IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION FOUR

Civ. No. B 069450
(Super. Ct. No. BC 052395)

CHURCH OF SCIENTOLOGY INTERNATIONAL,

Plaintiff-Respondent

-vs-

GERALD ARMSTRONG,

Defendant-Appellant.

On Appeal From Superior Court Of The State Of California
County of Los Angeles
The Honorable Ronald M. Sohigian

APPELLANT'S OPENING BRIEF

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APPELLANT'S OPENING BRIEF

INTRODUCTION

Appellant Gerald Armstrong appeals the issuance of a preliminary injunction by the Honorable Ronald M. Sohigian of the Los Angeles Superior Court in favor of respondent Church of Scientology International ("Scientology").

Despite the fact that the trial court granted very little of the injunctive relief Scientology sought, for the reasons stated below the injunction is illegal.

The settlement agreement the injunction in part enforces was procured by fraud, duress and the compromise of appellant's own attorney who also represented well over a dozen signing plaintiffs in the same "global settlement." None were represented by independent counsel. Flynn, who himself was a plaintiff, gained the most by the settlement, and at no time advised Armstrong that pursuant to the terms of the settlement Scientology could say whatever slander it wanted about Armstrong while he had to remain mute.

The injunction violates Armstrong's First Amendment Rights

to Freedom of Speech and Association and is a violation of Fourteenth Amendment Right to Equal Protection as it creates two classes of litigants. Those who have the money can buy Armstrong's testimony because he can only testify when compelled by Court Order. Those who cannot pay for Court Orders must go without the foremost expert on Scientology in the world.

It is Armstrong's special first-hand knowledge of a criminal organization that has been judicially suppressed through the mechanism of a preliminary injunction at issue here. Scientology would hold Armstrong silent while it slanders him - making him a "dead agent" - with impunity in order to further foist distortion and misrepresentation upon the world.

The injunction deprives the public of expert information and competent testimony an organization long-recognized as criminal, that preys on the weak, lost and lonely.

The injunction undermines the integrity of the judicial system and is an affront to honesty and fair play.

STATEMENT OF THE CASE

On February 4, 1992, Scientology filed its verified complaint for damages and for preliminary and permanent injunction against defendant Gerald Armstrong in Marin County Superior Court Action No. 152229. On March 30, 1992 the Marin court granted Armstrong's motion to transfer to the Los Angeles County Superior Court where it became Action No. BC 052395. During the pendency of Scientology's motion for injunctive relief, and in order to maintain the status quo, but specifically stating there was no adjudication on the merits, the Marin Court granted a temporary restraining order (16) [1]/ which was ultimately dissolved in Los Angeles.

On May 7, 1992, Scientology filed its Amended Memorandum of

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[1] All citations designated (___) are to the particular sequential page number of the Appendix Filed In Lieu Of Clerk's Transcript pursuant to California Rule of Court 5.1.

Points and Authorities in Support of Plaintiff's Motion for Preliminary Injunction for Breach of Contract (1-29), and Armstrong filed his Opposition to Motion for Preliminary Injunction. (30-50) Scientology replied on May 20, 1992. (51-63) The matter was heard on May 26 and 27, 1992 by the Honorable Ronald M. Sohigian (RT 5/26/92 and 1594-1713) who issued a preliminary injunction by his minute order dated May 28, 1992. (1714-17) Notice of ruling was given on June 5, 1992 in conjunction with the posting of a $70,000.00 bond. (1718-27)

Armstrong's Notice of Appeal was timely filed on July 30, 1992. (1728-30)

STATEMENT OF APPEALABILITY

Since this matter involves the granting of an injunction, it is the proper subject of an appeal. Code of Civil Procedure section 904.1 (f).

I. STATEMENT OF FACTS

A. Gerald Armstrong, The Scientologist

In consequence of being a member of the Scientology Organization for 12 years, Gerald Armstrong gained first-hand knowledge regarding both the nature of the organization and the methods of its day-to-day operations. Although Armstrong ultimately learned, that L. Ron Hubbard ("LRH") was "virtually a pathological liar when it [came] to his history, background, and achievements" (474-75, 485-89, 1004, 1008-14), at the outset of his involvement it was Hubbard's lies which induced his affiliation. (1004-08, 1067)

Armstrong learned that after inducing the affiliation of its members by various deceptions, Scientology continually "violat[ed] and abus[ed] its own members' civil rights, . . . with its "Fair Game" doctrine [and] harass[ed] and abuse[ed] those persons not in the Church whom it perceive[d] as enemies." (474) The "Fair Game Policy," a part of Scientology's system of discipline and punishment, states:

> "Enemy - SP (Suppressive Person) Order. Fair Game. May be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed."

(1036-1037)

Scientology also abused its members' civil rights through breaching its promises that the personal information it extracted from adherents through "auditing" [2]/ would be kept confidential. Instead, it used such information for the purposes of domination, extortion and blackmail. (734-74, 1039-41) Auditing was also employed to eliminate the members' ability to critically reason, (1038, 1081), despite Scientology's public claim that its purpose was to free individuals. (1086)

Armstrong possesses first-hand information regarding the visible structure of Scientology, and how the leadership ran Scientology through internal organizations, such as the Guardian's Office, the Sea Organization and the Commodore's Messenger Organization, which managed, operated and controlled all of Scientology regardless of any particular corporate designation. (475, 997, 1023-30, 1045-46). He knew that LRH's representation to the general public and the Scientology membership that "the fees you pay for service do not go to me" was false and that LRH lived in splendor while the organization staff lived like slaves. (1032-34)

Armstrong participated in and drilled hundreds of people in

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[2] During the process of "auditing" in Scientology, a person being "audited," a "penitent," communicates to the clergyman, counselor, or therapist, the "auditor," his innermost thoughts and relates incidents from his life which are emotionally charged, embarrassing or for which he could be blackmailed. The auditor writes down what the penitent says in "auditing reports." The auditor demands and records details such as time and place when an incident occurred, who was present, who knew about the incident, their relationship to the penitent and their address or general location. These "auditing reports" form, along with the auditor's notes and instructions made after the auditing sessions, the penitent's auditing files. (1081)

institutionalized schemes of practiced deception called "shore stories" or "acceptable truths," which LRH claimed were required to combat the "enemy." (1051, 1016-19, 787-88)

Armstrong was assigned to the Intelligence Bureau of the Guardian's Office [3]/ headed by LRH and his wife and then posted as LRH's communications aide. (996) During this time he coded and decoded Guardian's Office telexes, and maintained LRH's operations files including those which ordered infiltration of the federal, state and local government offices, and the theft of documents. Armstrong also handled LRH's telexes and dispatches ordering corporate manipulations which showed an absence of corporate integrity among the Scientology organizations.(1045-46)

LRH ordered Armstrong and his wife into the Rehabilitation Project Force ("RPF"), which was "a virtual prison Hubbard had created for any Sea Org members whom he considered to be in violation of or 'counter-intention' ("CI") to his orders or policies." (997; 738; 1048-49) The purpose of the RPF was to control members, who were physically held and not free to leave, break their will and obtain free labor. (740, 1050) Armstrong was imprisoned within the RPF for 17 months on one occasion and 8 months on a second. (739, 997, 999, 1048)

Armstrong personally participated in the massive destruction of evidence ordered in anticipation of a raid by the F.B.I. during which he came across LRH's life archive. (480-81, 485-86, 1000-01) Throughout 1980 and 1981, Armstrong assembled an

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[3] "The Guardian's Office is charged with the protection of Scientology. The Guardians handle intelligence matters including covert operations to acquire Government documents critical of Scientology, internal security within Scientology, and covert operations to discredit and remove from positions of power all persons whom Scientology considers to be its enemies." United States v. Heldt (1981) 668 F.2d 1238, 1247, cert. denied (1982) 102 S.Ct. 1971. The Guardian's Office executed tremendous control throughout all of Scientology, and until 1981, was the most powerful of LRH's two main control lines. (1023-28)

archive of 500,000 pages of documentation of LRH's life, writings and accomplishments. (1003) In October 1980, LRH contracted with an independent author, Omar V. Garrison, to write his biography. (1004) Armstrong became Garrison's "research assistant." (1004; 483-85)

During his biographical research, Armstrong discovered that LRH and Scientology had continuously lied about LRH's past, credentials and his accomplishments. (486, 1008-14) As the wide gap between LRH's claims about himself and the reality evidenced by the documentation Armstrong had assembled became manifest, he attempted to convince Scientology executives to change the biographical materials being published and disseminated about LRH so that they would be truthful. (1004; 486-87)

In response to Armstrong's requests that Scientology tell the truth about Hubbard, a leader ordered that Armstrong be "security checked. (487) Sec checking is a brutally accusative interrogation in which the E-Meter, the electrometer used in Scientology auditing, is employed as a lie detector and tool of intimidation. Upon learning that his sec checking had been ordered, Armstrong and Jocelyn, his wife, left Scientology. (1015)

Following Armstrong's departure, Scientology sued him, and hired private investigators who assaulted him, ran into him bodily with a car, attempted to involve him in a freeway accident, and followed and harassed him day and night for over one month. Scientology made four attempts to bring false criminal charges against him, destroyed his marriage, used his best friend to set him up in an intelligence operation, and had its members, lawyers and private investigators make false statements against him. (1053, 492-93)

B. <u>Scientology Sues Armstrong The First Time And Loses</u>

On August 2, 1982, Scientology sued Armstrong in L.A.S.C. No C420153 ("<u>Armstrong I</u>") for conversion of certain papers which he had archived as part of the Hubbard biography project. After a

lengthy trial, Judge Paul G. Breckenridge, Jr., filed his Memorandum of Intended Decision in Armstrong's favor on June 22, 1984. (467) Rejecting Scientology's effort to silence Armstrong and his counsel, (see 1202-1226), he stated:

> Defendant and his counsel are free to speak and communicate upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed. . . . defendant and his counsel may discuss the contents of any documents under seal or of any matters as to which this court has found to be privileged as between the parties hereto, with any duly constituted Governmental Law Enforcement Agency or submit any exhibits or declarations thereto concerning such documents or materials, without violating any order of this court.

