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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

AHMED AHMED,

Plaintiff,

Case No. 11-014-559-CZ

vs.

McDONALD'S CORPORATION AND
FINLEY'S MANAGEMENT COMPANY,

Defendants.

-----/

Proceedings taken in the above-entitled
matter before **HONORABLE KATHLEEN MACDONALD**, Third
Judicial Circuit Court Judge, Detroit, Michigan, on
Monday, March 11, 2013.

APPEARANCES:

FOR PLAINTIFF: MR. KASSEM DAKLALLAH
 MR. STEVE KIOSUS

FOR McDONALD'S: MR. THOMAS G. McNEILL
 MS. KATHRYN S. WOOD

FOR FINLEY'S MGMT: MR. ERIC CONN

FOR MAJED MOUGNI: MR. PAUL LEVY (Pro Hoc)

Shelee Beard
Official Court Reporter

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WITNESS

Page

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E X H I B I T S

NUMBER

MARKED

ADMITTED

None offered.

1 Detroit, Michigan

2 Monday, March 11, 2013

3 - - -

4 THE CLERK: Calling case number
5 11-014559, Ahmed versus McDonald's Corporation.

6 MR. DAKLALLAH: Kassem Daklallah for
7 the plaintiffs.

8 MR. LEVY: I'm Paul Alan Levy for
9 Majed Mougni.

10 MR. KIOSUS: Steve Kiosus on behalf
11 of interested parties.

12 MS. WOOD: Kathryn Wood of behalf of
13 McDonald's Corporation.

14 MR. McNEILL: Tom McNeill from
15 Dickinson Wright on behalf of McDonald's Corp.

16 MR. CONN: Eric Conn appearing on
17 behalf of Finley's Management Company.

18 THE COURT: We have before the Court
19 this afternoon this attorney's request to
20 dissolve the injunction; is that correct, or
21 reconsideration of the issuance of the
22 injunction?

23 MR. LEVY: It's a motion to vacate,
24 your Honor. You denied the motion to reconsider.
25 We filed the motion to vacate.

1 THE COURT: Thank you for correcting
2 me. I'm assuming that you read McDonald's brief.

3 MR. LEVY: I have.

4 THE COURT: Do you want to go first,
5 or do you want to let them go?

6 MR. LEVY: I guess it's my motion, so
7 I would like to go first.

8 THE COURT: Fine.

9 MR. LEVY: I think the parties
10 actually are basically in agreement on the orders
11 that you should enter, but although they disagree
12 rather strenuously about the reasons I think if
13 it were only a debate about what a possible
14 opinion would say, I wouldn't ask you to take
15 time for oral argument. You suggested in the
16 injunction that you're considering an attorney
17 misconduct grievance. I hope you give me an
18 opportunity to argue in some detail why we think
19 Mougni's Facebook page was entirely within his
20 first amendment rights.

21 THE COURT: Is this to prevent me
22 from filing a grievance?

23 MR. LEVY: No. Your Honor, if you
24 believe a grievance is appropriate, I think it's
25 your obligation to refer a grievance. But on the

1 other hand, I think if I persuade you that Mougni
2 was entirely within his first amendment rights,
3 then perhaps you would ultimately conclude a
4 grievance is inappropriate at it might color the
5 way you explain what your Honor ultimately does
6 with respect to the orders that everybody agrees
7 to enter into.

8 Mr. Mougni is a member of Dearborn
9 community. He's a member of the class that you
10 conditionally certified two months ago. He has a
11 low opinion of the proposed settlement than of
12 the parties who negotiated it. He believes that
13 the proposed settlement is unfair and illegal.
14 And he disagrees with your Honor's decision
15 indeed to grant preliminary approval. As the
16 first amendment guarantees, he expressed his
17 opinion rather forcefully, as I understand Mr.
18 Mougni's tradition is.

19 He spoke as a member of the community
20 that was affected by the violations, as a member
21 of the community affected by the settlement,
22 indeed a member of the proposed class. He has
23 every right to express his opinions even though
24 he is also a lawyer. The fact that he's a lawyer
25 doesn't mean he lose his right to speak as a

1 member of the community. That is true even if he
2 was seeking to represent class members as clients
3 in his capacity as a lawyer, because a lawyer who
4 seeks to represent clients to vindicate a
5 perceived injustice is not subject to the same
6 restriction as a lawyer who is seeking paying
7 clients. The Supreme Court of the United States
8 has repeatedly distinguished between those two
9 situations. In cases such as *Ohralik versus*
10 *State Bar*, 436 U.S. 447; *In Re Primas*, 436 U.S.
11 412; *NAACP versus Button*, 371 U.S. 415. Lawyers
12 who solicit clients for a cause are fully
13 protected by the first amendment unlike those who
14 solicit paying clients who are engaged in
15 commercial speech and are, therefore, deserving a
16 limited protection. There is no evidence that
17 Mougni sought paying clients in this case.

