

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
GENERAL CIVIL DIVISION

ESTATE OF LISA MCPHERSON, by
and through the personal Representative,
DELL LIEBREICH

Plaintiff,

Case No. 00-5682-CI-11
Division 11

vs.

CHURCH OF SCIENTOLOGY FLAG
SERVICE ORGANIZATION, JANIS
JOHNSON, ALAIN KARTUZINSKI
and DAVID HOUGHTON, D.D.S.,

Defendants.

Date 8/22/01 Time 5:32pm
Name _____
Relationship _____
Peter B. Thornburgh
CPS 47-5172226

AND RELATED COUNTERCLAIM.

**MOTION TO COMPEL LMT, INC. TO RETURN TO DEPOSITION;
FOR A FINDING OF CONTEMPT; AND FOR THE
ISSUANCE OF COERCIVE SANCTIONS**

Defendant, Church of Scientology Flag Service Organization, ("the Church") by and through its undersigned counsel and pursuant to Fla.R.Civ.P. 1.380, moves for an order finding deponent Lisa McPherson Trust, Inc. ("LMT, Inc.") and its principals, Robert Minton and Stacy Brooks, in contempt for failure or refusal to comply with the Court's Orders of April 10, 2000, May 15, 2000, July 19, 2000, November 8, 2000 and January 10, 2001, which required LMT to produce identified records and tapes.

As grounds for this motion, defendant states as follows:

I - INTRODUCTION

As early as April 10, 2000, Judge Moody authorized the Church to acquire relevant testimony and evidence from LMT, Inc. Notwithstanding several admonitions from the Court, several oral Orders and two *written* Orders, LMT, Inc., its owner Robert Minton and its attorney John Merrett, defied the Court's rulings. The company was given a final Order on July 19, 2000 to comply with the document and videotape productions no later than August 1, 2000. Despite informal efforts to resolve the matter, Minton and his company refused.

Thereafter Judge Quesada issued two *further* written Orders to LMT to comply with Judge Moody's rulings, and provided his own clear interpretation of the Orders to edify LMT's principals and avoid game-playing on production objections. Judge Quesada punctuated his Orders with separate monetary sanctions rulings. After the 2nd DCA rejected LMT/Minton/Brook's objections, and they were ordered again back into deposition on August 15th, still, they have refused full compliance.

Sanctions against LMT and its principals have been ineffective at forcing them to comply with Court Orders. They have filed repeated writs and lost, filed appeals which have been dismissed, had judgments entered against them and appealed those. They ignore the Court's admonitions. Not a penny of the prior sanctions have been paid, and yet the witnesses continue to refuse to comply with Court Orders which are now more than 15 months old, to produce all financial records regarding witness payments; all videotapes of witness statements; and all documents regarding statements of witnesses.

As the normal course of orders, admonitions and sanctions has had little effect, the Church requests that punitive and coercive sanctions be entered against LMT and its

principals, to encourage them to return to complete LMT's deposition and provide full compliance with prior production Orders.

II – STATEMENT OF FACTS

The Lisa McPherson Trust, (“LMT, Inc.”) was incorporated as a for-profit company by plaintiff's counsel, Kennan Dandar, for Robert Minton in 1999 (Ex. 1, LMT incorporation papers), as the proposed recipient of the hoped-for proceeds of this case. According to Mr. Minton's authenticated public Internet posting in February, 2000, he stated that the plaintiff has “promised to give the vast majority of any settlement or award from trial to The Lisa McPherson Trust ... And, when that money comes, The Lisa McPherson Trust ... [will] be forever endowed.” (Ex. 2, Minton posting dated February 2, 2000.) As of May of 2000, Minton had given Mr. Dandar over \$1,000,000 (Ex. 3, Minton Depo., May 24, 2000, p. 212) as his investment in this litigation, and has certainly given him far more since that time. Mr. Minton also testified that he expected to get “the bulk of any money that [Ms. Liebreich] gets out of this case” (Ex. 4, Minton Depo., January 13, 1998, p. 65), and characterized the money as his “piece of the litigation.” (*Id.*, p. 47.) According to Minton, this deal was worked out by Mr. Dandar and plaintiff Dell Liebreich. (*Id.*, pp. 64-65.)

As the sole shareholder, Mr. Minton elected himself the Chairman of the Board of LMT, Inc., and asserted it has no income other than whatever he provides. (Ex. 3, p. 250.)¹ LMT, Inc. is therefore Mr. Minton's alter-ego to implement his investment plan for this litigation. It has since put up Internet web pages alleging knowledge containing

¹ Minton is a retired multi-millionaire, who has made many millions of dollars trading third world debt.

allegations about Ms. McPherson and Scientology. It has collected as employees, several of the plaintiff's named witnesses in this case, including plaintiff's "expert" Jesse Prince; plaintiff's affiants Stacy Brooks and Peter Alexander; and witnesses Grady Ward, Theresa Summers, Jerry Armstrong and Jeff Jacobson.² LMT organizes "demonstrations" outside the Church in Clearwater largely consisting of Mr. Minton's employees, carrying signs accusing the Church and its leaders of murder, mayhem, calling it a Nazi organization, and shouting profanities at Church members and staff.³ LMT invites the media to its demonstrations and holds press conferences to generate derogatory media regarding Scientology. LMT employees have deliberately sought to intimidate witnesses by picketing in front of their homes; shouting at, threatening and harassing some Church staff witnesses. LMT has a full time videographer, Mark Bunker, who records these events and statements by witnesses and employees such as Prince and Brooks, Minton and other persons on the parties' witness lists. LMT, Inc.

² Plaintiff and Mr. Dandar are also advisory board members of LMT.

