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**F I L E D**  
 Clerk of the Superior Court  
**MAR - 7 2007**  
 By: M. WONG-JIMENEZ, Deputy

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

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11 PACIFIC LAW CENTER, a Professional Law Corporation,

12 Plaintiff,

13 v.

14 SHAHROKH SAADATNEJAD, individually  
 15 and doing business as  
 PACIFLAWCENTERS.COM and  
 16 USHOSTAGE.COM; and DOES 1 through  
 50, inclusive,

17 Defendants.

CASE NO. GIC 878352

**PACIFIC LAW CENTER'S SUPPLEMENTAL  
 MEMORANDUM IN SUPPORT OF ITS  
 MOTION FOR PRELIMINARY  
 INJUNCTION**

Date: March 9, 2007  
 Time: 3:00 p.m.  
 Dept. 75

Complaint Filed: January 12, 2007

I/C Judge: Hon. Richard E.L. Strauss

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I  
INTRODUCTION

At the hearing on Pacific Law Center's application for a temporary restraining order, the Court asked Pacific Law Center's counsel to address specific First Amendment issues.<sup>1</sup> Pacific Law Center is pleased to address them here.<sup>2</sup>

II  
THE FIRST AMENDMENT ISSUES

First Amendment rights are the hallmark of our democracy.<sup>3</sup> The limited relief Pacific Law Center seeks, however, does not impair those rights.

California—The *Balboa Island Village* Case.

The *Balboa Island Village* case is fully briefed and has been argued before the California Supreme Court.<sup>4</sup> That case addresses—in a defamation action—a **permanent** injunction affecting the content of speech.

In Court of Appeal in *Balboa Island Village Inn*<sup>5</sup> held that an injunction permanently barring Lemen from making certain statements adjudicated to be defamatory under the common law causes of action for libel and slander constituted a content-based prior restraint on speech in violation of both the First Amendment and the California Constitution.<sup>6</sup> That court, however, went on to say:

A content-based injunction restraining speech is constitutionally permissible if speech has been adjudicated to violate a **specific statutory scheme** expressing a compelling state interest justifying a prior restraint on speech, or is necessary

<sup>1</sup> The Court brought to Pacific Law Center's attention Professor Chemerinsky's brief in the *Balboa Island Village Inn* case. Counsel has read both briefs in that case as well as Professor Chemerinsky's brief in *Tory v. Cochran*, U.S. Supreme Court No. 03-1488.

<sup>2</sup> The Court also inquired whether its issuance of a temporary restraining order mandated a bond. It did not. A bond is within the Court's discretion. Since the Court said that it was not ordering a bond unless mandated, Pacific Law Center understood the Court to exercise its discretion in favor of not requiring a bond for the temporary restraining order.

<sup>3</sup> *New York Times v. Sullivan* (1964) 376 U.S. 254; *New York Times v. United States* (1971) 413 U.S. 713.

<sup>4</sup> *Balboa Island Village Inn, Inc. v. Lemen*, case no. S127904. Pacific Law Center understands that the parties argued that case on January 15, 2007.

<sup>5</sup> *Balboa Island Village Inn, Inc. v. Lemen* (2004) 121 Cal.App.4<sup>th</sup> 583, review granted. *Balboa Island Village Inn, Inc. v. Lemen* (Cal. 2004) 2004 Cal. LEXIS 11901. Pacific Law Center dismisses the appellate court decision because it helps frame the issues before the California Supreme Court.

<sup>6</sup> Article I, § 2, subdivision (a).

1 to a protect a right equal in stature to the constitutional right of free speech,  
2 and is no broader than necessary.<sup>7</sup>

3 The *Balboa Island Village Inn* court acknowledged that prior restraints are not  
4 unconstitutional *per se* under either federal<sup>8</sup> or state<sup>9</sup> law. The court found, however, that:  
5 (1) the injunction at issue was content-based—it forbade Lemen from ever making statements  
6 to non-parties based on the content of her statements; and, more importantly, (2) neither  
7 liable nor slander are part of a statutory scheme embodying any compelling state interest  
8 that might justify a content-based prior restraint.

9 At the Supreme Court oral argument—at least according to a reporter who was  
10 present—a majority of the Court suggested that narrowly drawn injunctions aimed at  
11 blocking defamatory speech would not violate either the United States or California  
12 Constitutions' free speech guarantees.<sup>10</sup>

13 As Professor Chemerinsky framed the issues presented in *Balboa Island Village Inn*  
14 they are: (1) whether a **permanent** injunction as a remedy in a defamation action violates the  
15 First Amendment; and (2) whether a **permanent** injunction violates the First Amendment  
16 when it is not **narrowly** tailored in its prohibition of all speech, in any place, at any time,  
17 about a matter of public concern, when imposed without an actual malice finding.

18 In his brief before the Supreme Court, Professor Chemerinsky acknowledged the  
19 Court's decision in *Aguilar*,<sup>11</sup> and argued that it was not contrary to his position in *Balboa*  
20 *Island Village Inn* because the injunction in *Aguilar*—which he said was a prior restraint—  
21  
22

23 <sup>7</sup> *Balboa Island Village Inn, supra*, 121 Cal.App.4<sup>th</sup> at 583. (Emphasis added.)

24 <sup>8</sup> *Southeastern Promotions, Ltd. v. Conrad* (1975) 420 U.S. 546, 558. See *Madsen v. Women's Health Care, Inc.* (1994) 512 U.S. 753, 763, fn. 2 (injunctions based on prior unlawful conduct); *Freedman v. Maryland* (1965) 380 U.S. 51, 58 (unprotected films may be enjoined). *Pittsburgh Press Co. v. Pittsburgh Commission On Human Relations* (1973) 413 U.S. 376, 390 (violation of anti-discrimination legislature).

