

Dale M. Cendali
Claudia E. Ray
Courtney L. Schneider
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Tel: 212-446-4800
Fax: 212-446-4900

Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
PAUL GREGORY ALLEN, TRUSTEE OF THE	:	
ESTATE OF ADRIAN JACOBS,	:	
	:	
Plaintiff,	:	10 Civ. 5335 (SAS)
	:	
- against -	:	DECLARATION OF DALE
	:	CENDALI IN SUPPORT OF
	:	SCHOLASTIC INC.’S MOTION TO
	:	DISMISS
	:	
SCHOLASTIC INC.,	:	
	:	
	:	
	:	
Defendant.	:	
	:	
-----	X	

I, Dale Cendali, declare as follows:

1. I am a partner in the law firm of Kirkland & Ellis LLP, counsel of record for the Defendant Scholastic Inc. I am licensed in the State of New York and admitted to practice before this Court. I submit this declaration in support of Defendant’s Motion to Dismiss.

2. I have read the works at issue in this matter, including Plaintiff’s book *The Adventures of Willy the Wizard: No 1 Livid Land* (“WTW”) and J.K. Rowling’s book, *Harry*

Potter and the Goblet of Fire (“*Goblet*”), as well as book one of the *Harry Potter* series, *Harry Potter and the Sorcerer’s Stone* (“*Sorcerer’s Stone*”).

I. Willy the Wizard

3. Published in the U.K. in 1987, *WTW* consists of 16 pages of text and 16 pages of illustrations and tells the story of an adult wizard named Willy. (*WTW*, Ex. 1, p. 1). Attached hereto as Exhibit 1 is a copy of the 1987 *WTW* book, modified for ease of reference to include page numbers.¹

4. Willy was raised in Switzerland by his father, Billy, who worked as an “angelsmith” performing “angel repairs.” (*Id.* at p. 5). When Willy was fourteen, his father gave him a “Book of Secrets,” which was left by an angel and which served as “his initiation into Wizardry.” (*Id.*).

5. Willy, who has blond hair, blue eyes, a beard and wears an earring, lives in a “private residence” in “Memories Hideaway,” a community that he “created” after abducting 25 tourists who were “all from one family,” casting a memory loss spell on them and spiriting away their bodies, but leaving their frozen, empty clothes so as to scare others away. (*Id.* at p. 5). Since then, Memories Hideaway has grown as the inhabitants “matured; children had grown, married, begot children.” (*Id.* at p. 13). The inhabitants now “ran the angel’s repair shop and mystery factory,” and “engaged in activities which Willy encouraged, fostered and turned into profitable cottage industries,” enabling him to pay the expenses of running his domain. (*Id.* at pp. 5, 13). Willy has several wizard “apprentices” who reside in Memories Hideaway -- “Tinken,” “Taylor,” “Soldyar,” and “Delight.” (*Id.* at pp. 8, 12).

¹ A pdf copy of this book was provided to Plaintiff several days in advance of the filing of this motion.

6. The story begins as Willy travels on a floating “velvet ladder” to “Napoleon’s Castle” for a wizards’ conference. (*Id.* at pp. 1-2). Upon entering the castle’s great hall, which is filled with wizards from around the world, Willy notices a sign that reads: “IT IS FORBIDDEN TO CAST SPELLS WHILE YOU VISIT THIS CASTLE. THE PENALTY FOR THE THOUGHT . . . WILL BE BANISHMENT TO TREATMENT ISLAND.” (*Id.* at pp. 2-3). A wizard referred to as “Duke Wizard Louis Dix-Sept” then announces “the year of the wizards’ contests” and informs the wizards that, “[e]ach of you will be given details of the competitions, prizes and penalties.” (*Id.* at p. 3).

7. Willy then returns to his home in Memories Hideaway where he sits in his “yellow bathroom-cum-study” in his bath. (*Id.* at p. 8). “[A]t the feet end [of the bath] there was a flat wall which lit up at the touch of a knob by his left hand. A switch by the right hand tap engaged by a twiddle from his big right toe motivated a slideout screen.” (*Id.*). Willy then “fed in the contest details that he had been given at the wizards’ conference and having adjusted the selector, every detail of the text was magnified so that he could peruse it at his leisure.” (*Id.*).

8. The contest details read: “GAIN ENTRANCE TO LIVID LAND! AND RELEASE FEMALE PRISONERS FROM ANGRY SAM’S COMPOUND. FORTY POINTS AWARDED FOR EACH PRISONER RESCUED.” (*Id.*). Wizards “achieving more than 1000 stars would receive life membership of Stellar Land.” (*Id.*).

