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Scientology International, Inc.; Building
Management Services, Inc.; Daniel Alan
Dunigan (erroneously sued and served as
David Alan Dunigan); Kenneth R. Seybold;
Matthew James Butler and Salvatore Meo

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

FRANCOIS CHOQUETTE,

Plaintiff,

vs.

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California corporation;
BUILDING MANAGEMENT SERVICES, a
California corporation; DAVID ALAN
DUNIGAN, an individual; MATTHEW JAMES
BUTLER, an individual; SALVATORE MEO, an
individual; and DOES 1 through 20, inclusive,

Defendants.

) Case No. RIC 538634
)
) Assigned for All Purposes to the
) Honorable Sharon J. Waters
)
) **DEFENDANTS' MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT OF MOTION TO STRIKE**
) **PORTIONS OF PLAINTIFF'S FIRST**
) **AMENDED COMPLAINT**
)
) (Served concurrently with Demurrer and
) Request for Judicial Notice)
)
) DATE:
) TIME: 8:30 a.m.
) DEPT.: 10

I. Introduction

Plaintiff Francois Choquette's action is predicated upon an incident in which he was
subject to a citizen's arrest by security guards at the premises of Golden Era Productions – a
division of the Church of Scientology International, which makes religious films and reproduces

1 religious audio lectures from the religion’s Founder and performs other management functions
2 from the Riverside County location. Mr. Choquette was subsequently prosecuted by the
3 Riverside County District Attorney’s Office for criminal trespass and battery for biting a security
4 guard who arrested him. The misdemeanor charges were voluntarily dismissed nearly a year
5 later without reference to guilt or innocence. Yet it would be difficult to adduce the simplicity of
6 these facts based upon a reading of the lengthy First Amended Complaint (“FAC”), which is
7 composed of hundreds of alleged incidents and assertions which bear no relation to this simple
8 tort case. Rather, the FAC veers off into irrelevant and bizarre tangents, commentary and
9 inflammatory allegations.

10 Plaintiff’s counsel Graham Berry has a long history of this sort of pleading and practice
11 of filing frivolous, over-the-top pleadings against one or more Churches of Scientology, its
12 members and staff. The most similar of such complaints was characterized by a Los Angeles
13 federal judge as a “rambling tale of irrelevancy,” before Mr. Berry was sanctioned pursuant to
14 Rule 11, Fed.R.Civ.P., and 28 U.S.C. §1927 and the case dismissed. And, after several other
15 frivolous, improper actions against Churches of Scientology were dismissed, with Mr. Berry
16 sanctioned in each action, he was officially denominated to be a “vexatious litigant” by the Los
17 Angeles County Superior Court for his litigation misconduct. Today, he is almost exclusively
18 representing members of the group “Anonymous,” which is a violent group aimed at destroying
19 the Church of Scientology.

20 While there are large portions of the complaint which defendants request be stricken by
21 the instant motion, all are irrelevant to any element of the causes of action. Thus, granting the
22 motion will significantly streamline the case. Plaintiff—who admits to publishing videos and
23 other material on the internet to cast the Church in a negative light—appears poised to use this
24 case as a springboard to gain discovery into areas that are not relevant to this case. If the court
25 does not deal with this issue at the outset of the case, it is likely the parties will be left with a
26 potentially never ending discovery dispute on their hands. This can be avoided at this point by
27 removing the irrelevant and improper allegations from the complaint.

1 **II. Background and Parties**

2 **A. Defendants**

3 Defendant Church of Scientology International (“CSI”) is the Mother Church of the
4 Scientology religion, and is dedicated to the advancement and dissemination of the religion.
5 CSI’s ecclesiastical authority extends to overseeing the administration of all Scientology
6 churches and missions worldwide, disseminating the beliefs and practices of Scientology and
7 providing religious services and training to its own staff members. As noted by the plaintiff, the
8 IRS recognizes CSI as a tax-exempt religious organization under 26 U.S.C. §501(c) (3).

9 The location most at issue in the FAC is Golden Era Productions (“Golden Era”), a
10 division of CSI. The individual defendants are staff of CSI, and members of the Church’s
11 religious order.

12 **B. Plaintiff Francois Choquette**

13 As noted in the First Amended Complaint, Mr. Choquette is affiliated with a group called
14 “Anonymous.” (FAC par. 21.) Starting in March of 2008, Mr. Choquette began performing what
15 he calls “demonstrations” at Churches of Scientology wearing chilling “vendetta” masks. (Id.)
16 While C.C.P. §437’s proscription on evidence other than that for which judicial notice may be
17 taken and limitation to the face of the complaint constrains elaboration on the activities of Mr.
18 Choquette and the hate group, Anonymous, suffice to say that he has made virulent and profane
19 attacks on Scientology churches and members since that time, in conjunction with Anonymous,
20 and has made many postings on the Internet under his pseudonym “Anonorange,” exhorting
21 others to harass the religion.

22 **C. Plaintiff’s Counsel, Graham Berry**

23 Attorney Graham Berry has been involved in considerable litigation against the Churches
24 of Scientology for over a decade and displays in each case, his own personal hatred of both
25 Scientology and its attorneys. Mr. Berry has filed many lawsuits against Scientologists and their
26 counsel and in each makes the same sort of outlandish allegations that appear herein. In each,
27 Mr. Berry was eventually admonished and sanctioned.

28

1 In 1998, Mr. Berry sued several Churches of Scientology, Defendant's counsel herein,
2 Kendrick Moxon, as well as President Clinton, Madeleine Albright, John Travolta and others, in
3 a 312 page complaint alleging a vast international conspiracy. (RJN Exhibit B (*Pattinson v.*
4 *Church of Scientology International*)). In *Pattinson*, U.S. District Judge Christina Snyder,
5 C.D.Cal., referred to the complaint as “a rambling tale of irrelevancy.” (RJN Exhibit H.) Mr.
6 Berry persisted with allegations similar to those asserted herein and was sanctioned pursuant to
7 Rule 11, F.R.C.P., and 28 U.S.C. §1927 for “unreasonably and vexatiously” multiplying the
8 proceedings. (RJN Exhibit C.) For this conduct, the Court issued sanctions against Mr. Berry in
9 the amount of \$28,484.72. (RJN Exhibit B.)

