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CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

DEPUTY

5 Attorneys for Defendants
 6 ELVIRA MORGAN, YVONNE KELLERHALS,
 7 ALEX GUEVERA, VIRGINIA FAIR, COBIE FAIR,
 8 WHITNEY FAIR, JOSHUA FAIR AND JANA FAIR

8 UNITED STATES BANKRUPTCY COURT
 9 CENTRAL DISTRICT OF CALIFORNIA
 10 NORTHERN DIVISION

11	In re:	) Bk No: ND 01-11549-RR
12	REED E. SLATKIN,	) CHAPTER 11
13	Debtor.	) MOTION OF ADVERSARY
14		) DEFENDANTS ELVIRA MORGAN,
15		) YVONNE KELLERHALS, ALEX
16		) GUEVERA, VIRGINIA FAIR, COBIE
17		) FAIR, WHITNEY FAIR, JOSHUA
18		) FAIR AND JANA FAIR'S TO
19		) VACATE ORDERS PURSUANT TO
20		) FED.R.BANKR.P. 2004 FOR
21		) EXAMINATION OF VARIOUS
22		) CHURCHES AND RELIGIOUS
23		) ORGANIZATIONS
24		) Date:
25		) Time:
26		) Ctrm: Hon. Robin Riblet
		) 1415 State Street
		) Courtroom 201
		) Santa Barbara, CA 93101

23 Elvira Morgan, Yvonne Kellerhals, Alex Guevera, Virginia Fair, Cobie Fair,
 24 Whitney Fair, Joshua Fair and Jana Fair ("Adversary Defendants"), defendants in
 25 Adversary Proceeding Nos. 02-01210RR and 02-01255RR herein, hereby move the Court
 26 for an Order vacating the Orders entered on February 27, 2003 allowing the Rule 2004

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1 videotaped examinations of Religious Technology Center, Church of Scientology
2 International, Flag Service Organization, Inc., International Association of Scientologists,
3 Advanced Organization Los Angeles, American Saint Hill Organization and Church of
4 Scientology Celebrity Center International and the Production of Documents ("Rule 2004
5 Orders"). On March 3, 2003, the Adversary Defendants filed an Objection to the *ex parte*
6 Motion filed on February 25, 2003 seeking issuance of the Rule 2004 Orders, but
7 unbeknownst to them, the Court had already issued the Rule 2004 Orders. Because the
8 grounds stated in those Objections remain valid nonetheless, the Adversary Defendants
9 here request that the basis for their objections be considered by the Court, that the Rule
10 2004 Orders be vacated, and that the Trustee be ordered to pursue any such discovery in
11 the adversary proceedings as required by law, and where these Adversary Defendants and
12 the other 272 such defendants named in Exhibit 2 to the Trustee's Motion will have a
13 greater ability to protect their own rights under the Federal Rules of Civil Procedure.

14 As grounds for the relief sought, and so as not to burden the Court with additional
15 papers, the Adversary Defendants adopt the arguments set forth in their Objections, a
16 copy of which is attached hereto and made a part hereof.

17 Dated: March 5, 2003

Respectfully submitted,

MOXON & KOBRIN

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20 By:


Helena K. Kobrin

21 Attorneys for Defendants
22 ELVIRA MORGAN, YVONNE
23 KELLERHALS, ALEX GUEVERA,
24 VIRGINIA FAIR, COBIE FAIR,
25 WHITNEY FAIR, JOSHUA FAIR
26 AND JANA FAIR

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12 UNITED STATES BANKRUPTCY COURT
 13 CENTRAL DISTRICT OF CALIFORNIA
 14 NORTHERN DIVISION

15 In re:

16 REED E. SLATKIN,

17 Debtor.

18) Bk No: ND 01-11549-RR

19) CHAPTER 11

20) DEFENDANTS EL VIRA MORGAN,
 21) YVONNE KELLERHALS, ALEX
 22) GUEVERA, VIRGINIA FAIR, COBIE
 23) FAIR, WHITNEY FAIR, JOSHUA
 24) FAIR AND JANA FAIR'S
 25) OBJECTION TO EX PARTE
 26) MOTION FOR FED.R.BANKR.P.
 2004 EXAMINATION OF VARIOUS
 CHURCHES AND RELIGIOUS
 ORGANIZATIONS

Date: N/A

Time: N/A

Ctrm: Hon. Robin Riblet

1415 State Street

Courtroom 201

Santa Barbara, CA 93101

24 Elvira Morgan, Yvonne Kellerhals, Alex Guevera, Virginia Fair, Cobie Fair,
 25 Whitney Fair, Joshua Fair and Jana Fair ("Defendants"), defendants in Adversary
 26

1 Proceeding Nos. 02-01210RR and 02-01255RR herein, hereby object to the Trustee's and
2 Official Committee of Unsecured Creditors' jointly filed "Notice of Motion and Motion
3 Pursuant to Fed.R.Bankr.P. 2004 for the Videotaped Examination of Religious
4 Technology Center, Church of Scientology International, Flag Service Organization, Inc.,
5 International Association of Scientologists, Advanced Organization Los Angeles,
6 American Saint Hill Organization and Church of Scientology Celebrity Center
7 International and the Production of Documents" (hereinafter "Rule 2004 Motion"), filed
8 ex parte on February 25, 2003, as follows:

