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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10	PLANS, Inc.,	)	No.: CIV. S-98-0266 FCD PAN
11		)	
11	Plaintiff,	)	PLAINTIFF PLANS OBJECTIONS TO
12		)	
12	vs.	)	PROPOSED FINDINGS OF FACTS;
13		)	
13	SACRAMENTO CITY UNIFIED SCHOOL	)	MEMORANDUM OF POINTS AND
14	DISTRICT, TWIN RIDGES ELEMENTARY	)	AUTHORITIES IN OPPOSITION TO
15	SCHOOL DISTRICT, DOES 1-100,	)	MOTION FOR JUDGMENT
16		)	
16	Defendant.	)	Date: September 12, 2005

17 _____ Time: 1:30 p.m.

18 Courtroom: 2

I

OBJECTIONS TO PROPOSED FINDINGS AND FACTS AND CONCLUSIONS OF LAW

Defendant's Proposed fact (A)(2):

At the final pretrial conference on February 11, 2005, the court excluded Betty Staley and Crystal Olsen from Plaintiff's witness list since they were Defendants' previously disclosed experts, they were listed by Plaintiff as "Defendants Experts," and were not disclosed by Plaintiff's as expert witnesses prior to the deadline for disclosure of expert witnesses on April 16, 2005.

Plaintiff's Objection: False and misleading.

Plaintiff first notes that defendants' efforts to reframe the exclusion of these relevant and material percipient witnesses should give pause to this court. These witnesses, along with a series of other percipient witnesses and exhibits were excluded under FRCP 37(c) because of plaintiff's alleged failure to affirmatively "disclose." In response to Defendants' Motions in Limine 11 and 13, plaintiff explicitly advised the court that it was not offering these witnesses as expert witnesses, but sought percipient testimony. Plaintiff had taken the depositions of these witnesses, and they had appeared on every witness list.

In this court's Pre-Trial Conference Order, entered January 16, 2001, and the court's Amended Pre-Trial Conference Orders, entered April 13, 2001, and April 24, 2001, both Betty Staley and Crystal Olsen were confirmed witnesses under the orders. Plaintiff had listed Betty Staley as:

(Defendants' Expert) To describe her understanding of the relationship between Anthroposophy and Waldorf Education.¹

Interestingly, in the same series of orders, defendants had also explicitly identified Betty Staley as a "percipient" witness as well as an expert witness.²

¹ See exhibit "A" to each of the court's Pre-Trial Conference Orders.

² See exhibit "B" to each of the court's Pre-Trial Conference Orders

1 In opposition to Defendants' Motions in Limine 11 and 12, plaintiff explicitly argued that
2 defendants had made no showing, whatsoever, that plaintiff had failed to disclose any of the subject
3 witnesses or exhibits under the propounded discovery:

4 Defendants fail to make a *prima facie* showing for the exclusion of any evidence. They fail to
5 demonstrate, with my specificity, a particular discovery request that was violated. Instead,
6 they ask this court to assume they asked the right question, and that they offered exhibit [or
7 witness] is outside the scope of the response. Defendant's Motion is really an untimely
8 discovery Motion, and not adequate as that.³

9 At the hearing on April 1, 2005, plaintiff asserted that there was no evidence before the court that
10 plaintiff had failed to disclose any witness or exhibit that should have been disclosed under the
11 propounded discovery. In response, the court stated there is disclosure under discovery and there is
12 disclosure under the rules, and that plaintiff had failed to disclose under the rules.

13 Plaintiff responded that this case was initiated when the Eastern District had opted out of
14 automatic discovery, and that all of the discovery to date had occurred only under propounded
15 discovery. In response to this assertion, this court queried defendants about whether or not they had
16 disclosed under the rules. In a careful response, Mr. Keiner stated that the defendants had complied with
17 all of there disclosure requirements. This statement may be technically true, as there were no automatic
18 disclosure requirements that any party participated in during the entire litigation.

19 Defendants never disclosed any witnesses to plaintiff other than in response to specific
20 propounded interrogatories. Defendants never disclosed any exhibits to plaintiff, other than listing them
21 for the purposes of the Pre-Trial Conference, which is exactly what plaintiff did.

22 Nevertheless, the defendants perpetuated the false premise, and caused the court to exclude a
23 series of percipient and material witnesses and exhibits without any showing that the subject witnesses
24 and exhibits were not properly disclosed in response to propounded discovery. The defendants' efforts
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27 ³ See Plaintiff's Opposition to Defendants' Joint Motion in Limine No. Eleven (11) to Exclude Witnesses, filed on or about
28 March 18, 2005

to reframe the facts regarding the exclusion of these witnesses suggests their understanding that the court's exclusions, based upon this false premise, will not hold-up.

Defendants' Conclusion of Law (B)(2):

The Court finds that anthroposophy is not a religion for Establishment Clause purposes.

Plaintiff's Objection: No foundation.

In Defendants' Conclusion of Law (B)(1), the proposed language properly states that plaintiff "failed to carry its evidentiary burden of proof" assuming the court is granting defendants' motion for Judgment. As neither party put on any evidence, the court has no basis for making a factual finding that Anthroposophy is not a religion.

II

DEFENDANTS ADOPTIVE ADMISSION REGARDING EXHIBIT 89 SHOULD SHIFT THE BURDEN TO DEFENDANTS TO EXPLAIN TO THE TAXPAYERS THAT ADMONITIONS FOR TEACHERS TO REACH TO LUCIFER AND THE AHRIMAN ARE NOT RELIGIOUS.

In response to Discovery, defendant Sacramento City identified, among others, that the Waldorf Teacher's Survival Guide. According to this defendant, this book is owned and maintained by the defendant for use by its public school teachers.

According to this material:

- Just as Lucifer thrives on eccentricity, on whims, on rebelliousness, and all else that arises from the individuality asserting itself too strongly, so Ahriman is most interested in controlling the Board room.

...

When the faculty does not overcome Ahriman, they are overcome by him. (Exhibit 89, p. 61.)

- *Okay. Now the question is, what do we have to do to prevent our epic production from ending in a Boarderhammerung?*

Call in Lucifer to balance Ahriman! (Exhibit 89, p. 63, emphasis original.)

- Most of that which contributes to our work as teachers, preparation work, artistic work, even meditative work, is under the guardianship of *Lucifer*. We can become great teachers under

1 his supervision, for he is responsible for much that has blossomed in the unfolding of
2 civilization and culture in the past. (Exhibit 89, p. 54, emphasis original.)

3 It does not seem unreasonable that when defendants provide such materials to their public school
4 teachers, they should have to account to the taxpayers for the meanings of such statements. The
5 taxpayers have a right to take such statements at face value, and the school districts that provide such
6 materials, should have to explain how such statements are not religious.

7 The document is self-authenticating, and is an admission under FRE 801(d)(2)(b).
8 Defendants should explain to the court the presence of such material for their public school teachers
9 rather than mount a defense that is based upon concealment of the evidence and the facts.

10 Dated: September 22, 2005

11 /S/ Scott M. Kendall

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13 SCOTT M. KENDALL
14 Attorney for Plaintiff PLANS
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