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USDC CDC filed 4/10/2006

Angela Bernhardt  
P.O. Box 480509  
Los Angeles, CA 90048  
Phone (310) 281-3092

Plaintiff In Pro-Per

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ANGELA BERNHARDT,  
  
Plaintiff,  
  
v.  
  
COUNTY OF LOS ANGELES, and  
LLOYD W. PELLMAN, individually and  
in his official capacity,  
  
Defendants.

Case No. CV 99-10121 GHK (PLA)

PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT; MOTION TO  
MODIFY INJUNCTION; POINTS  
AND AUTHORITIES

DATE: May 15, 2006  
TIME: 9:30 am  
PLACE: Ctroom George H. King,  
650 Roybal Bldg., 225 E. Temple  
Street, Los Angeles, CA

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State Bar Committee on Professional Responsibility and  
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1 TO: Defendants and their Attorneys of Record

2 PLEASE TAKE NOTICE that at 9:30 am on May 15, 2006, at the  
3 Courtroom of Hon. George H. King, 650 Roybal Bldg., 225 E. Temple Street,  
4 Los Angeles, CA, *pro per* plaintiff Angela Bernhardt (“Bernhardt”) will and  
5 by this notice does move the court:

6 (A) pursuant to F.R.C.P. 56(d) for partial summary judgment, to wit,  
7 that it appears without substantial controversy that (i) defendants’ have an  
8 official or unofficial custom, policy, practice or usage (“policy”) of offering,  
9 accepting, and entering into only “lump sum including all attorney’s fees”  
10 settlements of civil rights cases, and (ii) the policy is preventing Bernhardt  
11 from obtaining a lawyer.

12 (B) pursuant to F.R.C.P. 56(d) and 28 USC Section 2201, for a  
13 declaration that the policy is unconstitutional in that it violates the U.S.  
14 Constitution, Article 6, Clause 2 (“Supremacy Clause”), and for a declaration  
15 that such “lump sum” settlements are void as contravening statutory policy.

16 (C) for modification of the existing injunction in this case by replacing  
17 the words “offering to settle” with the word “settling.”

18 The grounds for the motions (A) and (B) are that the submitted evidence  
19 shows that there are no genuine issues as to any material fact and that  
20 Bernhardt is entitled to partial summary judgment as a matter of law.

21 The grounds for the motion (C) are that circumstances have changed  
22 since the initial injunction was entered requiring the modification.

23 The motion will be based on this notice, the following points and  
24 authorities, the Statement of Uncontroverted Facts and Conclusions of Law  
25 filed herewith, and upon such argument and evidence that may be presented at  
26 the hearing on the motion, and

27

28 PLAINTIFF’S MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND TO MODIFY  
INJUNCTION 4-9-2006



1 For purposes of this pleading “lump sum” settlement means “lump sum,  
2 including all attorney’s fees” settlement.

3 The upshot of this pleading is that the County’s lump sum settlement  
4 policy prevents a “victim” from becoming a “plaintiff” represented by a  
5 lawyer, contrary to the supremacy of federal law.

6 On October 6, 1998, Bernhardt was deprived, under color of law, of  
7 federal constitutional rights by Los Angeles County sheriffs deputies.<sup>1</sup>  
8 Bernhardt diligently but unsuccessfully sought a lawyer to represent her.<sup>2</sup>  
9 Bernhardt filed suit *in pro per* alleging, *inter alia*, violation of 42 USC Section  
10 1983 (“initial case”), but the suit was dismissed.<sup>3</sup> The dismissal was affirmed  
11 on appeal in an unpublished decision.

12 Prior to affirmance, on October 4, 1999, Bernhardt filed the instant  
13 action under 42 USC Section 1983 in an effort to obtain a lawyer for her initial  
14 case as well as for the instant case. She claimed that “[d]efendant County  
15 settles all civil rights lawsuits brought against the County, whether pretrial,  
16 during trial, pending appeal, pending cert petition or otherwise (excepting only  
17 a few cases where defendant [sic] prevail by verdict or appeal).”<sup>4</sup> She  
18 claimed it was a “custom, practice and policy” of the County “to offer or  
19 accept settlements in federal civil rights cases only on a ‘lump sum, including  
20 all attorney’s fees’ basis.”<sup>5</sup> She claimed that “only 2% of civil rights cases  
21  
22

---

23 <sup>1</sup> EXS 002-003

24 <sup>2</sup> EXS 011-012

25 <sup>3</sup> EXS 012

26 <sup>4</sup> EXS 003

27 <sup>5</sup> EXS 008, lines 6-8

1 filed in the Central District of California were resolved by verdict.”<sup>6</sup> She  
2 claimed that the policy prevented her from obtaining a lawyer.<sup>7</sup> She sought  
3 injunctive relief against the policy and declaratory relief that the policy,  
4 custom, or practice violated the Supremacy Clause because it conflicted with  
5 Congressional intent in enacting 42 U.S.C. Section 1988(b) (“Fees Act”  
6 hereafter).

7 This Court dismissed the instant case for lack of standing. Bernhardt  
8 appealed and the Ninth Circuit Court of Appeals reversed, holding that  
9 Bernhardt had standing to challenge the County policy.<sup>8</sup>

10 On remand, she applied to this Court unsuccessfully for a preliminary  
11 injunction prohibiting such “lump sum, including all attorney’s fees”  
12 settlements so that she could get a lawyer. She appealed and the Ninth Circuit  
13 again reversed, holding that, among other things, she had standing to pursue  
14 her claims that if she could prove the policy, she had standing to pursue her  
15 Supremacy clause claims, and ordering this Court to enter a preliminary  
16 injunction limited to this case prohibiting the County from *offering* a “lump  
17 sum, including attorney’s fees” settlement in her case only.<sup>9</sup> On December 12,  
18 2003, this Court entered that injunction.

19 Bernhardt still has been unable to obtain a lawyer because she still had  
20 the power to offer such a settlement.<sup>10</sup> She moved this Court unsuccessfully to  
21

---

22 <sup>6</sup> EXS 004, lines 1-2

23 <sup>7</sup> EXS 011, lines 6-7

24 <sup>8</sup> EXS 024, et seq, *Bernhardt v County of Los Angeles*, 279 F.3d 863 (9<sup>th</sup> Cir.,  
25 2002) (*Bernhardt I*)

26 <sup>9</sup> EXS 036 et seq, *Bernhardt v. County of Los Angeles*, 339 F.3d 920 (9<sup>th</sup> Cir.,  
27 2003) (*Bernhardt II*)

27 <sup>10</sup> EXS 142, lines 4-12

1 modify the injunction so that it also prohibited the County from *accepting*  
2 such a settlement so that she could obtain a lawyer.<sup>11</sup> This court declined to  
3 do so; Bernhardt appealed, and the Ninth Circuit Court of Appeals held that  
4 this Court had not abused its discretion in refusing to modify the preliminary  
5 injunction.

