



1 SAN JOSE, CALIFORNIA APRIL 24, 2013

2 PROCEEDINGS

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4 THE COURT: All right. This matter involves  
5 the Conservatorship of Beatrice Pacheco. You are, sir?

6 MR. MERRITT: David Merrit, sir.

7 THE COURT: Okay. Mr. Merrit. Who are you?

8 MR. MERRITT: I'm a party that just got  
9 dragged into this over a month ago. A local attorney  
10 was contacted by Mr. Starks and the attorney was not  
11 able to represent him because this was, first of all,  
12 not her area of law specifically. And she was just --  
13 her case files were just too overwhelmed. Thirdly, he  
14 did not have the finances to obtain her services or, she  
15 surmised, any other lawyer services. And so she  
16 thought --

17 THE COURT: We are talking about  
18 Ms. Pacheco.

19 MR. MERRITT: No. This is the person who  
20 referred Mr. Starks to me. A local attorney by the name  
21 of Robin Yeamans for your own cognizance. She knows me  
22 as a person who will -- I've advocate for myself and I  
23 try to guide individuals.

24 THE COURT: Advocate for yourself?

25 MR. MERRITT: In other words, if someone  
26 contravenes -- U.S., or other type of laws -- against me  
27 or my family, what have you, I have been a person  
28 inclined to pretty much go pro se in federal court and

1 pro per in state court.

2 THE COURT: Are you an attorney?

3 MR. MERRITT: No, sir. I'm a local business  
4 man. I try to stay away from jurisprudence, however it  
5 seems like I keep getting dragged into.

6 THE COURT: We're here at your request. Why  
7 are you here?

8 MR. MERRITT: Well, sir, first of all, I was  
9 asked by Beatrice Pacheco after some conversations with  
10 her to do whatever I could to get her some impartial  
11 decision-makers in her case, including the -- the -- the  
12 attorney that is supposed to be representing her. I  
13 have made a couple phone calls to his office which have  
14 not been returned yet. And, essentially, I'm motivated  
15 by seeing a person who is in what I -- what is --  
16 what -- what I -- has been represented to me as a dire  
17 situation, currently. She was just assaulted on Monday  
18 physically.

19 THE COURT: How do you know all of this?

20 MR. MERRITT: Okay. Communicating --  
21 communications with Mrs. Pacheco.

22 THE COURT: That's it? Mrs. Pacheco is the  
23 sole source of the information.

24 MR. MERRITT: Oh, exactly. Oh, definitely.

25 THE COURT: Okay. And so, again, I am  
26 trying to understand, why are you here?

27 MR. MERRITT: Okay. Ms. Beatrice Pacheco,  
28 the conservator -- or conservatee in this matter.

1 THE COURT: Right.

2 MR. MERRITT: She specifically enlisted me  
3 and asked me, "David" -- no. She explained her  
4 circumstances. I -- you know, first I --

5 THE COURT: And you understood she was under  
6 a conservatorship.

7 MR. MERRITT: I understand that, sir.

8 THE COURT: And she has a conservator.

9 MR. MERRITT: Well, but, Your Honor --

10 THE COURT: And she has an attorney.

11 MR. MERRITT: This is what -- so,  
12 essentially, she explained facts to me where she has  
13 been attempting to convey to the Court to get in front  
14 of a Court -- to get in front of a Judge to demonstrate  
15 that she should not be -- how do you say -- her rights  
16 should not be abrogated; that she does have sound mind;  
17 that they've been -- these are her words -- that the  
18 conservator and the lawyer, she believes, have been  
19 fabricating facts in the record and perpetrating a fraud  
20 upon her and the Court. That -- this is -- this is what  
21 I surmised from her. Now keep in mind, Your Honor --

22 THE COURT: Go back to my basic question.  
23 Why are you here?

24 MR. MERRITT: Okay. So --

25 THE COURT: No, no. You don't understand.  
26 You are not an attorney. You can't represent her. I'm  
27 trying to understand why you are here --

28 MR. MERRITT: Okay.

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1 THE COURT: -- before me.  
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2 MR. MERRITT: So, first of all, Your Honor,  
3 she is not equipped -- she does not have the  
4 intellectual ability nor expertise to draft --

5 THE COURT: She's under conservatorship.

6 MR. MERRITT: Well, this goes -- doesn't  
7 matter whether there's a conservatorship or -- any  
8 layperson is not going to know what steps to take to  
9 protect their rights. But at any rate --

10 THE COURT: She has an attorney to represent  
11 her in that regard.

12 MR. MERRITT: Okay. Now, she -- she does  
13 not -- she mistrusts her attorney. This is basically --  
14 this is specifically why. She has said -- she has  
15 conveyed to the attorney over and over her wishes and  
16 desires. And the attorney has either not been  
17 presenting it to the Court, or she believes that the  
18 Court has been ignoring her own wishes. She -- she --  
19 this is coming from her. And this is the whole thing --  
20 Your Honor --

21 THE COURT: Again, sir, why are you here?

22 MR. MERRITT: What do you mean? Okay.

23 THE COURT: You are not an attorney.

24 MR. MERRITT: Your Honor --

25 THE COURT: You are not a party to this  
26 action.

27 MR. MERRITT: Okay.

28 THE COURT: You have no standing to

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1 participate in this proceeding, let alone represent  
2 Ms. Pacheco.

3 MR. MERRITT: Okay. I see what you are  
4 saying. Okay.

5 THE COURT: which is apparently what you are  
6 doing.

7 MR. MERRITT: So, under the law -- your  
8 conservatorship law -- it actually affords the  
9 conservatee, the conservator, any friends or other  
10 interested persons -- you know the provisions. What is  
11 it? 2651 permits them to commence a petition or any  
12 other matter that's in the interest of the conservatee.  
13 And this is the whole thing.

