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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 LISSA UVIZL,
13 Plaintiff,
14 v.
15 DONALD J. MYERS.
16 Defendant.

17 Case No. BS 116340
18 Case No. BS 116339

19 MOTION IN LIMINE TO EXCLUDE
20 EVIDENCE OF PURPORTED
21 SCIENTOLOGY BELIEFS AND
22 PRACTICE

23 LEWIS MIRANDA,
24 Plaintiff,
25 v.
26 DONALD J. MYERS,
27 Defendant.

28 Date: October 24, 2008
Time: 8:30 am
Dept: 76

29 Defendant's counsel has indicated he intends to introduce evidence of Scientology
30 beliefs and practices. Plaintiffs hereby object to defendant's introduction of such
31 purported evidence and further request an order, before jury selection or the
32 commencement of trial, excluding such evidence upon the following grounds:

- 33 1. The introduction of evidence of Scientology beliefs or practices to attack
- 34 the complaining witnesses' credibility is barred by California Evidence Code §789;
- 35 2. Defendant's attempt to introduce evidence of any purported belief and

1 practice in the Scientology religion is irrelevant;

2 3. Any evidence of Scientology beliefs and practices should be excluded under
3 Cal.Evid. Code §352 as its probative value is substantially outweighed by the probability
4 that its admission will necessitate undue consumption of time or create substantial danger
5 of undue prejudice, of confusing the issues, or of misleading the court; and

6 4. Admission of defendant's purported evidence would entangle the court in
7 matters of ecclesiastical doctrine, and require it to determine the content of religious
8 practice and belief, in violation of the religion clauses of the First Amendment.

9 This motion is based upon the attached Memorandum of Point and Authorities, the
10 attached evidentiary materials; the complete files and records of this action; and upon
11 such oral and documentary evidence as may be brought before this Court at the hearing of
12 this matter.

13 Dated: October 23, 2008

Moxon & Kobrin

14
15 By: 

Kendrick L. Moxon

16
17 Attorneys for Plaintiffs
18 Lissa Uvizl and Lewis Miranda

19
20 **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION**
21 ***IN LIMINE* TO PRECLUDE "EVIDENCE" OF PURPORTED**
22 **SCIENTOLOGY BELIEFS OR PRACTICES**

23 Plaintiffs hereby move, pursuant to California Evidence Code §350 and §352 as
24 well as the First Amendment to the Constitution of the United States, to preclude
25 defendant from introducing evidence of, or evidence concerning, purported beliefs or
26 practices of the Scientology religion.

27 Plaintiffs expect that defendant will attempt to introduce assertions regarding
28 alleged Scientology beliefs to either attack the credibility of the Plaintiffs, who are
Scientologists and Church of Scientology International staff members, or that defendant

1 will attempt to introduce his version of Scientology beliefs and practices to somehow
2 contribute to his defense and either justify his acts or attempt to prejudice the court
3 against the complaining witnesses. Such evidence is specifically precluded by California
4 Evidence Code §789 and is also not relevant and thus not admissible per Cal.Evid. §350.

5 And, even if not strictly barred by evidence code §350 and §789, introduction of
6 such evidence must be prohibited under §352 because its probative value, *if any*, is
7 extremely marginal; it would foster undue prejudice against the complaining witnesses; it
8 would confuse and mislead the court; and it would require trial of collateral issues,
9 including presentation of additional witnesses and evidence on the subject of religious
10 belief and practice, resulting in undue delay, waste of time, and further prejudice and
11 confusion. Finally, introduction of such evidence would result in unconstitutional judicial
12 entanglement in matters of religious belief and practice, and would invite the court to
13 decide issues concerning the content and nature of religious belief and practice, contrary
14 to well-established doctrine under the First Amendment.

15 **Factual Background**

16 Over the past several months, defendant, Donald Myers, has conducted a willful
17 course of conduct to harass, annoy and alarm Plaintiffs, Lissa Uvizl and Lewis Miranda.
18 This conduct includes, stalking, screaming, banging on the window and doors where they
19 work and making obscene and lewd suggestions.

20 The *only* relevance that religion has to this case at all is that defendant has been
21 engaging in this course of conduct against the Plaintiffs because they are Scientologists.
22 The religious beliefs and practices of the Plaintiffs are not important for the determination
23 of the defendant's liability here; just as if the defendant had engaged in this illegal course
24 of conduct to Catholics, Jews, or Buddhists, the beliefs and religious practices of such
25 persons would have no place in the determination of defendant's liability.

26 Any attempt by defendant to introduce evidence of any purported Scientology
27 religious beliefs or practices would precipitate an elaborate and unconstitutional judicial
28 inquiry into a wholly collateral issue, *i.e.*, what are the beliefs and practices of the

1 Scientology religion.

2 **ARGUMENT**

3 **I. Introduction of Evidence of Scientology Beliefs or Practices to Attack the**
4 **Complaining Witnesses' Credibility Is Barred by Cal. Evid. Code §789.**

5 California Evidence Code §789 states:

6 Evidence of his religious belief or lack thereof is inadmissible
7 to attack or support the credibility of a witness.

8 On its face, Cal. Evid. §789 prohibits defendant from introducing evidence of what
9 he may claim are Scientology beliefs and practices to attack the credibility of the
10 complaining witnesses or to impeach them based on their actual or purported religious
11 beliefs. Moreover, defendant intends to introduce evidence of what he claims are the
12 Scientology beliefs and practices contrary to how the religion itself defines them, and
13 then to attribute his version of Scientology beliefs to the complaining witnesses in an
14 effort to damage their credibility.

