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SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

FRANCOIS G. CHOQUETTE,

Plaintiff,

vs.

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California corporation;
BUILDING MANAGEMENT SERVICES, a
California corporation; DAVID ALAN
DUNIGAN, an individual; KENNETH R.
SEYBOLD, 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

**NOTICE OF DEMURRER AND
DEMURRER TO SECOND 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
(erroneously sued and served as David Alan Dunigan); Kenneth R. Seybold; Matthew James

Butler and Salvatore Meo will and hereby do demurrer to the second (assault and battery, excessive force), fifth (Civil Code §51.2), and sixth (Constitutional violations) causes of action in the Second Amended Complaint of Plaintiff Francois G. Choquette.

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

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

Dated: July 30, 2010

LESTER & CANTRELL, 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

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 Second 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 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 Sixth Cause of Action

The sixth 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.

As to the Entire Second Amended Complaint

Defendants also generally demur to the entirety of the Second Amended Complaint, which, because four causes of action have been voluntarily dismissed and plaintiff fails to assert what allegations support the specific remaining causes of action, the entirety of the Second Amended Complaint should be dismissed. (Cal. Code Civ. Proc. § 430.10(e)-(f).)

1 WHEREFORE, Defendants pray as follows:

2 1. That Plaintiff take nothing by way of the second, fifth, and sixth causes of action
3 specifically, or by way of the entirety of the Second Amended Complaint;

4 2. For other relief as the court deems just and proper.
5

6 **LOBB CLIFF & LESTER, LLP**

7 Dated: July 28, 2010

8 BY: 

9 Mark S. Lester

10 David Cantrell

11 &

12 **MOXON & KOBRIN**

13 Kendrick L. Moxon

14 Attorneys for Defendants,
15 CHURCH OF SCIENTOLOGY
16 INTERNATIONAL, INC.; BUILDING
17 MANAGEMENT SERVICES, INC.;
18 DANIEL ALAN DUNIGAN
19 (ERRONEOUSLY SUED AND SERVED
20 AS DAVID ALAN DUNIGAN);
21 KENNETH R. SEYBOLD; MATTHEW
22 JAMES BUTLER AND SALVATORE
23 MEO
24
25
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This lawsuit concerns the efforts of a professional “protestor” to find *some* causes of action to benefit from his arrest, after he knowingly and willfully trespassed upon property housing the Church of Scientology International (the “Church”) and severely injured a security guard in the process. Plaintiff Francois Choquette has made a lifestyle out of harassing the Church and its members and staff. Plaintiff now seeks to expand the causes of action, to several claims which are completely unsupported by allegations of the Second Amended Complaint (“SAC”). The court reviewed Plaintiff’s prior pleading and determined it was wholly deficient—to the point of sustaining a demurrer to the entire complaint. While plaintiff has dismissed two of the causes of action no new allegations have been submitted, the SAC violently contradicts the prior complaints by ignoring now that the damages he here alleges were also caused by three other arrests and detentions by the Riverside and Los Angeles Police. The complaint remains not actionable¹.

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

Second., Plaintiff’s Fifth Cause of Action alleges that defendants violated Civil Code §51.2 by infringing upon plaintiff’s civil rights. However, the SAC does not describe what purported right of plaintiff the Defendants are alleged to have violated, how that right was allegedly violated, or specifically who violated that right.

Third, Plaintiff’s Sixth Cause of Action asserts violations of several different provisions of the California Constitution. Most of the constitutional claims asserted require “state action.”

¹ Plaintiff’s initial complaint asserted eleven causes of action. The first amended complaint narrowed this to nine causes and dismissed the 6th Cause of Action alleging abuse of process and the 7th cause of action alleging malicious prosecution. The second amended complaint now dismisses claims for negligent hiring and landowner’s liability—but adds back in the claim for malicious prosecution.

Yet, none of the defendants are alleged to be state actors—and the face of the complaint admits they are all private entities and individuals. The remaining constitutional claims are unsupported by any factual allegations whatsoever, cannot be cured by amendment, and should be dismissed.

Finally, the entire SAC is uncertain as the Court previously ruled and there amendments thereto do not sure these uncertainties. The demurrer to the entire SAC should accordingly be sustained.

II. THE PARTIES

Plaintiff was not innocent party passing by the Property. According to the complaint, Plaintiff is a member of a group called Anonymous which harasses and threatens violence upon the Church and its members. Plaintiff actively organizes “pickets” of fellow Anonymous members to harass the Church and interfere with its member’s religious exercise. (FAC, ¶21-22, 39.)

