In The
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KATHERINE FELT,

Plaintiff,

vs.

HARBHAJAN SINGH KHALSA YOGIJI, et al.,

Defendants.

Civil No. 86-0839 HB

PLAINTIFF KATHERINE FELT'S
MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION
TO DEFENDANT HARBHAJAN SINGH KHALSA YOGIJI'S MOTION TO DISMISS

16

TABLE OF CONTENTS

SUMMARY OF PLAINTIFF'S ARGUMENTS

Summary of First Amendment Argument

The defendants' argument that this case is barred by the First Amendment to the U.S. Constitution is flawed because it fails to recognize three critical points in the plaintiff's pleading. First, the plaintiff pleads that Yogi Bhajan's ostensibly religious statements were made in bad faith for the purpose of advancing secular objectives, not that the defendants' religious beliefs are untrue, and the defendants' subjective good faith and objectives are properly subject to judicial scrutiny. Second, many of the false representations and tortious acts of the defendants are on their face secular, and as such are outside the scope of First Amendment protections for religious beliefs. Third, the plaintiff has alleged numerous tortious and/or criminal acts which are not entitled to protection under the First Amendment, even if they were bona fide religious practices.

Summary of Statute of Limitations Argument

Because this is primarily a case involving state law causes of action brought in federal court under diversity jurisdiction, this Court must apply the statutes of limitation which would be applicable to the plaintiff's claims if brought in a court in New Mexico. This includes not only the limitations periods, but the tolling provisions as well. Since the limitations period applicable to the plaintiff's causes of action did not begin to run under New Mexico law until September, 1985, none of the plaintiff's claims are time-barred.

Summary of Argument on Sufficiency of Pleading

In all respects, the plaintiff's Complaint apprises the defendants of the charges they must answer, and enables them to prepare a defense. This Complaint is, therefore, sufficient. The defendants' demand for more detail would require the plaintiff to plead evidence, and would result in the sort of lengthy complaint which this Court has already forbidden the plaintiff to file.

A R G U M E N T

I. TORTIOUS AND CRIMINAL ACTIVITY IS PROPERLY ACTIONABLE IN A FEDERAL COURT, EVEN IS SUCH ACTIVITY IS CARRIED OUT UNDER THE CLOAK OF RELIGIOUS BELIEF.

A. Allegations that the ostensibly religious practices and representations of the defendants were merely a subterfuge designed to disguise the defendants' secular objectives present a justiciable issue.

The plaintiff is not seeking to test the "validity" of the religious tenets espoused by the defendants; rather, the plaintiff is seeking to test whether those tenets were espoused in good faith. Such an inquiry is permitted under the First Amendment. Because the defendants' entire First Amendment argument is based upon the proposition that the "validity" or the "reasonableness" of religious beliefs cannot be tested in a court of law (Def. Memo. at 4-8), the defendants' motion must fail.

This was the issue presented in United States v. Ballard, 322 U.S. 78 (1944). Guy and Edna Ballard were indicted for mail fraud for obtaining money, property "and other things of value" by falsely claiming they were divinely designated to transmit the word of God to mankind, and that they had miraculous healing powers. Id. at 79-80. Based upon these representations of divine designation and miraculous, supernatural powers, "...corporations were formed, literature distributed and sold, funds solicited, and memberships in the 'I Am' movement sought." Id. at 79. These claims are identical to claims asserted in the instant case.

At trial, the defendants sought to have the trial judge instruct the jury to decide the truth of defendants' religious assertions. The trial judge ruled that the jury should not be permitted to decide whether

it was true that the defendants were divinely designated or had supernatural powers, but that the jury should decide the defendants' good faith:

> The issue is: Did these defendants honestly and in good faith believe those things? If they did, they should be acquitted. I cannot make it any clearer than that.
>
> If these defendants did not believe those things, they did not believe that Jesus came down and dictated, or that Saint Germain came down and dictated, did not believe the things that they wrote, the things that they preached, but used the mail for the purpose of getting money, the jury should find them guilty. Therefore, gentlemen, religion cannot come into this case. ---Id. at 81-82

The Supreme Court ultimately held that the trial judge was correct in withholding from the jury whether the religious articles professed by the Ballards were true. Id. at 88. But, this does not mean that the Supreme Court foreclosed inquiry into whether the Ballards themselves believed in the truth of their teachings. To the contrary, the ruling of the trial judge was approved. Id. at 88.

On remand the U.S. Court of Appeals for the Ninth Circuit upheld the conviction, because the jury found that "respondents were without belief in the statements which they had made to their victim." Ballard v. United States, 152 F.2d 941, 943 (9th Cir. 1946), rev'd on other gnds., 329 U.S. 187 (1946). In the instant case, the plaintiff has similarly alleged that Harbhajan Singh Khalsa (hereinafter "Yogi Bhajan") espoused religious doctrine in bad faith, as part of a scheme to

defraud. E.g., Complaint at 18, 23, 29(c), 29(d), 42, 44 and 46.[1] Whether the doctrine is "valid" is simply not the issue; the issue is whether Yogi Bhajan believed the things he said.

This distinction, between trying the truth or validity of religious doctrine and trying the good faith with which the doctrine may be asserted on a given occasion, has been repeatedly recognized in cases decided subsequent to Ballard. For example, the Tenth Circuit has allowed inquiry into the good faith of one claiming religious exemption from federal taxation because the taxpayer's "use of the Church was a 'subterfuge and a sham'." United States v. Carroll, 567 F.2d 955 (10th Cir. 1977). The D.C. Circuit also recognized the justiciability of the good faith of one professing religious belief in Founding Church of Scientology v. United States, 409 F.2d 1146, 1162 (D.C. Cir. 1969):

> Any prima facie case made out for religious status is subject to contradiction by a showing that the beliefs asserted to be religious are not held in good faith by those asserting them, and the forms of religious

[1] In this regard the plaintiff notes that in three drafts of her Complaint originally presented to the Court for filing, she had alleged with greater specificity that Yogi Bhajan developed and espoused the ostensibly religious teachings of his organization in bad faith and for secular purposes. For example, the plaintiff sought to allege prior statements by Yogi Bhajan to the effect that he was going to "start a religion and make a million dollars," and that he began to characterize his business activities as a yoga teacher as part of a religion in response to a need for special immigration status as a minister of a religion and the desire to obtain tax exempt status.

The Court (per Meechum, S.J.), however, would not permit these earlier drafts of the Complaint to be filed, and directed the Clerk of the Court not to accept the documents for filing. As a result, and at the direction of the Court, these specifics were deleted from the Complaint as finally filed. Should this Court now agree with the defendant that the Complaint does not set forth sufficient facts to state a claim, the plaintiff stands ready to amend the Complaint to set forth additional facts and specifics.

> organization were erected for the sole purpose of cloaking a secular enterprise with the legal protections of a religion.

The rule could not be otherwise, for if all one needed to do in order to escape judicial scrutiny of his acts was to characterize his acts as religious, each man would "become a law unto himself." Reynolds v. United States, 98 U.S. 145, 166-167 (1878). People may not, with impunity, commit fraud under the cloak of religion. Cantwell v. Connecticut, 310 U.S. 296, 306 (1940).

The authority cited by the defendants is not to the contrary. The California Court of Appeals has expressly recognized that courts can "pass on the question of whether members of a religious organization honestly and in good faith believed assertedly fraudulent representations." Molko v. Holy Spirit Ass'n. for the Unification of World Christianity, 224 Cal. Rptr. 817, 827, n. 10, 179 Cal. App. 3d 450, 460 (1986), pet. for review granted, ____ Cal. Rep. ____ (July 24, 1986) (citing Ballard, supra). The Court in Molko also expressly reaffirmed the principle set forth in Cantwell, supra, that the state can and will intervene to prevent the commission of fraud through religious representations. Id. at Cal. Rep. 829.