³ The name of "Lisa McPherson Trust" was apparently close to lending an air of legitimacy to Minton's for-profit corporation. Certainly the use of her name for an anti-Scientology purpose would have been very offensive to Lisa McPherson herself, as the recent findings by Judge Quesada indicated that she was a very dedicated Scientologist. As noted by the Court, "Lisa McPherson's continuing commitment to Scientology is shown by letters she wrote to friends several weeks or even days before her automobile accident on November 18, 1995." (Ex. 5, Ruling, June 20, 2001, ¶ 2.) "Lisa 'was a dedicated Scientologist.' She participated in a 'wide variety' of Scientology religious courses and services, initially at a local church in Dallas, and then later at the Flag Service Organization after she moved to Clearwater in 1993 ..." (*Id.*, ¶ 3.) "Throughout her life as a Scientologist, Lisa McPherson contributed her time and energy to charitable and community projects sponsored by the Scientology church organizations with which she was affiliated in Dallas and Clearwater." (*Id.*, ¶ 4.) "Plaintiff Dell Liebreich, Lisa's aunt, conceded that Lisa was 'devoted to Scientology,' that Lisa 'loved Scientology,' and that Lisa was 'happy with Scientology.'" (*Id.*, ¶ 5.)

therefore possesses a substantial video library of statements demonstrating bias of plaintiff's witnesses, intimidation of defendants' witnesses, payments to fact witnesses and endeavors to contaminate the jury pool through LMT.

Thus, on March 26, 2000, LMT, Inc. was subpoenaed to produce records relating to payments to witnesses, other records and video tapes depicting witnesses. Contrary to Mr. Dandar's emotional argument at the deposition of LMT on August 15, 2001 (that LMT had nothing to do with this case or with him), Mr. Dandar has sought to prevent all discovery as to LMT for 1 ½ years, and as to Minton, for 4 years. He brought an oral motion for protective order to quash the deposition at a hearing on April 7, 2000, denied by Judge Moody, who ordered that the deposition of LMT's corporate representative go forward, including production of documents and videos of experts.

Three days later, Mr. Dandar sought again to quash the deposition of his benefactor's company. At the hearing on April 10, 2000 on Mr. Dandar's motion for protective order, Judge Moody ordered him to produce the person most knowledgeable of LMT, Inc., and to produce records and video tapes:

"Produce the tapes. Produce a representative of the trust who can testify about any payments made to witnesses, any interviews of witnesses in this case, any documents that they may have about witnesses in this case."

* * * *

"I don't care if they work at the trust or not. If they have tapes or documents or information where they've paid money to someone who is going to be testifying in this case, I want that information revealed."

(Ex. 6, Transcript of Proceedings, April 10, 2000, at pp. 23-24.)

At the deposition on April 24th, LMT, Inc. produced an employee by the name of

Robert Peterson as the "person most knowledgeable." He testified that he had been hired only one week earlier by Stacy Brooks as her assistant (Ex. 7, Depo. of Robert Peterson, p. 11), and had been informed he would be the witness only *that morning* when Brooks instructed him to attend. (*Id.*, pp. 25-26.) Although over 200 witnesses were identified by the parties, Ms. Brooks gave him only 4 names to "search" in a checkbook containing only 50 canceled checks handed to him by Ms. Brooks to find witness payments. (*Id.*, pp. 30-31, 33.) This was the entirety of his "search" for responsive records.

Peterson stated he had no idea of the identity of any of the witnesses in the case, and when read a list of plaintiff's witnesses, he admitted he searched for only 2 of the names. (*Id.*, pp. 33-37.) Peterson said videos existed, but didn't know who was portrayed in the videos. (*Id.*, p. 25.) Mr. Dandar also refused to produce any records at the deposition. (*Id.*, p. 24.)

A motion to compel was therefore filed by the Church. At the hearing on April 28th, Mr. Dandar represented that LMT was conducting a new search. Thus, Judge Moody reserved ruling on sanctions to permit Mr. Dandar to make good on his representations regarding his then-client, LMT, Inc. (Ex. 8, pp. 56-57.) Mr. Dandar however continued to procrastinate on setting the deposition, so a new motion to compel was served on May 11th. The *next day*, attorney John Merrett announced that he would now be representing Minton and LMT, Inc., but continued to block the deposition. At a hearing on May 15th, Judge Moody *again* ordered LMT, Inc. to appear and produce the records, telling Mr. Merrett:

For at least six weeks that I know of they've tried to get someone from the Lisa McPherson Trust to tell them a lot more information than I've allowed them to get, but they can't even get the information that I've allowed them

to get. They're entitled to find out what witnesses in this case have been paid by the Lisa McPherson Trust, if any, and if so, how much they've been paid, what witnesses are on video deposition, a video statement about any of the issues in this case or about the issues of Scientology, and they're entitled to see those videos.

At the last hearing that we had Mr. Dandar said that they were looking for those videos, they would be produced, and someone with more knowledge than Mr. Peterson was going to show up and answer these questions about the Lisa McPherson Trust.

(Ex. 9, Transcript of Proceedings, May 15, 2000, p. 41.)

The Court issued a written Order, that ordered LMT to:

[P]roduce a person most knowledgeable to testify to the matters addressed in the Court's Ruling in open Court on April 10, 2000, and to produce all financial records regarding the payment to any person identified at any time as a witness in this case; and shall produce *unedited* videos in the possession, custody or control of Lisa McPherson Trust, Inc., of statements of any person identified presently as a witness in this case. The records shall be produced within 3 days of this Order.

(Ex. 10, May 15, 2000 Order; emphasis supplied.)

The deposition went forward on May 18, 2000, now with Robert Minton appearing as the "person most knowledgeable" from LMT, Inc. Mr. Minton testified that he conducted no search for videos. Rather, what search was done, was by LMT's videographer, Mark Bunker. (Ex. 11, LMT Depo., May 18, 2000, pp. 28-29.) While admitting that he, as well as Stacy Brooks are listed as witnesses, Mr. Minton instructed Bunker *not* to look for any videos of statements by Minton, Brooks and witness Jeff Jacobsen. (*Id.*, pp. 30, 31.) When asked how Bunker could possibly have remembered all of the names that Mr. Minton told him to search for (the combined witness lists contain over 200 names), Mr. Minton responded, "There were only three, so this wasn't

hard to remember.” (*Id.*, p. 32.) Those three names were the persons in the excerpts of the video produced at the deposition: Dell Liebreich, her sister and witness Gerry Armstrong – a total of 32 minutes.

