

USDC SCAN INDEX SHEET



LMH 3/16/05 15:21

3:02-CV-02497 HUBBARD V. RITE AID CORPORATION

81

AMDM.

1 **Wayne C. Arnold, Bar No. 103194**
 2 **Lisa D. Herzog, Bar No. 194123**
 3 **HART, KING & COLDREN**
 4 **A PROFESSIONAL CORPORATION**
 5 **200 East Sandpointe, Fourth Floor**
 6 **Santa Ana, California 92707**
 7 **Telephone: (714) 432-8700**
 8 **Facsimile: (714) 546-7457**

05 MAR 15 AM 11:18
 CLERK U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

NUONG PRO TUNG
 MAR 11 2005

[Handwritten Signature]

9 **Attorneys for Defendants RITE AID CORPORATION and**
 10 **ARTHUR CIUFFO, JR. and EVELYN EMMERSON,**
 11 **Trustees of the CIUFFO FAMILY TRUST B erroneously**
 12 **Sued as THE CIUFFO FAMILY TRUST B, ET AL.**

13 UNITED STATES DISTRICT COURT
 14 SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

15 LYNN J. HUBBARD, BARBARA J.
 16 HUBBARD,

Case No.: 02CV2497-WQH (BLM)

Plaintiff,

**DEFENDANTS' MODIFICATION OF ITS
 MOTION FOR PRE-FILING ORDER
 PROHIBITING VEXATIOUS LITIGANTS
 FROM FILING NEW LITIGATION
 WITHOUT LEAVE OF COURT AND TO
 POST SECURITY AGAINST
 PLAINTIFFS LYNN J. HUBBARD AND
 BARBARA J. HUBBARD (ONLY
 WITHDRAWING REQUEST FOR RULE
 11 SANCTIONS)**

v.

17 RITE AID CORPORATION; THE
 18 CIUFFO FAMILY TRUST B, ET AL;
 19 AVOCADO PLAZA, L.L.C. and DOES 1
 20 through 20,

Defendant.

Date: April 1, 2005
 Time: 11:00 a.m.
 Ctrm.: 4

Complaint Filed: December 18, 2002
 Trial Date: None

21 TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that Defendants RITE AID CORPORATION and
 23 ARTHUR CIUFFO, JR. and EVELYN EMMERSON, Trustees of the CIUFFO FAMILY
 24 TRUST B (collectively "RITE AID"), respectfully withdraw only their request for Rule 11
 25 sanctions as contained in their Notice of Motion and Motion For Pre-Filing Order

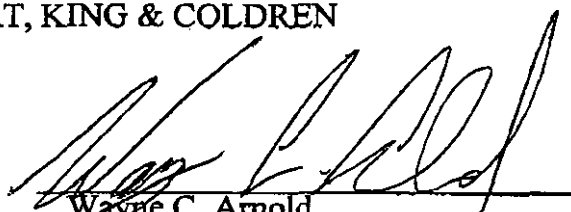
HART, KING & COLDREN
 A PROFESSIONAL CORPORATION
 200 EAST SANDPOINTE, FOURTH FLOOR
 SANTA ANA, CALIFORNIA 92707

1 Prohibiting Vexatious Litigants From Filing New Litigation Without Leave Of Court, To
 2 Post Security and For Monetary Sanctions. All remaining requests and arguments contained
 3 in RITE AID's Motion are not withdrawn, including but not limited to, RITE AID's
 4 request that plaintiffs Lynn J. Hubbard and Barbara Hubbard ("plaintiffs") are deemed
 5 vexatious and requiring them to obtain leave of court in order to file new litigation¹, request
 6 that plaintiffs be required to post security and request for monetary sanctions pursuant to the
 7 Court's own inherent power. RITE AID's requested relief from the Court remains unchanged
 8 and is permissible under other grounds, including this Court's own inherent power.²

9
 10 Dated: March 10, 2005

HART, KING & COLDREN

11
 12
 13 By:



Wayne C. Arnold
 Lisa D. Herzog
 Attorneys for Defendants RITE AID
 CORPORATION and ARTHUR
 CIUFFO, JR. and EVELYN
 EMMERSON, Trustees of the
 CIUFFO FAMILY TRUST B

14
 15
 16
 17
 18
 19 ¹ See *DeLong v. Hennessey* (9th Cir. 1990) 912 F.2d 1144, 1147 (stating that there is strong
 20 precedent establishing the inherent power of the federal courts to regulate the activities of abusing
 21 litigants by imposing carefully tailored restrictions under the power of 28 USC § 1651(a)). See
 22 also *Clinton v. United States* (9th Cir. 1961) 297 F. 2d 899; *Fischer v. United States* (C.D. Cal.
 2003) 2003 U.S. Dist. Lexis 9029; *Sims-Eiland v. Detroit Bd. Of Educ.* (E.D. Mich. 2001) 173 F.
 23 Supp. 2d 682.

24 ² Courts may issue sanctions under their inherent power. "The inherent power of a court can be
 25 invoked even if procedural rules exist which sanction the same conduct. *Chambers v. NASCO,*
 26 *Inc.* (1991) 501 U.S. 32, 39, 111 S.Ct. 2123 "A court may assess attorneys fees when a party has
 27 acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.* at 45-46. "Thus as the
 28 Court of Appeals for the Ninth Circuit has recognized, Rule 11 does not repeal or modify existing
 authority of federal courts to deal with abuses . . . under the court's inherent power." *Id.* at 48-49
 The Court's prior cases have indicated that the inherent power of a court can be invoked even if
 procedural rules exist which sanction the same conduct. *Id.* at 49. Sanctions under the court's
 inherent power may be imposed either on a motion of a party or by the court sua sponte. W.
 Schwarzer, A. Tashima, J. Wagstaffe, *California Practice Guides: Federal Civil Procedure*
Before Trial (Rutter 2004) § 17:170.

HART, KING & COLDREN
 A PROFESSIONAL CORPORATION
 200 EAST SANDPOINTE, FOURTH FLOOR
 SANTA ANA, CALIFORNIA 92707



Facsimile Transmission Cover Sheet

DATE: March 11, 2005 PAGES (incl. cover sheet): 5
 TO: Scott Hubbard, IV
 COMPANY: Law Offices of Lynn Hubbard
 FAX NO.: (530) 894-8244 PHONE: (530) 895-3252
 FROM: Wayne C. Arnold
 FILE NO.: 55001.038/220
 RE: Hubbard v. Rite Aid
 MESSAGE: Please see attached. Thank you.

- ORIGINAL WILL NOT FOLLOW
- ORIGINAL WILL FOLLOW BY:
(U.S. MAIL)

If there are any questions regarding this FAX transmittal, please call Dora at (714) 432-8700.

CAUTION: PRIVILEGED AND/OR CONFIDENTIAL INFORMATION

This message is intended only for the use of the individual to which it was addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employer or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original to us at the above address via United States Postal Service.

300 East Sandestin, South Beach, Florida, 33587-1165, Fax: (714) 432-8700

TX RESULT REPORT

NAME:HART KING COLDREN
 TEL :7145467457
 DATE:MAR.11'2005 11:05

SESSION	FUNCTION	NO.	DESTINATION STATION	DATE	TIME	PAGE	DURATION	MODE	RESULT
3284	TX	01	5001036*915308948244	MAR.11	11:04	005	00H00'53"	ECM	OK