6 Certain discovery ensued.

7 Attorney Michael R. Mitchell assisted Bernhardt in drafting this  
8 pleading, but is not representing Bernhardt.

## 9 II. RELIEF SOUGHT AND GROUNDS

10 Bernhardt seeks an order by the court pursuant to F.R.C.P. 56(d)  
11 specifying that it appears without substantial controversy that (i) defendants'  
12 have an *official or unofficial custom, policy, practice or usage* of offering,  
13 accepting, and entering into only "lump sum including all attorney's fees"  
14 settlements of civil rights cases ("policy" hereafter), and (ii) that she cannot  
15 obtain a lawyer because of the policy.

16 Bernhardt seeks a declaration<sup>12</sup> pursuant to 28 US Code Section  
17 2201 that this policy violates Article VI of the Constitution because it is  
18 contrary to a federal law, to wit, 42 U.S.C. Section 1988(b) ("Fees Act"),  
19 stopping her from obtaining effective access to the judicial process, contrary to  
20 the intent of Congress in enacting the Fees Act.

21 Bernhardt seeks a declaration pursuant to 28 US Code Section 2201 that  
22 fee-waiver and "lump sum, including all attorney's fees" settlements are void  
23 as contravening statutory policy.

24 Bernhardt seeks a modification of the existing injunction as follows

---

25  
26 <sup>11</sup> EXS 050 et seq.

27 <sup>12</sup> Second Amended Complaint, p. 13, paragraph 71, EXS 004-013

1 “IT IS HEREBY ORDERED that the County of Los Angeles is prohibited  
2 from ~~offering to settle~~ *settling* Plaintiff Angela Bernhardt’s civil rights case  
3 No. CV 99-10121 GHK in a way that inhibits, interferes with, or prohibits her  
4 counsel from applying for attorney’s fees under 42 USC Section 1988,  
5 including but not limited to “lump sum including all attorney’s fees’  
6 settlements.”

7 **III. IT APPEARS WITHOUT SUBSTANTIAL CONTROVERSY THAT**  
8 **DEFENDANTS HAVE AN *OFFICIAL OR UNOFFICIAL CUSTOM,***  
9 ***POLICY, PRACTICE OR USAGE* OF OFFERING, ACCEPTING, AND**  
10 **ENTERING INTO ONLY “LUMP SUM INCLUDING ALL**  
11 **ATTORNEY’S FEES” PRETRIAL SETTLEMENTS OF CIVIL**  
12 **RIGHTS CASES**

13 **A. A SURVEY OF 10 YEARS OF COUNTY SETTLEMENTS**  
14 **CONFIRMS EXISTENCE OF THE POLICY**

15 Over a ten-year period through mid-2005 the County settled  
16 approximately 789 civil rights cases.<sup>13</sup> Of these, 748 (or 95%) were settled  
17 prior to trial for \$58,717,547.91.<sup>14</sup> **All of these pretrial settlements were on**  
18 **a “lump sum, including all attorney’s fees” basis.<sup>15</sup>**

19 Of the remaining 41 cases which settled during or after trial or under  
20 other circumstances, there was payment of attorney’s fees in at most 21  
21 cases.<sup>16</sup> The remaining 20 cases were “lump sum” settlements.

22 Thus over 10 years in settling 789 civil rights cases, the County paid  
23

---

24 <sup>13</sup> MRM Dec, p. 4, lines 3-6

25 <sup>14</sup> MRM Dec, p. 4, lines 6-7

26 <sup>15</sup> MRM Dec, p. 4, lines 7-12

27 <sup>16</sup> MRM Dec, p. 4, lines 13-15

1 attorney's fees in at most 21 cases (2.6%), of which only ten (1.3%) were  
2 pursuant to an application for statutory attorney's fees, and all those  
3 applications and awards were made after verdict at trial against the County or  
4 other judicial defeats of the County.<sup>17</sup>

5 Ninety-seven point three percent (97.3%) were "lump sum" settlements.

6 This ten-year record demonstrates at least a "custom" if not an  
7 unofficial policy, practice, or usage of settling civil rights cases on a "lump  
8 sum" basis. It is so permanent and well-settled as to constitute a 'custom or  
9 usage' with the force of law.<sup>18</sup>

#### 10 **B. THE COUNTY HAS ADMITTED SUCH A POLICY**

11 By letter dated March 3, 1998, County Counsel wrote:

12 "This is to respond to your recent letter to the  
13 Supervisors in which you describe an unofficial  
14 policy of this office of requiring a plaintiff, as a  
15 condition for settling his civil rights suit, to waive  
16 statutory attorney's fees.

17 "The federal statute cited addresses the entitlement  
18 of attorneys' fees to be awarded the prevailing party  
19 in federal civil rights lawsuits. However, in a  
20 settlement, there is no prevailing party because the  
21 parties to the litigation have independently weighed  
22 the risks of proceeding to trial and have mutually  
23 agreed to resolve the litigation by a compromise."

24 This office does negotiate settlement of liability  
25 litigation for a single sum to compensate the  
26 claimant for the injuries claimed, the expenses  
27 incurred, and the attorney services rendered to the  
28 claimant.

Only in this manner can we evaluate the proposed  
settlement against the County's possible liability  
should the matter proceed to trial. Without having  
such an all inclusive settlement, we would not be in a  
position to advise either the operating department or

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17 MRM Dec. p. 4, lines 18-21

18 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 168, 90 S.Ct. 1598, 1614 (1970);  
*Monell v. Dept. of Social Services*, 436 U.S. 658, 690 (1978)

1 the Board of Supervisors of the precise fiscal impact  
2 of the settlement.

