



June 20, 2006

James C. Mason, Esq.
Lawyers Against Lawsuit Abuse, APC
402 West Broadway, Fourth Floor
San Diego, CA 92101

Re: Azevedo v. PJ'S
Case No.: 060553 H (CAB)

Dear Jim:

Since I doubt this case will settle without protracted litigation, the purpose of this letter is to discuss and demand class damages.

Under F.R.Civ.P, rule 23(b)(3) Plaintiffs are seeking class damages. The first task is to identify the class. As of May, 2006, the population of Normal Heights was 15,000. According to the U.S. Census 1/5 of the population is disabled, of this amount 33.5 use wheelchairs. Thus, the disabled population in wheelchairs in Normal Heights is 1,005. Therefore, Defendants have a potential exposure of \$4,000 times 1005 or \$4,020,000. The second task is to notify the 15,000 residents to identify class members at a cost of \$5,250.00. The third task is for Defendants to reserve funds. Thus, we will object to any sale of real property of Defendants; we will perfect a lien on all such real property.

The fourth task is to provide a method of distribution for unclaimed amounts. When a class action involves a large number of class members but only a small individual recovery, the cost of separately proving and distributing each class member's damages may so outweigh the potential recovery that the class action becomes unfeasible. Fluid recovery or "cy pres" distribution avoids these difficulties by permitting aggregate calculation of damages, the use of summary claim procedures, and distribution of unclaimed funds to indirectly benefit the entire class. *See Developments in the Law - Class Actions*, 89 Harv.L.Rev. 1318, 1517 (1976). Federal courts have frequently approved this remedy in the settlement of class actions where the proof of individual claims would be burdensome or distribution of damages costly. *In re Agent Orange Product Liability Litigation*, 818 F.2d 179, 184-85 (2d Cir. 1987); *2 Newberg on Class Actions*, at § 11.20. *Cf. Bebhick v. Public Utilities Commission*, 115 U.S. App. D.C. 216, 318 F.2d 187 (D.C.Cir.) (fluid recovery ordered in non-class action), cert. denied, 373 U.S. 913, 10 L. Ed. 2d 414, 83 S. Ct. 1304 (1963). Moreover, numerous state courts have utilized [**7] cy pres or fluid recovery procedures to ensure that wrongdoers do not "retain ill gotten gains" simply because of the administrative difficulties traditionally associated with small per individual damages. *E.g., State v. Levi Strauss & Co.*, 41 Cal.3d 460, 715 P.2d 564, 571, 224 Cal. Rptr. 605 (1986) (*en banc*); *see Newberg on Class Actions* at § 10.25.

At this stage of the case Plaintiffs may dismiss the class damages without prejudice. However, I believe this case will not settle without further litigation so I am informing you Plaintiffs are demanding \$4,020,000 for the class.

Sincerely,

Theodore A. Pinnock, Esq.

3033 Fifth Avenue, Suite 410, San Diego, California 92103
Telephone: 619.858.3671 * Facsimile: 619.858.3646
www.PinnockWakefieldLaw.com