(469) Judge Breckenridge found the facts presented by Armstrong to be true and incorporated Armstrong's trial brief as an appendix to its decision. (470) He characterized Scientology as malevolent, in part because the organization "or its minions is fully capable of intimidation [of witnesses, including Armstrong] or other physical or psychological abuse if it suits their ends" (474), and provided the following factual findings:

> In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract a maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect." [footnote omitted] From the evidence presented to this court <u>in 1984</u>, at the very least, <u>similar conclusions can be drawn</u>.
>
> In addition to <u>violating and abusing</u> its own members <u>civil rights</u>, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The <u>organization is clearly schizophrenic and paranoid</u>, and this bizarre combination seems to be a reflection of its founder LRH [L.

Ron Hubbard]. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile.

(Emphasis added.) (474)

In contrast to his findings regarding Scientology, Judge Breckenridge found Armstrong and his witnesses to be credible and sympathetic. He wrote:

> As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Homer Schomer to be credible, extremely persuasive and the defense of privilege or justification established and corroborated by this evidence . . . In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved [with the highest echelons of power in] the Scientology Organization, is on one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH [L. Ron. Hubbard], and his ideas. Each has manifested a waste and loss or frustration which is incapable of description.

(Emphasis added.) (473)

C. Scientology's Attempt To Frame Michael Flynn [4]

Within four months of Judge Breckenridge's decision, Scientology engaged in a massive "black PR" campaign against Michael Flynn which included the following operation:

> The recent efforts of Hubbard and his Organization include procurement through the payment of $25,000 to an individual currently under indictment for perjury and fraud, of an affidavit claiming that I assisted in the forgery of a two million dollar check belonging to L. Ron Hubbard. The affidavit was procured by one Eugene Ingram who has been removed from the Los Angeles

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[4] This section is based upon the Declarations of Michael J. Flynn, Armstrong's attorney. The Court should note that said declarations, however, were excluded from evidence. The trial court was incorrect however, because said declaration were based upon the personal knowledge of Flynn.

Police Department for aiding narcotics dealers, pimping, and running a house of prostitution. Mr. Ingram procured the affidavit from a citizen of the United Arab Emirates after publicizing a $100,000 reward in full page advertisements in the Boston Globe, the New York Times, and other newspapers.

(1183-84) The foregoing facts were found to be accurate in the reported decision, United States v. Kattar (5th Cir. 1988) 840 F.2d 118, 119-22.

D. Scientology's Attempt To Frame Armstrong

In 1984, after the Breckenridge decision, Scientology also attempted to set up and frame Armstrong, to "dead agent" him. As stated by Scientology in the Miller, Aznaran, and Xanthos litigation (discussed infra.)

> Gerald Armstrong has been an admitted agent provocateur of the U.S. Federal Government who planned to plant forged documents in [Scientology's] files which would then be "found" by Federal officials in subsequent investigation as evidence of criminal activity.

(1546-50; see also (1320). He had been

> "plotting against ... Scientology ... and seeking out staff members who would be willing to assist him in overthrowing [Scientology] leadership. [Scientology] obtained information about Armstrong's plans and, through a police-sanctioned investigation, provided Armstrong with the "defectors" he sought. On November 30, 1984, Armstrong met with one Michael Rinder, an individual whom Armstrong thought to be one of his "agents" (but who in reality was loyal to [Scientology]). In the conversation, recorded with written permission from law enforcement, Armstrong stated the following in response to questions by Mr. Rinder as to whether they had to have actual evidence of wrongdoing to make allegations in Court against [Scientology's] leadership:
>
> Armstrong: They can allege it. They can allege it. They don't even have -- they can allege it.
> RINDER: So they don't even have to -- like -- they don't have to have the documents sitting in front of them and then --
> Armstrong: Fucking say the organization destroys documents. . . . Where are the -- we don't have to prove a goddamn thing. We don't have to prove shit; we just have to allege it.

(Ex. E, Declaration of Lynn R. Farney, ¶ 6.) With such a criminal attitude, Armstrong fits perfectly into Yanny's game plan for the Aznaran case."

(1353-54)

The "written permission from law enforcement" was fraudulent and made without authority. The bogus document was dated November 7, 1984 on the letterhead of Eugene Ingram. (1572)

By public announcement, Los Angeles Chief of Police, Daryl F. Gates, repudiated the "written permission." In part, Chief Gates stated:

> I have directed an official letter to Ingram informing him that the letter signed by Officer Phillip Rodriguez dated November 7, 1984, and all other letters of purported authorizations directed to him, signed by any member of the Los Angeles Police Department, are invalid and unauthorized.

(1574)

Scientology's allegations against Armstrong were thoroughly investigated by the Los Angeles County District Attorney's Office and completely and soundly rejected. (1576-87)

E. The Settlement

In the Armstrong I litigation, on both the complaint and cross-complaint, Armstrong was represented by Boston attorney Michael J. Flynn, who also was Armstrong's employer. (665) In early December 1986, an agreement was reached in Los Angeles by the Scientology Organization and Flynn to settle most of the cases in which Flynn was involved, either as counsel, or as a party. On December 5, 1986, Armstrong, along with nearly a score of other litigants adverse to Scientology - all of whom were represented by Flynn - was flown to Los Angeles to participate in a "global settlement." (667) When Armstrong arrived in Los Angeles from Boston, he knew that settlement negotiations had been going on for months. (762) Upon Armstrong's arrival, he was shown a copy of a document entitled "Mutual Release of All Claims and Settlement Agreement" for the first time, as well as some other documents that he was expected to sign.

When Armstrong read the settlement agreement, he was shocked

and heartsick. The agreement betrayed everything that Armstrong had stood for in his battle opposing Scientology. (760) He told Flynn that the condition, set forth in settlement agreement ¶ 7-D, of "strict confidentiality and silence with respect to his experiences with the [Scientology organization]" was outrageous and not capable of compliance because it involved over 17 years of his life. Armstrong told Flynn that ¶ 7-D would require him to pay $50,000 if he told a doctor or a psychologist about his experiences over those 17 years, or if he put on a job resume the positions he had held while in Scientology. He told Flynn that the requirements of non-amenability to service of process in ¶ 7-H and non-cooperation with persons or organizations adverse to the organization in ¶¶ 7-G and 10 were obstructive of justice. Armstrong told Flynn that agreeing in ¶ 4-B to allow Scientology's appeal of Judge Breckenridge's decision in Armstrong I to continue without opposition was unfair to the courts and all the people who had been helped by the decision. Armstrong said to Flynn the affidavit that Scientology demanded he sign along with the settlement agreement was false. (668, 759)

Right after Armstrong first saw the document, he was told there were a number of other people with claims against Scientology who had already signed and others were being flown in to sign. (762) Flynn told Armstrong that he, and all the other lawyers, wanted to get out of the litigation because it had ruined his marriage and his wife's health. Flynn told Armstrong that all the other witnesses upon whom later he would have to depend wanted to settle, too.

In Flynn's presence, Eddie Walters, another litigant adverse to Scientology, yelled at Armstrong. Walters said everybody wanted out of the litigation, that Armstrong's objections would kill the deal for all of the them, and that Armstrong's objections didn't matter because the settlement was bigger than he was. (762-63) Flynn did not stick up for Armstrong. (764)

Flynn told Armstrong if he did not sign all he had to look forward to would be more years of threats, harassment and misery from Scientology, and everybody else would be very upset. Flynn advised Armstrong that the conditions of the settlement which he found offensive "were not worth the paper they were printed on" and that Scientology's lawyers were aware of Flynn's legal opinion and, nonetheless, wanted such language included. (759) Flynn advised Armstrong that in the event that there was further litigation against Armstrong by Scientology, Flynn would still be there to defend him. (768) Armstrong felt "a great deal" of pressure to sign the agreement, and capitulated. (761, 765-66, 772; 670-71)

It was Armstrong's understanding and intent at the time of the settlement that he would honor the silence and confidentiality provisions of the settlement agreement, and that Scientology would do likewise. (672)

On December 11, 1986, Flynn and Scientology attorneys John G. Peterson, Michael Lee Hertzberg and Lawrence E. Heller appeared, ex parte, before Judge Breckenridge, announced that they had settled Armstrong's Cross-Complaint in Armstrong I (458), and submitted a number of documents for filing. (1235-36, 1238, 1240-41, 1243-45, 1247-49, 1251.) Despite its promises, Scientology never did file the settlement agreement. (1258)

When Judge Breckenridge inquired whether the agreement impacted the appeal of his decision, the attorneys said that the agreement did not (458), despite Paragraphs 4-A and 4-B. (75-76) None of the attorneys advised Judge Breckenridge of their side stipulation that any retrial of Armstrong I ordered by the Court of Appeal would limit damages claimed by Scientology to $25,001, (1253) [5] and they failed to advise him there was another side

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[5] Said stipulation, signed by Michael Flynn on Armstrong's behalf and by John Peterson and Michael Hertzberg for Scientology and Mary Sue Hubbard, states: "The Church of Scientology of California, Mary Sue Hubbard, and Gerald

agreement between Flynn and Scientology attorneys Cooley and Heller whereby they agreed to indemnify Flynn if the Court of Appeal reversed Armstrong I and they retried the case and won. (1255-56)

Moreover, prior to and at the time of the settlement Armstrong was not aware of the side agreements between his lawyers and the lawyers for the organization that considered Gerald Armstrong as their enemy! (712-13, 715; 771-72)

On December 18, 1986, the Court of Appeal dismissed appeal No. B005912 as premature because Armstrong's cross-complaint remained to be tried. (1260-73) [6]/

On January 30, 1987, Scientology filed an Unopposed Motion to Withdraw Memorandum of Intended Decision in Armstrong I. (1279-83) which Judge Breckenridge denied. (1285) Scientology then filed its second appeal in Armstrong I. (1287) On July 29, 1991, the Court of Appeal affirmed Judge Breckenridge's decision. Church of Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060, 283 Cal.Rptr. 917.

