IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

JOHN B. THOMPSON,

Plaintiff,

v. Case No. 07-21256 (Judge Adalberto Jordan)

THE FLORIDA BAR and
DAVA J. TUNIS,

Defendants.

SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT, FOR INJUNCTIVE RELIEF, FOR FOR ATTORNEY'S FEES, AND FOR A WRIT OF MANDAMUS

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and files this second amended complaint for declaratory relief, for injunctive relief, for attorney's fees, and for a writ of mandamus, stating:

PREFACE

This amended complaint is an attempt by the plaintiff to state clearly the relief he seeks and the legal basis therefor. Defendants have moved this court to dismiss the first amended complaint on a number of grounds, including "abstention." The controlling case ignored by the defendants because they have no rejoinder to it is the United States Supreme Court Case of *Pulliam v. Allen*, 466 US 522 (1984), which provides for both injunctive relief and certain money damages. *Pulliam* is so important to this case that plaintiff attaches an entire copy of it, in PDF, as Exhibit A to this complaint.

There is no question that this complaint, as well as its framer, is, by The Florida Bar's definition, odd. It is not an easy thing to sue one's profession. Thompson did it before, when last The Bar sought to intimidate him in the exercise of his First

Amendment rights. The Bar lost that time, and it should lose again this time. The Bar, whose leaders literally call and pictorially display themselves on Bar brochures as "The Guardians of Democracy," is furious that any lawyer licensed by it would challenge its errors. Asia's first Nobel laureate, Rabindranath Tagore, noted "Power takes as ingratitude the writhing of its victims." The Florida Bar has thus surely acted, over the last three years as if it considers plaintiff herein the most nettlesome and ungrateful of Florida's tens of thousands of lawyers, not only because he refuses to go quietly but because plaintiff challenges the Bar's "Guardians of Democracy" mentality that they know better than the Framers of the Constitution, including the Bill of Rights, how to order society.

Plaintiff is a born again Christian, not some Luddite anarchist who would purpose to tear down his profession by eschewing rules and laws and customs. No Christian is free to ignore the civil authority. "Render unto Caesar what is Caeser's and unto God what is God's."

But being both a Christian and a lawyer surrenders neither to the state nor to any of its agencies the rights and duties of citizenship. The brave men who signed the Declaration of Independence considered but did not shrink from what some at the time considered the dilemma of being men of faith and/or of civic rectitude while at the same time coming against the civil authority of the British crown. From that most revered of our nation's public documents:

"Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it…"

Plaintiff proposes, by the relief he seeks herein, nothing nearly as radical as "abolishing" The Florida Bar. What plaintiff seeks is merely to hold The Florida Bar to its own "Rules Regulating The Florida Bar."

Beyond that but congruent with that end, plaintiff seeks a determination by this federal court that the federal constitution and the federal civil rights laws actually do protect citizens who are lawyers from ongoing illegal acts of The Florida Bar. Put simply, plaintiff seeks a determination that The Florida Bar is not above the law, as the US Constitution and Congress define it and as The Bar, in its own Rules, defines it

C.S. Lewis, the greatest apologist for the Christian faith in the 20th Century, might as well have been writing of The Florida Bar and its politically correct speech codes when he noted:

"Of all tyrannies, a tyranny exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end, for they do so with the approval of their own conscience."

Finally, Frederick Douglass would have had this rejoinder to immediate past Bar president Hank Coxe, who sat in the offices of Greenberg Traurig and told plaintiff Thompson and his lawyer, in front of five witnesses, on May 15, 2006: "Jack, you should be suspended from the practice of law for being vitriolic." Wrote Douglass:

"Those who profess to favor freedom and yet depreciate agitation, are people who want crops without ploughing the ground; they want rain without thunder and lightning; they want the ocean without the roar of its many waters. The struggle may be a moral

one, or it may be a physical one, or it may be both. But it must be a struggle. Power concedes nothing without a demand; it never has and it never will."

There is nothing unusual about government overreaching. Its abiding recurrence is what animated the framing of our federal constitution with its checks and balances and the limitation on the intrusiveness of government. What is unusual, to be frank, is that a Florida lawyer would dare to come against his profession's governmental overreaching that has now become institutionalized arrogance and not just at his expense. Is the undersigned plaintiff unusually brave or bright or creative or gifted, or is he "mentally disabled" as The Bar has asserted? No, he is simply blessed to be caught up in the dynamic that Aleksandr Solzehnitsyn, who knew a bit about the state's use of "mental illness" to stigmatize the nettlesome:

"You can have power over people as long as you don't take everything away from them. But when you've robbed a man of everything, he's no longer in your power." The Bar did this to Thompson once and robbed him of much, but not all, of what he had. The Bar is not going to do it again.

PARTIES

1. Thompson is a citizen of the United States, aged more than eighteen years, a resident of Florida, domiciled in Miami-Dade County, and an attorney licensed by the State of Florida and in continuous good standing with The Florida Bar since May 1977, when he was first licensed to practice law.

2. The Florida Bar, hereinafter The Bar, is an arm of the government of the State of Florida and part, in a sense, of the judicial branch created and supposedly overseen in its functioning by the Supreme Court of the State of Florida. It has offices throughout the

State of Florida, including in Miami-Dade County, with its main office in Tallahassee, Florida.

3. Dava J. Tunis, hereinafter Judge Tunis, is a Circuit Court Judge in the Eleventh Judicial Circuit of Florida (Miami-Dade County), appointed to the bench by Governor Jeb Bush, normally serving on the criminal bench but in this particular instance that gives rise to this action, she is serving as the "referee" in all Florida Bar "disciplinary" proceedings against Thompson, chosen for this task by Chief Judge Joseph P. Farina, Jr.

JURISDICTION

4. This court has jurisdiction over the declaratory judgment action relief sought herein by virtue of Rule 57, Federal Rules of Civil Procedure, and the federal Declaratory Judgment Act, 28 USC 2201. At issue in the "dec action" is the meaning and reach of the First Amendment to the United States Constitution and whether certain "pure political speech" as that term is used in constitutional parlance, is prohibited by lawyers licensed by The Florida Bar. Thus, a genuine federal issue in this regard is raised in and by this action. It is not an "abstract" issue as The Bar has asserted in its motion to dismiss the amended complaint, as The Bar seeks to discipline Thompson right now, not at some undetermined future time, for this pure First Amendment speech.

5. As to the federal civil rights action against The Florida Bar, this federal court has jurisdiction by virtue of 42 USC 1983 and 42 USC 1988 and is empowered, under the law and under the aforementioned *Pulliam v. Allen* case, to grant relief, even injunctive relief, under these federal civil rights laws.

