

Case assigned to Judge [Signature] 49

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FILED
LOS ANGELES SUPERIOR COURT

AUG 19 2008

JOHN A. CLARKE, CLERK
BY [Signature] D.M. SWAIN, DEPUTY

SUPERIOR COURT OF CALIFORNIA
LOS ANGELES COUNTY

10 JOSEPH R. FRANCIS; MRA HOLDING,)
11 LLC, a California limited liability company;)
12 MANTRA FILMS, INC., an Oklahoma)
13 corporation; and AERO FALCONS, LLC, a)
14 Delaware limited liability company,)

BC396472

Plaintiffs,)

Case No. _____

v.)

Complaint for:

16 JOHN DOE 1, as parent and natural)
17 guardian of PLAINTIFF C; JOHN DOE 2,)
18 as parent and natural guardian of)
19 PLAINTIFF D; JANE DOE 1, as parent)
20 and natural guardian of PLAINTIFF B and)
21 PLAINTIFF M; JANE DOE 2, as parent)
22 natural guardian of PLAINTIFF J; and)
23 JANE DOE 3, as parent and natural)
24 guardian of PLAINTIFF S,)

- 1. Rescission of Settlement Agreement: Improper Threats, Coercion and Duress.
- 2. Unilateral Mistake

Defendants.)

25 PLAINTIFFS, JOSEPH R. FRANCIS (hereinafter "Francis"), MRA
26 HOLDING LLC (hereinafter "MRA"), MANTRA FILMS, INC. (hereinafter
27 "Mantra"), and AERO FALCONS, LLC (hereinafter "Aero") (Francis, MRA,

Complaint

CT/CASE: 64728C39 LEA/REF:
RECEIPT #: COM18782801
DATE PAID: 08/19/08 08:16:56 AM
PAYMENT: \$320.00
RECEIVED:
CHECKS:
CASH:
CHANGE:
CARD:

1 Mantra and Aero may hereinafter collectively be referred to as "Plaintiffs"), by and
2 through their undersigned counsel and pursuant to the Federal Rules of Civil
3 procedure, hereby sue DEFENDANTS, JOHN DOE 1, as parent and natural
4 guardian of PLAINTIFF C (hereinafter "PC"), JOHN DOE 2, as parent and natural
5 guardian of PLAINTIFF D (hereinafter "PD"), JANE DOE 1, as parent and natural
6 guardian of PLAINTIFF B (hereinafter "PB") and PLAINTIFF M (hereinafter
7 "PM"), JANE DOE 2, as parent and natural guardian of PLAINTIFF J (hereinafter
8 "PJ"), and JANE DOE 3, as parent and natural guardian of PLAINTIFF S
9 (hereinafter "PS") (hereinafter collectively referred to as "Defendants"), and state:

10 **INTRODUCTION**

11 **SUMMARY**

12 This story is a new version of an old classic – a story of southern justice
13 gone awry. Nina Simone sang about it; William Faulkner wrote about it; historians
14 teach about it. A young man in his 30's imprisoned in a Florida jail cell in 2003,
15 for what? Not giving millions of dollars to deceitful plaintiffs and dishonorable
16 lawyers in a civil suit to satiate the avaricious appetite of a cavernous court, a court
17 that rewarded the licentious acts of the wayward plaintiffs and their lawyers with
18 illicit imprisonment and a coerced settlement under duress, perpetrating a
19 continuous perversion of justice.

20 The "302" would read as follows: a federal court judge (Richard Smoak),
21 personal friends and close ex-business partners of connected lawyers (Ross
22 McCloy), ordered Joseph Francis in 2003 imprisoned unless he "finally"
23 "resolved" a civil suit, giving Smoak's friends and ex-business partners millions
24 for the deceitful actions of their clients (the Defendants in this case), using
25 incarceration of Francis as their tool. Francis signed the settlement agreement at
26 issue in this case from a Panama City jail cell. Now, Francis seeks the remedy of
27 rescission, rescinding the settlement agreement for its illicit procurement through

1 illegal incarceration procured by the improper conduct of the defendants in this
2 case.

3 **THE PARTICIPANTS**

4 The actions detailed herein were coordinated and the direct consequence of
5 the conduct of the Defendants in this case. The back-story comprises a nest of
6 perpetrators and collaborators: women plaintiffs and their parents who deceived a
7 cameraman into filming them when they were frequently months away from their
8 18th birthday, but lied and claimed they were 18 or older, then sued Francis and
9 sought "damages" they "suffered" from their own deceit; their agents, the lawyers
10 (Ross McCloy, the lead local counsel), who "by coincidence" represented the city
11 and county governments engaged in a First Amendment war against Francis'
12 business, "by coincidence" represented the county in an illegal civil forfeiture
13 against Francis trying to seize his plane and car, and "by coincidence" were long-
14 standing personal friends and ex-business partners with one Richard Smoak, the
15 federal judge (the same Richard Smoak) they waited to preside over the civil suit;
16 and local law enforcement, who created an atmosphere of lawlessness in their
17 obsession to suppress the First Amendment speech of American citizens who they
18 solicited to visit their city for the millions the city and its inhabitants could make
19 off them.

20 **THE STORY**

21 For half a decade before 2003, a young southern Californian, Joe Francis,
22 branded and brandished an entrepreneurial enterprise that revolutionized media and
23 marketing, unchaining the free expression of female sexuality without Victorian
24 inhibition or imposition, known as Girls Gone Wild (GGW). Francis' rights
25 collided with the power structure of a small southern town, a religious conservative
26 community riddled in its power structure with lawless law enforcement, a town
27 hugging the coastal waters of the Gulf of Mexico, amassing hundreds of millions

1 of dollars from college-age celebrators by welcoming raucous and unbridled
2 celebration of youth during their annualized spring breaks from collegiate
3 activities.