25 <sup>9</sup> *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4<sup>th</sup> 121 (violation of anti-discrimination statute).

26 <sup>10</sup> See Exhibit 1. Chief Justice George and Justices Baxter, Corrigan and Werdegar apparently challenged the  
27 defense assertion that damages—not an injunction—was the **only** permissible relief for a defamation victim.  
It appeared that only Justice Kinnard and, possibly, Justice Moreno felt that the Court of Appeal decision  
was correct.

28 <sup>11</sup> *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4<sup>th</sup> 121, cert. denied 529 U.S. 1138 (2000).

1 was issued under the Fair Employment and Housing Act (FEHA).<sup>12</sup>

2 **California—Aguilar.**

3 *Balboa Island Village Inn* is not the first time that the California Supreme Court has  
4 had to address the prior restraint question under both California and federal law. In *Aguilar*,  
5 the Court upheld an injunction that barred racial epitaphs precisely because the California  
6 Legislature had enacted a statutory scheme—the FEHA—that protected employees from such  
7 workplace conduct. The *Aguilar* court relied on *Pittsburgh Press* and *Madsen*, among other  
8 decisions, in which courts have upheld injunctions prohibiting expression that violates a  
9 specific statutory prohibition.<sup>13</sup>

10 The *Aguilar* Court also contrasted *Kingsley Books*<sup>14</sup>—in which the Court upheld a  
11 provision authorizing a “limited injunctive remedy prohibiting the sale and distribution of  
12 obscene material”—with *Near*,<sup>15</sup> and pointed out that the Court has drawn a distinction  
13 between restraint that prohibited **future** issues of a publication because **past** issues had been  
14 found offensive, (*Near*) and *Kingsley Books*, in which, no attempt was made to bar **future**  
15 new and contested publications.

16 **Federal Law—Limited Injunctions Are Permissible.**

17 In *Pittsburgh Press*,<sup>16</sup> the Supreme Court upheld a Pennsylvania statute that barred,  
18 *inter alia*, newspapers from displaying employment advertisements that discriminated on the  
19 basis of gender. The Court said of itself that “it has never held that all injunctions [affecting  
20 expression] are impermissible.” An impermissible prior restraint exists only where the  
21 government is given discretion to regulate or prohibit protected speech; the prior restraint  
22 doctrine has no application to unprotected expression.<sup>17</sup>

23

24 <sup>12</sup> Gov. Code §1290, et seq.

25 <sup>13</sup> *Aguilar*, *supra*, 12 Cal.App.4<sup>th</sup> at 140.

26 <sup>14</sup> *Kingsley Books, Inc. v. Brown* (1957) 354 U.S. 436, 437.

27 <sup>15</sup> *Near v. Minnesota* (1931) 283 U.S. 697.

28 <sup>16</sup> *Pittsburgh Press*, *supra*, 413 U.S. at 390.

<sup>17</sup> *Id.* See, for example, *Times Film Corporation v. Chicago* (1961) 365 U.S. 43; *Chaplinski v. State of New Hampshire* (1942) 315 U.S. 568; *Bose Corporation v. Consumers Union of the United States, Inc.* (1984) 466 U.S. 485. Even in *Near*, *supra*, 283 U.S. at 708—in which the court struck down an injunction as a

1 In *Bose*,<sup>18</sup> the Court found that there were categories of communications to which the  
2 First Amendment did not extend because they “are no essential part of any exposition of  
3 ideas, and are of such slight social value as a step to truth that any benefit that may be  
4 derived from them is clearly outweighed by the social interest in order and morality.”<sup>19</sup>  
5 Among such, the Court identified: libelous speech (*Beauharnais v. Illinois* (1952) 343 U.S.  
6 250); fighting words (*Chaplinsky, supra*), incitement to riot (*Brandenburg v. Ohio* (1969) 395  
7 U.S. 444); obscenity (*Roth v. United States* (1957) 354 U.S. 476; and, child pornography  
8 (*New York v. Ferber* (1982) 458 U.S. 747. Nor is advance review of speech—arguably a  
9 form of “prior restraint”—impermissible.<sup>20</sup>

10 As recently as 2005, the Court did not outlaw injunctive relief even in a defamation  
11 case. Rather, in striking an arguably moot and overbroad restriction, the Court affirmed that  
12 any such injunction must be narrowly tailored.<sup>21</sup>

13 **Not Only Do the United States and California Constitutions Not Bar the Relief Pacific Law**  
14 **Center Seeks, but Decisions Interpreting Them Support a Preliminary Injunction in this**  
14 **Case.**

15 As the respective Supreme Courts affirmed in *Pittsburgh Press* and *Aguilar*, a  
16 legitimate statutory scheme that embodies a governmental interest permits injunctive relief.

17 For example:

18 • **Copyright Law, 17 U.S.C. §§ 501, et seq.**

19 Section 502(a) provides:

20 Any court having jurisdiction of a civil action arising under this title may . . .  
21 grant temporary and final injunctions on such terms as it may deem  
21 reasonable to prevent or restrain infringement of a copyright.<sup>22</sup>

22  
23 \_\_\_\_\_  
23 prior restraint—it said: “liberty of speech and of the press is not an absolute right, and the state may punish  
24 its abuse.”

24 <sup>18</sup> *Bose Corp v. Consumer Union of the United States, Inc.* (1984) 466 U.S. 485.

25 <sup>19</sup> Citing to *Chaplinsky, supra*.

