

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

JZK, INC., a Washington)	
corporation,)	
)	
Plaintiff,)	No. 12-2-02241-8
)	
vs.)	
)	
VIRGINIA COVERDALE, JOHN)	
DOES 1-20 and JANE DOES)	
1-20, also known as)	
ENLIGHTEN ME FREE,)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 1st day of November, 2012,
the above-entitled and numbered cause came on for hearing
before the Honorable James J. Dixon, Judge, Thurston
County Superior Court, Olympia, Washington.

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Certified Realtime Reporter
Thurston County Superior Court
2000 Lakeridge Drive S.W.
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1 November 1, 2012

Olympia, Washington

2 MORNING SESSION

3 Department 8

Hon. James J. Dixon, Presiding

4 APPEARANCES:

5 Virginia Coverdale, Defendant, with her
6 Counsel, Shawn Newman, Attorney at Law; client
7 representative of JZK, Inc., Michael Wright;
8 Jeffrey C. Grant, Andrea H. McNeely, and
9 Eric Gilman, Attorneys at Law, representing
10 the Plaintiff, JZK, Inc.

Kathryn A. Beehler, Official Reporter

11 --o0o--

12 THE COURT: Let's go on the record now,
13 please. The matter before the court is JZK, Inc., a
14 Washington corporation, as Plaintiff,
15 v. Virginia Coverdale, John Does 1 through 20,
16 Jane Does 1 through 20, AKA Enlighten Me Free.

17 This is Thurston County Superior Court Cause
18 No. 12-2-02241-8. I would appreciate the parties
19 identifying themselves for purposes of the record
20 and, furthermore, advising the court as to the
21 identity of their respective clients.

22 Mr. Newman?

23 MR. NEWMAN: Your Honor, Shawn Newman. I
24 represent the Defendant Virginia Coverdale.

25 THE COURT: Thank you. And who is on your
left?

1 MR. NEWMAN: Virginia Coverdale.

2 THE COURT: Thank you.

3 And Mr. Grant?

4 MR. GRANT: Good morning, Your Honor. Nice to
5 meet you. Jeffrey Grant of Skellenger Bender. I am
6 here on behalf of JZK, Inc. Seated at counsel today
7 with us today is a client representative, who is
8 Michael Wright.

9 THE COURT: Thank you. And Ms. McNeely?

10 MS. MCNEELY: Andrea McNeely, Gordon Thomas
11 Honeywell, representing JZK, Inc. And to my right is
12 Eric Gilman with my firm.

13 THE COURT: Thank you. There are and a couple
14 of preliminary matters that are worthy of and, in
15 fact, need attention. The first is, as a preliminary
16 matter, there has been a request of the court to
17 allow still photographs. I had advised the gentleman
18 who made the request that I would confer with
19 counsel. What is the position of the parties?

20 Mr. Grant?

21 MR. GRANT: No objection to that, Your Honor.
22 Thank you.

23 THE COURT: Ms. McNeely?

24 MS. MCNEELY: No objection.

25 THE COURT: Thank you. Mr. Newman?

1 MR. NEWMAN: No objection, Your Honor.

2 THE COURT: To the gentleman who made that
3 request, you are on the other side of the bar, so you
4 are allowed to take photographs as long as you stay
5 on that side of the bar. And "the bar" is that long
6 separating fence between the pews and the well of the
7 courtroom.

8 MR. GRANT: Your Honor, there's only one --

9 THE COURT: Thank you for asking, by the way.

10 MR. GRANT: Thank you, Your Honor. There is
11 only one condition on that. The still pictures of me
12 they use have to be flattering.

13 THE COURT: And the second issue that needs to
14 be at least placed on the record is that I asked my
15 judicial assistant to advise counsel in writing of a
16 relationship that I previously had with a close
17 associate of the plaintiffs. And I see from a letter
18 in the file that she did so, or at least attempted to
19 do so. And before I turn to the parties to get their
20 input or response to that letter, I will place the
21 issue on the record.

22 The parties have now been advised or are in the
23 process of being advised that in June of 2008, I
24 represented a close associate of Ms. Knight's in Yelm
25 Municipal Court. That was in June of 2008. And

1 during my representation of that individual, whose
2 name is "James Flick," and if my memory serves me
3 correctly or my brain power serves me correctly,
4 Mr. Flick is present in court. Is that accurate?