Minton admitted there were statements by Ms. Brooks in the LMT, Inc. tapes, but refused to produce them. (*Id.*, pp. 40-41, 46-47.) Minton also admitted there were statements by him in the videos about Lisa McPherson and Scientology (*id.*, p. 46), but again, refused to produce them. Minton stated he was aware of the Court’s ruling requiring unedited videos to be produced, but that Order had no effect in changing the scope of his search or production. (*Id.*, p. 52.) In short, Mr. Minton ignored the Court’s Orders.

LMT’s search for responsive documents relating to statements of witnesses was no better than the video search. It resulted solely in the production of plaintiff’s witness list and a scrap of paper of unknown origin. (*Id.*, pp. 25-28.) However, Mr. Minton asserted that LMT, Inc. possessed 8 file cabinets and 120 boxes of hard copy files. When asked how long the search took through these unalphabetized materials, he admitted that Stacy Brooks conducted the search (*id.*, p. 168), and that she spent a total of *forty minutes* searching the records (*id.*, p. 200), dedicating an average of 18 seconds to each box and file cabinet.

Beginning in June of 2000, Church counsel attempted informally to resolve the dispute over the missing “unedited” videos that LMT, Inc. was to have produced. However, Mr. Merrett ignored all correspondence, and a motion was filed for a further Order compelling production of the records and tapes by a date certain. After the hearing on July 18th, Judge Moody ordered further production as follows:

[P]roduce *all financial records regarding the payment to any person identified at any time as a witness* in this case; and shall produce *unedited* videos in the possession, custody or control of Lisa McPherson Trust, Inc., of statements of *any person identified presently as a witness in this case*.

Mr. Minton shall further file a sworn statement that LMT, Inc., *searched their video files as to the entire witness lists of the parties and produced all segments of statements dealing with Lisa McPherson, the Lisa McPherson case, the defendants and Scientology.*

Compliance with this Order is due on or before August 1, 2000

(Ex. 12, July 18, 2000 Order; emphasis supplied.)

LMT again ignored the Order, and Mr. Merrett ignored counsel's correspondence attempting to gain compliance. Thus, yet *another motion* was filed with Judge Quesada after the case was transferred to Pinellas County to gain compliance. Judge Quesada noted at the hearing that he was "absolutely astounded" by the lack of compliance with Judge Moody's Orders, and further commented: "I'm just scratching my head about why it's taking us a half-a-dozen months to get to this point. I just don't understand." (Ex. 13, November 8, 2000 Hearing, pp. 49-52.) On November 8, 2000, with neither of Judge Moody's Orders having been complied with, Judge Quesada ordered Mr. Minton, as the representative of LMT, to provide *within ten days* an affidavit in compliance with the July 19, 2000 Order concerning the scope of the search for responsive documents and affirming that all responsive documents had been produced.

The affidavit that Mr. Minton supplied evaded or ignored the Court's Order, and LMT provided no additional records or tapes.

Notwithstanding this history, a new motion to strike was brought before Judge Quesada by Mr. Dandar in December of 2000. This resulted in a lengthy memorandum

opinion by Judge Quesada intended to put the matter to rest on January 10, 2001. Judge Quesada ruled as follows:

FINDINGS OF FACT AND ORDER CONCERNING DISCOVERY
FROM LISA MCPHERSON TRUST, INC.

* * *

Having heard argument of counsel for the parties and for third party witnesses Lisa McPherson Trust, Inc., Stacy Brooks and Robert Minton and being otherwise fully advised in the premises, the Court finds as follows:

LMT, Inc. was incorporated as a for-profit company by plaintiff's counsel, Kennan Dandar, in 1999. (See Ex. A to Motion to Compel Deposition of the Lisa McPherson Trust, Inc.; for Sanctions and for a Finding of Contempt, filed October 27, 2000.) According to Mr. Minton's public Internet posting in February, 2000, LMT is to receive "the vast majority" of the hoped-for proceeds of this case (*id.*, Ex. B), in exchange for Minton paying the fees and expenses of this litigation. According to Mr. Minton's deposition testimony, this arrangement was worked out by Mr. Dandar and plaintiff Dell Liebreich. (*Id.*, Ex. C.)

Mr. Minton, the sole shareholder and Chairman of the Board of LMT, Inc., provides all funding for the company. (*Id.*, Ex. D.) LMT, Inc. also employs plaintiff's identified expert witness Jesse Prince, and consulting expert, Stacy Brooks, who has provided several affidavits filed by plaintiff herein. LMT, Inc. also possesses a video library of statements of Ms. Brooks, Mr. Minton, Mr. Prince and other persons. (*Id.*, Ex. K.)

On March 26, 2000, LMT, Inc. was subpoenaed to produce records relating to payments to witnesses, and records and video tapes depicting various witnesses. Mr. Dandar brought a motion for protective order to quash the deposition which was heard on April 7, 2000 by Judge Moody, who ordered that the deposition of LMT's corporate representative go forward, including production of documents and videos of witnesses. (*Id.*, Ex. E, Transcript of Proceedings, April 7, 2000, pp. 147-149.)

On April 10, 2000, plaintiff again moved to quash the deposition of LMT, Inc., which was again denied by Judge Moody, who ordered LMT, Inc. to, "produce a representative of the trust who can testify about any payments made to witnesses, any interviews of witnesses in this case, any documents that they may have about witnesses in this case." (*Id.*, Ex. F, Transcript of Proceedings, April

10, 2000 at 23-24.)

On April 24, 2000, LMT, Inc. produced an employee who apparently was not competent to address such issues, and a further motion to compel was filed by the Church, and heard by Judge Moody on May 15, 2000. Judge Moody granted the Church's motion, and ruled, "They're entitled to find out what witnesses in this case have been paid by the Lisa McPherson Trust, if any, and if so, how much they've been paid, what witnesses are on video, a video statement about any of the issues in this case or about the issues of Scientology, and they're entitled to see those videos." (*Id.*, Ex. I, Transcript of Proceedings, May 15, 2000, p. 41.)