10 Mr. Berry later brought an action against several members of the Church of Scientology
11 in a case called *Pattinson v. Miscavige*. (RJN Exhibit D.) This matter was also quickly
12 dismissed and Mr. Berry was personally sanctioned for his conduct. (*Id.*)

13 Mr. Berry was also sanctioned by L.A.S.C. Judge David Doi in *Jeavons v. Church of*
14 *Scientology International*, also for the filing of a frivolous action. (RJN Exhibit E.)

15 Around the same time, Mr. Berry brought a case against the Church of Scientology styled
16 *Berry v. Cipriano, et al.* Los Angeles Judge Alexander Williams dismissed the action and found
17 Mr. Berry to be a vexatious litigant pursuant to C.C.P. §391, stating, “With all the due respect,
18 Sir, I have to sadly state that if there is such a thing on God’s green earth as a vexatious litigant
19 you, Sir, sadly, are it.” (RJN Exhibits F-G.)

20 Mr. Berry was subsequently suspended from the practice of law for this and other
21 conduct. (RJN Exhibit I.)

22 **III. Legal Standard**

23 In accordance with California Code of Civil Procedure § 436, the court may, upon a
24 motion made pursuant to Code of Civil Procedure section 435, “strike out any irrelevant, false, or
25 improper matter inserted in a pleading.” Motions to strike pursuant to C.C.P. §436 are properly
26 utilized not to strike entire claims, but rather, to “strike portions of a complaint that are
27 irrelevant, improper, or not drawn in conformity with the law.” (*Quiroz v. Seventh Avenue*
28

1 *Center* (2006) 140 Cal.App.4th 1256, 1281 *Continental Building & Loan Ass'n v. Boggess*
2 (1904) 145 Cal. 30, (“The object of such a motion is to rid the pleading of its objectionable
3 averments.”).)

4 As set forth below, numerous irrelevant, gratuitous and distasteful allegations appear
5 throughout the first amended complaint, which have no bearing on the issues of this case and are
6 inserted for improper purposes of public consumption, to expand discovery beyond the
7 legitimate issues of the case for the use of plaintiff and/or his counsel, or simply to pursue some
8 other agenda irrelevant to the issues of this case. This improper use of the pleading procedure is
9 highlighted by the unfortunate history of the plaintiff’s goals of harassment and the history of his
10 chosen counsel.

11 **IV. Argument**

12 Mr. Berry’s conduct against the Church has now been expanded from Los Angeles to
13 Riverside County. Much like the 312 page *Pattinson* complaint, the first amended complaint in
14 this case is framed in a fashion making it nearly impossible to respond to what may be non-
15 frivolous allegations buried therein.¹ It is nearly impossible to formulate a response to the
16 complaint given the fact that Plaintiff does not allege what facts caused harm to *him*, as opposed
17 to allegations concerning other persons or events. The bulk of the FAC also expounds at length
18 over plaintiff’s objections to the County Supervisors and their consideration and passage of an
19 ordinance relating to picketing – none of which is relevant or appropriate for inclusion in the
20 complaint. All such matters are irrelevant should be accordingly be stricken as “irrelevant, false
21 or improper matter inserted in any pleading.” Defendants have categorized, to the extent
22 possible, sections of offensive pleading subject to the instant motion to strike:

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27 ¹ The outrageous allegations are also utterly false, a matter which beyond the scope of the instant motion, and
28 being irrelevant, should not have to be addressed whatsoever in this action.

1 **A. The FAC Contains Many Attacks on the Church, Which are Irrelevant to the**
2 **Case.**

3 Paragraphs 5, 6, 20, 23, 32, 34, 35 and 36 of the First Amended Complaint are intended
4 merely to denigrate the religion and its leaders. Although this case primarily concerns Plaintiff's
5 unverified allegation that he was assaulted, the above-referenced paragraphs all deal with
6 irrelevant issues concerning Plaintiff's skewed views regarding the Church. By way of example,
7 in paragraph 6, Plaintiff claims: "Although [the Church]...widely claim[s] to have a global
8 membership exceeding ten million people that is a falsified figure involving creative and
9 misleading statistics. Upon information and belief, there are only 30-50,000 currently active
10 [Church] staff members and public members world wide." (FAC, ¶6.) This and many similar
11 allegation are simply irrelevant to determining whether or not Plaintiff was subjected to a
12 battery on October 26, 2008. The remaining paragraphs referenced are similar in that they do not
13 allege any facts having to do with the incident that occurred at the Church property on October
14 26, 2008. Presumably, Plaintiff and Mr. Berry have included these irrelevant claims to attempt to
15 seek discovery on matters that are unrelated to this case. For instance, they appear poised to seek
16 the identity of the members of the Church based on the cited material above. The court should
17 put a stop to what is certain to be a discovery battle over irrelevant matters, and to narrow the
18 focus of the pleading to the actual issues of the case by striking this irrelevant material.

19 **B. Other Portions of the FAC Appear Solely Intended to Entice Media**
20 **Coverage—But Contain No Relevant Material.**

21 Paragraphs 10, 19, 49 of the FAC are apparently intended for media consumption, but
22 serve no purpose relevant to this lawsuit. For instance, in paragraph 19 of the FAC Plaintiff
23 refers to a biography written regarding Tom Cruise. Whether a biography was written and the
24 claims in the biography have literally no connection to this lawsuit. As has been Mr. Berry's
25 modus operandi in the cases described above, it appears through liberal pleading standards the
26 Plaintiff is trying to create a pleading that he can later "pitch" to media outlets in search of
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1 media coverage for what otherwise is fairly non-complex alleged tort case. These provisions,
2 therefore, should be stricken.

3 C. **Portions of the FAC Make Irrelevant References to Disputes with Former**
4 **Scientologists.**

5 Paragraphs 11 and 59 of the FAC are wholly irrelevant. These paragraphs assert that the
6 Church’s alleged agent David Miscavige has “punished” a list of individuals (¶11) and that the
7 Church has confined a list of individuals (¶59). These allegations appear designed to draw
8 attention to this case from other “Anonymous” group members to generate interest in the action
9 by them. No relevance to the claims is manifested and none exists

10 D. **The Church’s Alleged Policies Are Not Relevant to this Lawsuit.**

11 Paragraphs 24, 25, 26, 27 and 73 of the FAC, while obtuse, apparently assert that there
12 is some religious policy or practice of the religion which triggered the arrest of Mr. Choquette
13 when he trespassed on Church property adjacent to the Church’s religious film studio. While
14 the assertions are largely non-sequitur, they are also clearly irrelevant to any of the claims, are
15 offered to generally denigrate the defendants, and to expand discovery beyond the bounds of
16 the simplicity of the only *actual* claim at issue regarding the citizen’s arrest of Mr. Choquette.
17 In doing so, Plaintiff cites a number of lawsuits (none of which are from facts arising in the last
18 20 years) which he contends establish some wrongful practice. Surely Plaintiff does not
19 contend that because the Church has been involved in litigation (20 years ago), that these cases
20 are somehow relevant to his trespass and alleged battery. This material is simply not relevant to
21 Plaintiff’s current claims.

