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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF MARIN

13 CHURCH OF SCIENTOLOGY
14 INTERNATIONAL,

15 Plaintiff,

16 vs.

17 GERALD ARMSTRONG

18 Defendant.

19 Case No. CV 021632

20 **PLAINTIFF'S REPLY**
21 **MEMORANDUM IN SUPPORT**
22 **OF MOTION TO REINSTATE**
23 **SENTENCES FOR CONTEMPT;**
24 **and**
25 **MOTION FOR ISSUANCE OF**
26 **WARRANT FOR DEFENDANT'S**
27 **ARREST**

28 Date: September 7, 2007
Time: 9:00 am
Court: Dept. L

1 Plaintiff, Church of Scientology International, herewith replies to defendant Gerry
2 Armstrong's Opposition to the Church's Motion to Reinstate Sentences.¹

3 In an attempt to avoid the rulings of judges of this Court, which rulings have been
4 affirmed by the Court of Appeals, Mr. Armstrong seeks for the nth time to reargue the
5 merits of his position regarding whether an injunction should have been issued against
6 him to enforce the 1986 settlement between the parties. We are years past that.

7 Mr. Armstrong admits that he "has been claiming and complaining, essentially that
8 the contract contains unconscionable clauses with unconscionable results from the day in
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¹ The reply is filed late, because defendant "served" his Opposition after the close of
business by email on August 30, 2007. The hard copy has not yet been received.

1 December 1986 when [the settlement agreement] was first given to him to sign.”
2 (Opposition, p. 4) He never prevailed on that argument. Indeed, and as the Court of
3 Appeals recognized, this Court ruled that Armstrong’s defenses to the injunction
4 enforcing that agreement are res judicata and that Armstrong is accordingly estopped
5 from again re-litigating this issue he has repeatedly lost. (Ex. A, Appeals Court Mandate,
6 p. 10.) Armstrong did not appeal that ruling, and the issue is (still) final.

7 Equally final are the contempt orders which are the only subject of the instant
8 motion. In addressing Armstrong’s ubiquitous arguments that the settlement was
9 unlawful and the injunction requiring compliance with the settlement was unlawful, the
10 Court of Appeals has specifically found that injunction against him was “final.” It stated:

11 Armstrong makes several arguments challenging the validity
12 of the contempt orders.... Armstrong, however, is foreclosed
13 from challenging the merits of the contempt orders in this writ
14 proceeding [footnote noting that he did not appeal these
15 rulings]. The contempt orders are final.

16 (Ex. A, Court of Appeals Ruling, p. 6.)

17 Moreover, even if Mr. Armstrong retained the ability to address the merits, the
18 central assertion of his Opposition is simply false. Armstrong claims that *this* Court
19 found some aspect of the settlement agreement to be unconscionable, thus giving him, he
20 asserts, the ability to reargue the propriety of the settlement agreement. However, this
21 Court made no such finding. Rather, Armstrong has leapt upon the Court’s choice of
22 words in finding that a “punishment” greater than \$800,000 against Armstrong for
23 violating the injunction would be “unconscionable” as this was the amount Armstrong
24 received in the settlement agreement many years ago.

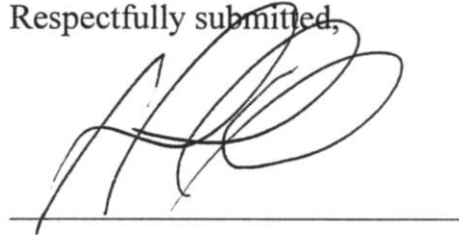
25 That statement had nothing to do with the contempt rulings, and is therefore
26 irrelevant to the instant motion.

27 The issue in the instant motion is solely and only the Appeal Court’s mandate to
28 this Court requiring that the sentences be re-instated, and plaintiff’s further request that a

1 warrant issue for that purpose. All else is irrelevant.

2 Dated: September 1, 2007

Respectfully submitted,

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6 Kendrick Moxon

7 Counsel for plaintiff
8 CHURCH OF SCIENTOLOGY
9 INTERNATIONAL

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TAB A

Filed 10/19/05

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FOUR

FILED
Court of Appeal First Appellate District
OCT 19 2005
Diana Horvath, Clerk
By _____

CHURCH OF SCIENTOLOGY
INTERNATIONAL,

Petitioner,

v.

THE SUPERIOR COURT OF MARIN
COUNTY,

Respondent;

GERALD ARMSTRONG,

Real Party in Interest.

A107095

(Marin County Super. Ct. Nos.
15229, 157680, CV021632)

In a petition for writ of certiorari, the Church of Scientology International (CSI) seeks an order compelling the trial court to reinstate sentences imposed upon Gerald Armstrong in earlier contempt proceedings. We grant the petition in part.