14 Now, I have elderly parents. They are  
15 84 years old. I grew up with seven sisters. My whole  
16 mindset is protect women, protect elderly, respect the  
17 elderly. I am seeing someone held prisoner in their  
18 home, their phone being disconnected, they are being  
19 assaulted.

20 THE COURT: You've seen all this with regard  
21 to Ms. Pacheco?

22 MR. MERRITT: I witnessed it. She called.

23 THE COURT: You witnessed all of this  
24 happening to Ms. Pacheco?

25 MR. MERRITT: Oh, as far as the phone being  
26 disconnected, of course. I filed the police report. I  
27 have pictures of her injuries.

28 THE COURT: Her injuries.

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1 MR. MERRITT: Yeah. Her physical injuries  
2 that occurred just this past Monday.

3 THE COURT: Mr. Merrit, again, you have no  
Page 6

4 standing in this matter.

5 MR. MERRITT: Well, Your Honor, you believe  
6 I have no standing, but I do have a couple ADA that I'd  
7 like to present to you.

8 THE COURT: You can't present anything.

9 MR. MERRITT: You are not -- well, these are  
10 ADA requirements.

11 THE COURT: For yourself?

12 MR. MERRITT: No. It's all -- it's for her.  
13 Her signature is on it.

14 THE COURT: Again, you can't do anything.  
15 You are not a party. You have no standing. You are not  
16 an attorney.

17 MR. MERRITT: So under the --

18 THE COURT: I have no clue how she got in  
19 contact with you. And I'm assuming this paperwork that  
20 we've been receiving lately has been prepared by  
21 yourself. Correct?

22 MR. MERRITT: Your Honor --

23 THE COURT: Correct?

24 MR. MERRITT: Your Honor --

25 THE COURT: Am I correct in that assumption?

26 MR. MERRITT: Yeah. You are correct.

27 THE COURT: With no, you know, license to  
28 practice law.

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1 MR. MERRITT: Your Honor -- okay. I'm not  
2 understanding your -- okay. So, I'm not -- Your Honor,  
3 I am here only in the interest of this woman, this  
4 elderly person who is under conservatorship. Okay. Her

5 wish is to get a honest, impartial lawyer who would  
6 represent her interests and nobody else. If that can  
7 happen -- she does not trust Michael Desmarais --  
8 whatever his name.

9 THE COURT: Desmarais.

10 MR. MERRITT: Desmarais. She doesn't trust  
11 him. That's -- and she wanted me to do whatever I can  
12 to get her before the Court.

13 THE COURT: Mr. Merrit, it's very clear to  
14 me that not only has she been manipulated by Mr. Starks,  
15 but you are manipulating also.

16 MR. MERRITT: Manipulating?

17 THE COURT: Manipulating.

18 MR. MERRITT: why?

19 THE COURT: why?

20 MR. MERRITT: what --

21 THE COURT: Do you understand what you are  
22 doing? Do you understand what harm you are putting this  
23 woman in? Do you understand the financial abuse that  
24 may be going on here --

25 MR. MERRITT: Your Honor, that's why --

26 THE COURT: -- of which you are a party?

27 MR. MERRITT: Your Honor, okay. So let's  
28 just say -- okay. First of all, she wants an impartial,

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1 honest attorney. That's what she wants. Okay.

2 These ADA requests specifically ask you for  
3 that; ask you to bring her here. She basically asks for  
4 the accommodation to permit me to speak on her behalf.

5 THE COURT: No. No. An ADA --  
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6 MR. MERRITT: Okay, Your Honor. So you are  
7 rejecting that, I understand that. But that's what this  
8 ADA request is for. This is federal law, and  
9 essentially I'm presenting it to you in good faith. I  
10 understand -- I don't know what's going on in this whole  
11 case.

12 THE COURT: You don't understand what's  
13 going on in this whole case, and yet you are filing all  
14 of these pleadings on her behalf, not only here, but in  
15 Family Court?

16 MR. MERRITT: I'm looking at -- I'm  
17 referencing -- I don't understand what's going on. Why  
18 there's so much resistance to bringing her an impartial  
19 type of circumstance so --

20 THE COURT: Sir, you are making an  
21 assumption that her attorney is not being impartial,  
22 or not advocating what she has requested.

23 MR. MERRITT: Well, speak to her. Speak --

24 THE COURT: He has.

25 MR. MERRITT: No, no. Well -- for the  
26 Court. Respectfully, I believe that there needs to be  
27 some fresh eyes into this.

28 THE COURT: Really?

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1 MR. MERRITT: Yes.

2 THE COURT: Based on what?

3 MR. MERRITT: Based upon the aforementioned  
4 in addition.

5 THE COURT: How much time have you have  
6 spent with Ms. Pacheco?

7 MR. MERRITT: Oh, boy --  
8 THE COURT: Really?  
9 MR. MERRITT: Probably about 9 to 14 hours.  
10 THE COURT: In her presence?  
11 MR. MERRITT: Huh?  
12 THE COURT: with her?  
13 MR. MERRITT: Yeah. I had a 45-minute  
14 discussion yesterday. At certain times -- at any rate.  
15 THE COURT: So you sat down with her at her  
16 home?  
17 MR. MERRITT: Yes.  
18 THE COURT: 45 minutes, talking about all of  
19 these things.  
20 MR. MERRITT: Listening to her, yes.  
21 THE COURT: Really?  
22 MR. MERRITT: Yeah. It's pretty  
23 disconcerting to me, this is the 21st century remember  
24 real /SRUPBDZ that's some racial /P-RBGS again /RER  
25 acknowledge dim /KREUBGS.  
26 THE COURT: Excuse me.  
27 MR. MERRITT: This is -- Your Honor, this is  
28 what I ascertained.