6. Additionally, as to the federal civil rights cause of action against Judge Tunis, this federal court has jurisdiction over it and over her by virtue of 42 USC 1983 and 42 USC 1988. See *Pulliam, supra*.

7. As to relief sought by means of the writ of mandamus, this federal court can enter a writ, as authorized under and in application of Florida law or under Rule 81(b), Federal Rules of Civil Procedure, which anticipates that kind of relief if not technically that particular writ.

VENUE

8. This court affords the parties the appropriate venue, given their location.

COUNT I. FACTS REGARDING DECLARATORY JUDGMENT ACTION

9. The Bar has a very long history of trying to infringe upon Thompson's exercise of his First Amendment rights, including but not limited to, his criticism of the American entertainment industry's marketing of adult and adult-rated entertainment to children, his criticism of that industry's use of lawyers to bring SLAPP (**S**trategic **L**itigation **A**gainst **P**ublic **P**articipation) Bar complaints against Thompson, and more recently criticism of the misconduct of sitting judges who have participated and collaborated in this illegal, unconstitutional assault upon Thompson's First Amendment rights through The Bar's "disciplinary" system.

10. The Bar is now proceeding with "disciplinary" charges bought by an Alabama judge against Thompson in retaliation for Thompson's accurate recounting of the alleged corruption of this judge in an Alabama wrongful death case against the video game industry. A local Alabama attorney offered to fix the case before Judge Moore, who is a friend of the reputed "fixer." This case was featured on CBS' *60 Minutes* (with

an interview of Thompson by the late, great Ed Bradley) and in an original article in *Reader's Digest.* See http://www.cbsnews.com/stories/2005/03/04/60minutes/main678261.shtml).

11. The Bar is so intent upon chilling Thompson's First Amendment speech about the alleged corruption of this sitting Alabama judge that it is violating its own procedural Rules in pursuing this ***unsworn*** SLAPP Bar complaint filed by the Alabama judge. The complaint is clearly improper not only in that it is unsworn but also in that The Florida Bar's own Rules prohibit its being processed first as a Florida Bar complaint. Alabama must first decide the matter. See Florida Bar Rule 3-4.6 which requires this sequence.

12. Further, this "disciplinary" matter, arising in Alabama, is currently pending and not some abstract possibility. Thus declaratory relief, because it is a real case and controversy, is appropriate. It is not a vague possibility, as The Bar alleges in its motion to dismiss the prior complaint.

13. Further, The Bar's designated reviewer, David Pollack of Stearns Weaver, violated a promise made to plaintiff and to his lawyer that he would meet with Thompson and his lawyer and get their side of the story before the matter was submitted to Grievance Committee 11-F. This was a specific, demonstrable, provable breach of not only a promise but of Bar Rules, in that The Bar went to Committee 11-F without hearing fully from respondent (Thompson), without talking to him as promised, and without any real preliminary investigation of the complained of actions. And The Bar has done this for the purpose of infringing upon Thompson's First Amendment right to criticize, truthfully, judges and others.

14. As if The Bar wanted to prove again its position that despite the First Amendment a lawyer may not be critical of a judge, whether the allegations are true or not, last autumn Thompson filed a lawsuit in Miami-Dade Circuit Court against the video game industry's marketing of a violent video game to children. The case fell to Eleventh Circuit Court Judge Ronald Friedman, who violated his own orders and other standards of judicial conduct in denying Thompson the relief he properly sought therein. This interesting judge filed an ***unsworn*** Bar complaint against Thompson in retaliation for Thompson's legitimate criticism of his errors, and The Bar gleefully ran with it. This unsworn Bar complaint is currently pending. Plaintiff has correspondence from The Bar itself stating that unsworn Bar complaints are of no force and effect, yet it is processing these two by these two judges nevertheless. They are unsworn because these judges know that certain factual assertions in the Bar complaints are false and would constitute perjury if sworn. The Bar knows this as well.

15. The Florida Bar has various "Rules Regulating The Florida Bar" which on their face and/or as applied illegally and unconstitutionally infringe upon any lawyer/citizen's right to "petition the government for a redress of grievances" and, more specifically, to be publicly critical of government officials, including the judicial branch of government. Rule 4-8.4 (d) is being applied by The Bar to Thompson's true and fair criticism of these two judges in a fashion that attempts to chill and infringe upon his "pure political" First Amendment speech.

16. But where does The Bar draw the line when it comes to criticism of judges by lawyers? Plaintiff Thompson was the individual, as reported by *The Miami Herald* and the *Ft. Lauderdale Sun-Sentinel* who single-handedly convinced Broward State Attorney

Michael Satz to write Florida Governor Crist to seek a special prosecutor to investigate the "crying judge," Larry Seidlin, who presided over the Anna Nicole Smith fiasco, because of published assertions that Seidlin had, among other things, had demanded bribes from a lawyer.

17. Kathy Rundle's Miami-Dade office is now investigating Seidlin, appointed to do so by Governor Crist. Why was Thompson's letter to Satz all right but his communications about the other two judges not all right? Thompson is allowed to complain to State Attorney Satz but not inform the public of his concerns about other judges? The difference can't be who the specific audience is, because renowned criminal defense lawyer Roy Black repeatedly goes on national television programs to excoriate Florida and other judges. But Roy Black is one of the "elite" protected by The Bar.

18. Thompson has exercised his right to comment on judges in order to improve the administration of justice by pointing out misconduct, corruption, and violation of court orders by these sitting judges. The notion that Thompson must be punished for being critical of a governmental officer because that criticism somehow impedes the administration of justice violates the First Amendment, as criticism of public officials enjoys the highest rung of constitutional protection. Is silly. It is intended to improve justice.

19. In contrast with the settled constitutional principle that "political speech" is protected, Florida Bar Rule 4-8.2(a), in its application by The Bar, seeks to prevent criticism of judges by lawyers. Florida Bar Rule 4-8.4(d) is an even broader attempt to chill First Amendment-protected criticism of anyone having anything to do with the

judicial process, including judges and even opposing counsel, even if that criticism is accurate, as it seeks to prohibit and punish "disparagement" of any judge or anyone for any reason even if the "disparagement" is true!

20. Both of the aforementioned Bar Rules are unconstitutional on a number of grounds, including but not limited to "vagueness." Attempts by The Bar, through these and other Rules, to prohibit and punish speech by lawyers that is critical of the judicial branch of government are unconstitutional by virtue of their inability to survive the "strict scrutiny" test which must be applied when the government seeks to limit a fundamental constitutional right.

