



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
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October 4, 2010

FILE NO. R-2010-002-SBC
RESOLUTION NO. 002-10-SBC

REQUESTING THAT THE CITY ATTORNEY SUBMIT AN AMICUS CURIAE BRIEF IN SUPPORT OF THE ADVERSE JUDGEMENT AGAINST LES JANKEY IN CALIFORNIA SUPREME COURT CASE NO. S180890, JANKEY V. LEE.

WHEREAS, The Small Business Commission (SBC) acknowledged in SBC Resolution No. 002-08-SBC that accessibility is an important civil right, emphasized that all businesses must comply with the Americans with Disabilities Act ("ADA"), and encouraged continued collaboration between the small business and the disability communities to identify mutually beneficial solutions;

WHEREAS, Serial lawsuits initiated by certain plaintiffs asserting claims under the ADA and related state anti-discrimination statutes against small businesses is a persistent and serious issue in San Francisco and throughout the Bay Area;

WHEREAS, The U.S Department of Justice publication titled "ADA Guide for Small Businesses" states that the, "ADA requires that accessibility be improved without taking on excessive expenses that could harm the business";

WHEREAS, Susan Mizner, Director, Mayor's Office on Disability, stated at the SBC's July 24, 2008 meeting that, "The City has no interest in businesses going under and the disability community has no interest in small businesses going under";

WHEREAS, Ross Woodall, Co-Chair, Mayor's Disability Council, stated at a November 30, 2009 joint meeting with the SBC that, "The Goal is to improve access not just finding ways of filing lawsuits";

WHEREAS, The filing of serial lawsuits asserting claims under the ADA and related state anti-discrimination statutes against small businesses does not necessarily lead to access improvements due to significant settlement funds being directed to plaintiffs attorneys;



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WHEREAS, The SBC is deeply concerned about the ongoing economic viability of small businesses and the negative impact that serial litigation has had on local businesses;

WHEREAS, Many small businesses, including those that have previously complied with California Building Code Title 24, have very limited means and resources to respond to the complaints and face significant economic hardship as a party attempting to defend against these lawsuits.

WHEREAS, An estimated 200 businesses in the City and County of San Francisco have been sued by serial ADA litigants;

WHEREAS, The impact of serial ADA litigation on small businesses has been severe and devastating and has forced many small businesses to close down;

WHEREAS, Entire merchant and neighborhood commercial districts, including those with a high concentration of minority-owned businesses have been targeted by serial plaintiffs, placing the economic viability of these districts at significant risk;

WHEREAS, Objective 6 of the Commerce and Industry Element of the San Francisco General Plan states that, "San Francisco is well known as a city with many distinct neighborhoods whose diverse characteristics are expressed on their commercial streets. Many of these neighborhood shopping areas reflect the surrounding neighborhood's ethnic and lifestyle characteristics;"

WHEREAS, Objective 6 of the Commerce and Industry Element of the San Francisco General Plan also states that, "Neighborhood commercial districts also constitute an important part of the city's economic base, contributing to the city's fiscal stability through property and business taxes, and providing employment opportunities for local residents";

WHEREAS, Policy 6.2 of the Commerce and Industry Element of the San Francisco General Plan states that, "The economic vitality of neighborhood commercial districts is an essential component of the fiscal health of the city and is necessary to ensure that quality services are available to its people";

WHEREAS, It appears that the majority of recent serial lawsuits in the San Francisco bay Area have been initiated by plaintiffs Les Jankey and Craig Yates and their attorney Thomas E. Frankovich. Mr. Frankovich has been the topic of considerable discussion before the SBC and throughout the small business community as well as the local media.

WHEREAS, In the case of Jankey v. Lee, the trial court found in favor of the defendant, dismissed all of the plaintiffs claims, and entered judgment against plaintiffs. The defendant requested as the "prevailing party" that the court award reasonable attorney's



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fees. The trial court granted the defendants request and entered a second judgment against plaintiffs. The plaintiffs subsequently appealed the second adverse judgment.

WHEREAS, The appellate court unanimously affirmed the adverse judgment awarding reasonable attorney's fees to the defendant in a published decision (Jankey v. Lee (2010) 181 Cal.App.4th 1173) and addressed, among other things, the well-documented problem of serial litigation against business owners. Plaintiff Jankey appealed this decision to the State Supreme Court.

WHEREAS, Affirmance of the Court of Appeal's decision by the Supreme Court will have the potential of discouraging serial ADA plaintiffs from suing every business they come in contact with;

WHEREAS, Affirmance of the Court of Appeal's decision by the Supreme Court will also provide potential support for further legislation aimed at slowing down and/or reducing the adverse effects of serial litigation on small businesses in California;

WHEREAS, Plaintiffs who file non-serial claims, conduct reasonable investigations to assess the strength of their claims, and do not employ questionable tactics that serial litigants often utilize, will likely not be negatively impacted by the State Supreme Court's decision to affirm the Court of Appeal's decision;

WHEREAS, At the SBC's July 24, 2010 meeting, the City Attorneys office stated that the City Attorney will consider filing an Amicus Curiae Brief when an issue is "Of importance to the City as a whole and as a public entity;"

THEREFORE, BE IT RESOLVED THAT, The Small Business Commission finds that preventing the filing of serial lawsuits asserting claims under the ADA and related state anti-discrimination statutes against small businesses in San Francisco is of importance to the City as a whole and as a public entity;

THEREFORE, BE IT FURTHER RESOLVED THAT, The Small Business Commission requests that the City Attorney submit an Amicus Curiae Brief in support of the adverse judgment against Les Jankey in California Supreme Court Case No. S180890, Jankey v. Lee.