9. Willy then instructs his apprentices to brief him on Livid Land, which is located “off the tip of Papua” and populated by “Angry Sam,” a “colt with a kangaroo body, and a human head,” as well as “Kanganatives” who “mined the rich rocks and panned and worked the gentle streams.” (*Id.*).

10. According to Willy's apprentices, to reach Livid Land "[a]ny unauthorised parties will have to penetrate their Sky-to-Ocean barrier," and must have the password. (*Id.* at p. 9). However, Willy's apprentice, Soldyar, learns that "there is an underground tunnel that runs from Livid Land onto the seabed and stretches for one mile from shore and finishes at a surveillance tower" which is never guarded. (*Id.*). As the platform of the surveillance tower is very small, only Willy's "miniature midget elves can penetrate," and thus Willy sends the "Pixie Elf Brigade" to be "parachute-dropped by a large multi-parachute in the region of the surveillance tower." (*Id.* at pp. 9, 11).

11. Upon reaching the tower, the elves, "Bimbo-Sad-Eyes," "Botticello," and "Simple Elf," scale down the tower's walls and conceal themselves behind a statue of a kangaroo where they are able to discover the password needed to access Livid Land. (*Id.* at pp. 11-12). Sitting in his "Ali Baba" chair, Willy is able to see the Pixie Elf Brigade in their position behind the statue, although he himself is back in Memories Hideaway. (*Id.* at p. 11).

12. After uncovering the password, the elves are picked up by "Anna Eagle," an eagle that resides in Memories Hideaway. (*Id.* at p. 12). Bimbo-Sad-Eyes, however, remains in Livid Land. (*Id.*). Disguised as a "rarebit," which are avoided by the "kangas" as they are bad luck, Bimbo-Sad-Eyes is able to remain on the island and send daily reports to Willy. (*Id.*).

13. After learning that "on the island there was an addiction for chocolates," Bimbo-Sad-Eyes reports this to Willy. (*Id.* at p. 14). Willy then outlines his plan to rescue the prisoners, and arranges a meeting with "Angel Leader Halo Perfectus" to discuss his plan and request the assistance of "meterological experts." (*Id.* at pp. 14-15). Halo Perfectus informs Willy that he has already briefed "Angel Weather" and assures Willy that all "cloud formations for the next four weeks over Kanga City will be plotted with fine accuracy." (*Id.* at p. 15).

14. For the next week or so, the inhabitants of Memories Hideaway work day and night shifts to create a “huge casting of White Chocolate,” which is placed onto an “Angels’ Chariot.” (*Id.* at p. 15). The chariot waits at “Angel Station XY near Heaven’s Gate” until Willy’s signal. (*Id.*). Meanwhile, Willy has his apprentice, Apprentice Delight (Willy’s “pretty new female recruit”), join Bimbo-Sad-Eyes on Livid Land as he has learned from a report that “the guard at the prison compound was not a Kanga native,” but rather “an indoctrinated Italian sailor, who invariably flirted with any female who encouraged him.” (*Id.* at pp. 12, 15-16).

15. When Willy signals the Angels’ Chariot, Halo Perfectus positions it “close to a large cloud which was slowly moving above central Kanga City.” (*Id.* at p. 16). Meanwhile, “Apprentice Delight made her way to charm the Italian guard” and at that moment, “the warm Kanga sun caressed the chocolate cloud and CHOCOLATE RAIN Poured OVER KANGALAND.” (*Id.*). The “sweet tooth Kangas . . . made for the chocolate waters,” and because the chocolate “was of the sleep inducing variety,” as the Kangas drank the chocolate rain “they collapsed into sleeping postures.” (*Id.*). As Apprentice Delight had been able to charm the “Italian sailor” guarding the prison, Bimbo-Sad-Eyes is able to open the “female prison section” and load the prisoners into a “large cage.” (*Id.*).

16. The story ends as a triumphant and happy Willy announces, “Open up the Hideaway. CHAMPBREW. It’s time for CELEBRATION!” as “[h]e had won his particular wizard’s test and the ladies were free.” (*Id.*).

II. *Harry Potter and the Goblet of Fire*

17. Published in 2000 in the U.S., *Goblet of Fire*, which is 734 pages long, is the fourth book in J.K. Rowling’s award-winning and worldwide best selling, seven-book series. (*Goblet*, Ex. 2). Attached hereto as Exhibit 2 is J.K. Rowling’s *Goblet of Fire* book.