A written order issued on May 15th, required LMT, Inc. to produce "a person most knowledgeable to testify to the matters addressed in the Court's Ruling in open Court on April 10, 2000, and to produce all financial records regarding the payment to any person identified at any time as a witness in this case; and shall produce unedited videos in the possession, custody or control of Lisa McPherson Trust, Inc., of statements of any person identified presently as a witness in this case. The records shall be produced within 3 days of this Order." (*Id.*, Ex. J, May 15, 2000 Order.)

No further records were produced in compliance with this Court's Order and a further motion to compel was filed by the Church. At the hearing on July 18th, Judge Moody signed another Order (filed on July 19, 2000) requiring compliance with the May 15, 2000 production no later than August 1, 2000. (*Id.*, Ex. P, July 18, 2000 Order.)

Receiving no productions, the Church subsequently brought a further motion for compliance with Judge Moody's Orders, which this Court granted by order dated November 20, 2000, again requiring written confirmation of LMT, Inc.'s compliance with the Orders of May 15, 2000 and July 19, 2000. A statement was subsequently filed by Robert Minton as LMT, Inc.'s representative, purporting to comply with the Orders addressed above. The statement of compliance, however, equivocated with the clear language of the Orders of May 15th, July 19th and November 20th - indeed, no further documents or tapes were produced at all - because his clients believed that Ms. Brooks, Mr. Minton, Grady Ward and Jeff Jacobsen are not legitimate "witnesses" in this case, that it should not be required to provide financial information relating to Jesse Prince after the date of Judge Moody's original ruling, and that plaintiff had subsequently filed a new motion for protective order.

While plaintiff has argued that a work product privilege attaches to the

ordered productions from LMT, Inc., the Court finds that no such privilege is applicable. LMT, Inc. is not an attorney nor is it employed by counsel. Thus, whether or not Stacy Brooks or Jesse Prince is a "trial consultant," their relationship with LMT, Inc., is not subject to any work product privilege and no work product assertion has been made as to payments to Ward or Jacobsen. LMT, Inc.'s payments to Ms. Brooks, Mr. Prince, Mr. Jacobsen and Mr. Ward and its collection of statements of these persons and Mr. Minton are therefore not privileged.

LMT, Inc. also argues that the information sought is irrelevant. The scope of relevance under Florida law is broad, as defined in Rule 1.280, Florida Rules of Civil Procedure: [citations to Rule omitted]

This standard is more than met in light of the admissions by Mr. Minton that LMT Inc. is to receive proceeds from this case, LMT's employment of plaintiff's consultants, LMT's employment of plaintiff's disputed expert, and LMT's maintenance of a video library of statements of plaintiff's witnesses Prince and Brooks, among others.

Moreover, as to Ms. Brooks, plaintiff has filed and utilized several of her affidavits and declarations in support of positions it has taken in motion practice in this action. Plaintiff argues that since Ms. Brooks is a trial consultant and will not be testifying at trial as a fact witness, that payments to her by Mr. Minton or LMT, Inc. are no longer relevant. The Court finds this position to be inconsistent with the record and the scope of discovery under Florida law. A party may not rely upon evidence to prevail upon a position, and then not disclose payments to the witness or other information which might refute the witness' testimony.

Payments to witnesses by a third party also raise legal issues addressed in *Golden Door Jewelry Creations Inc. v. Lloyds Underwriters*, 865 F.Supp. 1516 (1994) and *Rentclub v. Transamerica Rental Finance Corp.*, 811 F.Supp. 651 (1992), both of which apply Florida law. Potential evidence going to the abuse of process defense also warrants a finding of relevance of the discovery sought. Finally, payments to witnesses, whether they be fact witnesses or expert witnesses, and statements of witnesses regarding the general subject matter of their testimony, are clearly relevant discovery.

The Court finds that there is no justification for LMT, Inc.'s continued refusal to comply with the Court's Orders. It is therefore

ORDERED that LMT, Inc. is required to fully comply with the Court's

Orders of May 15, 2000, July 19, 2000 and November 20, 2000. LMT, Inc. is also sanctioned in the reasonable amount of the Church's attorneys' fees in the filing of its Renewed Motion to Compel Lisa McPherson Trust, Inc. and for Contempt Against Robert Minton and LMT, Inc., And for Further Sanctions and for the time spent at the hearing on such motion. Defendant is ordered to submit a proposed order and affidavit of counsel as to its reasonable fees.

(Ex. 14.)

At the time of the issuance of this Order, LMT, Inc. had already been sanctioned by Order dated December 8, 2000, in the amount of \$6,942.50. (Ex. 15.) Subsequent to the issuance of the January 10, 2001 Order, Judge Quesada issued further sanctions against LMT, Inc. by Order dated February 8, 2001, in the amount of \$900. (Ex. 16.) None of these sanctions have been paid, and the sanctions had no effect on encouraging LMT to comply with the discovery orders.⁴

Indeed, continuing every effort to stop the discovery as to the financing of this case by Minton and the payments of fact witnesses by Minton and LMT, Minton, LMT and *plaintiff* jointly filed a petition for certiorari in February of 2001 as to Judge Quesada's rulings. The petition falsely asserted in its introduction that the matters at issue required the production of *privileged* information. This was not true, and no privilege arguments were made in the brief. However, evidently first reading the introduction and summary of the plaintiff and the witnesses, the 2nd DCA quickly issued a stay of Judge Quesada's Order pending review of the petition. The 2nd DCA then took several months to rule, and finally issued a short rejection of the petition on July 13, 2001 and lifted the discovery stay.

⁴ LMT, Minton and Brooks have now posted a supersedeas bond as to two of the sanctions.

Still LMT's counsel declined to cooperate with setting the deposition. And *still* the "uninterested" counsel for plaintiff sought to intervene to stop the discovery – by filing a new motion for protective order before Judge Schaeffer, who by then had been assigned to the case. After oral argument on August 9, 2001, Judge Schaeffer recognized what was going on, denied Mr. Dandar's motion, and in open court set the LMT deposition to go forward on August 15th.