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E. Portions of the Complaint Regarding Plaintiff's Picketing Are Not Relevant.

Paragraphs 37, 40, 41 and 58 of the First Amended Complaint are irrelevant paragraphs and are apparently inserted to justify the plaintiff's "picketing" activities. For instance, in paragraph 37 Plaintiff claims that "when there is picketing...all but a few security guards are ordered indoors and behind shutters..." Although pleading constraints prevent dealing with the truth of such allegations, the allegations have literally nothing to do with whether or not Plaintiff can prove his tort claim. Again, these allegations appear aimed at allowing Plaintiff to conduct discovery into matters not related to this case, to further his (and his counsel's) interests in pursuing the Church. These allegations have no relevance to whether Plaintiff was trespassing and whether the persons who arrested him were justified in doing so. As the improper allegations have no relevance to any cause of action, they should be stricken.

F. Allegations Regarding the County Board of Supervisors or Sheriff's Department Are Irrelevant.

In paragraphs 48, 66, 67, 69, 70, 71, 72, 73, 78 and 79, Plaintiff also makes substantial irrelevant attacks on Riverside County Supervisor Jeff Stone, San Jacinto County Supervisors, the Riverside County Sheriff's Department and County legislation relating to demonstrations. Mr. Choquette, has appeared dozens of times at Riverside County Supervisor's meetings to complain about Scientology, to object to picketing ordinances, and to express his "opinion" regarding Supervisor Stone and his assertions of favoritism or "corruption" of county officials and the like. But this is not the place to pursue an irrelevant vendetta. Plaintiff's allegations concerning the Sheriff's refusal to entertain his complaints is equally irrelevant. None of these passages concern any element of any of the causes of action herein and each of them should be stricken.

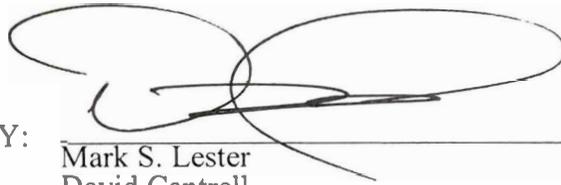
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1 **V. CONCLUSION**

2 Each of the passages address above are irrelevant to any of the causes of action, and are
3 inserted for improper purposes of (1) media consumption, (2) denigration of the defendants while
4 enjoying the pleading privilege from defamation, (3) pursuit of other alleged official affronts
5 against plaintiff and his associates by the County, and/or (4) to improperly expand discovery in
6 this case to irrelevant matters. As with the prior ruling in which Mr. Berry was sanctioned court
7 for vexatiously multiplying the proceedings through a prior "rambling tale of irrelevancy," the
8 identified portions of the FAC here should be stricken, so that the Court and the parties can deal
9 with allegations that make sense, and which have some alleged relevance to claims at hand.

10 Dated: January 14, 2010

LOBB CLIFF & LESTER, LLP



11
12
13 BY:

Mark S. Lester
David Cantrell

&

MOXON & KOBRIN
Kendrick L. Moxon

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16 Attorneys for Defendants, CHURCH OF
17 SCIENTOLOGY INTERNATIONAL, INC.;
18 BUILDING MANAGEMENT SERVICES,
19 INC.; DANIEL ALAN DUNIGAN
20 (ERRONEOUSLY SUED AND SERVED AS
21 DAVID ALAN DUNIGAN); KENNETH R.
22 SEYBOLD; MATTHEW JAMES BUTLER
23 AND SALVATORE MEO
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 1325 Spruce Street, Suite 300, Riverside, California 92507.

On January 14, 2010, I served the foregoing documents by placing a true copy thereof enclosed in a sealed envelope and addressed as stated below:

DOCUMENTS SERVED: DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT

SERVED UPON:	Law Offices of Graham E. Berry Graham E. Berry 3384 McLaughlin Avenue Los Angeles, CA 90066 Tel: (310) 745-3771 Fax: (310) 745-3771 Attorney for Plaintiff	MOXON & KOBRIN Kendrick L. Moxon 3055 Wilshire Blvd., Suite 900 Los Angeles, CA 90010 Telephone: (213) 487-4468 Facsimile: (213) 487-5385 Co-Counsel for Defendants
---------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

X **(By Mail)** I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Riverside, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(By Facsimile) I served the above-described document on the interested parties in this action by sending a true copy thereof by facsimile transmission pursuant to *California Rules of Court*, Rule 2008, from facsimile machine number (909) 788-0766. The facsimile machine I used complied with *California Rules of Court*, Rule 2008, and no error was reported by the machine. Pursuant to Rule 2008(e)(3), I caused the machine to print a transmission record of the transmission.

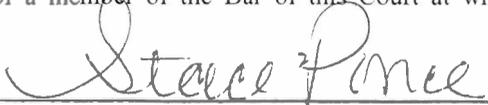
(By E-mail or Electronic Transmission) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(By Overnight Mail) I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery of documents. Under that practice it would be delivered to an authorized agent or driver of Federal Express with the fees paid or provided for on the date of service and delivered the next day.

(By Personal Service) I caused such envelope to be hand delivered to the offices(s) of the addressee(s).

X **(State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.


STACI PONCE

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13 Scientology International, Inc.; Building
14 Management Services, Inc.; Daniel Alan
15 Dunigan (erroneously sued and served as
16 David Alan Dunigan); Kenneth R. Seybold;
17 Matthew James Butler and Salvatore Meo

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE**

18 FRANCOIS G. CHOQUETTE,)

19 Plaintiff,)

20 vs.)

21 CHURCH OF SCIENTOLOGY)
22 INTERNATIONAL, a California corporation;)
23 BUILDING MANAGEMENT SERVICES, a)
24 California corporation; DAVID ALAN)
25 DUNIGAN, an individual; KENNETH R.)
26 SEYBOLD, an individual; MATTHEW JAMES)
27 BUTLER, an individual; SALVATORE MEO, an)
28 individual; and DOES 1 through 20, inclusive,)

Defendants.)