4 In the spring of 2003, the California entrepreneur, Joe Francis, publicly
5 announces to openly display the conduct of these Panama City collegiate
6 celebrators in the small southern town on national pay per view television for his
7 Girls Gone Wild brand in 2003. The First Amendment to the United States
8 Constitution safeguards Francis' activities. The First Amendment is empty letter
9 law to law enforcement in Panama City. Suddenly, the duplicity and hypocrisy that
10 is the too occasional politics of Panama City, Florida, unveils its ugly head.

11 In duplicitous treachery only the dogmatic and rigid can embrace, the local
12 powers that be publicly threaten to arrest and imprison the young Californian if he
13 steps foot in their town to simply observe and capture for the world the very spring
14 break behavior that Panama City uses to stuff its pockets and placate the tax-
15 concerned locals. Southern injustice, sadly symbolic for centuries as a land without
16 law, where guns and gavels too easily replaced law and logic, where the rope and
17 the tree too often substituted for the rule of law and the Bill of Rights, reared again.
18 It's an attitude where many of the powers-that-be would prefer women dress in
19 Muslim-like tunics, but then, they'd have no money to line their pockets from their
20 fortunate location by the sugary sands of the Gulf Coast.

21 Francis, arriving in Panama City in the spring of 2003 to a police helicopter
22 flying over his leased premises, police cars shadowing his every drive, police
23 officers stalking his every move, and public promises of arrest at any moment,
24 tried to resist the lawless behavior of law enforcement. With the very First
25 Amendment to the United States Constitution as his protection, enshrined into law
26 by Supreme Court decisions intended to stem the harassment of everyone from
27 Hefner to Flynt, Francis sued the local power structure of the small southern town

1 in federal court, succeeding in a stipulated settlement. But their promises of law
2 abiding carry as much weight in the power structures of the small-town south as
3 did the promise of the Fourteenth Amendment for African-Americans in the
4 Florida panhandle, where Rosewood residents still tell the tale. Another plot was
5 already afoot, relying and depending upon an atmosphere of lawlessness in the law
6 enforcement itself, with a supporting cast of lying cops, dubious lawyers and a
7 Constitutionally deaf federal jurist.

8 Several seventeen year old women, a birthday away from the age of
9 majority, snuck into the scene, lying and smiling happily along the way, inducing a
10 cameraman to photograph them and their sexual expression. One apparently was
11 the daughter of a politically well-connected corporate employee. Employing deceit,
12 state law enforcement officers obtain an illicit warrant to perform an illegal raid,
13 conduct unlawful seizures, make untrue statements to the press and public
14 concerning their seizures, and are later found by a state court to have acted toward
15 Francis with the "intent to deceive or reckless disregard of the truth." When the
16 then seventeen-year old women lied to entrap the Plaintiffs in this case, they
17 received encouragement from Florida state officials, but when young black sixteen
18 year olds commit crimes, they can be sent to the electric chair in Florida for their
19 mistakes, seen as "responsible adults" by the small-town power structure.

20 Reading from a script of Klan-era Florida, with denuded delusions of young
21 outsiders sneaking into girls' bedrooms with drugs and bad thoughts, local law
22 enforcement virally spread a nasty lie of drug involvement against Francis. It was a
23 complete lie. First, law enforcement lied about the presence of cocaine in a
24 Francis' plane; the state's own drug laboratory proved this was a complete
25 falsehood. Then, the law enforcement lied and labeled Francis' possession of a
26 prescription medication as drug trafficking; doctor's slips showed the medication
27 was not only completely legal, but also lawfully prescribed. As the scholar and

1 poet, Sir Scott, once scribed, "oh what a tangled web we weave, when first we
2 practice to deceive."

3 Unsatisfied with an unlawful attempt to keep Francis from engaging in First
4 Amendment protected speech, unsated by their unlawful raid and seizure, and
5 unfulfilled with their open and public deception to the community, all a preamble
6 to the injustice to come, in step the local connected lawyers, Harrison, Sale,
7 McCloy, Duncan & Jackson, led by Ross McCloy (hereinafter "McCloy"). A
8 predecessor of the firm included another name -- Smoak, as in Richard Smoak,
9 who now handled overflow work and conflict work from McCloy, his long-time
10 ex-law partner and intimate friend. Smoak would play a role yet to be cast.

11 First, McCloy's firm represented the government defendant in their
12 unsuccessful defense of the city and county's First Amendment violations of
13 Francis' rights. Then McCloy's firm appears representing the same law
14 enforcement agencies in civil forfeiture actions, the actions predicated on the
15 persistent prevarication of drug use their law enforcement clients knew to be false.
16 Next, McCloy's firm turns up as the unlikely agents and lawyers of the deceitful
17 women and their parents in a civil suit against Francis -- the same girls whose
18 deceit and misconduct precipitated many false criminal charges against Francis.
19 (McCloy's firm is known for defending against, not initiating, plaintiff' suits,
20 rendering the only logic of their choice their neck-deep involvement with local law
21 enforcement's war on Francis.) Of course, McCloy's fee structure is likely a piece
22 of the action -- a contingency fee recovery of any money recovered from Francis.
23 The motive is millions, the green eye of greed to accompany their clients'
24 proclivity toward perjury and perfidy.

