

1 **NICHOLAS W. HORNBERGER, BAR NO. 53776**  
 2 **ANDREW O. KRASTINS, BAR NO 179699**  
 3 **HORNBERGER & BREWER, LLP**  
 4 444 South Flower Street  
 5 Suite 3010  
 6 Los Angeles, California 90071-2901  
 7 Tel (213) 488-1655  
 8 Fax (213) 488-1255  
 9 [nhornberger@hgblaw.com](mailto:nhornberger@hgblaw.com)  
 10 [akrastins@hgblaw.com](mailto:akrastins@hgblaw.com)

11 Attorneys for Plaintiff  
 12 ALFRED PAUL SECKEL

13 UNITED STATES DISTRICT COURT  
 14 CENTRAL DISTRICT OF CALIFORNIA

15 ALFRED PAUL SECKEL, a  
 16 resident of California,

17 Plaintiff,

18 vs.

19 TOM McIVER, an individual,

20 Defendant.

CASE NO.: CV07-3134-GAF (JCx)

**PLAINTIFF ALFRED PAUL  
 SECKEL'S SETTLEMENT  
 CONFERENCE STATEMENT**

**DATE: March 6, 2008**  
**TIME: 9:30 a.m.**  
**ROOM: Room 20**  
**JUDGE: The Hon. Jacqueline  
 Choolian, Magistrate Judge**

21 Plaintiff submits the following Settlement Conference Statement.

22 **A. FACTS AND CLAIMS**

23 **1. Facts**

24 This is a defamation action. Plaintiff conducts research in the field of cognitive  
 25 neuroscience and specializes in the study of optical illusions. Plaintiff has written  
 26 numerous books on the subject of optical illusions and has collaborated with  
 27 scientists in the field of cognitive neuroscience. Plaintiff also is involved in  
 28 philanthropic and charitable activities. Plaintiff operates a company which distributes  
 and licenses optical illusions for research, entertainment and commercial purposes,  
 and also earns an income in the antiquarian book field, specializing in items dealing  
 with the history of science, and the archives of noted scientists.

1 Plaintiff met Defendant in the mid 1980s, when Plaintiff served as executive  
2 director of the Southern California Skeptics ("SCS"), a group devoted to exposing  
3 pseudo-science and challenging the teaching of creationism and similar religion-  
4 based beliefs in public schools. Defendant was an SCS member. The group  
5 sponsored lectures by prominent scientists such as the late Harvard biologist Stephen  
6 Jay Gould, and Nobel laureates Francis Crick and Murray Gell-Mann. Other lecturers  
7 included popular speakers involved in the Skeptical Movement, including Steve  
8 Allen, the late entertainer, and the stage magician James Randi.

9 The SCS was funded primarily through small membership fees. The SCS  
10 published a high-quality magazine, which resulted in substantial expense. During the  
11 last year of its operations, the SCS conducted lectures at Beckman Auditorium, on the  
12 campus of the California Institute of Technology ("Caltech"). Caltech charged a high  
13 fee for rental of the auditorium. Because of its volunteer-based operations and  
14 reliance on donations, the SCS was a "break-even" organization. When resources  
15 were thin, Plaintiff contributed from his own personal resources.

16 In 1990, Plaintiff sued a New York antique dealer from whom Plaintiff  
17 purchased an expensive clock which was falsely represented to Plaintiff as dating  
18 from the Renaissance. The litigation became taxing. Plaintiff's health declined.  
19 Plaintiff in September 1991 was diagnosed with life-threatening leukemia. Because  
20 of the lawsuit and Plaintiff's declining health, Plaintiff could no longer participate in  
21 the SCS and the organization ceased operations. Plaintiff has not seen or spoken to  
22 Defendant since 1988.

23 After Plaintiff recovered from his leukemia, Plaintiff developed an intense  
24 interest in how the human brain processes optical illusions. Although Plaintiff does  
25 not possess a formal college or university degree, Plaintiff commenced a course of  
26 rigorous study, and won the respect of noted experts in the field, including Professors  
27 Christof Koch and Shinsuke Shimojo, both of Caltech. Plaintiff worked in the  
28 research laboratories of both these scientists until 2006, and gained the respect of

1 numerous other scientists in this specialized field.