Because it hardly seemed possible that LMT would continue to obstruct after this lengthy history, Church counsel represented to Judge Schaeffer that he believed he could complete the deposition in a single afternoon, starting at 1:00 p.m. This estimate was obviously erroneous based upon what happened at the deposition.

First, the witness and her counsel were 35 minutes late arriving at the deposition. Second, a great deal of time was expended in the making and arguing of objections. The majority of such time was wasted on frivolous arguments made by Mr. Dandar and Mr. Merrett attempting to relitigate matters already decided against them by Judges Moody and Quesada. From the time of the refusal of the witness to answer the question regarding the source of funds paid to Robert Minton until the objection was overruled following the arguments of Mr. Dandar and Mr. Merrett, 26 minutes was lost. There were more than 20 additional objections requiring argument and delay. The witness and her counsel also took several breaks expending the limited available time. Church counsel was also required to ask repeated follow-up questions as a result of evasive responses. The Court was also unfortunately not able to stay beyond 4:45 p.m.

In sum, defendant's analysis of the deposition reveals that actual questioning consumed only 2 hours and 10 minutes. Moreover, the document production sought for

weeks (Ex. 17, letters to counsel), was not made until the beginning of the deposition, and the CD's were not produced until the middle of the deposition.

Thus, the deposition obviously was not completed. More significantly, the witness continued to refuse to comply with the Court's Orders, as follows:

LMT, Inc. Failed to Produce Videos Ordered by the Court

The Orders at issue required LMT, Inc. to "produce *unedited* videos in the possession, custody or control of Lisa McPherson Trust, Inc., of statements of any person identified presently as a witness in this case." (Ex. 11, May 15, 2000; Ex. 15, January 10, 2001.)

As noted above, LMT has employed a full time videographer, Mark Bunker, who has worked for LMT since at least December of 1999. (Ex. 18, checks to Bunker from LMT.) Mr. Bunker elsewhere described his job as follows:

Q. And what is your title and position with the trust?

A. I'm the producer of LMT Media.

Q. And what is LMT Media?

A. It's the multimedia division of the Lisa McPherson Trust, produced videos for the web.

* * *

[I] Shoot interviews with people, shoot footage, go back and edit that footage into a brief summary, much like a newscast, a little bit longer.

Q. And how is that published?

A. It's then put up on the internet for folks to watch.

(Ex. 19, Transcript of Hearing of June 28, 2000, pp. 9 & 10.)

What LMT actually produced were CD's containing the edited excerpts of videos

that are available on their web page, nothing more. (Ex. 20, Brooks Depo. as LMT Rep., August 15, 2001, pp. 98-99, 124.) These CDs have now been examined, and found to contain snippets of video footage that LMT evidently found supported some position it sought to present to the media or the public. (Ex. 21, Affidavit of Kendrick Moxon.)

Most of the excerpts are 2-3 minutes long. Some are shorter – some are longer. None of the CD's contain full length videos or anything resembling an entire video. For example, one of the CD's entitled "pickets," contains 45 short excerpts on one 80 minute CD, with textual headers explaining the significance of each excerpt as far as LMT is concerned.

(*Id.*) The issue of production of excerpts was litigated several times, to avoid the precise issue at hand: LMT has produced not what was wanted and what was ordered, but only snippets it wished to place into an entirely public forum. Each time the issue of the production of complete videos was raised, LMT lost and the Orders accordingly reflect that entire, *unedited* videos were to be produced.

Mark Bunker has spent many long hours videoing statements of Minton, Brooks, Prince, church members and witnesses, Armstrong, Caberta, and others. Rather than doing what was ordered by the Court, LMT simply downloaded canned excerpts which may or may not have anything to do with the issues at hand.

And, there are no actual magnetic videotape cassettes produced as were described by Minton at his deposition. Rather, the excerpts are extremely poor quality digital copies of actual video footage, and are extremely difficult to watch. (*Id.*)

LMT has violated the Court's Orders in another fashion with respect to tapes, by intentionally excluding tapes by redefinition of what belongs to the company. Ms. Brooks testified that she made some sort of agreement with Mark Bunker, her employee,

that whatever portions of videos went up on their website belonged to LMT, and if they didn't go up on the website, the videos he took as an employee belonged to him. (Ex. 22, Brooks Depo., June 23, 2000, pp. 60-61.) And, Ms. Brooks testified that it is *she* that decides what goes up on the website (*id.*, p. 61), thus excluding all other videos subject to the Court's Order by allegedly passing them out of her "possession, custody or control" to an employee. (*Id.*, p. 124.) Brooks admitted that Bunker is a full time employee of LMT who has no other actual employment, while seeking to equivocate on Bunker having other "projects." (*Id.*, pp. 124-125.) Brooks could also provide no explanation for what happened to videos of pickets by LMT staff which do *not* appear on their web site. (*Id.*, p. 135.)

In sum, LMT has intentionally violated the Court's Orders by producing *only* edited videos, and by allegedly giving the original unedited videos to its employee Mark Bunker.

The Witness Disobeyed the Court's Order to Answer a Question

While many questions were answered in an evasive manner or with answers that lack credulity,⁵ Ms. Brooks also disobeyed the Court's direct Order to answer one question. At her deposition, Ms. Brooks indicated that she was employed in 1997 by plaintiff's counsel as a consultant, but not after that time. (*Id.*, p. 120.) In the context of attempting to prevent discovery, for years, Mr. Dandar has claimed that Brooks was his consultant. At the initial day deposition in June of 2000, Brooks refuted Mr. Dandar's

⁵ As an example, the witness gave evasive answers to questions regarding financial matters, and made the incredible claim that \$800,000 was "donated" to her for-profit company from anonymous sources. (*Id.*, pp. 29-31, 33-35, 37-40, 42, 89.)

repeated assertions by stating that she had not been paid anything by Mr. Dandar since 1997 – if at all. (Ex. 22, pp. 31, 32.)⁶ And, in consideration of Ms. Brooks having purchased an expensive Belleaire home and new car at the time LMT opened, she was simply asked if she was employed in 1999, for the purpose of determining what other funds or benefits may have actually been provided to her as plaintiff's alleged expert affiant. However, she refused to respond. (Ex. 20, pp. 49-51.) Coercive sanctions should be applied until the witness returns to the deposition and responds to this question.

