

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

JEFF SMITH, individually and in his capacity as a director of CSN International, Inc., a California religious non-profit corporation, CSN International, Inc., a California religious non-profit corporation, THE WORD FOR TODAY, a California non-profit corporation,

**and Does 1 through 10, inclusive,
YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MICHAEL KESTLER, in his capacity as a director of CSN International, Inc., a California religious non-profit corporation,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

FEB 14 2006

ALAN SLATER, Clerk of the Court

BY J. ALVAREZ DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California
700 Civic Center Dr., West

CASE NUMBER
(NÚMERO DE CASO): **06CC03054**

**JUDGE MARY FUNGAL BRIDGEMAN
DEPT 011**

Santa Ana, CA 92701
Central Justice Center

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Lisa A. Roquemore (SBN 140523)
19900 MacArthur Blvd.
Suite 1150
Irvine, CA 92612
949-223-9601 949-223-9611

DATE: 2-14-06
(Fecha)

ALAN SLATER

Clerk, by
(Secretario)

JANAY ALVAREZ

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

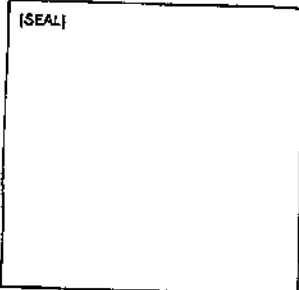
NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):

3. on behalf of (specify): **CSN INTERNATIONAL INC.**

- under:
- CCP 416.10 (corporation)
 - CCP 416.20 (defunct corporation)
 - CCP 416.40 (association or partnership)
 - other (specify):
 - CCP 416.60 (minor)
 - CCP 416.70 (conservatee)
 - CCP 416.90 (authorized person)

4. by personal delivery on (date): **2/15/06**



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7 Attorneys for Plaintiff MICHAEL KESTLER

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER

FEB 14 2006

ALAN SLATER, Clerk of the Court

BY J. ALVAREZ DEPUTY

8
 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **FOR THE COUNTY OF ORANGE**

11 MICHAEL KESTLER, in his capacity
 as a director of CSN International, Inc.,
 12 a California religious non-profit
 corporation,

13 Plaintiff,

14 vs.

15 JEFF SMITH, individually and in his
 16 capacity as a director of CSN
 INTERNATIONAL, INC., a
 17 California religious non-profit
 corporation, CSN INTERNATIONAL,
 18 INC., a California religious non-profit
 corporation, THE WORD FOR
 19 TODAY, a California non-profit
 corporation, and Does 1 through 10
 20 inclusive,

21 Defendants.

Case No.

06 C C 0 3 0 5 4

COMPLAINT FOR:

- (1) REMOVAL OF DIRECTOR;
- (2) BREACH OF FIDUCIARY DUTY;
- (3) ACCOUNTING;
- (4) PRELIMINARY AND PERMANENT INJUNCTION; and
- (5) APPOINTMENT OF A RECEIVER, ALTERNATIVELY FOR PROVISIONAL DIRECTOR.

JUDGE MARY RINGAL BRIDGEMAN
DEPT 1011

22
 23 Plaintiff, Michael Kestler, in his capacity as a director of CSN INTERNATIONAL, INC.,
 24 by and through his counsels of record, alleges as follows:

25 **IDENTIFICATION OF PARTIES**

26 1. Plaintiff Michael Kestler is one of two members of the Board of Directors at CSN
 27 INTERNATIONAL, INC. Michael Kestler is an individual who resides in Twin Falls, Idaho
 28 ("KESTLER" or the "Plaintiff".)

1 2. Defendant CSN INTERNATIONAL, INC., ("CSN") is now, and at all relevant
2 times mentioned was, a California religious non-profit corporation organized pursuant to the non-
3 profit religious corporation law pursuant to California Corporation Code section 9110, et seq. Its
4 principal place of business is Santa Ana, Orange County, California. CSN is in good standing
5 and currently has only two board members, KESTLER and Jeff Smith. CSN generates
6 approximately \$6 million dollars annually from donations.