2 Plaintiff's most recent book is "Masters of Deception," a high-quality, profusely  
3 illustrated study of artists from the Renaissance to the present who use optical  
4 illusions in their works. Plaintiff collaborated with numerous of the living artists  
5 whose work is included in the book. The preface was written by Douglas Hofstadter,  
6 an internationally renowned scholar who was awarded the Pulitzer Prize for his book,  
7 *Godel, Escher, Bach.*" Hofstadter's widely popular book is a study of the  
8 interrelationships between mathematics, certain visual arts and music, as exemplified  
9 in the work of the mathematician/logician Kurt Godel, the artist M. C. Escher and the  
10 composer Johann Sebastian Bach.

11 Plaintiff has formed scholarly relationships and friendships with such notable  
12 scientists and Francis Crick and Nobel laureate physicist Murray Gell-Mann.  
13 Plaintiff also authored a popular science column for children in the National  
14 Geographic Kids magazine. Plaintiff's books on optical illusions are intended to be  
15 both accessible to lay readers and to also provide matter of interest to serious students  
16 of the field.

17 Defendant is a graduate of Harvard University. He received a Masters Degree  
18 in anthropology from the New School for Social Research and a doctoral degree in  
19 anthropology from UCLA. Despite Defendant's credentials, Defendant has never  
20 earned a livelihood in the field of anthropology; he has never worked as a university-  
21 level scholar, professor or instructor. Defendant presently works as a part-time  
22 librarian at a small religious college in Ohio. While Plaintiff has successfully  
23 pursued several scholarly and entrepreneurial endeavors, Defendant's career went  
24 nowhere, Harvard and UCLA degrees notwithstanding. Plaintiff thrive, Defendant  
25 languished.

26 Defendant developed an intense resentment toward Plaintiff, expressed in  
27 correspondence which evidences seething hatred and an unabashed desire to injure.  
28 Defendant brooded over trivial and imagined wrongs – something about a borrowed

1 book or insufficient praise in connection with some SCS activity. Defendant  
2 recorded these in lengthy memoranda to himself which have been produced in  
3 discovery. Defendant began devoting immense energy to tracking Plaintiff's  
4 scholarly, business and private activities on the internet.

5 In May 2006, Defendant commenced an intense campaign of character  
6 assassination, defamation and harassment against Plaintiff, sending unsolicited  
7 defamatory correspondence to Plaintiff's scholarly and business acquaintances,  
8 friends and even former spouses. Defendant began tracking the activities of  
9 Plaintiff's college-age daughter; Defendant conducted what he described as a  
10 "reconnaissance" investigation, poring over aerial internet photographs of Plaintiff's  
11 private residence, and obtaining photos of the interior of Plaintiff's home and  
12 possession. This is documented in Defendant's discovery responses.

13 Defendant acknowledged in discovery responses that in the Spring of 2006,  
14 Defendant spent not less than 150 hours tracking Plaintiff's acquaintances and  
15 sending them unsolicited defamatory correspondence accusing Plaintiff of "looting  
16 the SCS out of existence," misappropriating "hundreds of thousands of dollars" from  
17 the group, "defrauding famous scientists out of thousands of dollars," "plagiarism,"  
18 of being a "convicted felon," and of misappropriating the intellectual property of  
19 others in the course of Plaintiff's work on optical illusions. Defendant's interrogatory  
20 responses show that Defendant did this on his employer's time as well as his own.

21 Former SCS treasurers, prominent scientists and other persons who oversaw the  
22 finances of the SCS repeatedly have informed Defendant that his allegations are false  
23 and that the SCS never possessed any substantial assets and have so declared under  
24 oath. This is confirmed by the e-mails to Defendant produced in discovery.  
25 Defendant has no basis for his allegations of fraud.