F. Scientology's Post Settlement Breaches

1. The Corydon "Dead Agent" Pack

In 1987, less than one year after the agreement was signed,

Armstrong, by and through their undersigned counsel, hereby stipulate that in any retrial ordered by any appellate court in Church of Scientology of California v. Gerald Armstrong, LASC No. 420153, the total damages awarded to the Plaintiff Church of Scientology of California and Plaintiff in Intervention Mary Sue Hubbard, combined for any and all causes of action, shall not exceed twenty five thousand and one dollars ($25,001.00)."

[6] The Court of Appeal would not have been advised of the resolution of the underlying Cross-Complaint in Armstrong I - on the existence of which it based its order of dismissal of the appeal - because the fate of said appeal was the subject of Paragraphs 4-A and 4-B of the secret agreement.

Scientology distributed a "dead agent" [7] pack which included an attack on Armstrong. It stated:

> "Corydon has used a description of the RPF provided by Gerry Armstrong, among others. Armstrong's description in this book, however, is completely contrary to his own previous sworn affidavit about the RPF. (Gerry Armstrong's description of the RPF in Corydon's book can also be viewed in light of Armstrong's numerous false claims and lies on other subject matters.)"

(1504) (Emphasis added.)

2. Scientology's Declarations In The Miller Litigation

In October, 1987, Scientology representative Kenneth Long executed five affidavits in Church of Scientology of California v. Miller, High Court of Justice, Chancery Division, No. 1987 C. No. 6140, wherein Long solely discussed his characterizations of Armstrong's activities that had been at issue in the Armstrong I litigation, and thus included within the scope of the settlement agreement. (See Appendix pp. 1506-23; 1525-44; 1546-50, 1555-62, 1564-70)

Long's third affidavit falsely charged that:

> Gerald Armstrong has been an admitted agent provocateur of the U.S. Federal Government who planned to plant forged documents in [Scientology's] files which would then be "found" by Federal officials in subsequent investigation as evidence of criminal activity. (1549)

In another affidavit filed in the Miller case on October 5, 1987, Sheila M. Chaleff also falsely stated:

> Mr. Armstrong is known to me to be a US government informant who has admitted on video tape that he intended to plant

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[7] "A 'dead agent' is a concept created by Hubbard in which an agent who is supposedly spreading stories about you, a lie, an untruth in his story is found. And that is documented. [¶] And then that documented fact is circulated to all of the people to whom the agent has communicated, and then he will become essentially dead, he will be killed by those people who have earlier trusted him. So you've destroyed his credibility and as an agent he is dead. [¶] And this pack of materials was a dead agent pack put out to dead agent Bent Corydon. Bent Corydon had written a book about Hubbard, and this is a pack of materials to discredit Bent Corydon." (791)

forged documents within the Church of Scientology and then using the contents to get the Church raided where these forged documents would be found and used against the Church. (1553)

3. Heller's Declaration And Argument In The Corydon Litigation

On or about November 1, 1989, in the case entitled Corydon v. Church of Scientology International, Inc., et al., LASC No. C694401, Scientology attorney Lawrence E. Heller filed a Notice of Motion and Motion of Defendant Author Services, Inc. to Delay or Prevent the Taking of Certain Third Party Depositions by Plaintiff. (1294-1305) In his memorandum, Heller discussed the "block settlement" of which the Armstrong agreement was a part:

> One of the key ingredients to completing these settlements, insisted upon by all parties involved, was strict confidentiality respecting: (1) the Scientology ... staff member's experiences within ... Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members ...; and (3) the terms and conditions of the settlements themselves. Peace has reigned since the time the interested parties entered into the settlements, all parties having exercised good faith in carrying out the terms of the settlement, including the obligations of confidentiality. [Original emphasis.]

(1297) In his sworn declaration, attorney Heller testified:

> I was personally involved in the settlements which are referred to in these moving papers which transpired some two and one-half years ago. . . . a "universal settlement" was ultimately entered into between the numerous parties. The universal settlement provided for non-disclosure of all facts underlying the litigation as well as non-disclosure of the terms of the settlements themselves. **The non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties involved.** [Original emphasis.]

(1301-02)

4. Scientology's Complaint Against The IRS

On August 12, 1991, Scientology filed a complaint styled Church of Scientology International v. Xanthos, et al., in United States District Court, Central District of California, No. 91-4301-SVW(Tx). (1307-47) Therein, Scientology stated:

> The infiltration of [Scientology] was planned as an undercover operation by the LA CID along with former [Scientology] member Gerald Armstrong, who planned to seed [Scientology] files with forged documents which the IRS could then seize in a raid. The CID actually planned to assist Armstrong in taking over the [Scientology] hierarchy which would then turn over all [Scientology] documents to the IRS for their investigation.

(1320)

5. The Aznaran Litigation

On or about August 26, 1991, Scientology filed its Supplemental Memorandum in Support of Defendants' Motion to Dismiss Complaint with Prejudice in Aznaran v. Church of Scientology of California, et al. United States District Court, Central District of California, No. CV-88-1786-JMI(Ex). (1349-59) Therein, a Scientology attorney stated that in 1984 Armstrong was

> "plotting against ... Scientology ... and seeking out staff members who would be willing to assist him in overthrowing [Scientology] leadership. [Scientology] obtained information about Armstrong's plans and, through a police-sanctioned investigation, provided Armstrong with the "defectors" he sought. On November 30, 1984, Armstrong met with one Michael Rinder, an individual whom Armstrong thought to be one of his "agents" (but who in reality was loyal to [Scientology]). In the conversation, recorded with written permission from law enforcement, Armstrong stated the following in response to questions by Mr. Rinder as to whether they had to have actual evidence of wrongdoing to make allegations in Court against [Scientology's] leadership . . .
>
> (Ex. E, Declaration of Lynn R. Farney, ¶ 6.) With such a criminal attitude, Armstrong fits perfectly into Yanny's game plan for the Aznaran case."

(1353-54)

Armstrong was cleared by the Los Angeles District Attorney after a thorough - and Scientology generated - investigation. (1576-87)

G. Armstrong's Post Settlement Breaches

Scientology's position at the hearing below was that Armstrong violated paragraphs 7-G and 7-H of the settlement

agreement. (81-82) The violations were predicated upon the facts that Armstrong had worked for two days in the office of Joseph A. Yanny and had executed two declarations to be filed in the Aznaran case (122-23; 128; 136-38), had later executed a declaration on Yanny's behalf that was filed in Religious Technology Center v. Yanny, LASC No. BC 033035, (124-34), and had worked as a paralegal for Ford Greene in the Aznaran case (143-45; 159-64; 169) in which Armstrong filed another declaration on the Aznarans' behalf. (147-57; RT 5/27/92 at 47)

LEGAL ARGUMENT

II. THE INJUNCTION SHOULD BE DISSOLVED

A. STANDARD OF REVIEW

1. Abuse Of Discretion

> "'[T]rial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued. [Citations.]' (IT Corp v. County of Imperial (1983) 35 Cal.3d 63, 69-70.) 'On appeal, the question becomes whether the trial court abused its discretion in ruling on *both* factors.' (Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, 286-87.)"

Ketchens v. Reiner (1987) 194 Cal.App.3d 470, 474.

Just as when a claim involves a facial attack on the constitutionality of an ordinance enforced by an injunction, the reviewing court's consideration of whether the trial court abused its discretion as to the likelihood of the plaintiff's prevailing on the merits can invoke a determination of the constitutionality of the contractual provisions injunctively enforced. Id.

"The action of the state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment." Shelley v. Kraemer (1918) 334 U.S. 1, 13. Included within the scope of state action is that which abrogates First Amendment rights. Id.

at 17.

Indeed, the appellate court can proceed to determine the merits of a facial constitutional attack without analyzing whether the trial court abused its discretion under the traditional two-part test. Cohen, supra, 40 Cal.3d at 287; Palos Verdes Shores Mobile Estates, Ltd. v. City of Los Angeles (1983) 142 Cal.App.3d 362, 368; Ortiz v. Woods (1982) 129 Cal.App.3d 672, 676; North Coast Coalition v. Woods (1980) 110 Cal.App.3d 800, 804-05. As Justice Ashby has explained:

> Occasionally, however, the likelihood of prevailing on the merits depends upon a question of pure law rather than upon evidence to be introduced at a subsequent full trial . . . If such a question of pure law is presented, it can sometimes be determinative over the other factor, for example, when the defendant shows that the plaintiff's interpretation is wrong as a matter of law and thus the plaintiff has no possibility of success on the merits.

Bullock v. City & County of San Francisco (1990) 221 Cal.App.3d 1072, 1094.

As will be seen below, based upon the facts set forth above, the case at bar can be resolved in this court on its merits.