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1 THE COURT: Based on what?  
2 MR. MERRITT: Based on statements from  
3 Steven Pacheco.  
4 THE COURT: And how much interaction have  
5 you have had with Mr. Pacheco?  
6 MR. MERRITT: Well, Your Honor, the  
7 interaction is limited, but -- however, you know -- it's

8 kind of like you walk in the room, and you know when  
9 someone -- how do you say -- turns a cold shoulder to  
10 you, they demonstrate hostility to you.

11 THE COURT: Maybe because you have no  
12 business being involved in this matter.

13 MR. MERRITT: Okay. All right.

14 THE COURT: Does that cross your mind at  
15 all?

16 MR. MERRITT: Your Honor, all I am asserting  
17 here, sir, for the Court to be made aware that this  
18 woman is being held prisoner in her home. She's not  
19 being afforded her fundamental rights. And that the --  
20 the parties that are involved are not -- I thought they  
21 were not conveying it to the Court. You know. That  
22 that was an assumption, but apparently, I guess, I don't  
23 know if they have or --

24 THE COURT: Do you know who all is involved  
25 in this?

26 MR. MERRITT: Well, as far as what's on the  
27 record --

28 THE COURT: Do you understand how she went

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1 under conservatorship?

2 MR. MERRITT: Yeah. The doctors -- in  
3 camera report all that.

4 THE COURT: Okay.

5 MR. MERRITT: I know.

6 THE COURT: And you understand the process?  
7 You also understand she has an attorney?

8 MR. MERRITT: Yes.  
Page 11

9 THE COURT: You also understand the Court  
10 investigators, who are sitting here to your right --

11 MR. MERRITT: Yes. Caroline Ross.

12 THE COURT: -- independently investigated  
13 this matter repeatedly. The conservator has an  
14 attorney. All these people were involved. Where we  
15 are -- we are here today because everyone has lied to  
16 me?

17 MR. MERRITT: Well, Your Honor, she wants to  
18 dissolve --

19 THE COURT: And she's being abused and taken  
20 advantage of.

21 MR. MERRITT: Your Honor, common --

22 THE COURT: And it's a racial thing.

23 MR. MERRITT: This is the thing, Your Honor.  
24 Wherever I am in the world -- and I travel the glob --  
25 if I see someone getting abused and if I step in and  
26 intervene, whether directly or otherwise, I do. That's  
27 just it. So what I'm witnessing sir, with all due  
28 respect, is an elderly person being abused.

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1 THE COURT: And you've witnessed it.

2 MR. MERRITT: Right now her phone is  
3 disconnected as of today.

4 THE COURT: Mr. Merrit, I'm trying to  
5 understand, you have no connection with the law. You  
6 have no connection --

7 MR. MERRITT: I'm a United States citizen.  
8 The law allows you to come forward. That's our duty. I  
9 grew up with this. I grew up having the constitution

10 read to me.

11 THE COURT: Sir, you are not a licensed  
12 attorney.

13 MR. MERRITT: I understand that, but I'm  
14 coming forth as a citizen, sir.

15 THE COURT: Out of the blue.

16 MR. MERRITT: No. Well -- hey, when you  
17 hear a damsel in distress --

18 THE COURT: How did you hear that damsel was  
19 in distress.

20 MR. MERRITT: Well, Your Honor, as I stated  
21 earlier, when the attorney referred this Mr. Starks to  
22 me. And I -- you know -- it invoked my own prejudices.  
23 I said "What are you doing marrying this old woman?"

24 THE COURT: So Robin Yeamans referred you.  
25 So, if we contact her --

26 MR. MERRITT: Yes, Your Honor.

27 THE COURT: -- she's going to tell us that  
28 she directed you to Ms. Pacheco.

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1 MR. MERRITT: Yes, sir.

2 THE COURT: To represent her?

3 MR. MERRITT: No, no, no. Mr. Starks to me.

4 THE COURT: Mr. Starks.

5 MR. MERRITT: Yeah. Mr. Starks to me. And  
6 then Mr. Starks came to me and he gave me this story.  
7 And I have my own things to do. I'm working 18 hours a  
8 day.

9 THE COURT: Okay. So we're not talking  
10 about Ms. Yeamans. We're talking about Mr. Starks.

11 MR. MERRITT: Yes.

12 THE COURT: Mr. Starks, who has a  
13 restraining order against him, who is not to communicate  
14 with her.

15 MR. MERRITT: Exactly.

16 THE COURT: And not even through third  
17 parties.

18 MR. MERRITT: Exactly. Exactly.

19 THE COURT: But, yet, you did it?

20 MR. MERRITT: Well, Your Honor, he stated  
21 that he needed to learn how to advocate for himself to  
22 counter what was happening to him.