The plaintiffs' claims in Molko were not, as the defendants imply, dismissed because inquiry into the actions of the Unification Church was foreclosed by the First Amendment. Rather, the case was dismissed because under the facts of that particular case[2] there was no evidence that members of the Unification Church who allegedly injured the plaintiffs acted other than out of a good faith religious belief. Molko, supra at Cal. Rep. 827-828. Unlike the plaintiff in this case, the plaintiffs in Molko conceded the sincerity of the religious beliefs of the defendants. Id. at 828. The only testimony presented by the

---

[2] It is important to note that the issues in Molko were decided upon cross-motions for summary judgment, after discovery had been taken and upon what the court characterized as "essentially undisputed" facts. Molko at Cal. Rep. 821. In the instant case there is no such record, and the allegations of the Complaint must be taken to be true for purposes of deciding the defendant's motion. Jenkins v. McKeithen, 395 U.S. 411, 421-422 (1969); Chavez v. Santa Fe Housing Authority, 606 F.2d 282 (10th Cir. 1979).

plaintiffs to support their case was expert opinion testimony, and that expert opinion testimony was disregarded by the Court.[3] Hence, the issue of the defendants' sincerity in Molko was decided on the evidence.

It is also significant that in Molko the only deceit at issue was an alleged failure on the part of the recruiters to identify their affiliation with the Unification Church during the recruitment process. Id. at 823. The Court found that the plaintiffs were fully aware of the recruiters' affiliation before they joined the Church, and therefore there could be no justifiable reliance upon the earlier failure to disclose. Id. at 826. In the instant case the plaintiff has alleged she was misled both in the recruitment process (Complaint at ¶¶29, 30) and as a means of keeping her in the group and doing the bidding of the group (Complaint at ¶¶38, 39 and 44).

Moreover, in Molko there was no evidence that the plaintiffs were kept in the group through the use of force, threats of force or other unlawful means. Id. at 830. Indeed, the plaintiffs in Molko admitted they were free to leave at any time. Id. at 822-823. In contrast, the plaintiff here specifically alleges she was restrained through force, threats of force and other unlawful means. E.g., Complaint at ¶¶57-59, 69-73, and 76.

The defendants' reliance upon the decision in Molko to stand for the proposition that the First Amendment bars adjudication of the plaintiff's claims is therefore misplaced. The plaintiff respectfully submits this Court can and should examine whether and to what extent the

---

[3] The court found that the expert testimony contradicted that of the defendants. Id. at 826, n. 9. The Court also questioned the validity of the expert testimony, characterizing it as "veiled value judgments." Id. at 829, n. 15. The Court also emphatically found that in order to credit the experts' testimony the Court would necessarily have to question the "authenticity and force" of the religious teachings, which was constitutionally impermissible. Id. at 828.

The opinion in Molko is unclear why the Court felt the experts' testimony would necessarily involve an evaluation of the truth of the Church's teachings. This question may be cleared up by the Supreme Court of California in coming months. In any event, the issue does not exist in the instant case, for the bad faith of the defendants alleged in the Complaint must be presumed. Jenkins, supra; Chavez, supra.

plaintiff was defrauded by bad faith religious claims made by the defendants.

B. Much of the defendants' misconduct is entirely secular in nature, and is therefore not within the scope of the First Amendment's protections for religious practice.

It is well settled that the secular activities of a religious organization are distinct from its religious activities and beliefs, and are not entitled to the same deference under the First Amendment. For this reason commercial activities of religious groups, event if infused to some degree with a religious purpose, are subject to federal regulation and sanction. Tony and Susan Alamo Foundation v. Secretary of Labor, ____ U.S. ____, 105 S. Ct. 1953 (1985); See also Founding Church of Scientology v. U.S., supra. at 1159, 1161, 1163-1164 (diagnostic services offered by a religious organization are subject to regulation and sanction if sold on basis of "pseudo-scientific," as opposed to religious, claims); Christian Echoes National Ministry, Inc. v. U.S., 470 F.2d 849 (10th Cir. 1972) (attempts by religious organization to influence legislation and political campaigns can form basis for withholding tax exempt status).

In the instant case a number of the fraudulent misrepresentations and other wrongful acts of the defendants are secular and are therefore beyond the scope of First Amendment restrictions upon regulation of religion. For example, Yogi Bhajan represented to the plaintiff that 3HO was devoted to "education and science" and not religion. Complaint at ¶29(d). The defendants also misrepresented to the plaintiff that she would be able to engage in a number of activities such as horseback riding, women's studies, vegetarian cooking, etc., which were not related to any religion. Id. at ¶30. It is the entire thrust of this Complaint that the defendants operate with secular, rather than religious, objectives. E.g., Id. at 18, 46.

Other misrepresentations had to do with objectively verifiable facts, such as the length of time Yogi Bhajan had studied under a particular yoga master (Complaint at ¶46(a)), the kinds of honors he received (Complaint at ¶46(f)), the number of followers he had (Complaint at ¶39(e)), and that he would see to the plaintiff's material needs if she would serve him (Complaint at ¶¶39(d), (h)).

The plaintiff's damages under her counts for violations of the Fair Labor Standards Act and the R.I.C.O. Act derive principally from her labor formulating recipes for commercial enterprises. Complaint ¶¶98-105. These are commercial damages arising from commercial activities, and as such are recoverable despite the defendants' ostensibly religious orientation. See Tony and Susan Alamo Foundation, supra; see also Prince v. Massachusetts, 321 U.S. 158 (1944).

To the extent the plaintiff's claims arise from secular activity of the defendants, the First Amendment's protections for religious activity are inapposite, and the defendants' motion should be denied.

C. The tortious and criminal activity complained of is outside the protection of the First Amendment, even if it was perpetrated as a good-faith religious practice.

Freedom of religious belief does not imply unfettered freedom to act. Where religious practices violate civil law, endanger the public health or welfare, or endanger the health or safety of a member of the religious order, those practices are subject to judicial review and legal sanction. Prince v. Mass., supra; Cantwell, supra; Reynolds v. U.S., supra; Carroll, supra; United States v. Grismore, 564 F.2d 929 (10th Cir. 1977).

The plaintiff has clearly alleged illegal activity as the basis for several of her causes of action. These activities include rape and other criminal assaults, violations of federal wage, wiretap and anti-racketeering laws, and criminal fraud. These crimes also constitute common law torts, and give rise to statutory causes of action. The plaintiff's count for involuntary servitude constitutes both a federal crime (18 U.S.C. §1584) and "conduct which violates the most fundamental tenets of both American society and the United States Constitution." Turner v. Unification Church, 473 F. Supp. 367, 372 (D. R.I. 1979), aff'd. mem. 602 F.2d 458 (1st Cir. 1979).

With respect to these claims the "validity" of the defendants' religion is immaterial. Such conduct is actionable regardless whether it was part of a religion or religious practice. The defendants' argument

that to decide these claims will necessarily involve judgments as to the validity of religious beliefs is, therefore, immaterial.

II. IN DIVERSITY CASES SUCH AS THIS, THE STATUTORY TOLLING PROVISIONS OF THE LAW OF THE STATE IN WHICH THE DISTRICT COURT SITS GOVERN.

Federal courts sitting in diversity cases apply the statute of limitations of the state in which the federal court is sitting, to the same extent that a state court would. Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938). Where a state statute of limitations is applied, the federal courts will adopt the entire framework of the state's law, including statutory provisions relating to the tolling of the statute, and state judicial construction and interpretation of the statute. Security Trust Co. v. Black River Natn'l. Bank, 187 U.S. 211 (1902); Erie, supra. The rationale behind this rule is, "in virtually all statutes of limitations, the chronological length of the period is interrelated with provisions regarding tolling, revival and questions of application." Wilson v. Garcia, ____ U.S. ____, 105 S. Ct. 1938, 1943 n. 17 (1985), citing Johnson v. Railway Express Agency, Inc., 421 U.S. 454 (1974).

