

Case No.: _____

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION _____

CHURCH OF SCIENTOLOGY
INTERNATIONAL, A California
nonprofit religious corporation,

Plaintiff and Petitioner,

vs.

SUPERIOR COURT OF THE STATE
OF CALIFORNIA, COUNTY OF
MARIN,

Respondent.

GERALD ARMSTRONG,

Real Parties in Interest.

Marin County Superior Court Case No.
157680.

CHURCH OF SCIENTOLOGY
INTERNATIONAL, A California
nonprofit religious corporation,

Plaintiff and Petitioner,

vs.

GERALD ARMSTRONG, and
individual; and DOES 1 THROUGH 50,
inclusive.

Defendants and Respondents

**MOTION TO CONSOLIDATE
APPEAL AND PETITION FOR
WRIT OF CERTIORARI OR, IN
THE ALTERNATIVE, WRIT OF
MANDATE**

Case No. CV157680

[Consolidated with Case No. 021632 by
Order dated April 9, 2004]

R E C E I V E D

JUL 17 2004

Ford Greene's
Hub Law Office

Case No. CV021632

[Consolidated with Case No. 157680 by
Order dated April 9, 2004]

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**CHURCH OF SCIENTOLOGY
INTERNATIONAL**

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INTERNATIONAL, A California
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Case No. 157680

[Consolidated with Case No.
CV021632, Order dated April 9, 2004]

CHURCH OF SCIENTOLOGY INTERNATIONAL, A California nonprofit religious corporation, Petitioner in the two above-captioned related matters pending before this Court, moves this Court for an order consolidating the two matters for purposes of briefing, oral argument and decision. This motion is made on the ground that the evidence and the legal questions presented by both matters are so related as to make it advisable to consolidate them.

This motion is based on the memorandum of points and authorities accompanying this motion.

July 15, 2004

Respectfully submitted:

WILSON CAMPILONGO LLP

By: -----
Andrew H. Wilson

Attorney for Plaintiff and Petitioner
CHURCH OF SCIENTOLOGY
INTERNATIONAL

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF THE CASE

In December of 1986, Petitioner Church of Scientology, International (“CSI”) entered into a settlement agreement (“Agreement”) with Real Party in Interest and Respondent Gerald Armstrong (“Armstrong”) designed to end years of bitter litigation. In 1992, CSI was compelled to institute litigation, *Church of Scientology International v Gerald Armstrong, Marin County Case No. 157680* (Armstrong I), to enforce the Agreement. CSI obtained a judgment awarding it a permanent injunction and liquidated damages of \$300,000.

After declaring bankruptcy, Armstrong violated the injunction in wholesale fashion and was held in contempt on three separate occasions by two different judges for a total of over 200 separate acts of contempt. The Hon. Gary W. Thomas imposed sanctions for the first two contempt sentences aggregating \$3600 and 28 days in jail. Meanwhile, Armstrong had fled to Canada, prompting the issuance of bench warrants for his arrest; he was never apprehended. On the third contempt conviction, the Hon. Vernon Smith postponed imposition of sentence until Armstrong could be brought before the Court.

CSI then brought a second action, *Church of Scientology International v. Gerald Armstrong, Marin County Case No. CV021632* (“Armstrong II”),

to recover liquidated damages for the breaches of the Agreement which formed the basis of the third contempt conviction, as well as 70 additional breaches. Armstrong II was assigned to the Hon. Lynn Duryee and set for trial on April 9, 2004. On that day, Mr. Armstrong appeared with his counsel for trial. Also on that day, Armstrong I was assigned to Judge Duryee, who consolidated the cases and combined the trial of Armstrong II with the hearing on the sentence to be imposed for the third contempt in Armstrong I.

After opening statements, Judge Duryee granted CSI's motion for judgment, on the ground that the facts which Armstrong's counsel had offered to prove did not constitute a defense to CSI's breach of contract action. However, even though the Agreement clearly provided for liquidated damages in the amount of \$50,000 per breach, and even though Judge Thomas had ruled that this provision was valid and enforceable, Judge Duryee held that CSI's damages should be limited to the amount of the consideration originally paid to him by CSI, less the \$300,000 awarded to CSI by the Armstrong I judgment.

