



## PRELIMINARY STATEMENT

This memorandum of law is submitted in opposition to plaintiffs' "instant application" to make defendant show cause regarding withdrawing their trial claims. This case was filed as a "federal question," "copyright infringement" suit under 17 U.S.C., which gave the Court its subject matter jurisdiction.<sup>1</sup>

The Court's September 5, 2008 "Decision and Order" on summary judgment made a final disposition on JRI's claims and granted JRI a 17 U.S.C. § 502 permanent injunction (notwithstanding JRI didn't have a copyright) against the compilation *Jasenovac: Proceedings of the First International Conference and Exhibit on the Jasenovac Concentration Camps* (hereafter, "*Proceedings Book*") and its "breach of fiduciary duty" claim (which was negated in the Complaint itself) by proxy based on Schindley knowing two people who allegedly breached a fiduciary duty to JRI; made final disposition of Schindley's 72 libel claims involved in her separate libel suit against Barry Lituchy (06-5868) (even while citing a fact issue—whether Schindley committed "forgery" or "proved" that someone else did not commit forgery—that, by law, precludes summary judgment) and libel claims against Yelesiyevich, Mosaic, and Miletic; made a final disposition of Schindley's countersuit against all four individual plaintiffs and JRI directors who voted to file a frivolous suit; made a final disposition on Mosaic's and Miletic's infringement claims (and set damages for trial); and made a final disposition on Memory's copyright rights to more than 40 texts in the *Proceedings Book*, most of which were derivative of the 1997 Conference, by setting for trial on whether Schindley had permission from Memory "partner" Bibic or Friendly to use Memory's Video Series in preparing portions of the *Proceedings Book* (notwithstanding evidence showed Memory had no claim to any of the more than 40 texts in the *Proceedings Book* and that Bibic was not a partner in Memory and that she used Bibic's copyrighted raw footage in preparing portions of the *Proceedings Book*).

The Court upheld the permanent injunction to JRI in a Feb. 2, 2009 order on rehearing.

The Court then **denied** he granted JRI a permanent injunction in a Feb. 27, 2009 order he sent to the Second Circuit in an attempt to influence the Circuit to dismiss Schindley's appeal.

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<sup>1</sup> Plaintiffs never substantiated their personal jurisdiction claim arising from Schindley's allegedly doing business or having distributors doing business for her in New York or that she sold even one of the *Proceedings* books.

Schindley has appealed the Court's final and interlocutory orders, amended her appeal to include the rehearing order, and will further amend to include the Court's new orders and file a Complaint of Judicial Misconduct and Petition for Writ of Mandamus to the Second Circuit.

As the trial date neared, after 3.5 years of this frivolous and abusive litigation and use of judicial resources based on claims to damages for all plaintiffs, Mosaic and Miletic withdrew their claims for damages and, necessarily, their infringement claims and Memory withdrew its copyright infringement claim (and, necessarily, its claim for damages), a claim already granted to the extent of having rights to the *Proceedings Book* by the Court summary judgment trial.

Without having to prove a single one of their lies, the district court has

(1) granted an illegal 17 U.S.C. § 502 injunction against the *Proceedings Book* to JRI (which did not have the required copyright registration, as required by 17 U.S.C. § 501, to a single one of the more than 40 texts in the derivative-compilation *Proceedings Book*) to replace the illegal temporary injunction that was granted in violation of FRCP 65(c), which requires a security in case the Book was wrongfully (as it was) banned on the basis of 12 of 416 pages and two of the more than 40 separate copyrightable works in the *Proceedings Book*;

(2) granted Memory's, Mosaic's and Miletic's copyright infringement claims and claims for damages and "irrefutable harm" based on fraudulent/misrepresentative copyrights, and NOW

(3) has allowed them to withdraw their frivolous claims on claims he had already granted them in summary judgment and adjourned the trial set for March 16, before Schindley was even served, let alone had a chance to respond to the Order to Show Cause.