21. The Bar has made absolutely no finding, even preliminarily, that anything Thompson has said about these two judges is false. The Bar seeks to punish him simply because what he has said is critical of two judges. If Thompson had said anything false and defamatory about these judges, they would have a civil remedy sounding in libel law, as indeed public officials can successfully bring libel actions against citizens. It is because of the very fact that Thompson has spoken the truth about these two judges that The Bar and these judges have brought a "disciplinary" action rather than a libel action. They could not win a libel action, and they know it.

22. But ***why*** is The Bar doing this—protecting judges from criticism at the expense of citizen lawyers' rights? The Florida Bar is ideologically wedded, officially, to what its current President and immediate three past Presidents euphemistically label "judicial independence." This is a code phrase for "judicial insulation" from the democratic process. The Florida Bar for years went so far as to prevent individuals running for judicial office from addressing the issues of the day during their campaigns

despite a specific U.S. Supreme Court ruling, *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), prohibiting such an unconstitutional limitation on political speech by judicial candidates.

23. If the court doubts the ideological bent of this Bar, it should note that The Florida Bar Foundation, in what appears to be a violation of the law, is sending money to the ACLU from its IOTA accounts to counsel minor girls on how to terminate their pregnancies without telling their parents about it. Thus The Bar Foundation, with Board of Governors approval is funding efforts to enable girls to get around Florida's Parental Notification Law. The Florida Bar Foundation got caught siphoning money off to the ACLU before, and it promised never to do it again. It is doing it again, thinking the coast was clear, until Thompson caught them. Thompson has asked The Bar to stop.

24. The continuing organizational commitment by The Bar to stamp out criticism of judges is seen on a recent Bar meeting brochure. It unintentionally hilariously depicts these Bar leaders as the "Guardians of Democracy" against all assaults upon "judicial independence." The irony of using secretive Bar "discipline" to chill democratic, constitutionally-protected criticism of judges by lawyers is lost upon these self-appointed "Guardians of Democracy."

25. Thompson is not the only victim of this unconstitutional punishment of pure "political speech" about judges. The Bar's thought police are now proceeding against a Broward County lawyer by the name of Sean Conway who allegedly posted a criticism of a judge at an Internet site dedicated to airing criticism of the sometimes bizarre Broward Court system. See it at http://jaablog.jaablaw.com/.

26. Recent mainstream news coverage of The Bar's attempt to crack down on this First Amendment speech on the wide-open Internet is to be found at: http://www.sun-sentinel.com/news/local/southflorida/sfl-cblog13may13,0,2783953.story?coll=sfla-home-headlines , http://www.miamiherald.com/467/story/104379.html , http://www.dailybusinessreview.com/news.html?news_id=43219, and even today at http://www.miamiherald.com/519/story/106909.html .

27. The Florida Bar is running around like the frantic little Dutch boy putting its finger into the dike in an ill-considered attempt to plug the First Amendment's flow of criticism of judges, to punish lawyers who dare engage therein, including the plaintiff. King Canute had the wisdom not to order the tide not to come in.

28. Broward attorney Fred Haddad has correctly pointed out recently in the *Ft. Lauderdale Sun-Sentinel* that judges "are not cardinals" and thus not above criticism by the one class of persons who know the most about their shortcomings—the lawyers who practice before them. The notion that the judicial branch of government is to be insulated from and immune to criticism of the kind that can be leveled against the President of the United States and against the Members of Congress is silly.

29. This assault by The Florida Bar upon the federal First Amendment constitutional right of lawyers, including the undersigned plaintiff, to be critical of government officials would indeed be comical if it were not so serious. Some of the very same Bar Governors who superintend the Bar's efforts to punish Thompson's criticism of judges have actively and publicly gone after federal officials in the other two branches of government. Former Bar president Hank Coxe has been very critical in *The Florida Bar*

News of President Bush and federal government officials as to some of their anti-terror policies. Mr. Coxe sees his First Amendment right to do *that* but denies others their First Amendment right to criticize other government officials.

32. When nonlawyers come to lawyers here in Florida and ask them what judges not to vote for in elections, is The Florida Bar going to dispatch the thought police and start punishing lawyers who answer their neighbors' questions? If not, then why not? Thompson is being punished for identifying gross misconduct by two judges before whom he appeared. Is The Florida Bar going to start bringing Bar complaints against Florida lawyers who are in the American Bar Association and who put their names to documents opposing the elevation of federal District Court judges to appellate courts? Where does The Florida Bar intend to draw the line?

33. Plaintiff did not give up his First Amendment rights when he became a lawyer. He has exercised those rights in order to reveal judicial corruption, misconduct, and error. Any and all attempts by The Florida Bar, by any means, to punish and intimidate plaintiff, through the application of its "Rules of Discipline" for such speech are illegal, unconstitutional, and subversive of our entire constitutional system of government which relies in no small part upon the exercise of the right of all citizens to criticize public officials, no matter who they are.

PRAYER FOR DECLARATORY JUDGMENT RELIEF

WHEREFORE, plaintiff John B. Thompson respectfully moves this Honorable Court for the entry of a Declaratory Judgment Order stating that any and all Florida Bar Rules, as framed and/or as applied, whose effect is to limit, chill, or infringe in any fashion the rights of lawyers to criticize the judicial system or any judges therein, are

hereby a nullity by virtue of their conflict with the First Amendment to the United States Constitution.

Plaintiff seeks any other relief, legal or equitable in nature, which the court deems necessary and proper.

COUNT II. FACTS PERTAINING TO 42 USC 1983, 42 USC 1988 ACTION AGAINST THE FLORIDA BAR

34. Plaintiff adopts and realleges paragraphs 1 through 33 and incorporates them into this count.

35. Plaintiff has a whole host of Bar complaints brought against him for things he has allegedly done that are not only not unethical but have absolutely nothing whatsoever to do with the "disciplinary" function of The Florida Bar. They are being pursued in bad faith and for an ulterior purpose.

36. The Bar's counselasserts in The Bar's motion to dismiss the earlier complaint that there can be no present relief unless it can be alleged and then shown that The Bar has acted in bad faith. Here is just some of that bad faith:

37. The Bar's Rule, as will be seen, is that discipline is to occur when harm to the public or to a client occurs. The concept of "harm" is the rationale for Bar discipline.