Defendant Church of Scientology International (“CSI” or “Church”) is the Mother Church of the Scientology religion, and is dedicated to the advancement and dissemination of the religion. CSI’s ecclesiastical authority extends to overseeing the administration of all Scientology churches and missions worldwide, and disseminating the beliefs and practices of Scientology throughout the world. Golden Era Productions, a division of defendant CSI, is located at 19625 Highway 79, Gilman Hot Springs, CA (the “Property”), which is owned by defendant Building Management Services. Defendants Danny Dunigan, Kenneth Seybold, Matthew Butler and Salvatore Meo are staff of the Church at that location of the arrest at issue in this case.

III. STATEMENT OF FACTS

After becoming a member of a protest group called “Anonymous,” in October 2008, Plaintiff used the internet to organize what he calls a “picket” to occur at the Property. (SAC ¶ 21-22, 39.) The picket was scheduled to occur on October 26, 2008. (SAC, ¶ 39.) While chasing after and harassing Church security staff and baiting the religious workers at the property, Plaintiff elected to travel across what he terms “a small dirt road path” to take a “short cut” through the Property (SAC, ¶ 52.) Although Plaintiff claims he had “no intention to trespass,” his complaint does not unequivocally deny that he was actually trespassing on the Church’s property

1 when taking this “short cut.” (SAC, ¶53.) Indeed, it appears he sought to be arrested, having
2 walked past clear “no trespassing” signs.

3 After Plaintiff trespassed on the Church’s Property, several of the individual Defendants
4 made a citizen’s arrest of Plaintiff. (FAC, ¶56.) During the arrest, Plaintiff intentionally bit one
5 of the security guards, requiring the security guard to seek medical treatment. Subsequently, a
6 Deputy Sheriff arrived. (FAC, ¶60.) Defendants turned Plaintiff over to the Sheriff’s Deputy,
7 who transported Plaintiff to the jail. (FAC, ¶62.) The Sheriff’s Department turned the matter over
8 to the District Attorney’s office, which, after reviewing the evidence, commenced a prosecution
9 of Plaintiff for trespass and for biting the security guard. (FAC, ¶194.) On October 19, 2009, the
10 District Attorney’s office elected to dismiss the criminal misdemeanor charges against Plaintiff
11 without reference to his guilt or innocence. (FAC, ¶158-159.)

12 **IV. ARGUMENT**

13 **A. Standard on Demurrer.**

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

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

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

26 “Excessive force,” however, is only an element when the defendant is a state actor. The
27 model California Civil Jury Instruction for assault and battery indicates the elements for a battery
28 are (1) that defendant touched the plaintiff; (2) plaintiff did not consent to the touching; (3)
plaintiff was harmed or offended by defendant’s conduct; and (4) a reasonable person in

1 plaintiff's position would have been offended by the touching. (CACI 1300.) There is no element
2 of "excessive force"—any touching that meets these elements can arguably amount to a battery.

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

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

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

25 **C. Plaintiff Has Failed to State a Cause of Action for Violation of Civil Code**
26 **§51.2 in the Fifth Cause of Action.**

27 In the Fifth Cause of Action, Plaintiff generally asserts that the Defendants "interfered
28 with or attempted to interfere with the Rights of Plaintiff and those engaged in Anonymous
protest with him." (SAC, ¶ 173.) But Plaintiff does not specify what rights were allegedly

1 interfered with, or how the purported interference occurred, or which of the Defendants allegedly
2 interfered with his unspecified rights.

3 The above quote infers, but does not state, that somehow his rights to *protest* were
4 interfered with when he was arrested. However, the SAC concedes that Plaintiff was not
5 engaged in any act of allegedly protected protest when he was arrested, but rather, that he was
6 “taking a shortcut” across Defendants’ property via a dirt road, and was arrested when he walked
7 over to a security guard parked in his vehicle on the Church property, “to enquire what he had
8 been doing at the picketer’s vehicle and why.” (SAC ¶52.) Plaintiff neither alleges that he was
9 protesting at the time of his arrest nor that he was engaging in any other form of constitutionally
10 protected activity while taking the alleged short cut through Defendants’ property and pursuing
11 the security guard. Because the Cause of Action fails to state a claim, it should be dismissed. At
12 a minimum, pursuant to Code of Civil Procedure § 430.10(f) the Plaintiff must provide some
13 specific facts.

14 **D. Plaintiff Has Failed to State a Cause of Action for Violation of Constitutional**
15 **Rights in the Sixth Cause of Action.**

16 Plaintiff also claims Defendants violated his rights under the California Constitution. This
17 appears to largely be a piling-on tactic when viewed in conjunction with the other causes of
18 action. Nevertheless, the claim should be disposed of at this point because there has been no
19 violation of a Constitutional right.