5 MR. WRIGHT: No, sir.

6 THE COURT: You look almost like him. He's
7 not here. I apologize for misidentifying you.
8 Mr. Flick is not present.

9 I represented Mr. Flick in a misdemeanor case.
10 During my representation of Mr. Flick, I met with
11 Ms. Knight for 45 minutes, at most, probably closer
12 to a half an hour. And my meeting with her was in
13 preparation for a motion to dismiss that we, "we"
14 meaning the defense, filed in that misdemeanor case.
15 And that motion was later granted without
16 Ms. Knight's testimony or further participation
17 required.

18 So I turn first to counsel for plaintiffs. Do
19 either Mr. Grant or Ms. McNeely have any objection to
20 my presiding over this case?

21 MR. GRANT: No, Your Honor. We received the
22 letter this morning timely. Thank you. And we did
23 respond in writing and indicated that we have no
24 objection.

25 THE COURT: Thank you. Ms. McNeely?

1 MS. McNEELY: No, Your Honor. No objection.

2 THE COURT: Thank you. Mr. Newman?

3 MR. NEWMAN: Your Honor, we did receive the
4 letter. We have no objection.

5 THE COURT: Okay. Thank you, all. And the
6 court does not find any independent basis to recuse.
7 I do not believe this is a conflict of interest. But
8 as the lawyers know, it is incumbent upon the court
9 to at least place that issue on the record to allow
10 the parties an opportunity to confer with their
11 respective clients and to ultimately make a decision
12 whether they wish to exercise their statutory right
13 to file an affidavit of prejudice.

14 Okay. Moving on to the merits of this case, the
15 court is in receipt of and has reviewed, over the
16 past 24 hours or so, certain pleadings, specifically,
17 the complaint for breach of contract and injunctive
18 relief filed October 29 and a response to the motion
19 for temporary restraining order that I believe was
20 filed some time this morning, Mr. Newman. Yes. It
21 was filed very early this morning at 8:07. I
22 received a bench copy of that responsive pleading
23 shortly thereafter, and I have had an opportunity to
24 review its contents.

25 So the matter before the court is the plaintiff's

1 motion for injunctive relief, specifically, a
2 temporary injunction. And I will turn first to
3 Mr. Grant.

4 MR. GRANT: Thank you, Your Honor. And shall
5 I come --

6 THE COURT: Would you, please?

7 MR. GRANT: I would be happy to.

8 THE COURT: Thank you.

9 MR. GRANT: Thank you, Your Honor. Good
10 morning. Jeffrey Grant on behalf of JZK, Inc.
11 First, let me start by acknowledging and thanking the
12 court for its sensitivity with respect to the issue
13 with Mr. Flick. It was helpful to note that that was
14 an issue, but clearly it is not, as the parties have
15 indicated.

16 You're right. We're here for the plaintiff's
17 request that the court issue a temporary restraining
18 order. There are a couple of items about the request
19 that we've made that I think are worth highlighting.
20 First, it's a very narrow and limited remedy that
21 we're seeking. It's narrow in time, of course by the
22 rule not to exceed 14 days. And all we're really
23 asking the court to do is to impose the equivalent of
24 a timeout.

25 We're asking the court to tell everybody that they

1 should just take a timeout and go to the place where
2 they were before the wrongful conduct that we've
3 identified in the complaint in the motion began to
4 occur. The timeout relief that we're asking for, I
5 think, is predicated on two things, both of which
6 have been established by any level of proof with
7 which we are supposed to present to the court today.

8 First, the defendant has promised in writing not
9 to distribute the materials that she received from
10 the Ramtha School of Enlightenment, RSE. It's one of
11 the exhibits to the declaration that was submitted in
12 support of the motion. She promised not to
13 distribute the materials that she received from RSE.

14 The second thing is, she has. It appears to have
15 begun in late September of this year. It's continued
16 through October. And as the information continues to
17 unfold on a daily basis, it's clear that the
18 defendant will continue to breach her written promise
19 not to distribute this information unless the court
20 intervenes and has the parties go back to where they
21 were before this wrongful conduct started.

22 So as a consequence of that, because of our
23 concern about the irreparable harm that will occur by
24 this continued distribution of materials, we're
25 asking the court to put a temporary hold on

1 everything.

2 It's now apparent to us, in looking at the written
3 response to the motion that I received from counsel a
4 few minutes before the hearing started, that there
5 are a number of defenses that they intend to raise to
6 the written promise of not to do this. We are
7 prepared to deal with those, and we will deal with
8 those at the motion for preliminary injunction.
9 We're suggesting that that occur sometime during the
10 week of November 12th.

