COMMONWEALTH OF KENTUCKY
MEADE CIRCUIT COURT
DIVISION 1
CIVIL ACTION NO. 07-CI-00082

JORDAN GRUVER — PLAINTIFF

vs. **PLAINTIFF'S PRETRIAL BRIEF**

IMPERIAL KLANS OF AMERICA,
RON EDWARDS, JOSHUA COWLES,
JARRED R. HENSLEY, and
ANDREW R. WATKINS — DEFENDANTS

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This is a personal injury action. The plaintiff, Jordan Gruver, alleges that members of the Imperial Klans of America (IKA), acting on behalf of Klan leader Ron Edwards, attacked him while they were recruiting at the Meade County Fair in Brandenburg, Kentucky, in July 2006. The plaintiff seeks compensatory and punitive damages.

The plaintiff originally sued five defendants: Jarred Hensley and Andrew Watkins, IKA members who attacked the plaintiff and served time in prison for the offense; Joshua Cowles, a former high-ranking IKA official who was with Hensley and Watkins at the time of the attack and did nothing to stop it; Ron Edwards, the IKA leader; and the IKA itself. Because Watkins and Cowles have settled with the plaintiff, the plaintiff has agreed to dismiss them from the case. Because the IKA is an unincorporated association totally controlled by Edwards, the plaintiff does not intend to proceed against the IKA separately. As a result, the plaintiff intends to proceed against only two defendants – Hensley and Edwards, the leader of the IKA.

This brief provides an overview of the evidence that the plaintiff intends to present, outlines his causes of action and his case for punitive damages, and addresses certain evidentiary issues that may arise at trial.

I. Overview of the Plaintiff's Case

Ron Edwards is the founder and "Imperial Wizard" of the Imperial Klans of America (IKA), an unincorporated white supremacist organization that promotes hate and violence. Edwards totally dominates the IKA. He is the unquestioned leader of the organization and operates it from the fifteen-acre compound in Dawson Springs, Kentucky, where he lives. He uses money from IKA dues, contributions, fees, and merchandise sales as his own personal funds. He has no other source of income. In short, Edwards does business as the IKA.

Because Edwards treats IKA funds as his own, he has an obvious personal financial interest in the size of his Klan's membership. To swell his ranks, he has opened his doors to the most dangerous elements of the white supremacist movement – violent, young skinheads. He requires his followers to recruit new members.

One of Edwards' most lucrative IKA ventures is an annual "White Power" rally and music festival called Nordic Fest held at his compound in the late spring. In addition to using the event to raise money for himself, Edward uses it to indoctrinate his followers in hate and violence through speeches, music, and the display of violent imagery. Invited speakers call for violence and the murder of minorities, including Hispanics. See, e.g., Pl. Exs. 49-50 ("A filthy Jew deserves nothing but death and if you can torture the dirty whatever before he dies, so much the better."); Pl. Exs. 51-52 ("Let's send the [Mexicans] back in boxes. . . . Either they will leave our land or they will become part of

it."). Songs glorify skinhead violence, including that aimed at Hispanics and other minorities. See, e.g., Pl. Ex. 36 ("[W]e're on the prowl tonight, get ready for a fight, . . . we're here to stomp some assess"); Pl. Exs. 45-46 ("no mercy" will be shown to "spics" and "niggers"). Having heard exhortations to engage in violence, skinheads are urged to recruit to bring in "more fresh members, more fresh blood, more money." Pl. Exs. 49-50.

Hensley, Watkins, and Cowles were among the IKA skinhead members who attended Nordic Fest in May 2006. They were obviously dangerous – men seething with anger and hatred toward minorities; Hensley and Cowles had been convicted of violent felonies; Watkins was in a band that called for violence against minorities, including Hispanics. All three took their obligation to recruit new members for Edwards' group seriously. When they went to the Meade County Fair in July 2006 and attacked the plaintiff, they were on a recruiting mission – a mission that stood to benefit Edwards financially. They were attracted to the plaintiff because he appeared to them to be Hispanic – an "illegal spic," to use their words. In fact, the plaintiff was born in Bismarck, North Dakota. His father was originally from Panama. His mother was born in Kentucky.

Edwards recognizes that his skinhead followers are dangerous. To protect his compound and his Nordic Fest events, he has a number of security rules and deploys dozens of security guards. But he takes no such similar precautions when he unleashes his skinhead followers on recruitment drives in the general public. The only "rule" that he has is a supposed prohibition against illegal acts – a "rule" that is designed, not to protect the public from the foreseeable harm that Edwards' followers may cause, but to protect Edwards from being accountable for that harm.