I. FACTUAL BACKGROUND

In December 1986, the parties entered into a settlement agreement under which CSI paid Armstrong, a former Church member, \$800,000 in exchange for his dismissal of claims against CSI. In addition, pursuant to paragraph 7.D. of the agreement, Armstrong agreed to maintain confidentiality concerning his experiences with CSI and not to publish orally or in writing any information about his experiences with or knowledge of CSI and its affiliated individuals and organizations. Paragraph 7.D. also contained a liquidated

damages provision under which Armstrong agreed that CSI was entitled to liquidated damages in the amount of \$50,000 for each breach of the agreement.¹

In February 1992, CSI filed a complaint against Armstrong alleging that he breached the settlement agreement by assisting counsel for other litigants against CSI and providing declarations in their cases describing his experiences with CSI. On October 17, 1995, the court granted CSI's motion for summary adjudication on four causes of action, concluding that Armstrong breached the settlement agreement entitling CSI to liquidated damages. The court found that Armstrong waived his First Amendment rights by signing the settlement agreement and rejected various challenges to the liquidated damages provision. The court also enjoined Armstrong from voluntarily assisting anyone other than a governmental entity engaged in litigation against CSI or defending a claim against it; facilitating the creation, publication, broadcast or writing of any work referring to CSI; or discussing CSI with anyone other than an immediate family member or his attorney. The court thereafter entered a judgment against Armstrong in the amount of \$321,923—\$300,000 in liquidated damages plus \$21,923 in interest. In addition, the

¹ Paragraph 7.D. provides in relevant part: "Plaintiff [Armstrong] agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. . . . Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of \$50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages [is] hereto acknowledged by Plaintiff."

court awarded CSI costs of \$334,671.75.² This court dismissed Armstrong's appeal from that judgment.

On June 5, 1997, the court found Armstrong in contempt of its order enjoining him from assisting others in litigation against CSI. The court fined Armstrong \$1,000 and ordered that he be confined in the county jail for a period not to exceed 48 hours. Armstrong did not appear at the hearing in the contempt proceedings and did not file any opposition or evidence. The court entered a second order of contempt on February 20, 1998, finding that Armstrong violated the injunction in 13 separate incidents between September 2, 1997 and November 26, 1997, including disseminating a documentary work about CSI on the Internet. The court fined Armstrong \$200 for each violation for a total of \$2,600 and ordered that he be confined a total of 26 days in the county jail. Again, Armstrong failed to appear at the contempt proceedings. A third order to show cause re contempt proceeding was issued in December 2000. Armstrong filed an opposition to the court's order to show cause but did not appear at the hearing. In his opposition, Armstrong admitted that he had violated the injunction but argued that he signed the settlement agreement under duress and that the injunction was unlawful. Armstrong further averred that he was living in British Columbia, Canada. At the hearing on January 17, 2001, the court found that the injunction was valid and that Armstrong violated it by making 131 postings on the Internet violating one or more provisions of the injunction, that he spoke in violation of the order at a public gathering in Florida on December 5, 1999, and that he gave a radio interview on December 10, 1999 that violated the injunction. The court noted that there were two outstanding warrants for Armstrong which resulted from the two previous contempt proceedings and deferred imposition of punishment on the present contempt pending Armstrong's apprehension.

On April 2, 2002, CSI filed another action for breach of contract against Armstrong again seeking to recover liquidated damages for Armstrong's breaches of the settlement agreement. CSI alleged 201 breaches of paragraph 7.D. of the agreement

² It appears this judgment debt was never paid and, ultimately, was discharged in bankruptcy.

requiring Armstrong to maintain confidentiality about CSI and sought liquidated damages in the sum of \$10,050,000. Armstrong answered the complaint and admitted that he had breached paragraph 7.D. of the agreement more than 200 times. He alleged that the provisions of paragraph 7.D. of the agreement were illegal, unconstitutional and unenforceable and raised numerous affirmative defenses including unconscionability of the agreement and invalidity of the liquidated damages provision.

On April 9, 2004, the case was called for trial. At the outset, the court heard CSI's motion in limine to preclude Armstrong from introducing any evidence of defenses to the action on the grounds of collateral estoppel and res judicata. CSI argued that the 131 breaches of the agreement for which it sought recovery had already been determined to violate the agreement and the injunction. The court took the motion in limine under submission and the parties proceeded with opening statements.

After presentation of opening statements, the court granted the motion in limine, finding that 131 breaches of the agreement did occur, and that "these defenses" had been previously litigated. The court, however, found that it would be unconscionable to "punish" Armstrong with liquidated damages in excess of the \$800,000 he received as a benefit under the settlement agreement. Noting that Armstrong had previously been "sanctioned" in the sum of \$300,000, the court entered judgment for CSI in the amount of \$500,000.

During the course of the proceedings, the court, with the agreement of the parties, consolidated the sentencing hearing on the third contempt proceeding with the trial on CSI's current complaint. With respect to the contempt, the court discharged the previous bench warrants on the contempt citations of June 5, 1997 and February 20, 1998 and ordered that the jail time imposed on the citations be deemed served. On the third contempt citation, the court sentenced Armstrong to five days in jail and imposed a fine of \$1,000 which was ordered "concurrent with the judgment." The court further ordered that the jail time was deemed served by Armstrong's appearance in court.