15 Section 789 prohibits any such effort to impeach a witness based upon his
16 purported religious beliefs. In a case arising under an earlier similar version of a state
17 evidence code, a state appellate court reversed a criminal conviction where the
18 prosecution insisted that members of the defendant's religion – Hinduism – were prone to
19 commit violent and mysterious murders. *People v. Singh*, (1936) 11 Cal. App.2d 244, 53
20 P.2d 403, 3308.

21 **II. Evidence of Scientology Beliefs or Practices Is Not Relevant and Is**
22 **Barred by California Evidence Code §350**

23 Cal.Evid. §350 prohibits the use of irrelevant evidence: This case is about whether
24 or not defendant engaged in a knowing and willful course of conduct to alarm, harass and
25 annoy the Plaintiffs. Plaintiffs' religious beliefs and practices are irrelevant.

26 Indeed, the introduction of aspects of the Scientology religion and any of its beliefs
27 or practices does not "have any tendency in reason to prove or disprove any disputed fact
28 that is of consequence to the determination of the action" (Cal. Evid. §210), namely, that
defendant made threats which put the Plaintiffs in fear. Thus, Scientology beliefs and

1 practices are not relevant to this case and any attempt to introduce evidence of any
2 purported belief and practice in the Scientology religion should be prohibited.

3
4 **III. Any Evidence of Scientology Beliefs and Practices Must Be Excluded Under Cal.Evid. Code §352.**

5 The Court may also “exclude evidence if its probative value is substantially
6 outweighed by the probability that its admission will (a) necessitate undue consumption
7 of time or (b) create substantial danger of undue prejudice, of confusing the issues...”
8 Cal.Evid. 352. *See also Kessler v. Gray* (1978) 77 Cal.App.3d 824, 291, 143 Cal.Rptr.
9 496, 500. “The prejudice referred to in Evidence Code section 352 applies to evidence
10 which uniquely tends to evoke an emotional bias against [a party] as an individual and
11 which has very little effect on the issues.” *People v. Yu* (1983) 143 Cal.App.3d at 358,
12 377, 191 Cal.Rptr. 859, 870, cert denied. 464 U.S.1072, 104 S.Ct. (1984), *People v.*
13 *Poplar* (1999) 70 Cal.App.4th 1129, 11338, 83 Cal.Rptr.2d 320, 325.

14 Admission of any such (irrelevant) evidence would inevitably lead to extended and
15 highly contested collateral issues of Scientology beliefs and practices; what the
16 complaining witnesses knew or believed about the existence and meaning of certain
17 beliefs and practices; and what attenuated conclusions can be drawn in this case from
18 those facts. In short, the inclusion in this case of Scientology beliefs and practices would
19 be akin to an inquest into the Scientology religion. Litigation of these collateral issues
20 could overwhelm and obscure the narrow dispositive issues. There can be no other
21 purpose to defendant’s attempt to introduce the evidence than to prejudice the court.
22 There is a probability that Plaintiffs would suffer unfair prejudice, that the court could be
23 confused and that trial of the case will be significantly extended and delayed.

24
25 **IV. Admission Of Defendant’s Purported Evidence Would Entangle The Court In**
26 **Matters Of Ecclesiastical Doctrine, And Require It To Determine The**
27 **Content Of Religious Practice And Belief, In Violation Of The Religion**
28 **Clauses Of The First Amendment**

29 Defendant may attempt to introduce evidence of what he claims to be Scientology
30 religious belief and practice. Plaintiffs would have no choice but to refute what

1 defendant claims are Scientology beliefs and practices or to otherwise testify concerning
2 them.

3 But it is not for a secular court to engage in an explanation of religious scripture.
4 “The First Amendment prohibits civil courts from . . . the interpretation of particular
5 church doctrines and the importance of those doctrines to the religion.” *Presbyterian*
6 *Church v. Mary Elizabeth Hull Memorial Presbyterian Church*, (1968) 393 U.S. 440,
7 450. Rather, the First Amendment requires courts to defer to the ecclesiastical position of
8 the Church itself with respect to the meaning and application of religious doctrines.
9 Neither the government nor its courts are free to inquire whether or not the religion’s
10 explication of its doctrines is the “correct” one. Such an inquiry, in itself, would violate
11 the requirements of the First Amendment. *Jones v. Wolf* (1979) 443 U.S. 595, 602;
12 *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 713.

13 Thus, the Court should reject defendant’s invitation that the Court undertake an
14 entangling inquiry into Scientology beliefs and practices. Such an inquiry is not
15 constitutionally permissible, as the cases discussed above clearly hold. They certainly
16 cannot be justified where the “issue” raised is of no relevance to any element in this case.

17 **V. CONCLUSION**

18 Plaintiffs respectfully request that their motion to exclude the introduction of
19 purported Scientology beliefs and practices, be granted.

20 Dated: October 23, 2008

Moxon & Kobrin

21
22 By:



23 Kendrick L. Moxon

24 Attorneys for Plaintiffs
25 Lissa Uvizl and Lewis Miranda
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action.

On October 23, 2008, I served the foregoing document described as:

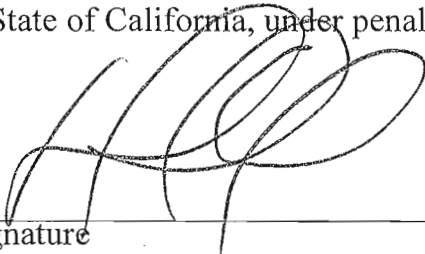
**MOTION IN LIMINE TO EXCLUDE EVIDENCE OF PURPORTED
SCIENTOLOGY BELIEFS AND PRACTICE**

by hand delivery on counsel for defendant, at the following address:

Graham Berry
3384 McLaughlin Ave.
Los Angeles, CA 90066

Executed on October 23, 2008, at Los Angeles, California.

I declare in accordance with the laws of the State of California, under penalty of perjury, that the foregoing is true and correct.


Signature