CASE NO. RIC 538634

Assigned for All Purposes to the
Honorable Sharon J. Waters

**NOTICE OF DEMURRER AND
DEMURRER TO FIRST AMENDED
COMPLAINT**

(Served concurrently with Motion to Strike
and Request for Judicial Notice)

Date:
Time: 8:30 a.m.
Dept: 10

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on _____, 20__, at _____, or as
soon thereafter as the matter may be heard in Department _____, Defendants Church of
Scientology International, Inc.; Building Management Services, Inc.; Daniel Alan Dunigan

1 (erroneously sued and served as David Alan Dunigan); Kenneth R. Seybold; Matthew James
2 Butler and Salvatore Meo will and hereby do demurrer to the second (assault and battery,
3 excessive force), fifth (“negligence, nuisance and occupier’s liability”), eighth (Civil Code
4 §51.2), and ninth (Constitutional violations) causes of action in the First Amended Complaint of
5 Plaintiff Francois G. Choquette.

6 The demurrer is brought on the grounds that the second, fifth, eighth and ninth causes of
7 action violate Code of Civil Procedure § 430.10(e) and (f).

8 Defendants also generally demur to the entirety of the First Amended Complaint, which,
9 because four causes of action have been voluntarily dismissed and plaintiff fails to assert what
10 allegations support the specific remaining causes of action, the entirety of the First Amended
11 Complaint should be dismissed. The demurrer will be based on this notice of demurrer and
12 demurrer, Defendants’ Request for Judicial Notice, and all papers before the court at the time set
13 for argument.

14
15
16 Dated: January 14, 2010

LOBB CLIFF & LESTER, LLP

17 BY: 

18 Mark S. Lester
19 David Cantrell

&

MOXON & KOBRIN

Kendrick L. Moxon

20
21 Attorneys for Defendants, CHURCH OF
22 SCIENTOLOGY INTERNATIONAL,
23 INC.; BUILDING MANAGEMENT
24 SERVICES, INC.; DANIEL ALAN
25 DUNIGAN (ERRONEOUSLY SUED
26 AND SERVED AS DAVID ALAN
27 DUNIGAN); KENNETH R. SEYBOLD;
28 MATTHEW JAMES BUTLER AND
SALVATORE MEO

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DEMURRER

Defendants Church of Scientology International, Inc.; Building Management Services, Inc.; Daniel Alan Dunigan (erroneously sued and served as David Alan Dunigan); Kenneth R. Seybold; Matthew James Butler and Salvatore Meo hereby demur to the second, fifth, eighth and ninth causes of action contained in Plaintiff’s First Amended Complaint. The grounds for the demurrer are as follows:

As to the Second Cause of Action

The second cause of action for assault, battery and excessive force does not state facts sufficient to constitute a cause of action (Code of Civil Procedure § 430.10(e).) This cause of action can only be maintained against a peace officer, and the complaint admits that Defendants are not peace officers.

As to the Fifth Cause of Action

The Fifth cause of action for “negligence, nuisance and occupier’s liability” does not state facts sufficient to constitute a cause of action (Code of Civil Procedure § 430.10(e).)

As to the Eighth Cause of Action

The eighth cause of action for violations of the California Civil Code §51.2 fails to state facts sufficient to constitute a cause of action and is vague and uncertain as it fails to provide any factual support for conclusory allegations of purported violations of Plaintiff’s civil rights. (Code of Civil Procedure § 430.10(e) and(f).)

As to the Ninth Cause of Action

The ninth cause of action for violations of the California Constitution fails to state facts sufficient to constitute a cause of action. (Cal. Code Civ. Proc. § 430.10(e).) Most of the claimed violations of the Constitution require “state action” and the complaint admits that Defendants are not “state actors.” Additionally, this action is uncertain, ambiguous and unintelligible. (Cal. Code Civ. Proc. § 430.10(f).) Many of the claims in Plaintiff’s claim do not provide any factual basis, making them uncertain and ambiguous.

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1 **As to the Entire First Amended Complaint**

2 Defendants also generally demur to the entirety of the First Amended Complaint, which,
3 because four causes of action have been voluntarily dismissed and plaintiff fails to assert what
4 allegations support the specific remaining causes of action, the entirety of the First Amended
5 Complaint should be dismissed.

6 WHEREFORE, Defendants pray as follows:

- 7 1. That Plaintiff take nothing by way of the second, fifth, eighth and ninth causes of
8 action specifically, or by way of the entirety of the First Amended Complaint;
9 2. For other relief as the court deems just and proper.

10
11 **LOBB CLIFF & LESTER, LLP**

12 

13 Dated: January 14, 2010

14 BY:

15 Mark S. Lester
16 David Cantrell

17 &

18 **MOXON & KOBRIN**
19 Kendrick L. Moxon

20 Attorneys for Defendants,
21 CHURCH OF SCIENTOLOGY
22 INTERNATIONAL, INC.; BUILDING
23 MANAGEMENT SERVICES, INC.;
24 DANIEL ALAN DUNIGAN
25 (ERRONEOUSLY SUED AND SERVED
26 AS DAVID ALAN DUNIGAN);
27 KENNETH R. SEYBOLD; MATTHEW
28 JAMES BUTLER AND SALVATORE
MEO

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This lawsuit concerns the efforts of a professional “protestor” to find *some* causes of
4 action to benefit from his arrest, after he knowingly and willfully trespassed upon property
5 housing the Church of Scientology International (the “Church”) and injured a security guard in
6 the process. Plaintiff Francois Choquette has made a lifestyle out of harassing the Church and its
7 members and staff. His attorney has similarly made such acts of harassment his life’s work, and
8 has been repeatedly sanctioned and even suspended from the practice of law for the filing of
9 frivolous claims against the Church. Plaintiff and his counsel seek now to expand the causes of
10 action of what should be a simple case, to several claims which are completely unsupported by
11 allegations of the First Amended Complaint (“FAC”). While plaintiff has dismissed two of the
12 causes of action from his FAC, at least four of Plaintiff’s remaining causes of action are—on
13 their face—not actionable¹.

14 First, Plaintiff brought a claim for excessive force in the Second Cause of Action. This
15 cause of action is largely duplicative of Plaintiff’s First Cause of Action for assault and battery.
16 Nevertheless, the excessive force claim is not actionable because such a claim requires the
17 defendant to be a peace officer. The complaint does not allege—nor can it—that the defendant
18 Church or its religious staff, are peace officers. Such claims cannot be cured by amendment and
19 should be dismissed.