38. Yet not a single client has complained about anything Thompson has done. Not one. The only complainants are two entertainment companies who got caught by Thompson marketing and distributing to children adult and adult-rated products, and two judges who both collaborated with these companies—Take-Two Interactive Software, Inc.—to tell The Bar that Thompson was over the line in his criticisms. The Bar is not protecting the public from Thompson. The Bar is protecting porn operators from the consequences of their illegal actions.

39. In almost all of these Bar complaints, Thompson has acted *pro bono* with no clients whatsoever. He has done it as a public activist. Tom Tew of Tew Cardenas, which represents the *Howard Stern Show* radio station that brought the SLAPP complaints against Thompson, stalked one of Thompson's clients, JR Rosskamp, thereby causing her to have a stroke and suffer permanent physical disability. He was stalking her to tell her to "drop Jack Thompson as your attorney." She will testify to that. The Bar's Sheila Tuma wrote Thompson and this stroke victim who complained to The Bar about this lawyer stalking her. Tuma stated that *because Mr. Tew was not acting on behalf of a client in the stalking, then his behavior was of no interest to The Bar!* So, if Thompson comes against a porn-to-kids company, *pro bono* and without even a client, he is to be harassed for three years by The Bar and presently told that The Bar wants him permanently disbarred.

40. The law calls this "selective prosecution," and it is a denial of equal protection. The referee herein, Tunis, refuses to allow Thompson any discovery in the Bar matter to prove this selective prosecution, so his legitimately raised defense of selective prosecution cannot even be posited by virtue of the denial of discovery.

41. The Bar's own past president, Miles McGrane, conducted a poll of our Bar members and the poll found that a huge number of us believe and know that The Bar leaves untouched the well-connected lawyers and but prosecutes lawyers who are not among the "elite." Our own membership believes The Bar is guilty of selective prosecution, yet Thompson is not allowed to prove it as a defense (see further, infra).

42. Thompson and our Miami-Dade State Attorney had a recent taste of this selective prosecution nonsense from The Bar. A Broward lawyer by the name of Hilliard

Moldof tampered with a witness in a murder trial. Kathy Rundle's office agreed not to bring criminal charges against Moldof on the agreement that The Bar would suspend him for at least six months. The Bar snookered Rundle and gave him an "admonishment," not even a public reprimand. Said Rundle's office: "I guess our trust in The Bar was misplaced." Thompson does not make this up. It was in all print and most electronic media in South Florida last week. There are other such examples, including the one that hit the news, coming out of the Third District today, in which that appellate court excoriates Hank Adorno for fraud that The Bar cannot bring itself to punish. The Moldof story is just indicative of what The Bar routinely does to protect some lawyers for no reason other than who they are. Thompson is on the other side of that coin.

BAR GOVERNOR AND THOMPSON'S "DESIGNATED REVIEWER" BEN KUEHNE

43. The Bar has used it own Bar Governor Ben Kuehne in order to deny Thompson any semblance of due process, equal protection, and fairness, and to chill the exercise of his constitutional rights of religion and speech. These details were not fully known to Thompson when he first amended the complaint herein. **If the court focuses on nothing else about how improperly and illegally The Bar has acted toward him and why it should be enjoined by this court from engaging in this behavior, then it is encouraged to look hard at just this:**

44. The most important individual in The Bar's disciplinary regime is what is called the "designated reviewer." This is a Bar Governor whose duty it is not only to observe what The Bar does *every step of the way*, but to correct it and then certify that The Bar has been "fair" and complied with all of its Rules, as well as with constitutional and legal requirements. This is not a certification only when it is all over. It is

contemporaneous with the disciplinary steps as they occur, and the respondent is told of the certification in correspondence. Thompson has received those certification letters.

45. The Bar's assertion now to this court is that Thompson has an adequate state remedy available to him through the Florida Supreme Court, which can review all that it has done to him but only when it is *done* doing it. This flies directly in the face of the very reason for the existence of the "designated reviewer" to guarantee and certify fairness as the process moves along. Why? Because The Bar recognizes in the use of the designated reviewer approach that the disciplinary process can be hurtful, destructive, and potentially unfair. A career can be ruined with one mistake, and the designated reviewer is there to be a safety net for both The Bar and the respondent.

46. The falsehood of The Bar saying to this court that Thompson is getting all the fairness he deserves when he has a review by the Supreme Court when it is concluded is silly. Why have a designated reviewer at all, then? Here is an analogy: In a hospital operating room, there is a "captain of the ship." He is the surgeon who tells the nurses and the anesthesiologist or anyone else in that O.R. if they are messing up as they go. He or she oversees everyone else in the process, and in doing so, he speaks up about the clamp that the nurse gave him when he asked for a sponge. He does it at the time, not when the patient is all sewed up and in recovery.

47. Here is Thompson, being operated on by The Bar for three years with a designated reviewer who is Ben Kuehne.

48. Mr. Kuehne, the captain of this disciplinary ship, is a leftwing ideologue, which he has every right to be. He has received awards from the ACLU and the People for the American Way. These are two organizations that have specifically targeted

Thompson over the years. Mr. Kuehne has also been a gay rights activist, and a prominent one. He has every right to be. But Thompson has been a very public activist on the other side of the gay rights issue and in specific gay rights battles locally on which Mr. Kuehne has been on the other side.

49. Thompson could no more sit on a grievance committee in judgment of how fairly it was treating Mr. Kuehne than Kuehne should be on his. Bias is understandable, and it must not be wished away as if it were not there.

50. Mr. Kuehne is not just an ideologue. He is an ideologue about the First Amendment, which is at the core of all of The Bar complaints pertaining to Thompson and his efforts against American entertainment companies and whether they have a First Amendment right to market adult entertainment to children. Thompson is on one end of the spectrum and Mr. Kuehne is on the other. He is an ACLU darling. The ACLU has been gunning for Thompson for years.

51. These Bar complaints are not trust account violation matters. They are Bar complaints arising out of culture war battles on opposing sides of which have labored Kuehne and Thompson.

52. When Thompson found out who his designated reviewer was nearly three years ago, Thompson requested that Kuehne recuse himself. The Bar refused, never giving a reason. Thompson has repeatedly sought that recusal. No response.

53. Then, two months ago, sitting in a "mediation" of all this in the Miami Bar office on Brickell Avenue, Bar prosecutor Sheila Tuma, when asked about the inappropriateness of Kuehne being Thompson's "designated reviewer" said, "Oh, he recused himself a few days ago." Thompson asked why. Response: "I won't tell you."

