THOMAS E. FRANKOVICH (State Bar #074414) JENNIFER L. STENEBERG (State Bar #202985) ARAH E. KRAEMER (State Bar #227286) THOMAS E. FRANKOVICH A PROFESSIONAL LAW CORPORATION 2806 Van Ness Avenue San Francisco, CA 94109 Telephone: 415/674-8600 415/674-9900 Facsimile: Attorneys for Plaintiffs JAREK MOLSKI and DISABILITY RIGHTS ENFORCEMENT, **EDUCATION SERVICES** 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF CALIFORNIA 10 JAREK MOLSKI, an individual; and)
DISABILITY RIGHTS
ENFORCEMENT, EDUCATION
SERVICES: HELPING YOU HELP CASE NO.CV 04-0450 ER (SHSx) 11 DECLARATION OF THOMAS E. 12 FRANKOVICH IN SUPPORT OF PLAINTIFFS' OPPOSITION TO OTHERS, a California public benefit 13 DEFENDANT'S MOTION FOR ISSUANCE OF A PREFILING corporation, 14 ORDER AND SANCTIONS Plaintiffs, 15 October 25, 2004 Date: Time: 10:00 a.m. 16 Court: MANDARIN TOUCH Location: 312 N. Spring Street Los Angeles, California Telephone: (213)894-3453 RESTAURANT; EVERGREEN DYNASTY CORP., a California 17 corporation; and BRIAN 18 MCINERNEY and KATHY S. MCINERNEY, as joint tenants, 19 OCT | 4 2004 Defendants. 20 21 22 I, THOMAS E. FRANKOVICH, declare that I am an attorney duly 23 licensed to practice in all the courts in the state of California and if called as a 24 witness and duly sworn, I would and could competently testify to the following 25 based upon my own personal knowledge: 26 That I am the attorney of record for Jarek Molski and Disability 1. 27 Rights Enforcement, Education Services in the above-referenced matter, and that 28

DECLARATION OF THOMAS E. FRANKOVICH

- 2. That on February 3, 2003, plaintiff Jarek Molski contacted me concerning his visit to the Mandarin Touch Restaurant in Solvang, California. Mr. Molski forwarded to me information concerning the nature of the disability access problems he encountered at the restaurant, as well as copies of his receipt and several photographs taken by him. A copy of the provided receipt and photographs are attached hereto as Exhibit A. After reviewing this material and speaking with Mr. Molski via telephone about the circumstances of his visit, on January 14, 2004, I personally traveled to Solvang, California and visited the Mandarin Touch Restaurant. During my visit, I confirmed the existence of numerous architectural conditions and deemed these conditions to constitute architectural barriers which could be removed consistent with the readily achievable barrier removal standards of the Americans with Disabilities Act ("ADA"). Only after this personal inspection, did I draft and cause to be filed the complaint in this action.
- 3. That in keeping with my obligations pursuant to Rule 11 of the Federal Rules of Civil Procedure, I personally conduct a pre-litigation inspection of each place of public accommodation that my firm considers for possible litigation. I also frequently retain and confer with an accessibility consultant who performs a *sub rosa* inspection of the premises as part of my Rule 11 investigation.
- 4. That in each case that I prosecute, I inform my client of my firm's litigation philosophy for prosecution of disability access claims under the ADA and State law. This philosophy is set out in a letter and is signed-off on by all of my clients. In essence, this letter states that the purpose of bringing a legal action is to bring about the removal of architectural barriers and ensure full and complete disability access to the subject public accommodation in compliance

- 5. That I have negotiated private settlements in numerous actions filed on behalf of plaintiff Jarek Molski, and that without exception, Mr. Molski has recovered injunctive relief as a significant component of settlement. As a condition of these private settlements, plaintiffs agree to dismiss their claims against the defendant, either through a unilateral voluntary dismissal or through a stipulated dismissal depending on the procedural status of the litigation, in exchange for the negotiated relief. Of the thirty-one (31) cases that defendant characterizes as having an "adverse" outcome, twenty-three (23) were so dismissed.
- having an "adverse" outcome was *Molski v. Longhouse Restaurant*, USDC C.D. Ca. Case. No. CV 04-3121 MMM. This case was voluntarily dismissed by plaintiffs after a filing error was discovered by plaintiff's counsel. Apparently due to the complaint being inadvertently mailed to the wrong Court, the complaint was improper filed in the Central District rather than the Northern District of California. Immediately upon discovery of this clerical error, a Notice of Voluntary Dismissal without prejudice was filed in the Central District and the case was re-filed in the Northern District of California where it continues to be litigated as USDC N.D. Ca. Case No. C 04-1942 RS.
- 7. That in another of the thirty-one (31) cases characterized by defendant as "adverse," the matter of *Molski v. Hunt Cellars*, USDC C.D. Ca. Case No. CV 03-6262 RGK (JWJx), defendant David Hunt did not retain counsel and was acting in *pro per*. In discussing with him his obligation to respond to the Complaint, my office offered him an extension of time and forwarded for his review and signature a stipulation formalizing this extension. Unfortunately, while continuing to discuss the merits of the case and the parties'