26 Plaintiff operates a business which collects and licenses optical illusions for use  
27 in the advertising and entertainment industries, and which also creates displays for  
28 universities, museums and science centers throughout the world. Up to the Spring

1 of 2006, when Defendant commenced covertly sending dozens of defamatory e-mails  
2 to Plaintiff's business and scholarly colleagues, Plaintiff's optical illusion business  
3 consistently yielded a net income in the mid six-figure range.

4 Defendant sent a long unsolicited e-mail to a prominent vision scientist with  
5 whom Plaintiff had an amicable scholarly relationship: "I am suspicious of how he  
6 amassed his visual illusion collection and suspect that he aims for proprietary  
7 ownership." Martinez-Conde oversees an optical illusion contest which attracts  
8 illusion contributors and students from around the world. Plaintiff helped judge the  
9 contest and donated prize money. Contest participation was a way to maintain a  
10 valuable presence and to establish additional connections in the field.

11 To an internet blogger, Defendant wrote as follows: "[Seckel] has achieved his  
12 status and power in the illusion field largely through unethical means and self-  
13 promotion at the expense of others. I am not going to say so publicly, but I believe  
14 he has unfairly cheated many people in acquiring his illusion material, just as he has  
15 in his other ventures." Defendant sent similar matter to prominent reporters,  
16 including a well-known New York Times science journalists and posted it on  
17 Wikipedia.

18 After Defendant began posting defamatory matter on the internet and sending  
19 defamatory e-mails to Plaintiff's colleagues in the field of optical illusion study,  
20 Plaintiff's illusion business was virtually destroyed because universities and scientific  
21 institutions immediately shied away from Plaintiff, and because Defendant's  
22 fabricated allegations of plagiarism and misappropriation of intellectual property  
23 caused the creators and suppliers of optical illusions to shun Plaintiff.

24 Defendant's discovery responses reveal that Defendant has no interest in vision  
25 science or optical illusions and no familiarity with Plaintiff's involvement in the  
26 study and collection of optical illusions. Defendant's charges of misappropriation of  
27 intellectual property, made secretly to vision scientists and specialists in cognitive  
28 neuroscience, evidence a malicious desire to injure. They have no other purpose.

1 Defendant gleaned the identities of Plaintiff's colleagues from names contained  
2 in the acknowledgments of Plaintiff's books, tracked them down and sent them  
3 unsolicited defamatory matter. Disturbingly typical is Defendant's e-mail to Douglas  
4 Hofstadter, the author of "*Godel, Escher, Bach*," who wrote the preface to Plaintiff's  
5 most recent book.

6 Defendant had no prior relationship with Hofstadter and has had no direct  
7 contact with Plaintiff since the early 1990s. Nonetheless, on June 3, 2006, Defendant  
8 sent Hofstadter an e-mail defaming Plaintiff. Defendant begins by launching into a  
9 flurry of accusations that Plaintiff is a "charlatan," that Plaintiff "pocketed" donations  
10 to the Southern California Skeptics, that Plaintiff defrauded other persons out of  
11 hundreds of thousands of dollars and similar statements.

12 It is only in the middle of the second page of the e-mail that Defendant identifies  
13 himself. Defendant informs Hofstadter that Defendant "was exploited" by Plaintiff  
14 in the 1980s but does not specify how. Defendant reveals that he has cradled a secret  
15 resentment against Plaintiff for two decades. In the next paragraphs, Defendant  
16 attempts to curry favor with Hofstadter, explaining that Defendant too is a disciple  
17 of Bach, that Defendant's choir conductor "worships Bach above all others," and has  
18 lectured about "musical symbolism."

19 Then Defendant explains that he too is engaged in arcane research, and that  
20 Defendant has "written about a lost Verdi opera concerning Jethro Tull, pioneer of  
21 mechanized agriculture." Defendant then steers Hofstadter to a cartoon which  
22 Defendant drew and a long poem about evolution and creationism which Defendant  
23 has written in the style of the seventeenth century English poet Alexander Pope.

