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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION

11 FAUSTINO AMBAOSIO,

12 Plaintiff,

13 vs.

14 NABI ENTERPRISES, INC., ET. AL.

15 Defendants

16 Case No.: EDCV 04-00255-RT
17 (SGLx)

18 DEFENDANT NABI
19 ENTERPRISES' *FIRST AMENDED*
20 MEMORANDUM OF POINTS AND
21 AUTHORITIES IN OPPOSITION TO
22 PLAINTIFF'S MOTION TO
23 COMPEL DISCOVERY
24 RESPONSES

25 AND

26 REQUEST FOR JUDICIAL NOTICE

27 AND

28 REQUEST FOR REFERRAL TO
STANDING DISCIPLINARY
COMMITTEE OF USDC CENTRAL
DISTRICT OF CALIFORNIA

Date: 28 February 2005

Time: 10:00 a.m.

Courtroom: 4

Hon. Robert J. Timlin

29 Defendant NABI Enterprises, Inc., hereby provides this **First Amended**
30 Memorandum of Points and Authorities in Opposition to Plaintiff Faustino

1 Ambrosio's (aka Ambaosio) Motion to Compel Responses to Interrogatories.
2 The reason this memorandum is being amended is because the notice and
3 motion Plaintiff served on Defendant showed a 21 February 2005 hearing date
4 (see Exhibit "K"); accordingly, Defendant rushed to timely file documents by the
5 deadline for the hearing date improperly noticed on Plaintiff's motion. Shortly
6 thereafter, your undersigned was contacted by Clerk Jim Holmes and informed
7 that the motion was actually calendared to be heard 28 February 2005;
8 accordingly, the purpose of this amended brief is to clarify and correct points in
9 the original, which was prepared in haste. Per my comments to Clerk Holmes,
10 the original brief, filed 7 February 2005, should be disregarded.
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14 While the motion fails to comply with applicable local rules, as discussed in
15 Section VI, below, Respondent brings the following **far more serious** [**and more**
16 **urgent**] concerns to the Court's attention:
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20 **Overview:**

- 21 1. Plaintiff's Attorney Roy Landers is currently under investigation by,
22 *inter alia*, the State Bar of California, in connection with the filing of
23 more than 500 identically worded ADA/access lawsuits since 2002;
24 compelling evidence suggests that Mr. Landers' plaintiffs may simply
25 never have visited many of the locations where he claimed they had
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1 suffered “physical damage” and “severe emotional distress” (as
2 discussed below). Notwithstanding the foregoing, he continues to file
3 and settle these cases at a rate of about one per day. In the
4 interests of justice, this Court must take action to prevent further mis-
5 use of its authority to avoid irreparable harm to defendants in a
6 number of cases, in that:
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10 a. A series of video depositions were recently taken of 3 of Mr.
11 Landers plaintiffs, revealing that:
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13
14 i. Mr. Landers claimed that the plaintiffs suffered “physical
15 damage” and “severe emotional distress” in each of the
16 lawsuits he filed; yet the deposition testimony contradicts
17 this [See Sections II, III and V, below, and Declaration of
18 Peters at ¶6];
19
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21
22 ii. Each of the plaintiffs deposed believed they’d only filed a
23 handful of lawsuits, even though Mr. Landers had already
24 settled 18, 26 and 31 for each of them, respectively [See
25 Section I, below];
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1 be construed to limit the Court's inherent power in that regard.

2 L.R. 83-8.2 Orders for Security and Control: On its own motion or
3 on motion of a party, after opportunity to be heard, the Court may, at
4 any time, order a party to give security in such amount as the Court
5 determines to be appropriate to secure the payment of any costs,
6 sanctions or other amounts which may be awarded against a
7 vexatious litigant, and may make such other orders as are
8 appropriate to control the conduct of a vexatious litigant. Such orders
9 may include, without limitation, a directive to the Clerk not to accept
10 further filings from the litigant without payment of normal filing fees
and/or without written authorization from a judge of the Court or a
Magistrate Judge, issued upon such showing of the evidence
supporting the claim as the judge may require.