7 3. Defendant Jeff Smith ("JEFF SMITH") is now, and at all relevant times mentioned
8 was, an individual who resides in Rancho Mirage, Riverside County, California, but conducts
9 business on behalf of CSN in Santa Ana, Orange County, California. JEFF SMITH is the son of
10 Chuck Smith, founder of Calvary Chapel Costa Mesa.

11 4. Defendant, THE WORD FOR TODAY ("WFT") is now, and at all relevant times
12 mentioned was, a California non-profit corporation organized and existing under the laws of the
13 State of California, with its principal place of business in Santa Ana, Orange County, California.
14 KESTLER is informed and believes that WFT may be a California religious non-profit
15 corporation.

16 5. KESTLER lacks the true names and capacities of the defendants sued herein as
17 Does 1 through 10, inclusive and therefore sues these defendants by such fictitious names.
18 KESTLER will amend this Complaint to allege their true name and capacities when they have
19 been ascertained.

20 6. KESTLER is informed and believed that each of the defendants designated herein
21 as a DOE is responsible in some manner for the events and happenings herein alleged.

22 7. Defendants JEFF SMITH, CSN, WFT and DOES 1 through 10 will be collectively
23 referred to as the "Defendants".

24 8. Upon information and belief, and at all relevant times, there existed a relationship
25 between each of the Defendants in the nature of a joint venture, partnership, parent and
26 subsidiary, principle and agent, employer and employee, master and servant, aider and abettor,
27 and principal and/or conspirator. Each and every action of each of the Defendants was carried out
28 within the course and scope of such relationship; each individual Defendant is, therefore, jointly

1 and severally liable for the acts complained for herein.

2 **FACTUAL BACKGROUND**

3 9. CSN is a religious non-profit corporation which operates a radio/satellite broadcast
4 network. CSN owns or operates 40 full power stations. CSN also broadcasts over 389 translators
5 pursuant to a local management agreement with Calvary Chapel of Twin Falls, an Idaho non-
6 profit religious corporation (CCTF). The network coverage extends throughout most of the
7 United States. All full power stations and translators are licensed to CSN and CCTF by the
8 Federal Communication Commission ("FCC"), and said licenses are in good standing with the
9 FCC.

10 10. CSN's mission is to provide Christian religious programming. Although, CSN is
11 associated with the Calvary Chapel ministries of Costa Mesa, California, CSN is a wholly
12 independent entity and is not formally affiliated with any particular church or denomination.

13 11. CSN has its corporate offices located in Santa Ana, California. However, the radio
14 broadcasting equipment, satellite uplink and programming originate in Twin Falls, Idaho. Except
15 for financial management, the bulk of the day-to-day operation for CSN takes place in Idaho.

16 12. At this time, CSN has a board of directors consisting of two members: KESTLER
17 and JEFF SMITH. CSN does not have a membership, and directors are appointed and approved
18 by the current board. JEFF SMITH's office is located in Santa Ana, CA, and KESTLER's office
19 is located in Twin Falls, Idaho. The Santa Ana office is responsible for the financial
20 management of the corporation and the Twin Falls office is responsible for the technical and
21 operational issues. At this time, the Board is deadlocked, and cannot adequately manage CSN
22 pursuant to its duties as a board.

23 13. During the past 24 months, in breach of California corporate formalities and to
24 perpetrate a fraud on CSN, JEFF SMITH has and continues to unilaterally make decisions
25 concerning the operation of CSN, which require prior board approval. In particular, JEFF SMITH
26 has:

- 27 a) Caused donations from the listening public to be deposited in the account
28 of TWF and has failed to adequately account for these donations;