54. So, now that three years of damage has been done, in which Kuehne, for example, superintended the resuscitation of a Bar complaint against Thompson by another ACLU/gay rights lawyer in Broward, against the recommendation of The Bar's "outside investigator," we now find at 11:59 pm in the life of this disciplinary day that has lasted three years that Mr. Kuehne is gone, having put his harm to Thompson in place and "certified," formally, how "fair" it has all been to Thompson.

55. Mr. Kuehne has been replaced, interestingly, by another Bar Governor whose gay rights views are so extreme that he has been rebuffed for them by the entire Bar Board of Governors. This is "anti-gay rights lawyer and homophobe Jack Thompson's" new designated reviewer for what remains of this witch hunt. There is a pattern here.

56. But wait, it gets worse for The Bar as to Mr. Kuehne.

57. The ABC Television affiliate here in Miami, WPLG-10, has reported in the last month that this same Ben Kuehne has received a "target letter" from the Justice Department, specifically from "Main Justice," not from the local US Attorney's Office. Mr. Kuehne is accused/suspected of laundering Medellin cocaine cartel in the Ochoa case handled by Roy Black. The court need not take Thompson's word for it. It can take ABC's word for it and it can take the word of federal investigators and Justice Department officials who met with Thompson re Kuehne at their request.

58. First of all, the US attorney here was afraid to investigate Kuehne "because he is so well-connected and politically powerful." That was from one of the federal investigators. One investigator said he had never seen a politicization of an investigation like Kuehne was capable of doing. Secondly, the target letter is in effect an assertion that Kuehne has taken money from a drug cartel, that he is on their payroll. With all that

is at stake, financially, between Thompson and video game industry giant Take-Two, with the case that is pending in Alabama (see infra), this gives one pause.

59. The feds, then, think Kuehne is a thief who can be bought, and here he is serving as Thompson's "designated reviewer." What's next, suspected pedophiles running day care centers? Someone can ask Janet Reno and Country Walk's Fuster victims how that arrangement worked out.

60. Thirdly, when a lawyer gets a target letter, he has to, under federal law, discharge his "McLain hearing" duties. He has to disclose to all litigants, clients, tribunals, and lawyers with whom he is involved that he is under suspicion. When did Thompson get his "McLain hearing" re Kuehne? Answer: He didn't. He finds out from a Bar prosecutor in a mediation who inadvertently lets it slip. This is bad faith on steroids.

61. But not only that, The Bar will not remove Kuehne from his role of designated reviewer in other cases! Just Thompson's it seems, and it won't say why. That is why Thompson wanted to depose Kuehne in this federal case, to find out what is going on here. The Bar has denied Thompson in the disciplinary matter any depositions to find out why Kuehne has recused himself.

62. Thompson, by virtue of who Ben Kuehne is, by what he is alleged by the feds to have done, and how his recusal was first not handled and then handled, invalidates, on its face, the presumed fairness of the entire disciplinary process.

63. In sum, any state bar disciplinary process, regardless of what state it occurs in, which certifies how "fair" it has been without allowing a respondent to see how fair it

really has been, is neither fair nor rational nor above review by somebody, and not when only after the unfairness engulfs the respondent.

64. Further, if a judge recuses himself from a case, all of his orders are fairly scrutinized by the parties. The Bar refuses such review of any of Kuehne's ruling in these matters, and for this review alone federal court action is required.

THE BAR'S LUNACY STUNT AND EXTORTION

65. The nadir of the long-standing assault upon Thompson's First Amendment rights by The Bar, judges, and entertainment industry lawyers, not only by means of Bar complaints alleging ethics misconduct, occurred over fifteen years ago when all three categories of the above-noted actors—The Bar, a judge/former chairman of the Florida ACLU, and porn industry lawyers—petitioned the Florida Supreme Court and secured a bizarre order from the High Court requiring that Thompson submit to a full psychiatric and psychological evaluation "because Thompson's obsession against pornography is so severe that he is mentally disabled by it and thus unfit to practice law."

66. The result of that Bar attempt to pathologize Thompson's activism generated an official finding ***by The Bar's own hand-picked health care practitioners*** that Thompson is a person acting upon his religious faith and perfectly sane in doing so.

67. The Bar's insurance carrier paid Thompson damages for this outrage, and now Thompson is the only officially Bar-certified sane lawyer in Florida. The Bar never got over this result and has subsequently pursued, in bad faith, as will be seen, *infra*, a vendetta to undo that result.

68. Several months ago, after Thompson's success before the Federal Communications Commission against the illegal airing of the *Howard Stern Show* and

after his other recent successes against the marketing of the *Grand Theft Auto* video games to children, The Florida Bar demanded that Thompson undergo another round of mental assessments by the Florida Lawyers Assistance program. The Bar apparently concludes that Thompson has been impaired while achieving these successes and while appearing on more than 200 national and international television programs. Thompson has been invited onto NBC's *Today* show eight times, and not because he is impaired.

69. The purpose of the assessment was and is not to critique Thompson's writing style, his "vitriol," or his less than Dale Carnegie-like skills. It is to stigmatize him with a public order that he is to be examined and that he might be mentally disabled. This is what The Bar tried to do before. It, in retribution, is trying to do it again. When asked what The Bar thinks is Thompson's disability and what he has done to suggest a disability, The Bar refuses to answer.

70. The Bar has been encouraged and prompted to do this by the lawyers for the local broadcast station, WQAM-AM, owned by Beasley Broadcast Group, Inc., of Naples, Florida, who have themselves brought SLAPP Bar complaints against Thompson in retaliation for his success against the airing of indecent material on their station in violation of 18 USC 1464. In fact, the lawyer who raised the lunacy proceedings threat on behalf of WQAM did so way back in 1992 the first time. The Bar's Sheila Tuma recently proved in writing that she is collaborating with this same "let's pathologize our opponents' behavior through The Bar" lawyer.

71. The illegal, unconstitutional intolerance by The Bar of Thompson's First Amendment-protected speech, and its collaboration with entertainment industry companies and lawyers who are using The Bar and its "disciplinary" functions as a means

of collateral attack upon Thompson in order to "shoot the messenger" is so extreme that within the last two months The Bar, having dropped its demand earlier this year that Thompson be evaluated for a mental defect, demanded this stigmatization again at a "mediation" a month ago. It was the same mediation at which the Kuehne bombshell was dropped.