18 In deed we submit that in rallying
19 his community against a perceived injustice, and
20 he might be wrong about whether it's an
21 injustice, but that's what he thought. In
22 rallying his community Majed Mougni actually
23 acted in the highest judicium of the bar, and he
24 should be considered a hero. I get paid a
25 salary, your Honor, to come here and advocate for

1 Mr. Mougni's first amendment rights, but Mr.
2 Mougni got paid nothing and sought no payment for
3 the advocacy in which he engaged. We fully
4 appreciate that your Honor has declared that you
5 wouldn't recognize the objections he covered,
6 clicking like on the facebook page or leaving
7 e-mail addresses, but he has every right to
8 solicit those expressions anyway.

9 If he were to urge opponents of the
10 settlement to pack your courtroom or to picket
11 downstairs, you would be -- you would have every
12 right to ignore that. And, indeed, we might
13 worry about a judge who is unduly influenced the
14 by those sorts of protest. That doesn't mean --

15 THE COURT: It happened to me before,
16 counsel, and it doesn't influence me. As long as
17 you brought up packing the courtroom, one of the
18 things he complained about is that I had extra
19 deputies here that day, that he felt intimidated;
20 I did not do that for that purpose. I did it
21 because I didn't know whether I would have a
22 packed courtroom or not. And in those kinds of
23 instances I ask for extra security. And once you
24 ask, they're here. I just wanted to clear that
25 up.

1 MR. LEVY: I don't defend the
2 rightness of anything he said about the
3 settlement and certainly about your Honor. I
4 only defend his right to say the things and not
5 be subjected to legal penalties for having said
6 them. By the same token, the fact that he urged
7 members of the class to click like on the
8 Facebook page or to post their address on the
9 page telling them that you, your Honor, would be
10 told about this is not a proper basis for a prior
11 restraint.

12 Now, you expressed concern that some
13 members of the class might be confused or misled
14 thinking it's enough to express themselves on his
15 Facebook page, or confused by some of the other
16 things he said. I can go through each of the
17 things; I did in my brief, I believe. Some of
18 his phrasing might have been inelegant, but
19 nothing he said is outright false, nor is there
20 any evidence that he was deliberately steering
21 people away from communicating their positions to
22 the Court in ways required by the class notice.
23 In fact, we know it was his purpose to get people
24 who oppose the settlement sufficiently to shoot
25 it down. It seems that belies any contention

1 that it was his intent to mislead people about
2 the proper way to communicate themselves to the
3 Court, or that he was intended to mislead them
4 into not exercising their rights properly.

5 When speech is on a public issue
6 where it's noncommercial and whether it directed
7 and influencing the decisions of a public
8 official, that, of course, speaks to the heart of
9 the first amendment's protection. The first
10 amendment did not countenance liability for core
11 speech, noncommercial speech that is only
12 misleading or confusing. Most of all, the first
13 amendment does not tolerate prior restraints
14 against such speech. An injunction entered on a
15 few days notice without a final finding by a jury
16 that what he said was false, the Sixth Circuit
17 U.S. Court of Appeals has repeatedly barred such
18 a prior restraint in the Eastern District of
19 Michigan. In Ford Motor Company versus Lane, for
20 example, Judge Borman said there were likely
21 violations of the Michigan Trade Secrets Act, but
22 that wasn't enough as a basis for a prior
23 restraint against speech. Proctor and Gamble
24 versus Bender's Trust, the Court held that a
25 third party had deliberately and knowingly

1 obtained documents in violation of a court order.
2 The sixth circuit still found that the prior
3 restraint was impermissible saying that to
4 justify a prior restraint, the publication, and I
5 quote, "must threaten the interest or
6 fundamentals at the first amendment itself."
7 Michigan Courts have agreed with that view of
8 prior restraints. We cited in our brief the in
9 re disclosure of jurors names case.

10 We think the circumstances that would
11 have supported a prior restraint were not present
12 here. And even then, if any prior restraints
13 were justified, the order had to be as limited as
14 possible. Yet, your Honor forbade Mougni from
15 speaking at all about the settlement, or at all
16 about the lawsuit, in effect, enjoining things
17 whose accuracy has never been adjudicated.