3 \*\*\*

4 We believe our practice of negotiating such all  
5 inclusive settlements is not only legal, but satisfies  
6 the objective of weighing the County's maximum  
7 exposure as established by the settlement against the  
8 risks of proceeding with the litigation, just as you,  
9 representing the claimant, must do."<sup>19</sup>

10 And in 2003 the Ninth Circuit noted: "There is nothing in the record,  
11 however, to refute or qualify the plain language of defendant Lloyd Pellman's  
12 1998 letter, or to suggest the policy he describes applies only to a subset of  
13 cases."<sup>20</sup> Nothing in Fortner's declaration refutes or qualifies the plain  
14 language of Pellman's 1998 letter. Indeed, he confirms it:

15 [I]t is certainly prudent practice . . . to conclude all settlements  
16 such that there are no contingent liabilities. As a result, in  
17 negotiating settlements . . . the attorneys in the Office of the  
18 County Counsel *seek finality* in all settlements."<sup>21</sup> (italics added)

19 Defendant Pellman, former County Counsel, declares – disingenuously  
20 again – that there is no County custom, policy, or practice to *accept*  
21 settlements only on a "lump sum basis."<sup>22</sup> What he most tellingly does not say  
22 in his declaration – as is evidenced by ten years of settlements, as is evidenced  
23 by his 1998 letter, and as is evidenced by the declarations of eleven lawyers –  
24 is that the custom, policy, and practice is to *offer and enter into* settlements

---

25 <sup>19</sup> EXS 018, and also Exhibit D to Declaration of Lloyd W. Pellman In Support  
26 of Motion for Summary Judgment, etc. ("Pellman Declaration" hereafter)

27 <sup>20</sup> EXS 043, *Bernhardt II*, 339 F.3d at 927

28 <sup>21</sup> Fortner Declaration in Support of Motion for Summary Judgment ("Fortner  
Declaration"), p. 3, line 28 - p. 4, line 4

<sup>22</sup> Pellman Declaration in Support of Motion for Summary Judgment ("Pellman  
Declaration"), p. 3, lines 13-16

1 only on a “lump sum basis.”

2 Defendant Pellman claims that when he wrote the 1998 letter, he was  
3 not “the final decision maker with any final authority to make or establish” the  
4 settlement policy.<sup>23</sup> But while he was County Counsel he certainly had that  
5 authority and was responsible for the settlement policy from August 4, 1998 (a  
6 month after his letter) through to March 2004, during which time Bernhardt’s  
7 claims arose. And the letter does not pretend to *establish* any policy, it merely  
8 recites what the County Counsel’s office does: “negotiate the settlement of  
9 liability litigation for a single sum to compensate for the injuries claimed, the  
10 expenses incurred, and the attorney services rendered to the claimant.”<sup>24</sup> It  
11 sets forth “We believe our practice of negotiating such all inclusive  
12 settlements is legal . . .” (emphasis added)<sup>25</sup> For him to now declare under  
13 penalty of perjury there was no custom or “practice requiring the waiver of  
14 statutory attorney’s fees in *all* civil rights cases”<sup>26</sup> is disingenuous and should  
15 be viewed skeptically by the Court. The word “all” is key here. As shown  
16 above, over ten years the County has entered into “lump sum, including all  
17 attorney’s fees settlements” – the equivalent of requiring waiver of statutory  
18 attorney’s fees – in 768 out of 789 cases. Ninety-seven point three percent  
19 (97.3%) of the County civil rights cases settled on a “lump sum” basis. 97.3%  
20 is not *all*, but it is sure close.

21 That defendants settle in this manner is not surprising. Justice Brennan  
22 foretold this 30 years ago.

---

23 Pellman Declaration, p. 5, lines 1-4

24 Exhibit D to Pellman Declaration.

25 *Id.*

26 Pellman Declaration, p. 5, lines 7-8

1 “[O]nce fee waivers are permitted, defendants will  
2 seek them as a matter of course, since this is a logical  
3 way to minimize liability. Indeed, defense counsel  
4 would be remiss not to demand that the plaintiff  
5 waive statutory attorney's fees. A lawyer who  
6 proposes to have his client pay more than is  
7 necessary to end litigation has failed to fulfill his  
8 fundamental duty zealously to represent the best  
9 interests of his client. Because waiver of fees does  
10 not affect the plaintiff, a settlement offer is not made  
11 less attractive to the plaintiff if it includes a demand  
12 that statutory fees be waived. Thus, in the future, we  
13 must expect settlement offers routinely to contain  
14 demands for waivers of statutory fees.”<sup>27</sup>

### 9 **C. ELEVEN CIVIL RIGHTS LAWYERS CONFIRM THE EXISTENCE** 10 **OF THE COUNTY’S LUMP SUM SETTLEMENT POLICY**

11 Eleven lawyers with a cumulative 212 years of civil rights practice in  
12 the Los Angeles area have filed declarations in this case.<sup>28</sup> A “great  
13 majority,”<sup>29</sup> or “over 90%”<sup>30</sup> of civil rights lawsuits against the County or its  
14 employees are resolved, prior to trial, during trial, or after trial by settlement.  
15 Only a minute percentage,” probably “2%” are resolved by verdict.<sup>31</sup>

16 Each of the lawyers confirm the existence of the County’s “lump sum  
17

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18  
19 <sup>27</sup> *Evans v. Jeff D.*, 475 U.S. 717, 758,106 S. Ct. 1531 (1986) (dissent)

20 <sup>28</sup> EXS 060, lines 2-26 (Gary S. Casselman, 20 years); EXS 067, lines 20-23  
21 (Joseph H. Freeman, 5 years); EXS 071, lines 24-28 (Shawn Khorrami, 8 years);  
22 EXS 079, lines 24-28 (Michael R. Mitchell, 31 years); EXS 094, lines 6-8 ( Samuel  
23 Paz, 20 years); EXS 110, lines 24-28 (Howard R. Price, 15 years); EXS 117, line 24  
24 through EXS 118, line 2 (Robert A. Seeman, 29 years); EXS 122, line 23 through  
EXS 123, line 3 (Carol A. Sobel, 26 years); EXS 135, line 24 through EXS 136, line  
2 (Carol A. Watson, 24 years); EXS 143, lines 22-25 (E. Thomas Barham, 18 years);  
EXS 160, lines 1-4 (Carl E. Douglas, 16 years)

25 <sup>29</sup> EXS 146, lines 7-9; EXS 063, lines 18-20; EXS 162, lines 14-16; EXS 069,  
lines 20-22

26 <sup>30</sup> EXS 096, lines 13-15

27 <sup>31</sup> EXS 074, lines 2-5; EXS 083, lines 1-4

1 including all attorney's fees" settlement policy.<sup>32</sup>

2 Accordingly, Bernhardt moves this Court to enter an order under  
3 F.R.C.P 56(d) specifying the material fact that appears without substantial  
4 controversy that defendants have an official or unofficial policy, custom,  
5 practice, or usage of settling civil rights cases on a "lump sum, including  
6 attorney's fees" basis.