25 Since such southern injustice is never concluded without a friendly judge,
26 the lawyers file, dismiss, then re-file their civil claim in federal court on behalf of
27 the women and their parents, then affirm a stay, while secretly awaiting a new

1 federal judicial appointment. After that appointment, they move to lift the stay.
2 Who was this new judge they waited on? Their long time friend and decade-long
3 former law partner, Richard Smoak (hereinafter "Smoak"), with a visceral bias
4 against Francis' business, likely known to them. Of course, neither they nor the
5 judge disclose this history of close personal and professional relationship. Imagine
6 if a person in a dispute with a businessman chose their long-time personal friend
7 and business associate to "independently judge" the dispute with the businessman.
8 Such a claim wouldn't work in a 3rd grade classroom; it should have no credence
9 in an American court of law. In an incestuous nest of internecine conflicts, inherent
10 and actual throughout, the women, the parents and their lawyers never made notice
11 in the record of the judge's long-standing intimate professional and personal
12 relationship, as his long-time ex-law partner and close personal friend, with other
13 members of McCloy's firm and McCloy. Nor did the court disclose the details on
14 the record itself. Many of these same individuals employed their financial and
15 political weight to get the state prosecutor prosecuting Francis elected.

16 Francis, amassing evidence of the fraud and deception committed against
17 him, secured a plea disposition from the state prosecutor, who agreed to a
18 probation plea deal and dismissal of almost all charges against Francis, due to the
19 paucity of facts, pervasiveness of lying law enforcement, and parade of deceitful
20 witnesses in the case against Francis. Immediately, the civil litigants against
21 Francis, including the parents of the women, call and threaten the prosecution with
22 a public campaign attacking the prosecutor if the plea deal goes through; after all,
23 it doesn't include million-dollar checks for the lying women and their parents.
24 Fearing public retaliation, the prosecutor drops the plea deal. Around the same
25 time, the ubiquitous Mr. McCloy, through his Chicago compatriot, Thomas Dent,
26 another lawyer for the lying women and their parents, then inform Francis' counsel
27 a settlement with millions might smooth the deal for the plea deal, suggesting

1 money will make both the state case and soon-to-be federal case disappear
2 resolved.

3 Francis' lawyers, naively trusting the integrity and impartiality of the court,
4 expose this in federal court. Neither Judge Smoak nor McCloy disclose the long-
5 standing close intimate friendship and business relationship between them. Instead
6 of punishing the conduct of the women's parents and their lawyers, Smoak
7 threatens Francis' then lawyers with sanctions and an ethics investigation for
8 publicly disclosing the continued deceit and apparent perjured testimony of the
9 women.

10 Unable to leverage a settlement through manipulation of the criminal
11 proceeding, the lying women and their parents, through their lawyers, commence a
12 new strategy. Judge Smoak previously ordered mediation in the case. The rules of
13 the order compel the appearance of the women, their parents, Francis and the
14 lawyers. The rules of the order also compel strict secrecy about the proceedings.
15 Francis arrives at the mediation. The women and their parents do not. The
16 mediation takes place for several days. The mediator files a report that mediation
17 took place and did not lead to settlement.

18 The lawyers for the women and their parents unveil their new strategy:
19 violate the mediation privilege and induce their ally on the court to do something
20 no federal judge has ever done – imprison a man for not offering to settle a civil
21 case. The Defendants, through their lawyers, file a motion with the court for
22 sanctions against Francis, publicly disclosing intimate details of the mediation,
23 under the guise they felt threatened, even though the lawyers didn't raise this issue
24 when the events occurred, continued to mediate for days with the person they
25 claimed to be "scared" of in the same hotel, and only brought the motion when
26 they didn't get the millions they wanted. The women and their parents weren't
27 even there. The lawyers, in violation of the mediation, disclose details completely

1 unrelated to any supposed "threat" such as when Francis arrived, what clothes he
2 wore, and comments about not giving them a dime.

3 At a hearing, the court rejects a temporary restraining order recognizing
4 there was no basis for perceiving threats of violence, but again doesn't condemn
5 their illicit disclosures. Instead, Smoak condemns Francis' choice of dress (at an
6 informal mediation), use of language during a mediation (intended to air feelings
7 fully and freely without censorship), and Francis' choice not to offer a settlement
8 (which was Francis' right under the Seventh Amendment to the United States
9 Constitution for a trial by jury not by judge). The court then orders Francis
10 imprisoned as a "sanction," only staying the order of imprisonment pending
11 Francis "finally" "resolving" the case. The local news headline screams the
12 conclusion: *Judge to Francis: Settle or Jail*. It is the first instance in known legal
13 history where a judge orders imprisonment to compel settlement discussions.

14 Francis then mediates for days on end to satisfy the court's order. The
15 mediator never reports any threats of any kind of any violence.

16 The lawyers for the women then *again* disclose the intimate details of the
17 mediation, disgorging that an offer was made but not resolved when reduced to
18 actual terms of payment, and demand Francis' imprisonment to coerce settlement.
19 The court grants the request and orders Francis' imprisoned within less than 24
20 hours until someone else can set up another mediation, and requiring Francis
21 mediate inside a jail cell. Francis, after moving to stay the proceeding fails, flies to
22 Panama City to appear, where he is arrested and imprisoned. At the time of his
23 imprisonment, no formal mediation outside of prison is established and Francis
24 cannot control the means of his release. Fearing interminable imprisonment,
25 Francis agrees to the settlement terms demanded by the lawyers for the women,
26 who control whether Francis will be released by their statements to the court, and
27

1 demand settlement as their condition. Francis signs the settlement papers inside a
2 jail cell.