Adoption of a state statute of limitations, including tolling provisions, is also the general rule where a federal statutory cause of action is at issue and a state limitation is applied by analogy. This principle was affirmed in Johnson v. Railway Express Agency, Inc. supra.

In Johnson the plaintiff brought his action pursuant to, inter alia, 42 U.S.C. §1981. The District Court dismissed the action as time-barred under the applicable Tennessee statute of limitation. The plaintiff argued both in the District Court and on appeal that the state statute of limitation should be tolled under the provisions of 42 U.S.C. §2000e-5.

The Supreme Court affirmed the principle that where a federal statute creating a private right of action has no specific limitation, "the controlling period would be the most appropriate one provided by state law." Id. at 462 (cases cited therein). The court went on to hold

that adoption of the state statute of limitation included adoption of state law tolling provisions:[4]

> In virtually all statutes of limitation the chronological length of the limitation period is interrelated with provisions regarding tolling, revival, and questions of application. In borrowing a state period a federal court is relying on the State's wisdom in setting a limit, and exceptions thereto, on the prosecution of a closely analogous claim. Id. at 463-454 (citations omitted) (emphasis added).

Hence, in the instant case New Mexico statute of limitation principles must apply, including the provisions of New Mexico law governing tolling of the statute for fraud and mental disability. In this regard, no statute of limitations began to run with respect to the plaintiff in this case until approximately September, 1985. It was at this time that she was finally able to see that she had been defrauded, and know that she had been injured as a result of the actions of the defendants.[5] Hence, the statute of limitations was tolled as to this plaintiff until September, 1985, less than one year prior to filing.

A case essentially identical to this one has been decided by the Court of Appeals of the State of New Mexico. Kathy Roney v. Siri Singh Sahib Harbhajan Singh Yogi, et al., Appeal No. 7842 (decided May 16, 1985) (a true and correct copy of that opinion is attached hereto for the convenience of the Court as "Attachment A."). In that case Yogi Bhajan and the corporate defendants named in this case were sued for personal injury. The complaint was initially dismissed because the suit was brought over three years after the specific physical injury complained of

---

[4] There is an exception to this rule where state law would "be inconsistent with the federal policy underlying the cause of action under consideration." Id. at 465. The defendants allege no such countervailing policy here, and none exists.

[5] For this reason the defendant's argument that the statute began to run in 1975, even prior to the infliction of most of the injury upon the plaintiff, is not only incorrect, it is immaterial. In view of the applicable tolling provisions, the length limitations imposed on this brief under local Rule 9(f), the plaintiff shall not here address the defendants' other arguments in detail.

was inflicted. The plaintiff contended the statute of limitations was tolled, and the Court of Appeals agreed:

> Because she alleges that the continuation of her "lack of free will and comprehension" was a direct and proximate result of defendants' mind and body control techniques, she is, in effect, also alleging that she could not have reasonably known of her cause of action within the statutory period. The allegation that defendants' techniques rendered her "incapable of understanding or perceiving the nature of what she was doing or its consequences. . ." demonstrates, on the face of the complaint, that plaintiff was unaware of the function and effects of a ligation, and was also in no mental condition to perceive the extent and effects of defendants' mind and body control techniques.

In the instant case the plaintiff has expressly alleged the same sort of mental disability and fraudulent concealment that tolled the statute in Roney, supra. E.g., Complaint at ¶¶51-52.[6]

The defendants misquote the court in O'Hara v. Kovens, 373 F. Supp. 1161 (D. Md. 1979), arguing in the face of all of the foregoing precedent that federal courts do not apply state tolling provisions, and that there is no tolling for "insanity" in cases brought in federal court. What O'Hara actually held was that in a federal securities fraud case "insanity" does not toll the statute of limitations:

> 'It is a matter of federal law as to the circumstances that will toll a state statute applied to private actions under the securities law.' [citation omitted.] O'Hara, supra. at 1167. (Underlined portion omitted from quotation in defendants' memorandum.)

It is true that insanity will not toll federal statutes of limitation -- that is, statutes of limitation contained within and governing federal statutory causes of action. The authorities relied upon in O'Hara, and cited by the defendants here, were cases decided under the Federal Tort Claims Act, which has as its statute of

[6] The plaintiff has also alleged the defendants coerced her silence through death threats to her and her family. Id. at 52, 59, 76.

limitations the two year limitation set forth in 28 U.S.C. §2401(b). See, Casias v. United States, 532 F.2d 1339 (10th Cir. 1976); Accardi v. United States, 435 F.2d 1239 (3d Cir. 1970). In the instant case, however, the plaintiff asserts only state statutory and common law causes of action and federal causes of action which do not contain their own statute of limitations.[7] The State law must therefore apply.

Finally, even if the running of the statute of limitations were not tolled due to mental disability, the plaintiff has also alleged fraudulent concealment. Fraudulent concealment will toll the statute of limitations under both state law (Roney, supra; N.S.M.A. (1981) §338(4)), and under the federal doctrine of "equitable tolling." Holmberg v. Armbrecht, 327 U.S. 392 (1946); Esplin v. Hirschi, 402 F.2d 94 (10th Cir. 1968).

For the foregoing reasons it cannot be said that any of the plaintiff's asserted causes of action is time-barred.

III. IN ALL OTHER RESPECTS THE PLAINTIFF'S COMPLAINT SUFFICIENTLY MAKES OUT THE CAUSES OF ACTION ASSERTED UNDER EACH COUNT.

A. The plaintiff has alleged the circumstances constituting the defendants' fraud with sufficient particularity to apprise the defendants of their misconduct.

Rule 9(b) of the Federal Rules of Civil Procedure requires that the "circumstances constituting fraud... shall be stated with particularity". The plaintiff has fulfilled this requirement.

---

[7] The plaintiff's claim under the F.L.S.A. is an exception. Under that act one can only recover wages for a period of two years prior to the date the action is commenced, three years for willful violations. 29 U.S.C. §255(a). However, for continuing violations of the Act such as are alleged in this case, the plaintiff can recover all back wages beginning with the first violation and ending with the last violation, assuming the last violation occurred within three years of the filing of suit. Jenkins v. Home Insurance Co., 635 F.2d 310 (4th Cir. 1980); Derouin v. Louis Allis Division, Litton Industrial Products, Inc., 618 F. Supp. 221 (E.D. Wisc. 1985) (interpreting 29 U.S.C. §206(d), which is subject to the same statute of limitation as 29 U.S.C. §216). Hence, no portion of the plaintiff's claim under the F.L.S.A. is time-barred.

The plaintiff has specifically alleged the time and place of the initial misrepresentations made by the defendants in order to induce the plaintiff to go to "Women's Camp". (Complaint at ¶¶29,30,39). The plaintiff has also alleged the circumstances surrounding subsequent fraudulent statements and representations by Yogi Bhajan designed to induce the plaintiff to act, including specific statements of what Yogi Bhajan said or failed to say (E.g., Complaint at ¶¶40-47) and how the other individual defendants participated in the Fraud (Id. at 48). Defendants' characterization of these averments in the Complaint as "vague" (Def. Memo at 17,18) is thus inaccurate.

While it is true that the plaintiff has sometimes stated the times at which misrepresentations were made in terms of a time frame rather than a specific date and hour, this is not fatal to her Complaint. There is nothing in F.R.C.P. Rule 9(b) which requires the time of fraudulent misrepresentations to be given, so long as the plaintiff uses "some means of injecting precision and some measure of substantiation into [her] allegations of fraud." Seville Industrial Machinery v. Southmost Machinery, 742 F.2d 786,791 (3d Cir. 1984). Although Rule 9(b) requires a more specific statement of the basis for a fraud claim than other types of claims, it must still be liberally construed in conjunction with Rule 8 and the general requirements of "notice pleading." Seville, supra; Friedlander v. Sims, 775 F.2d 810, 813 (5th Cir. 1985); Simcox v. San Juan Shipyard, Inc., 754 F.2d 430, 439-440 (1st Cir. 1985). This is particularly so where -- as in this case -- more specific pleading would unduly lengthen the Complaint. Simcox, supra at 440.[8] Here the defendants certainly know what they are accused of doing, and when, and they are thus enabled to prepare a defense.