23 THE COURT: So the true picture is coming  
24 out now. This is all at the direction of Mr. Starks.

25 MR. MERRITT: No, it's not. No. I have  
26 told him he should go ahead and accept it; forget about  
27 this lady; she's going to pass away soon. He should go  
28 on with his life. I didn't have time for this. You

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1 dont' understand. My life -- I manufacture things. I  
2 import --

3 THE COURT: So how do you know she's going  
4 to pass away soon?

5 MR. MERRITT: She's -- same thing I know  
6 about my mom and dad. They are 84. But the point, Your  
7 Honor, I'm expressing to you the discussion I had with  
8 him. My initial biases came to the fore as well. And  
9 after -- you know -- he went through, can you at least  
10 teach me how to go through law books, da da da. I said  
11 "okay. If you" --

12 THE COURT: And you are not an attorney, but  
13 you are going to teach him.

14 MR. MERRITT: And so, essentially, I said  
15 this is how you go in you shepardize books. This is how  
16 you look up books of authority. I am starting to  
17 orientate him to the basics of jurisprudence, you need  
18 to park yourself down at the law library as much as you  
19 can. You needs to read up on conservatorship, read up  
20 on TRO's. I didn't have to time to be his -- how do you  
21 say -- professor. Okay. And he didn't have the funds  
22 to go out and get one.

23 So, at any rate, after going through this,  
24 and periodically, when he was over at my office, she  
25 would -- she would call -- she would call and I --  
26 essentially, she wanted to speak to me.

27 THE COURT: Who wanted to speak to you?

28 MR. MERRITT: Oh. What's her name.

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1 THE COURT: "What's her name?"

2 MR. MERRITT: Beatrice. Beatrice.

3 THE COURT: So "what's her name" wanted to  
4 speak to you. Why did she want to speak to you?

5 MR. MERRITT: So she wanted to speak to me.

6 THE COURT: Why?

7 MR. MERRITT: She -- because she -- she  
8 started explaining to me.

9 THE COURT: Why did she want to speak to  
10 you?

11 MR. MERRITT: She started explaining to me.

12 THE COURT: Had she ever met you?

13 MR. MERRITT: No. Sir, that's what I'm  
14 about to answer you.

15 THE COURT: well, I'm trying to understand.  
16 You just said she wanted to speak to you. She doesn't  
17 know who you are.

18 MR. MERRITT: She wanted to speak to me.

19 THE COURT: why did she want to speak to  
20 you?

21 MR. MERRITT: This is what I'm about to tell  
22 you.

23 THE COURT: No. Just tell me.

24 MR. MERRITT: She wanted me to help her.

25 THE COURT: No. why did she want to speak  
26 to you? She doesn't know you.

27 MR. MERRITT: Right. But she -- she -- she  
28 said she wanted some help to get out of her dilemma.

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1 And she explained to me that her husband cannot do  
2 anything.

3 THE COURT: How did she get a hold of you?

4 MR. MERRITT: I said she called.

5 THE COURT: why would she call you?

6 MR. MERRITT: No, no. She -- she called --  
7 she -- she called -- uh, Mr. Starks.

8 THE COURT: She called Mr. Starks.

9 MR. MERRITT: Yes. She called Mr. Starks.

10 And --

11 THE COURT: Then what happened?

12 MR. MERRITT: And that -- I was telling you  
13 what happened.



14 THE COURT: No. No. She's called  
15 Mr. Starks. How did you come into the picture?  
16 MR. MERRITT: By her asking to speak to me.  
17 THE COURT: She doesn't know you.  
18 MR. MERRITT: Your Honor, so --  
19 THE COURT: Mr. --  
20 MR. MERRITT: Okay.  
21 THE COURT: Answer the question. She  
22 doesn't know you. Why would she want to speak to you?  
23 MR. MERRITT: So essentially --  
24 THE COURT: No. Why would she want to speak  
25 to you?  
26 MR. MERRITT: So she wanted to speak to me  
27 because --  
28 THE COURT: Why?

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1 MR. MERRITT: Because she heard I was  
2 helping to orientate Starks on advocating for himself.  
3 THE COURT: So Starks told her about you?  
4 MR. MERRITT: I -- it would have to be. He  
5 was -- he was essentially stating that he was there  
6 learning about how to -- you know -- advocate for  
7 himself. Whatever words -- I don't know the specific  
8 words.  
9 THE COURT: Mr. Merrit, you can't even get  
10 your story straight. Why did she speak to you?  
11 MR. MERRITT: Your Honor, but -- but -- now,  
12 this is the interesting thing. Why is it so hostile?  
13 Why are you so hostile towards her getting an advocate?  
14 Just someone --

15 THE COURT: Because you have no standing in  
16 this matter, sir. It's like anybody walking in off the  
17 street and saying "I want to be a participant." Not  
18 only a participant -- "I want to advocate on behalf of  
19 one of the parties."

20 MR. MERRITT: Your Honor, I do not want to  
21 advocate or participate. I want to see this woman get  
22 some impartial --

23 THE COURT: Sir, sir, what are all these  
24 papers that are in front of me?

25 I've got an emergency petition for removal,  
26 replacement of conservator of person, estate, and for  
27 issuance of amended letters of conservatorship. I've  
28 got a motion to disqualify the Judge -- which by the way

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1 is not timely, but you would know that if you read the  
2 law.

3 In any event, I've got all these things  
4 which you prepared. Correct?

5 MR. MERRITT: Mm-hmm.

6 THE COURT: Yes?

7 MR. MERRITT: Yes.

8 THE COURT: And which you had her sign.

9 MR. MERRITT: Yes. Based upon her  
10 instructions.

11 THE COURT: Based upon her instructions.  
12 Does she even know what she signed?

13 MR. MERRITT: Your Honor, well, she's got --  
14 she -- she -- she -- all of that has been gone over with  
15 her.

16 THE COURT: Really? And did she know what  
17 she was signing?

18 MR. MERRITT: Your Honor, she does.

19 THE COURT: Okay. Let me ask you this.  
20 Does she have the ability to do this because she's under  
21 a conservatorship?

22 MR. MERRITT: Does she have the ability?

23 THE COURT: Yeah.

24 MR. MERRITT: A conservatee has the right to  
25 removal of a conservator. That's -- that's part of the  
26 law. You know that.

