

KSR 8/15/01 10:03

3:96-CV-00888 UNITED REPORTING V. LUNGREN

155

CONSJGM.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
01 AUG 14 PM 4:34
BY: *K. Ridgeway* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED REPORTING PUBLISHING
CORP., a California Corporation,

Plaintiff/Appellee

vs.

CALIFORNIA HIGHWAY PATROL, et al.

Defendants.

CASE NO. 96 CV0888-B
97-55111

FINAL JUDGMENT ON CONSENT

Date:
Time:
Judge: Honorable Rudi M.
Brewster

United Reporting Publishing Corporation (hereafter "United Reporting") and Los Angeles Police Department (hereafter "LAPD"), the sole remaining parties to this action, hereby agree and consent to entry of judgment in this action against LAPD and in favor of United Reporting as set forth below. This Final Judgment on Consent constitutes a final judgment binding on all parties to this action.

IT IS ORDERED, ADJUDGED, AND DECREED:

A. This Court has subject matter jurisdiction over this action and has personal jurisdiction over the parties.

B. The following decisions contain findings of material facts and conclusions of law made in this case: *United Reporting*

155

ENTERED ON 8-15-01

1 *Publishing Corporation v. Lungren, et. al.*, 946 F. Supp. 822
2 (S.D.Cal. 1996); *United Reporting Publishing Corporation v.*
3 *California Highway Patrol and Los Angeles Police Department*, 146
4 F. 3d 1133 (9th Cir. 1998); *Los Angeles Police Department v.*
5 *United Reporting Publishing Corporation*, 120 S.Ct. 483, 145
6 L.Ed.2d 451 (1999); and *United Reporting Publishing Corporation*
7 *v. California Highway Patrol and Los Angeles Police Department*,
8 Order of the Ninth Circuit Court of Appeal dated November 1,
9 2000. Additional findings of fact and conclusions of law
10 supporting this Final Judgement On Consent are set forth in the
11 paragraphs below.

12 C. United Reporting made a facial and as-applied challenge
13 to a provision of the California Public Records Act, California
14 Government Code section 6254(f) as that provision was amended,
15 effective July 1, 1996, pursuant to Senate Bill 1059. Only the
16 as applied challenge remains and is addressed by this Final
17 Judgment on Consent. See *Los Angeles Police Department v. United*
18 *Reporting Publishing Corporation*, 120 S.Ct. 483 (1999).

19 D. California Government Code section 6254(f)(3)
20 (hereafter "section 6254(f)(3)") provides that state and local
21 law enforcement agencies shall make public: "the current address
22 of every individual arrested by the agency and the current
23 address of the victim of a crime, where the requester declares
24 under penalties of perjury that the request is made for a
25 scholarly, journalistic, political, or governmental purpose, or
26 that the request is made for investigation purposes by a licensed
27 private investigator Address information obtained
28 pursuant to this paragraph shall not be used directly or

1 indirectly to sell a product or service to any individual or
2 group of individuals, and the requester shall execute a
3 declaration to that effect under penalty of perjury."

4 E. United Reporting is an independently owned and operated
5 private publishing service. It employs journalists, with press
6 badges issued by the California Highway Patrol, to compile and
7 publish crime beat news and information, including the names,
8 addresses, and offenses charged of recent arrestees. United
9 Reporting is entitled to First Amendment protection for its
10 journalistic activities and publications. *Lovell v. Griffin*, 303
11 U.S. 444, 352 (1938). United Reporting's journalistic activities
12 and publications fall within prong one of section 6254(f)(3).

13 F. The second requirement of section 6254(f)(3), limiting
14 the "direct and indirect" use of arrestee addresses, prevents
15 United Reporting from applying for and publishing arrestee
16 addresses because it cannot sign the required declaration without
17 committing perjury and risking prosecution in violation of the
18 First and Fourteenth Amendments to the United States
19 Constitution. Section 6254(f)(3) plainly states the information
20 sought by United Reporting cannot be released without the
21 declaration required by the statute. Although United Reporting
22 has never directly solicited arrestees, United Reporting knows
23 many subscribers of its publications use the arrestee addresses
24 to sell products and services, and otherwise engage in
25 solicitation. Given the history of the statute and law
26 enforcement's explicit attempts to target United Reporting and
27 preclude it from publishing arrestee addresses to its
28 subscribers, coupled with its knowledge of its subscribers' uses,

1 if it signed the declaration required by the statute it could be
2 prosecuted for indirectly using arrestee addresses to sell a
3 product or service. Accordingly, United Reporting cannot satisfy
4 the statutory hurdle erected by section 6254(f)(3), and the
5 statute precludes release of the information without the
6 declaration required by the statute. As a result, United
7 Reporting cannot obtain the information needed to continue its
8 newsletter and information services activities, and the statute
9 operates as a restraint on United Reporting's lawful speech in
10 violation of the First and Fourteenth Amendments to the United
11 States Constitution. United Reporting's as-applied challenge is
12 thus perfected.

13 G. As applied to United Reporting's activities as
14 described in this lawsuit, section 6254(f)(3) violates United
15 Reporting's rights under the First Amendment to the United States
16 Constitution by preventing United Reporting from engaging in its
17 journalistic activities as described above.