2. The Constitutionality Of The Contractual Terms Enforced By Injunction Is Susceptible Of De Novo Review

The interpretation of a written document is a question of law, not of fact. In the absence of conflicting evidence, a reviewing court must independently interpret the written instrument. Parsons v. Bristol Development Co. (1965) 62 Cal.2d 861, 866. Thus, the interpretation of a written instrument presents a question of law to be decided de novo by an appellate court. Broffman v. Newman (1989) 213 Cal.App.3d 252, 257.

> "Even where extrinsic evidence was offered in the trial court, a reviewing court is not bound by the trial court's findings if the extrinsic evidence is not in conflict, is not substantial, or is inconsistent with the only interpretation to which the instrument is reasonably susceptible."

Okun v. Morton (1988) 203 Cal.App.3d 805; SCLC v. Al Malaikah

Auditorium Co. (1991) 230 Cal.App.3d 207, 219.

Since, below, Armstrong did not contest his actions which Scientology claimed were breaches of the settlement agreement, and since Scientology did not contest the truth of Armstrong's characterizations of its actions or those of Armstrong's former counsel, Michael Flynn, there is no conflicting evidence. Thus, this case is susceptible of de novo review.

B. The Preliminary Injunction

Judge Sohigian ordered the preliminary injunction as follows:

> Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:
>
> Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.
>
> Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.
>
> The court does not intend by the foregoing to prohibit defendant Armstrong from : (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order." (1715)

III. THE ISSUANCE OF AN INJUNCTION IS AN UNCONSTITUTIONAL PRIOR RESTRAINT WHICH IS PREDICATED UPON THE SUPPRESSION OF THE CONTENT OF ARMSTRONG'S SPEECH

A. Enforcement By Injunction Violates Armstrong's First Amendment Rights

The First Amendment right to free speech is applicable to the states through the Fourteenth Amendment. Gitlow v. New York (1925) 268 U.S. 652, 666. The U.S. Supreme Court has stated that "Prior restraints on speech and publication are the least tolerable infringement on First Amendment rights." Nebraska Press Association v. Stuart (1976) 427 U.S. 539, 559. Thus, "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns (1976) 427 U.S. 347, 373-74, 49 L.Ed.2d 547; C.B.S., Inc. v. U.S. District Court (9th Cir. 1984) 729 F.2d 1174, 1177. An injury is irreparable only if it cannot be undone through monetary remedies. Cate v. Oldham (11th Cir. 1983) 707 F.2d 1176, 1189. "Under our constitutional system prior restraints, if permissible at all, are permissible only in the most extraordinary of circumstances." C.B.S., 729 F.2d at 1183. Therefore, prior restraint on expression comes with a "heavy presumption" against constitutional validity. Organization For A Better Austin v. Keefe (1971) 402 U.S. 415, 419. In addition, the Supreme Court's "decisions involving associational freedoms establish that the right of association is a 'basic constitutional freedom' [citation] that is 'closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society.'" Buckley v. Valeo (1976) 424 U.S. 1, 25.

The effect of the injunction issued below is to prevent Armstrong both from freely speaking with the class of people who have been injured and harmed by Scientology, as well as associating with them. Under the same principles employed by Judge Sohigian a rape victim could be enjoined from associating and communicating with other rape victims because she signed a

gag agreement with her attacker. It makes no sense that a criminal organization [8]/ can buy the silence of its victims and then use the power of the judiciary to enforce it.

> Even where individuals have entered into express agreements not to disclose certain information, either by consent agreement [citation]; or by an employment contract and secrecy oath [citation], the courts have held that judicial orders enforcing such agreements are prior restraints implicating First Amendment rights.

In Re Halkin (D.C. Cir. 1979) 598 F.2d 176, 190.

Professor Melville B. Nimmer, in Freedom of Speech: A Treatise on the First Amendment (1984) put the value of freedom of speech and thought as follows:

> But it is not just the search for political truth for which freedom of speech is a necessary condition. The search for all forms of "truth," which is to say the search for all aspects of knowledge and the formulation of enlightened opinion on all subjects is dependent upon open channels of communication. Unless one is exposed to all the data on a given subject it is not possible to make an informed judgement as to which "facts" and which views deserve to be accepted. If any governmental body, be it a legislative body, a censorship board, the police department or a court of law, decides that **the public should not have access to some of the data on any given topic because the communication of such data will prove injurious in some manner, to that extent the public's ability to make an informed judgement on such topic is crippled by a distortion of the data before it.**

M.B. Nimmer, Freedom of Speech: A Treatise on the First Amendment (1984) § 1.02[A] p. 1-7.

It is precisely such a distortion as identified by Professor Nimmer that the injunction has engendered by the enforcement of the settlement agreement. Ironically, the trial court realized that the injunction dealt with the suppression of the content of Armstrong's speech.

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[8] See, United States v. Heldt (1981) 668 F.2d 1238, 1247, cert. denied (1982) 102 S.Ct. 1971; and Appendix pp. 492-93, 738-40, 996-97, 1000-01, 1045-46.

> . . . The information that's being suppressed in this case, however, is information about extremely blame-worthy behavior of the plaintiff which nobody owns; it is information having to do with the behavior of a high degree of offensiveness and behavior which is meritorious in the extreme.
>
> It involves abusing people who are weak. It involves taking advantage of people who for one reason or another get themselves enmeshed in this extremist view in a way that makes them unable to resist it apparently. It involves using techniques of coercion.

(1700)

Judge Sohigian recognized, moveover, that in addition to being malevolent, Scientology also acts dishonestly:

> There appears to be in the history of their behavior a very, very substantial deviation between their conduct and standards of ordinary, courteous conduct and standards of ordinary, honest behavior. They're just way off in a different firmament . . . They're the kind of -- it's the kind of behavior which makes you sort of be sure you cut the deck and be sure you've counted all the cards. If you're having a friendly poker game you'd make sure to count all the chips before you dealt any cards.

(1701)

The injunction at issue prohibits Armstrong from exercising his right to speak on the basis of content, that is, unless Armstrong is subpoenaed, he may not speak on the subject of Scientology or L. Ron Hubbard. Such content control is, however, anathema to our constitutional scheme. It allows an organization which abuses "people who are weak" by the employment of "techniques of coercion" to silence one of the most effective and knowledgeable individuals able to articulate how Scientology affects individuals "in a way that makes them unable to resist it apparently."

> [A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, or its content. [Citations.] To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from

government censorship. The essence of this forbidden censorship is content control. Any restriction of expressive activity because of its content would completely undercut the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open. [Citation.]

Police Department v. Mosley (1972) 408 U.S. 92, 96.

The injunction enforcing Scientology's settlement provisions is the most blatant form of content control. In light of the evidence before the trial court, it is clear that the public has a substantial interest in learning the truth about Scientology from Gerald Armstrong.

Indeed, in the litigation in America concerning Russell Miller's book, Bare-Faced Messiah (1987 Penguin Books) [9]/ Judge Leval wrote:

> Hubbard is unquestionably a figure of legitimate public concern. As the founder of a religion drawing vast numbers of adherents, as the author of instructive books which have sold millions of copies, and as a figure who at times in his life sought a high degree of publicity and at other times sought seclusion and secrecy, he is a subject of great public interest. If it is arguable (which I do not judge)

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[9] Not only was Bare-Faced Messiah the litigation in which the Long Affidavits were filed concerning Armstrong (1506-70), the preface of the book was dedicated almost entirely to Armstrong who is quoted as saying:

> "I realized I had been drawn into Scientology by a web of lies, by Machiavellian mental control techniques and by fear. The betrayal of trust began with Hubbard's lies about himself. His life was a continuing pattern of fraudulent business practices, tax evasion, flight from creditors and hiding from the law. He was a mixture of Adolf Hitler, Charlie Chaplin and Baron Munchausen. In short, he was a con man."

Bare-Faced Messiah, at pp. 5-6. This man is now silenced by an injunction which allows Scientology to say what it wants when it wants regarding him in all its litigations while he can only respond if subpoenaed to testify, or face contempt and possible jailing. (The court is requested to take judicial notice of the fact that an OSC re Contempt is currently set for hearing below on February 16, 1993.)

that his career and the Scientology religion have been advanced through deception, this is certainly a subject appropriate for critical exploration.

New Era Publications International v. Henry Holt and Company, Inc. (1988 S.D.N.Y.) 695 F.Supp. 1493, 1506.

B. Enforcement By Injunction Violates The Public's First Amendment Rights

The First Amendment values at issue are not limited to Armstrong. They include the American public as well.

> The freedom of speech and of the press, which are secured by the First Amendment against abridgment by the United States, are among the personal rights and liberties which are secured to all persons by the Fourteenth Amendment by a state. [¶] The safeguarding of these rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the process of education and discussion is essential to free government. Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evil averted by the courageous exercise of the right of free discussion. Abridgment of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to the power of correcting error through the processes of popular government.

Thornhill v. State of Alabama (1940) 310 U.S. 88, 95. (Emphasis added.)

Since the goal of the First Amendment is "producing an informed public capable of conducting its own affairs," Red Lion Broadcasting v. F.C.C. (1969) 395 U.S. 367, 392, "[t]he protection of the public requires not merely discussion, but information." New York Times v. Sullivan (1964) 376 U.S. 254, 272. Thus, the mark at which the First Amendment aims is "the widest possible dissemination of information from diverse and antagonistic sources." Associated Press v. United States 326 U.S. 1, 20.

Since the "First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others," City Council v. Taxpayers for Vincent

(1984) 466 U.S. 789, 804, it seeks to "preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance the monopolization of that market, whether it be by Government itself or a private licensee." Red Lion, 395 U.S. at 390.