II. Liability of Hensley, Watkins, and Cowles

The plaintiff has proposed instructions on Hensley and Watkins for assault and battery, and on Cowles for negligent supervision of Hensley and Watkins. Although Watkins and Cowles have settled with the plaintiff and will be dismissed from this lawsuit, the plaintiff has proposed jury instructions on their liability pursuant to Burke Enterprises, Inc. v. Mitchell, 700 S.W.2d 789 (Ky. 1985). See Palmore, Kentucky Instructions to Juries § 46.04 (5th ed. 2006).

To demonstrate that defendant Hensley committed assault and battery against him, the plaintiff will show that: (1) Hensley verbally threatened to strike or physically attempted to strike him with the intention of actually striking him or of putting him in fear of being stuck; and (2) Hensley actually struck him or put him in fear of being stuck. See Sigler v. Ralph, 417 S.W.2d 239, 241 (Ky. 1967). Because the plaintiff would predicate his intentional infliction of emotional distress claim against Hensley upon these same facts and likely would not obtain additional relief, he has not requested an instruction on that claim.

III. Liability of Ron Edwards

The plaintiff grounds his claims against IKA leader Ron Edwards on two bases of liability: (1) reckless selection, retention, and supervision of the Klansmen who attacked the plaintiff; and (2) inducement or encouragement of the violent actions by his Klansmen.

A. Reckless Selection, Retention, and Supervision

The plaintiff alleges that Edwards, in his capacity as the leader of the IKA, recklessly selected, retained, and supervised Klan officers and recruiters, which

proximately caused the plaintiff's injuries. Under Kentucky law, "a [principal] can be held liable when [his] failure to exercise ordinary care in hiring or retaining an [agent] creates a foreseeable risk of harm to a third person." Oakley v. Flor-Shin, Inc., 964 S.W.2d 438, 442 (Ky. Ct. App. 1998); see Grand Aerie Fraternal Order of Eagles v. Carneyhan, 169 S.W.3d 840, 844 (Ky. 2005) (applying same standard to negligent supervision claim); Restatement (Third) of Agency § 7.05(1) ("A principal who conducts an activity through an agent is subject to liability for harm to a third party caused by the agent's conduct if the harm was caused by the principal's negligence in selecting, training, retaining, supervising, or otherwise controlling the agent."); see also Patterson v. Blair, 172 S.W.3d 361, 371 (Ky. 2005) (citing Restatement (Third) of Agency § 7.05).

The fact that the recruiters were not paid is irrelevant. Even mere volunteers who are not "employed" in the traditional sense of the word can be agents of a principal. See Fournier v. Churchill Downs-Latonia, Inc., 166 S.W.2d 38, 40 (Ky. 1942) ("That 'one volunteering services without agreement for or expectation of reward may be a servant of the one accepting such services' is a rule generally and universally accepted and is stated . . . in Restatement of the Law on Agency, Volume 1, Section 225, page 496."); Restatement (Third) of Agency § 1.04 cmt c. (stating that "[g]ratuitous agency is a common occurrence" and "agency relationships may arise casually").

Liability attaches to the principal for reckless selection or retention of an agent if the principal knew or should have known that: "(1) the [agent] in question was unfit for the job for which he or she was [retained], and (2) the [agent]'s placement or retention in that job created an unreasonable risk of harm to a third party." Estate of Presley v. CCS of Conway, No. 3:03-CV-117, 2004 U.S. Dist. LEXIS 9583, at *16-17 (W.D. Ky. May

18, 2004); see Gaidry Motors, Inc. v. Brannon, 268 S.W.2d 627, 629 (Ky. Ct. App. 1953) (recognizing "the obligation imposed by the law upon every man to refrain from acts of omission or commission which he may reasonably expect would result in injury to third persons"). For liability to attach for negligent or reckless supervision of an agent, a plaintiff must show: "that the [principal] knew or had reason to know of the [agent]'s harmful propensities; that the [agent] injured the plaintiff; and that the . . . supervision . . . of such [agent] proximately caused the plaintiff's injuries." Grand Aerie Fraternal Order of Eagles, 169 S.W.3d at 844 (quoting 27 Am. Jur. 2d Employment Relationship § 401).