11 L.R. 83-8.3 Findings: Any order issued under L.R. 83-8.2 shall be
12 based on a finding that the litigant to whom the order is issued has
13 abused the Court's process and is likely to continue such abuse,
unless protective measures are taken.

14 L.R. 83-8.4 Reference to State Statute: Although nothing in this
15 rule shall be construed to require that such a procedure be followed,
16 the Court may, at its discretion, proceed by reference to the
17 Vexatious Litigants statute of the State of California, Cal. Code Civ.
Proc. §§ 391 - 391.7.

18 28 USC 1927. Counsel's liability for excessive costs:

19
20 Any attorney or other person admitted to conduct cases in any
21 court of the United States or any Territory thereof who so
22 multiplies the proceedings in any case unreasonably and vexatiously
23 may be required by the court to satisfy personally the excess
costs, expenses, and attorneys' fees reasonably incurred because of
such conduct.

24 FRCP 11: Signing of Pleadings, Motions, and Other Papers;
25 Representations to Court; Sanctions

26
27 "(b) Representations to Court.

1 “By presenting to the court (whether by signing, filing, submitting, or
2 later advocating) a pleading, written motion, or other paper, an
3 attorney or unrepresented party is certifying that to the best of the
4 person's knowledge, information, and belief, formed after an inquiry
reasonable under the circumstances,--

5 “(1) it is not being presented for any improper purpose, such as to
6 harass or to cause unnecessary delay or needless increase in the
7 cost of litigation;

8 “(2) the claims, defenses, and other legal contentions therein are
9 warranted by existing law or by a nonfrivolous argument for the
10 extension, modification, or reversal of existing law or the
establishment of new law;

11 “(3) the allegations and other factual contentions have evidentiary
12 support or, if specifically so identified, are likely to have evidentiary
13 support after a reasonable opportunity for further investigation or
discovery; and

14 “(c) Sanctions.

15
16 “If, after notice and a reasonable opportunity to respond, the court
17 determines that subdivision (b) has been violated, the court may,
18 subject to the conditions stated below, impose an appropriate
19 sanction upon the attorneys, law firms, or parties that have violated
subdivision (b) or are responsible for the violation.

20 “(1) How Initiated.

21 “(B) On Court's Initiative. On its own initiative, the court may enter an
22 order describing the specific conduct that appears to violate
23 subdivision (b) and directing an attorney, law firm, or party to show
24 cause why it has not violated subdivision (b) with respect thereto.”

25 **Introduction:**

26 In each of the 500+ complaints Mr. Landers has filed, he alleged that his
27 clients suffered “physical damage” and “severe emotional distress” at the
28

1 locations he sued. Of course, if Mr. Landers' clients did not go to these locations,
2 then they could not have been injured there; if they have no recollection or
3 information about a location Mr. Landers' sued on their behalf, we must assume
4 that they did not go there. If Mr. Landers' plaintiffs did not visit the locations
5 where he consistently claims they were injured, it would seem that he has
6 improperly invoked the jurisdiction of this, and too many other, Courts.
7
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10
11 I. **Each of the plaintiffs deposed believed they had filed only a small**
12 **number of lawsuits, compared to the many more Mr. Landers had**
13 **already settled in their names**

14
15 Each of the plaintiffs was asked in their depositions how many lawsuits
16 they thought they had filed. Their answers were significant, because to close an
17 ADA/access lawsuit with most courts, a plaintiff's signature will generally be
18 required, and they will normally receive a check. Their responses, quoted below,
19 would lead one to conclude that each of them believed they had filed about 5-10
20 lawsuits—certainly not the 18, 26 and 31, respectively, Mr. Landers had already
21 settled in their names at the time of their depositions:
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23

- 24
25 a. **Faustino Ambrosio**: ***"Maybe five"*** [Ambaosio depo at 27:13-16]; The
26 truth was that Mr. Landers had filed at least **49 lawsuits** in Mr.
27 Ambaosio's name and had already **settled 18** of them at the time of his
28

1 deposition.