27 THE COURT: Okay.

28 MR. MERRITT: I mean, she has the right to

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1 remove the conservator. She has the right to get her  
2 own attorney. She has the right to do many of the  
3 things that she's not being allowed to do. That's  
4 what's so bizarre.

5 THE COURT: I'm being lectured by someone  
6 who doesn't have a law degree.

7 MR. MERRITT: But, your Honor, look. A law  
8 degree? Come on. What? Did Franklin have -- did --  
9 did Benjamin Franklin have a law degree?

10 THE COURT: Oh, stop, sir. Come on. You  
11 have no standing. I'm trying to understand.

12 MR. MERRITT: All right, sir.

13 THE COURT: Let's move on to this question:  
14 why are we here today?

15 MR. MERRITT: First of all, as I stated, was  
16 the ADA application that she wished to present to you.

17 THE COURT: Well, I've seen no ADA  
18 application, number one.  
19 MR. MERRITT: That's what I have here.  
20 THE COURT: But number two, again, you can't  
21 do this.  
22 MR. MERRITT: I'm bringing this for her.  
23 Can I give it to the deputy?  
24 THE COURT: That was not the reason you  
25 called.  
26 MR. MERRITT: But this was the original  
27 reason why I came. Why I came -- no, no. The original  
28 reason why I came today was to present this ADA

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1 application.  
2 THE COURT: You told my clerk it's because  
3 you had an emergency petition.  
4 MR. MERRITT: Exactly.  
5 THE COURT: And that's why we're here on an  
6 ex parte basis.  
7 MR. MERRITT: Yes.  
8 THE COURT: Did you comply with the rules  
9 with regard.  
10 MR. MERRITT: To notice?  
11 THE COURT: Yeah. Notice.  
12 MR. MERRITT: Of course.  
13 THE COURT: Who did you provide notice to?  
14 MR. MERRITT: To all the counsel.  
15 THE COURT: Really? Who are the counsel?  
16 MR. MERRITT: Searle and -- -  
17 THE COURT: How did you provide notice to

18 them?

19 MR. MERRITT: Left a phone message on her  
20 answering service. A lady took the message down, she  
21 said she would make certain --

22 THE COURT: Okay.

23 MR. MERRITT: And Michael Desmarais's  
24 assistant.

25 THE COURT: And when did you do that?

26 MR. MERRITT: I called Michael -- was that  
27 two days ago, after the assault.

28 THE COURT: Two days about the request for

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22

1 today?

2 MR. MERRITT: No, about the assault.

3 THE COURT: I'm talking about the request  
4 here today.

5 MR. MERRITT: The request here today, that  
6 was called today.

7 THE COURT: Really?

8 MR. MERRITT: Yes.

9 THE COURT: Okay. Mr. Desmarais, did you  
10 get a call?

11 MR. DESMARAIS: No.

12 THE COURT: Mr. Searle, did you get a call?

13 MS. SEARLE: He called my office downtown  
14 and spoke with one of the paralegals. He did not tell  
15 her that there was a court hearing today. He told her  
16 that he wanted to speak with me about -- wanted to speak  
17 with me before the hearing and left a message that she  
18 gave me verbatim. And I confirmed it with her about

19 half an hour before this hearing began today, Your  
20 Honor. He did not tell her there was anything on  
21 calendar for today. Just a phone number for me to  
22 return his call, which I did, and no one answered.

23 THE COURT: Okay. Mr. Merrit, you're so  
24 knowledgeable in the law, why didn't you give those  
25 people proper notice?

26 MR. MERRITT: Your Honor, we just -- I just  
27 received notice of the hearing myself within the last  
28 60 minutes.

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1 THE COURT: Sir, you are the one that's  
2 bringing this stuff. You are the one that has the  
3 obligation to notify everyone in a timely manner that  
4 you are coming in.

5 Now, again, I'm playing along like you are  
6 an attorney. You can wave anything you want, sir. The  
7 reality is you are no one in this matter. Although you  
8 are running into some real problems, probably from a  
9 criminal standpoint as far as aiding and abetting with  
10 regard to the conduct of Mr. Starks, who already, I  
11 understand, has been arrested as a result of his  
12 conduct. But it's only because you are not an actual  
13 named party on the restraining order that you didn't get  
14 arrested.

15 MR. MERRITT: Okay, Your Honor, would you  
16 like these ADA request/applications?

17 THE COURT: They can be filed. They can be  
18 filed downstairs.

19 MR. MERRITT: These are confidential. Under  
Page 22

20 the ADA law, supposed to be --

21 THE COURT: Really? You know all about  
22 that?

23 MR. MERRITT: Yes.

24 THE COURT: Okay. You handle it  
25 appropriately. We're not taking it here.

26 MR. MERRITT: Oh, you are not taking it  
27 here.

28 THE COURT: Okay. So, you came down and had

24

1 everybody noticed, what, so you could turn in some ADA  
2 requests?

3 MR. MERRITT: No, sir. Your Honor, the --  
4 this morning when I came down -- okay -- the specific  
5 thing --

6 THE COURT: And filed this emergency  
7 petition.

8 MR. MERRITT: Emergency petition. I filed  
9 it downstairs.

10 THE COURT: Yeah.

11 MR. MERRITT: Now I came to ask -- what was  
12 her name down there -- Rebecca -- how do you handle ADA  
13 requests. She called up here to your clerk and she said  
14 I could drop it off to her if I wish. I came up to her  
15 and said I could leave it; that you were gone; that I  
16 could leave it with her. And I said I really want to  
17 communicate with the Judge what's going on currently  
18 with the conservatee.

