

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

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PAUL GREGORY ALLEN, TRUSTEE OF THE	:	:
ESTATE OF ADRIAN JACOBS,	:	:
	:	:
Plaintiff,	:	10 Civ. 5335 (SAS)
	:	:
- against -	:	<b>DECLARATION OF CLAUDIA RAY</b>
	:	<b>IN SUPPORT OF SCHOLASTIC</b>
	:	<b>INC.’S MOTION TO DISMISS</b>
	:	:
SCHOLASTIC INC.,	:	:
	:	:
	:	:
Defendant.	:	:
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I, Claudia Ray, declare as follows:

1. I am a partner in the law firm of Kirkland & Ellis LLP, counsel of record for 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*”), book two, *Harry Potter and the Chamber of Secrets* (“*Chamber of Secrets*”), and book three, *Harry Potter and the Prisoner of Azkaban* (“*Prisoner of Azkaban*”).

3. In its Complaint dated July 13, 2010 (the “Complaint”), Plaintiff alleges that numerous similarities exist between *Willy the Wizard* and *Goblet of Fire*. The similarities alleged in paragraphs 53 through 67 of Plaintiff’s Complaint are discussed below in the order they are addressed in the Complaint.

**I. Plaintiff’s Alleged “Similarities”**

4. Plaintiff claims that the “protest of some of the helpers regarding their past working conditions and their insistence on improved conditions is a theme in both works.” (Complaint, ¶53). In *WTW*, however, there is no “theme” regarding a protest, but rather there is only a single mention that Willy’s “elaborate laboratory” had been a gift from his apprentices “in protest at the conditions in which they had formerly worked.” (Declaration of Dale Cendali, dated Sept. 16, 2010 (“Cendali Dec.”), Ex. 1, p. 1).<sup>1</sup> Although it is hard to tell from such a passing reference, it does not appear that the apprentices literally “protest,” but rather that they simply purchased new laboratory equipment for Willy. Plaintiff points to a scene in *Goblet* where, after being freed from his master, Dobby the house elf states that he wants to be paid for his work. (Cendali Dec., Ex. 2, p. 378).<sup>2</sup> Although Plaintiff does not cite anything further, in *Goblet*, the theme of protesting working conditions is highly developed as Hermione, a student at Hogwarts, tries to encourage the house elf community to demand payment for their work. (*Id.* at pp. 379-80).

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<sup>1</sup> A copy of *Willy the Wizard* is annexed to the Declaration of D. Cendali as Exhibit 1.

<sup>2</sup> The book *Goblet of Fire* is annexed to the Declaration of D. Cendali as Exhibit 2.

5. Although Plaintiff claims that “Willy and Harry must rescue hostages from a community of magical creatures that are half human and half animal,” (Complaint, ¶55), in *WTW*, the female prisoners are guarded by “an indoctrinated Italian sailor” who was not a “Kanga native,” (Cendali Dec., Ex. 1, p. 16), whereas Harry must retrieve his friend Ron from the bottom of the Hogwarts lake where the “merpeople” -- half human and half mermaid -- live. (Cendali Dec., Ex. 2, pp. 498-503). Moreover, the merpeople are simply helping to administer the second task of the Triwizard Tournament and are not “guarding” the sleeping friends. (*Id.* at pp. 498-505).

6. Although Plaintiff tries to claim that a similarity exists between the “Kanga natives” in *WTW* and the “merpeople” in *Goblet*, (Complaint, ¶56), the Kanga natives in *WTW* “mined the rich rocks and panned and worked in the gentle streams,” and the only description of a “Kanga native” is of “Angry Sam,” who is a “colt” with “a kangaroo body, and a human head.” (Cendali Dec., Ex. 1, p. 8). In contrast, in *Goblet*, the merpeople are described as having “grayish skin and long, wild, dark green hair. Their eyes were yellow, as were their broken teeth, and they wore thick ropes of pebbles around their necks.” (Cendali Dec., Ex. 2, pp. 497-98).