2
3
4 b. **Dan Jones**: “*maybe 10*” [Jones Depo at 20:10-16]; The truth was that
5 Mr. Landers had filed **38 lawsuits** in Mr. Jones’ name and had already
6 **settled 26** of them at the time of his deposition.
7

8
9 c. **Ismael Rivera**: Q: “*fewer than ten?*” A: “*Possibly*” [Rivera Depo at
10 23:19 to 24:2]; The truth was that Mr. Landers had filed **76 lawsuits** in
11 Mr. Rivera’s name and had already **settled 31** of them at the time of his
12 deposition.
13

14 Because each of these plaintiffs would have had to sign an equal number of
15 settlement agreements or dismissals in order for Mr. Landers to represent to the
16 Court that each case had settled, it is impossible that each of them could not
17 have known of at least the number of lawsuits which had been settled at the time
18 they testified, unless, as many have suspected for some time, Mr. Landers’ office
19 makes a practice of filing lawsuits against locations where the plaintiffs have
20 never visited, as discussed below.
21
22
23

24
25 **II. Mr. Landers’ plaintiffs had no information about many of the**
26 **locations where he claimed they’d suffered “physical damage” and**
27 **“severe emotional distress”**
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1 Each of Mr. Landers' plaintiffs came to the depositions prepared to discuss the
2 facility for which the deposition had been noticed. However, because each
3 lawsuit claimed the plaintiff suffered "physical damage" and "severe emotional
4 distress" at each of the other locations Mr. Landers claimed they had visited, it
5 was relevant— if not essential-- to inquire about the injuries and experiences Mr.
6 Landers claimed each had suffered at the many locations he'd sued prior to
7 theirs. After all, if the plaintiff was already injured at the time he visited the facility
8 in question, some or all of the injury claimed at the location could be attributable
9 to previous injuries and/or emotional distress.
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14 Particularly where, as here, Mr. Landers had claimed his clients had suffered
15 "physical damage" in 30 or more previous incidents in just the past 2 years, it
16 was relevant to inquire about each such incident to determine if it played any part
17 in the "physical damage" and "severe emotional distress" Mr. Landers claimed
18 they had suffered at the site in question. The problem was that Mr. Landers'
19 clients had no knowledge of many of the locations at which he claimed they had
20 suffered these injuries, as their testimony cited below confirms. They were asked
21 questions like "where else in this area did you encounter inaccessibility" and they
22 could provide no information whatsoever, even though-- if the claims in Mr.
23 Landers' lawsuits are to be believed-- they should have been able to identify at
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1 least some of the other locations where they experienced these injuries.
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3

4 **Example 1:** [from the Deposition of Dan Jones at 53:23-5 (Exhibit “D” hereto)]:

5 Q: “Have you experienced inaccessibility anywhere else in San Bernardino”

6 A: “No.
7

8 **Problem:** Mr. Landers filed a lawsuit (Exhibit “M”) claiming Plaintiff
9 Jones visited a Del Taco in San Bernardino the day before (19
10 September 2003) he visited the Mexico Café (which had convened
11 the deposition) and also suffered “physical damage” and “severe
12 emotional distress” there as well. This would not be consistent with
13 his testimony that he had not been to San Bernardino for about a
14 year prior to his visit to the Mexico Café (Ex. “D” at 42:11-14), and
15 made no other stops beside a visit to a McDonald’s and a gas station.
16 Mr. Jones also claimed he took Interstate 5 all the way to Vegas (Ex.
17 “D” at 37:6-20); of course, Interstate 5 goes nowhere near Las Vegas.
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23 **Example 2:** [from the Deposition of Ismael Rivera (Exhibit “F”)]:

24 Q: “Do you recall any other company that you sued in San Bernardino?”

25 A: “I don’t remember exactly.” [Exhibit “F” at 67:4-6]

26 Q: “Can you recall any access problems you experienced in San
27
28

1 Bernardino?”

2 A: “In a specific location?”

3
4 Q: “In any location in San Bernardino in the last five years.”