18. In book one of the series, *Sorcerer's Stone*, readers are first introduced to the story's protagonist, Harry Potter, a boy with a "thin face, knobbly knees, black hair, and bright green eyes. He wore round glasses held together with a lot of Scotch tape" and had a "thin scar on his forehead that was shaped like a bolt of lightening."² (*Sorcerer's Stone*, Ex. 3, p. 5). Harry's wizard parents were killed by an evil wizard, Lord Voldemort, when he was a baby. (*Id.* at p. 2). Harry, "the boy who lived," mysteriously survives Lord Voldemort's attack on his family, which is assumed (incorrectly) to have resulted in Lord Voldemort's death. (*Id.* at pp. 2, 4). Harry is then placed in the care of his non-magical, or "Muggle," aunt and uncle, the Dursleys. (*Id.* at pp. 2-3).

19. When Harry is eleven, a stream of letters addressed to him start to arrive at the Dursleys' home, but the Dursleys refuse to let Harry read them. (*Id.* at pp. 6-7). Seeking to escape from the non-stop letters, the Dursleys and their son Dudley flee with Harry to a hotel and then to an isolated cabin out at sea, where a giant named Rubeus Hagrid arrives to tell Harry that he is a wizard and gives Harry a letter stating that he has been accepted at Hogwarts School of Witchcraft and Wizardry. (*Id.* at pp. 8-10).

20. *Goblet* opens three years later when Harry is 14 years old and, after attending the Quidditch World Cup, a wizard sport involving flying broomsticks, Harry begins his fourth year of school at Hogwarts. (*Goblet*, Ex. 2, pp. 20-21, 28, 30). During the school's annual welcome dinner, the headmaster of Hogwarts, Albus Dumbledore, announces that the school will be hosting the "Triwizard Tournament" ("Tournament"), an inter-scholastic competition between the "three largest European schools of wizardry." (*Id.* at pp. 186-87). The Tournament was

² Excerpts from *Sorcerer's Stone* are attached hereto as Exhibit 3.

established seven hundred years ago, but had not been held for over a century due to the high death tolls of the previous Tournaments. (*Id.*).

21. The Tournament consists of three tasks that take place over the course of the school year and are designed to test the champions' "magical prowess -- their daring -- their powers of deduction -- and, of course, their ability to cope with danger." (*Id.* at p. 255).

Dumbledore explains that one student, or "champion," who must be at least 17 years old, will be chosen from each of the three schools by the "Goblet of Fire," a "wooden cup . . . full to the brim with dancing blue-white flames." (*Id.* at pp. 188, 255). The three champions are to be judged by a panel of five judges in each of the three tasks and will compete for the prize of "the Triwizard Cup, the glory of their school, and a thousand Galleons personal prize money." (*Id.* at pp. 187-88, 254-55).

22. Although Harry does not submit his name to be chosen, the Goblet of Fire mysteriously names Harry as a competitor in the Tournament, along with three other students, Victor Krum from the Durmstrang school, Fleur Delacour from the Beauxbatons school, and another student from Hogwarts, Cedric Diggory. (*Id.* at pp. 269-72). The fact that he is chosen without submitting his name adds to Harry's already growing suspicion that something is not right. (*Id.* at p. 283). Harry takes on the Tournament's three tasks at great personal risk while also trying to uncover the mystery of who entered him as the fourth champion in the Tournament. (*Id.* at p. 282).

23. Harry's first task involves recovering a golden egg guarded by a dragon. (*Id.* at pp. 348-50). With the help of a hint from the Defense Against the Dark Arts professor, Alastor Moody, Harry completes the task by relying on his flying skills, which he developed playing Quidditch. (*Id.* at pp. 343-45, 353-54). Harry receives a score of 40 out of 50 points from the

panel of five judges and ties for first place in the first task of the Tournament. (*Id.* at pp. 359-60).

24. In order to learn what the second task entails, the champions are told that they must solve the clue inside the egg that they recovered from the dragon during the first task. (*Id.* at p. 361). When Harry opens the egg, however, all he hears is a loud and incomprehensible shrieking sound. (*Id.* at p. 365). Harry puts off the challenge of uncovering the clue inside the egg, focusing instead on getting a date for the Hogwarts Yule Ball, until he receives a hint from the other Hogwarts champion, Cedric Diggory, his competitor and schoolmate, who advises him to take a bath with the egg. (*Id.* at p. 431). Harry brings the egg to the prefects' bathroom, into a bathtub the size of a swimming pool. (*Id.* at pp. 458-59). After a ghost named Moaning Myrtle advises Harry to open the egg under the water, as she saw Cedric Diggory do, Harry is able to hear a riddle. (*Id.* at pp. 462-63).