72. More specifically, since The Bar's counsel herein says he wants more "specificity" of wrongdoing alleged in this complaint, The Bar's staff counsel, Sheila Tuma of The Bar's Orlando office, walked into a "mediation" of this dispute and demanded that Thompson submit to a new round of mental health examinations. If he did not do so, then The Bar would seek permanent disbarment, she threatened. Thompson has gone to local law enforcement officials with he believes is an act of extortion—using the threat of disbarment to force a mental examination. Law enforcement officials astutely asked Thompson what is The Bar's specific concern as to certain specific actions and possible diagnoses. Thompson has been able to tell them: "I don't know; The Bar won't say." They can't say, of course, because they have no real concerns. They are simply using the threat of disbarment to try to break Thompson down to agree to another round of stigmatizing tests, and the order to do so will be very public, just as it was the last time. The headline on the front page of the *Daily Business Review*, "Is This Lawyer Too Crazy to Practice Law," was devastating, and it was designed to be.

73. So wary is The Bar, however, of the *lack* of a reasonable basis for such a demand that ithas refused to comply with its own Bar Rules 3-7.13 and 3-5.2 as to how The Bar is *supposed* to secure a mental health assessment of a lawyer. Under The Bar's own Rules, affidavits are to be submitted, a formal file is to be opened and given a case

number, a staff investigation is to occur, a grievance committee is then to be impaneled, the allegedly impaired lawyer is to be brought before the committee, probable cause is to be found, and then the matter is to be submitted to the Florida Supreme Court for an order to compel. These are The Bar's own Rules! The Bar has done ***none*** of this, complied with none of the procedures to secure mental health examinations of Thompson set forth in their own Rules. There can be no demand for an exam without ALL of the requirements of Rule 3-7.13 being met. If this lunacy ploy in violation of the Bar's own specific two Rules on this is not a violation of due process then there is no such thing. See *Pulliam v. Allen* for the power of a federal court to compel a state to afford such due process and to stop such ongoing harm to a citizen.

74. What is more, the Florida Supreme Court knows of The Bar's ongoing violations of its own Rules as to this competency issue, and it refuses to require The Bar to abide by its own Rule 3-7.13. This refusal by the High Court puts the lie to The Bar's attorney's assertion to this court that Thompson has an adequate state remedy for this present Rule-breaking by The Bar. Extortion is a current problem, not something that can be remedied later.

75. Beyond the Rules violations of The Bar as to its lunacy examination demand, the court needs to know that resolution or settlement of the ethics issues rests upon Thmpson's agreement to this lunacy exam. The Bar tied the two together, stating that unless Thompson agrees to plead guilty to certain things AND to the lunacy assessment, then it will seek his permanent disbarment.

76. There is another point that proves the bad faith that The Bar's attorney says is not sufficiently alleged in the prior complaint: It is learned in the first month of law

school that a person who is mentally impaired may not have the "capacity" to consent to anything. Yet, The Bar has put the lunacy cart before the ethics horse by demanding that Thompson, who is allegedly incapacitated, plead guilty first AND THEN be assessed as to mental capacity after he has pled guilty! The way it works in the rest of America, rather than in Bar Wonderland, is that there is, let's say in a criminal proceeding, a determination of whether a defendant is "competent to stand trial" before he is tried. The Bar has it backwards. If this is not a denial due process by The Bar, then there is no such thing. This cries out for a federal judicial remedy.

77. And it is The Bar, not Thompson, that is claiming incompetency! Thompson has challenged both The Bar and the Florida Supreme Court to put up or shut up on this lunacy issue. It has asked The Bar to proceed with its competency concerns or knock it off. But The Bar does not want to do that because, again, it is using the threat of disbarment, in bad faith, to get what it wants—a lunacy exam, shouted from the rooftops, as it was before, by Thompson's coerced agreement.

78. To reiterate, The Bar wants Thompson to plead guilty and then and only then have him assessed as to mental incompetency. Yet, the American Psychiatric Association has reported that more defendants are in mental institutions because of a finding of "incompetency to stand trial" than for any other reason. The Bar is hoist upon its own petard in threatening Thompson with disbarment to try to get the psych evaluation *after* he pleads guilty. They don't want to proceed against Thompson fairly on the psych issue, because if they did, they would have done so by now. This is bad faith.

79. As if all of that is not enough, Ben Kuehne personally and specifically

authorized The Bar's written demand that Thompson submit to a forced mental exam. It is right there in Bar counsel's letter.

THE BAR'S "ETHICS" COMPLAINTS AGAINST THOMPSON

80. In addition to both The Bar's Kuehne problem and its extortionate, procedurally whacky and bad faith lunacy stunt, The Bar has also wrongly pursued ethics complaints against Thompson at the behest of the entertainment industry whose practice of distributing adult entertainment to children he has opposed.

81. The Bar has done this improperly, as can be shown at trial, both procedurally and for improper motives, all to the detriment of Thompson's due process, equal protection, and First Amendment rights.

82. For example, the cornerstone of all of the "Alabama" bar complaints has been the assertion by the video game industry lawyers that Thompson failed to disclose his "colorful disciplinary history before The Florida Bar" to the Alabama State Bar and the Alabama trial court when he applied for *pro hac vice* admission in Alabama. This is a lie. The Bar knows it is a lie. Thompson disclosed all of his disciplinary history in a 25-page filing prior to his *pro hac vice* admission. The Bar refuses all depositions, all requests for production, all requests for admission to get an answer to this one question: "What did I not disclose re my disciplinary history?" Thompson wrote a book about all this "disciplinary history" published by Tyndale House *before* he entered Alabama! His disciplinary history is all in there because Thompson is proud of it! The Bar will not say what he left out because he left out nothing. This is all a contrivance by the company, Take-Two, the makers of the *Grand Theft Auto* games that purposed to destroy Thompson by this SLAPP attack the instant he appeared on *60 Minutes.* This is precisely

what Big Tobacco did to try to destroy *The Insider,* Jeffrey Weigand, after he appeared on the same news program. The law firm that has doen this for Take-Two is Blank Rome, whose partner sits on the Bar's Board of Governors. Blank Rome, besides being counsel in Alabama, is registered lobbyist in the US House and Senate, for Take-Two.

83. Similarly, The Bar refuses to tell Thompson what actions he has done that violate the other Bar Rules it says he violated. If the court can believe it, The Bar has literally said: Here are the Bar Rules. Here are the ten boxes of letters, etc., you have written You figure it out. We don't have to tell you what you have done that violate what rules. You'll find out at trial. If charging authorities took at approach with criminal indictments, those indictment would be thrown out.