3 Francis brings this legal action to rescind the settlement agreement coerced
4 by duress and improper conduct of the women, their parents, their agents
5 (including the attorneys) and their knowing complicity in the illegal incarceration
6 of Francis in order to induce the settlement here. The defendants in this case began
7 their prior case against Francis with open deception, continued with probable
8 perjury, and concluded with illegal incarceration. That may be some deformed
9 version of southern justice, but it is not American justice.

10 JURISDICTION, PARTIES AND VENUE

11 1. Francis resides in Los Angeles County, California. He is the president
12 and chief executive officer of MRA; the sole shareholder of Mantra; and the
13 president of Aero. He brings this action individually and in his capacity as officer
14 of MRA, Mantra and Aero.

15 2. MRA is a California limited liability company with its principal place
16 of business in Santa Monica, California. MRA produces *Girls Gone Wild*
17 (hereinafter "GGW"), a film enterprise.

18 3. Mantra is an Oklahoma corporation with its principal place of
19 business in Santa Monica, California. Mantra is the sole member of MRA.

20 4. Aero is a Delaware limited liability company with its principal place
21 of business in Santa Monica, California. Aero provides transportation services to
22 Mantra and MRA.

23 5. John Doe 1, John 2, and Jane Doe 1, as well as their children PC, PD,
24 PB, and PM, were residents of the State of Florida at all pertinent times.

25 6. Jane Doe 2 and Jane Doe 3, as well as their children PJ and PS, were
26 residents of the State of Alabama at all pertinent times.

1 7. The actions of the defendants in this case were deliberately aimed at a
2 Californian and the California plaintiffs in this case, knowing the effect of the
3 actions would have on the California business and California resident. Hence,
4 personal jurisdiction over the defendants is Constitutional and proper.

5 **FACTUAL ALLEGATIONS**

6 **A. Francis & Panama City.**

7 8. Francis established one of the world's most extraordinary companies,
8 identified by independent publications as one of the twenty-five brands that
9 changed the world. Proponents see entrepreneurial enterprise of a young man who
10 rewrote a business model of marketing and branding for the twenty-first century;
11 modernists see the broadening of First Amendment expression to expand its
12 Constitutional protection; young women see a chance to express themselves
13 unbridled to public acclaim and the affections of young men. Opponents,
14 particularly power structures in fundamentalist communities in the small-town
15 south, prefer to repress female sexuality and see it as a dangerous expression, wish
16 to undo the First Amendment's protection and return it to an age of parochial
17 oppression as Hugh Hefner and Larry Flynt experienced in Francis' predecessor
18 shoes, and consider business enterprise only legitimate when it gains the approval
19 of the local power structure.

20 9. Successors to the southern sheriffs who reinvented lawless law
21 enforcement in the 1960's, the local powers that be in Panama City and Bay
22 County Florida set out to destroy Francis and his business from operating in their
23 town.

24 10. Panama City profits millions from soliciting a party-town atmosphere
25 for college-age men and women during their spring breaks from college.
26
27

1 11. Panama City officials threatened in 2003 to arrest and imprison
2 Francis if he merely steps foot in their town or engages in filming the Spring Break
3 activities and party scene.

4 12. Panama City officials engage in unlawful surveillance of Francis,
5 including helicopters over the legally leased premises, cars shadowing his every
6 drive, officers stalking his every move, and discouragements to partiers to involve
7 themselves with Francis' business.

8 13. Francis sues in federal court alleging First Amendment violations. The
9 defendants are represented by the law firm of Harrison, Sale, McCloy, Duncan &
10 Jackson ("HSMDJ"). Richard Smoak is, at that time, not a federal judge, but
11 simply an ex-law partner, on-going business associate through referral
12 relationships, and close personal friend of Ross McCloy, one of the lead attorneys
13 of the HSMDJ law firm.

14 14. The defendants in the First Amendment suit promise to stop their
15 conduct and agree to a stipulated dismissal of the action for their First Amendment
16 violations. The defendants never intended to keep their word; the law doesn't
17 matter a lot in Panama City to the law enforcement officials of Panama City.

18 **B. Women Solicit Girls Gone Wild to Film By Lying to GGW.**

19 15. John Doe 1, John Doe 2, and Jane Doe 1 allowed their daughters to
20 frequent areas of Panama City Beach where they knew their girls would be
21 partying. The women like to flash cameras as part of this party scene.

22 16. On or about March 31, 2003, PC, PD, PB and PM were traveling
23 down Front Beach Road in Panama City Beach, Florida, when they saw a vehicle
24 displaying the Girls Gone Wild logo. The women were familiar with exactly what
25 Girls Gone Wild was about and wanted to be a part of it. The only thing they
26 were intoxicated with was a desire to be publicly adorned by millions of men
27 across the country with their unbridled expression.

1 17. PC, PD, PB and PM approached the vehicle and indicated to a
2 representative of Mantra that they wanted to be filmed for the Girls Gone Wild
3 video series. A Mantra representative refused to film them unless they confirmed
4 their age. Each woman insisted they were older than seventeen years of age.

5 18. PC, PD, PB and PM appeared to be older than seventeen years of age
6 and a reasonable person would have believed that all four women were at least
7 eighteen years old. Based upon the women's assurances that they were older than
8 seventeen, a Mantra representative invited the four women to the filming location
9 of the GGW party at the Chateau Motel.