5 A: “I don’t remember exactly”

6 [continued]

7
8 Q. “Do you recall going to a gas station any time you were in San
9 Bernardino?”

10 A: “I don’t remember.”

11
12 Q. “Do you recall going to a Texaco station at any time in San Bernardino?”

13 A: “I don’t remember.” [Exhibit “F” at 71:1-25]

14
15
16 **Problem:** If the claims in Mr. Landers’ lawsuits are to be believed, Mr.
17 Rivera also went to Highland Texaco (Exhibit “N” at 4:3-5), a Circle K.
18 market (Exhibit “O” at 4:3-5), and a Tacos Mexico restaurant (Exhibit
19 “P” at 4:3-5) that same day, and suffered “physical damage” at each
20 (¶31 of each complaint) and “severe emotional distress” at each (¶45
21 of each complaint). Remarkably, another of Mr. Landers’ plaintiffs.
22 Alex Flores, also visited an Econo Lube & Tune just down the street
23 that same day, and also suffered “physical damage” and “severe
24 emotional distress” while there (Exhibit “Q” at 3:2, 4:4-5, 12:18, and
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1 16:11). Recall also that Mr. Landers lawsuits claimed that Dan Jones
2 visited The Mexico Café that same day, and a Del Taco, each just
3 blocks away, the day before, as discussed in Example 1, immediately
4 above. See also Plaintiff Faustino Ambrosio’s claims, as discussed in
5 the following example:
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9 **Example 3:** [from the Deposition of Faustino Ambrosio (aka Ambaosio) at
10 (Exhibit “B” hereto)]:
11

12 Q: “Have you sued any other locations in San Bernadrino?”

13 A: “I don’t remember.” [Exhibit “B” at 77:19-21]

14 [continued]

15
16 Q: “Were you injured anywhere in San Bernardino at any time?” . . .

17 A: “No” [Exhibit “B” at 79:23 to 80:4]

18 [continued]

19
20 Q: “Did you suffer any physical damage anywhere in San Bernardino at any
21 time?”

22 A: “No.” [Exhibit “B” at 84:15-17]

23 [continued]

24
25 Q: “Did you sue any other companies based on your trip to San Bernardino
26 that day or any other companies with regard to your travels that day?”
27
28

1 A: "No, I don't think so . . .no."

2 Q: "As I understand it . . . this was a one day trip, you didn't stay
3 overnight anywhere; is that correct?"
4

5 A: "Correct" [Exhibit "B" at 87:11-19]

6 [continued]

7
8 Q: "Did you suffer any sort of emotional distress at this property?"

9 A: "No, just that I couldn't go into the bathroom." [Exhibit "B" at 93:10-13]
10

11
12 **Problem:** If Mr. Landers' lawsuits are to be believed, Mr. Ambrosio
13 went to both El Pollo Loco (Exhibit "R", ¶¶ 2, 7, 31, and 45) Juan
14 Pollo (Exhibit "S", ¶¶ 2, 7, 31, and 45), and two different motels [the
15 Flagstone Motel (Exhibit "T", ¶¶ 2, 7, 31, and 45) and the Royal
16 Grand Inn (Exhibit "U", ¶¶ 2, 7, 31, and 45)] all that same day, and all
17 in the same neighborhood in which Dan Jones and Ismael Rivera
18 also allegedly suffered "physical damage" and "severe emotional
19 distress." Note that Plaintiff Ambrosio denied suffering any emotional
20 distress, despite Mr. Landers' frequent claims of that on his behalf.
21 Since he testified that he lives in Westminster, why would he have
22 gone to 2 motels in Santa Ana that same day? While he is entitled to
23 do this, it prejudices our defense if he has no knowledge of these
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1 alleged events, because it is essential to inquire about prior injuries
2 and emotional distress.

3
4 One need only watch the videos provided to the Court to see that Mr. Landers’
5 plaintiffs had no knowledge of many of the locations at which he’d claimed they’d
6 been injured.