11 In the meantime, there are a couple of other
12 things that we would like the court to allow us to
13 do. We'd like the court to, first of all, enter an
14 order that I guess I would characterize as a
15 spoliation order; that is, that the defendant would
16 not destroy or distribute further any of the
17 materials that she already has that would be covered
18 by the agreement that she has with the school.

19 Second, we would like to be able to take the
20 deposition of Ms. Coverdale, the defendant, on an
21 expedited basis -- and I might add, Your Honor,
22 without prejudice to our ability to conduct her
23 deposition after the preliminary injunction hearing,
24 in the event we need to question about other
25 information that might go more to the merits of the

1 case.

2 THE COURT: So the purpose of the deposition
3 you are requesting to be conducted prior to the next
4 hearing would be limited to questions with respect to
5 the propriety or request of temporary relief?

6 MR. GRANT: Yes, sir.

7 THE COURT: Is that accurate?

8 MR. GRANT: Yes, sir. That's -- that is a
9 good summary.

10 THE COURT: Okay.

11 MR. GRANT: There's another person not a
12 party, Elizabeth Rule, R-U-L-E, or Ann Ketterer,
13 K-E-T-T-E-R-E-R. And I'm not sure which is the
14 correct name. But I believe it is the same person.
15 That is a nonparty witness, but somebody that we
16 think is -- may have information relevant to the case
17 that we have.

18 And other than that, Your Honor, it seems to us
19 that what we have presented to the court is
20 reasonably straightforward. There are really two
21 things that we have: One, a written promise not to
22 do something, and then since then, a reasonably clear
23 and I think uncontested breach of that agreement.

24 As I said, there may be defenses to that. But at
25 the moment, there are no valid ones that would allow

1 this conduct to continue. And fortunately, the civil
2 rules provide a remedy when we have this situation
3 where it may need further briefing, further
4 testimony, further analysis to make decisions longer
5 term. But in the immediacy of what we have now,
6 there is a clear demonstrated violation of a right,
7 with an express intent to continue to do so, until
8 the court tells her to stop. And we're asking you to
9 do that today.

10 I was -- I think "intrigued" would be the word, in
11 reading the end of Mr. Newman's brief. His quotation
12 of Mr. Burke, I think, applies quite well to what it
13 is that we're asking the court to do today.

14 Edmund Burke, of course, said,

15 "The only thing necessary for the occurrence of
16 evil is for good men to do nothing."

17 And what we're asking the court today is to do
18 something, even on a temporary basis, on a limited
19 basis, to return us to where we were back before the
20 middle of September of this year, and then set a
21 hearing -- and make this stop for now, and then give
22 us a chance, all, to come back on the time period
23 prescribed by the rule and have a more developed
24 hearing to see whether the injunctive relief should
25 continue beyond 14 days.

1 And unless you have any other questions,
2 Your Honor, I have nothing further to say.

3 THE COURT: I do not. Thank you, Mr. Grant.

4 MR. GRANT: Very well. Thank you.

5 THE COURT: Ms. McNeely, do either you or
6 Mr. Gilman want to weigh in on this issue?

7 MS. McNEELY: Just very briefly, Your Honor.

8 THE COURT: Yes.

9 MS. McNEELY: Mr. Grant mentioned the harm.
10 And I think here the harm is, we have a proprietary
11 material. And if it's allowed to continue to be
12 disseminated, you can't at this point put the horse
13 back in the barn. So, you know, what we're asking
14 the court to do is what Mr. Grant mentioned, which is
15 to put us back to where we were before the horse was
16 let out of the barn. And we can't continue to let
17 more proprietary material out without harming the
18 school in releasing proprietary information to the
19 public.

20 THE COURT: Thank you.

21 MS. McNEELY: Thank you.

22 THE COURT: Mr. Newman?

23 MR. NEWMAN: Your Honor, Shawn Newman for the
24 Defendant, Virginia Coverdale. She is not part of
25 nor do I represent this entity called "Enlighten Me

1 Free." I only represent Ms. Coverdale for the
2 purposes of this hearing.

3 With respect to Mr. Grant's comments, I think it
4 is appropriate to ask, what are they looking for.
5 They are looking to have the court retaliate against
6 a whistleblower who has -- based on her own
7 paperwork, has reported numerous fire, health, and
8 safety violations. That's what they are here for.

9 They want to retaliate. They want to slap my
10 client down, which as illustrated in my response
11 brief is a violation of a very specific statute in
12 the State of Washington, which protects people like
13 my client and others who have the temerity to stand
14 up to power, especially to an institution -- let's
15 put it that way -- like this school, which according
16 to the evidence, spews hate.