10 19. Before allowing them to join the party and be filmed, GGW
11 representatives demanded further affirmations the women were older than 17. In
12 room 320 of the Chateau Motel, PC and PD, each one very cognizant, read,
13 reviewed and promised in writing, through an executed release form, stating that
14 each one was older than seventeen years of age and that each fully understood the
15 contents and consequences of the release they were signing. The women knew
16 GGW relied upon their promises and that GGW wouldn't film them if GGW had
17 any suspicion they were not at least 18 years of age.

18 20. PC and PD each voluntarily indicated that they wanted to be filmed
19 for the GGW series. In fact, PD even requested that the cameramen make her a
20 copy of the video.

21 21. Based upon PC and PD's representations that they were older than
22 eighteen, the signed release statements, and the women's representations that they
23 wanted to be depicted in the GGW video series, representatives of Mantra recorded
24 images of PC and PD.

25 22. This was a repeat performance by PD, who had been filmed for a
26 GGW video a month earlier. She had lied about her age on camera on that
27 occasion as well.

1 23. PB and PM were present on March 31, 2003 at room 320 of the
2 Chateau Motel while the images of PC and PD were recorded.

3 **C. PJ Solicited GGW to Film Her By Misrepresenting Her Age and**
4 **Signing a Release.**

5 24. In March of 2003, Jane Doe 2 allowed her daughter, PJ, to travel with
6 a friend from Alabama to Panama City Beach, Florida, during the height of spring
7 break festivities unaccompanied by a parent.

8 25. Jane Doe 2 knew or should have known that Panama City Beach,
9 Florida, is reputed for its spring break festivities, including but not limited to
10 college-type partying.

11 26. On or about March 27, 2003, PJ and her friend indicated to Mantra
12 representatives that they wanted to be depicted in the GGW series and had traveled
13 all the way from Alabama to appear in GGW.

14 27. PJ indicated to Mantra representatives that she was older than
15 seventeen years of age and, in a cognizant state of mind, executed a release form
16 stating that she was older than seventeen years of age and that she fully understood
17 the contents and consequences of the release she was signing.

18 28. PJ appeared to be older than seventeen years of age and a reasonable
19 person would have believed that she was at least eighteen years old.

20 29. Based upon PJ's representations that she was older than seventeen, the
21 signed release statement, and her representations that she wanted to be depicted in
22 the GGW video series, representatives of Mantra recorded images of PJ.

23 **D. PS Solicited GGW to Film Her By Misrepresenting Her Age and**
24 **Signing a Release.**

25 30. In March of 2003, Jane Doe 3, PS, and an eighteen year old friend of
26 PS traveled from Alabama to Panama City Beach, Florida, for a spring break
27 vacation.

1 31. On or about March 29, 2003, Jane Doe 3 allowed PS and PS' eighteen
2 year old friend to venture out alone in Panama City Beach during spring break
3 festivities.

4 32. When PS encountered Mantra representatives, she indicated that she
5 wanted to expose her breasts for a GGW video in exchange for a GGW t-shirt.

6 33. PS told the Mantra representatives that she was older than seventeen
7 years of age.

8 34. PS appeared to be older than seventeen years of age and a reasonable
9 person would have believed that she was at least eighteen years old.

10 35. Based upon PS' representations that she was older than seventeen and
11 her representations that she wanted to be depicted in the GGW video series,
12 representatives of Mantra recorded images of PJ.

13 **E. Illegal Raids.**

14 36. In April of 2003, some of the above-mentioned women and their
15 parents collaborated with the police in a secret investigation of Francis. It is
16 unclear whether the women and their parents always intended to use the law
17 enforcement targeting of Francis to profit from their own deceit. What is known is
18 the women and their parents ended up hiring the same lawyers (lawyers who
19 almost never represent plaintiffs nor are they known for their plaintiff
20 representation, furthering the suspicious nature of their involvement) who
21 represented the city and county officials in defense of the First Amendment claims
22 and in prosecuting a civil forfeiture action against Francis based on the deceptions
23 of local law enforcement, and successfully manipulated the filing of their case to
24 procure the judicial assignment of the lawyers' long time ex-business partner and
25 personal friend, Richard Smoak as the Judge on the case. The Judge's conduct
26 from very early on made it clear they had carte blanche to break the rules as often
27 as they wanted.

1 37. In April of 2003, local law enforcement, based on lies to a state court
2 judge, illegally raid Francis' premises and illegally seize property belonging to
3 Francis, including the films of the women. In the same month, local law
4 enforcement uses additional lies to seize a plane and car belonging to Francis,
5 publicly lie and claim drugs were found aboard. The state lab later examines the
6 evidence and finds there were no illegal drugs of any kind on the plane. The state
7 court judges later condemn the actions of local law enforcement for their "reckless
8 disregard of the truth" in their conduct toward Francis.

9 38. On September 12, 2003, Defendants, hiring the same lawyers who had
10 and were representing city and county officials, filed a lawsuit in the least likely
11 locale and venue – a federal district court, the Northern District of Florida. The suit
12 filed sought damages against the Plaintiffs for the Defendants' own lies and deceit
13 upon the Plaintiffs.

14 39. Notably, had the Defendants filed their case in state court, they may
15 have obtained the judicial assignment of a court familiar with the misconduct of
16 local law enforcement toward Francis.

