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7 BRUCE J. KELMAN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, NORTH DISTRICT

BRUCE J. KELMAN,	)	CASE NO.:
	)	37-2010-00061530-CU-DF-NC
Plaintiff,)	
	)	Assigned for All Purposes to:
v.	)	HON. THOMAS P. NUGENT
	)	DEPARTMENT: N-30
SHARON KRAMER, and DOES 1)	
through 20, inclusive,	)	UNLIMITED CIVIL CASE
)	
Defendants.	)	PLAINTIFF'S REPLY BRIEF IN
	)	SUPPORT OF APPLICATION FOR AN
	)	ORDER HOLDING DEFENDANT SHARON
	)	KRAMER IN CONTEMPT

Hearing Date: January 6, 2012
Time: 1:30 p.m.
Department: N-30

Trial Date: None

INTRODUCTION

Two matters are scheduled for hearing in this action:

I. Whether and the extent to which Defendant Sharon Kramer should be punished for indirect contempt under C.C.P. § 1209(a)(5) for violating this Court's preliminary injunction filed May 2, 2011; and

1 II. Whether and the extent to which Kramer should be
2 sanctioned for bringing a frivolous "Motion to Nullify Void
3 Temporary Injunctive Relief Order," which was denied by this
4 Court on October 21, 2011.
5

6 **I. KRAMER HAS WILLFULLY VIOLATED THE PRELIMINARY**
7 **INJUNCTION**

8 The preliminary injunction was filed on May 2, 2011. It
9 prohibits Kramer from republishing a statement that was
10 determined to be libelous at the trial of the prior action
11 (San Diego Superior Court case no. GIN044539). Specifically,
12 the injunction prohibits republication of the following:

13 "Dr. Kelman altered his under oath statements on the
14 witness stand" while he testified as a witness in an
15 Oregon lawsuit.

16 Kramer was present during oral arguments leading to the
17 issuance of the preliminary injunction, was served with the
18 written preliminary injunction and at all times had actual
19 knowledge of its existence and terms.

20 The preliminary injunction is a valid order. Kramer at
21 all times was able to comply with its terms, but she
22 willfully chose not to. Indeed, Kramer pridefully boasts
23 that she will never obey the preliminary injunction. (See,
24 for example, Exhibit 9 to the Third Supplemental Declaration
25

1 of Keith Scheuer.) Plaintiff has not previously requested
2 that Kramer be held in contempt.

3
4 The Order to Show Cause was filed on November 10, 2011.
5 Plaintiff caused the Order to Show Cause to be personally
6 served on Kramer on November 18, 2011, and served by mail on
7 her counsel on November 28, 2011. (Plaintiff requests that
8 the Court take judicial notice of the Proof of Service in
9 its files, which was filed with the Court on November 30,
10 2011.)

11 Kramer did not timely serve any factual opposition to
12 the Order to Show Cause. Although she electronically served
13 a document titled "Cause, Memorandum of Points &
14 Authorities; and Declaration of Sharon Kramer" by the close
15 of business on December 23 (as required by the Order to Show
16 Cause), she did not serve any of the exhibits referenced in
17 that document. Her opposition consisted only of argument and
18 a meaningless declaration devoid of any admissible evidence.
19 Five days after the Court had ordered Kramer to serve her
20 opposition papers, on December 23, Plaintiff's counsel
21 received a U.P.S. package from Kramer containing her "Errata
22 Cause, Exhibits and 2d Declaration of Sharon Kramer."
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1 Plaintiff has submitted four declarations that detail
2 eight specific instances where Kramer violated the
3 preliminary injunction. The original Declaration of Keith
4 Scheuer was filed October 13, and accompanied Plaintiff's
5 application for an order to show cause. The three
6 supplemental declarations of Keith Scheuer were filed on
7 November 7, November 8 and December 21, respectively.
8

9 The October 13 Scheuer declaration shows that Kramer
10 posted the defamation on the Internet in violation of the
11 preliminary injunction on September 13 (Exhibit 1). The
12 first supplemental declaration proves two more violations,
13 on November 3 (Exhibits 3 and 4). The second supplemental
14 declaration evidences breaches of the injunction on November
15 4 (Exhibit 5), and November 5 and 6 (collectively, Exhibit
16 6). The third supplemental declaration shows violations of
17 the injunction on November 22 (Exhibit 7) and November 28
18 (Exhibit 8).
19

20 Notably, Kramer posted all but the first of these
21 republications of the libel after Plaintiff applied for an
22 OSC re contempt on October 13, 2011.
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1 Each such posting constitutes a separate act of
2 contempt. Donovan v. Superior Court (1952) 39 Cal.2d 848,
3 855.