20 1. The Cause of Action is Uncertain Because it Never Alleges How a
21 Constitutional Right Was Violated.

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

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

Article I, section 1 provides: “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.” The only provision of the first amended complaint related to Article I, section 1 is a conclusory statement that Defendants “denied, or attempted to deny, the Plaintiff his rights of privacy and anonymity...” (SAC, ¶ 187.) A plaintiff alleging an invasion of privacy in violation of the state constitutional right to privacy must establish each of the following: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy under the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy. (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39-40.)

Plaintiff has not alleged sufficient facts to support the elements above. There is no allegation in the complaint of any legally protected privacy interest or of a reasonable expectation of privacy. Assuming that the vague complaint means to allege a violation of privacy arising out of the “picket” itself, Plaintiff admits that he posted his plans to picket “on Internet message boards.” (SAC, ¶ 39.) Plaintiff also admits most of the events alleged occurred “on the public easement along Highway 79.” (SAC, ¶ 40.) The events in question occurred in the public view, after Plaintiff made his plans known to world on the Internet. These admissions bar any claim of an invasion of privacy. If there is some other claim to privacy which is buried in the overwrought complaint, it is inscrutable, and emphasizes the need for a pleading which can be cogently addressed, unlike the vague and amorphous SAC.

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

Article I, section 2 provides, in part: “Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. *A law* may not restrain or abridge liberty of speech or press.” (Emphasis added.) There is no allegation in the first amended complaint indicating Defendants interfered with this right and obviously the defendants are incapable of establishing any “law.” There is no possible way to amend the

1 complaint to state a cause of action against Defendants. The California Supreme Court has held
2 that Article I, section 2 only protects against state action. (*Golden Gateway Center v. Golden*
3 *Gateway Tenants Asps'* (2001) 26 Cal.4th 1013, 1031.) Because Defendants are not state actors
4 and cannot create "a law", the cause of action must fail.

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

7 Article I, section 3 provides, in part: "The people have the right to instruct their
8 representatives, petition government for redress of grievances, and assemble freely to consult for
9 the common good." There is no allegation of any fact indicating that Defendants prevented
10 Plaintiff from petitioning the government for redress or assembling for the common good. There
11 is no claim that Defendants prevented a protest or assembly that occurred in a public place. The
12 only time it is alleged that Defendants stopped Plaintiff from doing anything was after Plaintiff
13 admittedly intruded on Defendants' property. Thus, no fact has been alleged indicating that
14 Defendants took any action that would violate Article I, section 3.

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

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

27 Even if Plaintiff were able to allege that Defendants took some action to interfere with his
28 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:

1 “This section has been said to constitute ‘the definitive statement
2 of the principle of government impartiality in the field of religion.’
3 An examination of the debates of the constitutional convention
4 which drafted the Constitution in 1879 indicates that the provision
5 was intended to insure the separation of church and state and to
6 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.))

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

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

11 Article I, section 7 is the due process and equal protection provision of the California
12 Constitution. As a matter of law, Defendants cannot be liable for a claim under this provision.
13 Even though Article I, section 7 does not contain an explicit “state action” requirement, the
14 California Supreme Court has found that a “state action” requirement does exist under this
15 provision. (*Golden Gateway Center v. Golden Gateway Tenants Ass’n* (2001) 26 Cal.4th 1013,
16 1023.) Thus, because Defendants are not “state actors” the cause of action fails.

17 7. The Complaint Fails to State Facts Sufficient to Constitute a Violation of
18 California Constitution Article I, section 13.

19 Article I, section 13 is the unreasonable search and seizure provision of the California
20 Constitution. This section reads:

21 “The right of the people to be secure in their persons, houses,
22 papers, and effects against unreasonable seizures and searches may
23 not be violated; and a warrant may not issue except on probable
24 cause, supported by oath or affirmation, particularly describing the
place to be searched and the persons and things to be seized.”

25 Although this provision does not contain a “state action” limitation on its face, the
26 California Supreme Court has held that a state action limitation is implicit. (*Jones v. Kmart Corp.*
27 (1998) 17 Cal.4th 329, 333.) Thus, even a lawless search and seizure by a private person acting
28 in a private capacity is not a violation of Article I, section 13 (*Ibid.*). Because Defendants are not

state actors, and are instead private citizens, there can be no cause of action against them for a violation of Article I, section 13.