20 Second, Plaintiff’s Fifth Cause of Action alleges that the two corporate Defendants were
21 negligent with respect to the property itself, and thereby incurred operator’s liability by failing to
22 maintain the property in safe fashion. These allegations are non sequitur, having no possible
23 bearing upon the facts alleged in the complaint, cannot be cured by amendment and should be
24 dismissed.

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27 ¹ Plaintiff’s initial complaint asserted eleven causes of action. The first amended complaint narrowed this to nine
28 causes –and two of these have now been dismissed – the 6th Cause of Action alleging abuse of process and the 7th
cause of action alleging malicious prosecution. The instant demurrer seeks dismissal of four further causes of action
specially, and the entire complaint generally.

1 Third, Plaintiff’s Eighth Cause of Action alleges that defendants violated Civil Code
2 §51.2 by infringing upon plaintiff’s civil rights. However, the FAC is not specific as to what
3 purported right of plaintiff the Defendants are alleged to have violated, how that right was
4 allegedly violated, or specifically who violated that right.

5 Fourth, Plaintiff’s Ninth Cause of Action violated several different provisions of the
6 California Constitution. Most of the constitutional claims asserted require “state action.” Yet,
7 none of the defendants are alleged to be state actors—and the face of the complaint admits they
8 are all private entities and individuals. The remaining constitutional claims are unsupported by
9 any factual allegations whatsoever, cannot be cured by amendment, and should be dismissed.

10 Fifth, Plaintiff has voluntarily dismissed four causes of action from the original
11 Complaint, yet has made few amendments to the general allegations of fact, which bear no
12 relation to the remaining causes of action. And, as set forth in the accompanying Motion to
13 Strike, the factual averments are largely irrelevant and improper. Because the specific factual
14 allegations are not referenced to any particular cause of action, it is impossible for defendants to
15 know what allegations relate to which claim. Thus, the demurrer should also be sustained
16 generally as to entirety of the First Amended Complaint.

17 **II. THE PARTIES**

18 While this appears to be the first lawsuit Plaintiff has filed against the Church, it needs to
19 be noted at the outset that Plaintiff was not innocent party passing by the Property. According to
20 the complaint, Plaintiff is a member of a group called Anonymous which has been harassing,
21 threatening violence upon the Church and its members. Plaintiff actively organizes “pickets” of
22 fellow Anonymous members to harass the Church and interfere with its member’s religious
23 exercise. (FAC, ¶21-22, 39.)

24 Defendant Church of Scientology International (“CSI” or “Church”) is the Mother
25 Church of the Scientology religion, and is dedicated to the advancement and dissemination of the
26 religion. CSI’s ecclesiastical authority extends to overseeing the administration of all
27 Scientology churches and missions worldwide, and disseminating the beliefs and practices of
28 Scientology throughout the world. Golden Era Productions, a division of defendant CSI, is

1 located at 19625 Highway 79, Gilman Hot Springs, CA (the “Property”), which is owned by
2 defendant Building Management Services. Defendants Danny Dunigan, Kenneth Seybold,
3 Matthew Butler and Salvatore Meo are staff of the Church at that location of the arrest at issue in
4 this case.

5 **III. STATEMENT OF FACTS**

6 After becoming a member of a protest group called “Anonymous,” in October 2008,
7 Plaintiff used the internet to organize what he calls a “picket” to occur at the Property. (FAC ¶
8 21-22, 39.) The picket was scheduled to occur on October 26, 2008. (FAC, ¶ 39.) While chasing
9 after and harassing Church security staff and baiting the religious workers at the property,
10 Plaintiff elected to travel across what he terms “a small dirt road path” to take a “short cut”
11 through the Property (FAC, ¶ 52.) Although Plaintiff claims he had “no intention to trespass,” his
12 complaint does not unequivocally deny that he was actually trespassing on the Church’s property
13 when taking this “short cut.” (FAC, ¶53.) Indeed, it appears he sought to be arrested, having
14 walked past clear “no trespassing” signs.

15 After Plaintiff trespassed on the Church’s Property, several of the individual Defendants
16 made a citizen’s arrest of Plaintiff. (FAC, ¶56.) During the arrest, Plaintiff intentionally bit one
17 of the security guards, requiring the security guard to seek medical treatment. Subsequently, a
18 Deputy Sheriff arrived. (FAC, ¶60.) Defendants turned Plaintiff over to the Sheriff’s Deputy,
19 who transported Plaintiff to the jail. (FAC, ¶62.) The Sheriff’s Department turned the matter over
20 to the District Attorney’s office, which, after reviewing the evidence, commenced a prosecution
21 of Plaintiff for trespass and for biting the security guard. (FAC, ¶194.) On October 19, 2009, the
22 District Attorney’s office elected to dismiss the criminal misdemeanor charges against Plaintiff
23 without reference to his guilt or innocence. (FAC, ¶98.)

24 The Complaint initially had eleven causes of action. Plaintiff voluntarily amended,
25 withdrawing two causes of action and thereafter, filed a notice dismissing his causes of action for
26 abuse of process and malicious prosecution. However, little change was made to lengthy factual
27 allegations to specifically identify which allegations support the remaining particular causes of
28 action.

1 **IV. PLAINTIFF'S COUNSEL'S HISTORY SUING THE CHURCH**

2 Plaintiff's lawyer, Graham Berry, is also a member of Anonymous. Mr. Berry has also
3 made harassment against the Church his life's work. As is set forth in more detail in defendants'
4 motion to strike, Mr. Berry has brought several complaints against the Church, and its counsel,
5 all of which have been dismissed, resulting in significant sanctions against Mr. Berry. (See
6 Defendants' Request for Judicial Notice, Exhibits B through H.)

7 Mr. Berry has been formally determined to be a "vexatious litigant" by courts of this
8 state, arising out of the filing of unmeritorious actions against churches of Scientology and their
9 counsel, (Request for Judicial Notice, Exhibits I) and was suspended from the practice of law for
10 his misconduct in filing harassing litigation against the Churches of Scientology and their
11 counsel. (See Request for Judicial Notice, Exhibits J.) It is against this backdrop that we analyze
12 why this complaint cannot pass the initial pleading stage.

13 **V. ARGUMENT**

14 **A. Standard on Demurrer.**

15 Defendants rely on two subdivisions of the demurrer statute as the basis for this
16 demurrer. The second and ninth causes of action each fail to state facts sufficient to support a
17 cause of action. (Cal. Code Civ. Proc. § 430.10(e).) At the same time, the eighth cause of action
18 in many respects is vague and uncertain as it fails to provide any factual support for conclusory
19 allegations of purported violations of the California Constitution. (Cal. Code Civ. Proc. §
20 430.10(f).)