25 <sup>20</sup> *Times Film Corp. v. Chicago* (1961) 365 U.S. 43, 44; *Freedman v. Maryland* (1965) 380 U.S. 51, 58; *Paris*  
26 *Adult Theater I v. Salton* (1973) 413 U.S. 49, 55.

26 <sup>21</sup> *Tory v. Cochran* (2005) 544 U.S. \_\_\_, 125 S.Ct. at 2511. *Tory v. Cochran* was a picketing speech case.

27 <sup>22</sup> *Cadence Design Sys. v. Avant! Corp* (9<sup>th</sup> Cir. 1998) 125 F.3d 824 (granting preliminary injunction for  
28 copyright infringement); see also *Spence v. Washington* (1974) 418 U.S. 405, 417 (1974) (Rehnquist, J.,  
dissenting) (giving copyright law as an example of a speech restriction).

1 • **Trade Secret Law, Cal. Civ. Code §§ 3426, et seq.**

2 Section 3426.2 states:

3 Actual or threatened misappropriation may be enjoined. Upon application to  
4 the court, an injunction shall be terminated when the trade secret has ceased  
5 to exist, but the injunction may be continued for an additional period of time  
6 in order to eliminate commercial advantage that otherwise would be derived  
7 from the misappropriation.<sup>23</sup>

6 • **Securities Law, 15 U.S.C. §§ 77a, et seq.**

7 Section 77t(b) provides:

8 Whenever it shall appear to the Commission that any person is engaged or  
9 about to engage in any acts or practices which constitute or will constitute a  
10 violation of the provisions of this title [15 USCS §§ 77a et seq.], or of any rule  
11 or regulation prescribed under authority thereof, the Commission may, in its  
12 discretion, bring an action in any district court of the United States, or United  
13 States court of any Territory, to enjoin such acts or practices, and upon a  
14 proper showing, a permanent or temporary injunction or restraining order  
15 shall be granted without bond.<sup>24</sup>

13 • **Trademark Law, 15 U.S.C. §§ 1111, et seq.**

14 Section 1116(a) empowers courts to issue injunctions to restrain speech:

15 The several courts vested with jurisdiction of civil actions arising under this  
16 Act shall have power to grant injunctions, according to the principles of equity  
17 and upon such terms as the court may deem reasonable, to prevent the  
18 violation of any right of the registrant of a mark registered in the Patent and  
19 Trademark Office or to prevent a violation under subsection (a), (c), or (d) of  
20 section 43 [15 USCS § 1125].<sup>25</sup>

19 • **Federal False Advertising (Federal Trade Commission Act), 15 U.S.C. §§ 41,  
20 et seq.**

20 Section 53(b) states that a court may issue an injunction in these circumstances:

21 Whenever the Commission has reason to believe (1) that any person,  
22 partnership, or corporation is violating, or is about to violate, any provision of  
23 law enforced by the Federal Trade Commission, and (2) that the enjoining  
24 thereof pending the issuance of a complaint by the Commission . . . would be

24 <sup>23</sup> *DVD Copy Control Assn., Inc. v. Bunner* (2003) 31 Cal.4th 864 (reversing appellate court and finding that the injunction was not a prior restraint because it was content neutral and was issued following unlawful conduct).

25 <sup>24</sup> *United States v. Lilly* (1994) 37 F.3d 1222 (securities law conviction was no violation of First Amendment right to free exercise); *SEC v. Alliance Leasing Corp* (9<sup>th</sup> Cir. 2002), 28 Fed. Appx. 648.

26 <sup>25</sup> *Maier Brewing Co. v. Fleischmann Distilling Corp.* (9<sup>th</sup> Cir. 1968) 390 F.2d 117, 123 (stating "[w]here, however, the infringement is deliberate and willful, and the products are non-competitive, both the trademark owner and the buying public are slighted, if the court provides no greater remedy than an injunction").

1 in the interest of the public the Commission . . . may bring suit in a district  
2 court of the United States to enjoin any such act or practice.<sup>26</sup>

3 • **Food, Drug & Cosmetics Act, 21 U.S.C. §§ 301, et seq.**

4 Section 332 provides that “[t]he district courts . . . shall have jurisdiction, for cause  
5 shown[,] to restrain violations of section 301 [21 USCS § 331], except paragraphs (h), (i), and  
6 (j).”<sup>27</sup>

7 **Application to Pacific Law Center.**

8 That is precisely what we have here. Trademarks are protected by a specific statutory  
9 scheme; the power to enact that scheme derives from the United States Constitution, Article  
10 I, section 8, clause 3.<sup>28</sup> Congress has determined that there is a compelling state interest  
11 both in establishing a system of registered marks and also permitting injunctive relief when  
12 such marks are infringed.<sup>29</sup>

13 California’s Trade Secrets Act—Civil Code §§ 3426, et seq.—is another legislative  
14 statutory scheme that includes injunctive relief against either actual or threatened  
15 misappropriation. In *DVD Copy Control*,<sup>30</sup> the court concluded that an injunction barring a  
16 website operator from posting trade secrets did not violate either the First Amendment or the  
17 California Constitution. The court found that First Amendment scrutiny was required  
18 because the dissemination of computer codes was protected activity. The court also found,  
19 however, that an injunction barring the dissemination of trade secrets was not “content  
20 based.” As the *DVD* court held, just because the trade secret might have some link to a  
21 public issue, does not create a legitimate public interest in the secret’s disclosure.

22 So also an injunction that bars the misappropriation of a trademark is also not

23  
24 <sup>26</sup> *FTC v. Garvey* (9<sup>th</sup> Cir. 2004) 383 F.3d 891, 900 (recognizing ability to obtain injunctive relief for FTC  
violation).

25 <sup>27</sup> *U.S. v. Odessa Union Warehouse Co-op* (9<sup>th</sup> Cir. 1987) 833 F.2d 172 (reversing denial of motion for  
injunction).