18 Now, plaintiff in McDonald's cite
19 several cases granting injunctions in a class
20 action context about speech of the class. Most
21 of those injunctions were against defendants who
22 were trying to limit their exposure to damages.
23 Speech with a pecuniary objective; The cases
24 relied explicitly on the pecuniary nature of the
25 speech. And, of course, the parties were already

1 before the Court as parties. McDonald's has
2 cited two cases in which class counsels were
3 enjoined pursuant to the Court's authority to
4 regulate their representation of the class as
5 counsel for the class. And both parties have
6 cited a few cases cancelling opt outs with
7 pecuniary objectives at variance with interest of
8 the class sent misleading letters to the class
9 members urging them to opt out making misleading
10 statements about the case itself. You, your
11 Honor, I don't think have found any misleading
12 statements about the case itself, only misleading
13 statements about the procedures for class members
14 to follow.

15 There were no injunctions in those
16 cases. Those were only cases in which opt-outs
17 were granted. Indeed, the parties have not cited
18 a single case involving an injunction as sweeping
19 as this even against the lawyer who is soliciting
20 paying clients to opt out of a class action.
21 Here, there is no pecuniary motive, none shown on
22 the records. Mogni is a class member like all
23 the other class members except he is a lawyer.
24 And he has a Facebook page which provides him
25 with an effective means of communicating.

1 McDonald's has not cited a single case in which a
2 member of a case has been enjoined from
3 communicating with other members of the class.
4 While we have identified case after case in which
5 judges held a broad prior restraint forbidding
6 any speech about the merits of the settlement
7 were refused by judges, such as the trial court
8 in Jorjean; or condemned on appeal, such as the
9 Third Circuit's decision in Community Bank of
10 Northern Virginia and the Bernard -V- Golf Oil
11 case where communications by class counsel there
12 was a prior restraint and the Fifth Circuit on
13 bond decided it was an improper prior restraint.

14 McDonald's now argues that your
15 instructions were justified on the grounds not
16 originally argued that Mougni is subject to
17 special rules simply because he's a lawyer. But
18 lawyers don't shed their first amendment rights
19 by becoming lawyers. He had never been a lawyer
20 representing a client in this case, thus subject
21 to the Court's disciplinary authority under such
22 cases as the Fieger case and Gentilly (ph) case
23 cited in papers. Mougni is much more analogous
24 to congressman Ford in United States v. Ford;
25 that's sixth circuit district decision cited in

1 the papers, where the sixth circuit said that
2 outside the courtroom a party has every right to
3 question, criticize or condemn the actions of
4 government.

5 Now, even if he had entered an
6 appearance as a lawyer representing clients in
7 this case, he would not vitiate his first
8 amendment right to express himself as in the
9 Bernard V. Golf Oil case. If he had entered an
10 appearance as counsel for individual class
11 members, his protection would be under a lower
12 standard as cited in Gentilly and the Fieger
13 cases. But those standards are lower, as the
14 Court said, only when the statement is by a
15 lawyer representing a client in a pending case.
16 I might add none of these cases involve prior
17 restraints. They were always posthoc
18 disciplinary cases.

19 Now, plaintiff has admitted that
20 Mougni was not representing anybody in this case.
21 The motion for an injunction admitted this in the
22 very first page, the very first sentence said
23 Majed Mougni, "a licensed attorney in the state
24 of Michigan not affiliated with this litigation,
25 and after the Court entered an injunction

1 plaintiff's counsel issued a statement which was
2 republished in full in the Arab American News.
3 We provided it to the your Honor with our
4 statement. One of the things they say is, and I
5 quote, "Mougni does not, nor has he ever
6 represented any client in this matter." In these
7 circumstances, your Honor, I submit he's not
8 subject to your disciplinary authority as a
9 lawyer. Although Mr. Mougni's name was on a
10 motion seeking more time to opt out or to object
11 that was an E-filed by Mr. Sheldon Miller, he was
12 not representing anybody but himself on that
13 matter. And as the Court's docket reflects, Mr.
14 Miller was in the case as retained counsel, but
15 Mougni was in the case pro se.