[8] As previously noted, considerable detail was deleted from prior drafts of the complaint, at the direction of the Court. This was at least in part due to the unusual length of the Complaint. Should this Court determine that there is insufficient detail in the Complaint, the remedy would not be dismissal. Rather, the plaintiff should be given leave to amend to include more detail. Friedlander v. Sims, supra [cases cited therein at 813); Barry v. St. Paul Fire and Marine Ins. Co., 555 F.2d 2 (1st Cir. 1977), aff'd. on other gnds. 438 U.S. 531 (1978); Sarter v. Mays, 491 F.2d 675 (5th Cir. 1974).

The defendants' demand that plaintiff must set forth exactly how the techniques of covert manipulation[9] employed by the defendants operate is contrary to the principles underlying F.R.C.P. Rules 8 and 9. The medical and psychological details of the operation of the thought reform process upon this particular plaintiff are evidentiary facts which need not be pled. Further, to the extent they need be included in the Complaint, they are more properly characterized as "other conditions of mind" which, under Rule 9(b), may be averred generally. Certainly, the defendants are free to obtain more detailed information in this regard through discovery, but the pleading of scientific or medical detail is not required in the Complaint.

B. The Complaint alleges extreme and outrageous conduct by the defendants in intentionally inflicting severe emotional distress.

The plaintiff's count for intentional infliction of severe emotional distress expressly incorporates the allegations that the plaintiff was subjected to physical assaults which caused the plaintiff pain, physical harm, fear, apprehension and great humiliation. Complaint at ¶91. The plaintiff has also alleged that she was publicly humiliated, held under armed guard, and threatened with physical injury and death. Id. The defendants' characterizations of these rapes, assaults, death threats and public humiliation as "petty oppressions or other trivialities" (Def. Memo at 18) is outrageous.

Similarly, the defendants' characterization of these effects as the product of the plaintiff's averments that she was intentionally placed in a mentally disabled state and made to feel ashamed and worthless, as the product of "prescribed behavior" and/or a "sanction" imposed by a religious group is contrary to the plaintiff's pleading. To the extent all or some of the procedures used to induce this state in the plaintiff were ostensibly religious practices, the plaintiff has alleged they were carried out in bad faith and without the consent of the plaintiff.

---

[9] The defendant, and not the plaintiff, characterizes this process as "brainwashing." The term "brainwashing" does not appear anywhere in the Complaint, and to plaintiff's knowledge has no recognized medical or legal definition.

Finally, to the extent the defendants suggest their practices cannot be "outrageous or unreasonable" as a matter of law because they are religiously motivated, they are wrong. As noted in Part I, supra, religious practices are not per se immune. Unlawful or tortious conduct remains actionable even if carried out under a religious cloak.

C. By undertaking to practice medicine without a license, defendants assumed, and then breached, a duty of care toward the plaintiff.

The defendants' argument that because the defendants never "held themselves out" as medical professionals, they cannot be liable for negligent practice of medicine, is specious. It is a felony in New Mexico to practice medicine without first qualifying for and then receiving a license. §61-6-18 NMSA 1978 (1986 Repl.). The "practice of medicine" is defined as offering or undertaking to prescribe any drug or medicine, or diagnosing, correcting or treating any disease, illness or pain, regardless whether one "holds himself out" as a medical professional. §61-6-15 NMSA 1978 (1986 Repl.) Thus, there is a statutory duty to refrain from unlicensed practice.[10]

The only authority cited by the defendants in support of their position does not hold what defendants say it does. In Goffe v. Pharmaseal Laboratories, Inc., 568 P.2d 600 (N.M. Appl 1976), the issue was whether the plaintiff had adduced sufficient evidence of standard of care to avoid summary judgment. The defendant against whom malpractice was alleged in Goffe was a doctor, and held himself out as such, so there was no issue whether one must "hold himself out" as a medical practitioner. Goffe simply does not hold that "a necessary element of a cause of action for malpractice is that the defendant held himself out as a medical professional". Def. Memo at 20.

Finally, the characterization of plaintiff's claim as "malpractice" is the defendants', not the plaintiff's. In New Mexico, an action for "malpractice" is a unique action, with special procedures. See §41-5-1, et seq., NMSA 1979 (1986 Repl.) "Medical Malpractice Act."

---

[10] There is a statutory exception for healing "by mental or spiritual means" as part of the tenets of a church. §61-6-16(I) NMSA 1976 (1986 Repl.). However, because the plaintiff has alleged prescription of "drugs, diets and medical devices", this exception has no application here. There is also an issue whether defendants were practicing in good faith.

Such actions cover only license practitioners (§41-5-3 NMSA 1979 (1986 Repl.)), which excludes the defendants (Def. Memo at 20).

D. The plaintiff's allegations that the defendants opened mail, disturbed her sleep, and monitored her activities states a cause of action for invasion of privacy.

While all of the limits of this tort have yet to be clearly defined, the tort generally protects a person's "right to be left alone." McNutt v. New Mexico State Tribune Co., 538 P.2d 804, 807-808 (N.M. App. 1975). The plaintiff has clearly alleged that the defendants have intruded into her physical solitude and seclusion and into her private affairs by opening her mail[11], interrupting her sleep, invading her home, and keeping her under constant surveillance. E.g., Complaint at ¶¶70-73, 81(d), 137,138. Such conduct constitutes an unwarranted intrusion into her physical seclusion and her private affairs, akin to an illegal search. See Apodaca v. Miller, 441 P.2d 200, 204 (N.M. 1968); McNutt, supra at 808.

The plaintiff has further expressly alleged that the defendants placed the plaintiff under surveillance for the purpose of intimidating, embarrassing, discrediting and demeaning her. Complaint at ¶¶81(d), (h), 138. Publishing information in order to embarrass, and especially publishing information which casts one in a false light, is well recognized as grounds for an action for invasion of privacy. See McNutt, supra at 808; Montgomery Ward v. Larragoite, 467 P.2d 399, 401 (N.M. 1970).

The defendants' argument that the plaintiff has not "alleged that she was entitled to seclusion" (Def. Memo at 21) is merely an assertion of privilege, which is an affirmative defense the plaintiff is not required to anticipate in her pleadings. Moreover, the plaintiff has alleged invasions of her privacy after she left the defendants' group. Complaint at ¶¶137, 138.

---

11 The defendant's conduct in this regard violated federal postal laws (18 U.S.C. §1702). The plaintiff respectfully submits that criminal violation of federal statutes designed to protect the privacy of individuals is per se sufficiently extreme and offensive to one of ordinary sensibilities to be actionable as an invasion of privacy.

The plaintiff has therefore stated a claim for invasion of privacy.

E. The defendants may be held jointly and severally liable for civil conspiracy.

Civil conspiracy is a recognized cause of action under New Mexico law. Las Luminarias of the New Mexico Council of the Blind v. Isengard, 587 P.2d 444, 447 (N.M. App. 1978); C&H Construction and Paving Co. v. Citizen's Bank, 597 P.2d 1190, 1198 (N.M. App. 1979). Its elements are: (1) an existence of a conspiracy; (2) the wrongful acts done pursuant to the conspiracy; and (3) damage resulting from those acts. Id. Here, all three elements have been pled.