19 THE COURT: Yeah. You said it was an  
20 emergency. Had to talk to me right away.

21 MR. MERRITT: She said "Okay. I have to  
22 check with the Judge to see if he can schedule you in a  
23 few days." And I said I would appreciate it if it's as  
24 soon as possible.

25 THE COURT: And this is all involving an ADA  
26 request?

27 MR. MERRITT: Yes. Three ADA requests. I  
28 want to speak to you and personally convey to you the

25

1 facts I've stated already.

2 THE COURT: And I'm trying to understand on  
3 what authority you were doing that.

4 MR. MERRITT: As a citizen --

5 THE COURT: No. No, sir. You are sitting  
6 here on the one hand and you are playing this citizen  
7 thing on the other hands you are claiming all this legal  
8 knowledge, but if you had all this legal knowledge, you  
9 should be aware that things have to be properly noticed.

10 MR. MERRITT: When someone --

11 THE COURT: You can't just come in ex parte  
12 and start talking about a case and telling me someone's  
13 life story and how things are going on according to your  
14 very informed viewpoint without all the parties present,  
15 the opportunity to address it appropriately. But you  
16 know that; right?

17 MR. MERRITT: May I, Your Honor?

18 THE COURT: Would you stop waving the ADA  
19 request? I'm trying to understand why you had us come  
20 down here, get set up because you had an emergency  
21 petition and you needed to be addressed right away.



22

MR. MERRITT: Your Honor.

23

THE COURT: That's what we were told.

24

That's why you needed to hear back right away about this

25

matter.

26

MR. MERRITT: Okay. So as far as the

27

petition, I scheduled a May 13th date. And as far --

28

THE COURT: You scheduled it?

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26

1

MR. MERRITT: Scheduled a May 13th date.

2

THE COURT: How did you schedule a May 13th

3

date?

4

MR. MERRITT: Called up and noticed it.

5

THE COURT: You are not even a party. You

6

are not even on the pleadings. You are no one.

7

MR. MERRITT: Your Honor, basically, what

8

happened was scheduling that date for the petition --

9

emergency petition, and I was hopeful that I could speak

10

to you to actually advance that hearing date of

11

May 13th.

12

THE COURT: Okay.

13

MR. MERRITT: And so today was the ex parte

14

on the ADA and the ADA says it's supposed to be only

15

between the person bringing the ADA request and the

16

Judge, and no other party.

17

THE COURT: who is the person bringing it?

18

MR. MERRITT: David Merrit.

19

THE COURT: No, it isn't.

20

MR. MERRITT: No?

21

THE COURT: Isn't it Beatrice Pacheco

22

bringing the request?

23 MR. MERRITT: She is making the request. I  
24 am bringing it -- there's a section on the ADA that says  
25 "person submitting request" basically to the Court. And  
26 so the Americans with Disabilities Act actually allows a  
27 person with disabilities to have someone present the ADA  
28 request to the Court.

27

1 THE COURT: She has a conservator.

2 MR. MERRITT: Right.

3 THE COURT: She has her own attorney.

4 MR. MERRITT: And she wishes to dissolve the  
5 conservatorship and obtain an impartial lawyer.

6 THE COURT: That's according to you.

7 MR. MERRITT: And you can confirm that with  
8 her.

9 THE COURT: I have an attorney that has  
10 checked with her. She has no recollection of any of  
11 these documents, has no clue what she had signed.

12 MR. MERRITT: Your Honor --

13 THE COURT: Does not want to have her  
14 attorney removed.

15 MR. MERRITT: Your Honor, I believe if you  
16 actually -- I just spoke to her this morning.

17 THE COURT: Really?

18 MR. MERRITT: I mean, she is of sound mind.  
19 She doesn't have -- I know they put in the record that  
20 she has severe dementia. She doesn't have severe  
21 dementia. And my wife happens to be an --

22 THE COURT: How do you know that, sir?

23 MR. MERRITT: Well, from the experience.

24 THE COURT: You have training also in that  
25 area?

26 MR. MERRITT: No. That's basic.

27 THE COURT: Basic what?

28 MR. MERRITT: Take Pysch 101, you can -- if

28

1 you look for the signs. Come on, Judge --

2 THE COURT: Let me see. So you know  
3 everything about being an attorney, conservatorships and  
4 ADA, but you also know everything about dementia.

5 MR. MERRITT: Judge -- judge -- judge --

6 THE COURT: One-stop shopping.

7 MR. MERRITT: Is it really that wrong, bad  
8 for someone that is concerned about what they witnessed  
9 with another human being?

10 THE COURT: You haven't witnessed anything,  
11 sir. You are brought in by Mr. Starks at Mr. Starks'  
12 direction.

13 MR. MERRITT: No, actually, I wasn't brought  
14 in by Mr. Starks by his direction.

15 THE COURT: You just said so.

16 MR. MERRITT: No, Your Honor -- Your Honor,  
17 what happened is I am the one who started seeing that  
18 all these things were going on, and I said "hold up for  
19 a second."

20 THE COURT: That's not what you just told  
21 me.

22 MR. MERRITT: No, Your Honor, you -- you  
23 know what you asked. You asked earlier how does she  
24 know me. He did not tell me to say "oh, except" --

25 she's the one that asked me, is there any way -- I'm  
26 over here. She gave me the story of how she's been  
27 trying to assert her rights, and she's been talking to  
28 her lawyers and everyone involved. She mentioned

♀

29

1 everyone. And she said she needs to assert her rights.

