

FILED

SEP 15 1998

RICHARD W. WIEKING
Clerk U.S. DISTRICT Court
North DISTRICT Of California
SAN JOSE

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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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10 RELIGIOUS TECHNOLOGY CENTER, a)
11 California non-profit corporation,)
12 Plaintiff,)
13 vs.)
14 GRADY WARD, an individual,)
15 Defendant.)
-----)

NO. C-96-20207-RMW
ORDER PURSUANT TO
JUDICIALLY SUPERVISED
SETTLEMENT

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17 On May 12, 1998, pursuant to an order of the Honorable
18 Ronald M. Whyte, the undersigned judge conducted a settlement
19 conference in the above-entitled action. Plaintiff appeared by
20 its counsel of record, Thomas R. Hogan, Samuel D. Rosen and
21 Helena K. Kobrin, and through its president and authorized
22 representative, Warren McShane, and defendant appeared in propria
23 persona. The parties met and conferred under Court supervision
24 for approximately two hours. In the course of the settlement
25 conference, the parties reached agreement on the material terms
26 of a settlement, and these terms were then recited on the record
27 in open court, acknowledged by the parties and counsel and
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1 confirmed by the Court as a judicially supervised settlement.

2 The parties further agreed that in the event they were
3 unable to agree upon the final written form of a formal
4 settlement agreement and judgment incorporating the material
5 terms recited orally on the record, the undersigned would retain
6 jurisdiction to determine the form of an order and judgment
7 memorializing the settlement. The parties having failed to reach
8 agreement, and the Court having afforded the parties the
9 opportunity to review and comment upon the Court's proposed form
10 of order and judgment, the Court will enter the order hereinafter
11 set forth as well as a judgment conforming thereto pursuant to
12 its retained jurisdiction.

13 Defendant has contended in correspondence to the Court and
14 counsel dated May 21 and June 4, 1998, at a hearing before the
15 undersigned on June 5, 1998 and again in correspondence dated
16 July 30, 1998, that the parties' agreement to vest this Court
17 with jurisdiction to resolve disputes over the final form of an
18 order and judgment was the result of a mutual mistake of law, and
19 that controlling Ninth Circuit authority precludes a District
20 Court from exercising such jurisdiction; in support of this
21 contention he has cited Jeff D. v. Andrus, 899 F.2d 753 (9th
22 Cir., 1989), and the authorities relied upon therein.> Defendant
23 correctly states the holding of these cases that a District Court
24 may not sua sponte modify the terms of a settlement or rewrite
25 the agreement of the parties. However, nothing in the cases
26 cited or elsewhere in the law precludes a District Court from

1 adopting a form of written order which does not modify, rewrite
2 or otherwise alter the material terms to which the parties have
3 agreed orally.¹ The language of both this order and the
4 accompanying judgment wherever possible has been taken verbatim
5 from the reporter's transcript.

6 Defendant also has contended in his July 30 correspondence
7 that the terms recited on the record on May 12, 1998 require that
8 he approve the form and content of a list of works and materials
9 as to which plaintiff claims copyright protection, and that
10 because he does not and will not approve of the list provided to
11 him by plaintiff to date, there is no agreement as to this
12 material term of the parties' settlement. In response to this
13 contention, the Court again has reviewed the reporter's
14 transcript in its entirety. While defendant is correct that at
15 one point the Court does refer to defendant's "final approval" of
16 the list in question, the record as a whole, and in particular
17 that portion of the record which follows the reference to "final
18 approval", does not support defendant's position. Rather, it is
19 clear that at the moment of the Court's confirmation of the
20 parties' oral agreement as a judicially supervised settlement, it
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23 ¹In fact, while a District Court may not impose new and
24 different settlement terms upon litigants without their consent,
25 nothing in the cases cited appears to preclude a voluntary
26 agreement by the parties to vest the Court with such plenary
27 authority. Although "plaintiff contends that such a voluntary
28 agreement is present here, the Court does not find it necessary
to reach this issue because it has declined plaintiff's request
to include terms not referenced explicitly on the record or which
do not follow necessarily from such explicit terms.

