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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE CITY AND COUNTY OF MARIN**
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11 CHURCH OF SCIENTOLOGY
INTERNATIONAL,)

12 Plaintiff,)

13 vs.)

14 GERALD ARMSTRONG, et al.,)

15 Defendants.)

Case No. CV 021362

**REPLY MEMORANDUM AND MOTION
TO STRIKE OPPOSITION TO MOTION IN
LIMINE OF DEFENDANT GERALD
ARMSTRONG**

Date: April 9, 2004
Time: 9:00 a.m.
Dept. L

Complaint Filed: April 2, 2002
Trial Date: April 9, 2004

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20 **INTRODUCTION**

21 Plaintiff Church of Scientology International's motion in limine seeks to streamline
22 the trial in this action by excluding matters CSI and defendant Gerald Armstrong have
23 previously litigated. Those matters which are the subject of this motion have been litigated
24 and found against Armstrong on several prior occasions. The remaining elemental issues
25 are admitted by Armstrong in his Answer. Armstrong is already subject to an order of
26 permanent injunction issued by this Court, the Honorable Gary Thomas, presiding, to cease
27 the conduct which the complaint addresses, and his affirmative defenses are subject to
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1 preclusion under the doctrine of collateral estoppel.

2 Literally on the eve of trial, Armstrong, heretofore *in propria persona*, has
3 substituted counsel to represent him and to file an opposition to plaintiff's motion in limine.
4 That counsel is the same counsel who previously represented him and crafted the very
5 affirmative defenses that were unsuccessful before Judge Thomas and are the subject of this
6 motion to preclude them from relitigation. The entire purpose of the last minute entry of
7 counsel is to try to expand the trial from that which the law compels – *i.e.*, the application of
8 already-resolved issues of fact and law to Armstrong's defiance of that injunction and his
9 continued serial breaches of a contract he signed and for which he received and kept no less
10 than \$800,000.

11 Contrary to the opposition, in this action, Armstrong, a Canadian national who fled
12 this jurisdiction to avoid incarceration for contempt of Judge Thomas' injunction, is neither
13 victim nor heretic. He has used the \$800,000 he received in settlement of a long-ago suit to
14 finance his breaches of the very contract that brought him that money. When called to
15 account for his conduct, he lost on summary judgment and incurred both a compensatory
16 damages award and an order to stop his relentless breaches of that contract. He
17 immediately ignored the order and was adjudged to be in contempt. He then fled the
18 jurisdiction and, from hiding in Canada, resumed his breaches and contumacious acts.

19 Now he comes to this Court again, having already litigated and lost the issues of
20 the contract's validity and enforceability, the reasonableness of the liquidated damages
21 figure, and the affirmative defenses he asserts, and has admitted in his Answer not only the
22 breaches alleged in the Complaint, but others as well. His arguments are the same as
23 before, and thus they are precluded as a matter of law.

24 25 **ARGUMENT**

26 Armstrong argues that "This case presents weighty issues regarding the free
27 exercise of religion, the prohibition against establishing a religion and free speech."
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1 Opposition, 2:21-23. That is simply not true. This case presents multiple admitted breaches
2 of a contract whose terms, validity, and enforceability Armstrong already has litigated and
3 lost. In his effort to avert the preclusive effect of collateral estoppel on the defenses he has
4 already litigated and lost, he never denies his breaches or the doctrine's applicability to the
5 defenses challenged by CSI's motion in limine. Instead, the opposition to the motion
6 merely continues the slanders he agreed to cease in exchange for \$800,000 and proclaims
7 his right to do so despite his contractual commitment and despite Judge Thomas' injunction
8 ordering him to cease.

9 Most of what is offered in the opposition is an attack on the Scientology religion,
10 as if that religion were the subject of this action. It is not; Armstrong's conduct is, and
11 Armstrong never denies the conduct CSI has alleged. Armstrong also relies on his
12 transparently biased capsulizations of other cases involving Scientology churches, not
13 necessarily CSI, none of which involved Armstrong. He does so not as legal precedent, but
14 rather as an appeal to the Court essentially to take judicial notice of old cases to which
15 neither Armstrong nor CSI were parties and to regard those cases as somehow factually
16 relevant to this motion. They are not, for four reasons.