4
5 Kramer does not deny that she repeatedly republished
6 the defamation. Instead, she tries to justify her disdain
7 for the injunction with the same arguments that she has
8 raised so many times before: All of the judges, justices and
9 court clerks have conspired against her; the jury in the
10 libel case was wrong; the Judgment in the libel case is
11 invalid; the First Amendment insulates her when she
12 republishes the defamation, because she is petitioning the
13 government for redress of her many grievances; she is
14 allowed to repeat the libel because it's a matter of public
15 record; and she's not bound by the injunction because her
16 "cause" is so important.

17
18 None of these theories excuses her conduct.

19 (i) Her dark fantasy about a grand conspiracy of all
20 court personnel is preposterous. There is no real-world
21 evidence of any conspiracy.

22 //

23 //

24 //

1 (ii) The Court of Appeal affirmed the jury's verdict,
2 and Kramer is stuck with it and the Judgment.¹

3 (iii) The First Amendment does not protect her. In
4 Balboa Island Village Inn, Inc. v. Lemen (2007) 40 Cal.4th
5 1141, the California Supreme Court recognized that the First
6 Amendment does not prevent a successful plaintiff in a libel
7 lawsuit from obtaining injunctive relief to prevent the
8 defendant from repeating the libel.
9

10 Kramer has no plausible justification for repeatedly
11 posting the defamation on assorted mold blogs, chatrooms and
12 websites. None of the offending postings was necessary to
13 petition government agencies for the redress of her
14 imaginary grievances. Rather, as is obvious from her
15 postings, she used the Internet sites to promote herself to
16 like-minded mold activists. For instance, in a posting on
17 November 5, 2011, titled "Do U understand? They will put me
18 in jail for using NET 2 show YU ca," she not only
19 republishes the libel, but opens the post with the
20 following:
21
22

23 "Are you all understanding? They are going to put me in
24 jail for evidencing on the internet why YOU can't get

25 ¹ On October 28, 2011, at Kramer's request, Judge Earl H. Maas, III
26 corrected a clerical error in the Judgment in GIN044539 to reflect that
27 Kramer was awarded her costs against GlobalTox. That correction expressly
28 did not affect any other aspect of the Judgment.

1 medical treatment and have to fight so hard to have
2 your claims properly adjusted."

3 She continues,

4 "All I have to do is get this info out FAR and WIDE and
5 then let them go ahead and block my movement
6 (incarcerate me) for speaking and evidencing the
truth..."

7 (A copy of this post is attached as part of Exhibit 6 to the
8 Second Supplemental Declaration of Keith Scheuer, filed in
9 this matter on November 8, 2011.)

10 This screed, like all of her others on the Internet, is
11 aimed at an audience of mold activists, and not at seeking
12 redress from government officials.

13 (iv.) The fact that the records in the earlier libel
14 lawsuit are public record does not confer a privilege to
15 republish the defamatory statement. Otherwise, every losing
16 defendant in a defamation action could endlessly republish
17 the defamation and the plaintiff would be powerless to
18 prevent it. That is not the law. Balboa Island Village Inn,
19 Inc. v. Lemen, supra.
20

21 (v.) Kramer's theories about mold science are
22 irrelevant in this injunction action, just as they were at
23 the trial of the libel action.
24

1 To summarize, Kramer has willfully and deliberately
2 violated the preliminary injunction at least eight separate
3 times, and is guilty of contempt.