26 <sup>28</sup> *Dawn Donut Co. v. Heart’s Food Stores, Inc.* (1959) 267 F.2d 358 (2d Cir.).

27 <sup>29</sup> *Au’Tomotive Gold, Inc. v. Volkswagen America, Inc.* (2006) 457 F.3d 1062 (9<sup>th</sup> Cir.); *E&J Gallo Winery v.*  
*Gallo Cattle Company, et al.* (1992) 955 F.2d 1327 (9<sup>th</sup> Cir.); *First Nationwide Bank v. Nationwide Savings*  
*& Loan Association* (1988) 682 F.Supp. 965 (E.D. Ark.).

28 <sup>30</sup> *DVD Copy Control Association, supra*, 31 Cal.4<sup>th</sup> 864.

1 “content based,” even though the injunction necessarily identifies the prohibited speech.  
2 While Saadatnejad may have things to say about Pacific Law Center that he contends are of  
3 public interest, that does not give him the right to violate its trademark or trade name in  
4 saying them.

5 The First Amendment does not prohibit courts from incidentally enjoining speech in  
6 order to protect other legitimate rights—especially where the legislature has protected those  
7 rights with a specific statutory scheme.

### 8 **Time, Place and Manner Restrictions Are Legitimate.**

9 Courts have upheld time, place and manner restrictions on speech. The government  
10 may impose reasonable time, place and manner restrictions on speech in public fora,  
11 provided that the restrictions are (1) content neutral, (2) narrowly tailored to serve a  
12 governmental interest, and (3) leave open alternative channels for communication.<sup>31</sup>

13 “The First Amendment does not guaranty the right to communicate one’s views at all  
14 times and places or in **any manner** that may be desired.”<sup>32</sup> Accordingly, while Mr.  
15 Saadatnejad may have First Amendment protection for **what** he wants to say, he may not say  
16 it in a **manner** that infringes a protected right: Pacific Law Center’s statutory right not to  
17 have him infringe or abuse its mark or trade name.

18 Here, Pacific Law Center seeks is “manner” restriction, nothing more. Saadatnejad  
19 can say whatever he thinks important, but he cannot say it by using Pacific Law Center’s  
20 trademark or its trade name.

### 21 **The Relief Pacific Law Center Seeks.**

22 Pacific Law Center is not attempting to bar what Saadatnejad can say about it—or  
23 anyone else for that matter. The only relief Pacific Law Center seeks is that Saadatnejad may  
24 not misappropriate its trademark or trade name to his own ends.

25 A narrowly tailored injunction—what Pacific Law Center seeks here—would only bar

26 <sup>31</sup> *Citizens for Peace in Space v. City of Colorado Springs* (2007) 2007 U.S.App. LEXIS 4441, \*10; *Ward v.*  
27 *Rock Against Racism* (1989) 491 U.S. 781, 791.



1 Saadatnejad from using Pacific Law Center's trademark or trade name; it does not bar  
2 anything he has to say **about** Pacific Law Center or its lawyers.

3 **III**  
4 **CONCLUSION**

5 Pacific Law Center understands and respects this Court's concern about Saadatnejad's  
6 First Amendment rights. Both California and federal decisions at the highest level, however,  
7 support the narrowly tailored relief Pacific Law Center seeks. It has no other adequate  
8 remedy except a preliminary injunction until this case can advance to trial.

9  
10 DATED: March 7, 2007

Respectfully submitted.

11 SOLOMON WARD SEIDENWURM & SMITH, LLP

12  
13 By: 

14 EDWARD J. MCINTYRE  
15 CHRISTINA M. MILLIGAN  
16 Attorneys for Pacific Law Center  
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27 <sup>32</sup> *Heffron v. International Society for Krishna Consciousness, Inc.* (1981) 452 U.S. 640, 647 (emphasis  
28 added); *Menotti v. City of Seattle* (2005) 409 F.3d 1113, 1138 (9<sup>th</sup> Cir.).



Home

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Español



## PROTECTING & DEFENDING THE PUBLIC'S RIGHT TO KNOW

### News & Opinion

#### Prior Restraint on Speech May Get OK

### Legal Hotline

The Recorder  
By Mike McKee  
January 30, 2007

### Membership

### Asked & Answered

SACRAMENTO — Individuals who unjustly defame others might soon find themselves muzzled by the courts.

### Access To Meetings

A majority of the state Supreme Court indicated during oral arguments Monday that injunctions aimed at blocking speech found defamatory by a judge wouldn't violate the United States or California constitutions' free speech guarantees — if narrowly drawn.

### Access To Records

If the court rules that way, it would give trial court judges for the first time the authority to issue permanent injunctions against defamatory speech, especially when damages might not be a sufficient remedy.

### News Gathering

Chief Justice Ronald George — joined by Justices Marvin Baxter, Carol Corrigan and Kathryn Mickle Werdegar — led the charge by challenging defense lawyers' assertions that damages are the only legal remedy available for victims of unwarranted defamation.

### Prop 59

### CFAC Podcasts

George and Corrigan, in particular, appeared bothered by the assertion that defamed people would have to keep going back to court seeking damages, rather than having a defamer hushed up permanently by the courts.

### Model Letters

### Books

"Does this have to go on forever?" George asked defense lawyer Erwin Chemerinsky, a constitutional law professor at Duke University School of Law.

### AG Opinions

Added Corrigan: "We keep doing this ad infinitum?"

### CFAC In The News

If George and Corrigan prevail, it would be a huge victory for the Balboa Island Village Inn, a Newport Beach restaurant and bar targeted by a neighbor, Anne Lemen, who has protested noise and other disturbances for years. She allegedly harasses employees and customers and makes false allegations about the business.