- 1 b) Failed to provide financial information to KESTLER when requested, and
2 refused to provide documentation to support what financial information that is
3 supplied;
- 4 c) Falsely represented the membership of the Board to third parties;
- 5 d) Secretly promoted the filing of a sexual harassment complaint in federal
6 Court in Idaho against KESTLER and CSN in an attempt to discredit KESTLER
7 and force him from the board and exposing CSN to potential liability and the cost
8 of defending a baseless lawsuit;
- 9 e) Loaned himself money from CSN funds without the knowledge and
10 approval of the Board, in violation of California Corporation Code §5236(a). Said
11 loans have not been repaid;
- 12 f) Wasted CSN funds by conducting an unnecessary and unapproved audit of
13 the operation in Twin Falls;
- 14 g) Failed to adequately manage the finances of CSN to the extent that
15 certified financial statements cannot be obtained;
- 16 h) Changed programming schedules and programming without approval of
17 the Board;
- 18 i) Caused the expenditure of large sums of CSN funds in building projects
19 without approval of the Board;
- 20 j) Replaced the CSN employee in charge of expansion and construction
21 without approval of the Board;
- 22 k) Refused to consult or otherwise confer with KESTLER regarding major
23 management decisions;
- 24 l) Caused the full power stations to solicit money on behalf of Calvary Radio
25 Network, an entity not affiliated with CSN, in violation of federal law governing
26 tax-exempt non-profit corporations, and without prior board approval;
- 27 m) Replaced key employees and hired additional employees without prior
28 board approval;

- 1 n) Expended large sums of CSN funds to purchase radio equipment which
2 permits full power stations to receive their programming signal from the office in
3 Santa Ana and bypassing the Twin Falls operation, without prior board approval;
4 o) Had demanded the attendance of all full power station managers at a
5 conference regarding Calvary Radio Network, and paid for the costs of attendance
6 with CSN funds, without prior board approval; and
7 p) Generally conducted himself in a duplicitous and manipulative manner
8 inimical to the well being of CSN.

9 14. The foregoing list of misconduct on the part of JEFF SMITH is not exhaustive and
10 other conduct not alleged herein has caused damage to the interests of CSN. Additionally, the
11 foregoing conduct puts the licenses at risk due to the potential perception on the behalf of the
12 FCC of change of control without notice to the FCC.

13 15. JEFF SMITH is a member of the board of directors of WFT. Upon information
14 and belief, JEFF SMITH had day to day operational control of WFT from 1997 until late 2003.
15 At that time, the board of directors for WFT removed JEFF SMITH from his managerial role, but
16 he remains a member of the board of WFT.

17 16. During the period of time in which JEFF SMITH had operational control of WFT,
18 he received donations from the public intended for CSN, but deposited those donations into WFT
19 accounts. JEFF SMITH also caused funds from WFT to be transferred to CSN, and funds from
20 CSN transferred to WFT. At this time, it is impossible to determine the financial relationship
21 between WFT and CSN. This difficulty is a direct result of the conduct of JEFF SMITH.

22 17. The conduct and actions taken by JEFF SMITH outlined above has been without
23 Board approval, and as such, are *ultra vires*. Plaintiff seeks a temporary and permanent
24 injunction against JEFF SMITH compelling him to cease acting without board authority, and
25 declaring all such actions taken by JEFF SMITH without board approval to be illegal and without
26 force and effect.

27 18. Due to the deadlock on the board of CSN, the Plaintiff is without an adequate
28 remedy at law.

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FIRST CAUSE OF ACTION

(Removal of Director)

AGAINST DEFENDANT JEFF SMITH

19. The allegations contained in Paragraphs 1 through 18 are included herein by reference.

20. JEFF SMITH, through his conduct and fraudulent actions alleged above, as well as his dishonest acts and gross abuse of authority and discretion in reference to CSN has damaged the interests and mission of CSN. Pursuant to California Corporation Code, section 9223(a), JEFF SMITH ought to be removed as a director of CSN permanently. Additionally, JEFF SMITH, should be barred from re-election as a director permanently or for an appropriate period prescribed by the Court.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty)

AGAINST DEFENDANT JEFF SMITH

21. The allegations contained in Paragraphs 1 through 18 above are incorporated herein by reference.

22. JEFF SMITH, as one of the directors, has failed to perform the duties of a director in good faith and in such a manner to be in the best interest of CSN and with such care as is appropriate under the circumstances.

23. Said breaches of duties are outlined in full in paragraphs 14 and 17.

24. Such breaches of fiduciary duty include, but are not limited to, failure to comply with the CSN's corporate formalities, commingling of funds, conducting himself in an *ultra vires* fashion without required Board approval and in violation of bylaws; and, putting at risk CSN's licenses due to the attempt to take control of CSN without notice to the FCC. All of this conduct is in violation of California Corporation Code, section 9241(a).