16 The same statement in the Arab
17 American News attacked Mougni's character even
18 though Mougni was barred at the same time by an
19 injunction from speaking publicly about this
20 case. For a month indeed, Mr. Daklallah has been
21 going around throughout the community defending
22 what he's done in this case, speaking to members
23 of the class one by one. And that's exactly what
24 he should do. Under our system of the first
25 amendment the remedy for speech we don't like is

1 more speech, not an injunction. Mr. Mougni has
2 been barred from responding because these
3 individuals with whom he might have spoken is or
4 might be a member of the class. How could he
5 help somebody with his hands tied behind his
6 back? When the reason somebody's hands is tied
7 behind his back is because of prior restraint, we
8 submit the prior restraint is overbroad and that
9 is why it should be overturned.

10 THE COURT: Thank you, counsel. Do
11 you wish to respond?

12 MR. DAKLALLAH: I see the floor to
13 Katie Wood and Tom McNeill. I'll reserve
14 comments until after they're done.

15 THE COURT: Thank you.

16 MS. WOOD: I think the parties are in
17 basic agreement on the relief requested. The
18 reasons for our agreement are different. I just
19 want to speak briefly to the propriety of you
20 entering the injunction in the first place.
21 First, there is the vast majority of case law
22 cited in the motions to vacate are based on
23 deformation claim. A lot of that brief argues
24 how you cannot enjoin deformation, that it has to
25 go to a full trial. And it's arguing who the

1 various elements of a deformation claim has not
2 been made here. This isn't a deformation claim,
3 and were not enjoining deformation. We're
4 enjoining false or misleading communications to
5 the class. If you look at the case law that
6 talks about prior restraint in that situation
7 where class members are getting confusing,
8 misleading or outright false information, your
9 obligation is to protect the class members from
10 that abusive communication through the use of
11 injunction. And you may do so when there is a
12 clear record as specific finding that reflect the
13 need for a limitation and potential interference
14 with the rights of the party. That's the Golf
15 Oil case.

16 Now, your decision didn't need to be
17 placed in a full blown evidentiary trial.
18 There's no case that suggests that's a
19 requirement. You were required to carefully
20 consider the evidence, and you did. The
21 evidence, albeit social media, was reduced to a
22 document form. And you were able to evaluate
23 each of those. And I submit there is very --
24 most of the assertions (sic) in those facebook
25 postings aren't opinion; they're facts. They're

1 facts about how to opt into the class. They're
2 facts about how to get money in the settlement.
3 It's a way that ties not a criticism to the
4 settlement directly, but to encourage people to
5 maybe not exercise their rights as they would
6 want to based on those misleading statements.
7 Your weighing of that evidence made it absolutely
8 appropriate under the case law when we're talking
9 about notice to the class and your duty and
10 responsibility to that class to make sure it's
11 getting the correct information, which is why the
12 lawyers just can't negotiate the settlement part
13 of the notice in itself. They have to have you
14 sign off that it is adequate notice, fair notice,
15 neutral notice; you did that. That's the same
16 principle behind you being able to do what you
17 did.

18 Now, in terms of Mr. -- few other
19 points. Mr. Mougni was not entirely silenced by
20 your order. If he had something to say, he could
21 seek leave of the Court or run it by the
22 plaintiff class attorneys and be able to say it.
23 He never even attempted to exercise that right.
24 He says in his papers that the order was so broad
25 that he couldn't even submit papers to the Court

1 on his own behalf to opt out, or object, or
2 intervene. That's on the face of the order
3 completely untrue; I would note he did not
4 exercise any of those rights. Now, there's no
5 difference, as counsel argues, between being a
6 party, or attorney in this case, or somebody who
7 is an attorney. I will submit at the time you
8 entered your order, there was ample attorney
9 evidence that Mr. Mougni was either actually
10 acting as an attorney in this case, or was trying
11 to. He had represented to counsel that he had
12 hundreds of people signed up. We know he had at
13 least one retainer agreement.

14 The public notice indicates that we,
15 meaning him and Mr. Miller, were seeking to help
16 the community. He was clearly acting as an
17 attorney, but I don't think it terms of whether
18 he was an attorney in this case or an attorney
19 period that the case law parcels that out. In
20 the Fieger case it was based on a disciplinary
21 hearing after he made comments about certain
22 judges. That was after the case had gone up on
23 appeal. It was on his radio show. The radio
24 show was not a broadcast to thousands his
25 representation of the case. The supreme court

1 didn't parcel out whether he was currently
2 looking to represent his client's interest. He
3 was speaking on his own behalf. The Michigan
4 Supreme Court found that kind of speech requires
5 lesser protection.

