I AM A DULY APPOINTED,
QUALIFIED AN ACTING OFFICIAL COURT REPORTER FOR THE
UNITED STATES DISTRICT COURT; THAT THE FOREGOING IS A
TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN
THE AFOREMENTIONED CAUSE ON JANUARY 31, 2005; THAT
SAID TRANSCRIPT IS A TRUE AND CORRECT TRANSCRIPTION OF
MY STENOGRAPHIC NOTES; AND THAT THE FORMAT USED HEREIN
COMPLIES WITH THE RULES AND REQUIREMENTS OF THE UNITED
STATES JUDICIAL CONFERENCE.

DATED: JANUARY 7, 2005, AT SAN DIEGO,
CALIFORNIA.

Lorlein Rayburn
LORLEIN RAYBURN RMR