This travesty of justice—censorship and prior restraint against publication,<sup>2</sup> cause of terrible anguish and frustration to aged Jasenovac survivors who did not understand how a U.S. court could censor their texts/information about Jasenovac, and shredding of defendant's Constitutional rights to due process has only been possible through judicial misconduct arising from Judge Brian Cogan's partiality toward plaintiffs' lawyers and against *pro se* defendant Schindley. *Kennedy v. Los Angeles Police Dep't*, 901 F.2d 702, 09 (9th Cir. '89); *U.S. v. Harris*, 502 F.2d 1,10 (9th Cir. '74). Judge Cogan, apparently without even reading the orders he signed for plaintiffs, granted a permanent injunction (but now claims he didn't) that is illegal by law as JRI does not have a copyright on which to base its infringement claim and ask for injunction;

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<sup>2</sup> Schindley long ago offered to remove the offending Mosaic and Miletic papers from the remaining copies and certainly would cut them from future publications of the Book.

granted JRI's frivolous "breach of fiduciary" claim that was negated in the Complaint itself; denied Schindley's clearly warranted FRCP 11(b) motion for frivolous lawsuit sanctions; threw out on Schindley's countersuit and 72 libel claims, even while citing in the Order (he apparently didn't read) a fact issue (that, by law, prohibits summary judgment for plaintiffs; claimed in an order sent to the Second Circuit (in effort to get Schindley's appeal thrown out) that he **didn't** grant a permanent injunction when he clearly **did** in two orders, as claimed by plaintiff JRI's counsel in their Opposition to Appellant's Motion to Stay Injunction (and had to know if he read any of Schindley's motion for rehearing papers); and then allowed Memory, Mosaic, and Miletic to simply withdraw their frivolous claims, including statutory damage claims which were prohibited by law for them, and, necessarily, their claims for liability—see below).

The foregoing is only the beginning of the list that demonstrates Judge Cogan's judicial misconduct through ignoring law and fact because of partiality to plaintiffs/their lawyers, yet Schindley is now faced with an Order to Show Cause ("OSC") why plaintiff Memory should not be allowed to withdraw its copyright infringement claim after prosecuting it with lie after lie for 3.5 years and Mosaic and Miletic to withdraw their damage claims and, necessarily, their liability claims, rather than go to trial when their present (and third) counsel knew at least two years ago and Schindley knew three years ago that they refused to come to the U.S. for trial. And this is after Schindley responded to a first OSC, signed by Judge Cogan, in which plaintiffs (1) asked to withdraw trial claims under FRCP 41(a), when they were prohibited by Schindley's appeal on her counterclaim from doing so (see below and first OSC response), (2) asked for attorneys' fees under Rule 54 when they were prohibited from that by 17 U.S.C. 412 (and, consequently, Rule 54) from doing so (see first OSC response), asked to write their own judgment<sup>3</sup> (which would be consistent with the way they have been running this case while the Court signs off on what they want and has delayed this litigation for one year with requests for proof (or evidence in the record) from plaintiffs (which they did not provide) and pretending to entertain a motion for rehearing when he didn't even know what plaintiffs wrote in the orders he signed (and obviously didn't read Schindley's reply or he would certainly have known he granted a permanent

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<sup>3</sup> I am really curious what that "judgment" would be. Would I get jail time for my *pro bono* work to educate about Jasenovac and for having the audacity to defend myself against frivolous claims instead of settling and giving in to extortion? Would plaintiffs want to steal the remaining 140 copies of the Proceedings Book so "someone" in New York could sell them? Would I be prohibited from talking or writing a book about this case or doing further research on Jasenovac as Lituchy has demanded from other of his victims? Would I have to get permissions that Lituchy claimed to already have and donate my work and money to JRI as Lituchy demanded in a settlement offer?

injunction) and has worked for them to further their goal of denying Schindley's rights to due process, depriving her of her right to speech and publication, and harassing her for 3.5 years with frivolous claims while none of the plaintiffs have substantiated even one of their claims.

**PLAINTIFF MEMORY HAS WITHDRAWN ITS COPYRIGHT INFRINGEMENT CLAIM (AND, CONSEQUENTLY, DAMAGE CLAIMS) THAT THE COURT HAS ALREADY GRANTED IN TRIAL BY SUMMARY JUDGMENT**

The Court on March 6 signed a second OSC, demanding Schindley show cause why Memory, Mosaic, and Miletic should not be allowed to withdraw their frivolous claims, including prohibited statutory damages, essentially withdrew their claims, adjourned the trial scheduled for March 16, and set a conference for March 19.