7. Plaintiff argues that the Kanga natives in *WTW* and the merpeople in *Goblet* each reside in a magical community “in an isolated location that is protected by a physical barrier that the main character must overcome.” (Complaint, ¶57). This is only true with respect to the Kanga natives, however, who reside on the island of Livid Land off the tip of Papua, which can only be accessed by penetrating a “Sky-to-Ocean barrier.” (Cendali Dec., Ex. 1, p. 9). In contrast, in *Goblet*, the merpeople reside at the bottom of the Hogwarts lake on the Hogwarts school grounds in Britain and can be accessed by anyone. (Cendali Dec., Ex. 2, p. 464).

8. Plaintiff claims that the protagonists in *WTW* and *Goblet* are “wizards, raised by non-wizards, who join the magical community in pre-/early-adolescence.” (Complaint, ¶60). In *WTW*, however, the reader is told only that Willy’s father worked as an “angelsmith” performing “angel repairs.” (Cendali Dec., Ex. 1, p. 5). No further information is provided with respect to Willy’s upbringing. With respect to his introduction into the “magical community,” the reader is only told that when Willy was fourteen, his father gave him a “Book of Secrets,” which was left by an angel by the name of “Angel Pretty” and which served as “his initiation into Wizardry.” (*Id.* at p. 5). In contrast, in *Goblet*, when Harry was one, the “most powerful Dark wizard,” Lord Voldemort, killed his mother and father, and attempted to kill him as well. However, Voldemort’s curse had rebounded and Harry had survived “with nothing but a lightning-shaped cut on his forehead.” (Cendali Dec., Ex. 2, p. 20). Harry is then placed under the care of his only living relatives, the Dursleys, non-wizards whom he detests. (*Id.* at p. 19). On Harry’s eleventh birthday, he learns that he is in fact a wizard and that “everyone in the hidden wizarding world knew his name.” (*Id.* at p. 20). All of these events are first introduced and discussed in greater detail in book one of the series, *Sorcerer’s Stone*. (Cendali Dec., Ex. 3, pp. 2-3).<sup>3</sup>

9. Plaintiff claims that each “protagonist attended or attends at least one of several wizard schools in Europe.” (Complaint, ¶61). In *WTW*, however, the reader is only provided with a vague reference to the fact that “Willy had been clever at wizards’ college” and that he had attended a “Junior wizards’ advanced students course in Palermo.” (Cendali Dec., Ex. 1, pp. 3, 10). In contrast, in *Goblet*, Harry attends a boarding school for wizards, Hogwarts School of Witchcraft and Wizardry, where he lives and studies all areas of wizarding. (Cendali Dec., Ex.

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<sup>3</sup> Excerpts from the book *Sorcerer’s Stone* are annexed to the Declaration of Dale Cendali as Exhibit 3.

2, pp.18-19). Moreover, this is first introduced in *Sorcerer's Stone*. (Cendali Dec., Ex. 3, pp. 10-11).

10. Although Plaintiff argues that each “protagonist has studied or studies wizard history,” (Complaint, ¶62), in *WTW*, there is only a single mention that in “wizards’ college” Willy had been “clever” in “ancient wizardry histoire.” (Cendali Dec., Ex. 1, p. 3). In contrast, in *Goblet*, at Hogwarts, Harry takes a course in “History of Magic,” taught by Professor Binns, a ghost who has continued teaching even after his death, and had the students “writing weekly essays on the goblin rebellions of the eighteenth century.” (Cendali Dec., Ex. 2, p. 234). This course is first mentioned in *Sorcerer's Stone* as Harry begins his study of the subject in his first year at Hogwarts. (Cendali Dec., Ex. 3, p. 11).

11. Plaintiff also alleges that “each work describes an international gathering of wizards who have come together from real countries all over the world and the personal impact that the main character feels knowing he is part of this brotherhood.” (Complaint, ¶63). To support this, Plaintiff points to a scene in *WTW* where Willy, while attending a wizards’ conference at Napoleon’s Castle, makes a passing reference that “[t]here were wizards of all races. Chinese, with massive Mandarin hats beautifully hand painted with peasant scenes. Black and brown wizards from the Ivory Coast and Delhi . . . . Until now he’d never realized the immensity of the Wizard brotherhood.” (Cendali Dec., Ex. 1, p. 3). Plaintiff tries to draw a similarity by pointing to a scene in *Goblet* where Harry is attending the “Quidditch World Cup.” Upon seeing all of the witches and wizards camping out in tents to attend the event, rather than coming to any kind of realization about a “brotherhood” of wizards, it dawns on Harry “how many witches and wizards there must be in the world; he had never really thought much about

those other countries,” nor had he seen such young witches and wizards before. (Cendali Dec., Ex. 2, p. 81).