17 40. Apparently displeased by the judicial assignment in federal court, the
18 Defendants dismissed their first action without prejudice and re-filed it, obtaining a
19 different judicial assignment. Defendants immediately sought a stay of the
20 underlying action. Unknown to the Plaintiffs, a process was afoot to appoint
21 Richard Smoak to the federal bench in Panama City. Smoak was close personal
22 friends, the ex-law partner and beneficiary of ongoing referral relationships with
23 the Defendants' lawyers, particularly Ross McCloy. The defendants also likely
24 knew of Smoak's personal hatred of Francis' business enterprise, his general
25 disregard for First Amendment limitations on a judge's conduct, and Smoak's
26 apparent willingness to abuse his position of power for the personal profit of his
27 friends and to voice his personal animus toward Francis.

1 41. After appointment of their favored judge, the Defendants move to lift
2 the stay on the case and seek immediate discovery. In a pattern of one-sided
3 conduct, Judge Smoak orders free discovery against Francis and his companies
4 (despite a parallel and pending criminal case), but prohibits depositions of several
5 Defendants. Smoak and the Defendants keep hidden from the record the fact of
6 Smoak's close relationship with the Defendants' lawyers.

7 42. In the spring of 2006, the following facts come to light. Defendants
8 threatened the state prosecutor that if he accepted a plea deal with Francis without
9 payment of moneys to them, the Defendants would engage in a broad-scale
10 national media campaign on national television against the state prosecutor. During
11 the myriad investigations prompted by the Defendants' conduct, the defendants
12 repeatedly change their stories and appear to commit clear acts of perjury. The
13 Defendants' lawyers then suggest settlement with millions to the Defendants as a
14 way for Francis to avoid state criminal and federal criminal prosecution. At an
15 evidentiary hearing, the Judge, Richard Smoak, issues no sanction against the
16 women, their parents or their lawyers, but instead threatens sanctions against
17 Francis' lawyers for exposing the lies and apparent perjury of the women. Smoak
18 and the Defendants continue to keep hidden from the record the fact of Smoak's
19 close relationship with the Defendants' lawyers.

20 43. On October 19, 2006, the Court entered a Scheduling and Mediation
21 Order which required the parties to mediate. The Order provides in part:

22 (a) All discussions, representations, and statements made at the mediation
23 conference shall be off the record and privileged as settlement
24 negotiations. Mediation proceedings shall not be recorded by a court
25 reporter or by an electronic recording device, except as necessary to
26 memorialize any settlement that may be reached.
27

1 44. Pursuant to the Mediation order, the parties selected Dominic M.
2 Caparello, Esq. (hereinafter the "Mediator") to mediate the dispute and agreed on a
3 two-day mediation session beginning March 21, 2007.

4 **F. Plaintiffs Attended Mediation on March 21, 2007 and March 22, 2007.**

5 45. At all times material hereto, Plaintiffs were confident that they would
6 prevail in the Actions brought by Defendants. Accordingly, Plaintiffs had no
7 desire to settle the claims raised in the Action. Moreover, defendants' actions and
8 misrepresentations had subjected Plaintiffs to criminal prosecution, public ridicule,
9 and damage to Plaintiffs' reputation, and Plaintiffs eagerly anticipated the
10 opportunity to litigate the matter to a jury at a public trial.

11 46. Notwithstanding Plaintiffs' desire to raise their defenses at a jury trial
12 in the matter, pursuant to the Mediation order Plaintiffs, appeared for the two-day
13 confidential mediation session beginning on March 21, 2007 (hereinafter the
14 "Mediation").

15 47. Plaintiffs' lawyers stayed and participated in the Mediation on March
16 21, 2007 and March 22, 2007. The defendants never appeared and never asked for
17 relief to not appear at the mediation. Only the defendants' lawyers appeared.

18 48. Francis understood that he was participating in the Mediation
19 individually and as the representative of MRA, Mantra and Aero. Offers and
20 demands were exchanged during the Mediation. The Defendants did not convey
21 that any demand by Defendants was only to MRA Mantra and Aero, which offer
22 would have dismissed the corporate defendants but not result in a dismissal of the
23 claims against Francis if accepted. The Mediator did not suspend or terminate the
24 mediation as to Francis, and Francis participated in all demands and offers.

25 49. Francis understood the mediation was informal, invited open
26 emotional communication, and blunt speak, especially with only the lawyers for
27 the Defendants present, not the Defendants themselves.

1 50. The Defendants' agents, their lawyers, provoked Francis from the
2 inception of the conversation by repeatedly lying at the mediation that the case was
3 about people who "are" minors, knowing full and well they were not minors and
4 were only in the case from their own successful deceit and lies against Francis and
5 his companies. Francis responded emotionally, at which time they got up and left
6 without approval or authorization from the mediator. Francis ultimately left the
7 room, continuing to negotiate from a neighboring room for the next two days.

8 51. Despite the parties' efforts, and exchanges of various demands and
9 offers, settlement was not reached at this Mediation. All parties adjourned. A trial
10 date of July 2007 (4 months away) was pending.

11 52. The mediator never reported any misconduct by anyone, kept the
12 communications confidential, reported mediation did take place as ordered, and no
13 settlement was achieved.

14 **G. The Defendants Breach the Mediation Privilege for the First Time.**

15 53. On March 23, 2007 Defendants, through their lawyers, disclosed
16 intimate details of the confidential mediation, under the guise the lawyers felt
17 scared. Most of the communications disclosed include Francis' statement he
18 wouldn't give them a dime, his manner of dress, and the like, in direct violation of
19 the mediation privilege and their implied agreement at mediation to keep all
20 communications disclosed confidential.