4 Pursuant to C.C.P. § 1218(a), she may be fined up to
5 \$1,000, and/or imprisoned for no more than five days, for
6 each act of contempt. Since Kramer purports to be indigent,
7 and since she has shown no remorse or inclination to change
8 her behavior, Plaintiff requests that she be imprisoned for
9 five days for each of the acts of contempt, a total of 40
10 days. If she is merely fined, in effect she will suffer no
11 consequences for her contemptuous disregard of this Court's
12 order.
13

14 In addition, Plaintiff is entitled to an award of his
15 attorney's fees and costs incurred in bringing this action
16 to enforce the preliminary injunction, pursuant to C.C.P. §
17 1218(a). As is set forth in the Third Supplemental
18 Declaration of Keith Scheuer, filed December 21, 2011,
19 Plaintiff has incurred at least \$16,800 in attorney's fees
20 and \$143.95 in costs in connection with this contempt
21 proceeding, all necessitated by Kramer's many violations of
22 the preliminary injunction.
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II. MONETARY SANCTIONS SHOULD BE AWARDED AGAINST
KRAMER FOR HER FRIVOLOUS "MOTION TO NULLIFY VOID
TEMPORARY INJUNCTIVE RELIEF ORDER"

In a Minute Order denying her frivolous discovery motions dated July 15, 2011, this Court explicitly warned Kramer that "any further unmeritorious or frivolous motion shall result in the imposition of sanctions."

Despite that admonition, Kramer subsequently filed a "Motion to Nullify Void Temporary Injunctive Relief Order," which once again restated her many baseless arguments that had already been rejected innumerable times by the Court of Appeal and this Court.

In his Opposition to Kramer's "Motion to Nullify," Plaintiff requested sanctions of \$2,400 as reimbursement for attorney's fees and costs incurred to oppose the frivolous motion, pursuant to the July 15 Minute Order. On a hearing on October 21, this court denied Kramer's motion, and continued the hearing on Plaintiff's request for sanctions, stating that it would be heard on the same day as the hearing on the order to show cause re: contempt.

To save trees, Plaintiff incorporates by reference his Request for Sanctions, which is included in his Opposition to Defendant's "Motion to Nullify Void Temporary Injunctive

1 Relief Order," filed with this Court on or about October 7,
2 2011.

3
4 **III. CONCLUSION**

5 For all of the reasons set forth above, Defendant
6 Sharon Kramer should be found guilty of eight acts of
7 indirect contempt, and imprisoned for five days for each
8 such act, and/or fined \$1,000 for each such act, and
9 Plaintiff should be awarded \$16,800 in attorney's fees and
10 \$143.95 in costs in connection with this contempt
11 proceeding.

12 Further, as sanctions for bringing the frivolous
13 "Motion to Nullify Void Temporary Injunctive Relief Order,"
14 Plaintiff should be awarded sanctions of \$2,400.

15 Dated: December 29, 2011

16 Respectfully submitted,
17 SCHEUER & GILLETT
18 a professional corporation

19 By _____

20 Keith Scheuer
21 Attorney for Plaintiff
22 BRUCE J. KELMAN
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 4640 Admiralty Way, Suite 402, Marina Del Rey, California 90292. On December 29, 2011, I served the foregoing **PLAINTIFF'S REPLY BRIEF IN SUPPORT OF APPLICATION FOR AN ORDER HOLDING DEFENDANT SHARON KRAMER IN CONTEMPT** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Sharon Kramer
2031 Arborwood Place
Escondido, CA 92029
SNK1955@AOL.COM

Tracey S. Sang, Esq.
215 South Coast Highway, Suite 205
Oceanside, CA 92054
SANGMITCHELL@ROADRUNNER.COM

BY MAIL – I caused each such envelope with postage thereon fully prepaid to be placed in the United States mail at Marina Del Rey, California. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited in the U.S. Postal Service on that same day with postage thereon fully prepaid at Marina Del Rey, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY ELECTRONIC DELIVERY—I sent such document by electronic transmission based on a court order to each of their email addresses, to and from which each of them has received and sent emails previously.

EXECUTED on December 29, 2011 at Marina Del Rey, California.

(STATE) – I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Keith Scheuer