17 The -- the disk, the CD they want you to --
18 they've showed to you has the following quotes.
19 You'll see this. They have JZ Knight saying the
20 following:

21 "Mexicans breed like rabbits. They are poison.
22 Every God damned Mexican family is a Catholic. All
23 the Mexicans are not worthy of conscious thought.
24 All gay men were once Catholic women. We will" --
25 and then she says, "We will come on you in a terror."

1 Now, they base their TRO on this agreement. A
2 couple of things. First of all, my client did not
3 receive this information from the school. Secondly,
4 if you look at the agreement, it is -- it's quite
5 interesting. But it has a very broad definition that
6 says, "Anything you believe you received from Ramtha,
7 whether in a dream, a vision, or from some disciple,
8 or any other source, you cannot communicate."

9 Now, what would that mean? If you think about it,
10 what about these fire safety and health violations?
11 Would that be -- should the court allow this
12 multimillion dollar for-profit entity to come in and
13 gag people that are reporting legitimate violations,
14 not only of health, safety, and fire violations, but
15 employment security issues and things like that.

16 Let me add, Your Honor, I got this case yesterday.
17 And I know Mr. Grant has talked about the need to
18 properly prepare for the hearing and things like
19 that. And we haven't -- we've not waived any
20 defenses.

21 I would also add that the -- that their request
22 for a -- to put this on a rocket docket for a
23 deposition is -- is intended to intimidate. It's
24 part of the -- it's part of the standard bag of
25 tricks that bullies use in litigation. And as you

1 may -- I'm sure you are aware, the anti-slap statute
2 was intended to stop that activity.

3 That is what this is about, Your Honor. As
4 co-counsel indicated, the cat's already out of the
5 bag. The problem here and why this is such an
6 emergency for the plaintiff is because you have
7 politicians stumbling all over themselves to give
8 back the money. This has caused a huge embarrassment
9 for the school and for Ramtha's followers. That's
10 done. That's out. And that's the 600-pound gorilla
11 in the room. And that's the reality.

12 They wouldn't be here. You ask yourself, why
13 would you want to take on someone who -- and -- who
14 is a former member of the school, who is pointing out
15 these health, safety violations? Why would you do
16 that?

17 You know, and the other thing, Your Honor, this
18 isn't an emergency. You look at their own paperwork.
19 This -- this activity's been going on for quite a
20 while. They cite -- the first exhibit is a
21 September 10th, 2012, posting that they consider
22 offensive. And what's on the top of that posting?
23 It's about health, safety, and fire violations.
24 That's what it's about.

25 So what he's asking you to do today is not simply

1 protect what they characterize as some sort of a
2 proprietary interest, which we disagree with. What
3 they are asking you to do today is shut down a
4 whistleblower who has the guts to point out problems
5 at the school. And I have a stack of complaints they
6 filed over time -- I didn't have time to submit it to
7 the court; I just got it from my client -- everything
8 from issues concerning children to issues concerning
9 health issues and fire issues.

10 Your Honor, the burden is on -- obviously on the
11 plaintiffs to make this TR0. And as you are aware
12 and I put in my briefing, they have to show that
13 there is a -- a threat of immediate and irreparable
14 injury, loss, or damage, right now. They can't do
15 that. They -- in fact, they say we can't calculate
16 it. We don't know what the damage is until we get
17 engaged in this rocket docket intimidation game with
18 my client. That's, to me, a -- they lose on that
19 alone. They cannot prove any threat of imminent
20 irreparable damage or loss.

21 Moreover, Your Honor, as part of the TR0, you look
22 at the likelihood that the plaintiff will ultimately
23 prevail at trial, whether they have a clear and
24 equitable legal right. I've cited case law about the
25 contract itself is unconscionable. Any contract,

1 Your Honor -- think about it.

2 Any contract that would compel an employee or
3 follower to shut their mouth about illegal activity
4 or perceived -- or for right or wrong, you know?
5 Whether -- at the end of the day, if the person is
6 correct or incorrect, any contract that gags
7 employees or followers like that -- and this is what
8 this contract does. Very broad. Very broad. That's
9 an unconscionable contract in violation of public
10 policy. So I think they lose on that ground.