21 54. On March 23, 2007, the Court ruled that an evidentiary hearing on the
22 matter would be conducted on Friday, March 30, 2007 at 9:30 a.m. The Court
23 ignored the obvious breach of the mediation privilege, and again hid his close
24 former friendship and business partnership with McCloy and his firm.

25 **H. Smoak to Francis: Settle or Jail.**

26 55. At the hearing, Judge Smoak refused to strike the pleadings or keep
27 confidential the mediation communications, making clear he didn't care what the

1 law said. Judge Smoak declared he wouldn't let Francis "hide" behind the
2 confidentiality provisions of Florida mediation law. During the hearing, the Court
3 warned that if the allegations were true, such as Francis promising to not give a
4 dime to the Defendants, then Francis may well end up in jail.

5 56. At the evidentiary hearing on March 30, 2007 the Court found that
6 Francis violated the Order to Mediate because his communications at the inception
7 of the mediation announced his intention not to give the Defendants a dime. The
8 Seventh Amendment to the United States Constitution guaranteed Francis the
9 Constitutional right not to offer one dime to a litigant and the right to demand a
10 public trial by jury. The defendants and their agents knew Judge Smoak's order
11 violated Francis' constitutional rights and created an impermissible atmosphere of
12 coercion and duress they induced with their misconduct and sought to personally
13 profit from.

14 57. The Court urged the parties to negotiate further before ordering
15 sanctions. :

16 get together during the noon break, instead of heading to a restaurant,
17 and see if there is some way that you can resolve not just what might
18 happen today, but see if you can't build on the attempt of Dominic
19 Caparello and, Mr. Burke, your efforts, and the plaintiffs' efforts, and
20 see if there isn't some way to **get this case resolved**. Like I said, it
21 seems to me that each side has sufficient problems, sufficient risk at
22 the hands of the jury and sufficient uncertainty on the outcome that
23 this case cries out for compromise.

24 The Court warned:

25 If you come back this afternoon, somebody is going to be real
26 unhappy, probably, with my ruling. That's fair warning, and **I think**
27 **that you need to put a dollar figure in your mind on what it's**
worth to you to avoid what may be a sanction that you weren't
counting on.

1 58. After the noon break, the parties informed the Court that they had not
2 arrived at a settlement. The Court then issued the following sanction:

3 Therefore, coercive incarceration is an appropriate sanction for this
4 situation.

5 Mr. Francis can cure his contempt and have this sanction of
6 incarceration removed upon his proper participation in mediation.

7 59. Upon request for clarification from Francis' counsel, Smoak made
8 clear that Francis had to get the matter "resolved" "finally" in order to satisfy the
9 stay of imprisonment. Otherwise, Francis would be imprisoned. The Court
10 suspended the incarceration until 5:00 p.m. on Saturday, March 31, 2007. The
11 Court ordered the mediation to continue in good faith all day Saturday. Smoak
12 made clear what "good faith" meant: to get the case "resolved" "finally." The
13 newspaper journalists reported the same, with their headline: *Judge to Francis:
14 Settle or Jail.*

15 60. Based on the Court's comments, Francis reasonably believed that he
16 had to settle the Action in order to avoid being jailed.

17 **I. Francis Continued to Mediate in Good Faith.**

18 61. On March 31, 2007, the parties mediated over a period of
19 approximately six hours. Plaintiffs are informed and believe that the mediator
20 reported to the court that the parties had made and exchanged more than two
21 rounds of offers in good faith. After much give and take, the parties arrived at a
22 tentative settlement figure, but no other terms of settlement were discussed.
23 Plaintiffs were excused by the Court, with the understanding that the Defendants
24 would further communicate with their counsel and with plaintiffs, and that the
25 parties would continue to negotiate a potential resolution.

26 62. The following Tuesday, April 3, the defendants herein drafted and
27 presented to Francis a short (and unacceptable) three-page settlement agreement.

1 While a settlement figure had been tentatively agreed upon, issues arose about how
2 the settlement was to be documented and over what period of time the settlement
3 figure would be paid. In light of the pending criminal trial, various terms and
4 conditions concerning confidentiality, preservation of evidence, and other matters
5 also remained in dispute. Among other things, the parties were unable to agree on
6 a period of time within which the settlement figure would be paid.
7 Notwithstanding the efforts made by all parties to reach an agreement on the
8 outstanding points and to settle the Action, the mediation did not lead to
9 settlement.

10 **J. Defendants' Violate Mediation Privilege A Second Time.**

11 63. Under existing law and in the implied agreement of the parties, no
12 discussion concerning mediation would be disclosed. Again, knowing the Judge
13 would reward their misconduct for his close friend and ex-law partner, the
14 Defendants, through their lawyers, again disclosed intimate details of the
15 mediation and demanded incarceration of Francis to get the settlement they
16 wanted.

17 64. Judge Smoak, as Defendants anticipated, rewarded their violation,
18 mimicked their words, and ordered Francis incarcerated in less than 24 hours,
19 though Francis was not even within the city, would take longer than 24 hours to
20 arrive, and intended to seek a stay of the order. No judge in America has ever
21 ordered a person imprisoned for "not settling" or not engaging in settlement
22 discussions of a case to his satisfaction.

23 **K. Court Imprisons Francis For Not Settling.**

24 65. On April 4, 2007, the Court ordered Francis to surrender to the
25 custody of the U.S. Marshal not later than 12:00 p.m. on April 5, 2007. Id. The
26 April 4, 2007 Order noted that Francis could resolve the situation by mediating in a
27

1 "meaningful fashion". *Id.* Smoak made clear previously what he meant by
2 "meaningful" – the case being "resolved" "finally."