The authority cited by the defendants, Armijo v. National Surety Corp., 268 P.2d 339 (1954), is not to the contrary. All the court held in Armijo was that there are no separate damages which arise from a conspiracy; damages only occur as a result of the wrongful acts of the conspirators. Las Luminarias, supra at 447, citing Armijo.

Nor is there any merit to defendants' claims that their roles are not pled specifically enough. Def. Memo at 21-22. The plaintiff has specified when and what fraudulent misrepresentations were made (Complaint at ¶¶40-47), and how the other defendants participated in transmitting those misrepresentations (Id. at ¶132). The plaintiff has specifically alleged the defendants' role in physically restraining the plaintiff so that she could be battered (Id. at ¶60), and in imprisoning the plaintiff (Id. at ¶¶70-74). Indeed, for each Count alleged by the plaintiff, the individual defendants' roles in carrying out the objectives of Yogi Bhajan have been specified.

As was the case with the plaintiff's fraud allegations, the defendants here are sufficiently apprised of what they are charged with to permit them to prepare a defense. See Part III. A., supra (authorities cited therein). The defendants may obtain details and particulars through discovery. Therefore, the plaintiff respectfully submits that additional detail in pleading will only serve to lengthen the Complaint, in contradiction of prior rulings of this Court.

F. Miscellaneous Matters.

The individual defendants have incorporated by reference arguments made by the corporate defendants in a separate motion to this Court. Def. Memo at 19. These arguments pertain to plaintiff's R.I.C.O. claims, 13th Amendment Claims, and claims under the Fair Labor Standards Act.

In response, the plaintiff respectfully refers the Court to her responses to the arguments made by the corporate defendants. The plaintiff hereby incorporates her responses into this memorandum. See F.R.C.P. Rule 10(c).

Respectfully submitted,

PETER N. GEORGIADES, ESQ.
300 Grant Building
Pittsburgh, PA 15219
(412) 281-0705

GORDON REISELT, ESQ.
Singer, Smith & Williams
P.O. Box 25565
Albuquerque, N.M. 87125
(505) 247-3911

In The
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KATHERINE FELT,

Plaintiff,

vs.

HARBHAJAN SINGH KHALSA YOGIJI, et al.,

Defendants.

Civil No. 86-0839 HB

PLAINTIFF KATHERINE FELT'S
MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION
TO CORPORATE DEFENDANTS' MOTION TO DISMISS

17

TABLE OF CONTENTS

SUMMARY OF PLAINTIFF'S ARGUMENTS

Summary of First Amendment Argument

The defendants' argument that this case is barred by the First Amendment to the U.S. Constitution is flawed because it fails to recognize three critical points in the plaintiff's pleading. First, the plaintiff pleads that Yogi Bhajan's ostensibly religious statements were made in bad faith for the purpose of advancing secular objectives, not that the defendants' religious claims are untrue; the defendants' subjective good faith and objectives are properly subject to judicial scrutiny. Second, many of the alleged false representations and tortious acts of the defendants are on their face secular, and, as such, are outside the scope of First Amendment protections for religious practices. Third, the plaintiff has alleged numerous tortious and/or criminal acts which are not entitled to protection under the First Amendment, even if they were bona fide religious practices.

Summary of Argument with Respect to R.I.C.O.

The allegations of the Complaint in this case are sufficient to alert the defendants to what they are being accused of, and permit them to prepare a defense. This is all that is required in a Complaint, since the defendants can obtain additional detail through discovery and pleading detail will

result in an impermissibly long Complaint. In the event the Court should determine that additional detail is necessary, the plaintiff is prepared to file an amended pleading and respectfully requests leave to do so.

Summary of Argument with Respect to the F.L.S.A.

The U.S. Supreme Court has held that even an employee of a religious organization is entitled to the protections of the F.L.S.A., where the employee performed "operational" or "administrative" work or work relating to secular endeavors of the organization with the expectation of compensation. The defendants' argument that the plaintiff could not have expected to be compensated for her labor is contradicted by the plaintiff's express averments that she not only expected to be compensated for certain work she performed for the defendant corporations, but that she was, in fact, compensated for that work (albeit at illegally low rates). Because these factual averments must be taken as true for purposes of deciding a motion to dismiss under Rule 12(b), the defendants cannot now dispute the plaintiff's allegations with argument.

Summary of Argument With Respect To Right of Action for Involuntary Servitude

By all of the standards recognized for the implication of a private right of action from a federal criminal statute

and/or a constitutional provision, a private right of action in favor of individuals subjected to involuntary servitude should be implied. Although there is a split of authority on the question, the court cited by the defendants decided against a private right of action based upon standards applicable to private actions against government officials for constitutional torts, and based upon the erroneous conclusion that state law remedies are adequate to redress the grievances of a slave. Because involuntary servitude is a unique wrong, not addressed by existing tort law, the better view is to permit federal criminal laws to be augmented by private civil actions.

A R G U M E N T

I. TORTIOUS AND CRIMINAL ACTIVITY IS ACTIONABLE IN THIS COURT, EVEN IF CARRIED OUT PURSUANT TO ACTUAL OR OSTENSIBLE RELIGIOUS BELIEFS.

A person committing tortious or criminal acts is liable for those acts, even though those acts may have been carried out under a religious ruberic. Moreover, where -- as here -- it is alleged that ostensibly religious teachings and practices were propounded in bad faith in order to facilitate the perpetration of a fraud, it is within the power of the courts to examine whether the religious activities were carried out in good faith, even though the truth or validity of religious doctrine may not be tested.

Essentially the same argument as the corporate defendants now raise was raised by individual defendant Harbhajan Singh Khalsa Yogiji (hereinafter "Yogi Bhajan") in his motion to dismiss, filed contemporaneously with the instant motion (hereinafter "Bhajan motion"). Because both motions are now pending before the same judge of this court, and in the interests of economy of space in responding to this complex and lengthy motion, the plaintiff hereby respectfully incorporates her reply to the First Amendment argument made by Yogi Bhajan into this memorandum. See F.R.C.P. Rule 10(c). The plaintiff's reply to defendant Yogi Bhajan's motion is set forth in her memorandum of points and authorities in opposition at 1-9.

The corporate defendants do cite certain authority which was not relied upon by the individual defendant. The first such authority is Turner v. Unification Church, 473 F. Supp. 367, (D. R.I. 1979), aff'd mem. 602 F.2d 458 (1st Cir. 1979), which is cited to stand for the proposition that practices by which it is alleged the individual defendant kept the plaintiff in a mentally debilitated state were "initiation procedures" and "conditions of membership" of the defendant organizations, which are "not normally subject to judicial review". Def. Memo at 7, fn.5. Turner, does not, however, hold that these conditions can never be reviewed. The court in Turner goes on to expressly recognize the distinction between religiously motivated actions and religious beliefs (Id. at 371-372), and notes that involuntary servitude such as that alleged in this case is "conduct which violates the most fundamental tenets of both American Society and the United States Constitution". Id.[1]

The court in Turner relies upon the decision in U.S. v. Ballard, 322 U.S. 78 (1944), which does permit an examination of the bona fides of professed religious beliefs when fraud is an issue. See plaintiff's memo in opposition to Bhajan motion at 1-3. The defendants are simply inaccurate in their assertion that the plaintiff's claims will "inevitably involve a test of the

[1] The complaint in Turner was dismissed, but not because of any holding that the defendant's actions were protected from scrutiny under the First Amendment. The court in Turner held that the plaintiff there could not rely upon the federal civil rights statutes or the Thirteenth Amendment to recover.

Sikh faith." Def. Memo at 7. All that is being tested is whether the defendants, when they professed beliefs and took actions ostensibly based upon the Sikh faith, knew and believed their actions were not actually based upon the Sikh faith. Although the distinction is a fine one, it is an important one.