LMT Failed to Comply With the Court's Order to Produce Statements of Witnesses

Judge Moody ordered LMT to “produce a representative of the trust who can testify about any payments made to witnesses, any interviews of witnesses in this case, any documents they may have about witnesses in this case.” (Ex. 6, April 10, 2000, pp. 23-24.) Judge Quesada's “Order Compelling Document Production of Lisa McPherson Trust, Inc.” of November 20, 2001, requiring compliance also specifically ordered, “LMT, Inc.'s search for video tapes and documents relating to witnesses in this case must utilize the parties' witness lists previously filed, as well as any other person reasonably identified as a witness to the facts in this case.” (Ex. 23, Order, November 20, 2000.) Judge Quesada further referenced the April 10, 2000 ruling regarding document production in his memorandum opinion on January 10, 2001 as to the scope of the required production.

⁶ Indeed, when this important fact was revealed to the Court at the hearing on December 14, 2000, Mr. Dandar's empty retort was, “She still consults with me and if she does it for free, God bless her, actually I don't have to pay her to do it.”

Again, LMT, through its President, failed to comply. Literally no statements of *any* witnesses were produced. Notwithstanding that there was substantial litigation over the large number of boxes of potential statements, the computer records and e-mail files, Brooks testified that she did not consider that electronic files were responsive to the Order. (Ex. 20, pp. 66-69.) Ms. Brooks also testified that although she, Minton and Prince (and others in the office who are witnesses, such as Theresa Summers) *would have had* emails relating to Scientology and Lisa McPherson, that they *destroyed* all such records and continue to destroy any newly created records responsive to the Court's Order on a weekly basis. (*Id.*, pp. 74-76.) Indeed, Brooks claimed she searched every computer thoroughly and that each was cleaned of all such statements, (*id.*, p. 77), while admittedly there have been many statements in the past year and half (*id.*, pp. 77-78), that would have been responsive.

As to paper files, while LMT had 120 boxes of files in May of 2000, Brooks claimed that now it had only about 50. (*Id.*, p. 69.) Yet, she also swore that they disposed of no more than a single box of paper in the entirety of the time between April 2000 and today, (*Id.*, pp. 70-71), consisting only of paper they "no longer needed." (*Id.*)

Ms. Brooks also testified that she gave some records to their attorney, but that he told her she needn't be concerned with that, since whatever Mr. Merrett possessed was allegedly privileged. (*Id.*, p. 72.) Yet, she admitted to having written affidavits and statements about Scientology that her attorney possessed – which obviously were not produced. Nor has any privilege log been produced.

Brooks also asserted that the records of communications and complaints to government agencies regarding Church staff and church witnesses such as Marcus

Quirino and Leslie Woodcraft made by LMT employee Theresa Summers were not able to be located, but that Brooks didn't bother to ask Summers what happened to them. (*Id.*, p. 101.) Later, after much prodding by counsel and distracting objections by her attorney, Brooks admitted that Summers had records regarding Quirino (a church staff member who was deposed by plaintiff in this case), and regarding the Woodcrafts (Leslie Woodcraft was also deposed by plaintiff and is on his trial witness list). (*Id.*, pp. 107-109). Ms. Brooks also found other written complaints regarding Church staff members but declined to produce them. (*Id.*, p. 109.)

And, Brooks made the incredible sworn assertion that there is not a single piece of paper in the entire office that was written by her, by Minton, or by her vice-president, Jesse Prince, who is also designated as Mr. Dandar's "expert" witness on the issue of Scientology. (*Id.*, p. 72.) She also made the astounding assertion in her testimony that her entire staff for three weeks searched every nook and cranny in the entire office, all of the space, all of the boxes, all of the desks, and could not find a single written statement that concerned this case, any issue in this case, or any statement concerning Lisa McPherson. (*Id.*, pp. 79-80.) This testimony can mean only that either Ms. Brooks has committed perjury or that all responsive records have been destroyed. The entire *purpose* of her office concerns *this case, Lisa McPherson* and issues raised in the complaint regarding Scientology. Voluminous evidence demonstrates this purpose, such as the literally hundreds of postings to the Internet printed out and authenticated in prior depositions (*e.g.*, Ex. 24), statements to the media (Ex. 25), and other documents such as a newsletter. (Ex. 26.) The newsletter contains both an essay from Ms. Brooks and a quoted excerpt from a writing by Ms. Brooks, in which she states, "I don't think there is

any question that Scientology brought pressure to bear on Medical Examiner Joan Wood to change the autopsy report concerning the cause of Lisa McPherson's death." (*Id.*, p. 2.) Another page in the newsletter states: "From the Library: I've put up the Lisa McPherson police investigation CD ... The library has been indexed but that is basically an inventory. The next projects will be to ... put in shelving, and re-index the items using the final index system". (Ex. 26.)

Ms. Brooks made the similarly incredible assertion that she searched all of the computers in her office and couldn't find a single thing written by any of her staff concerning Lisa McPherson. (Ex. 20, p. 80.) Yet a glance at the LMT web page shows numerous documents written by her and her staff about Lisa McPherson (see *e.g.*, Ex. 27) – again, that is the purpose of the organization.

The web pages also represents that substantial information has been acquired regarding Lisa McPherson. The assertion that this organization possesses no documents relating to these issues is like saying a botanical library possesses no documents regarding trees.

The responsive records have either never been sought and collected by LMT's principals, or have been destroyed. Either way, LMT has failed to comply with the Court's Orders.

LMT Failed to Produce Ordered Financial Records

The Orders at issue required LMT, Inc. to "to produce all financial records regarding the payment to any person identified at any time as a witness in this case." (Ex. 11, Order, May 15, 2000; Ex. 14, Order, January 10, 2001.) However, the witness failed to do so. For example:

– No board minute or any other documentation was produced regarding the transfer of the entirety of the company’s stock to Brooks for \$1.00. (Ex. 20, pp. 42-45.)

