

1 ANDREW H. WILSON, ESQ., SBN 63209  
2 WILSON CAMPILONGO LLP  
3 475 Gate Five Road, Suite 212  
4 Sausalito, CA 94965-1475  
5 Telephone: (415) 289-7100  
6 Facsimile: (415) 289-7110

7 Attorneys for Plaintiff,  
8 CHURCH OF SCIENTOLOGY INTERNATIONAL

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF MARIN**

CHURCH OF SCIENTOLOGY  
INTERNATIONAL, A California nonprofit  
religious corporation,

Plaintiff,

vs.

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

Defendants.

Case No.: CV 021632

**PLAINTIFF CHURCH OF  
SCIENTOLOGY INTERNATIONAL'S  
OBJECTION TO ALL EVIDENCE**

Date: April 9, 2004

Time: 9:00 a.m.

Dept.: L

Complaint Filed: April 2, 2002

Trial Date: April 9, 2004

**INTRODUCTION**

Defendant Gerald Armstrong ("Armstrong") answered the Complaint herein, admitting the commission of the 201 breaches of contract asserted therein and asserting forty four affirmative defenses. They are identical to the forty three affirmative defenses which he raised in defending the prior action <sup>1</sup> ("Prior Action") which Plaintiff brought to recover for breach of the very agreement at issue here, save for the addition of a defense based on the Thirteenth Amendment. In the Prior Action, this Court adjudicated those defenses against Armstrong, entered a permanent injunction, a final judgment and an order holding Armstrong in contempt for violation of the injunction. Armstrong subsequently fled this Court's jurisdiction and has remained a fugitive from

<sup>1</sup> Church of Scientology International v. Armstrong, Case No. 152229.

1 justice. Armstrong's appeal of the judgment was dismissed. Accordingly, Plaintiff hereby moves  
2 for an order precluding the introduction of all evidence by Armstrong on the ground that  
3 Armstrong's Answer admits the breaches and that Armstrong is collaterally estopped to raise the  
4 asserted affirmative defenses.

### 5 ARGUMENT

6 In contrast to the usual motion in limine, which seeks to keep particular items of evidence  
7 from a jury, an objection to all evidence is essentially the same as a general demurrer or motion for  
8 judgment on the pleadings seeking to end the trial without the introduction of evidence. Such an  
9 objection is properly sustained where even if the plaintiff's allegations were proven, they would not  
10 establish a cause of action. *Edwards v. Centex Real Estate Corp.*, 53 Cal.App.4th 15, 26 (1987),  
11 or, as here, where defendant's answer is unable to establish a defense to plaintiff's cause of action.  
12 *Carlson v. Lindauer*, 119 Cal.App.2d 292, 301 (1953); *Los Angeles v. California Towel & Linen*  
13 *Supply Co.* 217 Cal.App.3d 410, 416, 31 Cal.Rptr. 832 (1963). This procedure "may [also] be  
14 viewed as the functional equivalent of an order sustaining a demurrer to the evidence, or non-suit."  
15 *Id.* at p. 27.

16 The scope of the court's inquiry is relatively narrow. Both a demurrer and a motion for  
17 judgment on the pleadings accept as true all material factual allegations of the challenged pleading,  
18 unless contrary to law or to facts of which a court may take judicial notice. The sole issue is  
19 whether the complaint, as it stands, states a cause of action as a matter of law. The scope of a trial  
20 court's inquiry on a motion for non-suit is similarly limited. A motion for non-suit or demurrer to  
21 the evidence concedes the truth of the facts proved, but denies as a matter of law that they sustain  
22 the plaintiff's case. This motion shares the characteristic of a motion for judgment on the pleadings.  
23 Witkin, *California Procedure, 4<sup>th</sup> Ed.*, Proceedings Without Trial § 176, Bancroft Whitney (1997),  
24 citing *Miller v. McLaglen*, 82 Cal. App. 2d 219 (1947). A trial court may grant the motion only  
25 when, disregarding conflicting evidence, viewing the record in the light most favorable to the  
26 plaintiff and indulging in every legitimate inference which may be drawn from the evidence, it  
27 determines there is no substantial evidence to support a judgment in the plaintiff's favor (or when  
28 the answer is insufficient to contest the averments in the complaint.) *Edwards*, supra, 53

1 Cal.App.4th at pp. 27-28. See also, *Mechanical Contractors Association of Northern California*  
2 *v. Greater Bay Area Association of Plumbing and Mechanical Contractors*, 66 Cal.App.4th 672,  
3 (1998); *Witkin*, supra.