24 The damage from the allegations is obvious, especially when sent to persons  
25 who do not have a close personal acquaintance with Plaintiff but are within Plaintiff's  
26 ambit of scholarly, business and philanthropic activities, and therefore prospective  
27 future scholarly and business colleagues. Indeed, any reasonable person receiving  
28 such an unsolicited e-mail from a complete stranger would likely steer far clear of

1 Plaintiff even if the recipient did not believe any of Defendant's allegations. This  
2 is so because the e-mail indicates that Plaintiff is being pursued by someone who is  
3 unbalanced and is seeking to establish an intimate personal relationship with a total  
4 stranger and to displace Plaintiff in that person's circle of acquaintances. The effect  
5 is highlighted by the disturbing series of non-sequiturs and Defendant's unfiltered  
6 malice. Where Defendant has sent his defamatory correspondence to a person who,  
7 like Hofstadter, is widely recognized and respected, Defendant's conduct bears all the  
8 hallmarks of a stalker seeking recognition from a celebrity with whom he has no  
9 relationship whatsoever. The perplexed and unnerved recipient of such a  
10 communication surely would share it with others in the course of seeking the advice  
11 of friends and colleagues. Hence the injury mushrooms.

12 Plaintiff's First Amended Complaint contains dozens of additional substantially  
13 identical examples of defamatory matter which Defendant sent to Plaintiff's  
14 scholarly, business and personal acquaintances since the Spring of 2006. Defendant's  
15 discovery responses show that Defendant covertly sent such material to more than  
16 one hundred persons, including science journalists, cognitive and vision scientists,  
17 universities, philanthropic institutions with which Plaintiff is affiliated, Plaintiff's  
18 former spouse, his patent attorney, business acquaintances, philanthropic grant  
19 organizations and others.

20 E-mails disclosed in discovery also reveal that Defendant also induced a female  
21 acquaintance of Plaintiff to feign friendship and romantic attraction in order to induce  
22 Plaintiff to divulge the identities of Plaintiff's personal, business and scholarly  
23 acquaintances. The e-mails disclose that Defendant attempted to recruit third persons  
24 to infiltrate private gatherings at Plaintiff's residence to spy on Plaintiff, his family  
25 and acquaintances.

26 Because of Defendant's course of defamation, harassment and internet stalking,  
27 Plaintiff can no longer divulge professional information on the internet and can no  
28 longer advertise his lecture schedule or disclose his other scholarly and business

1 activities for fear that Defendant will immediately deluge the institutions with  
2 defamatory matter. Defendant has damaged Plaintiff's illusion business; Defendant  
3 has undermined Plaintiff's reputation among scholars and business persons.  
4 Defendant has caused Plaintiff and his family to fear for their personal safety because  
5 Defendant has attempted to recruit proxies to gain entry into Defendant's private  
6 residence.

7 **2. Claims and Defenses**

8 Plaintiff asserts claims for libel per se, libel, intentional and negligent infliction  
9 of emotional distress and invasion of privacy. Plaintiff also seeks a permanent  
10 injunction as to those matters which are adjudicated to be false. Discovery thus far  
11 shows that Defendant repeatedly has been informed that his defamatory claims are  
12 false, that Defendant – in writing – has expressed joy upon learning he has caused  
13 Plaintiff severe injury and distress, that Defendant redoubled his efforts upon learning  
14 that Plaintiff's mother and brother were gravely ill, and that Defendant has no  
15 evidence to support his allegations of fraud, plagiarism, theft and other wrongdoing.

16 Defendant claims that the defamatory allegations are true and that the  
17 statements are protected as "opinion." Plaintiff also anticipates that Defendant will  
18 contend that Plaintiff is a public figure and that Plaintiff must therefore prove actual  
19 malice. An all-purpose public figure is one who has achieved such pervasive fame  
20 or notoriety that he or she becomes a public figure for all purposes and contexts.  
21 *Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 351. Plaintiff is not an all-purpose  
22 public figure. Rather, he is a researcher in an obscure technical field, and a private  
23 business person.