It is precisely what the First Amendment forbids that the trial court has done. Scientology is assisted in suppressing the truth known by Armstrong so that it can monopolize and inhibit the "marketplace of ideas" where the American public will judge it. By judicial enforcement of the settlement agreement, free speech through the medium of litigation, on issues critically affecting the public, through Gerald Armstrong, is censored. Thus, Scientology will continue to victimize "weak people" with relative impunity. This is intolerable.

Scientology apparently bought Armstrong's right to free speech, but it cannot get the judiciary to do the dirty work of imposing prior restraints for it so that it can violate the rights of others with a minimization of accountability for the consequences of its conduct.

> "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

Whitney, 274 U.S. at 377. "Speech concerning public affairs is more than self-expression; it is the essence of self-government. It is the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences." Ibid. The scope of the First Amendment "goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which the members of the public may draw." First National Bank of Boston v. Bellotti (1978) 435 U.S. 765, 783. The First Amendment protects the public constitutional interest in receiving information. Kleindienst v. Mandel (1972) 408 U.S. 753, 762-63.

> Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.

Buckley, supra, 424 U.S. at 67.

The trial court's muting of Armstrong is the enforced deafening of the public. It is wrong to allow a criminal organization to buy the silence of its greatest critic, particularly in litigation. The content of speech of the nature at issue in this case cannot be sacrificed on the altar of settlement. Such would be an affront to democracy.

C. Enforcement By Injunction Violates Equal Protection Because It Creates Classes of Litigants Predicated Upon A Classification Based Upon Wealth

The trial court treats some speech on the subject of Scientology differently than others. Thus, this Court must address the injunction in terms of the Equal Protection Clause of the Fourteenth Amendment. The injunction affects Armstrong's right to freely speak through the medium of litigation. This is expressive conduct, speech. Moreover, it does so by a classification formulated in terms of the content of his speech, that is, the prohibition is tied to the subject of L. Ron Hubbard and Scientology. The injunction creates other classifications regarding Armstrong's right to testify. Under oath pursuant to subpoena he may, but by declaration he may not. The difference between the two is money. While depositions cost money, declarations don't.

The crucial question is whether there is an appropriate governmental interest that is suitably furthered by the differential treatment.

The central problem with the injunction is that it limits Armstrong's right to speak in adversary proceedings in terms of the content of his speech. Others may speak of Scientology through declarations; he may not. He may speak on all subjects through declarations, but not on Scientology. The operative

distinctions are (1) the subject of Scientology, and (2) the money required to purchase speech on that subject.

"... [A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its subject matter, or its content." Police Department v. Mosley, supra, 408 U.S. at 95.

Necessarily then, under both the Equal Protection Clause, as well as the First Amendment, the government may not select "which issues are worth discussing or debating" by enjoining Armstrong from discussing Scientology in litigation. Id. at 96. "There is an 'equality of status in the field of ideas,' and government must afford all points of view an equal opportunity to be heard." Ibid. A fortiori, this concept applies in litigation.

Even if the state may have a legitimate interest in controlling the content of Armstrong's speech, and it does not, its justifications must be "carefully scrutinized" and must be "tailored to serve a substantial governmental interest." Id. at 99. In view of the fundamental nature of the rights to free speech, and to association, governmental action which may have the effect of curtailing these freedoms is subject to a standard of review of strict scrutiny. Buckley, supra, 424 U.S. at 25.

The only possible governmental interest supporting the injunction is the settlement of lawsuits. This interest, however, does not carry the weight of Armstrong's speech interest, and the requirement that the only way litigants can have access thereto is to purchase it. The value of Armstrong's speech interest is in providing competent proof and information regarding a criminal organization. The state's interest in settling lawsuits, in this case, through an injunction has resulted in the enforcement of a criminal organization's purchase of the suppression of facts harmful to its antisocial goals.

Since the injunction describes impermissible speech, not in terms of time, place and manner, but in terms of the subject matter of Scientology, it "slips from the neutrality of time,

place and circumstance into a concern about content." Ibid. Allowing Armstrong's speech to take place only pursuant to subpoena - which costs money - does not sanitize the content-control imposed by the injunction.

> [T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed "to secure 'the widest possible dissemination of information from diverse and antagonistic sources,'" and "to assure unfettered exchange of ideas for the bringing about of political and social changes desired by the people." [citations.] The First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend upon a person's financial ability to engage in [or prevent] public discussion.

Buckley, supra, 424 U.S. at 48-49.

Under the circumstances of this case, and in light of Scientology's criminal history, its wholesale violations of citizen's civil rights, and Armstrong's knowledge thereof, settlement does not outweigh censorship. There is a less restrictive alternative - completely free speech - whether by declaration, deposition or at trial.

The right to redress is applicable to the states through the Fourteenth Amendment. DeJonge v. Oregon (1937) 299 U.S. 353, 364-65. The injunction makes a distinction based upon class and wealth. The state is exempted from the requirement to compel Armstrong's testimony - he may speak voluntarily with agents of the state. Ordinary citizens who have been harmed by Scientology, and who do not have the benefit of the power of the state, must pay money in order to obtain what the state can obtain for free. In other words, to obtain Armstrong's knowledge of Scientology, the state is entitled to exercise the constitutional right to redress of grievances for free while an ordinary citizen is restricted from such constitutional exercise of rights based upon wealth because he or she must pay money in order to obtain Armstrong's testimony through expensive

deposition, at trial, or both. The government is not permitted to do this. Douglas v. California (1963) 372 U.S. 353; Harper v. Virginia Board of Education (1966) 383 U.S. 663; Boddie v. Connecticut (1971) 401 U.S. 371.

Indeed, of all the circumstances conceivable, it is a vicious irony that a criminal organization, masquerading in the guise of a religion, which "[i]n addition to violating and abusing its own members civil rights, . . . with its 'Fair Game' doctrine has harassed and abused those persons not in the Church whom it perceives as enemies," (474) can require people to pay for evidence which the government can have for free. As stated by Judge Geernaert when Scientology first attempted to enforce the settlement agreement,

> I know we like to settle cases. But we don't want to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest.

(606) The person who really pays for the injunction at issue is the litigant who doesn't have the financing to pay for testimony.

IV. THE INJUNCTION IS UNCONSTITUTIONALLY OVERBROAD AND IMPERMISSIBLY VAGUE AND THEREFORE VOID

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume than man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the exercise of [those] freedoms." Uncertain meanings inevitably lead citizens to "steer

far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked."

Grayned v. City of Rockford (1972) 408 U.S. 104, 108-09. An additional reason which supports the void for vagueness rule is that such vagueness encourages erratic application and permits and encourages harsh and discriminatory enforcement, particularly against he who merits the displeasure of the authorities. Papachristou v. City of Jacksonville (1972) 405 U.S. 156, 162, 170; Colautti v. Franklin (1979) 439 U.S. 379, 390.

Judge Sohigian's injunction prohibits Armstrong, and Ford Greene, his attorney, from

> "Voluntarily assisting any person (not a governmental organ or entity) intending to make, . . . press . . . arbitrate, or . . . litigate a claim against ['all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel' (72)] regarding such claim or regarding pressing, arbitrating, or litigating it.
>
> Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against ['all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel' (72)]"

The above quoted order is vague and overbroad.

Ford Greene represents the plaintiffs in Aznaran v. Church of Scientology of California, United States District Court, Central District of California, Case No. CV-88-1786-JMI. (159) Were he to comply with the injunction, he would be precluded from representing the Aznarans because he also represents Armstrong. This is a chilling infringement on both the Aznarans' and Armstrong's constitutional right to counsel of their choice. It is an interference with Greene's right to practice law and with Greene's obligation to represent people - who cannot otherwise find counsel willing to face "Fair Game" - against Scientology.

Gerald Armstrong works for Ford Greene. Greene litigates against Scientology. Does Armstrong's employment by Greene

constitute assistance within the terms of the injunction? Is Armstrong in violation of the order when he works on non-Scientology cases, because in so helping Greene carry the load Greene can dedicate more time litigating against Scientology? Is Armstrong in violation of the injunction when he answers the phone and somebody suing Scientology is on the other end? If Armstrong orders office supplies some of which will be used in anti-Scientology litigation, is he in violation? If Armstrong handles outgoing Scientology-related mail? Opens an envelope? Licks a stamp? Goes to the post office? Assembles exhibits to a brief opposing a Scientology motion? Signs a proof of service?

How is Armstrong to ascertain what and who are "all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel[?]" (72)

Finally, Armstrong may engage "in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of" the injunction. (1715) Since the injunction is not clear about what Armstrong can or cannot do, however, this provision, too, is vague and unclear. It restricts his employment, and Greene's law practice.

V. THE INJUNCTION IS VOID SINCE IT IS TOO INDEFINITE AND UNCERTAIN TO BE SPECIFICALLY PERFORMED

Civil Code section 3390 (5) prohibits enforcement by specific performance of "an agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable." When one seeks to obtain specific performance, "a greater degree or amount of certainty is required in the terms of an agreement which is to be specifically executed in equity than is necessary in a contract which is the basis for an action at law for damages." Long Beach Drug Co. v. United Drug Co. (1939) 13 Cal.2d 158, 88 P.2d 698, 701. Thus, even though a contract might be valid, it is not necessarily

specifically enforceable, or the proper subject of a prohibitory injunction due to its intrinsic nature, or due to lack of definiteness. Ibid; Lind v. Baker (1941) 48 Cal.2d 234, 119 P.2d 806, 812; Hunter v. Superior Court (1939) 36 Cal.App.2d 100, 97 P.2d 492, 498.