Plaintiffs Memory, Mosaic, and Miletic cite *Ferrato v. Castro*, 888 F. Supp. 33 (S.D.N.Y. 1995) in claiming Schindley would not be prejudiced by a withdrawal of claims with prejudice. However, in that case, only discovery had been completed. In this case, after 3.5 years of harassment, summary judgment (TRIAL) has been made on final order of Memory's, Mosaic's and Miletic's copyright claims, final order has been made dismissing Schindley's libel claims against them (and others) and is now in appeal, defendant's countersuit against Memory, Mosaic, and Miletic (and others) was dismissed on final order and is now in appeal, defendant's request for Rule 11(b) sanctions (which this withdrawal validates) has been denied in final order and is now in appeal.

Plaintiffs further argue that the factors outlined in *Catanzano v. Wing*, 211 F.3d 99 (2nd Cir. 2001) weigh in plaintiffs favor:

Plaintiffs claim their "motion [was filed] as soon as practicable," yet they have known for three years their motion was frivolous as even the filing attorney admitted three years ago that Memory didn't have rights to any of the texts in the *Proceedings Book* (see Schindley's summary judgment papers), and Mosaic and Miletic stated that they would not come to the U.S. for trial in April, 2006. Further, Mr. Bellovin was informed of that in May, 2007 (See Schindley declaration). Mosaic and Miletic further admitted they had waived exclusive rights and granted nonexclusive license to Dr. Bulajic (Miletic to his Serbo-Croatian paper for Bulajic to commission an English translation) a proceedings book before Bulajic brought them to the Conference. In fact, plaintiffs relied on a partial judge to win a frivolous suit and hoped for "unforeseen circumstances" (i.e., Schindley might get hit by a truck or have a stroke from the

continuous harassment and financial and physical devastation). That plaintiffs filed their motion to withdraw as soon as “practicable” is beyond disingenuous.

Plaintiffs’ explanation that their dismissal is “requested to conserve judicial resources” is also disingenuous. Plaintiffs and their lawyers harassed defendant to the point that Judge Matsumoto ordered the second set of depositions be held in the court house and that no “derogatory” statements be made or she would be called.<sup>4</sup> Plaintiffs had no qualms about using judicial resources for 3.5 years with numerous hearings, letters to the court to prejudice the Court against Schindley, and hundreds of filings, some of which blatantly misstated authorities and law, requiring Schindley’s spending thousands of hours to research and respond (notwithstanding the Court appears not to have read a word of his own summary judgment orders or Schindley’s rehearing document), and trial by summary judgment involving some six hours of oral argument. Further, plaintiffs contradict the claim they want to “conserve judicial resources” by stating that trying the claims “will likely not greatly advance plaintiffs’ interests,” essentially making “judicial” interests and “plaintiffs’ interests” one and the same, as it has appeared to be all along.

Schindley moved for a stay of the trial pending appeal, but to deny Schindley trial in which plaintiffs have to prove something, anything in this case and in which she would have opportunity to prove some of her claims would prejudice her. Plaintiffs have relied on a friendly judge to harass her with a frivolous lawsuit for 3.5 years and now, when it is time to “put up or shut up,” simply want to walk away from their frivolous claims with an illegal permanent injunction against the *Proceedings Book* without paying damages for the unlawful injunction or frivolous lawsuit sanctions or for damages to Schindley’s health, business, and personal and professional reputation and abusing the courts and defendants for 3.5 years with a frivolous lawsuit that was simply filed to extort money and property or paying for the libelous assault on Schindley with 72 libelous statements, most of which are libel *per se*. Defendant wanted to wait for trial until the Second Circuit’s ruling, in part, on the illegal permanent injunction and defendant’s claims that plaintiffs’ claims were frivolous, etc., and plaintiffs have now admitted their claims are, in fact, frivolous.