24 The limited purpose public figure is an individual who voluntarily injects  
25 himself or herself or is drawn into a specific public controversy, thereby becoming  
26 a public figure on a limited range of issues. *Gertz v. Robert Welch, Inc.* (1974) 418  
27 U.S. 323, 351. *Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 351. Plaintiff,  
28 however, is known to a small group of specialists in an arcane field of scholarly.



1 Plaintiff has not been involved in the Skeptics Movement since he was diagnosed  
2 with leukemia in 1991. Accordingly, Plaintiff is not a limited purpose public figure.

3 Additionally, Defendant's malice is evidenced by three thick binders of  
4 defamatory unsolicited e-mails, including statements of unambiguous delight upon  
5 learning that he has caused Plaintiff harm. Plaintiff has produced declarations under  
6 penalty of perjury from former SCS treasurers and others demonstrating that  
7 Defendant repeatedly has been informed that his allegations are false. This is  
8 confirmed by responses Defendant received to numerous of his unsolicited e-mails.

9 Plaintiff's invasion of privacy claim is based on Defendant's intrusion into  
10 Plaintiff's private affairs, his recruitment of proxies to derive confidential information  
11 from Plaintiff, and his attempts to gain entry into Plaintiff's residence and unsolicited  
12 communications with Plaintiff's former spouses. Plaintiff's emotional distress claims  
13 are based on the same course of misconduct. Finally, because Defendant has  
14 indicated that Defendant has no intention of desisting, Plaintiff seeks a permanent  
15 injunction preventing Defendant from disseminating such statements as are  
16 adjudicated to be false.

17 **B. STATEMENT OF DAMAGES**

18 Defendant has covertly sent the defamatory matter to well over a hundred  
19 individuals and institutions. Because of the insidiousness of Defendant's misconduct,  
20 it is necessarily difficult for Plaintiff to quantify with precision the actual harm  
21 caused by each defamatory communication. Accordingly, Plaintiff's actual damages  
22 will necessarily be difficult to prove to a certainty. This is the reason that damages  
23 in cases of libel per se are presumed. (1990) *Weller v. ABC*, 232 Cal.App.3d 991,  
24 1012-1013.

25 Plaintiff presently is marshaling his financial records and intends to consult a  
26 forensic accountant. Plaintiff's confidential financial records indicate that from  
27 Spring 2006, when Defendant began disseminating defamatory matter on Wikipedia  
28 and other internet sites and covertly sending unsolicited defamatory e-mails to

1 Plaintiff's business and scholarly associates, revenues from Plaintiff's optical illusion  
 2 collection/licensing business have dropped from the mid six figures to virtually zero.  
 3 Plaintiff claims general damages in the amount of \$2,000,000 based on pain,  
 4 suffering, humiliation, and emotional distress Plaintiff has endured. Plaintiff also  
 5 seeks punitive damages.

6 **C. PROCEEDINGS TO DATE**

7 Plaintiff filed suit on May 11, 2008. The Court conducted a Scheduling  
 8 Conference on September 10, 2007. The Court granted Plaintiff's motion to amend  
 9 the scheduling order to permit the filing of Plaintiff's First Amended Complaint.  
 10 Plaintiff filed the First Amended Complaint on February 4, 2008. The discovery  
 11 cutoff is May 11, 2008. The last day for hearing motions is May 21, 2008. The last  
 12 day to conduct a settlement conference is June 1, 2008. The proposed pre-trial  
 13 conference order is due on June 11, 2008. The final pre-trial conference is set for  
 14 June 25, 2008. A jury trial is set to commence on July 24, 2008.

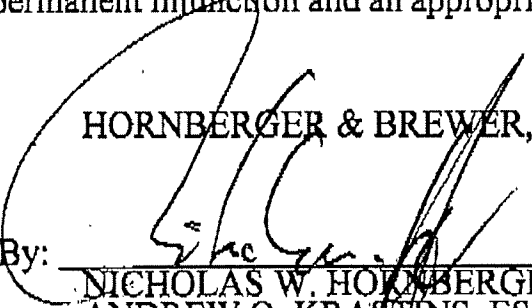
15 **D. SETTLEMENT NEGOTIATIONS TO DATE**

16 Defendant's counsel requested a settlement conference before a Magistrate  
 17 Judge. On February 7, 2008, Plaintiff's counsel sent Defendant's counsel a letter  
 18 offering to settle the matter for a payment of \$300,000, which is the policy limit of  
 19 Defendant's insurance policy, a permanent injunction and an appropriate retraction.  
 20 Defendant has not responded.