1 | was the mutual intent of the parties that defendant not be
2 | potentially liable for copyright infringement as to works or
3 | materials the copyrighted status of which he had neither
4 | knowledge nor notice and that plaintiff would do its best to
5 | provide notice. Defendant's principal concern was not with the
6 | form of notice but rather with preserving his rights under the
7 | First Amendment and the doctrine of fair use. As contemplated by
8 | the parties' agreement vesting the Court with jurisdiction over
9 | the final form of this order and of the judgment which
10 | accompanies it, the Court has included language in both documents
11 | which reflects this mutual intent.

12 | Defendant further contends in his July 30 correspondence
13 | that he has newly discovered evidence that plaintiff
14 | misrepresented the copyrighted status of certain works which were
15 | the subject of plaintiff's complaint and that he relied upon the
16 | truth of plaintiff's representations in entering into the May 12
17 | agreement. Because the Court's present task is limited to
18 | reducing the May 12 agreement to writing, and because the alleged
19 | misrepresentations do not appear in the transcript, the Court
20 | declines to address this matter at the present time. The Court
21 | notes that any party to an agreement who can establish that the
22 | agreement was procured by fraud has a legal remedy. That remedy,
23 | however, properly is obtained through a noticed proceeding in
24 | which competent evidence is produced and all parties have an
25 | opportunity to be heard rather than by a passing reference in
26 | correspondence.

1 Finally, defendant requests an evidentiary hearing with
2 respect to the question of whether the May 12 oral agreement is
3 sufficient to constitute a binding settlement of this action. At
4 the same time, defendant states that "[m]ost of the issues herein
5 are matters of law which will be reviewed de novo by an appeals
6 court." Because the Court has relied entirely upon the May 12
7 reporter's transcript to ascertain the material terms of the
8 parties' agreement and has added its own language only to the
9 extent it finds necessary to effect the mutual intent of the
10 parties as expressed on the record in these proceedings, the
11 Court concludes that an evidentiary hearing would serve no useful
12 purpose. The request accordingly will be denied.²

13 Good cause therefore appearing, IT IS HEREBY ORDERED as
14 follows:

15 1. Judgment shall be entered in favor of plaintiff,
16 Religious Technology Center, in the amount of Three Million
17 Dollars (\$3,000,000.00). Pursuant to plaintiff's complaint for
18 nondischargeability filed December 9, 1997 and defendant's
19 consent thereto, said judgment shall not be dischargeable in
20 bankruptcy and will not be affected by any bankruptcy now or in
21 the future. Plaintiff's motion to withdraw the reference of said
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24 ²On August 19, 1998, the Court received unsolicited
25 correspondence from plaintiff urging the Court to enter its order
26 and injunction immediately, because of alleged ongoing conduct of
27 defendant. On August 21, the Court received a response to this
28 correspondence from defendant objecting to plaintiff's submission
and setting forth additional reasons why defendant believes that
no enforceable settlement was achieved on May 12. The Court
declines to consider either of these communications.

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2 complaint for nondischargeability as well as defendant's
3 counterclaim thereto from the Bankruptcy Court shall be granted
4 and defendant's counterclaim shall be dismissed with prejudice.

5 2. Defendant shall take all steps necessary to withdraw any
6 pending bankruptcy proceeding, and shall not initiate any
7 bankruptcy proceeding in the future, to the extent that such
8 proceeding would affect said judgment.

9 3. Plaintiff shall not take any steps to execute or collect
10 upon said judgment'except as follows:

11 a. Defendant shall pay to plaintiff the sum of Ten
12 Thousand Dollars (\$10,000.00) forthwith upon receipt of, or if
13 subsequent to May 12, 1998 he has received, an advance from
14 Robert Minton with respect to a book about Scientology authored
15 by defendant.

16 b. Defendant shall pay to plaintiff the sum of Two
17 Hundred Dollars (\$200.00) per month commencing on the first day
18 of the month following entry of said judgment and on the first
19 day of each month thereafter. Said obligation shall continue for
20 so long as defendant shall live but shall not survive defendant's
21 death or be a charge against defendant's estate or heirs.