7 **IV. IT APPEARS WITHOUT SUBSTANTIAL CONTROVERSY THAT**  
8 **THE POLICY PREVENTS BERNHARDT FROM OBTAINING A**  
9 **LAWYER**

10 Bernhardt needs only one lawyer. And ten civil rights lawyers have  
11 sworn that if the County were prohibited from entering into such "lump sum"  
12 settlements, they would be able and willing to represent her.<sup>33</sup>

13 Accordingly, Bernhardt moves this Court to enter an order under  
14 F.R.C.P 56(d) specifying the material fact that appears without substantial  
15 controversy that the County's settlement policy prevents Bernhardt from  
16 obtaining a lawyer.

17 **V. BERNHARDT IS ENTITLED TO DECLARATORY RELIEF THAT**  
18 **THE COUNTY'S POLICY IS PREEMPTED BY THE FEES ACT**

19 28 U.S. Code Section 2201 provides in relevant part:

20 "(a) In a case of actual controversy within its  
21 jurisdiction, . . . any court of the United States, upon  
22 the filing of an appropriate pleading, may declare the

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23  
24 <sup>32</sup> EXS 062, lines 2-9; EXS 068, lines 10-12; EXS 072, lines 20-27; EXS 081,  
25 lines 1-8; EXS 111, lines 19-23; EXS 118, lines 18-21; EXS 123, lines 19-13; EXS  
136, lines 20-28; EXS 144, lines 22-28; EXS 160, line 28 through EXS 161, line 1-6.

26 <sup>33</sup> EXS 144, lines 17-18; EXS 061, lines 25-26; EXS 160, lines 22-24; EXS  
27 068, lines 8-9; EXS 072, lines 17-19; EXS 080, lines 19-21; EXS 094, lines 24-25;  
EXS 113, line 20 through 114, line 4; EXS 118, lines 16-17; EXS 124, lines 1-2;  
EXS 136, lines 14-16

1 rights and other legal relations of any interested party  
2 seeking such declaration, whether or not further  
3 relief is or could be sought. Any such declaration  
4 shall have the force and effect of a final judgment or  
5 decree and shall be reviewable as such.”

6 There is an actual controversy. Bernhardt contends that the County  
7 policy violates Article 6, Clause 2 (“Supremacy Clause”) of the U.S.  
8 Constitution. Defendants contend the policy is legal.<sup>34</sup> Bernhardt seeks a  
9 declaration that the policy is preempted by federal law, to wit, the Fees Act.

10 **A. BERNHARDT HAS STANDING TO CHALLENGE THE POLICY**  
11 **BY INVOKING THE SUPREMACY CLAUSE**

12 It is the law of this case that Bernhardt has standing to invoke the  
13 Supremacy Clause.<sup>35</sup>

14 **B. THE POLICY IS PREEMPTED BY THE FEES ACT**

15 The Supremacy Clause provides:

16 “This Constitution, and the Laws of the United  
17 States which shall be made in Pursuance thereof; and  
18 all Treaties made, or which shall be made, under the  
19 Authority of the United States, shall be the supreme  
Law of the Land; and the Judges in every State shall  
be bound thereby, any Thing in the Constitution or  
Laws of any State to the Contrary notwithstanding.”

20 42 USC Section 1988(b) is a Law of the United States which provides  
21 in relevant part:

22 “In any action or proceeding to enforce a provision  
23 of sections . . . 1983, . . . of this title, . . . the court,  
24 in its discretion, may allow the prevailing party,  
other than the United States, a reasonable attorney's

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25 <sup>34</sup> EXS 081, lines 9-18; EXS 087 - 091

26 <sup>35</sup> EXS 036 et seq, *Bernhardt v. County of Los Angeles*, 339 F.3d 920, 929 (9<sup>th</sup>  
27 Cir., 2003) (*Bernhardt II*)

1 fee as part of the costs, . . . .”

2 As Congress recognized 30 years ago, the nation’s civil rights laws are  
3 essentially meaningless if there are no attorneys willing to represent victims  
4 whose rights have been violated. To ensure that attorneys would take on the  
5 representation of victims, Congress enacted the Civil Rights Attorneys Fees  
6 Award Act of 1976 (“Fees Act”), which allowed courts to award attorney’s  
7 fees to “prevailing part[ies]” in cases brought under the civil rights statutes,  
8 including 42 U.S.C. § 1983. See Pub. L. 94-559 (codified at 42 U.S.C. §  
9 1988(b)). According to Congress, “fee awards are essential if the [civil rights  
10 statutes] are to be fully enforced...[F]ee awards are ancillary and incident to  
11 securing compliance with these laws, and are an integral part of the remedies  
12 necessary to obtain such compliance.” S. Rep. 94-1011 at 5 (94th Cong.).

13 The Supreme Court has been cognizant of the primary policies behind  
14 the attorney’s fees provision: to ensure effective access to the judicial process  
15 for all citizens. *Evans v. Jeff D.*, 475 U.S. at 731, 106 S.Ct. at 1531  
16 (Congress enacted the Fees Act “to attract competent counsel to represent  
17 citizens deprived of their civil rights”); *Kay v. Ehrler*, 499 U.S. 432, 438  
18 (1991) (the Fees Act’s “specific purpose was to enable potential plaintiffs to  
19 obtain the assistance of competent counsel in vindicating their rights,” . . . “the  
20 overriding statutory concern is the interest in obtaining independent counsel  
21 for victims of civil rights violations” . . .and recognizing that § 1988  
22 represents “statutory policy of furthering the successful prosecution of  
23 meritorious claims”); *City of Riverside v. Rivera*, 477 U.S. 561, 579-80 (1986)  
24 (“[H]ad respondents had to rely on private-sector fee arrangements, they might  
25 well have been unable to obtain redress for their grievances. It is precisely for  
26 this reason that Congress enacted § 1988.”)

1 And the Ninth Circuit has held that the Fees Act was enacted "to  
2 encourage compliance with and enforcement of the civil rights laws." *Dennis*  
3 *v. Chang*, 611 F.2d 1302, 1306 (9th Cir. 1980).