**THE MOSIC AND MILETIC CLAIMS FOR DAMAGES CANNOT BE  
WITHDRAWN WITHOUT WITHDRAWING CLAIMS FOR LIABILITY:  
THEY CAN’T HAVE LIABILITY WITHOUT DAMAGES**

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<sup>4</sup> Bellovin called and then hung up on the Court’s clerk when I tried to state what was happening. As I recall, I documented some 100 “derogatory” statements by plaintiffs, yet the Court threw out my motion for sanctions.

Plaintiffs filed this case on a myriad of lies, and the most important one is, as it is now revealed, that each plaintiff had damages that were in the federal court's jurisdiction and that they were entitled to statutory damages under 17 U.S.C. § 504, when, in fact, they were prohibited by 17 U.S.C. § 412 from claiming statutory damages AND attorney fees. In fact, it is a lie that any plaintiff had any recoverable damages, and Mosaic and Miletic stated in deposition that their damages occurred after the suit was filed when many people who opposed banning the book allegedly "harassed" them, with Miletic claiming that a woman threatened to "exterminate" him because he filed this suit to ban the *Proceedings Book* and Mosaic stating that he was removed from his position as Memorial Director at the Belgrade Jewish Federation because of his role in banning the Book. They all knew from the beginning they could not prove damages.<sup>5</sup> As the Court pointed out, JRI is not claiming damages and, like Memory, has not proven a thing that goes to damages. Now, Mosaic and Miletic want to withdraw their claim to damages as they haven't presented evidence of any and will not come for trial.

**WITHOUT DAMAGES, THERE IS  
NO LIABILITY AND NO JURISDICTION.  
NO PLAINTIFF PROVIDED EVIDENCE TO SUPPORT  
CLAIMS OF DAMAGES.**

**Without a supporting authority that liability exists outside of damages, that there is standing to file suit in federal court without damages,**

**THE COURT MUST DISMISS ALL OF PLAINTIFFS' CLAIMS AND  
FREE THE ILLEGALLY BANNED BOOK.**

Just as the Court reversed himself in allowing (with his adjournment of trial, etc.) Memory to withdraw the frivolous copyright infringement claim that the Court had already granted to the extent of rights, the Court must also dismiss, absent a claim of damages, Mosaic's and Miletic's copyright infringement claims (that the Court already granted). In fact, the Court already has granted withdrawal of all Memory, Mosaic, and Miletic claims to damages, and without damages, there can be no liability.

**IN A FAIR COURT, SCHINDLEY WOULD BE ENTITLED TO  
FULL COSTS and ATTORNEY'S FEES AS THE PREVAILING  
PARTY, FRIVOLOUS LAWSUIT SANCTIONS, MENTAL ANGUISH DAMAGES,  
DAMAGES TO HER FINANCIAL and PHYSICAL HEALTH, and**

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<sup>5</sup> Joe Friendly admitted in deposition that Memory's claims were false, that Memory filed just to suppress the *Proceedings Book* and had no other particular "wish" (see Schindley's summary judgment papers).

**FRCP RULE 65(c) DAMAGES (SECURITY) FOR A WRONGFULLY BANNED BOOK  
ON MOSIC'S AND MILETIC'S FRIVOLOUS CLAIM OF DAMAGES AND  
"IRREFUTABLE HARM" and DAMAGES FOR THE ILLEGAL  
PERMANENT INJUNCTION TO JRI**

According to 17 U.S.C. § 505, the prevailing party can get full costs and attorneys' fees at the Court's discretion. With plaintiffs Memory's, Mosaic's, and Miletic's withdrawal of all claims and the Court's denial that he granted JRI a permanent injunction, Schindley has won. However, since this Court has so thoroughly abused his discretion, denied defendant and countersuit and libel plaintiff due process, and now tries to influence the Second Circuit to throw out her appeal in his own interest, Schindley will not ask the Court's "discretion."

**THE COURT SIGNED (AND GRANTED) YET ANOTHER ORDER THAT IS  
CONTRARY TO LAW AND HAS HARASSED DEFENDANT**

The Court has signed a second OSC that is contrary to law as plaintiffs' counsel Marshall Bellovin, et al. has cited parts of F.R.C.P. 41 out of context to trick the Court into thinking this is a matter of the Court's discretion, presumably because they have had such success in getting the Court to ignore substantive law and evidence and repeatedly rule them.

