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11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF RIVERSIDE**

13
14 FRANCOIS G. CHOQUETTE,
15 Plaintiff,

16 vs.

17 CHURCH OF SCIENTOLOGY
18 INTERNATIONAL, a California corporation;
19 BUILDING MANAGEMENT SERVICES, a
California corporation; DAVID ALAN
20 DUNIGAN, an individual; KENNETH R.
SEYBOLD, an individual; MATTHEW JAMES
21 BUTLER, an individual; SALVATORE MEO, an
individual; and DOES 1 through 20, inclusive,
22 Defendants.
23

CASE NO. RIC 538634

Assigned for All Purposes to the
Honorable Sharon J. Waters

**DEFENDANTS' REPLY TO DONALD
MYERS' OPPOSITION TO MOTION
TO COMPEL DEPOSITION**

Date: 8/20/10

Time: 9:00 a.m.

Dept. 2

24 **I. INTRODUCTION**

25 Mr. Myers' ("Myers") Opposition avoids the central issues in the motion to compel his
26 deposition and dramatically mischaracterizes others. Myers does not dispute that (1) the
27 deposition was properly set, (2) he agreed to appear for deposition, or (3) that he refused to
28 provide deposition testimony. At the same time Myers claims he is not able to attend deposition

1 without a lawyer, Myers offers legal conclusions about what he deems to be relevant and
2 irrelevant in this dispute. The bulk of Myers' argument is that he needs to find a lawyer to
3 represent him at his deposition. However, Defendants have been trying to get Myers to sit for
4 deposition since *February*. Myers has offered no legitimate excuse to prevent him being ordered
5 to attend his deposition.

6 **II. Argument**

7 **A. Items Conceded by Myers.**

8 Before examining the allegations made by Myers, the court may wish to consider the
9 matters that are not in dispute. Myers does not dispute any of the following facts established by
10 the motion:

- 11 • He agrees he has been provided with several pieces of photographic and
12 video evidence;
- 13 • He was served with a valid subpoena;
- 14 • He agreed to attend his deposition on May 28, 2010;
- 15 • He arrived several hours late through no fault of Defendants;
- 16 • He did not engage an attorney to attend the deposition with him; and
- 17 • Prior to the deposition he never refused to attend due to lack of counsel.

18 With the above concessions in mind, we turn to the arguments Myers is making against
19 proceeding with his deposition.

20 **B. Myers' Lack of Legal Counsel Does Not Prevent His Deposition.**

21 Counsel Not Required. There is no provision of law requiring that a deponent to have
22 legal counsel at a deposition (particularly a non-party witness.) Nevertheless, Myers contends he
23 "did not want to answer further questions without the benefit of counsel." (Opposition 13:3-4.)
24 Myers' argument is contradicted by his own e-mail communications in which he never refused to
25 attend the deposition based on a lack of legal counsel. (Cantrell Declaration, Exhibits F and I.) In
26 fact, he agreed he was "willing to stay all day if necessary." (Cantrell Declaration, Exhibit F.)

27 No Notification RE: Counsel Until Day of Deposition. Myers' seems to suggest that he
28 came to Riverside on May 28 for the sole purpose of informing Defendants that he needed to

1 engage counsel. “On May 28, 2010, I spent the morning and early afternoon traveling from the
2 City of Los Angeles to the City of Riverside to attend the deposition...to tell the lawyers...I did
3 not wish to proceed without the assistance of a lawyer.” (Myers Declaration, ¶ 10.) By this time
4 he knew Mr. Moxon was required to travel “65 miles” to attend the deposition. (Myers
5 Declaration, ¶ 8.) Why would any rational person—after not advising of a purported need to
6 postpone the deposition—travel 65 miles for the sole purpose of telling the parties he “did not
7 wish to proceed without the assistance of lawyer”? In fact, Myers agreed to attend, and is using
8 the need for counsel as an excuse to further delay his deposition. The sole person who benefits
9 from this games-playing is Myers’ friend, plaintiff Francois Choquette. The parties prejudiced
10 are the defendants who need his testimony.

11 Myers has had more than 6 months to acquire counsel. Whether or not he does so
12 provides no basis to refuse to attend a deposition, prevent defendants from acquiring important
13 discovery, or imposing upon the defendants the costs and fees of his prior scheduled appearance.

14 **C. Riverside is an Appropriate Location for the Deposition.**

15 The opposition incorrectly asserts the location of the deposition was inappropriate. He is
16 mistaken. A deposition of a non-party “shall be taken at a place that is, at the option of the party
17 giving notice of the deposition, either within 75 miles of the deponent’s residence, or within the
18 county where the action is pending and within 150 miles of the deponent’s residence.” (Cal.
19 Code Civ. Proc. § 2025.250(a).) Myers concedes the deposition was within 65 miles of his home.
20 (Myers Declaration, ¶ 8.) The requirements of the Code were met.