21 **B. The Second Cause of Action for Excessive Force is Insufficient Because**
22 **Defendants are Not Public Entities.**

23 The first cause of action is for assault and battery, and claims Defendants used excessive
24 force against Plaintiff in making a citizens' arrest in order to remove Plaintiff from their
25 Property. The second cause of action also seeks the same claim for assault and battery—but
26 makes the additional allegation that defendants' used "excessive force."

27 However, "excessive force" is only an element when the defendant is a state actor. The
28 model California Civil Jury Instruction for assault and battery indicates the elements for a battery

1 are (1) that defendant touched the plaintiff; (2) plaintiff did not consent to the touching; (3)
2 plaintiff was harmed or offended by defendant’s conduct; and (4) a reasonable person in
3 plaintiff’s position would have been offended by the touching. (CACI 1300.) There is no element
4 of “excessive force”—any touching that meets these elements can arguably amount to a battery.

5 If a battery is being alleged against a peace officer, however, there is an added element of
6 reasonableness at issue. The jury instruction dealing with *peace officers* requires the plaintiff to
7 prove the peace officer used “unreasonable force.” (CACI 1305.) The case law indicates that in a
8 case against a peace officer, the plaintiff must prove unreasonable force. (*Edson v. City of*
9 *Anaheim* (1998) 63 Cal.App.4th 1269, 1272.) Thus, to have a cause of action for “excessive
10 force” arising out of an arrest, the defendant to the claim must be a peace officer. The element of
11 excessive force is merely a limitation on actions against peace officers. There is no law which
12 creates a tort or crime for excessive force in addition to a claim for battery.

13 The allegations of the complaint fail to allege any defendant is a peace officer or
14 otherwise a state agent – and of course, they are not. With respect to every individual defendant,
15 the complaint alleges they were “a security guard” and they were “acting within the course and
16 scope of [their] employment and agency with” the Church. (FAC, ¶¶12-15.) The FAC repeatedly
17 alleges the individual defendants were “Scientology security guards” and never once provides a
18 direct allegation that the “security guards” were somehow peace officers, nor that they were
19 employed in any official capacity by a government agency. (FAC, ¶¶ 42, 43, 46.) Indeed, the
20 California Supreme Court has held that private security guards *do not* constitute state officials or
21 peace officers. (*Jones v. Kmart Corp.* (1998) 17 Cal.4th 329, 333.)

22 Based on the admissions in the complaint that the individual defendants are not state
23 actors, coupled with the fact that the law does not impose liability on private citizens for
24 “excessive force,” plaintiff has failed to state a cause of action for “assault & battery, excessive
25 force.” The court should sustain the demurrer to this cause of action without leave to amend as
26 there is no legitimate basis for an amendment.

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1 C. **Plaintiff Has Failed To State a Cause Of Action For “Negligence, Nuisance &**
2 **Occupier/Premises Liability.**

3 The gist of plaintiff’s vague Fifth Cause of Action, predicated initially upon Civil Code §
4 1714, as stated in FAC ¶168, is that “CSI and/or BMS owed a legal duty to the Plaintiff to
5 exercise ordinary care in the management of the premises to avoid exposing the Plaintiff and
6 other foreseeable entrants upon the unfenced roadside land to an unreasonable risk of harm,” and
7 ¶169, which states in relevant part, “Defendants CSI and/or BMS owed a legal duty of care to the
8 Plaintiff to maintain the property in such a manner as to avoid exposing the Plaintiff to an
9 unreasonable risk of injury,” and ¶170 which alleges that “CSI and/or BMS failed to conform to
10 a standard of care, failed [to] act reasonably or to maintain land in their possession and control in
11 a reasonably safe condition ...” Such allegations have no conceivable bearing on the facts
12 alleged herein to establish a cause of action of negligent maintenance of the property. Plaintiff
13 did not slip and fall, nor does he allege that he was injured because of some other dangerous
14 condition on the property onto which he trespassed, nor alleged any other manner of harm that
15 befell him because of a negligent maintenance of the property.

16 Rather, he asserts he was battered in the course of a citizen’s arrest following his entry on
17 the defendant’s land. Section 1714, an old statute, is actually a simple reiteration of the law of
18 negligence. As the Supreme Court concluded, “the intention of the legislature in enacting section
19 1714 of the Civil Code was to state the basic rule of negligence together with the defense of the
20 contributory negligence modified by the emerging doctrine of last clear chance.” (*Li v. Yellow*
21 *Cab* (1975) 13 Cal.2d 804, 822.)

22 Section 1714 is simply inapplicable, as a claim of negligence arising out of a condition of
23 the *land* at which Mr. Choquette was arrested, is unsupported by any factual allegations in the
24 FAC.

25 Plaintiff makes an apparent alternative assertion in the Fifth Cause of Action, that the
26 alleged improper positioning of “no trespassing” signs on the property created a “public
27 nuisance” as defined in Penal Code §556.3, and in some unspecified fashion giving rise to a legal
28 claim for injury. If the alleged failure to correctly position “no trespassing” signs on a property

1 constitutes a criminal nuisance, 98% of citizens are property owners in the County are daily
2 committing a crime. Indeed, that is not the meaning of §556.3. Rather, the statute is entirely
3 reliant on acts of placing signs on *another* person’s property or on public property without
4 permission – such as advertising signs posted along the roadway on property owned by another.
5 In any event, Penal Code §556.3, a criminal statute, does not give rise to a civil action. The cause
6 of action is frivolous on its face, and should be dismissed.

7 **D. Plaintiff Has Failed to State a Cause of Action for Violation of Civil Code**
8 **§51.2 in the Eighth Cause of Action.**

9 In the Eighth Cause of Action, Plaintiff generally asserts that the Defendants “interfered
10 with or attempted to interfere with the Rights of Plaintiff and those engaged in Anonymous
11 protest with him.” (FAC, ¶ 204.) But Plaintiff does not specify what rights were allegedly
12 interfered with, or how the purported interference occurred, or which of the Defendants allegedly
13 interfered with his unspecified rights.