17 First, in the same contract that Armstrong breaches again and again in defiance
18 both of its terms and Judge Thomas's order, Armstrong agreed that "any past action or
19 activity, either alleged in this lawsuit or activity similar in fact to the evidence developed
20 during the course of this lawsuit, will not be used by either party against the other in any
21 future litigation." Plaintiff's Exhibit 1, Agreement, ¶7(1). To make it crystal clear what that
22 ¶7(1) means, it further states: "In other words, the 'slate' is wiped clean concerning past
23 actions by any party." *Id.* Thus, by presenting his scurrilous recitation of past litigation
24 involving not CSI, but Scientology churches generally, Armstrong demonstrates only two
25 things: his uncontrollable compulsion to attack his former religion and his willingness to
26 violate yet another provision of the contract.

27 Second, the Court is legally required to ignore all of Armstrong's slanderous
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1 characterizations of prior cases. Those citations to other decisions are not offered by
2 Armstrong as legal precedent to assist the Court in resolving any issue. They are offered for
3 Armstrong's rendition of their factual findings. In other words, Armstrong asks essentially
4 that this Court take judicial notice of factual findings of other courts in other cases
5 involving other parties. That is forbidden as a matter of law. *Sosinsky v. Grant*, 6 Cal. App.
6 4th 1548, 1551 ["Taking judicial notice of the truth of a judge's finding would be
7 tantamount to taking judicial notice that the judge's factual finding must necessarily have
8 been correct and that the judge is therefore infallible."].

9 Third, the fatal irony of Armstrong position cannot be overlooked. With the passion
10 that only intense prejudice can inspire, Armstrong seeks to avoid the preclusive effect of
11 collateral estoppel to issues actually litigated by these parties to judgment before Judge
12 Thomas by offering vicious mischaracterizations of CSI through factual findings in cases
13 not involving these parties or these issues. Armstrong cannot claim CSI cannot rely on a
14 true collateral estoppel by trying to inflame the Court into accepting a pseudo-estoppel the
15 Court is bound as a matter of law to reject.

16 Fourth, Armstrong's litany of slanted and misleading allegations concerning prior
17 litigation are the same arguments that Armstrong made in unsuccessfully defending the
18 prior action. They were rejected. Plaintiff's Exhibit 6, Order of Summary Judgment, pg.2-3.
19 Armstrong is estopped to make them again here.

20 Armstrong relies on *Greenfield v. Mather*, 32 Cal. 2d 23, 35 (1948) for the
21 proposition that the principles of *res judicata* should not apply because of the so-called
22 "unfairness" exception. However, *Greenfield* is totally inapposite. *Greenfield* was a
23 collection action, in which the plaintiff sought a judgment which was contrary to the
24 judgment in the previous action:

25 In their reply brief filed by counsel for Mr. Mather in the District Court of
26 Appeal, Second Appellate District, on February 3, 1942, in support of his
27 appeal from the judgment of December 12, 1939, in the Los Angeles
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1 action, counsel state at pages 42 and 43: "But even if we were so
2 charitably inclined as to permit respondents to call this new and different
3 matter in the third judgment 'surplusage', the record would not permit it,
4 because the new judgment, in respect to the direction to pay the money to
5 Mrs. Mather, is directly contrary to the recitals in the second judgment and
6 in the original findings.
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8 32 Cal. 2d at 29. While it is hard to imagine what flight of fancy, or desperation, caused
9 Armstrong to offer *Greenfield* as authority for the proposition that this Court should not
10 apply collateral estoppel here, it is not hard to see that this case has no similarity with
11 *Greenfield*. There is no conflict between orders and judgment entered in the prior action
12 and the judgment CSI seeks here.

