GENERAL COUNSEL
A PROFESSIONAL CORPORATION

LOS ANGELES OFFICE
333 South Grand Avenue, 25th Floor
Los Angeles, California 90017
Telephone: (213) 233-9450
Facsimile: (213) 233-9451

ORANGE COUNTY OFFICE
620 Newport Center Drive, Suite 1100
Newport Beach, California 92660
Telephone: (949) 892-1080
Facsimile: (949) 892-1081

SAN DIEGO OFFICE
501 West Broadway, Suite 800
San Diego, California 92101
Telephone: (619) 727-5320
Facsimile: (619) 727-5321

WWW.GENERALCOUNSELPC.COM

REPLY TO: LOS ANGELES OFFICE

14 September 2005

CONFIDENTIAL – FOR SETTLEMENT PURPOSES ONLY – NOT TO BE FILED

United States Magistrate Judge FFFFFFFFF
United States District Court for the Central District of California
312 North Spring Street
Los Angeles, California 90012

Re: PPPPPP v. DDDDDD
USDC Case No. SA 123456
Our File No. ABCD.112101.01

Dear Judge FFFFFF:

As per the Court's Order of August 9, 2005, please allow this letter brief to serve as the Confidential Settlement Conference Statement of defendant DDDDDD.

A. Summary of Factual Background

PPPPPP is a professional plaintiff who has been found by at least one United States District Judge to be a vexatious litigant. PPPPPP's scheme is to go from small business to small business and identify the smallest, most detail-oriented and technical violations of the Americans with Disabilities Act. In league with his business partners ZZZZZZ (the attorney representing PPPPPP here, who has also himself been found to be a vexatious litigant) and XXXXXX (DDDDDD's expert witness, who has founded an entire business based on opining in PPPPPP cases), PPPPPP then leverages these claims into lawsuits which then fund yet more lawsuits. What PPPPPP himself brings to the table is the fact that he is in a wheelchair. He is the figurehead plaintiff in this mill which runs on the same basis as the now infamous Trevor Law Group.

DDDDDD is a typical example of a PPPPPP victim. DDDDDD is a family owned and operated business, with three generations of the AAAAAA family participating. AAAAAA, the current President, at age 27, only just inherited the business from his father and grandfather.

At page 9 of his complaint, PPPPPP alleges that he "suffered" from the following "defects," the rebuttal to each of which is discussed:

- Signage and parking spots. PPPPPP has admitted that businesses are not liable for acts of vandalism. Vandals, usually young gang members, frequently either take such signs or "tag" them with graffiti, requiring them to be taken down and replaced.

- Van parking. PPPPPP drives a red 2-seater sports car, not a van.
- Directional signage to restrooms. Such signage does indeed exist.
- Women's restroom. PPPPPP is a man.
- Men's restroom. The men's restroom is fully handicapped accessible.
- Ramp to bowling lanes. PPPPPP has admitted that he is not an expert in business center operations. The "ramp" of which PPPPPP speaks is get onto the concourse itself, which is a ½ - 1 inch lip, under which is much of the machinery needed to operate the lanes themselves. The ADA does not require 100% compliance if to do so would be commercially unreasonable. To modify this would require a commercially unreasonable expenditure
- Service counter height. Again, this is an issue of bowling center operations. The counter height is where it is as a theft deterrent. DDDDDD will proffer expert testimony that to lower the counter height would result in an unacceptable risk of theft and violence.

B. Summary of Legal and Factual Issues Presented by Case

The factual issues as to PPPPPP's substantive claims are as discussed above. However, A major factual and legal issue will be PPPPPP's status (or lack thereof) under the ADA.

PPPPPP believes that just because he is disabled and DDDDDD is open to the public that the ADA applies. DDDDDD respectfully submits that the inquiry is more subtle than that, and that neither PPPPPP nor DDDDDD fall within the ambit of the ADA. This is because PPPPPP, as a professional plaintiff and an adjudged vexatious litigant, was not simply a member of the general public on DDDDDD's property for the purposes for which DDDDDD holds itself open to the public. Rather, by virtue of his hostile intent, PPPPPP was a trespasser and as such took himself out of the category of "the public" which DDDDDD invited onto its property, which has the additional effect of taking DDDDDD out of the category of "public accommodations" under the ADA.

The law of property and trespass, as it applies to private property held open to the public for a specific (business) purpose, is fairly clear. This was recently enunciated in Allred v. Harris (1993) 14 Cal.App.4th 1386, 1390:

> As a general rule, landowners have a right to exclude persons from trespassing on private property; the right to exclude persons is a fundamental aspect of private property ownership. (See Loretto v. Teleprompter Manhattan CATV Corp. (1982) 458 U.S. 419, 435)

This follows the fairly commonsensical proposition set forth in MacLeod v. Fox West Coast T. Corp. (1937) 10 Cal.2d 383, 393:

> An owner has the right to forcibly eject trespassers.