Even though the trial court rewrote the contract provisions found at 7-G and 7-H of the settlement agreement (81-82), for the reasons discussed above the provisions of the injunction are fraught with uncertainty and therefore not susceptible of specific performance. Thus, there are no "contractual terms which are sufficiently definite to enable the court to know what it is to enforce." Tamarind Lithography Workshop v. Sanders (1983) 143 Cal.App.3d 571, 575; Henderson v. Fisher (1965) 236 Cal.App.2d 468, 477.

The provisions of the injunction are fatally uncertain.

VI. SPECIFIC PERFORMANCE DOES NOT LIE INASMUCH AS IT WOULD REQUIRE PROTRACTED SUPERVISION AND DIRECTION OF THE COURT.

A contract which requires a continuing series of acts and demands cooperation between the parties for successful performance of those acts is not subject to specific performance. Thayler, 255 Cal.App.2d at 303.

> Courts of equity will not decree the specific performance of contracts which, by their terms, stipulate of a succession of acts whose performance cannot be consummated by one transaction inasmuch as such continuing performance requires protracted supervision and direction.

Id. at 255 Cal.App.2d at 304; Whipple Quarry Co. v. L.C. Smith Co. (1952) 114 Cal.App.2d 214, 249 P.2d 854, 855; Lind, 119 P.2d at 813; Hunter, 97 P.2d at 498.

In addition to being overbroad, vague and uncertain, the injunction would require constant supervision to enforce. The court would have to be at the parties' elbow making determinations as to when anything which related to Scientology was sufficiently attenuated therefrom to allow Armstrong to work on it in the course of his employment, or deciding when someone

or something was or was not adverse to, or aligned against Scientology. It is an invitation for Scientology to ensconce itself in Greene's law office. It is impossible for the Court to decipher the ambiguities inherent in the injunction. But even if it could be rationally construed, the injunction could never be enforced.

VII. SINCE THERE IS NO MUTUALITY OF REMEDY, SPECIFIC PERFORMANCE WILL NOT LIE

In bilateral contracts, such as the agreement herein, mutuality of obligation and remedy is necessary because of mutual promises. The doctrine requires that the promises on each side must be binding obligations in order to be consideration for each other. Mattei v. Hooper (1958) 51 Cal.2d 119, 122, 330 P.2d 625; Larwin-Southern Calif. v. JGB Inv. Co. (1979) 101 Cal.App.3d 606, 637, 162 Cal.Rptr. 52. In order for the agreement to be obligatory on either party, it must be mutual and reciprocal in its obligations. Harper v. Goldschmidt (1909) 156 Cal. 245, 104 P. 451.

Paragraphs 4-A and 4-B of the agreement prohibit Armstrong from litigating Scientology's complaint against him on appeal while allowing Scientology to litigate the matter in the appellate courts to the extent it desired. (75-76) Paragraph 7-D prohibits Armstrong from speaking to others about Scientology, but does not prohibit Scientology from talking to others about Armstrong. (77-79) Paragraph 7-E requires Armstrong to deliver documents about Scientology to Scientology, but does not require Scientology to deliver to Armstrong documents it possessed concerning him. (79-81) Paragraph 7-G prohibits Armstrong from assisting or cooperating with persons adverse to, or aligned against Scientology, but did not prohibit Scientology from assisting or cooperating with persons who were aligned against or adverse to Armstrong, to wit, the Long Affidavits. Paragraph 7-H prohibits Armstrong from testifying about Scientology, but did not prohibit Scientology from testifying about Armstrong, to wit,

the Long Affidavits.

There are two provisions in the agreement that are mutual. One is that Armstrong would dismiss his Cross-Complaint in consideration for a payment of money. The other was in Paragraph 7-I (82) which stated that neither party would say anything about the other in future litigation. It was Armstrong's understanding and intent at the time of the settlement that he would honor the silence and confidentiality provisions of the settlement agreement, and that Scientology would do likewise. (672) As to the former, Scientology obtained what it paid for, and as to the latter, Scientology has consistently breached it. Thus, as to the provisions that Scientology seeks to specifically enforce, specific performance can not be had because there is an absence of mutuality.

VIII. ARMSTRONG HAD NO FREEDOM OF CONSENT

A. Duress

Sections 1569 (1) and (3) of the California Civil Code defines duress as the (1) "[u]nlawful confinement of the person of the party, . . ." or (2) "[c]onfinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive." The cases, however, have established much broader definitions, and consequently, the language of the decisions can rarely be reconciled with the statutory language. For example, in Harlan v. Gladding, McBean & Co. (1907) 7 Cal.App. 49, duress means a condition of mind produced by improper external pressure or influence that practically destroys the free will of a person and causes him to do an act or enter into a contract not of his own volition. In Sistrom v. Anderson (1942) 51 Cal.App.2d 213, duress is effectuated by an unlawful threat which overcomes the will of the person threatened and induces him to do an act that he is not bound to do and would not otherwise have done. Steffen v. Refrigeration Discount Corp. (1949) 91 Cal.App.2d 494, states that the test of duress, at its harshest, is what would have influenced the conduct of a

reasonable man. Indeed, the modern tendency is to find duress wherever one, by the unlawful act of another, is induced to make a contract under circumstances which deprive him of the exercise of free will. See Keithley v. Civil Service Board (1970) 11 Cal.App.3d 443; Balling v. Finch (1962) 203 Cal.App.2d 413; Gross v. Needham (1960) 184 Cal.App.2d 446; Lewis v. Fahn (1952) 113 Cal.App.2d 95; Sistrom, 51 Cal.App.2d at 213. Under this standard, duress is to be tested, not by the nature of the threat, but by the state of mind induced in the victim. Balling, 203 Cal.App.2d at 413; Lewis, 113 Cal.App.2d at 95.

In the case at bar, the agreement was made under duress and is, thus, voidable. Specifically, in Paragraph 11-A of the agreement: "The parties to this Agreement acknowledge . . . [t]hat all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will." (84) However, Armstrong testified that he had endured many years of psychological duress and brainwashing from Scientology. Moreover, he described the duress and undue influence to which he was subjected as soon as he had arrived in Los Angeles and was pressured into signing the agreement. (995-1053; see pp. 10-12, supra.)

Accordingly, duress exists to void the agreement. Indeed, Judge Geernaert noted:

> "So my belief is Judge Breckenridge, being a very careful judge, follows about the same practice and if he had been presented with that whole agreement and if he had been asked to order its performance, he would have dug his feet in because that is one of the -- I have seen -- I can't say -- I'll say one of the most ambiguous, one-sided agreements I have ever read. And I would not have ordered the enforcement of hardly any of the terms had I been asked to, even on the threat that, okay, the case is not settled.

(606)

B. Armstrong's Attorney Had A Conflict Of Interest With Both Armstrong And A Number Of The Other Settling Parties

Rule 5-102 of the Rules of Professional Conduct states:

> (A) A member of the State Bar shall not accept professional employment without first disclosing his relation, if any, with the adverse party, and his interest, if any in the subject matter of the employment. A member of the State Bar who accepts employment under this rule shall first obtain the client's written consent to such employment.
>
> (B) A member of the State Bar shall not represent conflicting interest, except with the written consent of all parties concerned.

In the Armstrong settlement, Armstrong was represented by attorney Michael Flynn. Despite an order to do so (1248-49, 1258), the agreement was never placed before the court. (582) Flynn also represented a number of other Scientologists.

Furthermore, Flynn did not put the second settlement agreement (111-16) before the court. In that second settlement agreement the parties acknowledged that they had "been subjected to intense, and prolonged harassment by the Church of Scientology throughout the litigation, and that the value of the respective claims stated therein is measured in part by the length and degree of harassment." (114)

The second secret settlement agreement was entered into by the settling plaintiffs, including Armstrong, and their attorney, Flynn. The egregious conflicts between the plaintiffs and Flynn, and between plaintiffs themselves, are readily apparent from the face of the document. Notwithstanding these facts, the document has only one fleeting reference to consultation with outside counsel. (114) All of these people, including their attorney, had been subjected to the most outrageous deprivations, harassment and intimidation. Each should have been separately represented in the settlement. None were.

Indeed, concerning Armstrong's settlement, attorney Flynn even had a separate side-deal with the Scientology lawyers. If

as a result of the settlement term that Armstrong would not oppose any appeal of the Breckenridge Decision, there was a reversal, damages on retrial against Armstrong would be limited to $25,001 payment for which Scientology would indemnify Flynn. This was never disclosed to Armstrong. Additionally, Flynn told Armstrong that he would represent Armstrong in the future against Scientology, if necessary.

The global settlement, and side-agreements, included Flynn, Armstrong's own attorney who had interests diametrically opposed to those of Armstrong and interests diametrically opposed to those of the other settling former Scientologists. Finally, all of the settling parties had interests that were diametrically opposed as among themselves. Each of them, including Flynn, should have been separately represented. Objectively, none of these settling former Scientologists were capable of representing themselves in this situation. They each required legal counsel with undivided loyalty. What they got, however, was legal counsel who had conflicts between each of his clients and between himself and his clients. No one disputes the Herculean efforts of Michael Flynn against Scientology, but Scientology eventually destroyed Flynn's will to fight. However well he had represented these clients prior to the settlement, he breached all applicable ethical rules in representing himself and all of the settling parties in this global agreement. It was a mammoth conflict of interest for Michael Flynn to represent each of the settling parties in a settlement in which he himself was the largest beneficiary.