E. Based on the Several Modifications to the Causes, Defendants Demur to the Entire Pleading.

Plaintiff has now amended the pleading but has not cured the vague and argumentative nature of the pleading. Few changes were made to lengthy factual allegations, which contain numerous irrelevant, scurrilous and improper allegations. Rather, plaintiff merely made wholesale *deletions* to the Second Amended Complaint without clarifying any of the causes of action. Indeed, plaintiff remains bound by the allegations of the prior contradictory amended complaints, (*Amid v Hawthorne Community Medical Group, Inc.* (1989) 212 Cal.App.3d 1383, 1390-91; *Owens v Kings Supermarket* (1988) 198 Cal.App.3d 379, 384), in which he asserted the same damages he now claims herein were also caused by three other arrests and detentions by the Riverside and Los Angeles Police. (Original Complaint ¶ 142; First Amended Complaint ¶¶ 142-146).

Aggravating the improper pleading respecting irrelevance and scurrilous opinion and allegation, none of the facts are specifically identified as supporting the remaining particular causes of action. This makes an impossible task for the defendants and indeed, for the Court, in attempting to divine what in the 21 pages (117 paragraphs) of “Common Allegations” are germane to any particular claim. While defendants could spend scores of hours and many thousands of dollars in discovery attempting to unravel the allegations and connect them to specific causes of action, this should rightfully be the responsibility of the plaintiff, so that the defendants can know exactly why they were sued; so the Court can manage the contest; and so that a record is made respecting the specificity of the claims.²

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

Prolix, confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens on litigants and judges. As a practical

² This is already becoming a significant problem. The court can take judicial notice of the motion to compel Plaintiff's accomplice Donald Meyers' deposition. Plaintiff's witnesses are refusing to testify to allegations in the complaint under the argument that those allegations are not relevant. If the witnesses Plaintiff is advising cannot understand the complaint, how can Defendants be expected to defend it?

1 matter, the judge and opposing counsel, in order to perform their
2 responsibilities, cannot use a complaint such as the one plaintiffs
3 filed, and must prepare outlines to determine who is being sued for
4 what. Defendants are then put at risk that their outline differs from
5 the judge's, that plaintiffs will surprise them with something new
6 at trial which they reasonably did not understand to be in the case
7 at all, and that res judicata effects of settlement or judgment will be
8 different from what they reasonably expected. "[T]he rights of the
9 defendants to be free from costly and harassing litigation must be
10 considered." [citation omitted]

7 * * *

8 Something labeled a complaint but written more as a press release,
9 prolix in evidentiary detail, yet without simplicity, conciseness and
10 clarity as to whom plaintiffs are suing for what wrongs, fails to
11 perform the essential functions of a complaint.

11 *Id.*

12 *McHenry* echoes the language of a California Supreme Court from the nineteenth
13 century, which is cited as governing law in the California Code Commissioners' Note to CCP §
14 425.10:

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

26 *Green v. Palmer*, 15 Cal. 411, 417 (1860). The Court held that the complaint at issue was
27 "stuffed full of irrelevant matter – suggestions, charges and statements, which subserve no useful
28

1 purpose, and are only calculated, when read to the jury, to excite prejudice against the
2 defendants." *Id.* at 414.

3 The demurrer should therefore be sustained as to the entirety of the Second Amended
4 Complaint, so that the parties and the Court have a reasonable pleading to focus and define the
5 scope of the issues in this case.

6 **V. CONCLUSION**

7 This case, at best, is a standard (yet baseless) claim for assault and battery arising out of a
8 citizen's arrest for trespassing. Nevertheless, because Plaintiff and his lawyer are more interested
9 in the target (the Church) than the lack of factual support, they have set out a number of causes
10 of action that are unsupported by the factual allegations, and the damage claims are contradicted
11 by the prior complaints, as to which, plaintiff remains bound. The causes of action at issue in this
12 motion have not been sufficiently alleged to surpass demurrer.

13
14
15 Dated: July 30, 2010

16 **LOBB CLIFF & LESTER, LLP**

17 BY: 

18 Mark S. Lester

19 David Cantrell

20 &

21 **MOXON & KOBRIN**

22 Kendrick L. Moxon

23 Attorneys for Defendants, CHURCH OF
24 SCIENTOLOGY INTERNATIONAL,
25 INC.; BUILDING MANAGEMENT
26 SERVICES, INC.; DANIEL ALAN
27 DUNIGAN (ERRONEOUSLY SUED
28 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 310, Riverside, California 92507.

On July 30, 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 SECOND AMENDED COMPLAINT

SERVED UPON:

Francois G. Choquette
31735 Riverside Dr., #C295
Lake Elsinore, CA 92530
Plaintiff In Pro Per

MOXON & KOBRIN
Kendrick L. Moxon
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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.

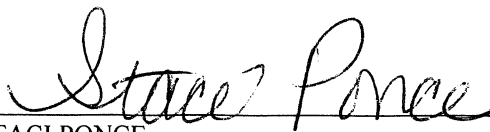
(By E-mail or Electronic Transmission) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission,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