3 66. This time Smoak order Francis to mediate from a jail cell. In fact, the
4 Court stated that "[the mediation] will be done in strict compliance with the usual
5 protocols, and Mr. Francis *will remain in custody* for whatever time it takes to get
6 that set up with all due deliberate effort." Hence, Francis did not have the "keys" to
7 his own jail cell short of settlement, rendering the order an illegal criminal
8 contempt and compelling settlement as the only means of release. Defendants
9 knew the illegal coercion placed upon Francis and deliberately procured it through
10 improper conduct.

11 67. It was clear to Francis that, to the Court, meaningful mediation meant
12 that the mediation must result in a settlement as sought by the Defendants. The
13 Court even stated that Mr. Francis could complete his trial preparation "*in custody,*
14 *if that's what it takes to get him to properly comply.*" Defendants knew the illegal
15 coercion placed upon Francis and deliberately procured it through improper
16 conduct.

17 **L. Francis Signs Settlement Agreement While In Jail.**

18 68. On April 10, 2007, Mr. Francis traveled to Panama City, Florida to
19 voluntarily surrender pursuant to the Court's Order.

20 69. On April 10, 2007, Francis was taken into federal custody.

21 70. Francis intended to defend the Action at trial, but, while sitting in a
22 Panama City jail cell, Francis reasonably believed that he had no option but to
23 settle the Action or stay jailed.

24 71. The coercion and improper influence placed on Francis destroyed his
25 free agency and compelled him to act in a manner not of his own volition.

26 72. Francis understood that the only way to comply with the Court's
27 orders was to enter into the Settlement.

1 73. Accordingly, Francis executed the Settlement Agreement with
2 Defendants from his jail cell. Defendants knew the illegal coercion placed upon
3 Francis and deliberately procured it through improper conduct. After the
4 Settlement was executed, Judge Smoak lifted the civil contempt order and
5 dismissed the Civil Case.

6 **Count I – Rescission of the Settlement Agreement**
7 **Improper Threats, Coercion and Duress**

8 74. The allegations contained anywhere in this complaint are re-alleged as
9 if specifically set forth herein.

10 75. Plaintiffs executed the Settlement involuntarily and not as an exercise
11 of free choice or will; Plaintiffs surrendered to the improper compulsion of the
12 mediation process.

13 76. As stated above, Plaintiffs continuously attempted to mediate with
14 Defendants while standing firm on their position that they would prevail in the
15 Action; Plaintiffs did not want to settle the Action.

16 77. Here, the negotiation occurred in an atmosphere devoid of free choice
17 and will. Under the circumstances, Plaintiffs reasonably believed that he had no
18 option but to execute the Settlement in order to be released from jail.

19 78. Objectively, Plaintiff's entered the Settlement without free will,
20 because Plaintiffs knew and understood the following facts:

21 (A) The Court had warned Francis of the possibility of incarceration
22 based on conduct which should have remained confidential and
23 which was not violation of the Court's mediation order;

24 (B) The Court told Francis to consider a dollar figure and get the
25 matter "resolved" "finally" to avoid jail;

26 (C) The Court ordered Francis' incarceration for failing to mediate in
27 good faith, despite days of effort by the parties to negotiate a

1 resolution of the dispute, including numerous exchanges of offers
2 and demands between the parties.

3 79. Furthermore, subjectively, Plaintiffs entered the settlement without
4 free will because the incarceration placed Francis in a state of mind where he could
5 only understand that if he wanted to avoid further jail, he needed to settle with the
6 charging parties. Francis' state of mind in this regard was affected by the
7 incarceration because:

8 (A) Francis was kept in a very cold room. He was so cold, his lips
9 were blue, his teeth chattered;

10 (B) On incarceration, Francis could not depend on continuous medical
11 care for his prescription medication, further impacting Francis'
12 state of mind;

13 80. But for Francis' duress placed upon Plaintiffs throughout their
14 misconduct and willing participating in the illicit orders of the judge, Plaintiffs
15 would not have entered into the Settlement.

16 81. Plaintiffs understood that they had no choice but to enter into the
17 Settlement in order to avoid further incarceration.

18 **Count II – Rescission of the Settlement Agreement**
19 **Unilateral Mistake Induced**

20 82. Plaintiff's re-allege any statement elsewhere in the complaint as if
21 fully set forth herein.

22 83. Plaintiff's entered into the settlement, to the extent this court finds that
23 settlement was not compelled, then the settlement was the result of a mistake that
24 was induced by the Defendants into believing it was.

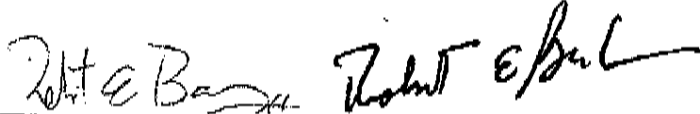
25 84. In particular, Plaintiffs understood that the settlement of the case
26 would result in Francis' release from incarceration and resolution of all pending
27 matters between the Plaintiffs and Defendants.

1 85. The position of the Plaintiffs has not so changed that granting the
2 relief would be unjust.

3 WHEREFORE, PLAINTIFFS respectfully requests that this Honorable
4 Court enter an Order rescinding the Settlement entered into between PLAINTIFFS
5 and DEFENDANTS, returning the parties to status quo ante and granting such
6 other and further relief as it deems appropriate under the circumstances.

7 Dated this 18th day of August, 2008.

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