6 In terms of the notice period, we
7 submit reopening it to give the class 28 days is
8 appropriate. We are very interested in
9 finalization of this matter. And having the
10 notice period be effectuated in the same time and
11 manner as it was before, we think is appropriate
12 to ensure all people, not just the folks who hit
13 like, not just the folks who sent in their opt
14 out on Mr. Mougni's incorrect opt out form are
15 made aware and can confirm they are supporting
16 due process, acting on full and neutral
17 information from this Court to make their
18 determination about what they want to do with
19 respect to their membership in the class.

20 THE COURT: Thank you, counsel

21 MR. McNEILL: I'd like to maybe just
22 offer a note or two about the record because
23 during the status conference Mr. Levy challenged
24 whether this order of preliminary injunction was
25 based upon an adequate record, and he did so

1 again today. You and I and the parties in this
2 case live this world. As lawyers, we often enter
3 the case after the facts are already set. We
4 inherit the facts; Indeed, Mr. Levy has done just
5 that. He's come in 30 days after the fact and
6 put his silver tongued elegant spin on what
7 Mougni did.

8 If you were here, Mr. Levy, and you
9 read what we read on facebook and we saw what we
10 saw in the newspapers and on Fox News, we would
11 all agree, outside this courtroom when not
12 advocates, that Mr. Mougni was (A)acting as a
13 lawyer, and (B) absolutely giving grossly false
14 and inaccurate legal advice to the class. It is
15 those cases that we cite. And those reasons
16 which persuaded the Court protect the class,
17 which is this Court's responsibility, to protect
18 the class that injunction was proper and properly
19 entered.

20 I speak to sister counsel's comment
21 about the first amendment and distinguishing Mr.
22 Levy cases, but as one who was here on this
23 record with this Court, I thought I would make
24 those observations.

25 THE COURT: Counsel.

1 MR. DAKLALLAH: Your Honor, if I may.
2 Kind of touching on what Mr. McNeill just said,
3 the idea that Mr. Mougni was not acting as an
4 attorney in this case, regardless of what I may
5 have said or what somebody in my firm may have
6 said in an interview with some newspaper, is
7 unbelievable. It's simply absurd to try to argue
8 that Mr. Mougni was not acting as an attorney in
9 this case particularly, as Mr. McNeil touched on,
10 when those of us who were actually involved in
11 the case received phone calls from Sheldon
12 Miller, who's joined at the hip with Mr. Mougni
13 saying, hey, what if we had a coupon settlement
14 in the case. What if we were to give people 20
15 percent off coupons; would that something that
16 you guys would be willing to entertain as a
17 possible settlement?

18 When we're having these kind of
19 discussions, when we're talking about
20 reallocating funds in a way that is going to get
21 these lawyers paid on the case, how can it be
22 argued that anything other than an attorney
23 trying to negotiate with another attorney on a
24 case where pecuniary gain was taking place is
25 absurd. And the idea that somebody who is known

1 to everybody as an attorney in the community
2 could generate forms, which he supplies to people
3 within the community on his Facebook page where
4 he is known as a lawyer in the community, talking
5 about an ongoing legal case both on his Facebook
6 page and in the media and multiple outlets, how
7 that can be looked at as anything other than a
8 lawyer looking to solicit potential clients to do
9 things within the legal system, is absurd to me.
10 It's an incredible argument. There is no
11 credibility to that particular portion of the
12 argument.

13 Beyond that, your Honor, I think one
14 of the things I touched upon when we last were
15 here for the status conference with Mr. Levy
16 participating telephonically, the point for me as
17 class counsel at this stage is not to show
18 somebody that I'm smarter than them, or that I
19 can argue better about an issue. The point to me
20 is to do what is best for the class; that is my
21 duty; that is what I must do as class counsel.
22 And the best thing for this class is not to have
23 an argument at any level; this level, the
24 appellate level, higher appellate level. That is
25 not was is in the best interest of the class.

1 Regardless of my feeling on whether there is
2 merit, or whether there is merit such that such
3 an argument that there was an improper prior
4 restraint could prevail under the facts as we
5 know them to be right now, what's in the best
6 interest of this class is to have the settlement
7 that we have placed on the record and that has
8 been advertised out in the marketplace through
9 media and through the class notice mechanism to
10 have that finally effectuated. At the end of the
11 day, your Honor, regardless of how fervently we
12 disagree with everything that Majed Mougni has
13 done, regardless of how sanctionable I believe
14 that conduct to be, regardless of how grievable I
15 believe that conduct to be, with all that fervent
16 opposition he tried to present to the settlement,
17 we still had less than .01 percent of people
18 exercising any action to do anything.