Clearly, Armstrong entered the settlement without the benefit of objective counsel. (752-56)

C. Fraud

1. Actual Fraud Exists

The elements of actual fraud, whether in contract or in tort, have been stated as follows: There must be (1) a false representation or concealment of a material fact (or, in some

cases, an opinion) susceptible of knowledge, (2) made with knowledge of its falsity or without sufficient knowledge on the subject to warrant a representation, (3) with the intent to induce the person to whom it is made to act upon it; and such person must (4) act in reliance upon the representation (5) to his damage. Harding v. Robinson (1917) 175 Cal. 534, 538; Wolfe v. Severns (1930) 109 Cal.App. 476, 485; 1 Witkin, Summary of California Law § 393.

The act constituting actual fraud may be concealment or "any other act fitted to deceive." Specifically, "[t]he suppression of that which is true, by one having knowledge or belief of the fact" is actual fraud. Civil Code § 1572 (3); Williamson & Vollmer Engineering v. Sequoia Ins. Co. (1976) 64 Cal.App.3d 261, 273; 1 Witkin, Summary of California Law, § 398. The Restatement points out that concealment is an affirmative act, equivalent to a misrepresentation (Comment a), and that it usually consists either in actively hiding something from the other party, or preventing him making an investigation that would have disclosed the true facts (Comment b).

The purpose of the catch-all statement, "any other act" is suggested in Wells v. Zenz (1927) 83 Cal.App. 137.

> "Fraud is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to get an advantage over another. No definite and invariable rule can be laid down as a general proposition defining fraud, and it includes all surprise, trick, cunning, dissembling, and unfair way by which another is deceived. The statutes of California expressly provide that . . . any other act fitted to deceive is actual fraud."

In this case, actual fraud in both the form of concealment and active misrepresentation exist.

At the time of the settlement Flynn told Armstrong "that in the event that anything happened he would still be there to defend me." (768) The truth, however, was that Flynn had an agreement with Scientology never to represent anyone against the

organization again. [10]/ Flynn even refused to give Armstrong a declaration to use in his own litigation. (767-68)

None of the well over a dozen plaintiffs involved were told that the agreement was not reciprocal, i.e., that Scientology could say whatever it wanted about the signing plaintiffs following the settlement, but that the plaintiffs, including Armstrong, must remain silent. (91, 667-68) "It was [his] understanding and intention at the time of the settlement that [he] would honor the silence and confidentiality conditions of the settlement agreement, and that the organization had agreed to do likewise." (672) Similarly, Flynn failed to disclose to Armstrong the existence of the side agreement for indemnity. (771, 1253, 1255)

Mr. Flynn knew all these material facts yet concealed them from the signing plaintiffs, including Armstrong, with the intent to induce the plaintiffs, including Armstrong, to sign the agreement. In turn, Armstrong, and the other plaintiffs signed the agreements in reliance upon Mr. Flynn's representations, to their detriment. Accordingly, actual fraud exists to void the agreement.

2. **Constructive Fraud Exists**

Constructive fraud consists of (1) "any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him;" (2) "any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud." Civil Code § 1573. Where a confidential or

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[10] This is a violation of Rule of Professional Conduct 1-500 (A) which states: "A member shall not be a party to or participate in offering or making an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement restricts the right of a member to practice law. "

fiduciary relationship exists between the parties, the failure of the person in whom confidence is placed to disclose material facts within his knowledge may constitute constructive fraud within the meaning of Civil Code § 1573 (1). Ford v. Shearson Lehman American Express (1986) 180 Cal.App.3d 1011, 1020; Main v. Merrill Lynch (1977) 67 Cal.App.3d 19, 32; McFate v. Bank of America (1932) 125 Cal.App. 683, 686.

In the present case, constructive fraud also exists. Flynn, who had a fiduciary relationship as their attorney with the signing plaintiffs, including Armstrong, failed to disclose material facts within his knowledge to the signing plaintiffs prior to their signing the agreement. The failure of Flynn, in whom confidence was placed, to disclose such material facts constitutes constructive fraud, thus, voiding the agreement.

IX. TO THE EXTENT THAT THE INJUNCTION IS IN RESTRAINT OF TRADE, IT IS INVALID.

Apparently, Armstrong is enjoined from working for Ford Greene, but only on Scientology cases. Such is an unreasonable restraint of trade.

Business and Professions Code section 16600 provides that, subject to exceptions contained in its chapter, "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." The Restatement 2d, Contracts § 186 states: "(1) A promise is unenforceable on grounds of public policy if it is unreasonably in restraint of trade. (2) A promise is in restraint of trade if its performance would limit competition in any business or restrict the promisor in the exercise of a gainful occupation."

Specifically, Armstrong is employed by Ford Greene. The injunction restricts Armstrong's acts by working for Mr. Greene.

Although covenants not to compete may be enforceable if for a limited time period, such a covenant in perpetuity is not enforceable. Thus, the lifetime prohibition of Armstrong working

as a paralegal is void.

X. SCIENTOLOGY HAS NOT MET ITS BURDEN WHICH WOULD ENTITLE IT TO INJUNCTIVE RELIEF BECAUSE IT IS NOT ENTITLED TO THE EQUITABLE REMEDY OF SPECIFIC PERFORMANCE

Applying Civil Code section 3391 to the circumstances of this case, Armstrong cannot be compelled to specifically perform the agreement. [11]/

An injunction cannot be granted to prevent the breach of a contract, the performance of which would not be specifically enforced. Thayer Plymouth Center, Inc. v. Chrysler Motors Corp. (1967) 255 Cal.App.2d 300, 304; Eichholtz v. Nicoll (1944) 66 Cal.App.2d 67, 151 P.2d 664, 666. Thus, it is rote that "equity will not lend its aid to enforce contracts which upon their face are so manifestly harsh and oppressive as to shock the conscience; it must be affirmatively shown that such contracts are fair and just." Jacklich v. Baer (1943) 57 Cal.App.2d 684, 135 P.2d 179, 183. The rationale for this rule is grounded in a common sense recognition of the rules of fair play.

> It is said . . . that the doctrine that he who seeks equity must do equity means that the party asking the aid of the court must stand in a conscientious relation to his

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[11] In full, Civil Code section 3391 states: "WHAT PARTIES CANNOT BE COMPELLED TO PERFORM. Specific performance cannot be enforced against a party to a contract in any of the following cases:

1. If he has not received an adequate consideration for the contract;
2. If it is not, as to him, just and reasonable;
3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or
4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in the case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

> adversary; that the transaction from which his claim arises must be fair and just and that the relief itself must not be harsh and oppressive upon the defendant. And that specific performance will always be refused when a contract itself is unfair, one-sided, unconscionable, or affected by any other such inequitable feature, and when specific performance would be oppressive upon the defendant, or would prevent the enjoyment of his own rights, or would in any other manner work injustice.

Id, 135 P.2d at 184; Chrittenden v. Hansen (1943) 59 Cal.App.2d 56, 138 P.2d 37, 38; Quan v. Kraseman (1948) 84 Cal.App.2d 550, 191 P.2d 16, 17; Eichholtz, supra.

Scientology cannot prove the fairness and justness of the agreement it seeks to enforce. There is nothing fair about Scientology being able to abuse its right to Free Speech by slandering Armstrong, and then being able to seek a contempt citation and have Armstrong thrown in jail for simply exercising his First Amendment right to tell the truth in the face of Scientology's lies about him.

XI. THE SETTLEMENT AGREEMENT SEEKS TO SUPPRESS EVIDENCE OF JUDICIALLY CREDITABLE FACTS WHICH DISCREDIT THE SCIENTOLOGY ORGANIZATION; SUCH VIOLATES PUBLIC POLICY AND RENDERS THE CONTRACT VOID.

What Scientology is seeking to do is to remove Armstrong, and all others like him, [12]/ from playing any role in the truth-seeking process, whether such process be found in competition in the public marketplace of ideas, or in the truth-seeking forum provided by the judiciary. By eliminating those who are knowledgeable of its history and practices, Scientology seeks, quite literally, to shape public opinion and skew judicial decision-making by writing its own script. Thus, with no regard

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[12] For example, Scientology unsuccessfully attempted to enforce identical settlement agreements against the Aznarans. See 190-445 for motion for preliminary injunction. For settlement agreements, see 303-316. For an example of the type of information in the Aznaran case that Scientology sought to suppress, see Declaration of Vicki Aznaran at 417-430. It is remarkably similar to Armstrong's Declarations.

for the truth, Scientology may rest secure in the knowledge that it has purchased the silence of witnesses adverse to it. [13]/

The consideration of a contract must be lawful. Civil Code section 1607. If any part of the consideration is unlawful the entire contract is void. Civil Code section 1608. Consideration is unlawful if it is contrary to an express provision of law, contrary to the policy of express law, though not expressly prohibited, or otherwise contrary to good morals. Civil Code section 1667. The object of the contract is the thing which it is agreed, on the party receiving the consideration, to do or not to do. Civil Code section 1595. The object must be lawful when the contract is made. Civil Code section 1596. Whether or not a contract in a given case is contrary to public policy is a question of law to be determined from the circumstances of each particular case. Bovard v. American Horse Enterprises (1988) 201 Cal.App.3d 832, 838; Kallen v. Delug (1984) 157 Cal.App.3d 940, 951; Russell v. Soldinger (1976) 59 Cal.App.3d 633, 642.

It is a fundamental rule of construction of contracts that all applicable laws in existence when an agreement is made, which laws the parties are presumed to know and have in mind, necessarily enter into the contract and form a part of it without any stipulation to that effect, as if they were expressly referred to and incorporated in the agreement. People v. Hadley

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[13] Such is precisely the type of agreement that current Senate Bill No. 711 seeks to outlaw. As amended January 27, 1992, Senate Bill No. 711 states:

> Notwithstanding any other provision of law, as a matter of public policy, in actions based on fraud, or based upon personal injury . . . no part of any confidentiality agreement, settlement agreement, stipulated agreement, or protective order to keep from public disclosure information that is evidence of fraud shall be entered or enforceable upon settlement or conclusion of any litigation or dispute concerning the fraud . . .