2 So, basically, Your Honor, I mean -- it's  
3 obvious that you don't want me to be asserting her  
4 rights.

5 THE COURT: You can't assert her rights.

6 MR. MERRITT: Well -- or, letting you know  
7 that she wants to assert her rights. But all I wanted  
8 to do was inform the Court that -- that this is a woman  
9 who I believe an injustice -- a miscarriage of justice  
10 is occurring. And that it does -- it should be  
11 rectified, sir.

12 THE COURT: And that's based on your  
13 training in the law, based on your knowledge of  
14 dementia. All of this. It's all based on --

15 MR. MERRITT: We're all human beings. We're  
16 all going to pass away. Come on, Judge. We're all here  
17 for temporary. Come on. God doesn't put us here to  
18 urinate, defecate and die. He put us here to be a light  
19 to other people, to help other people.

20 I can't go -- I grew up with a sense of  
21 helping people. That's my purpose. I've got two  
22 elderly parents, 84 years old. And I have got nine  
23 siblings. If any one of us acted to like what happened  
24 to her, oh, we would all gang up on that sibling.  
25 There's no way that the -- the disrespect that's going

26 on there -- and, please, independently confirm this  
27 stuff. I'm just -- I'm just the messenger. Don't shoot  
28 the messenger, Your Honor.

♀

30

1 THE COURT: I have a court investigator --

2 MR. MERRITT: Beautiful.

3 THE COURT: -- to independently confirm and  
4 has confirmed the exact opposite of what you are talking  
5 about.

6 MR. MERRITT: Well, right now, who do I  
7 speak to? The supervisor? Her phone got disconnected.  
8 She's being imprisoned in her home. She had a guy -- a  
9 security guy say "Get back in the house, Beatrice, you  
10 don't belong out of the house, you can't come outside"  
11 when I went to visit her this morning. I mean that's  
12 what's happening, sir.

13 THE COURT: Really?

14 MR. MERRITT: And I got permission from the  
15 investigator to record them -- conversations recorded. I  
16 have permission to record her. She is a sound thinking  
17 human being who has the -- she's being cursed with old  
18 age. She's being cursed with being a Caucasian woman.  
19 She's being curse with --

20 THE COURT: She's being cursed with being a  
21 Caucasian woman?

22 MR. MERRITT: If you listen to her desires,  
23 sir, her wishes -- she's still a coherent, fundamentally  
24 sound, thinking human being. She's just asking "hey."  
25 She doesn't have the strength or vigor that you and I  
26 have.

27 THE COURT: Mr. Merrit --

28 MR. MERRITT: She's just asking for her day

31

1 in court. If she is truly mentally unfit, sir -- you  
2 know, if an honest assessment can be done, then I will  
3 be able to rest.

4 THE COURT: well, but according -- but I  
5 understand you've already made that assessment.

6 MR. MERRITT: well, that's the thing. well,  
7 you know, I -- I didn't actually get my -- what do you  
8 call it -- psych degree.

9 THE COURT: Really? But according to you  
10 just taking one class of psych qualifies you to  
11 determine about dementia.

12 MR. MERRITT: Actually writing a book that  
13 went national.

14 THE COURT: Writing a book.

15 MR. MERRITT: Yes. Publishing a book.

16 THE COURT: Okay. Before I find out  
17 anything more about your resume -- because God knows,  
18 you may be a dentist also.

19 MR. MERRITT: I tried that one time.

20 THE COURT: Yeah. I wouldn't be surprised.

21 In any event, sir, let me just repeat one  
22 last time. You have absolutely no standing in this  
23 matter. You cannot advocate on behalf of Ms. Pacheco in  
24 any way, shape or form. And I am ordering you not to.  
25 Do you understand?

26 MR. MERRITT: Okay. You are ordering me not  
27 to. And so -- so -- what do I need to do with this ADA

28 request that she's presenting for the court?

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1 THE COURT: Well, I'm going to wait for her  
2 to present them or people who represent her to present  
3 it to me.

4 MR. MERRITT: Okay, sir.

5 THE COURT: Okay.

6 MR. MERRITT: All right.

7 THE COURT: Thank you very much for coming  
8 in.

9 MR. MERRITT: Have a good day.

10 THE COURT: You too.

11 MS. SEARLE: Your Honor, may I make a  
12 request? This is Lynn Searle.

13 THE COURT: Yes. Ms. Searle?

14 MS. SEARLE: Based on what you heard here  
15 today, I would ask that you issue a TRO to Mr. Merritt to  
16 have no contact of any kind with Ms. Pacheco and,  
17 perhaps, set that for a hearing at some date in the  
18 future.

19 THE COURT: Okay.

20 MS. SEARLE: But she's suffered a great  
21 deal -- clearly, there's been a great deal of contact  
22 between Mr. Starks and her by means of Mr. Merritt. And  
23 it needs to stop. And we've been, you know, just having  
24 a lot of difficulty trying to get it to stop and I think  
25 that would be helpful.

26 THE COURT: All right.

27 MR. DESMARAIS: Your Honor, given the  
28 neuropsychologist's report, I concur with Ms. Searle's

1 request. I also ask Mr. Merritt identify for the record  
2 his business address and home address.

3 THE COURT: I'm sorry, Mr. Desmarais. You  
4 want to repeat that last request.

5 MR. SEARLE: I ask that -- I concur with  
6 Ms. Searle's request given the neuropsychiatrist's  
7 report, and I ask that Mr. Merritt state his business  
8 address and his home address on the record.

9 THE COURT: Well, I understand Mr. Merritt's  
10 business address is 37 -- strike that -- 3073 Lawrence  
11 Expressway in Santa Clara, 95051. The telephone is area  
12 code 408-498-8045. Is that correct?