84. These are further improper acts, which violate Thompson's First Amendment, due process, equal protection, and other rights under the United States Constitution. Thompson is not being vague and general, as The Bar's counsel asserts. Here, with specificity, are some more denials of due process, equal protection, and First Amendment rights:

a. Punishment of Thompson for pure "petition" speech to government agencies on his own behalf, including the Federal Communications Commission and Florida's Governor. Tew Cardenas admitted that its SLAPP complaints were in *retaliation for Thompson's letter to Governor Bush*;

b. Punishment of Thompson for truthful, First Amendment speech about opposing parties and counsel, with no attempt having been made whatsoever by The Bar to determine if these comments were true or false. They were very offensive because

they were true. These lawyers did not sue Thompson for libel because they knew they were true;

c. Processing unsworn Bar complaints, in violation of a specific rule that all Bar complaints must be sworn;

d. Processing Alabama Bar complaints as if they were Florida Bar complaints, in direct and clear violation of The Bar's jurisdictional Rule 3-4.6;

e. Threatened Thompson with disbarment for "ethics" conduct that was not even in the form of a complaint by a complainant, with The Bar not informing Thompson as to the nature of the secret complaint. Sheila Tuma, Bar prosecutor, demanded that Thompson plead guilty to these new secret complaints without even telling him what they were or who the complainants were! We have the letter;

f. Refused to prosecute and discipline the SLAPP Bar complainants against Thompson whose own actions The Bar knows to be, variously, unethical and unlawful, including documented perjury by some of the complainants. This selective prosecution of Thompson and the "looking the other way" as to Thompson's detractors and SLAPP complainants is demonstrable and it is consequential. The Tom Tew stalking of Thompson's client is just one example. Another example is that one of the SLAPP Bar complainants has admitted in two responses to Requests for Admission in another matter that he consumes without a prescription marijuana. He says all judges that enforce drug laws are "criminals. Where is the medical assessment of him? Where is the prosecution for calling all judges criminals?

g. Denied Thompson all meaningful discovery in the Bar proceedings, including depositions, despite the guarantee in Bar Rules that the Rules of Civil Procedure, as to

discovery, apply. In denying and thwarting discovery, The Bar has denied Thompson all defenses. Defenses that cannot be proven by discovery are stripped away, and improperly so.

h. Denied Thompson any and all opportunities to address his grievance committee, despite the clear constitutional requirement that he be allowed to address his accusers. The Bar claims an analogy to a grand jury, yet there are no minutes taken that Thompson can see, so the conduct therein, such as that by Mr. Kuehne, cannot even be assessed because it is secret.

i. Other procedural and substantive rights have been denied, which Thompson can enumerate if the court needs more.

WHEREFORE, Thompson demands injunctive relief, first preliminary and then permanent, prohibiting The Florida Bar from continuing to deny him the substantive and procedural rights he is guaranteed, by way of injunction, under 42 USC 1983, and attorney's fees under 42 USC 1988. See *Pulliam v. Allen, supra*.

COUNT III. JUDGE TUNIS AND HER ONGOING FEDERAL CIVIL RIGHTS VIOLATIONS

85. Plaintiff adopts and realleges paragraphs 1 through 84 and incorporates them into this count.

86. Judge Tunis was appointed by Dade County Circuit Court Chief Judge Joseph P. Farina, Jr., to preside over certain illegal and unconstitutional Florida Bar "disciplinary" proceedings against Thompson generated by the entertainment industry and its lawyers in order to protect, with a "shoot the messenger strategy," these companies' illegal marketing, distribution, and sale of pornographic, violent, and adult

entertainment material to children. The Florida Bar knows full well the SLAPP (strategic litigation against public participation) nature of these contrived Bar proceedings. So does Judge Tunis. As noted earlier, The Bar's leadership has a very long history, because of its ultra-liberal social policy agenda, of collaborating actively with the entertainment industry to infringe upon Thompson's constitutional rights through ridiculous SLAPP Bar efforts.

87. Judge Tunis is presiding over the latest installment of these purely SLAPP Bar proceedings that she knows have absolutely nothing to do with "discipline" and "ethics" but rather have everything to do with the protecting of the public from additional successes against the entertainment industry's marketing of adult entertainment to children and against The Bar itself. Judge Tunis is thus actively, knowingly, and effectively presiding over Bar proceedings that by their very nature and purpose violate federal civil rights laws, regardless of the procedural irregularities that The Bar and Judge Tunis have imposed upon Thompson. These proceedings by their very nature violate Thompson's First Amendment rights of speech and religion, as well as possibly other civil rights.

88. Additionally, Judge Tunis has denied Thompson any and all meaningful due process within these illegal, unconstitutional proceedings, as partially set forth, *supra*, and has thereby volitionally and knowingly made herself part of the illegal and unconstitutional assault upon Thompson's constitutional and civil rights not only as to the ends of these proceedings but also as to their means.

89. These include but are not limited to violations of Thompson's right to due process (both procedural and substantive), and his right to equal protection. In the latter

regard, The Bar is guilty of selective prosecution, yet Judge Tunis has denied Thompson all discovery as to that defense, even though such discovery is mandated by *United States v. Armstrong*, 517 US 456.

90. Judge Tunis has, from the bench, labeled Thompson's defensive pleadings "propaganda," and yet she has refused to recuse herself from this action after making that outrageous, injudicious pronouncement, and she has refused to provide any basis for her refusal to step down so that Thompson might remedy any defect in his motion to recuse.

91. Judge Tunis has even gone so far as to deny Thompson a continuance of these proceedings on the basis of the existence of a serious medical situation within Thompson's immediate family, his wife's cancer and complications of her treatment, refusing to provide the basis for that denial. She has now done that twice, as recently as yesterday.

92. Additionally, Judge Tunis has denied, with her various improper orders, any and all meaningful discovery he seeks by which to defend himself. Such discovery is mandated by Florida Bar Rules, Florida Rules of Civil Procedure, and the United States Constitution. Not only has Judge Tunis denied Thompson these basic civil rights within the context of these Bar "disciplinary" proceedings, but Judge Tunis' abject refusal to address the purely SLAPP nature of these proceedings is unconscionable and consequential. She refuses to have a hearing on that overarching basis for dismissal.

93. Thompson reiterates the listing found in paragraph 84 and its subparts as to just some of the specific denials of due process, equal protection, and First Amendment rights in which Judge Tunis has actively and wrongly participated.

94. The collaboration between The Florida Bar and Judge Tunis to deny Thompson the most basic of procedural and other constitutional rights constitutes a past, ongoing, and prospective violation of Thompson's federal civil rights. Thompson cannot defend himself before a referee who has denied simple discovery, denied hearings on important issues, denied her recusal without saying why, denied him continuances caused by family emergencies, etc. This referee is acting as if she were a Bar operative rather than as an arbiter who has a duty to be fair. Calling Thompson's defense "propaganda" is reason enough to remove this referee.