25. Additionally, JEFF SMITH has breached his fiduciary duties to CSN by participating in self-dealing transactions, including but not limited to, lending money to himself from CSN funds without the knowledge and approval of the Board, causing donations from the

1 listening public to be deposited in the account of TWF that should have been deposited in CSN
 2 accounts and failing to adequately account for these donations in violation of California
 3 Corporation Code, section 9243.

4 26. Defendant JEFF SMITH intentionally and knowingly breached his fiduciary duties
 5 as alleged above.

6 27. Such breaches of fiduciary duty threaten to and will cause great and irreparable
 7 injury to CSN, in that such conduct will result in a serious disruption of CSN's business. The
 8 damages that have been and will be sustained by CSN by reason thereof cannot be readily
 9 ascertained or calculated, and unless immediate injunction relief as prayed for herein is granted,
 10 the breaches of fiduciary duty will continue and/or be completed, rendering ineffectual a final
 11 judgment that will ultimately consider the final merits of the Parties' dispute. By reason thereof
 12 and due to the current deadlock, Plaintiff has no adequate remedy at law for such acts and
 13 threatened acts.

14 28. Accordingly, JEFF SMITH, as an interested director, should be ordered to pay
 15 such damages as in the discretion of the Court and should be ordered to do such things that will
 16 provide an equitable and fair remedy to CSN, including but not limited to, account for any loans
 17 to himself and donations deposited in the account of TWF and/or return and replace such
 18 donations in accordance with California Corporation Code, section 9234(h).

19 **THIRD CAUSE OF ACTION**

20 (Accounting)

21 **AGAINST ALL DEFENDANTS**

22 29. The allegations contained in Paragraphs 1 through 18 above are incorporated
 23 herein by reference.

24 30. As a result of JEFF SMITH's conduct alleged above and breach of fiduciary
 25 duties, including but not limited to, commingling of funds, lending money to himself, and/or
 26 depositing donations of CSN's into TWF's accounts, KESTLER is informed and believes that
 27 Defendants JEFF SMITH and TWF are now in possession of substantial sums of money that
 28 properly belong to CSN. The amount of loans and deposits and commingling made by

1 Defendants JEFF SMITH, CSN and TWF cannot be ascertained without a full and complete
2 accounting.

3 31. KESTLER has demanded an accounting, but JEFF SMITH, TWF and CSN have
4 failed and refused, and continue to refuse, to provide an appropriate accounting of all loans,
5 commingling and list of donations.

6 32. KESTLER prays that this Court impose a constructive trust on all profits, loans,
7 deposits, donations, and other sums obtained by Defendants JEFF SMITH, CSN and TWF from
8 the wrongful acts alleged herein and require a full and complete accounting of said sums
9 forthwith to KESTLER.

10 **FOURTH CAUSE OF ACTION**

11 (Preliminary and Permanent Injunction)

12 **AGAINST DEFENDANT JEFF SMITH**

13 33. Plaintiff re-alleges Paragraphs 1 through 18 and incorporate them herein by
14 reference.

15 34. Injunctive relief is appropriate and necessary due to the wrongful activities of
16 JEFF SMITH as previously described.

17 35. Plaintiff is entitled to preliminary and permanent injunction ordering Defendant
18 JEFF SMITH and all other appropriate defendants to stop all inappropriate conduct including, but
19 not limited to, commingling of assets, inappropriate loans, misappropriation of donations, and all
20 other acts that require Board of Director approval. Additionally, to the extent a receiver is
21 appointed or a provisional director, Defendant JEFF SMITH ought to be enjoined from
22 interference with the rights and duties of a receiver and/or provisional director and director
23 KESTLER.

24 36. Due to the deadlock of the Board of CSN, KESTLER is without an adequate
25 remedy at law. Thus, such equitable relief including, but not limited to, a temporary and
26 permanent injunction against JEFF SMITH compelling him to cease acting without Board
27 authority and declaring all such actions taken by JEFF SMITH without Board approval to be
28 illegal and without force or effect, is proper.