19 Case law is clear on this. Silence
20 to the terms of the settlement by a class where
21 you must opt out to take action is considered by
22 the Court to be acceptance of that settlement.
23 And truth be told, we have done as Mr. Levy has
24 stated. We have as class counsel gone out into
25 the community and spoken with the leaders, and

1 spoken with the community members, and taken
2 calls from people who called our that inquire.
3 If a child calls my office asking a question
4 about this settlement, I will take time out of my
5 day to explain the case to them, explain the
6 process to them and explain the settlement, it's
7 merits and everything. We find at the end of the
8 conversations whether we're dealing with
9 individuals, potential class members, or whether
10 we're dealing with leaders of organizations, at
11 the end of those conversations, invariably it
12 ends with them congratulating us, hugging us if
13 we're meeting them in person and saying great
14 job, this is a great thing for the community.

15 So truth be told it's not as Mr. Levy
16 is trying to portray for his client. Perhaps he
17 hasn't argued that here today, but he said that
18 in the past in other media. It's not a situation
19 where we're trying to hold our head down and hide
20 from people this settlement. We're very proud of
21 this settlement. We're very proud of what it
22 represents. And we're very happy and the
23 community is happy about the benefits that's
24 going to be bestowed upon the community through
25 these charities. So whether it's 28 days or 28

1 years, I'm comfortable with a discussion about
2 the merits of the settlement because I know it's
3 a great settlement. If it takes an additional 28
4 days to put off what I see as non-meritorious
5 legal argument at other levels, that to me is
6 worth it for the class to be able to get this
7 settlement funded now and to benefit the people
8 at the HOUDA Clinic who are going to be using
9 this money to help people who cannot afford
10 medical care, or whether it's through
11 scholarships that are going to be awarded through
12 the museum. These things to me are much more
13 important, much more valuable and are the only
14 reasons why I filed the concurrence with the
15 argument that the injunction should be vacated
16 for a period of re-notice for 28 days.

17 THE COURT: You get the last word,
18 counsel.

19 MR. LEVY: I'd say a couple of
20 things. That's exactly why a debate should take
21 place, and it should be in an environment where
22 the fellow who seems to be the leading community
23 opponent has his say. At the end of the day you
24 will decide whether enough opt outs or objections
25 have come in to show anything other than what Mr.

1 Daklallah has said. That is actually the process
2 that plays out in class action settlements
3 throughout this country.

4 What worries us and the reason we're
5 in this case is that sometimes what happens in
6 class action settlements is that nobody likes the
7 objector. There's always an attempt to suppress
8 the objector. I know that wasn't the intent
9 here.

10 THE COURT: If he were a member of
11 the class, and I do have objections and read them
12 all carefully. He's not just an objector. He
13 cannot take one hat off and be something else
14 when it suits him. And when you said he did not
15 attack the settlement he attacked procedures,
16 that is not accurate. He called it a backroom
17 deal. In essence, he called it a miscarriage of
18 justice and a slap in the face to the community.

19 MR. LEVY: Your Honor, I think you
20 misunderstood what I said. What I said was that
21 he had not attacked the merits of the settlement.
22 I did not see in your oral findings in the
23 transcript, which I unfortunately saw only a
24 couple days before the motion to vacate was due,
25 to get it on for hearing when we wanted to get it

1 on for hearing. It was mostly drafted that's why
2 there's so much about liable in the beginning. I
3 did not see in your oral findings anything
4 suggesting that you had decided that what he said
5 about the merits was false and misleading. That
6 is to say it was sort of liable with the class
7 counsel which affected the class proceeding by
8 undermining confidence in class counsel. I
9 thought your findings were directed only to what
10 he said about the procedures.

11 THE COURT: I also referred to the
12 fact he called it a backroom deal. You and I
13 disagree on this, counsel, that's what we do.

14 MR. LEVY: That's what we do. It was
15 not negotiated in public. It was technically a
16 backroom deal. Now, it's a bad spin. It's a
17 negative spin, but it doesn't make something
18 defamatory. And people say these things about
19 class action settlements.

20 THE COURT: You don't get to say it
21 when you're an attorney and trying to intervene
22 or at a minimum interject yourself into a case
23 where you have no right or standing to be
24 involved.