The distinction may be best illustrated by example. If a man professes to be the Pope of Rome, it is either true that he holds the position or it is not. There is generally[2] no need to test the truth or validity of Catholic religious teachings in order to resolve the issue whether the man professing to be the Pope is actually the Pope. The question is not whether his word is divinely inspired; the question is whether he holds the office and is entitled to the deference, respect, trust and stature accorded the holder of that high office. Where the individual claiming to be the Pope of Rome is brought before the Court upon

---

[2] An exception to this would be a case where two or more individuals claimed to hold the same religious office, based upon some doctrinal definition of who should hold the office or some similar matter defined by a body of religious law or doctrine. See Presbyterian Church v. Hull Church, 393 U.S. 440 (1969) (land ownership cannot be decided contingent upon whether actions of congregation "amount to a fundamental or substantial abandonment of the original tenets and doctrines" of the church). There is no such competing claim here; either Yogi Bhajan was appointed to the office of "Siri Singh Sahab" as he claims, or he was not.

Moreover, even those cases which hold that civil courts must defer to religious decision-making bodies in matters turning upon doctrinal interpretation recognize an exception where there is "fraud, collusion or arbitrariness." Gonzalez v. Archbishop, 280 U.S. 1(1929) cited in Hull Church, supra at 447. It is just such fraud and collusion which is at issue in the instant case.

an allegation that he solicited and obtained money, property and free labor based upon his representations, is the Court helpless to decide whether the man is a fraud or not? The defendants would have this Court hold that it is, but such a holding would be inconsistent with prior holdings of the U.S. Supreme Court.

The second authority cited by the corporate defendants is a religious encyclopedia wherein the author states that Yogi Bhajan is recognized as the leader of the Sikh faith in the Western Hemisphere. Def. Memo at 6, fn.3. These statements are proffers of evidence, and the plaintiff respectfully maintains that it is not proper to present or consider evidence upon a motion to dismiss. Moreover, the statements contained in the defendants' memo are pure hearsay, and it would be unfair and unjust to consider such statements without affording the plaintiff the opportunity to test the veracity of the cited source through cross-examination of the author.

Similarly, the defendants urge the court to make a finding that the fasting, chanting, and yoga which were used in part by Yogi Bhajan to control the plaintiff, were part of the practice of the Sikh religion. Def. Memo at 10. This misstates the Complaint, which states that the body posturing, fasting, chanting and deep meditation were ostensibly part of yoga training and not any religious practice. Complaint at ¶33. Moreover, the plaintiff contends throughout the Complaint that Yogi Bhajan's ministrations to the plaintiff were not carried out in pursuit of any religious objective. See, e.g., Complaint ¶34

(practices were "under the false guise" of promoting spiritual purity; ¶18 (true purpose of Sikh Dhara Brotherhood Corporation is secular).[3] Whether the chanting, fasting and other exercises were, in fact, part of any religion is therefore a contested issue in this case. Any doubts about the plaintiff's version of the facts must be resolved in favor of the plaintiff upon a motion to dismiss. Jenkins v. McKeithen, 395 U.S. 411 (1969); Chavez v. Santa Fe Housing Authority, 606 F.2d 282 (10th Cir. 1979).

Hence, the corporate defendants' motion to dismiss must fail for the same reasons the individual defendant's motion must fail. The defendants have misstated the allegations of the Complaint and misconstrued the limits of this Court's power to scrutinize and sanction ostensibly religious conduct which is perpetrated in bad faith, which is secular in nature, and/or which is tortious or criminal.

---

[3] The plaintiff was even more specific about the secular motives and objectives of the defendants in original drafts of her Complaint. Those drafts were, however, rejected by the Court sua sponte when presented for filing, and the plaintiff was directed by the Court to excise much of the material in her original Complaint. For example, the plaintiff excised specific averments that, prior to coming to the United States, Yogi Bhajan declared an intention to "go to the United States and make a million dollars by starting a religion", and that the defendant organizations were started by Yogi Bhajan in order to satisfy requirements of federal law pertaining to his own status as an immigrant and exemption from taxation.

II. THE PLAINTIFF HAS ALLEGED THE CIRCUMSTANCES CONSTITUTING THE DEFENDANTS' R.I.C.O. VIOLATIONS WITH SUFFICIENT PARTICULARITY TO PERMIT THE DEFENDANTS TO KNOW WHAT THEY ARE ACCUSED OF AND PREPARE A DEFENSE.

The corporate defendants' argument here is much like the individual defendant's argument with respect to the plaintiff's fraud count; they insist that because the exact time and place of each predicate act and the identity of the corporate officers or agent committing the act is not specified, the complaint is defective. In fact, the time, place and content of each of the fraudulent misrepresentations is pled.

In Count I of her Complaint, the plaintiff has alleged the general type of fraudulent misrepresentations made by the defendants, and has given specific examples. Complaint at ¶¶18,19,23-28,34-38,40-48 (incorporated into Count V in ¶87). This information, along with the fact that Yogi Bhajan (who was a corporate officer and agent of each of the corporate defendants), and the general time frame in which the misrepresentations in question were made (E.g., Complaint ¶¶39,45,48) is sufficient to permit the defendants to know what they are accused of and to prepare a defense. The times of misrepresentations pertaining to the defendant's stolen recipies and formulas are more precisely pinpointed. Id. at ¶¶99,104,106.

As defendants themselves note, the standard of specificity in a R.I.C.O. Count is the same as in a fraud count; the degree of "particularity" necessary is governed by F.R.C.P. Rule 9(b). Def. Memo at 16. There is nothing, however, in

F.R.C.P. Rule 9(b) which requires the time of fraudulent misrepresentations to be given, so long as there is "some means of injecting precision and some measure of substantiation into [the] allegations of fraud." Seville Industrial Machinery v. Southmost Machinery, 742 F.2d 786, 791 (3rd. Cir. 1984). Although a more precise statement is required for fraud (and R.I.C.O.) counts than for other claims, Rule 9(b) must still be construed in conjunction with F.R.C.P. Rule 8 and the general requirements of "notice pleading." Seville, supra; Friedlander v. Sims, 775 F.2d 810, 813 (5th Cir. 1985); Simcox v. San Juan Shipyard, Inc., 754 F.2d 430, 439-440 (1st Cir. 1985).

This is particularly so where -- as in the instant case -- a higher degree of specificity would unduly add to the length of the Complaint. Simcox, supra at 440. As previously noted (see fn. 3, supra) considerable detail was deleted from several successive drafts of the Complaint in this case at the direction of the Court. This was due at least in part to the unusual length of the Complaint.

The plaintiff is prepared to allege her R.I.C.O. claim in greater detail, should the Court determine that the instant Complaint is insufficient. Under such circumstances, the Court should not dismiss this case, but grant the plaintiff leave to file an amended pleading alleging her R.I.C.O. count with greater particularity. Bennett v. Berg, 685 F.2d 1053 (8th Cir. 1982) (R.I.C.O. allegations which failed in particularity struck

"without prejudice"); Bruss v. Allnet Communications Services, Inc., 606 F. Supp. 401, 407 (N.D. Ill. 1985) (21 days to replead given). This is in keeping with the general rule of pleading that a complaint should not be dismissed unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41 (1957); see generally 3 Moore's Federal Practice (1982) ¶¶15.08, 15.10.

In addition to arguing lack of specificity, the corporate defendants contend that they cannot be the defendant acting upon an enterprise engaged in interstate commerce and, at the same time, be the enterprise itself. Def. Memo at 18. Even if this assertion is generally correct as a matter of law, the plaintiff does not allege that the corporate defendants occupy both roles at once. Rather, the plaintiff alleges that at some times the defendants are the corrupted "enterprises" (with the individual defendants as the "persons" doing the corrupting), and at other times they are the "person" corrupting other, purely commercial enterprises engaged in commerce.