14 The above quote infers, but does not state, that somehow his rights to *protest* were
15 interfered with when he was arrested. However, the Complaint concedes that Plaintiff was not
16 engaged in any act of allegedly protected protest when he was arrested, but rather, that he was
17 “taking a shortcut” across Defendants’ property via a dirt road, and was arrested when he walked
18 over to a security guard parked in his vehicle on the Church property, “to enquire what he had
19 been doing at the picketer’s vehicle and why.” FAC ¶52. Plaintiff does not allege that he was
20 protesting at the time of his arrest nor that he was engaging in any other form of constitutionally
21 protected activity while taking the alleged short cut through Defendants’ property and engaging
22 the security guard. Because the Cause of Action fails to state a claim, it should be dismissed. At
23 a minimum, pursuant to Code of Civil Procedure § 430.10(f) the Plaintiff must provide some
24 specific facts.

25 **E. Plaintiff Has Failed to State a Cause of Action for Violation of Constitutional**
26 **Rights in the Ninth Cause of Action.**

27 Plaintiff also claims Defendants violated his rights under the California Constitution. This
28 appears to largely be a piling-on tactic when viewed in conjunction with the other causes of

1 action in the 64 page complaint. Nevertheless, the claim should be disposed of at this point
2 because there has been no violation of a Constitutional right.

3 The Cause of Action is Uncertain Because it Never Alleges How a
4 Constitutional Right Was Violated.

5 California Code of Civil Procedure section 430.10, subdivision (f) allows a demurrer to
6 be sustained when the complaint is uncertain. Although the cause of action claims violations of
7 several sections of Article I of the California Constitution, the first amended complaint never
8 specifically identifies (1) the conduct that Plaintiff contends was a violation, or (2) how the acts
9 or omissions amounted to a violation. For this reason, the demurrer should be sustained and (if
10 Plaintiff plans to go forward with this claim) Plaintiff must be required to specifically plead how
11 and why he contends his rights under the Constitution were violated.

12 2. The Complaint Fails to State Facts Sufficient to Constitute a Violation of
13 California Constitution Article I, section 1.

14 Article I, section 1 provides: “All people are by nature free and independent and have
15 inalienable rights. Among these are enjoying and defending life and liberty, acquiring,
16 possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”
17 The only provision of the first amended complaint related to Article I, section 1 is a conclusory
18 statement that Defendants “denied, or attempted to deny, the Plaintiff his rights of privacy and
19 anonymity...” (FAC, ¶ 218.) A plaintiff alleging an invasion of privacy in violation of the state
20 constitutional right to privacy must establish each of the following: (1) a legally protected
21 privacy interest; (2) a reasonable expectation of privacy under the circumstances; and (3)
22 conduct by defendant constituting a serious invasion of privacy. (*Hill v. National Collegiate*
23 *Athletic Assn.* (1994) 7 Cal.4th 1, 39-40.)

24 Plaintiff has not alleged sufficient facts to support the elements above. There is no
25 allegation in the complaint of any legally protected privacy interest or of a reasonable
26 expectation of privacy. Assuming that the vague complaint means to allege a violation of privacy
27 arising out of the “picket” itself, Plaintiff admits that he posted his plans to picket “on Internet
28 message boards.” (FAC, ¶ 40.) Plaintiff also admits most of the events alleged occurred “on the

1 public easement along Highway 79.” (FAC, ¶ 40.) The events in question occurred in the public
2 view, after Plaintiff made his plans known to world on the Internet. These admissions bar any
3 claim of an invasion of privacy. If there is some other claim to privacy which is buried in the
4 overwrought complaint, it is inscrutable, and emphasizes the need for a pleading which can be
5 cogently addressed, unlike the vague and amorphous FAC.

6 3. The Complaint Fails to State Facts Sufficient to Constitute a Violation of
7 California Constitution Article I, section 2.

8 Article I, section 2 provides, in part: “Every person may freely speak, write and publish
9 his or her sentiments on all subjects, being responsible for the abuse of this right. *A law* may not
10 restrain or abridge liberty of speech or press.” (Emphasis added.) There is no allegation in the
11 first amended complaint indicating Defendants interfered with this right and obviously the
12 defendants are incapable of establishing any “law.” There is no possible way to amend the
13 complaint to state a cause of action against Defendants. The California Supreme Court has held
14 that Article I, section 2 only protects against state action. (*Golden Gateway Center v. Golden*
15 *Gateway Tenants Asps’* (2001) 26 Cal.4th 1013, 1031.) Because Defendants are not state actors
16 and cannot create “a law”, the cause of action must fail.

17 4. The Complaint Fails to State Facts Sufficient to Constitute a Violation of
18 California Constitution Article I, section 3.

19 Article I, section 3 provides, in part: “The people have the right to instruct their
20 representatives, petition government for redress of grievances, and assemble freely to consult for
21 the common good.” There is no allegation of any fact indicating that Defendants prevented
22 Plaintiff from petitioning the government for redress or assembling for the common good. There
23 is no claim that Defendants prevented a protest or assembly that occurred in a public place. The
24 only time it is alleged that Defendants stopped Plaintiff from doing anything was after Plaintiff
25 admittedly intruded on Defendants’ property. Thus, no fact has been alleged indicating that
26 Defendants took any action that would violate Article I, section 3.

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5. The Complaint Fails to State Facts Sufficient to Constitute a Violation of California Constitution Article I, section 4.

Perhaps the most ridiculous of the Constitutional claims relates to the allegation of a violation of Article I, section 4. This section reads, in part: “Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion.” There is no allegation of what Defendants have done to infringe on Plaintiff’s religious freedom. In fact, the allegation is actually that *Plaintiff* went to *Defendants’* property to protest against *Defendants’* purported religious beliefs. There is simply no allegation that plaintiff was seeking to exercise any religious right, what that right might be, or that Defendants did anything to interfere with Plaintiff’s exercise or enjoyment of religion.

Even if Plaintiff were able to allege that Defendants took some action to interfere with his religious freedom, such an allegation would be futile. This provision of the California Constitution was not aimed at *private* parties. According to the California Supreme court:

“This section has been said to constitute ‘the definitive statement of the principle of government impartiality in the field of religion.’ An examination of the debates of the constitutional convention which drafted the Constitution in 1879 indicates that the provision was intended to insure the separation of church and state and to guarantee that the power, authority, and financial resources of the government shall never be devoted to the advancement or support of religious or sectarian purposes.” (*California Educational Facilities Authority v. Priest* (1974) 12 Cal.3d 593, 604. (Emphasis added.))

Thus, because Defendants are not a governmental entity and cannot “make law” concerning religion, Defendants cannot be liable for a violation of Article 4.