4 In this context, the most liberal construction of Armstrong's Answer shows that the  
5 Answer fails, as a matter of law, to state a defense to Plaintiff's complaint. Armstrong's Answer  
6 admits that he breached the agreement sued upon here, not just the 201 instances that Plaintiff  
7 alleges, but on more than 100,000 occasions. "By reason of the facts alleged in paragraph 15, 16  
8 and 17 of CSI's ....complaint, Armstrong has committed 204 separate and distinct breaches of  
9 paragraph 7D of the Mutual Release plus more than 99,796 more separate and distinct breaches of  
10 paragraph 7D of the Mutual Release..." Answer, paragraph 29.<sup>2</sup>

11 This is similar to the situation in *Knoff v. San Francisco*, 1 Cal. App. 3d 184 (1969), in  
12 which the trial court properly entered judgment because the answer raised only immaterial factual  
13 issues and questions of law. Here, the Answer raises no factual issues. It admits the commission of  
14 the breaches of contract alleged in the Complaint, and raises forty four affirmative defenses,  
15 identical to those raised in the Prior Action, save for the addition of a defense based on the  
16 Thirteenth Amendment.

17 The viability of these defenses, or lack thereof, is a matter of law. All of these defenses,  
18 and the factual assertions upon which they were based, were adjudicated against Armstrong in the  
19 Prior Action. There, Judge Thomas granted the Church's motion for summary judgment, ruling  
20 that the Agreement was not entered into under duress, not induced by fraud, did not fail for lack of  
21 mutuality, did not infringe on First Amendment rights, and that the liquidated damages provision  
22 was valid. Plaintiff's Exhibit 6, pg. 2, ln. 19 - pg. 4, ln. 12. The Order of Permanent Injunction  
23 entered October 17, 1995 by Judge Thomas provided that the Agreement had been freely and  
24 voluntarily entered into, Plaintiff's Exhibit 7, and Judgment was entered on May 2. Plaintiff's  
25 Exhibit 8. The Order of Contempt issued by Judge Smith in 2001 references the judgment,  
26 provides that the Agreement was valid when entered into and remains enforceable and then holds

27  
28 <sup>2</sup> Plaintiff will move forward at trial on breaches 1-131 which were the subject of the Order of Contempt dated  
July 31, 2001. Plaintiff's Exhibit 11.

1 Armstrong in contempt for the 131 breaches upon which Plaintiff seeks to recover here. Plaintiff's  
2 Exhibit 11, ¶ 2 at pg. 2, ln. 16.

3 As discussed more fully in PLAINTIFF CHURCH OF SCIENTOLOGY'S MOTION TO  
4 EXCLUDE EVIDENCE ON ARMSTRONG'S AFFIRMATIVE DEFENSES, Armstrong is  
5 collaterally estopped to raise these defenses as a matter of law. See, *Torrey Pines Bank v. Superior*  
6 *Court of San Diego County*, 216 Cal. App. 3d 813, 821 (1989) [Dismissal with prejudice of action  
7 bars assertion of affirmative defenses based on identical facts.]. In *Torrey Pines*, the prior action  
8 ended with a dismissal with prejudice, which the Court held sufficient. Here, the prior action  
9 ended in a final judgment on the merits after entry of orders granting summary judgment and  
10 imposing a permanent injunction. Armstrong's appeal was dismissed. See also, *Hamilton v.*  
11 *Carpenter*, 15 Cal. 2d 130 (1940). *Gates v. Superior Court of Los Angeles County*, 178 Cal. App.  
12 3d 301, 308 (1986) ["...if the second action involves a right, title or issue as to which the judgment  
13 in the first action is a conclusive adjudication, the estoppel so far as that right, title or issue is  
14 concerned must likewise extend to every matter which was or might have been urged to sustain or  
15 defeat the determination actually made."].

### 16 CONCLUSION

17 The facts alleged in Armstrong's Answer, even if proven, would not constitute a defense  
18 to the Complaint. The motion should be granted.

19 April 8, 2004.

Respectfully submitted:

20 WILSON CAMPILONGO LLP

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23 By:   
Andrew H. Wilson

24 Attorneys for Plaintiff  
25 CHURCH OF SCIENTOLOGY  
26 INTERNATIONAL  
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