11 To say it's okay is going to gag all -- anybody
12 else. You could put this in a contract. This is
13 not -- we can't -- this is -- we are in a civil
14 society. We live in a society that wants to promote
15 people who have the guts to complain to government
16 about illegal activity. You know, we live in a
17 society that should not tolerate these kind of
18 bigoted statements by the school and the leader of
19 the school.

20 Now, you know, you ask yourself, what is this
21 proprietary information they're protecting? You
22 know, I look at the contract. And it talks about --
23 it uses the term "information and techniques."
24 That's what the contract talks about.

25 So they're upset that it's been disclosed that the

1 information and techniques that they are talking
2 about include these threats against almost every
3 group you could name, Catholics, Jews, vegans, you
4 know? And these are -- these are -- should be taken
5 very seriously, you know? Do you have a right --
6 would you gag a person who is aware of a threat -- of
7 a terrorist threat based on a contract? And I
8 suggest, absolutely not. That's a violation of our
9 state slap law, violation of our right to free
10 speech. Because that's what this is about.

11 This is about prior restraint. They want you to
12 shut this -- these people down, because they are in
13 political hot water. Finally, the politicians who
14 have benefitted from the largess of the school and
15 JZ Knight are realizing who she really is. And they
16 want to disassociate from her as fast as possible.
17 And what they are here to do is to put a lid on that.
18 They want to retaliate for that.

19 As co-counsel indicated here, the cat's out of the
20 bag. There is no threat of imminent, immediate harm.
21 There's no threat of imminent immediate harm.
22 There's no reason this case has to be put on a rocket
23 docket to have these intimidating depositions.
24 Because I want to take JZ Knight's deposition. You
25 want to do that? Let's do it. Let's do it. I'll

1 take her deposition. But let's do it per the rules,
2 so that it's done in a timely, conscientious manner.

3 I would just add, Your Honor, that as you know,
4 the TRO is an extraordinary remedy. I've already
5 outlined in my briefing that there is -- that this
6 disclosure -- that they're thinking is going to
7 happen or may happen or has happened, the cat's out
8 of the bag. Whatever damage they claim has occurred
9 is already done.

10 But this is -- this is clearly an effort to
11 intimidate a whistleblower under -- and this is
12 prohibited by the state constitution, by the First
13 Amendment, and by our state's anti-slap law.

14 Your Honor, if you have any questions, again, I
15 can answer any questions that you may have.

16 THE COURT: I don't. Thank you, Mr. Newman.

17 Mr. Grant, you represent the moving party, so I'll
18 allow you an opportunity to offer any rebuttal
19 argument you may have.

20 MR. GRANT: Thank you. I appreciate that,
21 Your Honor. Thank you.

22 So a couple of things. Mechanically or
23 procedurally, let's be clear about the state of the
24 record. The evidentiary record before the court is
25 limited to the declaration of Mr. Wright with the

1 exhibits that were attached to that. There's no
2 evidence that's been submitted by the defendant that
3 would contradict that. So to that extent, the
4 factual determinations for this court are relatively
5 easy.

6 A couple of points have been raised, and if I may,
7 I'll probably just try to run down the order that I
8 was listing them, as opposed to some more attractive
9 quilt weaving them together.

10 There have been a number of arguments raised about
11 potential contractual defenses to this particular
12 agreement. That may be. We are prepared to address
13 those. I think it's helpful to recollect, though,
14 that the contract that's before the court in the
15 record has been signed by thousands of people,
16 probably tens of thousands of people, and it has
17 never been challenged, has never been questioned, has
18 never been tipped over. So this agreement is well in
19 place and has been very effective for both sides of
20 the party on that particular document.

21 I think it's important to remember, too, that what
22 we're talking about here is information of the
23 school, not the speech of the defendant. We're not
24 trying to shut the defendant down. We're not trying
25 to make her limit her ability to say things, her

1 ability to use social media or newspapers, letters to
2 the newspaper editorials. She can continue to say
3 what she wants to say. What she can't do is use the
4 material that has come from the school. That's what
5 the agreement is about.

6 So if the defendant wants to complain about health
7 and safety violations or be critical of the school or
8 call it out or bring it down or whatever her agenda
9 might be, she's free to do that. And an order by
10 this court will not limit her ability to say what she
11 wants.

12 What we're asking the court to protect is speech
13 of somebody else, the school, which the defendant
14 agreed not to use. And she's doing that.

15 Now, I -- it's been mentioned that, well, the
16 cat's out of the bag. There are more cats. This is
17 part of the problem.