95. This judicial misconduct, which is illegal and unconstitutional, gives rise to this 42 USC 1983 claim and remedies available to him thereunder, including injunctive relief, as well as an award of attorney's fees against Judge Tunis personally under 42 USC 1988. She has denied Thompson due process every step of the way, and he is entitled to legal and equitable relief from these ongoing denials. See *Pulliam v. Allen, supra.*

96. The appropriateness of these remedies under the federal civil rights laws against state court Judge Tunis is to be found in the aforementioned and attached United States Supreme Court case of *Pulliam v. Allen,* 466 US 522(1984). The United States Supreme Court makes it clear therein that there is no such thing as "judicial immunity" when it comes to antics such as those engaged in by Judge Tunis. The High Court makes it also very clear that injunctive relief is available to Thompson ***prospectively*** against the continuing illegal antics of Judge Tunis, as well as the appropriateness of an award of attorney's fees against Judge Tunis personally, which Thompson has incurred.

97. As to deference by the federal judicial system to state judicial proceedings and state judges involved therein, there was no blind deference to the state judge in *Pulliam,* and there should be none here. Federal civil rights laws were created in large part to deal with violations of citizens' constitutional and civil rights by state officials, including judges, who act as if they thought their judicial fiefdoms were beyond the reach of the United States Constitution. The Southern states are particularly prone to these types of abuses, sadly.

98. Additionally, Thompson has no real state remedy available to him whatsoever, which is why this federal remedy is sought. Thompson has repeatedly asked the Florida Supreme Court, by petitions for writs of mandamus, to remedy this ongoing, illegal, and recidivist assault upon the United States Constitution by The Bar that it, the Florida Supreme Court, created and has a duty to oversee. The Florida Supreme Court has told Thompson to get lost and has *threatened him with more harm in response to his requests for relief*. That fact is a rejoinder to The Bar's assertion that he has an adequate, timely state remedy. He will never have a remedy from this Supreme Court. Its Bar is doing this with its ongoing approval, including the lunacy stunt. It doesn't even care about Ben Kuehne. It will never care about Ben Kuehne.

99. Locally, when Thompson recently requested a hearing from Chief Judge Joseph Farina, the jurist who appointed Judge Tunis to oversee this Star Chamber assault upon Thompson and the Constitution, Judge Farina's approach was to contact Thompson's lawyer, dictate that Thompson would not be allowed to participate in a discussion of the appropriateness of Thompson's request for a hearing even though he

was co-counsel in the Bar proceedings. Thus, the state court system has denied Thompson ***all*** remedies as to the misconduct of The Bar and of the referee.

WHEREFORE, plaintiff Thompson seeks an injunction against Judge/Referee Tunis halting in their entirety these sham, SLAPP, illegal, and unconstitutional Bar "disciplinary" proceedings because in their very essence they patently seek to infringe upon Thompson's First Amendment rights of speech and religion. She is acting under color of state law to deprive Thompson of equal protection and due process under the laws of this nation. Not only does plaintiff Thompson seek injunctive relief against Judge Tunis, but also an award of attorney's fees against Judge Tunis personally, as authorized by 42 USC 1988. See *Pulliam, supra*.

Plaintiff seeks any other relief, legal or equitable in nature, which the court deems necessary and proper.

COUNT IV. WRIT OF MANDAMUS

100. Plaintiff adopts and realleges paragraphs 1 through 99 and incorporates them into this count.

101. Several weeks ago plaintiff submitted to The Florida Bar's *Florida Bar News* a full-page, paid ad to be published in that publication.

102. The Bar and its house organ not only refuse to run the ad but refuse to inform plaintiff as to what may or may not be wrong with it as to any editorial policies of the *News.*

103. The ad addresses the misconduct, in fair terms, of The Bar. It is an attempt to alert Bar members to this pending lawsuit and the peril it poses to The Bar. The "Guardians of Democracy," ironically, are using a state-run and state-funded newspaper

to stop the ad from running. This is beyond irony. This shows the extent to which The Florida Bar will deny Thompson his right to pay for his own expression under the First Amendment.

104. The *News* is not a private paper. The Bar and its house organ are run by an arm of the State of Florida. Running the ad and/or informing plaintiff advertiser as to what may or may not be wrong with the ad is a purely ministerial act, not a discretionary one, which The Bar has a public duty to perform.

105. Further, there is no legal remedy available to plaintiff to make the ad run or have The Bar tell him why it cannot, so that it will be seen by other Florida lawyers, other than by a writ of mandamus or by similar remedies anticipated by Rule 81(b), Federal Rules of Civil Procedure.

WHEREFORE, plaintiff seeks a writ of mandamus or similar relief under Federal Rule 81(b) compelling The Florida Bar and its state-run house organ either to run the paid ad or inform Thompson why it will not or cannot.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all issues so triable.

CONCLUSION

Thompson's wrongful death case against Take-Two is set for trial in Alabama in January 2008. Literally hundreds of millions of dollars are at stake. Thompson has been the driving force behind this case. He will be a key fact witness, now, therein. The Bar is demonstrably collaborating with the video game SLAPP Bar complainants not to protect the public but rather to protect the complainants and to protect The Bar from Thompson.

The Bar never got over being bested by Thompson fifteen years ago. For The Bar, this is a vendetta. If it is not a vendetta, then The Bar is doing a good impersonatin of one.

With the advent of the "integrated bar" has come the danger inherent in having one entity, The Bar, exercising all three functions of government. The Bar makes the Rules (legislative), it enforces the Rules by prosecution (executive), and it judges whether the Rules have been violated (judicial). With the consolidation of all three functions of government, there comes abuse. One would think lawyers would know that.

Voltaire wrote that "It is dangerous to be right when the government is wrong." The Bar is incensed that Thompson is right, and it is out to destroy him since it can't prove him wrong. What The Bar cannot refute it seeks to pathologize, literally. If The Bar had ever done this to this judge in this action, he would not today be sitting on the bench. The stigma would be overwhelming.

This court must not let this Bar get away with this use of Ben Kuehne and threatened, baseless psych evaluations to run over Thompson or anyone else.

This regulatory hubris affects our profession and the public's perception of us. Lest we forget, it is the public we are to serve. Thompson has tried, *pro bono*, to do just that, to protect children from corporate predators, and this is the thanks he gets from The Bar.

I HEREBY CERTIFY that this has been served upon record counsel this 9th day of August, 2007, electronically.

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