For example, in paragraphs 91 and 92 of the Complaint, the corporate defendants in this case are cast in the roles of an "enterprise", and the corrupting "persons" are the individually named defendants. In paragraph 94 and 95 of the Complaint, however, it is alleged that the corporate defendants in this case themselves maintained an interest in or control over a number of

outside commercial enterprises which are engaged in interstate commerce, some of which are noted in the Complaint. Id. at ¶¶101,104.[4]

In other words, there is a two step process alleged. First, the individual defendants created or took control of the corporate defendants through a pattern of racketeering activity. Then, at a later time, the corporate defendants were turned toward participation in and control over the operations of outside businesses through a pattern of racketeering activity.

The plaintiff respectfully maintains that the best way to clarify when each corporate entity was engaged in which activity is through discovery. Discovery will not only answer any questions the defendants may have about what the plaintiff maintains their roles were, but will also assist the plaintiff in clarifying the internal governing structures of these groups, and exactly how they executed their control over the various businesses in question.

This is not a situation where the plaintiff has alleged R.I.C.O. in order to "discover a wrong". It is clear that mail

[4] These outside enterprises were more specifically identified in the drafts of the Complaint which the Court previously directed the plaintiff to shorten. They include such businesses as a security service and a cosmetics firm. Again, the plaintiff is prepared to outline this claim more specifically should the Court deem an amended pleading to be necessary.

fraud, wire fraud and extortion were used to create, manage and control these businesses. Specific wrongful conduct has been alleged. The plaintiff does not, however, have all of the evidence at her disposal at the outset of the case. The evidence, principally in the form of corporate documents and records, is in the control of the defendants.

Nevertheless, should the Court determine that the plaintiff has not pled sufficient facts to make out all of the elements of her cause of action, the plaintiff respectfully requests leave of the Court to file an amended pleading which will set forth her claims in greater detail.

III. THE PLAINTIFF'S EXPECTATION OF COMPENSATION ACCORDING TO THE REQUIREMENT OF THE F.L.S.A. IS CLEARLY ALLEGED IN THE COMPLAINT, AND CANNOT BE DISPUTED UPON A MOTION TO DISMISS.

The defendants concede that the plaintiff has alleged that her work performed for the defendants in this case was for commercial enterprises engaged in interstate commerce, and with the expectation of pay. Def. Memo at 21, citing Complaint ¶¶33-37 and 81(c). The plaintiff has clearly alleged that she entered into her relationship with Yogi Bhajan with the expectation that her material needs would be taken care of by the defendant and his followers. Complaint ¶ 39. More important, the plaintiff has alleged that not only did she expect to be compensated, but she actually was compensated, (albeit at rates which fell below the minimum levels prescribed by statute). Complaint ¶111.

Despite these clear allegations, the defendants attempt to characterize the plaintiff's labor as labor for which she could not reasonably expect compensation. Def. Memo at 21. The plaintiff respectfully maintains that because the clear allegations of the Complaint must be taken to be true for purposes of deciding this motion, and because she has clearly alleged facts which demonstrate not only that she expected compensation, but that she actually received compensation, the defendants' motion must fail.

In an effort to create ambiguity where none exists, the defendants cite to paragraphs in the Complaint which refer to the exercises prescribed by Yogi Bhajan set forth under the plaintiff's fraud count (Count I), and argue that the labor the plaintiff performed was part of these ostensibly religious or educational practices. Def. Memo at 21-22, citing Complaint ¶¶33-35,37,81(c). However, paragraphs 33-34 and 37 all expressly allege a secular motive in accepting the plaintiff's labor. Paragraphs 35 and 81(c) do not refer to any labor related to the plaintiff's F.L.S.A. claim.

Paragraph 34 does mention "long hours of labor", but on its face sets the "long hours of labor" apart from the yoga exercises, prayer, meditation, chanting and lectures by Yogi Bhajan. The Complaint indicates that these ostensibly religious or educational activities were, "...coupled with long hours of labor and very little sleep" to mentally disable the plaintiff. Id. ¶34. To the extent there is ambiguity in the way this paragraph is phrased, the remaining allegations of the Complaint,

(cited above) should make the plaintiff's position perfectly clear. Moreover, to the extent there are doubts, those doubts must be resolved in the plaintiff's favor. Conley v. Gibson, supra.

The leading case on point is Tony and Susan Alamo Foundation v. Secretary of Labor, ___ U.S. ___, 105 S.Ct. 1953 (1985).[5] There, the Supreme Court settled beyond question that employees of religious organizations are entitled to the protections of the F.L.S.A. even if the employee declares that his work is one of the practices of his religion. Id. at 1961. In Alamo Foundation, the Court implied an "expectation of compensation". Id. at 1962. In the instant case, the plaintiff has expressly pled such an expectation. Moreover, the record clearly indicates she was in fact compensated, which, unless the averment is ultimately disbelieved by the jury, is conclusive evidence that the defendants also had an expectation the plaintiff would be compensated.

These facts are among many that distinguish this case from any of the cases cited by the defendants. In no case relied upon by the defendants was the plaintiff in fact compensated during the period for which the plaintiff claimed the benefits secured by F.L.S.A.

---

[5] All of the opinions cited by the defendants were rendered prior to the decision in Alamo Foundation, and to the extent they impose any different requirements or tests, they have been, in effect, overruled.

The plaintiff, therefore, respectfully maintains that nothing in the defendants' motion negates the prima facie case of violation of the F.L.S.A. set forth in the Complaint, and that the defendants should be required to file an answer.

IV. THIS COURT SHOULD FOLLOW THE LINE OF AUTHORITY WHICH HOLDS THAT A PRIVATE RIGHT OF ACTION EXISTS FOR INVOLUNTARY SERVITUDE.

The factors to be weighed in determining whether a private right of action should be implied are clearly set forth in Cort v. Ash, 422 U.S. 66, 78 (1975):

> 1. Is the plaintiff one of a class for whose special benefit the statue was enacted?
>
> 2. Is there any implicit or explicit legislative intent to either create or proscribe a private action?
>
> 3. Is an implied private right of action consistent with the underlying purposes of the legislative scheme?
>
> 4. Is the cause of action one traditionally relegated to state law or of concern principally to the states, so that it would be inappropriate to imply a federal right of action?

With respect to a right of action for involuntary servitude, the first of these requirements is satisfied because the Thirteenth Amendment and implementing legislation were enacted for the purpose of abolishing slavery in every form. Civil Rights Cases, 109 U.S. 3 (1883). The protection of the Thirteenth Amendment extends to every person within the United

States, and is not limited to members of any particular class or race. As declared in Hodges v. United States, 203 U.S. 1, 8 (1906):

> While the inciting cause of the [13th] Amendment was the emancipation of the colored race, yet it is not an attempt to commit that race to the care of the nation. It is the denunciation of a condition, and not a declaration in favor of a particular people. It reaches every race and every individual, ...

The implementing legislation likewise is designed to protect everyone who has been subjected to this unique wrong:

> Whoever knowingly and willfully holds to involuntary servitude ... any other person ... shall be fined not more than $5,000.00 or imprisoned not more than 5 years, or both. 18 U.S.C. §1584 (emphasis added).

The fourth requirement in the test set forth in Cort v. Ash, supra, is also clearly satisfied. The very existence of the Thirteenth Amendment in our Federal Constitution, and federal statutory proscriptions of peonage, make freedom from slavery a federally protected right which is not traditionally relegated to the states. Indeed, the Thirteenth Amendment and anti-peonage statutes were enacted largely in response to the inadequacy of state law protections for enslaved people. It has been explicitly recognized that the federal anti-slavery statutes were enacted to remedy a wrong that state laws and traditional tort remedies did not address:

> It is disturbing that such involuntary servitude was assisted by the silent and even collaborative acquiescence of local communities. [Citation omitted.] It is for this reason that Congress extended federal jurisdiction to encompass these crimes despite the availability of state remedies for kidnapping and false imprisonment. U.S. v. Booker, 655 F.2d 562, 566 (4th Cir. 1981) (contains exhaustive review of history of anti-slavery statutes) (emphasis supplied).