12. Plaintiff claims that similarities exist between the “means of magical transportation that allow wizards to travel undetected through the real world.” (Complaint, ¶64). To support this claim, Plaintiff points to Willy’s “Aladdin’s dagger,” about which the reader is told the following: Willy “felt in his tunic pocket. Pocket *sesame* was always to be relied on in an emergency. Woosh! He touched the concealed jewelled dagger that Aladdin had bequeathed to him and presto he was walking silently in Precious Boulevard off Sultan’s Row.” (Cendali Dec., Ex. 1, p. 1). It is unclear from this language, however, what causes Willy to be transported -- the dagger, which possibly has a connection to Sultan’s Row, or a “pocket sesame” spell of some kind. Plaintiff compares this to the “Portkeys” used to transport wizards in *Goblet*. However, in contrast, any object can be transformed into a “Portkey” (with the help of a spell) and thus be “used to transport wizards from one spot to another at a prearranged time.” (Cendali Dec., Ex. 2, p.70). As Mr. Weasley explains, there “have been two hundred Portkeys placed at strategic points around Britain,” one of which is an old boot at the top of “Stoatshead Hill,” which Harry and his friends use to travel to the Quidditch World Cup. (Cendali Dec., Ex. 2, p. 70-73). The “Triwizard Cup,” which serves as the finish line in the final task of the Tournament, also turns out to be a Portkey, and upon touching it, Harry is unwillingly sent into the hands of the evil wizard Lord Voldemort. (*Id.* at pp. 635-636).

13. Plaintiff also alleges that similarities exist between the “Swan taxi” in *WTW* and the “Knight Bus” in *Goblet*. (Complaint, ¶64). Swan taxis, however, are flying swans that are invisible except for their eyes and are used to transport wizards and other objects. (Cendali Dec., Ex. 1, p. 3-4). In contrast, the “Knight Bus,” which is briefly mentioned in *Goblet* to identify

“Stan Shunpicket,” a “pimple wizard” who was the conductor “on the triple-decker Knight Bus,” is first introduced in *Prisoner of Azkaban* and is described as a “violently purple bus,” which provides emergency transportation to stranded witches or wizards and can be seen by the magical community, but not the non-magical community, which does not “look properly.” (Cendali Dec., Ex. 2, p. 126); (*Prisoner of Azkaban*, Ex. 1, pp. 2-4)<sup>4</sup>; (Complaint, ¶64).

14. In its Complaint, Plaintiff also claims that both works involve a “magical train that is used only by wizards.” (Complaint, ¶64). *WTW*, however, involves “Pullman-like trains” used by chess players that travel “six million milomiles from Earth” through the sky and are “made of see-through platinum, and inside the trains were chess rooms,” (Cendali Dec., Ex. 1, p. 10), whereas, the train in the *Harry Potter* series -- the Hogwarts Express -- is a “scarlet steam engine” that travels along tracks on the ground and serves to transport the students of Hogwarts from London to and from school and is first introduced in *Sorcerer’s Stone*. (Cendali Dec., Ex. 2, p. 163; Cendali Dec., Ex. 3, p. 12).

15. In its Complaint, Plaintiff also compares the gold snuff that Willy tells another wizard to sniff and say “VIVA ALPHONSO, VIVA MARIA” in order to get back to Spain, (Cendali Dec., Ex. 1, p. 3), to “floo powder” in *Goblet*. (Complaint, ¶64). Floo powder, however, is used by Mr. Weasley and his family to travel to and from the Dursleys’ home via the Dursleys’ chimney. (Cendali Dec., Ex. 2, p. 47-48). Floo powder is actually first introduced in *Chamber of Secrets* and allows wizards to travel from one chimney to another by throwing the powder into the flames (which then turn emerald green), and then stepping in and shouting one’s

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<sup>4</sup> Excerpts from the book *Prisoner of Azkaban* are annexed to this declaration as Exhibit 1.