4 What is the effect of the County's policy on Los Angeles civil rights  
5 lawyers who filed declarations in this case?

6 Over 17 years, at least 56 of these lawyers' clients who were suing the  
7 County have bargained away the right to apply for statutory fees in exchange  
8 for settlement of the clients' merits claims.<sup>36</sup> Over the same period, at least 75  
9 of their other clients who were suing other governmental entities bargained  
10 away the right to apply for statutory fees in exchange for settlement of the  
11 clients' merits claims.<sup>37</sup> Such settlements prevented one lawyer from applying  
12 for \$2,984,275 in statutory fees in 18 cases.<sup>38</sup>

13 The eleven civil rights lawyers are unanimous: By virtue of these  
14 bargains, in the aggregate and in the long run, they no longer expect to receive  
15 statutory attorney's fees upon settlement of civil rights cases.<sup>39</sup> As a result,  
16 they are unable and unwilling to represent victims of civil rights abuse with  
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20 <sup>36</sup> EXS 144, lines 7-9 (at least 10 of Barham's clients); EXS 160, lines 9-11  
21 (more than 25 of Douglas' clients); EXS 080, lines 5-7 (3 of Mitchell's clients); EXS  
22 111, lines 2-4 (estimated 10 of Price's clients); EXS 118, lines 6-8 (approximately 8  
of Seeman's clients)

23 <sup>37</sup> EXS 160, lines 11-12 (more than 25 other Douglas' clients); EXS 080, lines  
24 7-8 (at least another 15 of Mitchell's clients); EXS 111, lines 4-6 (estimated 10 other  
Price clients); EXS 118, lines 8-9 (at least 25 other Seeman clients)

25 <sup>38</sup> EXS 080, lines 8-9

26 <sup>39</sup> EXS 144, lines 11-12; EXS 061, lines 18-19; EXS 160, lines 13-15; EXS  
27 068, lines 2-3; EXS 072, lines 9-10; EXS 080, lines 11-12; EXS 094, lines 16-17;  
EXS 111, lines 7-8; EXS 118, lines 10-11; EXS 123, lines 14-18; EXS 136, lines 10-  
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1 modest damage claims.”<sup>40</sup> So long as the County has the *power* to enter into  
2 “lump sum, including all attorney’s fees” settlements, they will be unable and  
3 unwilling to represent such victims against the County.<sup>41</sup>

4 What is the effect of the County’s policy on victims?

5 Because of these settlements, these lawyers have declined over 17 years  
6 to represent at least 290 victims of civil rights abuse.<sup>42</sup>

7 The lawyers are unanimous that defendants' settlement policy “does **not**  
8 attract competent counsel to represent citizens deprived of their civil rights. In  
9 fact, the settlement policy stands as an obstacle, preventing [them] from  
10 representing such citizens, particularly on claims of modest economic damage  
11 or only equitable relief.”<sup>43</sup> The lawyers are practically unanimous that  
12 defendants' settlement policy “does **not** enable them to file private actions  
13 seeking to encourage compliance with and to enforce the civil rights laws. In  
14 fact, the settlement policy stands as an obstacle [], preventing [them] from  
15 filing private actions, with modest damage or only equitable claims, to

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19 <sup>40</sup> EXS 144, lines 13-14; EXS 061, lines 20-21; EXS 160, lines 16-17; EXS  
20 068, lines 4-5; EXS 072, lines 11-12; EXS 080, lines 13-14; EXS 094, lines 18-21;  
21 EXS 111, lines 9-10; EXS 118, lines 12-13; EXS 123, lines 19-25; EXS 136, lines  
12-13 (“usually”)

22 <sup>41</sup> EXS 144, lines 14-16 (“most plaintiffs”); EXS 061, lines 21-24; EXS 160,  
23 lines 19-21; EXS 068, lines 5-7; EXS 072, lines 14-16; EXS 080, lines 17-19; EXS  
094, lines 21-23; EXS 111, lines 10-12 (“very hesitant”); EXS 118, lines 13-15; EXS  
123, lines 25-28; EXS 136, lines 14-16

24 <sup>42</sup> EXS 072, lines 12-14 (more than 50); EXS 080, lines 15-17 (100); EXS 111,  
25 lines 16-18 (over 100); EXS 160, lines 17-19 (“scores” or at least 40)

26 <sup>43</sup> EXS 062, line 20 - 063, line 2; EXS 069, lines 1- 4; EXS 073, lines 10-13;  
27 EXS 082, lines 6 - 9; EXS 095, lines 17 - 20; EXS 112, lines 8-12 (“extremely  
difficult”); EXS 119, lines 6 - 9; EXS 125, lines 8 - 13; EXS 137, lines 11 - 14; EXS  
145, lines 11 -14; EXS 161, lines 17 - 20

1 encourage compliance with and to enforce civil rights laws.”<sup>44</sup>

2 The lawyers are unanimous that defendants settlement policy “violates  
3 Article VI of the Constitution by interfering with the purposes of Congress in  
4 enacting 42 U.S.C. Section 1988, to wit, attracting competent counsel to  
5 represent citizens deprived of their civil rights and encouraging compliance  
6 with and enforcement of the civil rights law.”<sup>45</sup>

7 The Ninth Circuit held in this case:

8 Under the Supremacy Clause, federal law can displace local law  
9 or regulation through express preemption, field preemption or  
10 conflict preemption. *Ting v. AT&T*, 319 F.3d 1126, 1135 (9th  
11 Cir. 2003). Express preemption results when Congress enacts a  
12 clear statutory command that local law is displaced. *Id.* Field  
13 preemption occurs when federal regulation of an area is so  
14 comprehensive that we must infer that Congress left no room for  
15 local regulation. *Id.* at 1136. Finally, “[c]onflict preemption is  
16 found where ‘compliance with both federal and state regulations  
17 is a physical impossibility,’ or where state law ‘stands as an  
18 obstacle to the accomplishment and execution of the full purposes  
19 and objectives of Congress.’ ” *Id.* (citations omitted).