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1 **D. Based on the Several Modifications to the Causes, Defendants Demur to the**
2 **Entire Pleading.**

3 As noted above, Plaintiff voluntarily amended, withdrawing two causes of action and
4 thereafter, filed a notice dismissing two further claims for abuse of process and malicious
5 prosecution. However, little change was made to lengthy factual allegations, which contain
6 numerous irrelevant, scurrilous and improper allegations (see accompanying Motion to Strike).

7 Aggravating the improper pleading respecting irrelevance and scurrilous opinion and
8 allegation, none of the facts are specifically identified as supporting the remaining particular
9 causes of action. This makes an impossible task for the defendants and indeed, for the Court, in
10 attempting to divine what in the 33 pages of "Common Allegations" are germane to any
11 particular claim. While defendants could spend scores of hours and many thousands of dollars in
12 discovery attempting to unravel the allegations and connect them to specific causes of action,
13 this should rightfully be the responsibility of the plaintiff, so that the defendants can know
14 exactly why they were sued; so the Court can manage the contest; and so that a record is made
15 respecting the specificity of the claims.

16 Complaints such as this have been disapproved in the strongest possible terms. *See, e.g.,*
17 *McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996):

18 Prolix, confusing complaints such as the ones plaintiffs filed in this
19 case impose unfair burdens on litigants and judges. As a practical
20 matter, the judge and opposing counsel, in order to perform their
21 responsibilities, cannot use a complaint such as the one plaintiffs
22 filed, and must prepare outlines to determine who is being sued for
23 what. Defendants are then put at risk that their outline differs from
24 the judge's, that plaintiffs will surprise them with something new
25 at trial which they reasonably did not understand to be in the case
26 at all, and that res judicata effects of settlement or judgment will be
27 different from what they reasonably expected. "[T]he rights of the
28 defendants to be free from costly and harassing litigation must be
considered." [citation omitted]

* * *

Something labeled a complaint but written more as a press release,
prolix in evidentiary detail, yet without simplicity, conciseness and

1 clarity as to whom plaintiffs are suing for what wrongs, fails to
2 perform the essential functions of a complaint.

3 *Id.*

4 *McHenry* echoes the language of a California Supreme Court from the nineteenth
5 century, which is cited as governing law in the California Code Commissioners' Note to CCP §
6 425.10:

7 There never was a greater slander upon the code than to say that it
8 permits long pleadings. On the contrary, it enjoins conciseness
9 everywhere; and if in any pleading that was ever written under its
10 rule there be an unnecessary word, it was put there in disregard of
11 its provisions. . . . If pleadings are not to set forth the real claim
12 and defense, they are useless, and had better be dispensed with. . . .
13 If an immaterial statement be inserted or even an unnecessary
14 word, the courts have the power to strike it out. To avoid
15 repetition, as well as to obtain conciseness, logical order is
16 necessary. There are persons who are incapable of making a
17 logical statement of anything, and such persons will be bad
18 pleaders under the code. But a man of education, as every lawyer
19 is supposed to be, ought to have no difficulty in setting forth any
20 occurrence in its logical, which is its natural, order. And if he does
21 this, and sets forth only the facts on which his case hinges, and
22 uses no more words than are necessary, we shall have brevity and
23 substance, and hear no more of long pleadings, unnecessary
24 recitals, or immaterial averments. . . .

25 *Green v. Palmer*, 15 Cal. 411, 417 (1860). The Court held that the complaint at issue was
26 "stuffed full of irrelevant matter – suggestions, charges and statements, which subserve no useful
27 purpose, and are only calculated, when read to the jury, to excite prejudice against the
28 defendants." *Id.* at 414.

The demurrer should therefore be sustained as to the remainder of the First Amended
Complaint, even if sustained without prejudice, so that the parties and the Court have a
reasonable pleading to focus and define the scope of the issues in this case.

25 VI. CONCLUSION

26 This case, at best, is a standard (yet baseless) claim for assault and battery arising out of a
27 citizen's arrest for trespassing. Nevertheless, because Plaintiff and his lawyer are more interested
28 in the target (the Church) than the lack of factual support, they have set out a number of causes

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of action that are unsupported by facts or factual allegations. Even after using over sixty pages to assert these claims, the causes of action at issue in this motion have not been sufficiently alleged to surpass demurrer. The second, fifth, eighth and ninth causes of action cannot be cured by amendment and should accordingly be dismissed from the complaint at this stage of the litigation, and the remainder of the complaint dismissed for the reasons set forth above.

Dated: January 14, 2010

LOBB CLIFF & LESTER, LLP


BY:

Mark S. Lester
David Cantrell

&

MOXON & KOBRIN
Kendrick L. Moxon

Attorneys for Defendants, CHURCH OF SCIENTOLOGY INTERNATIONAL, INC.; BUILDING MANAGEMENT SERVICES, INC.; DANIEL ALAN DUNIGAN (ERRONEOUSLY SUED AND SERVED AS DAVID ALAN DUNIGAN); KENNETH R. SEYBOLD; MATTHEW JAMES BUTLER AND SALVATORE MEO

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 1325 Spruce Street, Suite 300, Riverside, California 92507.

On January 14, 2010, I served the foregoing documents by placing a true copy thereof enclosed in a sealed envelope and addressed as stated below:

DOCUMENTS SERVED: NOTICE OF DEMURRER AND DEMURRER TO FIRST AMENDED COMPLAINT

SERVED UPON:

Law Offices of Graham E. Berry
Graham E. Berry
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Tel: (310) 745-3771
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X (By Mail) I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Riverside, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(By Facsimile) I served the above-described document on the interested parties in this action by sending a true copy thereof by facsimile transmission pursuant to *California Rules of Court*, Rule 2008, from facsimile machine number (909) 788-0766. The facsimile machine I used complied with *California Rules of Court*, Rule 2008, and no error was reported by the machine. Pursuant to Rule 2008(e)(3), I caused the machine to print a transmission record of the transmission.

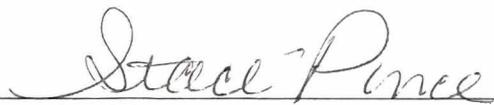
(By E-mail or Electronic Transmission) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(By Overnight Mail) I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery of documents. Under that practice it would be delivered to an authorized agent or driver of Federal Express with the fees paid or provided for on the date of service and delivered the next day.

(By Personal Service) I caused such envelope to be hand delivered to the offices(s) of the addressee(s).

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.


STACI PONCE