Although the second and third elements defined in Cort v. Ash are not as obviously satisfied as the first and fourth elements, upon examination it is apparent that they also favor an implication of a private right of action. The Thirteenth Amendment and implementing legislation are silent as to any Congressional intent to create or to proscribe such private actions. Yet the Supreme Court has been consistent in broadly construing the rights of litigants under legislation implementing the Thirteenth Amendment.[6] See, e.g., Jones v. Alfred H. Mayer

---

[6] The court in Turner found there was a legislative intent to deny a civil cause of action under the anti-slavery statutes because, according to that Court, those statutes were enacted "against a backdrop" of civil rights legislation such as 42 U.S.C. §§1981, 1983 and 1985. Turner, supra at 376. On this point, however, the court is historically inaccurate.

The anti-slavery statutes had their origins in statutes passed in 1867. Fourteen Stat. 546, 39th Cong., 2d Sess. (1867). The civil rights statutes had their origins in statutes passed years later. See, e.g., 16 Stat. 144, Act of May 31, 1870 (now codified as 42 U.S.C. §1891). Thus the anti-slavery statutes at issue in this case were not passed "against a backdrop" of civil rights legislation aimed at the badges and incidents of slavery. It was the other way around. If the order of passage of these statutes implies anything, it implies a congressional intent to achieve broad enforcement of the Thirteenth Amendment's prohibition.

Co., 392 U.S. 409 (1968) (private actions under 42 U.S.C. §1982 not limited by state action requirement); Griffin v. Breckenridge, 403 U.S. 88 (1971) (action for conspiracy under 42 U.S.C. §1985(3) maintainable absent state action).

For similar reasons a private right of action by enslaved people against their former masters will be consistent with and promote the overall legislative scheme to see to it that slavery "shall not exist in any part of the United States." Civil Rights Cases, supra at 20. Private actions would remove the profit from slavery, which is generally the prime motive in maintaining slaves. It would also multiply the number of eyes watching the would-be slave master, leaving him less able to conceal his illegal conduct. Perhaps most important, a private right of action would provide former slaves a legal means with which to personally and directly strike back at their oppressors and restore their own autonomy and dignity. At a minimum it must be said that private rights of action are "consistent with" the legislative scheme to abolish slavery is all of its forms.

One federal court has already found authority for the implication of a private right of action directly under the Thirteenth Amendment. Flood v. Kuhn, 316 F. Supp. 271 (S.D. N.Y. 1970), aff'd. 443 F.2d 264 (2d Cir. 1970), aff'd. 407 U.S. 258 (1971). The court in Flood v. Kuhn, however, found that the "servitude" in that case (a baseball player complaining of having to play for teams to which he was assigned under the then

existing player draft system) was not sufficiently "involuntary" to constitute slavery. Id. at 316 F.Supp. 281.

The sole authority relied upon by the defendants, Turner v. Unification Church, supra, expressly recognized the right to be free from involuntary servitude is "clearly a federally protected interest" (Id. at 374) and that federal courts have the power to imply a civil cause of action under such circumstances. Id., citing Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).[7] The court there, however, found it unnecessary to exercise its discretion to imply a civil cause of action for three reasons. First, the court felt that state tort law was sufficient to redress the

---

[7] In this regard it is important to note that the court in Turner analyzed the issue in terms of the line of cases which implied a private right of action for constitutional torts against governmental officials. The Court in Turner correctly noted that such actions necessarily involve action by a federal agent unconstitutionally exercising his authority. Id. at 374. This is true by definition. However, the plaintiff respectfully submits the Court erred in holding that action by a government official is always a prerequisite to all implied private rights of action.

Cort v. Ash, for example, was an action between private parties. Moreover, it is clear that unlike the Fourth Amendment, which was at issue in Bivens, the Thirteenth Amendment and implementing legislation clearly reach conduct between private parties, and are not limited to state action. Jones v. Alfred H. Mayer Co., supra; Griffin v. Breckenridge, supra. Thus, the Court in Turner was following the wrong line of cases when it analyzed plaintiff Turner's claim.

plaintiff's injuries. Second, the court felt that civil rights legislation adequately vindicates the interests of a party subjected to involuntary servitude. Finally, because the Thirteenth Amendment applies to conduct between two private citizens as well as to state action, the court felt that a private right of action under the Thirteenth Amendment would make a constitutional issue out of common law torts such as false imprisonment. Id. at 374.

The plaintiff respectfully submits that the analysis of the court in Turner failed to recognize the unique nature of involuntary servitude. The better view is expressed in such cases as Booker v. United States, supra, and Flood v. Kuhn, supra.

Involuntary servitude is a truly unique offense. It often involves assault, but it is not assault. It may and usually does include wrongful imprisonment, but is more than wrongful imprisonment. It usually also involves intentional infliction of emotional distress, but it is far more than that. It is a combination of these things, and more, with the design to strip the victim of his dignity as a free person capable of making choices, overcome the individual's will and reduce that human being to the status of a chattel.

The plaintiff submits that the very fact that the prohibition of involuntary servitude was embodied in a constitutional amendment is a powerful statement that slavery is

a unique and singularly intolerable transgression against society. The prescriptions against assault, battery or involuntary servitude have never been elevated to assume constitutional dignity, although these torts have been recognized for centuries. As culpable as these acts are, they are not nearly so mean or barbarous as the enslavement of one man by another. To equate involuntary servitude with a common tort would indeed "trivialize the great purpose of that character of freedom." See City of Memphis v. Greene, 451 U.S. 100 (1981).

As previously noted, Congress has already recognized the inadequacy of remedies available for kidnapping, false imprisonment, and so forth. U.S. v. Booker, supra. It follows that a private right of action for involuntary servitude would not "constitutionalize" state tort law, as was suggested by the Court in Turner, supra at 374. No cause of action would be presented unless a litigant was subjected to the unique wrong of slavery, as that term has been defined in cases such as U.S. v. Bibbs, 564 F.2d 1165 (5th Cir. 1977), cert. den. 435 U.S. 1007, U.S. v. Schackney, 333 F.2d 475 (2d Cir. 1954), and U.S. v. Ingalls, 73 F.Supp. 76 (S.D. Calif. 1947).

Nor are existing federal statutory remedies adequate to redress private grievances. As the Court in Turner itself held, civil rights statutes such as 42 U.S.C. §1981, 1983 or 1985 require elements of racial discrimination or state action which are not always present in slavery cases. Id. at 372-373. The instant case is an example.

The opinion in Turner is, therefore, based upon the false premise that state and federal remedies are adequate to redress the injuries of an individual who has been enslaved. For this reason Turner should not be followed.

V. INCORPORATION OF RESPONSE TO ARGUMENTS OF THE INDIVIDUAL DEFENDANT.

The corporate defendants purport to incorporate by reference "the arguments and points of [sic.] authorities set out in Individual Defendants' [sic.] Brief in Support of Motion to Dismiss." Def. Memo at 13. To the extent any arguments or authorities of the individual defendant are incorporated by the corporate defendants, the plaintiff wishes to incorporate her responses to those arguments and authorities. See F.R.C.P. Rule 10(c).

CONCLUSION

For the foregoing reasons, the plaintiff respectfully submits that the corporate defendants' motion to dismiss should be denied in its entirety, and the corporate defendants be directed to file an Answer to the Complaint.

Respectfully submitted,

PETER N. GEORGIADES, ESQUIRE
300 Grant Building
Pittsburgh, PA 15219

(412) 281-0705

GORDON REISELT, ESQ.
Singer, Smith & Williams
P.O. Box 25565
Albuquerque, N.M. 87125
(505) 247-3911