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United States District Court, N.D. California.

Kristina RIDGEWAY, Individually and on Behalf of all Persons Similarly Situated, Plaintiffs,  
v.  
FLAGSTAR CORPORATION and Denny's, Inc., Defendants.  
UNITED STATES of America, Plaintiff,  
v.  
FLAGSTAR CORPORATION and Denny's, Inc., Defendants.  
Nos. C 93-20202 JW, C 93-20208 JW. | Sept. 22, 1994.

#### **Attorneys and Law Firms**

Jerry L. Steering, The Law Offices of Melvin M. Belli, Sr., Beverly Hills, CA.

Thomas L. Pfister, Latham & Watkins, Los Angeles, CA.

Brian F. Heffernan, U.S. Dept. of Justice, Housing and Civ. Enforcement Div., Washington, DC.

Mary Beth Utti, Asst. U.S. Atty., San Francisco, CA.

Antonio Lawson, Saperstein, Mayeda & Goldstein, Oakland, CA.

Amanda K. Wilson, Public Interest Law Firm, San Jose, CA.

#### **Opinion**

### **ORDER TO CEASE AND DESIST**

WARE, District Judge.

\*1 The hearing on the Order to Show Cause issued to Jerry L. Steering and the Law Offices of Melvin M. Belli, Sr. was held on September 22, 1994 at 9:00 a.m. After considering the arguments of counsel, the Court hereby orders Jerry L. Steering and the Law Offices of Melvin M. Belli, Sr. to cease and desist from conduct which interferes with the execution of the Amended Consent Decree issued by this Court as set forth below.

### **I. BACKGROUND**

This is a class action suit brought under federal and state civil rights statutes challenging racially discriminatory customer policies and practices at Denny's Restaurants in California. On May 24, 1994, the parties filed, and the Court preliminarily approved, an Amended Consent Decree settling all monetary and injunctive issues. The Amended Consent Decree was given final approval by the Court on July 29, 1994. The Amended Consent Decree includes provisions for the establishment of a claims procedure under which members of the class who file valid and timely claims are entitled to a pro rata share of a settlement fund of approximately \$27 million.

Under the Amended Consent Decree, the claims procedure is to be administered by an experienced claims administrator jointly selected by the parties. The parties selected the Rust Consulting Group, Inc. of Minneapolis, Minnesota as Claims Administrator. A toll-free 800 telephone number was established to provide potential claimants with access to the Claims Administrator to request claim forms and to seek assistance in completing and filing claims. Additionally, under the

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Amended Consent Decree, the law firm of Saperstein, Mayeda & Goldstein is designated as Class Counsel.

Following preliminary approval of the Amended Consent Decree and announcement of the settlement in May 1994, the parties received reports that a number of individuals and organizations in California were charging fees to individuals for services related to the preparation and/or filing of claims in this case. The parties investigated these activities and submitted two reports on their investigation to the Court.

On June 16, 1994, the Court approved a Stipulation and Order that (1) amended the claim form in this action to include express language advising that “giving false information or assisting others in providing false information on this claim form is a crime” and that anyone “provid[ing] false information on this claim form or assist[ing] others in providing false information ... could be subject to investigation ... and ... criminal prosecution;” and (2) directing that a Special Notice be mailed, along with the claim form, to all potential claimants. The Special Notice expressly cautions claimants that the Claims Administrator and Class Counsel are available to provide, free of charge, assistance in filing claims.

In July 1994, Class Counsel were advised by Robert Moran of the Law Firm of Melvin Belli, Sr. that Belli’s firm represented a number of individuals who had possible race discrimination claims against Denny’s Restaurants. Moran requested that should any of these individuals file a claim that is determined to be valid, that the settlement check be issued jointly in the names of the Law Offices of Melvin Belli and the claimant. It was represented that Belli’s clients were facing the decision of whether to opt-out or remain in the class and file a claim and that Moran wanted to ensure some way for the Belli firm to be paid for work already undertaken in investigating their clients cases and advising them of their options. Class Counsel agreed to the issuance of joint checks on the condition that Belli’s office provide Class Counsel with: written confirmation of their representation for each claimant; signed statements from each client authorizing and requesting that payment of his or her monetary settlement be made jointly; and written confirmation that the substance of the Special Notice approved by the Court on June 16, 1994 had been reviewed with each claimant.

\*2 In August, Mike Mundi of Belli’s office called the Claims Administrator and Class Counsel requesting that 500 claim forms be issued to Belli’s office. Mundi claimed that Belli had written consent from Class Counsel and Defendant’s counsel to assist people wishing to file claims. Class Counsel denied the request.