– While producing a single summary printout of several months of payroll, no records of instructions to the payroll company or any other correspondence was produced, even though Ms. Brooks admitted there are payroll records every month, even though other payroll records are under her control from the payroll company. (*Id.*, pp. 54-55.)

– No records were produced regarding a \$12,000 “loan” to witness Grady Ward but for a single canceled check, Brooks claiming she doesn’t “believe” there are other records regarding the loan. (*Id.*, p. 57.)

– No 1099s, W2s, W4s, or any other state or federal tax information was produced regarding the witness/employees.

– No records were produced regarding expense payments to witness Ursula Caberta. (*Id.*, p. 84.)

– No records were produced concerning the “loans” of Minton’s money to the company and the alleged “anonymous” \$800,000 funding received by the company and paid to Minton.

– While records of payments for Jesse Prince’s criminal defense were produced, no such checks were produced for the criminal defense of witness/employee Mark Bunker.

– No records were produced concerning the “loan” from the company to Brooks which was repaid, at least in part, by one of the checks produced. (Ex. 28.)

– Ms. Brooks also stated that she has a financial program, QuickBooks, which

contains financial information regarding payments to the witnesses, but that she did not print out any of the information to produce. (Ex. 20, p. 81.)

Ms. Brooks, as the representative of a company she claims to own, has failed to comply with the Court's Order to produce all financial records reflecting or concerning payments to any witness.

III – COERCIVE SANCTIONS SHOULD ISSUE TO FORCE COMPLIANCE WITH THE COURT'S RULINGS.

Mr. Minton, Ms. Brooks and their company have intentionally violated Judge Moody's unequivocal Orders of April 10, 2000, May 15, 2000 and July 19, 2000, and Judge Quesada's Orders of November 8, 2000 and January 10, 2001, requiring the production of unedited videos of all of the persons identified as witnesses in this case; of all financial records relating to each witness; and all written statements of each of the witnesses. "It is a general rule that disobedience of any lawful order constitutes a contempt of the court's authority." *Handbook on Discovery Practice*, 2000, p. 3. It is settled that this Court has the power to impose remedies in civil contempt so as to coerce compliance with its Orders, to punish a contemner and to make restitution to the victim of the contempt. *See, e.g., Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S.Ct. 2123, 2132 (1991), *citing United States v. Hudson*, 7 Cranch 32, 34, 3 L.Ed. 259 (1812); *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 831, 114 S.Ct. 2552, 2559 (1994); *In re Jove Engineering*, 92 F.3d 1539, 1553 (11th Cir. 1996); *Parisi v. Broward County*, 769 So.2d 359, 363, 365 (Fla. 2000). These powers in civil contempt include coercive incarceration (*see Parisi*, 769 So.2d at 365), fines to vindicate the offense to the dignity of the Court and its Orders (*see id.*, at 366), and an

award of damages including attorneys' fees and expenses to the aggrieved party (*see id.*, at 366).

In *International Union, United Mine Workers of America v. Bagwell*, 512 U.S., *supra*, at 827-828, 114 S.Ct. at 2557, the U.S. Supreme Court compared civil and criminal contempt: "a contempt sanction is considered civil if it 'is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court.'" (citation omitted.)

A court may impose civil contempt sanctions "for either or both of two distinct purposes, to coerce compliance with a court order, and to compensate the complainant for actual losses sustained by him as the result of the [person's] contumacy." *In re Chase & Sandborn Corp.*, 872 F.2d 397, 400-401 (11th Cir. 1989). Compensatory fines are paid to the complaining party based upon actual losses, and coercive fines are paid into the court. (*Id.* at 401.) Imprisonment for the purpose of coercing a person to comply with a court order is another coercive sanction that courts can apply to remedy conduct in civil contempt. *Blalock v. United States*, 844 F.2d 1546, 1559 (11th Cir. 1988) (upon finding that a person is in contempt, court will impose fine and imprisonment sanctions, based on what is "most likely to achieve compliance"); *see, Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 442, 31 S.Ct. 492, 497 (1911) ("imprisonment for civil contempt is ordered where the [person] has refused to do an affirmative act required by the provisions of an order which, either in form or substance, was mandatory in its character.")

Mr. Minton admitted at his deposition as the corporate representative that he was aware of Judge Moody's Orders requiring production of unedited videos. (Ex. 12, p. 52.)

Mr. Merrett was present at the hearings when Judge Moody's Orders were entered, he was reminded of the May 15, 2000 Order during the deposition and in subsequent letters he was told that he must comply or that it would be necessary to seek further judicial relief. LMT and their counsel have been repeatedly sanctioned by the Court for failure to comply with these simple orders. Ms. Brooks has also been personally sanctioned by the Court for her failure to respond to deposition questions. Lengthy argument and even writs were filed and *lost* on these orders by LMT, Brooks, Minton and their counsel. This continued refusal to comply, constitutes a knowing and intentional violation of Court Orders and warrants a finding of contempt and appropriate sanctions. *Mercer v. Raine*, 443 So.2d 944, 946 (Fla. 1984); *Johnson v. Allstate*, 410 So.2d 978 (Fla. 5th DCA 1982).

At a hearing before Judge Schaeffer on August 9, 2001, the issue of this and other depositions was raised with the Court. Judge Schaeffer was surprised at the extent of the numerous orders to comply and the continuing failures of LMT and Minton to comply to do so. It was pointed out to Judge Schaeffer that the monetary sanctions were ineffective at coercing Minton and his company to comply, as they had refused to pay and simply filed endless petitions for certiorari – which were uniformly denied, and endless appeals – which have also thus far also been uniformly denied. The name of this game is *delay* in aid of the plaintiff's position in this case, and indeed, since May and June of 2000, defendants have been unable to acquire discovery from these parties, notwithstanding the sanctions Orders by Judge Quesada. Judge Schaeffer's response was,

Well, I got news for you, Judge Quesada is one of the nicest guys I know, but Judge Quesada does not run his courtroom the same way I do. I might give somebody one opportunity and somebody might get fined once.