18 THE COURT: And that would -- I suspect you
19 are about to answer a question from the court -- a
20 question the court intends to ask you, which is, What
21 is the substantial harm that would result in
22 continued disclosure of this sort?

23 MR. GRANT: Well, first of all, it isn't
24 continued disclosure -- the continued disclosure
25 isn't limited to what's already been released. The

1 particular segment that we're talking about, I think,
2 where the smaller version came from, the one that
3 counsel likes to discuss the details of, is about a
4 20-minute clip of what really is an 11-hour video.

5 So we're trying to limit the continued disclosure
6 of other materials. And I think the record is clear
7 that the defendant continues to do that through the
8 use of the electronic voices that she's been able to
9 land on.

10 So it isn't just the one that's been out. It's
11 the one that it -- it would be continued footage from
12 the same session. And other materials. I mean, we
13 don't really know exactly what it is that she has and
14 what she intends to release. We know that she's
15 disseminated information that's covered by the
16 agreement that she promised not to distribute. We
17 know that she claims to have more and wants to
18 distribute it. And we are trying to stop that.

19 I think it's also helpful to point out that an
20 order from this court, at least temporarily,
21 recognizing the validity of the claims that the
22 information may not be used is of assistance in
23 working with the ISP entities like YouTube in having
24 the information taken down from the internet that's
25 already been posted. So this is another reason why

1 this is important.

2 This injunctive relief helps us historically, and
3 more importantly, helps us going forward, until at
4 least we can have the opportunity for the preliminary
5 injunction.

6 Did that answer your question, Your Honor?

7 THE COURT: It does.

8 MR. GRANT: All right. But, you know, back to
9 the theme of this is the school's information. We're
10 not talking about dreams here. We're talking about
11 tactile, actual documents and web material and video
12 that has been released. This is tangible information
13 and tangible product that we're trying to stop. This
14 is where the agreement comes into play in this
15 particular situation.

16 The idea that it's necessary for the defendant to
17 use this information and that she should be excused
18 from her promise not to disclose it because of the
19 health and safety violations that she claims to
20 report is not well taken. If the plaintiff wants to
21 complain -- pardon me.

22 If the defendant wants to complain about safety
23 issues, health issues, employment violations, then
24 she needs to go to the governmental agencies that are
25 responsible for that, not the internet, not YouTube.

1 That's not what this is about.

2 She's not trying to report anything other than to
3 disclose this information and try to embarrass the
4 school and to try to embarrass JZ Knight. And these
5 are -- she has other opportunities to do that if she
6 wants. What the agreement says is that you can't use
7 the information that comes from the school that
8 you've agreed to keep confidential.

9 And on the alleged violations, let me just point
10 out that to the extent that there have been
11 allegations made, the respective municipalities and
12 governmental agencies have all responded to that.
13 And if we need to get into that particular issue,
14 we're prepared to demonstrate to the court the
15 responses from the regulating agencies, not the
16 YouTube audience.

17 As I said at the beginning, this is not really an
18 attempt to stop the defendant from saying what she
19 wants to say of her own accord. All we're asking is
20 that she not be allowed to use information that she
21 has promised not to do. And that type of relief --
22 that type of notion is not particularly unique.

23 There is a very wide avenue through the law that
24 protects the ability of people and entities like the
25 school to have information that they distribute, that

1 they make, that they market, that they sell to
2 others, and then have a limitation on its use.

3 Here, the defendant agreed to do that. If I can
4 get the benefit of the product this school has, then
5 I promise not to distribute it, forever. And she's
6 breached that.

7 We're asking the court not to impair her speech
8 but to protect ours. Let's have a temporary timeout
9 TRO, and then let's come back in 14 days and address
10 the defenses that have been raised this morning.

11 THE COURT: Thank you.

12 MR. GRANT: Thank you.

13 THE COURT: I'm ready to rule. There is, of
14 course, some applicable law that applies to the
15 immediate issue before the court, and that applicable
16 law includes the civil rules, specifically Civil
17 Rule 65(b), and the state law which is codified in
18 RCW 7.40.020. And I make those references not
19 necessarily to the lawyers involved in this case,
20 because the lawyers are well familiar with the
21 purposes behind that law and the specific language in
22 that law. So I make those references and place this
23 information on the record really for the purpose of,
24 (A) creating a record on this case, and equally
25 importantly, at least to the court, (B) to advise the

1 public, not necessarily the people who are here in
2 court this afternoon, but to the public in general,
3 that the issue before the court is not the merits of
4 this case.