Applying this concept to business establishments, the Court in Demmer v. City of Eureka (1947) 78 Cal.App.2d 708, 711 stated:

> One who, while lawfully upon the property of another or upon public property as an "invitee" … uses the property upon a venture in his own interests and not within the scope of his invitation … loses his status as an "invitee" and becomes a trespasser.

This was later approved in O'Keefe v. South End Rowing Club (1966) 64 Cal.2d 729, 737, where the Court quoted from the Restatement 2d Torts §332(2):

> A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.

This was further refined in Civic Western Corp. v. Zila Industries, Inc. (1977) 66 Cal.App.3d 1, 17, with the statement that:

> … [A] trespass may occur if the party, entering pursuant to a limited consent … proceeds to exceed those limits by divergent conduct on the land of another.

Quoting from the Restatement 2d Torts §168, the Civic Western Court then went on to say:

> A conditional or restricted consent to enter land creates a privilege to do so only in so far as the condition or restriction is complied with. Id.

Finally, in Cassinos v. Union Oil Co. (1993) 14 Cal.App.4th 1770, 1780, it was held that:

> Where one has permission to use land for a particular purpose and proceeds to abuse the privilege, or commits any act hostile to the interests of the land owner, he becomes a trespasser.

Although DDDDDD is indeed "open to the public," it is not an unlimited public forum, like a park or a town square. In a park or a town square, anyone with the right permits can open a lemonade stand, or get up on a soapbox and preach the benefits of joining the California Nazi Party, etc.

DDDDDD, however, is private property that is open to the public for a limited purpose: to have that public come on to the premises to take part in its business. To continue the foregoing examples, if someone came onto DDDDDD's property and set up a lemonade stand or began a political speech, DDDDDD would be perfectly justified in kicking that person off the property as a trespasser.

This is exactly what PPPPPP is doing. He has a job. His job is to scout out targets and then act as a figurehead plaintiff. His partners in the litigation mill business he runs are his lawyers and his expert witnesses. PPPPPP has filed over 300 lawsuits, using the same expert witnesses and lawyers over and over again. He's never worked a day in his life after discovering this new way of making money. Thus, PPPPPP's coming on to DDDDDD's property and scouting for ADA litigation is no more different than if he were to set up a lemonade stand in Lane No. One.

DDDDDD respectfully submits that, given his track record and the vexatious litigant finding, a jury would be more than justified to find that PPPPPP was on DDDDDD's property not to bowl (the purpose for which it is held open to the public) but, rather, was there for the purpose of setting up a lawsuit. Plaintiff may argue that he was simply there to bowl, but a jury, as Judge Rafeedie did when he held PPPPPP to be a vexatious litigant, is free to find that these protestations of innocent intent are not credible.

If that is indeed the case, then DDDDDD submits that PPPPPP's hostile intent exceeded the limited access which he was granted to DDDDDD property. At that point, by operation of law, DDDDDD ceased to be public property or a place of public accommodation as far as PPPPPP, the trespassing professional plaintiff, was concerned. PPPPPP was on private property at that point, **for which the ADA does not apply**. DDDDDD intends to argue that this interpretation correctly squares with the true intent of the ADA's noble purpose, to protect against discrimination, and guards this from the corruption wrought by professional plaintiffs like PPPPPP and his ilk. As such, **PPPPPP was not covered by the ADA at all**.

C. Description of Damages Sought

DDDDDD respectfully refers this Court to PPPPPP's Statement for this issue. However, to the extent that PPPPPP's requests for damages include attorneys' fees, it should be noted that all work performed in this case associated with the Order to Show Cause was (a) not mandated by anything DDDDDD did, as such an order came sua sponte as a result of the vexatious litigant finding, and (b) the hearing for the OSC involved 18 PPPPPP litigants, not just DDDDDD. Further, DDDDDD will be prepared to prove that all of the legal work in this case has been nothing more than a cut-and-paste application from the 300+ other PPPPPP cases.

Finally, to the extent that PPPPPP claims daily damages, DDDDDD is prepared to prove that PPPPPP has never visited another establishment after he has sued them (including other bowling centers), even after they have settled or performed full remediation. PPPPPP's only interest in visiting businesses is to set them up for a lawsuit.

D. Summary of Settlement Negotiations

DDDDDD offered PPPPPP $7,500.00 at the outset of this matter for settlement, to which PPPPPP responded with a demand for $25,000.00. Nothing has changed since then.

E. Trial Data

1. Trial date: November 1, 2005
2. Pre-trial conference date: October 24, 2005
3. Estimated length of trial: 5-7 days
4. A jury trial is anticipated

F. Other Relevant Circumstances

None.

Respectfully Submitted,

John A. Safyurtlu
General Counsel for
DDDDDD