21 Putting aside the requirements of the Code, the practical impact of the deposition location
22 should be considered. Myers never asked to hold the deposition in Los Angeles—nor does he
23 claim to have done so. Moreover, plaintiff lives in Riverside County, he filed this action in
24 Riverside County, and the primary incidents alleged in the complaint happened in Riverside
25 County. Myers can and does come to this jurisdiction when he pleases and as noted above, he
26 has come to Riverside County with and without plaintiff dozens of times for the purpose of
27
28

1 harassing the defendants.¹ Nevertheless, had Myers asked to move the deposition to Los
2 Angeles, defendants would likely have acceded to the request. But doing so would also have
3 incurred the additional expense of lead counsel from Lester & Cantrell, LLP traveling to Los
4 Angeles and therefore creating just as great an expense in the event of the refusal of the witness
5 to testify as has now occurred. Myers' entire argument regarding the location of the deposition is
6 nothing more than a red herring.

7 **D. The Brief Questioning of Myers Was Appropriate.**

8 The few questions asked of Myers before he terminated the deposition by leaving, were
9 appropriate. They mainly concerned his alleged inability to get counsel and what documentary
10 and video evidence he had produced. Contradicting other arguments, Myers' Opposition asserts
11 that he "decided he needed the assistance of a lawyer," because of purported objectionable
12 questions concerning plaintiff's use of medication and plaintiff's carrying of a bicycle to the
13 deposition. (Opposition p. 5) Yet these matters concern important issues regarding plaintiff's
14 alleged damages, because plaintiff alleges he has permanent back, shoulder and arm injuries.
15 The "bicycle" questioning revolved around the fact that when Myers and plaintiff arrived
16 together, plaintiff (allegedly injured back and all) managed to easily lift a bulky bicycle out of
17 the trunk of a taxi—evidencing the lack of an injury.

18 In fact, the deposition was terminated by Myers only after insistent requests from the
19 plaintiff to the witness that he needed to talk to him, (Ex. J, Depo., at 23), at which point Myers
20 said, "Well, we're going to wrap this up soon."(Id.) The areas of questioning to which Myers
21 objects are central to issues in this case, they are not private.

22 Moreover, the several minutes of questioning were hardly exhaustive as Myers
23 ridiculously claims. The deposition had barely started when he left.

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27 ¹ Myers admits in paragraph 4 of his declaration that "from personal experience and observation" he is
28 familiar with the layout of Defendants' facility on Highway 79 in Gillman Hot Springs. Indeed, he has
been there numerous times and was criminally convicted for vandalizing property at this location.

1 **E. Myers' Mudslinging is Incorrect.**

2 Myers spends most of his brief explaining what he contends is wrongful conduct on the
3 part of the Defendants and seeking to justify his acts by claiming he and plaintiff are merely
4 "protestors." This is not accurate. Myers has been harassing the Church of Scientology and its
5 parishioners for years. Calling their activities "protest" or "demonstration" does not legitimize
6 nor justify the trespassing by the plaintiff in this case, in which he baited security guards to arrest
7 him on church property, only to file the instant frivolous lawsuit.

8 Myers made the same "protestor" justifications in an unsuccessful defense of his
9 prosecution for malicious property damage at church facilities in Riverside county. Myers also
10 attempted the same justification in his defense for the masked stalking of a young woman who
11 works for the defendant Church of Scientology International in Los Angeles. Myers' own video
12 of incident, posted by him on Youtube.com as a taunt against the woman he stalked and
13 harassed, demonstrates the disingenuous nature of his assertions. (Ex. B, Pedersen Declaration.
14 As demonstrated in the attached DVD Myers' harassment includes acts of entering Scientology
15 churches and screaming at members therein. (Pedersen Declaration, Exhibit B.) This is not
16 legitimate or lawful "protest," but even if it was, his purported feelings toward Defendants do not
17 make his deposition any less relevant to the case.

18 **F. Myers Refusal to Meet and Confer Necessitated This Motion.**

19 This motion likely could have been avoided with a reasonable informal resolution of the
20 dispute. But the witness blew off all attempts to meet and confer after the deposition,
21 necessitating the motion to compel. Indeed, even though he left the deposition purportedly to
22 seek counsel, he does not currently represent that he will appear after he finds a lawyer.
23 Defendants were left with no choice but to bring this motion because there is no indication
24 Myers was going to attend deposition without being ordered to do so. Thus, in addition to paying
25 the fees and costs associated with the truncated deposition, Myers should also be required to pay
26 reasonable attorneys fees incurred by defendants in bringing this motion. Myers' claim that he is
27 not in a condition to pay is not a valid excuse for his actions; indeed, he accepts donations
28 through his website to help him in the legal claims he brings against Defendants.

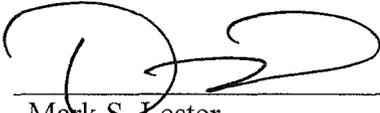
1 **III. CONCLUSION**

2 As addressed in defendants' motion to compel, Myers is an important witness in this
3 case. He received some evidence and evidently altered it to seek to protect the plaintiff from
4 prosecution. He received original evidence from other known eye-witnesses in coordination
5 with the plaintiff and plaintiff's counsel (who was also Myer's counsel in his criminal case and
6 civil stalking case). He has personal knowledge of many facts going to the elements of the case,
7 defenses and damages.

8 Donald Myers should be ordered to appear for deposition in the next week and to pay to
9 defendants the amount of \$7,230.91 as the reasonable fees and expenses incurred in the
10 deposition and in bringing the motion to compel.

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14 Dated: August 13, 2010

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