In Armstrong I, Judge Duryee discharged the contempt sentences imposed by Judge Thomas, imposed a five day jail sentence which she declared was served by Armstrong's appearance, and levied a \$1000 fine which was to be "concurrent" with the judgment in Armstrong II.

CSI has filed a Notice of Appeal and Election to Proceed Under Rule 5.1 of the California Rules of Court in Armstrong II and a Petition for Writ of Certiorari or, in the Alternative, a Writ of Mandate in Armstrong I.

II.

CONSOLIDATION IS NECESSARY TO CONSIDER TOGETHER TWO MATTERS WHICH CONCERN ISSUES ARISING FROM THE SAME AGREEMENT AND WHICH HAVE OVERLAPPING APPELLATE RECORDS

The standard test for consolidation on appeal is whether the cases to be consolidated share at least one common issue. *Pacific Legal Foundation v. California Coastal Commission*, 33 Cal 3d 158, 165 (1982). This is a factual question which requires consideration of “whether the questions presented are so related as to make it advisable to consolidate...” *Sampson v. Sapoznik*, 117 Cal. App. 2d 607,609 (1953). There is no question here that the standard has been met for the following reasons:

1. Both Armstrong I and Armstrong II arise out of Armstrong’s breaches of the Agreement. The breaches upon which Armstrong II is based are the same breaches upon which the third contempt order in Armstrong I was based.

2. Armstrong I and Armstrong II were consolidated by Judge Duryee on April 9, 2004. Both the appeal in Armstrong II and the writ

petition in Armstrong I arise from orders made by Judge Duryee as a result of the “combined” trial of Armstrong II and the contempt sentencing in Armstrong II.

3. One of the principal issues in Armstrong II is whether Judge Duryee’s refusal to award liquidated damages in excess of \$500,000 contravenes Judge Thomas’ ruling on the validity of the liquidated damages provision, and the final judgment, in Armstrong I. One of the principal issues in Armstrong I is whether Judge Duryee improperly conflated the purposes to be served by contempt citations with the purposes to be served by liquidated damage awards by characterizing the judgment in Armstrong II as punishment for the contempts in Armstrong I.

4. The Exhibits filed in support of the petition in Armstrong I will substantially overlap the Appendix to be filed in Armstrong II.

In addition, consolidation of these matters will not delay consideration of the writ petition in Armstrong I. CSI will be able to file its Opening Brief in Armstrong II within 10 days of notice that the matters have been consolidated.

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CONCLUSION

For the reasons stated above, the writ petition in Armstrong I and the appeal in Armstrong II should be consolidated for the purposes of briefing, oral argument and decision.

July 15, 2004

Respectfully submitted:

WILSON CAMPILONGO LLP

By: 

Andrew H. Wilson

Attorneys for Plaintiff and Petitioner
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the County of Marin, State of California. I am over the age of 18 and not a party to the within action; my business address is 475 Gate 5 Road, Suite 212, Sausalito, California 94965.

On July 16, 2004, I served the foregoing document(s) described as follows:

MOTION TO CONSOLIDATE APPEALS

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, as follows:

XX BY MAIL:

 BY FEDERAL EXPRESS OR OVERNIGHT COURIER

 BY HAND DELIVERY AT COURT EX PARTE HEARING.

Ford Greene, Esq.
HUB Law Offices of Ford Greene
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

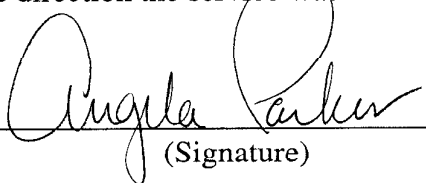
Marin County Superior Court
Hon. Lynn Duryee
3501 Civic Center Drive
San Rafael, CA 94913

Executed on July 16, 2004, at Sausalito, California

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

 (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Angela Parker
(Type or Print Name)


(Signature)