### CFAC Assembly

### Sunshine Ordinances

According to court records, though, Lemen went too far by making nine public allegations that the restaurant's owners, among other things, sold alcohol to minors, distributed illegal drugs, participated in prostitution and made child pornography. Orange County Superior Court Judge Gerald Johnston ruled that Lemen's comments were defamatory and issued a permanent injunction prohibiting her from repeating the statements.

### Newsletter ("Flash")

### About Us

Santa Ana's Fourth District Court of Appeal reversed in part in 2004, finding that while Lemen's speech was defamatory, a permanent injunction was overly broad and constituted a "content-based prior restraint on speech." The U.S. Supreme Court has generally frowned on any prior restraints.

### Contact Us

'If you allow an injunction in this case, then in every defamation case the remedy would be an injunction.'  
— Erwin Chemerinsky, representing defendant Anne Lemen

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On Monday, Joyce Kennard and possibly Carlos Moreno appeared to be the only Supreme Court justices who felt the Fourth District was correct.

Kennard told J. Scott Russo — a partner in Irvine's Dubia, Erickson, Tenerelli & Russo who represented the Balboa Island Village Inn — that "at first glance" it appeared the court of appeal reached the right decision. Noting that neither the U.S. nor California Supreme Courts has allowed permanent injunctions against defamatory speech, she said the court must move cautiously in regard to the country's "most cherished constitutional provision — freedom of speech."

Several justices asked why Balboa Island Village Inn sought only injunctive relief, rather than damages. Russo explained that it would have been difficult to prove that Lemen's actions alone posed financial problems for the restaurant because the entire city — and Balboa Island in particular — suffered an economic downturn at about the same time.

George rushed to Russo's defense by pointing out that seeking damages isn't always easy anyway, particularly if someone doesn't have the money to pay.

Chemerinsky warned that the permanent injunction approved by the trial court in this case was so broad that it would have prevented Lemen from even approaching employees of the restaurant if she ran into them while on a trip abroad. He also warned the justices about opening a Pandora's box.

"If you allow an injunction in this case, then in every defamation case the remedy would be an injunction," he said. "It has always been the law in this country that damages are the remedy in defamation cases."

Justice Baxter, however, asked Chemerinsky whether damages would still be the sole remedy if defamatory comments forced someone out of business. When the professor said yes, Baxter wondered how that could be if running a restaurant were an individual's lifelong dream.

"Is that a right that's of less value than the right to free speech?" he asked.

Justice Werdegar seemed to chart a middle road, asking Chemerinsky whether an injunction could be fashioned in a way that was narrow. As an example, she asked whether the injunction against Lemen would be constitutional if it said she wasn't able to repeat nine specific statements judged defamatory and for which getting damages would be difficult.

Chemerinsky said that would be possible, but still wouldn't necessarily be constitutional.

"So," George asked skeptically, "there's no way to write an injunction that will solve all the constitutional problems?"

# EXHIBIT

# 1

At one point during the arguments, Kennard pointed out that Lemen was able to secure 400 signatures from local residents complaining about the Balboa Island Village Inn. Russo responded by saying that residents signed the petition based on Lemen's false allegations, making that support irrelevant.

"It did not mean she was right," he said.

A ruling in Balboa Island Village Inn Inc. v. Lemen, S127904, is due within 90 days.



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 SAN DIEGO CA 92101

ACCT#: 02221

ATTORNEY/BAR #: 80102 PHONE: 619-231-0303  
 ATTENTION: DELL FAX: 619-231-0303  
 ATTORNEY'S FILE NO. 57132002

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*P 57122.002*

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**CASE NO.** GIC 898352

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3:17:08 AM PM EC FD/EX

**STATUS INFORMATION**

I HAVE STATUSED CLIENT \_\_\_\_\_  
 SPOKE TO: \_\_\_\_\_  
 DATE: \_\_\_\_\_ / TIME \_\_\_\_\_

CC'S RET'D ON: \_\_\_\_\_  
 P.O.S. RET'D ON: \_\_\_\_\_  
 REQUIRED DROP: \_\_\_\_\_

SERVICE	AMOUNT	SERVICE	AMOUNT	SERVICE	AMOUNT
1 DOCUMENT FEE		8 TELEPHONE		16 BAD ADDRESS	
2 COURT SERVICES (FILING)		9 MAILING		17 BILLAGE ATTEMPTS	
3 DELIVERY		10 STAKE-OUT		18 FIELD LOCATE	
4 COURT SERVICES (RESEARCH)		11 WAITING TIME		19 DOCUMENT PREP	
5 SKIP TRACING		12 OVERNIGHT MAILING		20 UNPAID	
6 SPECIAL RUSH		13 SPECIAL HANDLING (PAX)		21 CK#	
7 FEES CHARGED		14 SPECIAL HANDLING (MILITARY)		22 OTHER	
8 CHECK CHARGE		15 SPECIAL HANDLING (WAGON)		23 OTHER	

1 EDWARD J. MCINTYRE [SBN 80402]  
 emcintyre@swsslaw.com  
 2 CHRISTINA M. MILLIGAN [SBN 231655]  
 cmilligan@swsslaw.com  
 3 SOLOMON WARD SEIDENWURM & SMITH, LLP  
 401 B Street, Suite 1200  
 4 San Diego, California 92101  
 Telephone: (619) 231-0303  
 5 Facsimile: (619) 231-4755  
 6 Attorneys for Pacific Law Center

7  
 8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**  
 9

10  
 11 PACIFIC LAW CENTER, a Professional Law  
 Corporation,  
 12  
 Plaintiff,  
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 v.  
 14  
 15 SHAHROKH SAADATNEJAD, individually  
 and doing business as  
 PACIFICLAWCENTERS.COM and  
 16 USHOSTAGE.COM; and DOES 1 through  
 50, inclusive,  
 17  
 Defendants.  
 18

CASE NO. GIC 878352  
**DECLARATION OF SERVICE**  
 Dept. 75  
 Complaint Filed: January 12, 2007  
 I/C Judge: Hon. Richard E.L. Strauss

19 I, Deborah V.T. Pierson, declare:  
 20 I am employed in the County of San Diego, State of California. I am over the age of  
 21 18 years and not a party to this action. My business address is Solomon Ward Seidenwurm  
 22 & Smith, LLP, 401 B Street, Suite 1200, San Diego, California 92101.