1 **FIFTH CAUSE OF ACTION**

2 (Appointment of Receiver or Provisional Director)

3 **AGAINST DEFENDANT CSN**

4 37. The allegations contained in Paragraph 1 through 18 above are re-alleged and
5 incorporated herein by this reference.

6 38. The CSN Board of Directors is deadlocked and cannot function as a Board as
7 presently constituted. Since CSN is a religious non-profit corporation with a large satellite
8 network that has a nationwide reach and a mission to provide Christian religious programming,
9 CSN has a duty to the public it serves, and not the parochial and personal interests of JEFF
10 SMITH. The mission and needs of CSN transcend the interests of both JEFF SMITH and
11 KESTLER

12 39. Additionally as alleged above, JEFF SMITH is commingling assets, lending
13 money to himself from corporate assets without Board approval; and, Plaintiff is informed and
14 believes and thereon alleges that deposits of donations that should be going to CSN are being
15 deposited into TWF accounts instead. Unless a receiver is appointed, the Board of Directors will
16 remain deadlocked and the moneys/donations will continue to be diverted and/or commingled.
17 Consequently, the interests of CSN will be impaired and great and irreparable damage, injury and
18 harm will be caused. The injuries include, without limitation, loss of donations, as well as the
19 potential loss of the licenses of CSN.

20 40. Additionally as alleged above, the appointment of a receiver is appropriate to take
21 charge of CSN on the grounds of mismanagement by JEFF SMITH. .

22 41. Plaintiff is without adequate remedy at law.

23 42. Accordingly, Plaintiff seeks the appointment of a receiver to operate CSN in the
24 place of JEFF SMITH and/or KESTLER and to avoid further diversion of its assets and
25 inappropriate conduct by JEFF SMITH. Further, KESTLER requests that the Receiver appoint a
26 new board of directors, comprised of individuals independent of CSN and any entity previously
27 involved in CSN operations subject to the approval by the Court. CSN has significant revenues,
28 and if operated properly, can sustain itself indefinitely and fulfill its mission.

1 43. Alternatively, if this Court deems appropriate, a Provisional Director ought to be
 2 appointed to break the deadlock pursuant to California Corporation Code, section 308. A
 3 Provisional Director is appropriate due to deadlock and because the business of CSN no longer
 4 can be conducted to its advantage; and, the business or property of CSN will be impaired or loss
 5 unless a Provisional Director is appointed.

6
 7 WHEREFORE Plaintiff Michael Kestler prays for judgment as follows:

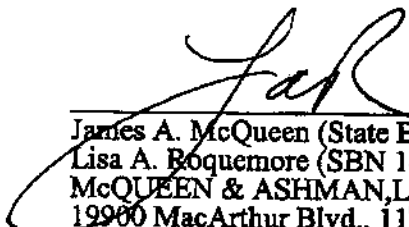
- 8 1) For removal of Defendant JEFF SMITH from the office of Director of the
- 9 corporation;
- 10 2) That Defendant JEFF SMITH be barred from re-election to the office of Director
- 11 permanently or such other period that the Court prescribes;
- 12 3) Damages according to proof;
- 13 4) For an accounting of JEFF SMITH's, CSN's and TWF's affairs, from 1998 to
- 14 current and order any such reimbursement from JEFF SMITH and/or TWF for any
- 15 funds/donations inappropriately received by JEFF SMITH or TWF, and require an
- 16 accounting of the financial activities by CSN, TWF and JEFF SMITH;
- 17 5) For the appointment of a receiver to (a) operate, (b) take over management of
- 18 CSN, (c) take control of the property and assets of CSN, and (d) recommend a new
- 19 board of directors independent of CSN, subject to approval of the Court and the
- 20 individuals and entities previously associated with CSN. Alternatively, to appoint
- 21 a Provisional Director;
- 22 6) Issue a temporary restraining order restraining JEFF SMITH from further actions
- 23 as a director without prior approval of the board;

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- 1 7) For injunctive and equitable relief;
- 2 8) For KESTLER's cost of suit; and
- 3 9) For such other and further relief as this Court deems just and proper.

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5 Dated: February 13, 2006

McQUEEN & ASHMAN LLP

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