5 I'm not asked to decide at this particular hearing
6 whether the complaint filed by the plaintiff is
7 dispositive - of course it's not - whether it is more
8 valuable or more persuasive than any responsive
9 pleading from the defendant. That issue, of course,
10 is not before the court. This is a lawsuit that was
11 filed within a matter of days ago.

12 I fully anticipate, based upon the nature of the
13 lawsuit, the one pleading that the court has received
14 in response to the complaint, and what the parties
15 are stating verbally to the court this afternoon,
16 that this case will be hotly litigated and contested
17 and argued by very competent, capable lawyers from
18 both sides, and perhaps also from sides that have yet
19 to weigh in, and that this case will not resolve any
20 time in the immediate future.

21 The issue before the court is whether the court
22 should maintain the status quo until the merits of
23 this case can be heard. That is the language of
24 decisions that have been reached by our higher
25 courts, the Courts of Appeal and the State Supreme

1 Court. And the reason I say that is, despite the
2 lines drawn in the sand here from the lawyers, this
3 is a pretty simple issue, to me. And frankly, with
4 no disrespect to the defendants here, I haven't
5 really wrestled with the issue. It is pretty
6 straightforward.

7 In the court's opinion, the plaintiff is entitled
8 to temporary relief, is entitled to a temporary
9 injunction, solely for the purpose of maintaining the
10 status quo until these issues can be fully resolved,
11 until all of the sides have an adequate, ample
12 opportunity to be heard, until all sides have
13 adequate, ample opportunity to present evidence and
14 to argue the law.

15 Mr. Newman has ably argued on behalf of his client
16 that there are constitutional issues here that his
17 client may have that constitute a constitutional
18 defense to the complaint. That may or may not be so.
19 And Mr. Newman, on behalf of his client, asserts that
20 the intention or goal of the plaintiff is some sort
21 of retaliation against a whistleblower. That may or
22 may not be the case. That is not for me to determine
23 today.

24 I am not taking into consideration any position
25 set forth or argued today by the defendant that the

1 entry of an order establishing temporary relief would
2 constitute some sort of restraint or prohibition
3 against what he refers to as a whistleblower. That
4 is not the court's intention. That is not what I am
5 going to do. But my interpretation of the statute
6 that I've cited, the court rule that I've cited, and
7 the language set forth by our State Supreme Court in
8 cases cited by at least one of the parties,
9 specifically, *Northwest Gas Association* at
10 141 Wn. App., the *Tyler Pipe* case, which is a seminal
11 case, frankly, on this type of an issue, more
12 specifically, the issues that the court is required
13 to take into consideration when a party is requesting
14 temporary relief, weigh in the favor of the
15 plaintiff.

16 Prior to entering an order granting temporary
17 relief, this court is required to make a finding
18 that,

19 There is a likelihood that the plaintiff will
20 eventually prevail at a trial on the merits by first
21 showing that the plaintiff has a clear legal or
22 equitable right. Clearly the plaintiff does in this
23 case;

24 That the plaintiff reasonably fears that that
25 right would be invaded continued disclosure.

1 Clearly, in the court's mind, that applies, as well;

2 And that the disclosure would result in
3 substantial harm. The last factor I had some
4 questions about, and Mr. Grant answered those
5 questions to my satisfaction. And specifically,
6 Mr. Grant has argued persuasively to this court that
7 there is more information potentially available to
8 the defendant here that could be posted on an
9 internet site. And if so, that that posting or
10 distribution would result in substantial harm to the
11 plaintiff. So I disregard. To a certain extent.
12 The arguments made by the defendant that the cat is
13 out of the bag. And I accept, in the alternative,
14 the argument from the plaintiff that about 1/20th of
15 the cat is out of the bag, or at least that there is
16 some argument in support of that consideration.

17 So I will grant the request asking for a temporary
18 restraining order. And I will grant the request of
19 the plaintiff to enter what is commonly referred to
20 as a spoliation order that precludes the defendant
21 from destroying or further distributing any items
22 that may be considered as evidence in this case.

23 I am not convinced that there is any immediate
24 need for the plaintiff to conduct any deposition of
25 the defendant, so I will deny that request. And I

1 further deny any request of an expedited deposition
2 of Ms. Rule and/or Ms. Ketterer.

3 I will ask the parties to consult with my judicial
4 assistant to come up with a date sometime within the
5 next 14 days for a hearing on the merits on this
6 case. My calendar is controlled by my judicial
7 assistant; otherwise, I would set a date here in
8 court. And I will sign an order to that effect.