In a letter dated August 24, 1994, attorney Jerry Steering of Belli’s firm provided Class Counsel with copies of retainer agreements between his firm and some 43 individuals. Steering requested that claim forms be issued to these individuals and again asked that additional forms be issued for individuals who may contact the Belli firm in the future as a result of the extensive publicity that Steering received and generated in the case.<sup>1</sup>

On September 2, 1994, Class Counsel received an electronic mail message from Kristen Hughes of Rust Consulting Group, Inc. which advised them that a caller reported solicitation of potential claimants at a mall in Los Angeles and the distribution of self-addressed stamped envelopes addressed to the Law Offices of Melvin Belli. Class Counsel questioned Jerry Steering about the mall solicitation. Steering admitted that his firm was actively soliciting claimants through advertisements in local African-American newspapers in Los Angeles.<sup>2</sup> However, Steering denied that there were any in-person solicitations. Steering revealed to Class Counsel that individuals who respond to the Belli advertisement are sent a retainer agreement, a letter and a slightly amended version of the claim form which they are requested to complete and return to Belli. Belli’s office then reviews and strengthens the claim as necessary and maintains this draft until the official claim form is received. Upon receipt of the official claim form, the client is to forward the blank form to Belli’s office where the requested information is typed onto the official form in accordance with the previously submitted handwritten draft and then forwarded to the Claims Administrator after a signature is secured. The letter sent by Belli’s firm to the potential claimants contains several misrepresentations and could lead a class member to believe that he or she needs the assistance of the Belli firm to file a claim.

## II. LEGAL STANDARDS

This Court has personal jurisdiction over this action pursuant to 42 U.S.C. § 2000a-6 and 28 U.S.C. §§ 1331, 1343 and 1345. Continuing jurisdiction has been retained by the Court during the effective period of the Decree. *See* Amended Consent Decree at §§ V.D. and E. Under the Court’s retained jurisdiction, the Court has authority to issue orders to effect compliance with the Decree. *See* Fed.R.Civ.P. 23(d). Additionally, The Court has authority under the All Writs Act, 28 U.S.C. § 1651(a) to issue “all writs necessary or appropriate in aid of [its’ ...] jurisdiction [ ...].”

### III. ANALYSIS

The power and duty of the Court to protect and effectuate its prior orders extends to the issuance of injunctions against nonparties whose conduct interferes with or impedes implementation of those orders. *Washington v. Washington State Commercial Passengers Fishing Vessel Ass'n*, 443 U.S. 658, 692 n. 32 (1979). Under the All Writs Act, “the Court can use its inherent powers to protect its final decrees, especially when the nonparty’s actions threaten the adjudicated public rights of a party to the litigation.” *NAACP v. Brock*, 619 F.Supp. 846, 852 (D.D.C.1985).

\*3 The actions of Jerry L. Steering and the Law Firm of Melvin M. Belli, Sr. do indeed threaten the implementation of the Court’s orders in this case. Aspects of the conduct of the Belli law firm amount to avaricious freeloading on the work of Class Counsel. Under the guise of a contingent fee, class members are induced by the Belli firm to pay money for assistance in filing a claim, a service for which Class Counsel have already been compensated and will perform without charge. The Court is mindful of the benefit to the public and to attorneys which is realized when attorneys are willing to take cases on a contingent fee basis. There is a public benefit because without contingent fee arrangements many people of limited means would not be able to pursue claims because of the high cost of litigation. There is a benefit to attorneys from contingent fee arrangements because, among other things, in some instances the percentage fee greatly exceeds the amount an attorney would earn if the time spent on the case were billed at an hourly rate. Attorneys should be allowed to benefit when they take the risk of providing substantial legal services with the prospect that there might be no recovery.

In this situation, however, the Court questions whether there is a true “contingency” or risk worthy of the high price being charged to the class. There certainly is no need for contingent fee arrangements to encourage people to file their claims since the claims filing procedure set up by the Court is free of charge.

The Court has already established reasonable compensation for attorneys’ fees in this case. The conduct of the Belli law firm has the effect of taxing the class twice for attorney’s fees. The Court’s decree establishes a claim fund which the Court intends to be paid to the class with no further deductions for attorney’s fees.

Of utmost concern to the Court is that the conduct of the Belli law firm interferes with the claims process established by the Court, misrepresents the claims process and poses a danger of harming the interests of the class. The statement in the August 30, 1994 document sent by the Belli law firm to the class states that the “Denny’s case class counsel” have stated that “they have no intention of paying each and every claim submitted to them.” This statement is likely to mislead claimants into believing that legitimate claims will not be honored; and that the Class Counsel is allied with “Denny’s” and is not representing the interests of the class. A statement such as this creates unwarranted fear among the claimants that unless they retain private counsel their claims will not be properly considered.