23 On March 7, 2007, I served a copy, including all exhibits, if any, of the following  
 24 document(s):  
 25 1. **PACIFIC LAW CENTER'S SUPPLEMENTAL MEMORANDUM IN SUPPORT**  
 26 **OF ITS MOTION FOR PRELIMINARY INJUNCTION;**  
 27 2. **DECLARATION OF EDWARD J. MCINTYRE IN SUPPORT OF PACIFIC LAW**  
 28 **CENTER'S MOTION FOR PRELIMINARY INJUNCTION; and**

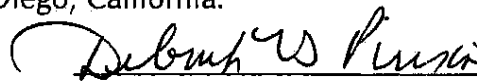
1           3.       **PACIFIC LAW CENTER'S NOTICE OF LODGMENT IN SUPPORT OF ITS**  
2 **MOTION FOR PRELIMINARY INJUNCTION**

3 on the parties in this action listed in the attached Proof of Service List, which is incorporated  
4 herein by this reference, by the following means:

- 5        **(BY MAIL – AS INDICATED BELOW)** I caused each such envelope to be  
6 sealed and placed for collection and mailing from my business address. I am  
7 readily familiar with the practice of Solomon Ward Seidenwurm & Smith, LLP  
8 for collection and processing of correspondence for mailing, said practice  
9 being that in the ordinary course of business mail is deposited with the  
10 postage thereon fully prepaid in the United States Postal Service the same day  
11 as it is placed for collection. I am aware that upon motion of the party served,  
12 service is presumed invalid if the postal cancellation date or postage meter  
13 date on the envelope is more than one day after the date of deposit for mailing  
14 contained in this affidavit.
- 15        **(BY PERSONAL SERVICE – AS INDICATED BELOW)** I caused each such  
16 envelope to be sealed and given to a courier authorized by our attorney  
17 service to receive documents for delivery on the same date. A proof of service  
18 signed by the authorized courier will be filed upon demand.
- 19        **(BY FEDERAL EXPRESS – AS INDICATED BELOW)** I am readily familiar with  
20 the practice of Solomon Ward Seidenwurm & Smith, LLP for the collection  
21 and processing of correspondence for overnight delivery and know that the  
22 document(s) described herein will be deposited in a box or other facility  
23 regularly maintained by Federal Express for overnight delivery.
- 24        **(BY FACSIMILE – AS INDICATED BELOW)** This document was transmitted  
25 by facsimile transmission from (619) 231-4755 and the transmission was  
26 reported as complete and without error. I then caused the transmitting  
27 facsimile machine to properly issue a transmission report, a copy of which will  
28 be filed upon demand.
- 29        **(BY EMAIL – AS INDICATED BELOW)** These documents were transmitted by  
30 email transmission from dlorhan@swsslaw.com on March 7, 2007, and the  
31 transmission was reported as complete and without error.

32 I declare under penalty of perjury under the laws of the State of California that the  
33 foregoing is true and correct.

34 Executed on March 7, 2007, at San Diego, California.

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36 \_\_\_\_\_  
37 DEBORAH V.T. PIERSON

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**PROOF OF SERVICE LIST**

Shahrokh Saadatnejad  
3713 Mt. Ashmun Place  
San Diego, CA 92111  
VIA PERSONAL SERVICE





Stephen L. Knox, President  
John Maguire, Exec. Vice President  
Robert C. Porambo, Director of Legal Services

**PRIORITY**

www.knoxservices.com

## PROCESS INSTRUCTION FORM

DATE: 5/16/02    CHECK CORRECT BOX:  SERVICE OF PROCESS    FILING     DELIVERY     COURT RESEARCH     SKIP TRACE     WRIT SERVICE

**CLIENT/BILLING INFORMATION**

FIRM NAME AND ADDRESS: ACCT# 02221  
**APPROVED DIRECT INSURANCE BILLING**  
 CARRIER NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 CITY, STATE, ZIP: \_\_\_\_\_  
 ADJUSTER: \_\_\_\_\_  
 INSURED: \_\_\_\_\_  
 CLAIM NUMBER: \_\_\_\_\_  
 DATE OF LOSS: \_\_\_\_\_

SOLEMON, WARD, SEIDENWURM & SMITH  
 401 "B" STREET, SUITE 1200  
 SAN DIEGO CA 92101  
 619-231-0303

ATTORNEY/BAR # 50102    PHONE: \_\_\_\_\_  
 ATTENTION: 1200    FAX: \_\_\_\_\_  
 ATTORNEY'S FILE NO. 57125 062

REPRESENTING  PL  PE  DE  RE  OTHER

**COURT CASE INFORMATION**

COURT: SDSC    CASE NO. 9:0577352  
 CASE NAME: PC v. Saavedra  
 DATE OF HEARING: \_\_\_\_\_  
 TIME:  AM  PM / DEPT.