- 9 1. The 2004 Motion was filed without notice to Defendants.
- 10 2. The 2004 Motion seeks production of documents and examinations of seven
11 named entities regarding, *inter alia*, alleged transfers to and by Defendants and other
12 persons and entities identified on Exhibit 2 thereto, which appears to be a schedule
13 identifying most or all of the current defendants in adversary proceedings herein.
14 3. Having commenced adversary proceedings against Defendants and
15 numerous other persons and entities, discovery regarding or affecting such defendants --
16 *i.e.*, discovery such as that sought by the 2004 Motion -- is subject to the provisions of the
17 Federal Rules of Bankruptcy Procedure 7026 *et seq.* and Federal Rules of Civil Procedure
18 26 *et seq.*, and Rule 2004 examinations are improper. *See, e.g., In re the Bennett Funding*
19 *Group, Inc.*, 203 B. R. 24, 28 (Bankr. N.D.N.Y. 1996) ("The well recognized rule is that
20 once an adversary proceeding or contested matter has been commenced, discovery is
21 made pursuant to the Fed.R.Bankr.P. 7026 *et seq.*, rather than by a Fed.R.Bankr.P. 2004
22 examination"); *First Financial Savings Ass'n v. Kipp (In re Kipp)*, 86 B.R. 490, 491
23 (Bankr. W.D. Tex. 1988), quoting 8 Collier on Bankruptcy, ¶ 2004.03[1] at pp. 2004-5 -
24 2004-6 ("once an actual adversary proceeding has been initiated, 'the discovery devices
25 provided for in Rules 7026-7037... apply and Rule 2004 should not be used....").
26 4. The Rule 2004 Motion is the Trustee's and Creditors Committee's improper

1 attempt to circumvent Defendants' and the other adversary proceedings defendants'
2 discovery rights and is not permitted:

3 [C]ourts will usually not allow a 2004 exam where an adversary
4 proceeding is pending, because the party requesting the exam is
5 likely seeking to avoid the procedural safeguards of Bankruptcy
6 Rules 7026-7037.

7 *2435 Plainfield Avenue, Inc. v. Township of Scotch Plains (In re 2435 Plainfield Avenue,*
8 *Inc.), 223 B.R. 440, 456 (Bankr. D. N.J. 1998), aff'd 213 F.3d 629 (3rd Cir. 2000), quoting*
9 *6 Norton Bankruptcy Law and Practice, §141:35.¹*

10 5. Thus, proceeding by way of Rule 2004 is improper and would deprive
11 Defendants and the other defendants in adversary proceedings identified in Exhibit 2 to
12 the Rule 2004 Motion of their discovery rights.

13 6. An additional reason Rule 2004 should not be employed here is that
14 Defendants and the other adversary proceedings defendants may well have privacy,
15 clergy-communicant and other issues that would be better decided under traditional
16 discovery procedures.

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22 ¹ In order to prevent injustice, and to insure that parties in
23 bankruptcy adversary proceedings have the same rights as
24 parties to a federal suit in a non-bankruptcy context, it is
25 important to insure that the procedural safeguards of the
26 discovery process provided in Fed.R.Civ.P. 26-37,
incorporated by reference in Fed.R.Bankr.P. 7026-7037, are
not avoided by permitting a Rule 2004 examination while an
adversary proceeding is pending.
2435 Plainfield Avenue, 223 B.R. at 456.

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Accordingly, Defendants respectfully submit that the 2004 Motion should be denied.

Dated: March 3, 2003

Respectfully submitted,

MOXON & KOBRIN

By: 
Helena K. Kobrin

Attorneys for Defendants
ELVIRA MORGAN, YVONNE
KELLERHALS, ALEX GUEVERA,
VIRGINIA FAIR, COBIE FAIR,
WHITNEY FAIR, JOSHUA FAIR
AND JANA FAIR

PROOF OF SERVICE

I am over the age of 18 years, and not a party to this action. My business address is 3055 Wilshire Blvd., Suite 900, Los Angeles, California 90010, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 3, 2003, in Los Angeles, California, the following document:

DEFENDANTS ELVIRA MORGAN, YVONNE KELLERHALS, ALEX GUEVERA, VIRGINIA FAIR, COBIE FAIR, WHITNEY FAIR, JOSHUA FAIR AND JANA FAIR'S OBJECTION TO EX PARTE MOTION FOR FED.R.BANKR.P. 2004 EXAMINATION OF VARIOUS CHURCHES AND RELIGIOUS ORGANIZATIONS

was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid to those designated below:

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Santa Barbara, California 93101

R. Todd Neilson, Trustee
10100 Santa Monica Blvd.
Suite 410
Los Angeles, California 90067

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 3, 2003 at Los Angeles, California.


