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10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA

13 In re:) Case No.: 98-51326 ASW-7
14 H. Keith Henson,)
15 Debtor.) **Adv. No. 03-5130**
16)
17) **DATE:** April 15, 2008
Religious Technology Center, Creditor,) **TIME:** N/A
18 Plaintiff,) **CTRM:** Hon. Arthur S. Weissbrodt
19 v.)
20 H. Keith Henson, Debtor,)
21 Defendant.)
22)
23)

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26 **SUPPLEMENTAL REPLY MEMORANDUM IN SUPPORT OF**
27 **MOTION OF RELIGIOUS TECHNOLOGY CENTER FOR**
28 **SUMMARY JUDGMENT OF NONDISCHARGEABILITY**

1 At the outset, plaintiff Religious Technology Center (“RTC”) requests that defendant H. Keith
2 Henson’s (“Henson”) Reply to Supplemental Memorandum in Support of Motion of Religious
3 Technology Center for Summary Judgment of Nondischargeability be stricken by the Court because
4 Henson unilaterally filed it 10 days late and filled it with matters that have nothing to do with the
5 pending motion or this adversary proceeding, including false and irrelevant allegations about RTC’s
6 President. A separate Motion to Strike is filed herewith and sets forth the grounds.

7 Lest the Court not strike Henson’s response, RTC replies here to anything found in Henson’s
8 response that has any possible relevance to the pending motion.

9 The most significant point in Henson’s response is his admission that his posting was willful and
10 intentional, and that addressing this issue therefore consists of “pointless arguments.” Thus, if the Court
11 had any doubt on this subject, Henson himself, with his own concession, has resolved those doubts.¹

12 Beyond that, Henson argues that another infringer has posted NOTs 34 on the Internet. RTC has
13 addressed in its Supplemental Memorandum why that contention is irrelevant. To summarize here, the
14 District Court instructed the jury that, where the defendant is aware that a work is copyrighted, the
15 infringement of the same copyrighted work by others is no defense to a finding of willfulness.
16 (Declaration of Helena K. Kobrin, Ex. 40, Jury Instruction 9.)

17 Moreover, the cases cited by RTC in its Supplemental Memorandum establish that a statutory
18 damages award is injury *per se* under 11 U.S.C. § 523(a)(6). The jury found willfulness and awarded
19 statutory damages in the face of Henson’s argument that others had infringed the same work. The Ninth
20 Circuit affirmed the willfulness finding and the statutory damages award. In doing so, it recognized that
21 NOTs 34 was an unpublished work, in spite of Henson’s arguments that others had infringed it, and that
22 Henson knew his copying of it would lead to market harm. *RTC v. Henson*, 1999 WL 362837 (9th Cir.)
23 (unpublished).

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26 ¹ Henson has further shown his willingness, and indeed desire, to willfully and maliciously engage in
27 similar conduct once again. On July 28, 2008, he sent Ms. Seid an email containing a URL to
28 unpublished material that he gratuitously wanted to file in this case, when it has no relationship to any
issue in either this adversary proceeding or his bankruptcy case, as Ms. Seid informed him in her
response. (Declaration of Elaine M. Seid, Exs. 3, 4.)

1 Henson has created no genuine issue of material fact warranting a conclusion other than that his
2 infringement was willful and malicious. RTC's summary judgment motion should therefore be granted.

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4 Dated: August 4, 2008

Respectfully submitted,

MCPHARLIN, SPRNKLES & THOMAS

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7 /s/ Elaine M. Seid

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Elaine M. Seid

9 Attorneys for Plaintiff

10 RELIGIOUS TECHNOLOGY CENTER
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