Plaintiffs' lawyers cite FRCP 41(a)(2) in claiming "claims" "may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Plaintiffs' lawyers deliberately omit from their paraphrase of FRCP 41(a)(2) the first and controlling part, "Except as provided in paragraph (1) of this subdivision of this rule . . ."

Paragraph (1) provides under (i) that plaintiffs may file a notice of dismissal "before service by the adverse party of an answer or of a motion for summary judgment" and under (ii) "by stipulation of dismissal signed by all parties."

Clearly, the intent of Rule 41(a)(1) is to protect a defendant from going through answering, etc. for a frivolous action and then having plaintiffs simply dismiss it after harassing defendant, not to mention putting a defendant through 3.5 years of hell and then having plaintiffs simply (even after doing Court-ordered trial preparation) essentially say, "Okay, it was all a joke. We claimed Memory, Mosaic, and Miletic were eligible for enhanced statutory damages in the amount of \$150,000 each and claimed that Memory, Mosaic, and Miletic had all suffered damages to their "businesses," but, oops, a claim for them of statutory damages is not allowed by law under 17 U.S.C. § 412, so our claims were frivolous from the beginning and, oops, neither Memory, Mosaic, or Miletic had a business to damage or could show any evidence of damages



that didn't occur after (Mosaic and Miletic) the suit was filed. Plaintiffs Mosaic's and Miletic's attempts to withdraw their claims for damages is simply an admission their cases were frivolous in the first place, and it prejudices defendant who has a right to face the "accusers" who have given her hell for 3.5 years from the comfort of another country without showing up for trial.

The real reason Memory, Mosaic, and Miletic want to withdraw their claims is

(1) Plaintiffs knew that when Mosaic and Miletic did not show up for trial, their entire cases would be dismissed on defendant's motion.

(2) Memory knew that Schindley had proof of both Friendly's and Bibic's "permission."

Since claims for damages must be within the jurisdictional limits of the court, Bellovin's declaration statement (#9) that "the cost of trying the claims outweighs any economic remunerative from a successful outcome" is an admission that the claims for damages were not in the jurisdictional limits of the court, \$75,000 for each for plaintiffs Memory, Mosaic, and Miletic. Bellovin is essentially claiming that it would cost more than \$225,000 to have a trial on these three issues, or, in the alternative, admitting he prosecuted frivolous claims for damages as they are not within the jurisdictional limits of this court. In fact, all four plaintiffs' claims for damages together are now \$0.00.

Further, FRCP 41(a)(2) says the court shall not dismiss claims against defendant's objections without defendant's consent if a countersuit has been filed that is still being adjudicated. Defendant's countersuit, the Court's summary dismissal of her claims on behalf of countersuit defendants (even while citing a remaining "fact" question), is in appeal in the Second Circuit. Clearly, defendant did not "consent," as Bellovin said in his declaration (#2) that he conferred with defendant and she would not consent. However, the Court has already granted the request to withdraw claims and, consequently, reversed his own granting of infringement claims.

Again Bellovin cites case law that is not on point to persuade the Court. *Wakefield v. N. Telecom, Inc.*, 769 F.2d 109, 114 (2d Cir. 1985) involved withdrawing claims, i.e., causes of action, not damages.<sup>6</sup> Mosaic and Miletic have effectively withdrawn their copyright infringement claims when they withdrew their damage claims.

This suit was filed simply to use the courts to harass defendants and make them settle a frivolous suit, and the filing attorney knew that when he filed it, and he and Makara's attorney

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<sup>6</sup> The *Zavadzan* case is not available to me and should be provided by plaintiffs, but I'm sure it is the same trick plaintiffs have used frequently—citing case law that does not apply. I am going through the cases in the Court's Sept. 5<sup>th</sup> "Order" for my appeal brief, and I haven't found one yet that is on point.

agreed in Jan. 2006 that the only cases that had any merit were Mosaic's and Miletic's (before Miletic's copyright was exposed as fraudulent and before they both admitted their damages occurred after the suit was filed and that they granted nonexclusive license to Dr. Bulajic/the Conference). The filing attorney bailed out when he learned that Schindley would not settle and that she had proof that Dr. Klein authorized her to publish the proceedings of the Conference he hosted and chaired, that she had proof that she "declined" a directorship in JRI, and that Bibic had copyrighted the raw footage she used to pull stills. Certainly, Bellovin now knows the same.