20 Bernhardt argues that the County runs afoul of the Supremacy  
21 Clause because its policy effectively repeals § 1988. We interpret  
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23 <sup>44</sup> EXS 063, lines 3 - 7; EXS 069, lines 5-9; EXS 069, lines 5-9; EXS 082, lines  
24 10 - 14; EXS 095, line 21 - 096, line 3; EXS 112, lines 13 - 18 (“greatly  
25 discourages”); EXS 119, lines 10 - 14; EXS 137, lines 15 - 19; EXS 145, lines 15 -  
19; EXS 161, line 21 - 162, line 3

26 <sup>45</sup> EXS 063, lines 8-12; EXS 069, lines 10-14; EXS 069, lines 10-14; EXS 073,  
27 lines 14 - 18; EXS 082, lines 15 - 19; EXS 096, lines 4 - 8; EXS 112, lines 18 - 22;  
EXS 119, lines 15 - 18; EXS 125, lines 18 - 23; EXS 137, line 1 - 138, line 2; EXS  
145, line 20 - 146, line 2; EXS 162, lines 4 - 8

1 her to be invoking the "obstruction strand of conflict preemption"  
2 in which "an aberrant or hostile state rule is preempted to the  
3 extent it actually interferes with the methods by which the federal  
4 statute was designed to reach [its] goal." *Ting*, 319 F.3d at 1137  
5 (internal quotation marks omitted). In determining whether a local  
6 regulation creates such an interference, courts must " 'consider the  
7 relationship between [local] and federal laws as they are  
8 interpreted and applied, not merely as they are written.' " *Id.*  
9 (quoting *Jones v. Rath Packing Co.*, 430 U.S. 519, 526 (1977)).<sup>46</sup>

10 **i. The Fees Act Regulates Civil Rights Attorney Fee Awards So**  
11 **Comprehensively That Congress Left No Room For Local Regulation**

12 In the arena of civil rights attorney's fees, federal regulation under the  
13 Fees Act is so comprehensive that this court must find that "Congress left no  
14 room for local regulation."<sup>47</sup>

15 First, Congress enacted the Fees Act, designed to attract lawyers to  
16 represent victims – to transform "victims" into "plaintiffs." Congress vested  
17 "the court" with discretion to allow reasonable attorney's fees. Congress  
18 simply assumed that an attorney would be able to get a determination from the  
19 court whether his client – either plaintiff or defendant – "prevailed," and if so,  
20 what reasonable fee should be awarded; an application was envisioned.  
21 Otherwise the Fees Act would be meaningless. But County Counsel is  
22 regulating in this federal arena.

23 First, as shown above, County Counsel has decided that in a civil rights  
24 settlement, *there is no prevailing party* so that no attorney's fees are payable

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26 <sup>46</sup> *Bernhardt II*, 339 F.3d at 930

27 <sup>47</sup> *Bernhardt II*, 339 F.3d at 929

1 in at least 97.3% of the 789 surveyed settlements he has entered into. He is  
2 usurping the power of the court. Under County Counsel’s regulation, the  
3 Fees Act reads:

4 “In any action or proceeding to enforce a provision of sections .  
5 . . . 1983, . . . of this title, . . . ~~the court~~, *County Counsel* in its  
6 discretion, may allow the prevailing party, other than the United  
7 States, a reasonable attorney's fee as part of the costs, . . . [but  
8 there is no prevailing party upon settlement]”

9 It is for the federal courts, not County Counsel, to decide who is or is  
10 not a prevailing party. And federal courts have done this regularly for years.  
11 See, e.g. *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of*  
12 *Health and Human Resources*, 532 U.S. 598, 121 S.Ct. 1835, 149 L.Ed.2d  
13 855 (2001).

14 "The fact that [plaintiff] prevailed  
15 through a settlement rather than through  
16 litigation does not weaken her claim to  
17 fees. Nothing in the language of  
18 [Section] 1988 conditions the District  
19 Court's power to award fees on full  
20 litigation of the issues or on a judicial  
21 determination that plaintiff's rights have  
22 been violated. Moreover, the Senate  
23 Report expressly stated that 'for  
24 purposes of the award of counsel fees,  
25 parties may be considered to have  
26 prevailed when they vindicate rights  
27 through a consent decree or without  
28 formally obtaining relief.' S. Rep. No.  
94-1011, p. 5 (1976)." <sup>48</sup>

Second, County Counsel’s “lump sum settlements” prevent civil rights  
lawyers from applying to the court to determine whether their clients  
“prevailed,” and, if so, for an award of reasonable attorney’s fees. If a civil  
rights lawyer represents a plaintiff who desires to accept or enter into a "lump

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<sup>48</sup> *Maheer v. Gagne*, 448 U.S. 122, 129 (1980)

1 sum, including all attorney's fees" settlement with defendants, the lawyer  
2 cannot legally or ethically delay, much less prevent, such a settlement, even if  
3 he had obtained, as consideration for representing the victim, the right to apply  
4 for statutory attorney's fees. <sup>49</sup>

5 Third, County Counsel usurps the authority of the court to determine the  
6 amount of any fee award, if any.<sup>50</sup> County Counsel simply has decided there  
7 will be no fee award upon settlement because there is no "prevailing party."

8 **ii. The Policy Is Hostile to Method Congress Chose to Encourage**  
9 **Representation of Victims of Civil Rights Abuse**

10 As shown above, the County policy is hostile to the methods "– the  
11 availability of statutory attorney's fees - that Congress has chosen to encourage  
12 representation of individuals whose civil rights have been violated."<sup>51</sup> It  
13 constricts "the effective access to the judicial process for persons with civil  
14 rights grievances which the Fees Act was intended to provide."<sup>52</sup> It prevents  
15 victims of civil rights abuse with only modest or equitable claims from getting  
16 a lawyer to vindicate their civil rights. It "stands as an obstacle to the  
17 accomplishment and execution of the full purposes and objectives of  
18 Congress." *Ting v. AT&T*, 319 F.3d 1126, 1136 (9<sup>th</sup> Cir., 2003)

19 Accordingly, Bernhardt moves the court pursuant to F.R.C.P. 56(d) and  
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21 <sup>49</sup> EXS 063, lines 21-25; EXS 069, lines 23-27; EXS 083, lines 5-9; EXS 096,  
22 lines 16-20; EXS 113, lines 7-11; EXS 120, lines 4-8; EXS 126, lines 7-14; EXS  
138, lines 11-15; EXS 146, lines 10-14; EXS 162, lines 17-22