25 MR. LEVY: Your Honor, that's where

1 we respectfully disagree. As an attorney, he has
2 a right to characterize the deal as a bad deal
3 and using negative comments about people who
4 negotiated and its contents. And it's not
5 through injunction. And it's not through
6 litigation that we decide whether what he's
7 saying is good or bad. It's through the
8 marketplace of ideas and Mr. Daklallah doing as
9 he did, going around and defending himself in the
10 community. That's the system the first amendment
11 requires even when the speaker is the lawyer.

12 The point was made that, well, he
13 could of exercised his right to come in and ask
14 your Honor for an exception or go to counsel.
15 Let's imagine the situation which he's called by
16 a reporter who calls in response to the
17 statement. It wasn't an interview. It was a
18 written statement issued to the Arab American
19 News, which they printed in full containing what
20 I quoted to you. So a reporter calls him up and
21 says, what do you think about this. He has to
22 say to the reporter, hold on, I have to call the
23 judge and ask her permission for the response I
24 want to give you. I have to have call opposing
25 counsel and run by the answer I might give you.

1 That is a system of prior restraint, which the
2 first amendment condemns. It is one of the
3 reasons why your order went too far, in our
4 opinion.

5 THE COURT: Any other comments?

6 MR. CONN: Your Honor I feel it
7 incumbent to comment on behalf of my client,
8 Finley's Management Company. We echo the
9 arguments that have been set forth by McDonald's
10 Corporation. The relief they request is
11 appropriate under the circumstances. However, I
12 could not disagree any more with regards to the
13 arguments set forth by Mr. Mougni. I believe
14 your prior order was absolutely correct for the
15 reasons set forth by counsel for McDonald's and
16 also Mr. Daklallah.

17 MR. McNEILL: Your Honor, I know
18 you're prepared to give an opinion. I just want
19 to make sure we have a clear record.

20 Mr. Levy had moved to vacate
21 McDonald's second motion to reopen the class
22 period and to effect curative notice. Does the
23 Court wish to deal with the vacate issues first?

24 THE COURT: Let's do that first. As
25 far as I'm concerned, this injunction was the

1 proper exercise of this Court's authority to
2 prevent abusive, misleading and false
3 communications to class members. This lawyer by
4 his postings and pleadings identified himself as
5 an attorney either specifically or in reference
6 to his law firm. As an attorney, he is an
7 officer of the court, and under certain
8 circumstances, such as this, an attorney's speech
9 can be restricted. His speech materially
10 prejudiced this litigation. And although I guess
11 your motion to vacate is denied, it's really a
12 moot point at any rate because I intend to agree
13 with counsel to dissolve the injunction based on
14 his statements that he will no longer and all his
15 future conduct and speech will be as class member
16 and a community activist and not as an attorney.
17 And he'd better make it very clear, or I'll put
18 that injunction right back in.

19 I've read through your request for
20 re-notice and I have read the re-notice. I think
21 at this stage in litigation in order to
22 administer this class action appropriately, I
23 feel compelled to agree with you that we have to
24 issue re-notice to all the class members. And I
25 have read through your proposed notice. I agree

1 with everything you have put in there, that
2 everything that should be in here is in here.

3 MR. McNEILL: We came to this point
4 as a very difficult exercise of judgment for our
5 client. There are others at the podium. I don't
6 know if they have comments relative to our
7 proposed order or to our proposed supplemental
8 notice. I would hand up to the Court a copy of
9 the proposed order.

10 THE COURT: Counsel, have a seen
11 this?

12 MR. KIOSUS: Yes, I saw it, your
13 Honor.

14 THE COURT: Do you have any objection
15 to it?

16 MR. KIOSUS: Only objection I have is
17 in the brief filed by McDonald mischaracterized
18 what was said in status conference. However, we
19 clarified that last time on the record.
20 Nonetheless, they included that. Next time it
21 gets recorded so we'll know what did or didn't
22 occur.

23 THE COURT: Hopefully, we won't have
24 to have anymore.

25 MR. McNEILL: Your Honor, the only

1 thing that's required to --

2 THE COURT: I have to add one more
3 thing to this record because there is another
4 forum that's going to hear this. Because of his
5 lawyer's actions the costs of resolving this case
6 are now spiraling out of control because of him.

7 MR. DAKLALLAH: Your Honor, if I may
8 briefly speak to that point. That was something
9 I thought to say, but my turn had long passed.
10 We're talking about real dollars in a real world
11 at this point. We're not talking about simply
12 having a theoretical debate about whether a
13 lawyer has the right that he will fight and die
14 for to lie to class members. We had to expend an
15 additional, I estimate \$30,000 of class money.
16 Do I tell the museum, well, you just got to give
17 30 less scholarships?