13 MR. MERRITT: Yes, that's correct.

14 THE COURT: And your home phone and address?

15 MR. MERRITT: I would object, Your Honor.  
16 First of all, due process is being contravened here  
17 quite blatantly. There is no standing for them -- or no  
18 basis. They certainly don't have any basis, legal  
19 standing, to even assert that a TRO needs to be -- you  
20 just stated -- you just stated that I'm not a party,  
21 that I'm not involved, that I have no standing to be  
22 here.

23 THE COURT: Right.

24 MR. MERRITT: And so, Your Honor, this --  
25 you understand the term "Jim Crow-ism?" With all due  
26 respect, this is -- this is -- I mean, these youngsters  
27 may not know, but, Your Honor, sir, I mean, that's  
28 what's happening here. You know, this is -- this is --



1 this is very much -- you know -- unconstitutional. A  
2 person is coming in reporting what has happened to this  
3 elderly person who is supposed to be protected by the  
4 conservator. Her wishes to dissolve the conservatorship  
5 and get a new one appointed, to get a new attorney --  
6 okay. That's it. It's not coming in asking the Court  
7 to do anything but protect the conservatee. And yet,  
8 we're getting on this attack bulldog attack mode to  
9 attack the messenger. Your Honor, that's -- I -- I  
10 don't know how the Sixth District would feel about this,  
11 but this is something that I believe would be -- I don't  
12 know if this is first impression, but it's -- it's  
13 inappropriate, sir.

14 THE COURT: Mr. Merritt, you are ordered to  
15 have no contact directly or indirectly with Ms. Beatrice  
16 Pacheco. You are not to go within 100 yards of  
17 Mrs. Pacheco. And that is good until a hearing -- when  
18 would you like the hearing? Ms. Searle?

19 MS. SEARLE: Whatever the -- whatever the  
20 legal time is. Does it have to be within two weeks?

21 THE COURT: Usually it's within 20 days.

22 MS. SEARLE: Okay. 20 days.

23 THE COURT: Let's do this. Let's schedule  
24 it for -- let's schedule it for May 10th.

25 MR. SEARLE: Your Honor, I have another  
26 hearing that day.

27 THE COURT: Okay. Well, then let's schedule  
28 it -- let's do this. Let's schedule it for May 8th at

1 10:30.

2 MR. SEARLE: Oh, my goodness. I have  
3 another hearing that day too. May I make a suggestion,  
4 the papers that he filed this morning that were set for  
5 hearing on the 13th. Does the 13th work for you, Your  
6 Honor?

7 THE COURT: well, it's going to be difficult  
8 to hold it at that time.

9 MS. SEARLE: Okay. Okay.

10 THE COURT: we could possibly do it at the  
11 end of the 9:00 calendar. Let's go ahead and set it for  
12 9 o'clock on the 13th.

13 MS. SEARLE: Okay.

14 MR. DESMARAIS: Thank you, Your Honor.

15 MR. MERRITT: So, Your Honor, do you want me  
16 to actually be present at that hearing?

17 THE COURT: Yes. Well, again, what's going  
18 to happen is -- put it this way. You are not ordered to  
19 be present. You can be here if you like. You've been  
20 given notice of that. I've given it here to you in the  
21 courtroom. If you fail to appear, that restraint could  
22 be made permanent at that time. Right now the stay away  
23 and no contact order is only valid until 9 o'clock on  
24 May 13th.

25 MR. MERRITT: Until you hear --

26 THE COURT: At which time we will have a  
27 hearing as to whether it should become permanent or not.

28 MR. MERRITT: Okay. And that's the same

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1 time that the petition for dissolving the  
2 conservatorship --

3 THE COURT: well, I don't know. Again --

4 MR. MERRITT: That's the date that was  
5 reserved.

6 THE COURT: I have a date but nothing's been  
7 noticed, and I don't know.

8 MR. MERRITT: They've all been served  
9 copies.

10 THE COURT: well, again, you need to have a  
11 notice of hearing and everything else. But, like I  
12 said, you are not permitted to represent her in this  
13 matter. So you are going to have a real problem there.

14 MR. MERRITT: So, Your Honor -- this is  
15 extraordinary.

16 THE COURT: You know, Mr. Merritt, you put  
17 your finger right on it. It is extraordinary, but for  
18 reasons different than what you think. Okay. Thank  
19 you, sir.

20 MS. SEARLE: One more thing, Your Honor.

21 THE COURT: Ms. Searle, you will prepare the  
22 papers for me?

23 MR. MERRITT: What time did you say?

24 THE COURT: At 9 o'clock on May 13th.

25 MS. SEARLE: Could we get that home address  
26 for service purposes?

27 THE COURT: Home address?

28 MR. MERRITT: Yes. Send it to my office.

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1 THE COURT: what's your home address?

2 Pacheco 4-24-13.txt  
MR. MERRITT: It's 660 Pinnacles, Sunnyvale,  
3 California.

4 THE COURT: Zip code?

5 MR. MERRITT: 94085.

6 THE COURT: All right. Thank you, sir.  
7 (Whereupon, the proceedings were adjourned.)

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I, PAMELA CARDIFF, DO HEREBY CERTIFY THAT THE FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN THE WITHIN-ENTITLED ACTION;

THAT, I REPORTED THE SAME IN STENOTYPE BEING THE QUALIFIED AND ACTING OFFICIAL COURT REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, APPOINTED TO SAID COURT, AND THEREAFTER HAD THE SAME TRANSCRIBED INTO TYPEWRITING AS HEREIN APPEARS.

DATED THIS 1st DAY OF MAY, 2013.

\_\_\_\_\_  
PAMELA CARDIFF, CSR  
CERTIFICATE NO. 11430