**LOCATION INFORMATION**

ENTITY TO BE SERVED/DELIVERED/FILED: Sharon Saavedra  
 DOCUMENTS/ITEMS  FILING FEES/WITNESS FEES ATTACHED   
 S&C  S&C/UD  SUB  SUB/DT  
 SIGNATURE: X  SEE ATTACHED

BUS RES ADDRESS AND TELEPHONE NUMBER

3713 Mt SD 7511  
 PHONE NO. ( ) \_\_\_\_\_

**SPECIAL INSTRUCTIONS**

STATUS DUE BY: Must be done tonight    CONFIRMATION CALL BACK REQUIRED

LAST DAY TO SERVE: \_\_\_\_\_

IS KNOX THE DEPO OFFICER?  YES  NO

**FOR OFFICE USE ONLY**

	SERVICE AMOUNT	SERVICE AMOUNT	SERVICE AMOUNT
ASSIGNMENT	PHONE	LESS	
FILE	FILE	PAGE	
DELIVERY	DELIVERY	DATE	
PRINT	PRINT	PAID	
SEARCH	SEARCH	OTHER	
CHECK	CHECK	OTHER	

**STATUS INFORMATION**

I HAVE STATED CLIENT \_\_\_\_\_  
 SPOKE TO: \_\_\_\_\_  
 DATE: \_\_\_\_\_ / TIME \_\_\_\_\_  
 CC'S RET'D ON: \_\_\_\_\_  
 P.O.S. RET'D ON: \_\_\_\_\_  
 REQUIRED DROP: \_\_\_\_\_

- 1. PACIFIC LAW CENTER'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION;**
- 2. DECLARATION OF EDWARD J. MCINTYRE IN SUPPORT OF PACIFIC LAW CENTER'S MOTION FOR PRELIMINARY INJUNCTION; and**
- 3. PACIFIC LAW CENTER'S NOTICE OF LODGMENT IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION**



Stephen L. Knox, *President*  
John Maguire, *Exec. Vice President*  
Robert C. Porambo, *Director of Legal Services*

## PROCESS INSTRUCTION FORM

www.knoxservices.com

DATE: 3-7-09

CHECK CORRECT BOX:  SERVICE OF PROCESS  FILING  DELIVERY  COURT RESEARCH  SKIP TRACE  WRIT SERVICE

### CLIENT/BILLING INFORMATION

FIRM NAME AND ADDRESS: **ACCT#: 02221**

SOLOMON, WARD, SEIDENWURN & SMITH  
401 "B" STREET, SUITE 1200  
SAN DIEGO CA 92101

ATTORNEY/BAR #: 80902 PHONE: 619-231-0303

ATTENTION: 1200 FAX: 619-231-0302

ATTORNEY'S FILE NO. 57158002

REPRESENTING  PL  PE  DE  RE  OTHER

APPROVED DIRECT INSURANCE BILLING

CARRIER NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY, STATE, ZIP: \_\_\_\_\_  
ADJUSTER: \_\_\_\_\_  
INSURED: \_\_\_\_\_  
CLAIM NUMBER: \_\_\_\_\_  
DATE OF LOSS: \_\_\_\_\_

### COURT CASE INFORMATION

COURT: SDSC

CASE NO. GIC 898352

CASE NAME: PCL v. Sacramento

DATE OF HEARING: \_\_\_\_\_  
TIME:  AM  PM / DEPT. \_\_\_\_\_

### LOCATION INFORMATION

ENTITY TO BE SERVED/DELIVERED/FILED: \_\_\_\_\_

DOCUMENTS/ITEMS  FILING FEES/WITNESS FEES ATTACHED

S&C  S&C/UD  SUB  SUB/DT

SIGNATURE: X *Tu*  SEE ATTACHED

BUS	RES	ADDRESS AND TELEPHONE NUMBER
<input type="checkbox"/>	<input type="checkbox"/>	<i>10401</i>
<input type="checkbox"/>	<input type="checkbox"/>	

PHONE NO. ( ) \_\_\_\_\_

### SPECIAL INSTRUCTIONS

STATUS DUE BY: *3/11/09*

LAST DAY TO SERVE: *3/11/09*

IS KNOX THE DEPO OFFICER?  YES  NO

CONFIRMATION CALL BACK REQUIRED

*Handwritten notes and dates: 3/5-6/20 14/11/09*

### FOR OFFICE USE ONLY

	SERVICE	AMOUNT	SERVICE	AMOUNT	SERVICE	AMOUNT
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<input type="checkbox"/>	CHECK CHARGE		AL		ER	

STATUS INFORMATION

I HAVE STATED CLIENT

SPOKE TO: \_\_\_\_\_

DATE: \_\_\_\_\_ / TIME \_\_\_\_\_

CC'S RET'D ON: \_\_\_\_\_

P.O.S. RET'D ON: \_\_\_\_\_

REQUIRED DROP: \_\_\_\_\_

1 EDWARD J. MCINTYRE [SBN 80402]  
emcintyre@swsslaw.com  
2 CHRISTINA M. MILLIGAN [SBN 231655]  
cmilligan@swsslaw.com  
3 SOLOMON WARD SEIDENWURM & SMITH, LLP  
401 B Street, Suite 1200  
4 San Diego, California 92101  
Telephone: (619) 231-0303  
5 Facsimile: (619) 231-4755

6 Attorneys for Pacific Law Center

7

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

9

10

11 PACIFIC LAW CENTER, a Professional Law  
Corporation,

12

Plaintiff,

13

v.

14

15 SHAHROKH SAADATNEJAD, individually  
and doing business as  
16 PACIFLAWCENTERS.COM and  
USHOSTAGE.COM; and DOES 1 through  
50, inclusive,

17

Defendants.