18 We're getting to the point where if
19 we continue on a path where I have to come to
20 court to defend the settlement because somebody
21 is lodging any false statements relating to the
22 merits of that settlement, there's going to be no
23 money left for the class is basically where we're
24 headed. I would ask the Court to reserve for a
25 later date other issues dealing with the finances

1 of this case because we don't have a great
2 understanding at this point of how expensive it's
3 about to get.

4 THE COURT: File all the pleading you
5 need to file, counsel.

6 MR. LEVY: If they feel obligated to
7 file a pleading, I guess we'll feel obligated to
8 respond. Lawyering does spiral out of control
9 when people feel compelled to file motions.

10 MR. McNEILL: When I spoke I might
11 have interrupted Mr. Levy. I didn't know whether
12 he wanted more time about the notice.

13 MR. LEVY: Our view is 28 days
14 re-notice period seems right. I really don't
15 have enough substantive knowledge about the
16 community. I understand there must have been
17 justifications given for the particular forums
18 noted. As an officer of the court, I'm not in
19 position to express an opinion about the rest of
20 the order whether it's appropriate or not. I try
21 not to speak as an officer of the court without
22 being on firm grounding. We certainly don't
23 oppose it. We agree the 28 day re-notice period
24 is appropriate.

25 MR. McNEILL: Your Honor, in that

1 regard there's a couple of blanks on the
2 supplemental notice we would have to fill in for
3 photocopy purposes and translations, one of which
4 is the start date of the notice period. I
5 understand from plaintiff's counsel that he is
6 prepared to move forward tomorrow morning, which
7 would start the class period then on March 12th
8 and run 28 days thereafter if that's acceptable
9 to the Court.

10 THE COURT: Yes.

11 MR. McNEILL: And the other blank
12 is --

13 THE COURT: He's had a dry run on
14 this once.

15 MR. McNEILL: I understand he'll be
16 ready to do that. The other thing is that the
17 supplemental notice also provides additional
18 notice to the class concerning the final approval
19 hearing. We'd like to add that date if we could.
20 Counting out of 28 days, Your Honor, I believe
21 that's April 8th or April 9th. And I was
22 wondering whether we could secure a date and time
23 during the week of April 5th.

24 THE COURT: That would be fine.

25 MR. LEVY: Your Honor, may I tell Mr.

1 Mougni the injunction is now dissolved and he's
2 free to speak, or should I tell him to wait?

3 THE COURT: Well, the order has to be
4 entered, which will probably be happening today.

5 MR. LEVY: Thank you, your Honor.

6 THE COURT: I do want you to tell him
7 if he even insinuate that he's acting as an
8 attorney, they'll be back.

9 MR. LEVY: Here's what worries me.
10 He is a lawyer.

11 THE COURT: He signed his postings as
12 attorney. He sent out the form from his law
13 office. Those are the kind of things that he
14 cannot do.

15 MR. LEVY: Your Honor, with respect,
16 I believe the first amendment entitles him to do
17 that. I will advise him of your Honor's
18 comments. I hope we're not here spending more of
19 class counsel's time and mine, but it does take
20 two to tango both in terms of people speaking --

21 THE COURT: In fact, he has
22 mis-stated this injunction to many of the media
23 outlets; that he was not allowed to speak at all.
24 He was allowed to speak, but he was not allowed
25 to speak as an attorney giving false and

1 misleading information to the public.

2 MR. LEVY: That's not what your
3 injunction said. That may have been your
4 intention to put it in the injunction, but one of
5 the faults of this prior restraint is that it was
6 not so limited.

7 THE COURT: It wouldn't have been
8 issued if it weren't the case.

9 Thank you, counsel.

10 MR. McNEILL: What date would be good
11 for the final hearing?

12 THE COURT: How about Wednesday the
13 17th at 10 o'clock.

14 (Whereupon proceedings concluded.)

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1 STATE OF MICHIGAN)
2) SS
3 COUNTY OF WAYNE)

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5

6 REPORTER'S CERTIFICATE

7

8 I, Shelee Beard, CSR-5493, do hereby
9 certify that I have recorded the proceedings had and
10 testimony taken in the above-entitled matter at the
11 time and place hereinbefore set forth and that the
12 foregoing is a full, true and correct transcript of
13 proceedings had in the above-entitled matter; and I do
14 further certify that the foregoing transcript has been
15 prepared by me or under my direction.

16
17
18
19

20 _____
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25