The second time they go to jail and they sit in jail until they give a deposition. If they want to sit there for six years wouldn't make a bit of difference to me.

I don't fool around with that and I don't fine rich people money that doesn't mean a thing to them. You don't disobey a court order of mine, and I'm going to tell you men that, and if there are any women there I'll tell you that, you disobey court orders of mine and you go to jail if I have to do that.

I have never had to put a lawyer in jail and the reason is because they all know I mean business. I run a tight courtroom and a tight ship and I don't put up with stuff.

(Ex. 29, Hearing, pp. 27-28.)

There is little dispute that Minton is a "rich man" and that the President of the company,⁷ Stacy Brooks, has his resources behind her and unknown sources of funds, as evidenced by her refusal to respond if she was employed in 1999 when she bought an expensive home and car. Her forgetfulness or alleged lack of knowledge regarding the \$800,000 "donation" to her company which she decided to give to Minton, her acquisition of a car and house and her ability to pay counsel for hundreds of hours of time to avoid discovery, also suggest financial wherewithal.

In any event, financial sanctions have had no effect in coercing Ms. Brooks, Mr. Minton or LMT to provide testimony: they have each been sanctioned and have steadfastly refused to pay the sanctions or provide the discovery at hand. Instead, they have expended many times the amount of the sanctions awarded in endless appeals and writs and maneuverings to avoid discovery. Thus, while additional monetary sanctions certainly should issue to compensate defendant for the costs involved in the witnesses'

⁷ Minton has been charged in Switzerland with financial fraud arising out phony debt buy back schemes with Nigeria (Ex. 30), in which it has been alleged he made in excess of \$100,000,000.

failures to provide discovery, additional and coercive sanctions are also necessary to enforce the Court's authority.

Defendant accordingly requests that an Order issue finding that the allegations in the counter-claim relating to the LMT, Inc. and its principals be found as uncontroverted:

5. Liebreich and Dandar have also misused the process by purchasing testimony of fact witnesses in violation of Florida law and rules of the Florida Bar. They have done so by having Minton pay large sums of money to Dandar's purported "consultant" in this case, Stacy Young, and to alleged "experts" Jesse Prince and Vaughn Young, who are in reality no more than "fact" witnesses who know nothing of the facts. After exposure of the improper relationship between Minton and Prince and Brooks and the payments to them, a payment system was established which was effectively money laundering, whereby Brooks, Prince and other witnesses would be paid by Minton via the Lisa McPherson Trust, Inc., utilizing funds provided by Minton for that purpose. Plaintiff has also paid or caused to be paid, sums of money and valuables to other alleged fact witnesses presently known to defendants: Theresa Summers, Karsten Lorenzen, Peter Alexander and Gerry Armstrong. Each of these persons has provided whatever testimony, affidavits and declarations Minton wishes for Liebreich and her attorney to use in this case in exchange for such funds, regardless of their relevance or lack of truth.

7. Through this fabrication of evidence, witness tampering and paying the expenses of others to aid in this effort, Liebreich, her attorney and Minton have engaged in activities calculated to infect the jury pool, increase the value of non-party Minton's investment in this lawsuit, and to harass and intimidate witnesses.

8. Plaintiff's misconduct in turning this lawsuit into a business deal with Minton, in coordination with and with the approval of the other beneficiaries of the estate of Lisa McPherson, is knowing, willful and intentional. Plaintiff has perverted the processes of this Court, and with the funds provided by Minton after this case was filed, undertaken to force defendants to relinquish their rights so that she and Minton could obtain advantages not otherwise available to them, including using their actions to create adverse media through purchased and created testimony, forcing the Church to encumber valuable properties to provide an advantage not normally available to a plaintiff, and poisoning the jury pool, all for the

dual purposes of damaging the Church and running up the value of this case to procure a large settlement out of all proportion to what the case could or should be worth....

(Ex. 31.)

Moreover, warrants should issue for the arrest of Ms. Brooks and Mr. Minton in accordance with Judge Schaeffer's admonitions, and that they be incarcerated until such time as full compliance is made to the Court's Orders.

In addition to the above, LMT, Inc., Brooks and Minton should be sanctioned jointly and severally in the amount of \$3,000, representing the reasonable attorneys' fees arising out of the instant motion. (Ex. 21, Affidavit of Kendrick L. Moxon.)

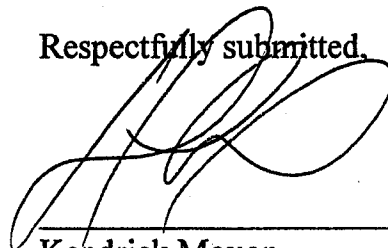
CONCLUSION

Minton, Brooks and LMT, Inc. have a stake in this litigation as the contracted beneficiaries of any intended recovery. Yet they have refused to comply with Court discovery Orders, and prior sanctions have no effect at encouraging compliance.

An Order should issue making findings with respect to the counter-claim at issue, and the witnesses sanctioned. Arrest warrants should also issue for the company's principals, Brooks and Minton, to be incarcerated until such time as full compliance is made to the Court's Orders, and the witnesses also be monetarily sanctioned.

Dated: August 22, 2001

Respectfully submitted,



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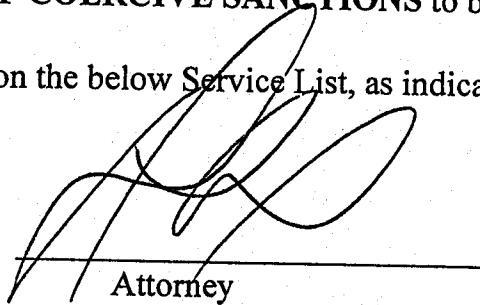
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CHURCH OF SCIENTOLOGY
FLAG SERVICE ORGANIZATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused the foregoing **MOTION TO COMPEL LMT, INC. TO RETURN TO DEPOSITION; FOR A FINDING OF CONTEMPT; AND FOR THE ISSUANCE OF COERCIVE SANCTIONS** to be served on this 22ND day of August, 2001, to counsel on the below Service List, as indicated.



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