B. Inducement or Encouragement

The plaintiff alleges that Edwards' inducement or encouragement of the Klansmen's violent actions were substantial factors in causing the plaintiff's injuries. Kentucky law recognizes liability for the knowing encouragement or inducement of a tort. See Ratliff v. Stanley, 224 Ky. 819, 819-21 (1928) (upholding cause of action against jailer for, *inter alia*, encouraging inmates to attack him); see also Restatement (Second) of Torts § 876(b) (stating that one who knowingly encourages tort of another is liable to party injured by tortious conduct); § 877(a) (explaining that one who "orders or induces the [tortious] conduct" is liable for the conduct).

IV. Punitive Damages

Section 411.184 of the Kentucky Revised Statutes governs the award of punitive damages in Kentucky. In relevant part, the statute states that "[a] plaintiff shall recover punitive damages only upon proving, by clear and convincing evidence, that the defendant from whom such damages are sought acted toward the plaintiff with oppression, fraud or malice." Ky. Rev. Stat. § 411.184(2). "Malice" describes conduct

"specifically intended . . . to cause tangible or intangible injury to the plaintiff," § 411.184(1)(c), or carried out by the defendant in "reckless disregard for the lives, safety or property of others." Phelps v. Louisville Water Co., 103 S.W.3d 46, 52 (Ky. 2003) (quotation marks omitted). Edwards should incur punitive damages because his selection, retention, and supervision (or lack thereof) of those individuals who attacked the plaintiff and his inducement or encouragement of such violent actions evince a "reckless disregard for the lives, safety or property of others." Id.

V. Racist Beliefs & the First Amendment

The defendants in this case may have unpopular views, but that does not cloak them with any form of constitutional immunity. As the Supreme Court has emphasized, "it has never been deemed an abridgment of freedom of speech . . . to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." Cal. Motor Trans. Co. v. Trucking Unlimited, 404 U.S. 508, 514 (1972) (citation & quotation marks omitted); accord Brown v. Hartlage, 456 U.S. 45, 55 (1982) ("The fact that an agreement [to engage in illegal conduct] necessarily takes the form of words does not confer upon it, or upon the underlying conduct, the constitutional immunities that the First Amendment extends to speech.").

Although "the mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence" is protected by the First Amendment, "preparing a group for violent actions and steeling it to such action" is not. Noto v. United States, 367 U.S. 290, 297-98 (1961); accord NAACP v. Clairborne Hardware, 458 U.S. 886, 927 (1982) (holding that speaker can be held liable when speech "authorized,

directed, or ratified" commission of a tort); Brown, 456 U.S. at 55 ("[A] solicitation, even though it may have an impact in the political arena, remains in essence an invitation to engage in an illegal exchange.").

As long as the defendants' statements and beliefs are relevant to the issues of this case, they are admissible as evidence. See, e.g., United States v. Abel, 469 U.S. 45, 54 (1984) ("[A]ttributes of the Aryan Brotherhood – a secret prison sect sworn to perjury and self-protection – bore directly not only on the fact of bias, but also on the source and strength of . . . bias."); NAACP, 458 U.S. at 927 (holding that "speeches might be taken as evidence" of "other specific instructions to carry out violent acts or threats"). In United States v. Beasley, for example, the Court of Appeals for the Eleventh Circuit ruled that the beliefs and practices of the defendant's religion, which mandated the commission of arson and murder, were relevant to the case because the "religious teachings were used to justify, rationalize, and promote crime." 72 F.3d 1518, 1527 (11th Cir.1996) (per curiam). The court also held that the defendant's religious beliefs were pertinent because they demonstrated how he "exerted influence and control over the members and how he used his preachings to justify heinous crimes." Id.; accord United States v. Moon, 718 F.2d 1210, 1233 (2d Cir. 1983) (holding church practices relevant "to illustrate [church leader's] control over the activities of other church officials").

Here, the statements and practices of the IKA and the defendants will be relevant in several ways. First, Edwards' encouragement of violence through the IKA's speeches, music, literature, and other activities is relevant to the plaintiff's claim that Edwards encouraged or induced the violent actions of the Klansmen who attacked the plaintiff. Moreover, the evidence is relevant to the plaintiff's reckless selection, retention, and

supervision claim against Edwards because it establishes that Edwards knew or should have known of the violent temperaments of the Klansmen who attacked the plaintiff and resulting danger they posed to the plaintiff and others. See, e.g., Plaintiff's Exhibits discussed, supra, on pages 2-3.

Respectfully submitted this 6th day of November, 2008.

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