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9 **III. Each of the plaintiffs’ testimony clearly indicated that they had not**
10 **suffered the “physical damage” and “severe emotional distress”**
11 **Mr. Landers consistently claims**

12 In each of his complaints, Mr. Landers alleges that his clients suffered
13 “physical damage” (usually at ¶31) and “severe emotional distress” (usually at
14 ¶45). California law generally requires the to make claims for severe emotional
15 distress, a plaintiff must allege distress so severe that “no reasonable [wo]man
16 could be expected to endure it.” Cervantez v. J.C. Penney Co. (1979) 24 C. 3d
17 579, 593, 156 C.R. 198, 595 P2d 975. Generally, a mental health professional’s
18 bills are required to support such claims; each of the plaintiffs testified that they
19 had not seen one in connection with the events in the lawsuits.

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21
22 First, there is compelling evidence that Mr. Landers’ clients simply did not go
23 to many of the locations where he claimed they suffered injury and distress, or if
24 they went, it could not possibly have been that bad, because they can’t
25 remember it. If they did go, neither the complaint, nor their testimony, sets forth
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1 facts which would support a cause of action for either severe emotional distress;
2 yet, Mr. Landers has filed and settled hundreds of lawsuits making this claim on
3 behalf of his clients. Pursuant to the authority set forth above, this Court should
4 exercise its authority to restrain Mr. Landers from filing (or prosecuting) any
5 future lawsuits until he has made those defendants whole who were called to
6 respond to what appear to be completely meritless claims.
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10 **IV. Only when the Landers plaintiff's claims are considered together**
11 **does the truth begin to emerge**

12
13 Many have long suspected that Mr. Landers' office files these lawsuits
14 randomly for the various plaintiffs in his "pool," and then if a deposition is actually
15 noticed, the deponent then visits the facility in question to prepare. The answers
16 of each of the deponents were consistent with this. At least **two** of Mr. Landers'
17 clients became disabled committing armed robberies [Dan Jones, see Exhibit "D"
18 and Danny Serafin; see the second (of a series of 3) News 8 video clip posted at
19 www.ADAabuse.com.
20
21

22 Since Mr. Landers is based in San Diego, as are most of his clients, it seemed
23 odd that so many of them should be claiming they visited the San Bernardino
24 area between 10 and 20 September 2003— in fact, suing many businesses just
25 blocks from one another **on the very same street!** During this 10 day period, if
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1 the claims in Mr. Landers lawsuits are to be believed:

- 2 • Faustino Ambrosio [aka Ambaosio] (49 lawsuits) sued 4 businesses
- 3
- 4 • Gaynor Carlock (116 lawsuits to date) sued just 1
- 5
- 6 • Alex Flores (39 lawsuits) sued 2
- 7
- 8 • Dan Jones (38 lawsuits) sued 2, and
- 9
- 10 • Ismael Rivera (76 lawsuits) sued 5

11 Since these individuals had not previously filed lawsuits in this Court or
12 area, it seemed odd that so many of them would suddenly have reason to be in
13 the same area at approximately the same time. We thought that perhaps a party
14 or conference or some other event might have brought them all together, but:

- 17 • Faustino Ambrosio (aka Ambaosio) testified that he received incorrect
18 directions driving to a landscaping job in Riverside [Exhibit “B”];
- 19
- 20
- 21 • Dan Jones testified that he just stopped for food on the way to Las
22 Vegas (though he would have passed countless more convenient
23 restaurants in the many miles of stoplights between the freeway
24 and restaurant he sued) [Exhibit “D”]; and
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- 1 • Ismael Rivera testified that he just drives to distract himself; yet
2 inexplicably **happened** to wind up in **on exactly the same street**
3 **sued by the other plaintiffs** [Exhibit “F”]
4

5
6 Any of these cases or facts, by themselves, might seem insignificant; when
7 taken together, however, many think there is compelling evidence of a massive
8 attempt to defraud.
9