**BELLOVIN'S CLAIM FOR ATTORNEYS' FEES UNDER  
F.R.C.P. 54 WAS AGAINST THE LAW**

This Court signed an OSC in which Bellovin asked the Court to allow him to file a "motion for attorney fees pursuant to FRCP 54, without seeking further permission from the Court," again tricking the Court into doing his bidding that is completely outside the law for the following reason:

**THIS SUIT WAS FILED AS A COPYRIGHT INFRINGEMENT SUIT UNDER 17 U.S.C., THE U.S. COPYRIGHT ACT. THE U.S. COPYRIGHT ACT, UNDER 17 U.S.C. § 412, PROHIBITS THESE PLAINTIFFS FROM SEEKING ATTORNEYS' FEES OR STATUTORY DAMAGES.**

Still the Court signed Bellovin's first OSC when FRCP 54 (d)(1) says "Costs Other than Attorneys' Fees. Except when express provision therefore is made either in a statute of the United States . . ." and regarding attorneys' fees, FRCP 54 (d) (2) (A) says, "Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial."

After asking for damages under 17 U.S.C. § 504, injunction under 17 U.S.C. § 502, and attorneys' fees and costs of suit under 17 U.S.C. § 505, they want, in direct conflict with law, to ask for attorneys' fees under Rule 54. The substantive law governing this action is 17 U.S.C.; this is an action for copyright infringement, which plaintiffs and, apparently, the Court (as the Court calls this action a "breach of fiduciary duty and copyright 'violation'" action), when presented with copyright law, simply try to ignore.

The Court even stated, "It is understandable that Schindley, as a *pro se* litigant, has thrown up many technical copyright concepts gleaned from copyright treatises to challenge the validity of the copyrights or to support some defense to them. However, none of them apply to this case." (emphasis added) ("Decision and Order," Document # 410, p. 16, 1st para.)

The Court denied his first OSC, presumably only because plaintiffs' ask for withdrawal without prejudice to re-filing. After all this, the Court has abused his discretion once again in signing a second OSC and in granting Memory's, Mosaic's, and Miletic's OSC under Rule 41 regarding (a) withdrawing their claims set for trial—Memory's copyright infringement and damage claims and Mosaic's and Miletic's damage and, consequently, infringement claims—and “(b) Cancelling the trial scheduled for March 16, 2009” **before** defendant was even served notice of the order to show cause, let alone had opportunity to respond.

### **BELLOVIN'S DECLARATION IS DEFECTIVE AND CONTAINS PERJURY**

Pursuant to FRCP 56(e), Bellovin's declaration is defective as it contains conclusory arguments (see #11) instead of just “facts as would be admissible in evidence.”

Further, Bellovin, in addition to leaving out Memory and Schindley's claims that were disposed of in final order, commits perjury in his Declaration in note #1 in stating that “Plaintiffs' (**plural**) request for a permanent injunction” was granted. In fact, plaintiff (**singular**) JRI's request for a permanent injunction was granted. Bellovin's statement goes to a material fact in Schindley's appeal, and Schindley wants to pursue perjury charges against Bellovin. (While all four plaintiffs seem to have the same head, Barry Lituchy, the financier and driving force behind this lawsuit, particularly when Mosaic and Miletic didn't even know in 2006 that they were individual plaintiffs but thought they were only suing as parties in JRI's suit, in fact, there are, by law, four individual plaintiffs and only one, JRI, has been granted permanent injunction on its frivolous claim, in spite of the fact the Court now reverses and says he didn't grant a permanent injunction.