22 4. Notwithstanding any provision of the preceding
23 paragraph, plaintiff may execute and collect upon said judgment,
24 and the same shall be a charge against defendant's estate to the
25 full extent permitted by California law, should any of the
26 following occur:

1 a. Defendant fails to make any required payment such
2 that he becomes more than thirty (30) days in arrears;

3 b. It is determined by the Court, after notice and an
4 opportunity to be heard/ that defendant has committed a material
5 violation of the permanent injunction hereinafter set forth and
6 contained in said judgment;

7 c. Plaintiff proves and reduces to judgment any claim
8 against defendant involving copyright infringement, trademark
9 infringement, theft of trade secrets or defamation of plaintiff,
10 any other Church of Scientology entity, or any officer or agent
11 of plaintiff or such other entity in their capacity as an officer
12 or agent.

13 5. At least thirty (30) days prior to publication of the
14 book referenced in paragraph 3(a), defendant shall provide a full
15 and complete copy of the text of said book to plaintiff.
16 Plaintiff may review the text, but plaintiff's approval or
17 consent shall not be required prior to publication. In the event
18 defendant realizes a net profit from publication of the book,
19 plaintiff shall be entitled to receive the entirety of such net
20 profit.

21 6. A permanent injunction consistent with that sought by
22 plaintiff in its complaint shall be entered against defendant and
23 any person or entity acting in concert with him, and the terms of
24 said injunction shall be set forth in and be a part of said-
25 judgment. In addition to the works identified in plaintiff's
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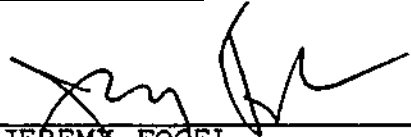
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complaint, said injunction also shall protect any other copyrights owned by plaintiff or any other Church of Scientology entity. Plaintiff shall endeavor to provide defendant with written notice which reasonably describes the nature and identity of copyrighted works or other materials not identified in plaintiff's complaint or in other pleadings on file in this action. In the event that plaintiff does not provide such a description as to any works or materials within the scope of the injunction, in any enforcement proceedings plaintiff shall have the burden of proving that defendant had actual or constructive knowledge that the works or materials were within the scope of the injunction.

7. Each party shall bear its or his own attorney's fees and costs in this action.

8. This order shall serve as notice of the Court's ruling, and because it is a written memorialization of the parties' binding agreement recited on the record in open court on May 12, 1998, it shall be effective nunc pro tunc to, said date.

Dated: September 11, 1998



JEREMY FOGEL
United States District Judge

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FILED
AUG 12 1999
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

M. A. W.
EXHIBIT NO. 9
9/24/99
R. BRAMANTI

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RELIGIOUS TECHNOLOGY CENTER, a
California non-profit corporation,

Plaintiff,

v.

GRADY WARD, an individual,

Defendant.

No. C-96-20207 RMW EAI

ORDER DENYING DEFENDANT'S
MOTION FOR PROTECTIVE ORDER RE
NON-PARTY DISCOVERY

Presently before this Court is Defendant Grady Ward's motion for protective order regarding non-party discovery. Defendant filed its motion on May 13, 1999. Plaintiff filed its opposition on June 7, 1999, to which Defendant filed a Reply on June 16, 1999. A hearing was noticed on this matter for July 12, 1999, but Defendant was unable to attend. Thereafter, the Court decided to take the matter under submission on the papers.

In his motion, Defendant asks this Court for a protective order staying all non-party discovery. The instant motion was filed after Plaintiff served a subpoena noticing third party Robert

1 Minton for deposition in Boston, Massachusetts. Plaintiff represents that it has not noticed any other
2 third-party discovery and does not presently intend to do so. The parties dispute the relevance and
3 appropriateness of Mr. Minton's deposition at this stage of the litigation.

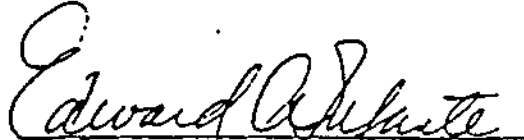
4 Having considered the written submissions, the Court finds that Defendant has not shown
5 good cause sufficient to justify a protective order under Fed. R. Civ. P. 26(c). Accordingly, the
6 Court hereby DENIES Defendant's motion for protective order regarding non-party discovery.

7 IT IS SO ORDERED.

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DATED

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EDWARD A. INFANTE
United States Magistrate judge