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11
12 **V. Mr. Landers engaged in substantial discovery misconduct to**
13 **prevent the truth from coming out**

14 Mr. Landers repeatedly engaged in misconduct during each of the depositions
15 taken. [See Declaration of Peters at ¶7 and the highlights circled at Exhibits
16 “B”, “D” and “F”] It was so bad during the first one (the Deposition of Dan
17 Jones) that your undersigned served highlighted copies of FRCP 30, FRCP 26
18 and Armstrong v. Hussman Corp. 163 FRD 299 early on in the second
19 deposition (i.e., Ismael Rivera). Many have speculated why an attorney who
20 has been practicing since 1975 (and makes a claim to fees of \$450/hr.) would
21 not know that his conduct violated applicable Federal Rules of Civil
22 Procedure.
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1 Particularly when Mr. Landers' many objections and instructions not to
2 answer are heard on the videotapes, it becomes clear that if he were to allow
3 those questions to have been answered, it would have exposed the fact that
4 his clients had not been to many of the locations he had represented in the
5 lawsuits he had filed. Exhibits "B" (8:18-25), "D" (5:16-25), and "F" (3:21-25)
6 shows that Mr. Landers instructed his clients not to answer on 22 occasions
7 during the three short depositions and ended each prematurely.
8
9

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12 **VI. The motion should be denied because it fails to comply with Local**
13 **Rule 37**

14 The Local Rules provide that:

15
16
17 **L.R. 37-2 Moving Papers.** "If counsel are unable to settle their
18 differences, they shall formulate a written stipulation. The stipulation
19 shall be filed and served with the notice of motion."
20

21
22 **L.R. 37-2.4 Failure to File Joint Stipulation.** "The Court will not
23 consider any discovery motion in the absence of a joint stipulation or a
24 declaration from counsel for the moving party establishing that opposing
25 counsel (a) failed to confer in a timely manner in accordance with L.R. 37-
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1 1; (b) failed to provide the opposing party's portion of the joint stipulation in
2 a timely manner in accordance with L.R. 37-2.2; or (c) refused to sign and
3 return the joint stipulation after the opposing party's portion was added. If
4 such declaration accompanies the motion, then L.R. 6-1, 7-9 and 7-10
5 apply."
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9 The procedures outlined in Local Rule 37 are designed to ensure that
10 valuable Court time will not be used if there is any means of resolving discovery
11 disputes informally between counsel. While communication between counsel
12 had been less than complete on this issue (while it has been extremely effective
13 on all others, in that follow-up calls and email are routinely sent when anything
14 expected is not received; see Declaration of Peters at 8 and Exhibit "I"); however,
15 if Mr. Landers had followed the procedure set out in Local Rule 37, there is a
16 good chance that this matter would not have been brought to the Court today.
17 For example, many attorneys will document a failure to respond, or the fact that
18 they did not receive something they expected in writing; had this been received, it
19 certainly would have been early notice of miscommunication and the need to re-
20 send something.
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25 Mr. Landers' office has frequently sent such "follow-up" letters, copies of
26 which are attached as Exhibit "I." Even without a follow-up letter, if Mr. Landers
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1 had presented his part of the Joint Statement (as was his obligation under Local
2 Rule 37-2.2), this would have signaled that something had gone awry. Basically,
3 Mr. Landers just wrote a letter and never took any further action before bringing
4 this motion, despite extensive communication between our firms on nearly every
5 other matter in the 6+ cases in which we are involved. [See Exhibit “K” and
6 Declaration of Peters at 8].
7
8

9 10 **Conclusion**

11
12 This Court should immediately consolidate proceedings in all of Mr. Landers’
13 cases and suspend his power to make further [mis]use of this Court’s authority
14 until the investigation of these matters is complete. Additionally, the findings of
15 this Court should be referred to the Standing Disciplinary Committee of this
16 Court, the State Bar and the other District Courts (i.e., the Southern District, and
17 the Western and Southern divisions of the Central District) for appropriate action.
18

19
20 Mr. Landers has sued many of the smallest businesses in the Inland Empire,
21 and businesses of this size are often compelled to make settlement offers they
22 can’t afford in cases with false claims simply because they lack the resources
23 and information to prove the falsehood of these claims— justice that is
24 unaffordable is justice denied!
25
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27
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1 Respectfully submitted,

2
3 Dated: 14 February 2005

Lawyers Against Lawsuit Abuse, APC

4
5 A handwritten signature in black ink, appearing to be the initials 'JR' or similar, written in a cursive style.