23 <sup>50</sup> EXS 062, lines 9-16; EXS 068, lines 15-19; EXS 072, line 1 through EXS  
24 073, line 6; EXS 081, line 21 through EXS 082, line 2; EXS 095, lines 7-13; EXS  
25 111, line 24 through EXS 012, line 4; EXS 118, lines 22-26; EXS 137, lines 1-7;  
EXS 145, lines 1-7; EXS 161, lines 7-13

26 <sup>51</sup> *Bernhardt II*, 339 F.3d at 928, quoting *Evans v Jeff D.*, 475 U.S. 717, 741  
n. 34, 106 S.Ct. 1531, 89 L.Ed.2d 747 (1986)

27 <sup>52</sup> *Evans v Jeff D.*, 475 U.S. 717, 106 S.Ct. 1531, 89 L.Ed.2d 747 (1986)

1 28 USC Section 2201 for a declaration that defendants’ policy, custom,  
2 practice, and usage (“policy”) of settling civil rights cases on a “lump sum,  
3 including attorney’s fees” basis violates Article 6, Clause 2 of the Constitution  
4 because (a) federal regulation under the Fees Act is so comprehensive that  
5 Congress left no room for local regulation, and (b) the policy is hostile to the  
6 method Congress chose to encourage representation of victims of civil rights  
7 abuse.

8 **VI. BERNHARDT IS ENTITLED TO DECLARATORY RELIEF THAT**  
9 **FEE-WAIVER SETTLEMENTS ARE VOID AS CONTRAVENING**  
10 **STATUTORY POLICY**

11 There is an actual controversy. Bernhardt contends that fee-waiver  
12 settlements are void as contrary to the statutory policy to attract lawyers to  
13 represent victims of civil rights abuse. Defendants contend that fee-waiver  
14 settlements are legal because they encourage settlements. Bernhardt seeks a  
15 declaration that fee-waiver settlements are void as contrary to statutory policy  
16 to attract lawyers to represent victims.

17 First, defendants have the cart-before-the-horse. If a victim cannot find  
18 a lawyer to represent her, there will be no plaintiff nor any lawsuit to settle.  
19 Unless the victim, like Bernhardt, proceeds in *pro per*. In the unlikely event  
20 that the *pro per* could prevail, no statutory fees would be payable,<sup>53</sup> so the  
21 issue of a fee-waiver encouraging settlement would never arise.

22 Proof of the detrimental effects of lump sum settlements, – not only on  
23 Bernhardt in *pro per*, but on all prospective victims – is set forth above.  
24 Lawyers are not attracted represent victims because practically every case  
25 settles, – before, during, or after trial – and an ensuing fee-waiver settlement is

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27 <sup>53</sup> *Kay v. Ehrler*, 449 U.S. 432 (1991)

1 contrary to Congressional intent that lawyers be attracted to represent victims,  
2 so that victims obtain effective access to the judicial process.

3 This does not serve the public interest in attracting lawyers to represent  
4 victims. The Fees Act conferred on Bernhardt – and other victims – a right to  
5 apply for statutory attorney’s fees (1) if she could obtain an attorney to  
6 represent her so she could become a “plaintiff,” and (2) if she could, through  
7 that attorney’s efforts, “prevail.” And if Bernhardt prevails by waiving her  
8 right to apply for statutory attorney’s fees, it has no affect on her. But as  
9 shown above, it has a disastrous affect on the victims such as Bernhardt and  
10 the civil rights bar. It quite naturally leads the lawyers to shun victims of civil  
11 rights abuse with modest damage or only equitable claims. As a result, they  
12 are not attracted to represent such victims, – transforming them into  
13 “plaintiffs” – contrary to the statutory policy embodied in the Fees Act.

14 “[A] statutory right conferred on a private party, but affecting the public  
15 interest, may not be waived or released if such waiver or release contravenes  
16 the statutory policy.”<sup>54</sup>

17 See also, e. g., *Boyd v. Grand Trunk Western R. Co.*, 338 U.S. 263, 266  
18 (1949) (holding venue provision of Federal Employers' Liability Act  
19 non-waivable); cf. *James v. Home Construction Co. of Mobile, Inc.*, 689 F.2d  
20 1357, 1359 (11<sup>th</sup> Cir., 1982) (implying a right of action for attorneys to seek  
21 fees under Truth-in-Lending Act to further congressional policies); *Amaro v.*  
22 *Continental Can*, 724 F.2d 747 (9<sup>th</sup> Cir., 1984) (Congress did not intend  
23 ERISA minimum standards to be eliminated by contract.) An agreement  
24 which is contrary to public policy is void and unenforceable. See Restatement  
25 (Second) of Contracts § 178 (1981)

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27 <sup>54</sup> *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 704, 65 S. Ct. 895 (1945)  
(holding right to liquidated damages under Fair Labor Standards Act non-waivable)

1 Accordingly, Bernhardt moves the court pursuant to F.R.C.P. 56(d) and 28  
2 USC Section 2201 for a declaration that such “lump sum” or “fee-waiver”  
3 settlements are void as contravening statutory policy to attract lawyers to  
4 represent victims, thereby giving them effective access to the judicial process.

5 **VII. THERE HAS BEEN A CHANGE OF CIRCUMSTANCES**  
6 **WHICH REQUIRES MODIFICATION OF THE INJUNCTION IN THIS**  
7 **CASE**

8 Bernhardt previously sought a modification of the existing injunction in this  
9 case which the court denied by order entered February 6, 2004. The Ninth Circuit  
10 Court of Appeals affirmed the denial. But since then, there has been a change in the  
11 law.

12 A change in the law may constitute a changing circumstance requiring the  
13 modification of an injunction.<sup>55</sup> An intervening judicial opinion may require  
14 modification of an injunction.<sup>56</sup>

15 Federal Rule of Civil Procedure 54(b) states that a district court can modify an  
16 interlocutory order "at any time" before entry of a final judgment, and the Ninth  
17 Circuit has long recognized "the well-established rule that a district judge always has  
18 power to modify or to overturn an interlocutory order or decision while it remains  
19 interlocutory."<sup>57</sup>

20 The intervening judicial opinion is *Pony v. County of Los Angeles*, 433 F.3d  
21 1138 (9th Cir., Jan. 11, 2006)  
22 <http://caselaw.lp.findlaw.com/data2/circs/9th/0356855p.pdf>

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24 <sup>55</sup> *System Federation No. 91 v. Wright*, 364 U.S. 642, 647-48, 5 L. Ed. 2d 349,  
81 S. Ct. 368 (1961)