21 DATED: February 21, 2008

HORNBERGER & BREWER, LLP

22  
 23 By:

  
 \_\_\_\_\_  
 NICHOLAS W. HORNBERGER, ESQ.  
 ANDREW O. KRASINS, ESQ.  
 Attorneys for Plaintiff  
 ALFRED PAUL SECKEL

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

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 444 South Flower Street, Suite 3010, Los Angeles, CA 90071-2901.

On February 21, 2008, I served the foregoing document described as **PLAINTIFF ALFRED PAUL SECKEL'S SETTLEMENT CONFERENCE STATEMENT**, on the interested parties in this action by placing true copy(ies) thereof enclosed in a sealed envelope, addressed as follows:

Samuel A. Wyman, Esq. Eric T. Lamhofer, Esq. <b>WOLFE &amp; WYMAN, LLP</b> 5 Park Plaza, Suite 1100 Irvine, CA 92614-5979 TEL: (949) 475-9200 FAX: (949) 475-9203	Attorneys for Defendant <b>TOM McIVER</b>
---	--

By mail, I deposited such envelope(s) in the mail at Los Angeles, California, with postage prepaid.

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 at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

By facsimile, I transmitted such documents from Los Angeles, California to the offices of the addressee(s) indicated on the service list.


By overnight delivery, I caused such envelope to delivered via overnight delivery to the party(ies) listed on the attached mailing list.

By personal service, I caused the aforementioned documents to be delivered, such envelope(s) by hand to the office(s) of the addressee(s) above, by **ACE MESSENGER SERVICE AND ATTORNEYS SERVICE** located at 811 Wilshire Blvd., Suite 900, Los Angeles, CA 90017.

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

(Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on February 21, 2008, at Los Angeles, California.

  
\_\_\_\_\_  
Karina Olivaria

***HORNBERGER & BREWER, LLP***  
 ATTORNEYS AT LAW

**Los Angeles Office**

444 South Flower Street, Suite 3010  
 Los Angeles, California 90071-2901  
 Telephone: (213) 488-1655  
 Facsimile: (213) 488-1255

**Orange County Office**

19200 Von Karman Ave, Sixth Floor  
 Irvine, California 92612  
 Telephone: (949) 622-5466

**WEBSITE:** www.hgblaw.com

**FACSIMILE TRANSMITTAL SHEET**

**DATE:** February 21, 2008

**CASE NAME:** Seckel v. McIver

**OUR FILE NO.:** 2006-06014

THE FOLLOWING DOCUMENT INCLUDING THIS COVER SHEET IS 12 PAGES.

**PLEASE DELIVER THIS TRANSMISSION TO:**

**NAME:** Eric Lamhofer, Esq.

**OFFICE:** WOLFE & WYMAN, LLP

**FAX NO.:** (949) 475-9203

**FAX NO.:** (949) 475-9200

**THIS DOCUMENT IS FROM:**

**NAME:** Karina Olivarría for

**Telephone:** (213) 488-1655

**NICHOLAS W. HORNBERGER**

**COMMENTS:** Plaintiff Alfred Paul Seckel's Settlement Conference Statement. A copy will follow via first class mail.

**WARNING:** THE INFORMATION IN THIS FACSIMILE COMMUNICATION IS PRIVILEGED AND CONFIDENTIAL; IT IS INTENDED ONLY FOR THE USE OF THE RECIPIENT NAMED ABOVE. IF THE READER OF THIS WARNING IS NOT THE INTENDED RECIPIENT (OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT) YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY SENDER BY TELEPHONE, AND RETURN THE ORIGINAL TELECOPY TO THE ABOVE ADDRESS BY U.S. MAIL. THANK YOU.