25. Upon listening to the riddle several times, Harry realizes that the second task involves holding his breath underwater to recover something. (*Id.* at pp. 463-465). With the help of his friends Ron and Hermione, Harry tries to find a spell that will allow him to accomplish the task. (*Id.* at pp. 485-86).

26. Just moments before the task is to begin, when Harry still has not found a solution, Dobby the house elf gives him a substance called "gillyweed" that Harry eats before entering the Hogwarts lake to compete in the task. (*Id.* at pp. 490-91). Upon eating the gillyweed, Harry grows gills, enabling him to breathe underwater. (*Id.* at p. 494).

27. Harry then swims to locate the "merpeople" -- half mermaids, half humans -- from whom Harry must "recover what [they] took," which turns out to be Harry's friend Ron, as well as other students. (*Id.* at pp. 495-98). Taking the riddle literally, Harry believes that the

students “won’t come back” unless they are saved (although it turns out that they are just under a sleeping spell and would not be harmed by the task), and he pulls Ron and another student up to the surface with him, even though the task only requires him to recover Ron. (*Id.* at pp. 463, 501-03). Although this causes Harry to exceed the time limit, he is awarded 45 points out of 50 for his “moral fiber” and comes in second place. (*Id.* at p. 507).

28. The third task involves navigating a labyrinth filled with magical obstacles. (*Id.* at p. 551). Harry and his schoolmate Cedric help each other to complete the maze. (*Id.* at pp. 626-27). When they reach the Triwizard Cup, which serves as the finish line, they agree to take hold of the Cup at the same time and therefore tie the competition. (*Id.* at pp. 634-35).

29. The task turns out to be a trap, as the Triwizard Cup unexpectedly turns out to be a “Portkey,” which transports Harry and Cedric to a graveyard. (*Id.* at p. 636). In the graveyard, Harry and Cedric come face to face with Lord Voldemort and one of his supporters, “Wormtail.” (*Id.* at pp. 637-43). Cedric is killed by Wormtail, and Lord Voldemort, using some of Harry’s own blood, is restored to a new body and thus regains his strength. (*Id.*).

30. Harry must then battle Lord Voldemort. (*Id.* at pp. 660-69). As they duel, mysteriously, a beam of light connects Harry’s and Voldemort’s wands, causing ghosts to emerge from Voldemort’s wand and provide Harry with the protection he needs to race back to the Portkey just in time to return to Hogwarts and escape his own death. (*Id.*).

31. Upon arriving back at Hogwarts, Harry is whisked away by who he believes to be Alastor Moody, but who he learns is really Barty Crouch Jr., Lord Voldemort’s supporter in disguise. (*Id.* at pp. 672-83). Barty Crouch Jr. confesses to Harry that, at Voldemort’s direction, he has been “guiding [Harry] through these tasks” by telling Cedric Diggory to open the dragon egg underwater to uncover the clue to the second task, knowing that Cedric would tell Harry in

turn; and calling Dobby the house elf to the staffroom to collect some robes to ensure Dobby overheard his conversation with “Professor McGonagall about the hostages who had been taken, and whether Potter would think to use gillyweed.” (*Id.*). Crouch’s true identity is revealed and Harry informs Dumbledore of Lord Voldemort’s return. (*Id.* at pp. 682-83, 695).

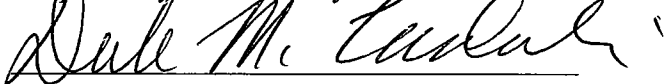
32. As Cedric has been killed, Harry is awarded the prize money of 1,000 Galleons. (*Id.* at p. 710). Harry offers the prize to Cedric’s parents, who refuse to take it, whereupon Harry gives it to his friends Fred and George Weasley, Ron’s older twin brothers, in order to help them with their plans to start a wizard joke shop. (*Id.* at pp. 716-17, 733).

33. The story ends as a somber and more mature Harry travels back home from school for the summer. (*Id.* at p. 724).

34. I declare under penalty of perjury that the foregoing is accurate to the best of my knowledge.

Dated: September 16, 2010

Respectfully submitted by:



Dale M. Cendali
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
(212) 446-4846

Attorneys for Defendant
SCHOLASTIC INC.