9 MR. GRANT: Your Honor, I have a proposed
10 order. It is similar to the order that was submitted
11 with our papers. May I hand it up?

12 THE COURT: Would you provide Mr. Newman with
13 an opportunity to review it?

14 MR. NEWMAN: Your Honor, I --

15 MR. GRANT: Yes, I would. And let me just
16 make a couple of comments about the proposed order,
17 if I may, while we are waiting to land on a date. If
18 we turn to page 3 --

19 THE COURT: By the way -- and I apologize for
20 interrupting, Mr. Grant. I am not requiring the
21 plaintiff to post a bond. I do not see any need --

22 MR. GRANT: Very well.

23 THE COURT: -- for the imposition of a bond.
24 And I make that decision based upon the court rule
25 that I reviewed prior to taking the bench this

1 afternoon.

2 MR. GRANT: Yes, sir. And that would be
3 paragraph No. 4 on page 3. That was one of the items
4 that I wanted to address.

5 In paragraph 5, I believe that the court has
6 denied our request for the relief in paragraph 5(a),
7 the deposition of the defendant.

8 THE COURT: Yes.

9 MR. GRANT: I would like to at least address
10 specifically the issue of the relief requested in
11 paragraph 5(b), which is a document production. We
12 didn't address that specifically. The court didn't
13 address that specifically. But we've asked the
14 defendant to at least make a document production.
15 And we can be sensitive to the date.

16 MR. NEWMAN: Your Honor, I would just say that
17 this should proceed pursuant to the court rules, and
18 if they want to make a formal request for production
19 of records, they can do that. I will respond per the
20 court rules.

21 You don't make the request in open court.

22 THE COURT: And even if you do make the
23 request in open court, I am inclined to deny that
24 request. I think that the discovery in this case may
25 occur, for lack of a better term, on a normal

1 discovery route and schedule.

2 MR. GRANT: Yes, sir.

3 THE COURT: But I also make that decision
4 taking into consideration that this order will
5 preclude the defendant and/or her agents, I assume --
6 yes, agents, employees, and all other persons in
7 concert with them from destroying or otherwise
8 disseminating any of the tangible items or intangible
9 items that are included in paragraph 2 of the order.

10 I hope that makes sense to the lawyers.

11 MR. GRANT: It does, Your Honor. Thank you.
12 So I think the only changes that we've talked about
13 so far -- the court is lining out or striking
14 paragraph 4 on page 3, all of paragraph 5, which
15 covers pages 3 and 4 --

16 THE COURT: Correct.

17 MR. GRANT: -- and then I believe --

18 THE COURT: And a show cause date; right?

19 MR. GRANT: Yes, sir. Well, I believe,
20 Your Honor, if I may --

21 THE COURT: Yes.

22 MR. GRANT: -- just to go back to the
23 beginning, page 1, as a matter of completeness, it's
24 probably appropriate for the court to write in a
25 third item, which would have been -- and I forget the

1 exact title, but the written submission that came
2 from counsel.

3 THE COURT: Yes. And I appreciate you
4 bringing that to my attention.

5 So one more time, as I mentioned earlier, I would
6 appreciate the lawyers having a joint conversation
7 with my judicial assistant for the sole purpose of
8 establishing a show cause date for this issue to be
9 fully considered. And I will hand down the order
10 that I have signed for filing.

11 MR. GRANT: And is it the last page that just
12 needs to be completed, Your Honor, with the date?

13 THE COURT: It is.

14 MR. GRANT: Okay. Thank you very much,
15 Your Honor. And thank you for considering our motion
16 during what is normally court time, particularly for
17 the staff. We know how important that is.

18 THE COURT: And before we go off the record, I
19 wish to further extend my appreciation to the lawyers
20 involved in this case who -- I don't want to say too
21 much, especially at this stage in the proceedings.
22 But the briefings and the pleadings submitted by all
23 the lawyers involved in this case are directly on
24 point, responsive, illustrative, and very helpful to
25 the court.

1 Thank you.

2 MR. GRANT: Thank you, Your Honor.

3 MR. NEWMAN: Thank you, Your Honor.

4 THE COURT: You are welcome, and we are in
5 recess.

6
7 (Conclusion of the November 1, 2012, Proceedings.)

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IN AND FOR THE COUNTY OF THURSTON

Hon. James J. Dixon, Judge

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) Case No. 12-2-02241-8
)
) REPORTER'S CERTIFICATE
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Kathryn A. Beehler, Reporter
C.C.R. No. 2248