(1495)

(1967) 257 Cal.App.2d Supp. 871, 881.

"Agreements to suppress evidence have long been held void as against public policy, both in California and in most common law jurisdictions." Williamson v. Superior Court (1978) 21 Cal.3d 829, 836-37. In Brown v. Freese (1938) 28 Cal.App.2d 608, the California Court of Appeal adopted section 557 of the Restatement of the Law of Contracts prohibiting as illegal those agreements which sought to suppress the disclosure of discreditable facts. The court stated:

> A bargain that has for its consideration the nondisclosure of discreditable facts . . . is illegal. . . . In many cases falling within the rule stated in the section the bargain is illegal whether or not the threats go so far as to bring the case within the definition of duress. In some cases, moreover, disclosure may be proper or even a duty, and the offer to pay for nondisclosure may be voluntarily made. Nevertheless the bargain is illegal. Moreover, even **though the offer to pay for nondisclosure is voluntarily made and though there is no duty to make disclosure or propriety in doing so, a bargain to pay for nondisclosure is illegal.** [Emphasis added.]

Brown 28 Cal.App.2d at 618.

In Allen v. Jordanos' Inc. (1975) 52 Cal.App.3d 160, 125 Cal.Rptr. 31, the court did not allow a breach of contract action to be litigated because it involved a contract that was void for illegality. In Allen, plaintiff filed a complaint for breach of contract which he subsequently amended five times. Plaintiff, a union member, was entitled by his collective bargaining agreement to have a fair and impartial arbitration to determine the truth or falsity of the allegations against him of theft and dishonesty. The allegations of the amended complaints stated that there had been an agreement between the parties whereby defendant laid off plaintiff, defendant's employee, and allowed plaintiff to receive unemployment benefits and union benefits. "Defendants also agreed that they would not communicate to third persons, including prospective employers, that plaintiff was discharged or resigned for dishonesty, theft, a bad employment attitude and

that defendants would not state they would not rehire plaintiff." Id. at 163. Plaintiff alleged there had been a breach in that defendants had communicated to numerous persons, including potential employers and the Department of Human Resources and Development, that plaintiff was dishonest and guilty of theft and had resigned for fear of being discharged for those reasons, that plaintiff had a bad attitude and that defendants would not rehire him. Plaintiff alleged that as a result of the breach he suffered a loss of unemployment benefits, union benefits and earnings. The court held that the plaintiff had bargained for an act that was illegal by definition. It stated:

> The nondisclosure was not a minor or indirect part of the contract, but a major and substantial consideration of the agreement. A bargain which includes as part of its consideration nondisclosure of discreditable facts is illegal. (See Brown v. Freese, 28 Cal.App.2d 608, 618 [83 P.2d 82.].) It has long been hornbook law that consideration which is void for illegality is no consideration at all. [Citation.]

Id. 52 Cal.App.3d at 166.

The object of a contract must be lawful. Civil Code sections 1550, 1596. If the contract has a single object, and that object is unlawful, the entire contract is void. Civil Code section 1598.

Civil Code § 1668 states:

> All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

Since an agreement to suppress evidence or to conceal a witness is illegal, Witkin, § 611 at 550; Penal Code §§ 136, 136.1, and 138; Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 196 Cal.Rptr. 871; Tappan v. Albany Brewing Co. (1889) 80 Cal. 570, 571-572, and the combined effect of the "global settlement" has been to remove the availability as witnesses of

most former high-ranking Scientologists, [14]/ such can "lead to subtle but deliberate attempts to suppress relevant evidence." Williamson, 21 Cal.3d at 838.

Thus, where a contract is made either (1) to achieve an illegal purpose, or (2) by means of consideration that is not legal, the contract itself is void. Witkin, Summary of California Law (9th Ed. 1987) Vol. 1, Contracts, § 441 at 396.

There are two reasons for the rule prohibiting judicial enforcement, by any court, of illegal contracts.

> [T]he courts will not enforce an illegal bargain or lend their assistance to a party who seeks compensation for an illegal act [because] . . . Knowing that they will receive no help form the courts . . . the parties are less likely to enter into an illegal agreement in the first place.

Lewis & Queen, 48 Cal.2d at 149 [308 P.2d at 719].

> This rule is not generally applied to secure justice between parties who have made an illegal contract, but from regard for a higher interest - that of the public, whose welfare demands that certain transactions be discouraged. [Emphasis added.]

Owens v. Haslett (1950) 98 Cal.App.2d 829, 221 P.2d 252, 254.

Illegal contracts are matters which implicate public policy. Public policy means "anything which tends to undermine that sense of security for individual rights, whether of personal liberty or private property, which any citizen ought to feel is against public policy." Ibid. Therefore, "[a] contract made contrary to public policy may not serve as the foundation of any action, either in law or in equity, [Citation] and the parties will be left where they are found when they come to court for relief. [Citation.]" Tiedje v. Aluminum Paper Milling Co. (1956) 46 Cal.2d 450, 454.

It is well settled that agreements against public

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[14] See also Appendix pp. 111-16 for enumeration of those individuals settling as part of the package. Note that most were mentioned as witnesses in Judge Breckenridge's opinion (473).

> policy and sound morals will not be enforced by the courts. It is a general rule that all agreements relating to proceedings in court which involve anything inconsistent with [the] full and impartial course of justice therein are void, though not open to the actual charge of corruption.

Eggleston v. Pantages (1918) 103 Wash. 458, 175 P. 34, 36; Maryland C. Co. v. Fidelity & Cas. Co. of N.Y. 71 Cal.App. 492 Fong v. Miller (1951) 105 Cal.App.2d 411, 414. "In other words, where the illegal consideration goes to the whole of the promise, the entire contract is illegal." Witkin, § 429 at 386; Morey v. Paladini (1922) 187 Cal. 727, 738 ["The desire and intention of the parties [to violate public policy] entered so fundamentally into the inception and consideration of the transaction as to render the terms of the contract nonseverable, and it is wholly void."].

Professor Witkin states:

> It is obviously an obstruction of justice to conceal, suppress, falsify or destroy evidence which is relevant and known to be sought or desired for use in a judicial proceeding or an investigation by law officers.

Witkin, California Criminal Law (2d.Ed. 1988) Vol. 2, § 1132, at p. 1311. Such constitutes a crime against public justice because it is designed to intimidate witnesses and prevent them from giving testimony in violation of Penal Code section 136.1.

> The general rule controlling in cases of this character is that where a statute prohibits or attaches a penalty to the doing of an act, the act is void . . . The imposition by statute of a penalty implies a prohibition of the act to which the penalty is attached, and a contract founded upon such act is void.

Smith v. Bach 183 Cal. 259, 262, quoted in Severance v. Knight-Counihan Co. (1947) 29 Cal.2d 561, 177 P.2d 4, 8.

If a court is not able to distinguish between the lawful part of an agreement, and the unlawful part, "the illegality taints the entire contract, and the entire transaction is illegal and unenforceable. Keene v. Harling (1964) 61 Cal.2d 318, 321; Mailand v. Burckle (1978) 20 Cal.3d 367, 384. Assuming arguendo,

that the entire agreement is not unenforceable, then the Court must save the good part, and sever and discard the rest. Civil Code section 1599 tells us what to do with a contract which is partially void, and has at least one distinct lawful object, and at least distinct unlawful object. Section 1599 states that the contract is void as to the unlawful objects, and valid as to the lawful objects. [15]/

Armstrong proposes that contractual provisions 4-A, 4-B, 7-E, 7-G, 7-H, 7-I, 10, and 18-D are not lawful for the reasons discussed above. Those provisions share the common objective of suppressing credible, judicially tested information which discredits Scientology. In contrast, Paragraphs 1, 2 and 4 have the distinct objective of settling Gerald Armstrong's Cross-Complaint in Armstrong I. Thus, as to the former, the contract is void, while as to the later it is valid.

It has long been the law in California that

> When the transaction is of such a nature that the good part of the consideration can be separated from that which is bad, the Courts will make the distinction, for the . . . law . . . [divides] according to common reason; and having made that void that is against law, lets the rest stand. [Citation]. Thus, the rule relating to severability of partially illegal contracts is that a contract is severable if the court can, consistent with the intent of the parties, reasonably relate the illegal consideration on one side to some specified of determinable portion of the consideration on the other side.

Keene v. Harling (1964) 61 Cal.2d 318, 320-21; Brown v. Freese, supra.

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[15] This principle is recognized in Paragraph 16 of the settlement agreement which states in "the event any provision hereof be unenforceable, such provision shall not affect the enforceability of any other provision thereof." (85)

CONCLUSION

The injunction should be dissolved. The facts are clearly before the court. There are no disputes. Armstrong does not contest the facts which Scientology characterizes as violations. Scientology has not contested the facts preceding, during and following the execution of the settlement agreement. This one-sided agreement is an affront to fair play. Armstrong never contracted to sacrifice his First Amendment rights so that Scientology could spread lies about him - dead agent him - and the only thing he could do to fight back was to be enjoined and ultimately jailed. Armstrong's history of his battle with Scientology belies such an intent.

The preliminary injunction should be dissolved, and the provisions designed to suppress evidence and obstruct justice severed and stricken from the contract.

DATED: January 18, 1993

By: _____
FORD GREENE and PAUL MORANTZ
Attorneys for Defendant
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: APPELLANT'S OPENING BRIEF

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

SEE SERVICE LIST

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: January 19, 1993

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