The August 30, 1994 document solicits claimants to use the Belli law firm to present claims and states that the Denny’s case claims’ administrator and class counsel are “also” available to provide you with assistance free of charge. It further states “[h]owever, neither of them will file claims for you.” This statement has the propensity to mislead claimants into believing that Class Counsel will not assist the class in filing a claim and that the claims process is so complex that the assistance of an individual lawyer is needed to file a claim. The class is further instructed to call the claims administrator and request “our” official form. Although Mr. Steering has informed the Court that “our” was an unintended typographical error, the class is not privy to such knowledge, and such a statement is likely to mislead the class to believe that the Belli law firm has some official position in administration of claims.

\*4 The August 30, 1994 document sets up a claims filing procedure which is different from the procedure established by the Court. Under the Court’s Decree any person can obtain a claim form and mail or otherwise deliver it directly to the Claim Administrator. The Belli law firm’s claim process involves a pink claim form created by the Belli law firm, which is identical to the claim form approved by the Court. Claimants are told to request an official form but to not fill it out. They must fill out the Belli claim form and to leave the Court’s official form blank. The Belli firm instructs that it will then transpose the information from its pink form onto the Court’s official form and send it back to the claimants for review and signature. Claimants are instructed that after they approve the official form they must sign it and, instead of sending to the Claims Administrator, they must mail the signed official form back to the Belli law firm. The Belli law firm promises to send the completed form to the Claims’ Administrator. It is likely that this process will result in delay, confusion and potentially result in claims being filed too late under the terms of the Consent Decree.

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The document contains conflicting instructions. For example, on page 2 of the August 30, 1994 document claimants are instructed to “send us [the Belli law firm] the Official Denny’s Claim Form signed ... in the enclosed envelope ...” This is likely to lead a claimant to believe that the Official form must be signed in blank and returned with the attorney-client agreement. This is contrary to the instructions set forth on page 1.

The Belli documents also have the potential to mislead claimants into believing that once they submit the material to Belli’s law firm, they have tendered a claim. This could result in a claim being denied through the conduct of the Belli law firm.

The Court acknowledges the responsiveness and helpfulness that Mr. Steering and the Belli Law Firm displayed at the hearing on this matter. However, the Court finds that the actions of Jerry L. Steering and The Law Firm of Melvin M. Belli, Sr. threaten the integrity and orderly implementation of the claims procedures approved by this Court thereby infringing upon the rights of all class members, potential or otherwise, in this matter.

**IV. ORDER**

For all the foregoing reasons, the Court Orders as follows:

1. With respect to class members who have signed a contingent fee agreement with the Belli law firm:
  - a. the Court appreciates and accepts the Belli law firm’s offer made during the hearing on this matter to waive all attorney’s fees;
  - b. the Court orders Jerry L. Steering and the Belli Law Firm to present Class Counsel with a list, including address and telephone number, if any, of all class members who have signed a contingent fee agreement with their firm; the Court further orders Class Counsel to send each class member on the Belli list a copy of this Order and notice that their attorney’s fees have been waived; a proposed form of such notice shall be sent to the Court for its approval;
  - \*5 d. the Court orders Jerry L. Steering and the Belli law firm to retain copies of any and all documents used in the Belli claims process, including but not limited to, the pink forms that have been sent to class members;
2. The Court orders Jerry L. Steering and the Belli law firm to provide class counsel with a list of those class members who have contacted the Belli law firm regarding this case, but have not yet signed a contingent fee agreement or completed the claim filing process.
3. Jerry L. Steering and The Law Offices of Melvin M. Belli, Sr., you, your agents, servants and employees are **HEREBY ORDERED TO CEASE AND DESIST**:
  - a. from advertising in the manner set forth in the attached Exhibit A;
  - b. from sending to the claimants or potential claimants in this case, a letter of the type attached as Exhibit B;
  - c. from soliciting potential claimants to enter into a contingent fee agreement of the type attached as Exhibit C; and
  - d. from presenting claims in this case that are not made in accordance with the process established by the Court.

Nothing in this Order shall preclude Jerry L. Steering or the Belli law firm from representing individuals who are not members of the class, or who opt out of the class, or whose claims are denied.

IT IS SO ORDERED.

Footnotes

<sup>1</sup> It is noted that 5 of the 43 individuals for whom Steering sought claim forms had submitted timely opt out statements and were referenced in the Court’s Final Approval Order as valid opt outs.

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<sup>2</sup> The advertisement resembles an official class notice or public service announcement. It states “ATTENTION AFRICAN–AMERICANS If you have been the victim of racial discrimination between November 14, 1988 and May 24, 1994 at a DENNY’S restaurant you probably have a right to money from DENNY’S call: JERRY L. STEERING, ESQ.”