### **PRAYER**

WHEREAS, plaintiffs, their attorneys, and the Court have collaborated to deprive Schindley of her due process rights and, just on this latest abuse and harassment, have caused Schindley mental anguish and physical damage, and she has been denied recourse in this court of “justice,” and

WHEREAS Judge Brian Cogan has abused his discretion and shown sufficient partiality to plaintiffs to constitute judicial misconduct in signing plaintiffs' orders that he apparently didn't even read because he didn't even know he granted JRI a permanent injunction and couldn't possibly have read even Schindley's rehearing response (Exhibit A, p. 4 attached, document # 420) before signing plaintiffs' order denying rehearing and upholding the permanent

injunction and then sent an order to the Second Circuit in which he denied he granted JRI a permanent injunction and made obvious efforts to try to influence the Second Circuit to throw out Schindley's appeal and issued final orders on (1) JRI's frivolous copyright infringement claim and award of a permanent injunction under 17 USC § 502 (in spite of a lack of copyright registration that prohibits such injunction) and on its frivolous "breach of fiduciary claim" (negated in the Complaint itself); (2) Schindley's libel suit (even when citing a fact issue that precludes summary judgment) and countersuit, etc.; (3) Memory's, Mosaic's and Miletic's frivolous copyright infringement claims (setting for trial only whether Schindley had "permission" to use Memory's copyright protected "work" and amount of damages to Mosaic and Miletic; and

WHEREAS Judge Cogan could be damaged if Schindley succeeds in her appeal and appears to be committed to making sure Schindley does not succeed, even sending (one of) his Feb. 27, 2009 order(s) to the Second Circuit with misstatements of fact to try to get Schindley's appeal dismissed and is now defining plaintiffs' counsels' attacks on Schindley, and

WHEREAS Schindley asks this Court to CEASE AND DESIST his own and plaintiffs' and their counsels' harassment of defendant and, just as he reversed his rulings on Memory's, Mosaic's, and Miletic's copyright claims by allowing them to withdraw them and at least trying to reverse his decision on JRI's permanent injunction by stating he **did not grant JRI a permanent injunction**, to reverse his other rulings against the *Proceedings Book* and reinstate Schindley's libel suit, countersuit, and Rule 11(b) motion against plaintiffs' attorneys and allow her due process at trial under another judge and to prosecute perjury charges against Bellocin.

March 9, 2009

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**Defendant Schindley has pointed to *material* mistakes to permit the Court to reverse its ruling on JRI's entitlement to (a) Summary judgment on its breach of fiduciary duty claim and (b) a permanent injunction**

(b) Permanent Injunction:

8. Schindley addressed in her Memorandum in Support of Summary Judgment JRI's copyright infringement claim on pages 4-8 and further provided the copyright law in a summary judgment chart, yet the Court made material mistakes in ignoring copyright law and case law, claiming "none of them apply to this case" (quoting the Order at the top of p. 16) and awarded a permanent injunction under 17 U.S.C. §502 to JRI in spite of 17 U.S.C. §411, "(b), no action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title" and §501(b) "The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it." Since *Wheaten v. Peters* in **1834**, a registered copyright has been necessary to file an infringement suit and ask for injunction under 17 U.S.C. §502). 33 U.S. (8 Pet.) 591 (1834). This Court made a material mistake in turning established law on its head and should reverse and throw out JRI's copyright infringement claim, frivolous by law, and lift the injunction on the unlawfully banned proceedings book.

9. Plaintiffs' counsel should be sanctioned for deliberately misstating the Supreme Court's ruling in *eBay Inc. v. MercExchange L.L.C.* 126 S. Ct. 1837 (2006). (Such a blatant fraud on the Court should give the Court pause to wonder how many other misrepresentations by Plaintiffs he has relied on.) Plaintiffs argue that it is "without basis in law or fact" that JRI is not entitled to permanent injunction because "JRI does not have a valid copyright" because an injunction "need not be based on a copyright, but may be granted where plaintiff has demonstrated [the four point test]," and then Plaintiffs have the unmitigated gall to "support" their ridiculous statement with the Supreme Court ruling in *eBay Inc.*, stating "Nothing in the [four point test for injunction under 17 U.S.C. §502 and under patent law], as set forth by the United States Supreme Court in *eBay Inc.*, requires a showing of copyright ownership. JRI has therefore established its entitlement to an injunction under the test articulated in *eBay Inc.*" (I object that I, as a Pro Se defendant, should even have to spend time addressing such a misrepresentation to the Court by a lawyer.) **MercExchange's patent infringement suit against eBay was predicated on its patent:**