6
7
8 Attorneys for Defendant NABI Enterprises

9 -- BY FACSIMILE --

1
2 David W. Peters, SBN 155449
3 Lawyers Against Lawsuit Abuse, APC
4 402 West Broadway, Suite 400
5 San Diego, CA 92101
6 (619) 275-2000 Fax (888) 453-1262

7 Attorney for Defendant NABI Enterprises

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION

11
12 FAUSTINO AMBAOSIO,

13 Plaintiff,

14 vs.

15 NABI ENTERPRISES, INC., ET. AL.

16 Defendants

Case No.: EDCV 04-00255-RT
(SGLx)

Proof of Service of:

DEFENDANT NABI
ENTERPRISES' MEMORANDUM
OF POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL
DISCOVERY RESPONSES

AND

REQUEST FOR JUDICIAL NOTICE

AND

REQUEST FOR REFERRAL TO
STANDING DISCIPLINARY
COMMITTEE OF USDC CENTRAL
DISTRICT OF CALIFORNIA

Date: 28 February 2005

Time: 10:00 a.m.

Courtroom: 4

Hon. Robert J. Timlin

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

3
4 I, the undersigned, hereby declare that I am a resident of the State of California
5 and am employed in the County of San Diego, State of California. I am over the
6 age of 18 and not a party to the within action; my business address is Lawyers
7 Against Lawsuit Abuse, APC, 402 West Broadway, Suite 400, San Diego, CA
8 92101.

9 On 14 February 2005, I served the foregoing document described as:

- 10 1. DEFENDANT NABI ENTERPRISES' FIRST AMENDED MEMORANDUM
- 11 OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S
- 12 MOTION TO COMPEL DISCOVERY RESPONSES, AND, REQUEST FOR
- 13 JUDICIAL NOTICE, AND, REQUEST FOR REFERRAL TO STANDING
- 14 DISCIPLINARY COMMITTEE OF USDC CENTRAL DISTRICT OF
- 15 CALIFORNIA
- 16 2. REVISED DECLARATION OF DAVID PETERS IN OPPOSITION TO
- 17 MOTION TO COMPEL
- 18 3. EXHIBITS "A" THROUGH "U" [except that Exhibits "C", "E" and "G" are
- 19 video depositions equally available to counsel through the videographer]
- 20 4. Table of Contents
- 21 5. Table of Authorities

22 on the parties in this action by serving:

23 Mr. Roy Landers, Esq.	Mr. Tom Agawa, Esq.
24 7840 Mission Center Court, Suite 101	3790 Florida Street, Unit A109
25 San Diego, CA 92108	San Diego, CA 92104-6232

26 (X) By Envelope - by placing () the original (X) a true copy thereof enclosed in
27 sealed envelope(s) addressed as above and delivering such envelope(s):

28 (X) By Mail: As follows: I am "readily familiar" with this firm's practice of collection
and processing correspondence for mailing. Under that practice it would be
deposited with the U.S. Postal Service on that same day with postage thereon
fully prepaid at San Diego, California in the ordinary course of business. I am
aware that on motion of the party served, service is presumed invalid if postal
cancellation date or postage meter date is more than one day after date of deposit

1 for mailing in affidavit.

2 () By Personal Service: I delivered such envelope(s) by hand to the offices of the
3 addressee(s).

4 Executed on 14 February 2005, at San Diego, California.

5
6 (X) FEDERAL I declare that I am employed in the office of a member of the bar
7 of this Court at whose direction the service was made.

8
9
10 

11 David Warren Peters