13 Armstrong next asserts that the "public interest" exception should apply here, citing *City*
14 *of Sacramento v. State of California*, 50 Cal. 3d 51 (1990) and *Kopp v. Fair Political*
15 *Practices Commission*, 11 Cal. 4th 607. Neither of these cases supports that argument. In
16 *City of Sacramento*, the Court considered whether a decision regarding reimbursability of
17 costs, in a case between the State of California and a municipality would bind those who
18 were not parties to the case. The Court's discussion of this issue reveals that it is
19 inapplicable here:

20 Even if the formal prerequisites for collateral estoppel are present here, the
21 public_interest exception governs. Whether chapter 2/78 costs are
22 reimbursable under article XIII B and parallel statutes constitutes a pure
23 question of law. The state was the losing party in Sacramento I, and also
24 the only entity legally affected by that decision. Thus, strict application of
25 collateral estoppel would foreclose any reexamination of the holding of
26 that case. The state would remain bound, and no other person would have
27 occasion to challenge the precedent.
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2 Yet the consequences of any error transcend those which would apply to
3 mere private parties. If the result of Sacramento I is wrong but
4 unimpeachable, taxpayers statewide will suffer unjustly the consequences
5 of the state's continuing obligation to fund the chapter 2/78 costs of local
6 agencies. On the other hand, if the state fails to appropriate the funds to
7 meet this obligation, and chapter 2/78 therefore cannot be enforced (Rev.
8 & Tax. Code, former § 2255, subd. (c); Gov. Code, § 17612, subd. (b)),
9 the resulting failure to comply with federal law could cost California
10 employers millions. Under these circumstances, neither stare decisis nor
11 collateral estoppel can permanently foreclose our ability to examine the
12 reimbursability of chapter 2/78 costs.

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14 As below, plaintiffs also argue that reconsideration of Sacramento I is
15 precluded by res judicata. They suggest that the prior litigation resolved
16 not only the legal issues presented by this appeal, but all claims among the
17 current parties as well.

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19 **Of course, res judicata and the rule of final judgments bar us from**
20 **disturbing individual claims or causes of action, on behalf of specific**
21 **agencies, which have been finally adjudicated and are no longer**
22 **subject to review.** (Code Civ. Proc., § 1908 et seq.; Slater, supra, 15 Cal.
23 3d at p. 796; Bernhard v. Bank of America (1942) 19 Cal. 2d 807, 810
24 [122 P.2d 892].) However, the issues presented in the current action are
25 not limited to the validity of any such finally adjudicated individual
26 claims. Rather, they encompass the question of defendants' subvention
27 obligations in general under chapter 2/78. We therefore conclude that
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1 defendants may contend in this lawsuit that chapter 2/78 is not a
2 reimbursable state mandate.
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4 50 Cal. 3d at 64-65 (emphasis added). Just as the individual claims or causes of action
5 which had been adjudicated were no longer subject to review there, neither are the
6 individual affirmative defenses which were adjudicated against Armstrong in the Prior
7 Action subject to review here, *Kopp* involved a situation in which an issue of state law was
8 decided by a federal court. The Court held that the principles of *res judicata* should not
9 apply because the California state courts should have the opportunity to decide this issue:
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11 This is a matter in which the public interest requires that relitigation not be
12 foreclosed, and hence reject the claim that the doctrines of *res judicata* or
13 collateral estoppel bar consideration of the state law issue in this litigation.
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15 11 Cal. 4th at 612.

16 The issue this Court confronts is simple. Armstrong repeatedly breached his
17 contractual obligations to CSI, was adjudged liable for that conduct, and permanently
18 enjoined from further breaches. He repeatedly defied that injunction and was convicted of
19 contempt. He then fled this jurisdiction, relocated to his native Canada, and from there
20 continued his campaign of breaches and contempt. He now has the temerity to claim that
21 the *equities* permit him to continue his breaches, defy Judge Thomas, scrap the doctrine of
22 collateral estoppel, and relitigate the entire matter as if nothing before had proceeded. His
23 basis for making that claim are slanderous allegations not against CSI, but against a
24 religion, going so far as to impart to that religion as a purported doctrine he calls "fair
25 game" – which does not exist, has not existed since 1968, and *never* meant what Armstrong
26 claims it meant – and which Judge Thomas also rejected in entering the judgment that
27 precludes Armstrong from relitigating these issues yet again.
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CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the motion be granted.

Dated: April 9, 2004

Respectfully submitted,

WILSON CAMPILONGO LLP

By: 
Andrew H. Wilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
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