18 H. For the reasons set forth in paragraphs B through G
19 above, judgment is therefore entered that as applied to United
20 Reporting, Government Code section 6254(f)(3) is unconstitutional
21 in that it violates United Reporting's rights under the First and
22 Fourteenth Amendments to the United States Constitution.

23 I. Judgement is also entered against LAPD and in favor of
24 United Reporting for the total sum of \$382,625.85, which consists
25 of \$352,226.25 in attorneys' fees and \$30,399.60 in costs, to be
26 paid within 10 days after entry of this judgment by the Court.
27 Said amount shall accrue interest at the legal rate for post-

28 /////


1 judgment interest until paid if it is not timely paid in
2 accordance with this provision.

3 J. This Action is dismissed with prejudice, provided,
4 however, that this Court shall retain jurisdiction of this case
5 for enforcement of the Settlement and this Final Judgment on
6 Consent.

7 K. The parties hereby consent and agree to entry of this
8 Consent Judgment without further notice and waive service
9 thereof.

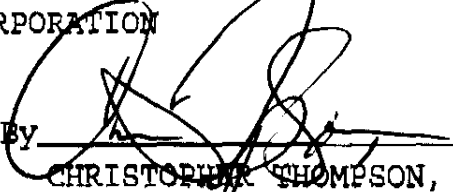
10 Dated: ^{Aug.} July 8, 2001

GRAY CARY WARE & FREIDENRICH LLP

12 By 
13 GUYLYN R. CUMMINS
14 ATTORNEYS FOR UNITED REPORTING
15 PUBLISHING CORPORATION


16 Dated: July 31, 2001

UNITED REPORTING PUBLISHING CORPORATION

17 By 
18 CHRISTOPHER THOMPSON, CEO and
19 President

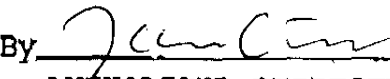
20 Dated: July 18, 2001.

CITY ATTORNEY, CITY OF LOS ANGELES

22 By 
23 JAMES AXTELL, DEPUTY CITY
24 ATTORNEY FOR LOS ANGELES
25 POLICE DEPARTMENT

26 Dated: July 20, 2001

LOS ANGELES POLICE DEPARTMENT

27 By 
28 AUTHORIZED REPRESENTATIVE FOR
THE LOS ANGELES POLICE
DEPARTMENT

1 judgment interest until paid if it is not timely paid in
2 accordance with this provision.

3 J. This Action is dismissed with prejudice, provided,
4 however, that this Court shall retain jurisdiction of this case
5 for enforcement of the Settlement and this Final Judgment on
6 Consent.

7 K. The parties hereby consent and agree to entry of this
8 Consent Judgment without further notice and waive service
9 thereof.


10 Dated: July ____, 2001 GRAY CARY WARE & FREIDENRICH LLP

11
12 By _____
13 GUYLYN R. CUMMINS
14 ATTORNEYS FOR UNITED REPORTING
15 PUBLISHING CORPORATION

16 Dated: July ____, 2001 UNITED REPORTING PUBLISHING
17 CORPORATION

18 By _____
19 CHRISTOPHER THOMPSON, CEO and
20 President

21 Dated: July 18, 2001 CITY ATTORNEY, CITY OF LOS ANGELES

22 By 
23 JAMES AXTELL, DEPUTY CITY
24 ATTORNEY FOR LOS ANGELES
25 POLICE DEPARTMENT

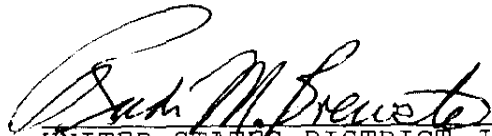
26 Dated: July 20, 2001 LOS ANGELES POLICE DEPARTMENT

27 By 
28 AUTHORIZED REPRESENTATIVE FOR
THE LOS ANGELES POLICE
DEPARTMENT

IT IS SO ORDERED:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 8-13, 2001


UNITED STATES DISTRICT JUDGE
HONORABLE JUDGE RUDI M. BREWSTER

PROOF OF SERVICE

I am a resident of the state of California, over the age of eighteen years, and not a party to the within action. My business address is Gray Cary Ware & Freidenrich, 401 B Street, Suite 1700, San Diego, California 92101-4297. On August 8, 2001, I served the within documents: **FINAL JUDGMENT ON CONSENT**

By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below.

By personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

James K. Hahn, City Attorney
Cecil Marr
Senior Asst. City Attorney
James Axtell
Deputy City Attorney
200 North Main Street,
Seventeenth Floor
Los Angeles, CA 90012-4129
Tel: (213) 485-6393
Fax: (213) 485-8898

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.


I deposited the above document(s) for facsimile transmission in accordance with the office practice of Gray Cary Ware & Freidenrich LLP for collecting and processing facsimiles. I am familiar with the office practice of Gray Cary Ware & Freidenrich LLP for collecting, processing, and transmitting facsimiles, which practice is that when a facsimile is deposited with the Gray Cary Ware & Freidenrich LLP personnel responsible for facsimiles, such facsimile is transmitted that same day in the ordinary course of business. The facsimile of the above document(s) was transmitted to the above parties.

The facsimile was transmitted by 4:30 p.m. on August 8, 2001. The facsimile number of the sending machine is 619-236-1048 from San Diego, California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

Executed on August 8, 2001 at San Diego, California.


Lorri J. Kanski