- 8. That in another of the thirty-one (31) cases characterized by defendant as "adverse," *Molski v. Mosby Winery*, USDC C.D. Ca. Case No. CV 04-1076 NM(RNBx), the Court entered an Order dismissing plaintiffs' claims after defendants filed their Answer to the Complaint under the wrong case number. After this error was corrected by defendants and explained to the Court, the Court's Order dismissing plaintiffs' action was rescinded and the matter reinstated.
- 9. That in yet another of the thirty-one (31) cases characterized by defendant as "adverse," *Molski v. Valencia Winery*, USDC C.D. Ca. Case No. 03-5455 R, the parties entered into a private settlement agreement favorably resolving plaintiffs' claims. Unfortunately, due to delay in securing signatures to the final agreement and payment of the settlement monies, the stipulation of dismissal was not timely filed in advance of the calendared pretrial conference. When counsel for both sides failed to appear at the conference, the matter was dismissed by the Court.
- 10. In the remaining four cases which are not accounted for above, two of which were dismissed for lack of prosecution and two of which were dismissed for counsel's failure to comply with a Court order, plaintiff Jarek Molski was represented by Ms. Charla Duke rather than present counsel. I am unaware of

the circumstances of these dismissals but understand from Mr. Molski that the matters did result in favorable settlements.

11. That I am unaware of any case filed on behalf of plaintiff Jarek Molski being dismissed by the Court on grounds related to the actual merits of his claims, i.e. a grant of summary judgment or summary adjudication in favor of defendant. Nor am I aware of either Mr. Molski or his counsel being sanctioned by the Court for bringing a less than meritorious claim.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 11<sup>th</sup> day of October, 2004, at San Francisco, California.

Thomas E. Frankovich
Attorneys for Plaintiffs JAREK MOLSKI and
DISABILITY RIGHTS, ENFORCEMENT,
EDUCATION, SERVICES

## CERTIFICATE OR PROOF OF SERVICE 1 State of California 2 ) ss County of San Francisco 3 I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United 4 States and a resident of the County of San Francisco, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 2806 Van Ness Avenue, San Francisco, CA 94109-5460; that on the below date, following normal business practice, I served the foregoing document, described as: 6 DECLARATION OF THOMAS E. FRANKOVICH IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR 7 ISSUANCE OF A PREFILING ORDER AND SANCTIONS 8 on the interested parties in the action, conveyed as follows: 9 by depositing true copies thereof, enclosed in a sealed envelope, with postage thereon 10 fully prepaid as stated on the attached service list: in first class U.S. Mail 11 in \_\_\_\_\_ priority or X standard overnight mail via Federal Express. Ø 12 I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service or Federal Express. In 13 the ordinary course of business, correspondence, including said envelope, will be deposited with the United States Postal Service or Federal Express in San Francisco. 14 by transmitting via facsimile to the fax number(s) set forth below on the attached service 15 list. 16 Addressed to: 17 Robert H. Appert Attorney at Law 18 1208 S. San Gabriel Blvd. San Gabriel, CA 91776 626/285-9870 Facsimile: 20 Alan H. Boon Berger Kahn 21

Alan H. Boon
Berger Kahn
2 Park Plaza, Suite 650
P.O. Box 19694
Irvine, CA 92623-9694
Facsimile: 949/474-7265

I declare under penalty of perjury under the laws of the State of California that I am employed in the office of a member of this court at whose direction the service was made, and that the foregoing is true and correct. Executed this October 11, 2004 at San Francisco, California.

Michelle Dantzman //
(Original Signed)

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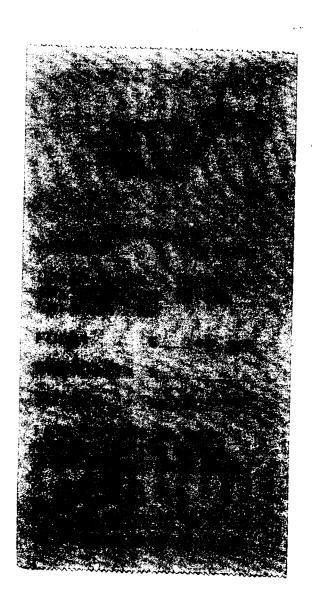
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