

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

-----  
RELIGIOUS TECHNOLOGY CENTER,

Plaintiff,

Civil Action No. 95-1107-A

v.

ARNALDO PAGLIARINI LERMA,

et al.,

Defendants.  
-----

DEFENDANT ARNALDO LERMA'S  
MEMORANDUM REGARDING THE MOTION FOR A  
PROTECTIVE ORDER BY NON-PARTY JEFFREY JACOBSEN

Introduction

Rule 26(c) of the Federal Rules of Civil Procedure grants the courts broad powers to protect a person from "annoyance" or "oppression" in connection with discovery. In such instances, a court may order that discovery not be had and that the attorney requesting the discovery be sanctioned by an award of costs. (Fed. R. Civ. P. 26(c).) This type of relief is especially appropriate when the person from whom the discovery is sought is not a party to the litigation. (Fed. R. Civ. P. 45(c)(1).)

The request for a protective order by non-party Jeffrey Jacobsen is an appropriate instance for the court to exercise these powers due to oppression and abuse of Mr. Jacobsen by the

party making the discovery requests, Plaintiff Religious Technology Center ("RTC").

### Argument

#### **A PROTECTIVE ORDER IS NECESSARY TO STOP RTC'S ABUSIVE DISCOVERY OF NON-PARTY JACOBSEN.**

The discovery abuse of Mr. Jacobsen by RTC was extreme. The abuse was aggravated by the facts that he was not represented by counsel, that the deposition took place only five days after he was served with a subpoena for same and that the day before the deposition Mr. Jacobsen sent a letter to RTC's attorneys objecting to the subpoena's request for production of documents under Rule 45 of the Federal Rules of Civil Procedure. (Krohnke Aff. ¶¶ 7, 10, & Ex. D.) The specifics of the abuse of Mr. Jacobsen by RTC are as follows:

- (1) RTC took a computer disk from Mr. Jacobsen to have its contents printed out and then returned to the witness. Later, however, RTC refused to return the disk to the witness. (Krohnke Aff. ¶¶ 11-12 & Ex. E.)
- (2) RTC asked many extremely argumentative and abusive questions of the witness. (Id. ¶ 7.)
- (3) RTC asked many questions that were not relevant to the subject matter of this action or that were not reasonably calculated to lead to the discovery of admissible evidence. In so doing, RTC apparently

- was using the deposition for some ulterior purpose. (Id. ¶ 6.)
- (4) RTC asked many repetitive questions. (Id. ¶ 8.)
  - (5) RTC rejected the witness' desire to complete the deposition to accommodate his schedule. (Id. ¶ 3.)
  - (6) RTC evaded the order of this Court to conduct a "brief" deposition of the witness. (Order, Oct. 3, 1995.)
  - (7) At the conclusion of the deposition, RTC's representative at the deposition, Mr. Lynn Farny, apparently screamed at and berated the witness. (Krohnke Aff. ¶ 12 & Ex. E.)

Given all of these circumstances, Mr. Jacobsen was more than justified in refusing to produce certain CD-ROM's to RTC and instead sending them to the Court. (Id. ¶ 12 & Ex. E.) Now, the Court should return the CD-ROMs to Mr. Jacobsen, bar RTC from conducting any further discovery of Mr. Jacobsen in this action and impose some kind of monetary sanction on RTC for its conduct at the deposition of Mr. Jacobsen.

#### Conclusion

For these reasons, Mr. Lerma respectfully requests this Court to grant Mr. Jacobsen's request for a protective order returning the CD-ROM's to Mr. Jacobsen, barring RTC from conducting any other discovery of Mr. Jacobsen in this action and

imposing some kind of monetary sanction on RTC for its conduct at the Jacobsen deposition.

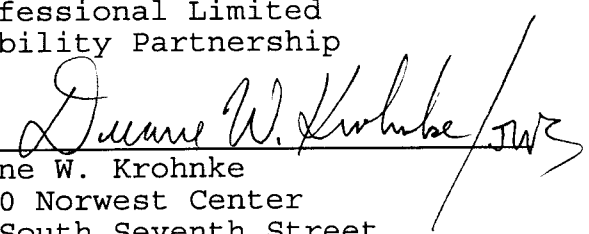
DATED: November 29, 1995

Jay Ward Brown  
(Va. Bar No. 34355)  
ROSS, DIXON & MASBACK, L.L.P.  
601 Pennsylvania Avenue, N.W.  
North Building  
Washington, DC 20004-2688  
(202) 662-2000

Of Counsel

Respectfully submitted,

FAEGRE & BENSON  
Professional Limited  
Liability Partnership

By:   
Duane W. Krohnke  
2200 Norwest Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402  
(612) 336-3000  
Thomas B. Kelly  
Natalie Hanlon-Leh  
FAEGRE & BENSON, P.L.L.P.  
2500 Republic Plaza  
370 17th Street  
Denver, Colorado 80202  
(303) 592-9000

Attorneys for Defendant  
Arnaldo Pagliarini Lerma

MLL2D82D.WP5

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendant Arnaldo Lerma's Memorandum Regarding the Motion for a Protective Order by Non-Party Jeffrey Jacobsen was served this 29<sup>th</sup> day of November 1995, upon counsel for the other parties as follows:

Bruce R. McHale, Esq.  
Chamowitz & Chamowitz, P.A.  
118 N. Alfred Street  
Alexandria, Virginia 22314  
(BY REGULAR MAIL)

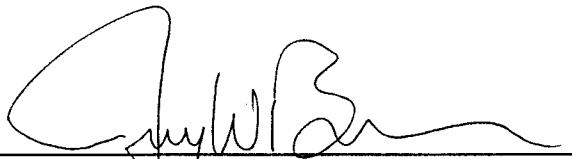
Earle C. Cooley, Esq.  
Cooley, Manion, Moore &  
Jones, P.C.  
21 Custom House  
Boston, Massachusetts 02110  
(BY FEDERAL EXPRESS)

Michael Grow, Esq.  
Vorys, Sater, Seymour & Pease  
1825 L Street, N.W.  
Washington, D.C. 20036  
(BY FEDERAL EXPRESS)

R.V. Lupo, Esq.  
Willian Brinks Hofer  
Gilson & Lione  
2000 K Street, N.W.  
SUITE 2001  
Washington, D.C. 20006-1809  
(BY HAND DELIVERY)

Helena K. Kobrin, Esq.  
7629 Fulton Avenue  
N. Hollywood, Calif. 91605  
(BY REGULAR MAIL)

Christopher Wolf, Esq.  
Proskauer Rose Goetz &  
Mendelsohn LLP  
1233 Twentieth Street, N.W.  
Washington, D.C. 20036-2396  
(BY FEDERAL EXPRESS)

  
Jay Ward Brown