desired location. (Declaration of Courtney Schneider, dated Sept. 16, 2010 (“Schneider Dec.”), Ex. 1, p. 2).<sup>5</sup>

16. Although Plaintiff claims that “[b]oth works discuss special wizard hospitals for the diagnosis and treatment of wizard illnesses,” (Complaint, ¶65), *WTW* only makes one vague reference to a wizard who is “Chief Wizard Surgery at Hospital Space.” (Cendali Dec., Ex. 1, p. 10). Beyond this, there is no discussion of “Hospital Space.” In contrast, Plaintiff cites to a scene in *Goblet* where Professor Dumbledore explains to Harry that one of his schoolmate’s parents who were tortured for information about Voldemort’s whereabouts, are now clinically insane and being treated as “St. Mungo’s Hospital for Magical Maladies and Injuries.” (Cendali Dec., Ex. 2, p. 603). Beyond this, in *Goblet*, there are also references to the hospital wing of Hogwarts, which is first introduced in *Sorcerer’s Stone* and treats injured Hogwarts students. (Cendali Dec., Ex. 2, p. 299); (Cendali Dec., Ex. 3, p. 14).

17. Plaintiff alleges that in both works “memory erasing spells play an important role in the relations of wizards with non-wizards.” (Complaint, ¶66). In *WTW*, there is only one reference to Willy’s use of such a spell as Willy cast the “Dungo spell for loss of memory” on 25 tourists that he captured. (Cendali Dec., Ex. 1, p. 5). Willy casts this spell so that the tourists will remain in Memories Hideaway, establish a community, and work for him in various cottage industries so that he may support his domain. (*Id.*). In contrast, a memory loss spell is used in *Goblet* to ensure that non-magical “Muggles” do not recall the magical activity they accidentally witness at the Quidditch World Cup due to Lord Voldemort’s machinations so as to ensure that they remain oblivious to the wizarding community. (Cendali Dec., Ex. 2, Ex. 2, p. 145).

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<sup>5</sup> Excerpts from the book *Chamber of Secrets* are annexed to this the Declaration Courtney Schneider as Exhibit 1.



Moreover, such a spell is first introduced in *Chamber of Secrets*. (Schneider Dec., Ex. 1, pp. 4-5).

18. Plaintiff argues that “both works feature commercial villages, hidden away from the real world, that produce goods and services especially for wizards.” (Complaint, ¶67). Memories Hideaway in *WTW*, however, is a community that Willy created after capturing a family of tourists and splicing away their bodies, but leaving their frozen, empty clothes. (Cendali Dec., Ex. 1, p. 5). “The frozen bodiless clothes adorned the entrance to Willy’s domain and ensured his privacy.” (*Id.*). The non-wizard tourists now “engaged in activities which Willy encouraged, fostered and turned into profitable cottage industries,” which Willy used to cover the expenses of “running his domain.” (*Id.* at p. 13). Willy himself lives in Memories Hideaway, in which “[a]ll of the bungalows except the first one were made of a unique glass with little prickles which melted the falling snow on impact. Beside the Mystery Workshop was a staircase that led below ground. There lived the inhabitants, the workers and their families. The underground dormitories for each family had a cool blue décor.” (*Id.* at p. 6). In contrast, in *Goblet*, Hogsmeade Village is an all-wizard town that Hogwarts students “in their third year and above” are occasionally “permitted to visit” as a fun place where they may buy sweets or visit the “Three Broomsticks” for some “butterbeer.” (Cendali Dec., Ex. 2, pp. 317-18). Hogsmeade is first introduced in *Prisoner of Azkaban*. (*Prisoner of Azkaban*, Ex. 1, pp. 5-7). When Harry visits Hogsmeade for the first time he notes that, “Hogsmeade looked like a Christmas card; the little thatched cottages and shops were all covered in a layer of crisp snow; there were holly wreaths on the doors and strings of enchanted candles hanging on the trees.” (*Id.*).

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

Dated: September 16, 2010

Respectfully submitted by:

A handwritten signature in black ink, appearing to read 'C. Ray', written over a horizontal line.

Claudia E. Ray  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, NY 10022  
(212) 446-4800

*Attorneys for Defendant*  
SCHOLASTIC INC.