

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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JOHN WILEY & SONS, INC.,

Plaintiff

-against-

**SUPAP KIRTSANG D/B/A BLUECHRISTINE99
and JOHN DOE NOS. 1-5,**

Defendants

08 CV 7834

Lynch, G, USDJ

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**DECLARATION OF SUPAP KIRTSANG
IN OPPOSITION TO MOTION FOR CONTEMPT**

Supap Kirtsang, pursuant to 28 U.S.C. § 1746 declares under the penalties of perjury as follows:

1. I submit this declaration, together with the accompanying declaration of my counsel in opposition to the motion (the “**Motion**”) of Plaintiff John Wiley & Sons, Inc., (“**Plaintiff**” or “**Wiley**”) seeking an order of contempt.
2. In the Motion, the Plaintiff claims that I knowingly violated an April 27, 2009 order of the Court (the “**Order**”) prohibiting me from transferring funds from an account I maintain at the Bank of America (the “**Bank**”).
3. I understand that the Plaintiff has submitted papers to the Court indicating that a copy of the Order was hand delivered to the Bank the day the Order was issued. Neither I nor my counsel was personally served with a copy of the Order that day.
4. I understand that a copy of the order was apparently transmitted to my counsel by email hours after it was issued.

5. I do not have personal knowledge as to when my counsel opened his email that day. But I can advise the Court that I did not see the Order, nor had I an opportunity to speak to my counsel about it prior to the time I withdrew funds from the Bank.

6. This was a very busy time for me. It was only days before my graduation from my doctoral program at USC and at a time when my father was flying all the way from Thailand to come and stay with me and participate in the event. I had to make arrangements for his stay, prepare for the celebration we planned and so on. If I knew of the Order I would not have withdrawn the funds. I certainly did not withdraw the funds with the intention of defeating the purpose of the Order.

7. Prior to receiving the Order I lived my life as I would have lived it without fear of an impending freeze on my account. There was no rush here to pull funds out of the Bank before anyone could stop me. As I acknowledged in the declaration I submitted in opposition to the attachment motion, I had withdrawn funds to repay family and friends in anticipation of my graduation from USC and because I had no intention of continuing to sell books.

8. As soon as I did learn of the Order and my counsel explained its meaning to me, I was fairly convinced that the account would be freed up on the date of the scheduled argument, April 28, 2009. In fact, if I did not think that this would be the case I would not have worked with my lawyer on putting together an extensive set of papers to submit in opposition to the attachment motion (upon which the order was based).

9. We did not ask the Plaintiff to withdraw the attachment motion. My legal fees for defending against the attachment motion were not so far apart from the

amount that I had in the Account. If all I cared about was keeping \$6000, I would have made no effort to mount a defense against the attachment motion. I could have simply turned over the money to the Plaintiff and not have bothered. I bothered because I believed that our defense to the motion for attachment was meritorious. I also wanted to be as forthright with the Court as possible and to not do anything that would have given the impression that I was up to anything unethical (such as hiding money). That is was not my intention to simply *cut and run* should be evident from the very fact that we raised a very legitimate and carefully researched and coordinated defense.

10. I also understand that before the attachment motion was argued the Plaintiff decided to withdraw its motion. Of course once the motion was withdrawn, any funds in the Account would have been released to me in any event.

11. Yet, the Plaintiff apparently believes that the Court should act as though the Plaintiff won the attachment motion and allow it to effectively *reattach* the funds that were in the Account.

12. The Plaintiff seems to claim that it was duped into making a mistake and that if it had known that money was taken from the Account it might have acted otherwise with respect to its earlier motion. But I never made any statement about what was or was not in the Account, nor did I make any statement intended to hide what I did or did not do in the past regarding the money in the Account. In fact, I even acknowledged in my declaration in opposition to the attachment motion that recently I had been withdrawing funds.

13. Assuming I had known of the Order beforehand it would have made no sense for me to go to the bank to withdraw the funds since the Order stated that the Bank

could not release the funds to me. It would have been an exercise in futility. (Of course I would have had no way of knowing whether the Bank would delay in freezing the funds.)

14. Further, assuming the worst in my character—that I would intentionally seek to defeat the Court’s intentions—I would not be so stupid as to attempt to do something where the Bank was on notice of the prohibition and could, therefore, catch me in the act of doing something the Court said I could not do. I would have had no idea of how long it would take for the Bank to freeze my account and would have assumed that it would happen immediately. If I saw the Order before hand I would have thought that the funds were already frozen (the Bank having already received the notice) and not exposed myself to some kind of punishment by getting *caught in the act*.

15. This is the first time I have been involved in any legal proceedings whether here or in Thailand. I would never do anything that I knew to be wrong. While the Plaintiff will surely protest this claim (on the basis of its allegations in its complaint), I would have the Court know that I have provided to the Plaintiff a legal opinion that I obtained online which states conclusively that my book sales were entirely legal. I am a law abiding person.

16. I had no idea that the Order was given by the Court when I took out the money. Requiring me to now post funds that would have been released to me had I won the Motion would be inconsistent with affording me an opportunity to submit our opposition to the attachment motion in the first place. Those papers and arguments were not ruled upon only because the Plaintiff withdrew its motion.

17. Accordingly I respectfully ask the Court to deny the Motion.

Dated: July 6, 2009


Supap Kirtsaeng