18

CASE NO. GIC 878352

**DECLARATION OF SERVICE**

Dept. 75  
Complaint Filed: January 12, 2007

I/C Judge: Hon. Richard E.L. Strauss

19

I, Deborah V.T. Pierson, declare:

20

21 I am employed in the County of San Diego, State of California. I am over the age of  
22 18 years and not a party to this action. My business address is Solomon Ward Seidenwurm  
& Smith, LLP, 401 B Street, Suite 1200, San Diego, California 92101.

23

24 On March 7, 2007, I served a copy, including all exhibits, if any, of the following  
document(s):

25

26 **1. PACIFIC LAW CENTER'S SUPPLEMENTAL MEMORANDUM IN SUPPORT  
OF ITS MOTION FOR PRELIMINARY INJUNCTION;**

27

28 **2. DECLARATION OF EDWARD J. MCINTYRE IN SUPPORT OF PACIFIC LAW  
CENTER'S MOTION FOR PRELIMINARY INJUNCTION; and**

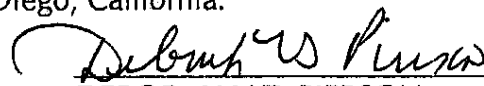
1           3.     **PACIFIC LAW CENTER'S NOTICE OF LODGMENT IN SUPPORT OF ITS**  
2     **MOTION FOR PRELIMINARY INJUNCTION**

3     on the parties in this action listed in the attached Proof of Service List, which is incorporated  
4     herein by this reference, by the following means:

- 5            **(BY MAIL – AS INDICATED BELOW)** I caused each such envelope to be  
6     sealed and placed for collection and mailing from my business address. I am  
7     readily familiar with the practice of Solomon Ward Seidenwurm & Smith, LLP  
8     for collection and processing of correspondence for mailing, said practice  
9     being that in the ordinary course of business mail is deposited with the  
10    postage thereon fully prepaid in the United States Postal Service the same day  
11    as it is placed for collection. I am aware that upon motion of the party served,  
12    service is presumed invalid if the postal cancellation date or postage meter  
13    date on the envelope is more than one day after the date of deposit for mailing  
14    contained in this affidavit.
- 15         **(BY PERSONAL SERVICE – AS INDICATED BELOW)** I caused each such  
16    envelope to be sealed and given to a courier authorized by our attorney  
17    service to receive documents for delivery on the same date. A proof of service  
18    signed by the authorized courier will be filed upon demand.
- 19         **(BY FEDERAL EXPRESS – AS INDICATED BELOW)** I am readily familiar with  
20    the practice of Solomon Ward Seidenwurm & Smith, LLP for the collection  
21    and processing of correspondence for overnight delivery and know that the  
22    document(s) described herein will be deposited in a box or other facility  
23    regularly maintained by Federal Express for overnight delivery.
- 24         **(BY FACSIMILE – AS INDICATED BELOW)** This document was transmitted  
25    by facsimile transmission from (619) 231-4755 and the transmission was  
26    reported as complete and without error. I then caused the transmitting  
27    facsimile machine to properly issue a transmission report, a copy of which will  
28    be filed upon demand.
- 29         **(BY EMAIL – AS INDICATED BELOW)** These documents were transmitted by  
30    email transmission from dlordan@swsslaw.com on March 7, 2007, and the  
31    transmission was reported as complete and without error.

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

Executed on March 7, 2007, at San Diego, California.

  
DEBORAH V.T. PIERSON

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**PROOF OF SERVICE LIST**

Shahrokh Saadatnejad  
3713 Mt. Ashmun Place  
San Diego, CA 92111  
VIA PERSONAL SERVICE

EDWARD J. MCINTYRE, ESQ.  
SOLOMON, WARD, SEIDENWURM & SMITH  
401 "B" STREET, SUITE 1200  
SAN DIEGO CA 92101  
619-231-0303

Ref. No. : 0260607-01  
Atty. File No. : 57122002

P 57122002

put behind

#1 on attached

SUPERIOR COURT OF CA. COUNTY OF SAN DIEGO  
SAN DIEGO JUDICIAL DISTRICT

PLAINTIFF : PACIFIC LAW CENTER  
DEFENDANT : SHAHROKH SAADATNEJAD

Case No.: GI  
PROOF OF S-----

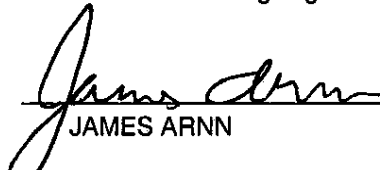
Hearing date : March 9, 2007 Time :03:00 PM Dept./Div. : 75

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SEE ATTACHED LIST FOR DOCUMENTS
3. a. Party served : SHAHROKH SAADATNEJAD, individually  
b. Person served : "JOHN DOE", FATHER/CO-TENANT  
(CAUC-ME/M/55YRS/5'6"/165LBS/BALDING)
4. Address where the party was served 3713 MT. ASHMAN PLACE  
SAN DIEGO, CA 92111 (Residence)
5. I served the party  
a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on March 7, 2007 (2) at: 08:30 PM
6. Witness fees were not demanded and were not paid.
7. **Person who served papers**
  - a. JAMES ARNN
  - b. KNOX ATTORNEY SERVICE, INC.  
2250 Fourth Avenue  
San Diego, California 92101
  - c. 619-233-9700
  - d. Fee for service: \$64.75
  - e. I am:
    - (3) a registered California process server
    - (i) an employee
    - (ii) Registration No. 152
    - (iii) County: San Diego

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 13, 2007

Signature:

  
JAMES ARNN

PROOF OF SERVICE