25 <sup>56</sup> *See Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 437-38,  
26 49 L. Ed. 2d 599, 96 S. Ct. 2697 (1976)

27 <sup>57</sup> *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963)

1 This opinion constitutes a change in circumstances requiring modification of  
2 the existing preliminary injunction.

3 When the Ninth Circuit decided *Bernhardt II*, it noted that one of the theories  
4 upon which Bernhardt was proceeding was that the County’s policy deprived her of  
5 her “ ‘implied federal statutory right under 42 U.S.C. Section 1988’ to contract with an  
6 attorney for representation in exchange for an assignment to the attorney of the right  
7 to seek statutory attorney fees.”<sup>58</sup>

8 “Assuming, as the district court appears to have done *and the County does not*  
9 *challenge in this appeal*, that Bernhardt has an implied federal right under § 1988,  
10 [citation omitted], the question is whether the County policy might violate that right.”  
11 (italics added).<sup>59</sup> In *Pony*, the County has successfully challenged the existence of  
12 such a right.

13 *Pony* (who did find a lawyer) held that a victim has no right (implied or  
14 otherwise) to contract with an attorney for representation in exchange for an  
15 assignment to the attorney of the right to seek statutory attorney fees. It also held that  
16 an attorney who entered into such a contract had no standing to challenge the  
17 County’s “lump sum” settlement policy and would not be paid more than \$50,000 in  
18 statutory fees he had earned. And it leaves Bernhardt without hope of obtaining a  
19 lawyer unless this court modifies the injunction.

20 Ten of the lawyers who filed declarations in this case conditioned their  
21 willingness to represent Bernhardt, *inter alia*, on just such an assignment.<sup>60</sup> (The  
22 eleventh lawyer is retired) After *Pony*, Bernhardt has nothing to offer a lawyer in  
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24 <sup>58</sup> *Bernhardt II*, 339 F.3d at 927, citing *Bernhardt I*, 279 F.3d at 866 EXS 043

25 <sup>59</sup> *Bernhardt II*, 339 F.3d at 927, EXS 043

26 <sup>60</sup> EXS 064, lines 9-11; EXS 070, lines 11-12; EXS 074, lines 22 - 24; EXS  
27 083, lines 21-23; EXS 097, lines 4-6; EXS 113, lines 23-25; EXS 120, lines 20-22;  
EXS 126, lines 23-25; EXS 146, lines 26-28; EXS 163, lines 8-9;

1 exchange for representation. She has nothing to transform her from a victim into a  
2 real plaintiff. Bernhardt wants to be fair and assure that lawyers are paid for their  
3 work. But a lawyer contemplating representing her would realize that he would be  
4 be ethically required continually to advise Bernhardt that she “owns” the fee rights  
5 and may waive them to settle her case, even if this means the lawyer will not be  
6 paid.<sup>61</sup> Notwithstanding Bernhardt’s determination to be fair, she cannot enter into a  
7 binding contract to that end. *Pony* prevents it.

8         The more hours, and accompanying overhead, the lawyer reasonably and  
9 ethically devoted to prosecution of Bernhardt’s case, the more that would increase the  
10 “lump sum” dollar settlement value – only to Bernhardt -- of Bernhardt’s case. The  
11 lawyer would instantly perceive that the more he worked for Bernhardt, the more  
12 money he would lose unless her case somehow fell within that 1.3% of all civil rights  
13 cases against the County where – after legal defeat – County Counsel could not resist  
14 an application for statutory attorney’s fees.

15         The lawyer would say to his or her self, “Unless I take Bernhardt’s case to trial  
16 and prevail or obtain other favorable relief against the County, my chances of being  
17 allowed simply to make an application for statutory fees is 1.3%.” And 97.3% of  
18 these case settle on a “lump sum” basis.

19         Now the only way Bernhardt can get an attorney is for this court (a) grant  
20 declaratory relief as sought above, or (b) to modify the injunction to prevent the  
21 County from settling Bernhardt’s case on a “lump sum, including all attorney’s fees”  
22 basis - the effective equivalent of assuring the Bernhardt can obtain a lawyer to  
23 represent her.

24         Accordingly, Bernhardt moves the court to modify the existing injunction

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26         <sup>61</sup> State Bar Committee on Professional Responsibility and Conduct Formal  
27 Opinion No. 1989-114 available at  
[http://www.calbar.ca.gov/calbar/html\\_unclassified/ca89-114.html](http://www.calbar.ca.gov/calbar/html_unclassified/ca89-114.html)

1 entered December 15, 2003 to read:

2 IT IS HEREBY ORDERED that the County of Los Angeles is prohibited from  
3 ~~offering to settle~~ *settling* Plaintiff Angela Bernhardt's civil rights case No. CV 99-  
4 10121 GHK in a way that inhibits, interferes with, or prohibits her counsel from  
5 applying for attorney's fees under 42 USC Section 1988, including but not limited to  
6 "lump sum including all attorney's fees settlements."

7 **VIII. PRAYER**

8 Bernhardt moves the court to grant these motions so that Bernhardt – and other  
9 victims of civil rights abuse -- can be transformed from being "victims" into real  
10 "plaintiffs" by getting a lawyer. Bernhardt's limited access to a law library and a  
11 stack of law books, with no legal training, no law degree, and severely limited  
12 experience in litigating in this federal court is not the same as being represented by a  
13 competent civil rights lawyer as Congress by enacting, and the President by signing,  
14 the Fees Act, intended.

15  
16 /s/ \_\_\_\_\_  
17 Angela Bernhardt  
18 Plaintiff in pro per  
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**CERTIFICATE OF SERVICE**

I am a citizen of the United States; I am over the age of 18 years and not a party to the above-entitled action; my office address is 20300 Ventura Boulevard, No. 317, Woodland Hills, CA 91364. On April 10, 2006, I served the foregoing document on the interested parties in said action placing a copy in the U.S. Mail at Woodland Hills, CA 91364, postage prepaid, addressed as follows:

Raymond G. Fortner, Jr., County Counsel  
Roger H. Granbo, Assistant County Counsel  
Johanna M. Fontenot, Principal Deputy County Counsel  
Richard K. Kudo, Senior Associate County Counsel  
648 Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012-2713

I declare under penalty of perjury and the laws of the United States that the foregoing is true and correct and that this Certificate of Service was executed on April 10, 2006 at Woodland Hills, California.

/s/ \_\_\_\_\_  
MICHAEL R. MITCHELL