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November 17, 2008

VIA CERTIFIED MAIL

California Labor & Workforce Development Agency
Attention: Doug Hoffner, Undersecretary
801 K Street, Suite 2101
Sacramento, CA 95814

Elliot J. Abelson
General Counsel
Church of Scientology International
8491 West Sunset Blvd., Suite 1100
Los Angeles, CA 90069

Golden Era Productions
19625 Highway 79
Gilman Hot Springs, CA 92583

RE: Notice of Claim – LWDA No. 3994
Labor Code Private Attorneys Act of 2004,
(Labor Code §2698 et seq.)

Employees: Marc Headley, _____ _____ & _____ _____
Employer: Church of Scientology International

To Whom It May Concern:

INTRODUCTION

The Notice of Claim dated September 23, 2008 is hereby supplemented and amended on behalf of Marc Headley and _____ ___. A new claimant is added, _____ _____.[1] She worked for Church of Scientology International (CSI) within the past year.

This addresses and disarms CSI's Statute of Limitation argument, although claimants do not agree with CSI's various statute of limitations arguments.

In addition to a new potential class plaintiff, this amended notice has been expanded to address Federal labor law, primarily U.S. Supreme Court and Ninth Circuit decisions concerning arguments made by CSI's counsel. As is demonstrated by the section on Federal law, the Fair Labor Standards Act applies to religious organizations. There is no "religious

[1] While this is an amended notice for claimants as a group, technically this could also be considered a new notice for _____.

exemption" to Federal labor laws. Neither is there any "religious exemption" under California law, which was demonstrated in the initial letter of notice.

CSI's counsel has also claimed that the "minister exception" bars apparently all labor claims against Scientology. That cannot be. Among other things, unless 100% of CSI's employees are "ministers", which is clearly not the case; the minister exception cannot even theoretically confer blanket immunity from labor laws to Scientology. Further, even if applicable, the "minister exception" does not bar all claims involving a "minister". It is limited to ministers and specific types of religious disputes. For example, a gay minister would have rights, including the right not to be defamed by his church, which would not be nullified by the minister exception. See, Gunn v. Mariners Church, Inc. (2008) 167 Cal. App. 4th 206,
214. (Church members can believe that being gay is a sin, however, a gay minister is still protected from civil torts committed by his church.)

In fact, claimants were not ministers and most, if not all, of CSI's employees would not qualify for the minister exception. The minister exception does not apply to these claimants or these labor law claims. This dispute is about pay and working conditions, not religion per se.

Showing considerable chutzpah, CSI has threatened sanctions for making this claim. Among other things, CSI contends that, beyond question, this claim is barred by agreements, waivers, statutes of limitation, minister exception and complete non-applicability of the labor laws to the "church". These bogus arguments are addressed to a limited but sufficient extent in this letter.

A Labor Code Section 2698 class action is designed to allow recovery of civil penalties and attorney's fees. Back wages are separate by may be sought concurrently. Claims for legal wages and penalties are not waivable. Labor Code §1194 expressly provides that minimum wages may be recovered irrespective of any agreement to the contrary. Further support for the "non waiver" rule is found in cases cited below and the recent case of Gentry v. Superior Court (2007) 42 Cal. 4th 443.

On a related point the California Supreme Court has also held that minimum wages are alternatively recoverable under the unfair practice laws and the four year statute of limitation applicable to Business and Professions Code §17200 and related laws. Cortez v. Purolator Air Filtration Products Co. (2000) 23 Cal.4th 163. The contemplated class action may seek restitution of proper wages for at least four years back. An analysis of statue of limitation issues such as accrual, tolling, estoppel and fraudulent concealment is beyond the scope of this notice. Any one year rule for penalties is satisfied by a class plaintiff who worked for less than minimum wage within the last year.

Somewhat oversimplified, the gist of this claim is that employees of Church of Scientology International have been working 100+ hour weeks for years at well below minimum wage. The days are long and the work week is 7 days. Days off are rare. There are no proper breaks, rest periods, meal periods or records kept. Non-compliance with the Labor Code is virtually a daily affair. This often starts when the employees are children.

This is illegal and not excused by Scientology's claim to be a religion. Violated Labor Code sections are listed in a chart submitted with the initial notice letter. The non-exhaustive list of violations includes:

LAB 98.6 Retaliation for filing a labor complaint
LAB 201 Wages due upon discharge
LAB 204 Timely payment required
LAB 206 Any release or waiver of wages is null and void
LAB 226 Proper pay records
LAB 226.7 Proper meal breaks must be provided
LAB 432.5 Improper statement cannot be required
LAB 510 California overtime laws
LAB 512 California meal break provisions
LAB 551-552 One day rest in 7 day week
LAB 1102.5 Employee right to report violation
LAB 1175 et. seq. Records and rates on minor employees
LAB 1194-1197 Minimum wage must be paid
LAB 1290 et. seq. Improper employment of minors

Claimants started working for the Church of Scientology International (CSI) when minors (Marc Headley started at age 16; _____ at age 7; _____ at age 14). _____, the newly named claimant, was employed by CSI from 1984 –2008. The Labor Code violations started at the beginning and continued throughout their term of employment. There are currently minors and adults working for CSI who are toiling under illegal working conditions. Rules on wages, hours, breaks, records, child labor and working conditions are simply ignored. The employees work extraordinary hours almost 365 days a year for a substandard, and illegal, wage.

RETALIATION HAS OCCURRED

Since the first notice, the Scientology enterprise has retaliated against claimants Marc Headley and _____. This is in violation of LAB 1102.5 and carries an additional penalty of $10,000 for each wrongful act of retaliation.

FEDERAL LABOR LAW PROTECTS THE POTENTIAL EMPLOYEE CLASS

Tony & Susan Alamo Foundation v Sec of Labor, 471 US 290 (1985) sets forth several principles of law applicable to the basic and almost undeniable facts underlying this claim. This case is widely cited for its holding and general principles of law set forth in the opinion.

Alamo finds that there is no "religious" exemption to the Fair Labor Standards Act. 29 U.S.C. §203 et. seq. Under Alamo, there is no "Constitutional" exemption to the minimum wage and overtime laws obtained by declaring yourself to be a religion. Also, under Alamo, and the weight of authority, the question of 'employment" for purposes of the labor laws does not turn on the perception or agreement of the parties. What the employees may claim, presumably under some pressure from the employer, is not dispositive and borders on
complete irrelevancy. It does not matter that the employees may have signed various forms, waivers and "acknowledgments. . It does not matter that employees may be willing to claim "volunteer' status. See e.g. Alamo, at 471 US 302.

The Alamo court confirmed that the tax status of an organization or enterprise was basically irrelevant. It was the commercial nature of the enterprise that mattered. A religious enterprise is subject to the labor laws if it has any commercial activities. (Religion and commerce are not mutually exclusive functions under the law). The test of "employment" is economic reality. The Alamo court noted that the "associates" were entirely dependant on the foundation for long periods. They were working with the expectation of benefits---albeit meager. These workers were found to be "employees" working for an enterprise for purposes of the federal labor laws. This is a leading and applicable case decided by the US Supreme Court. This case alone would get the CSI labor claims past a motion to dismiss under the FSLA.

In Mitchell v. Pilgrim Holiness Church Corp, 210 F.2d 879 (7th Cir 1954), a circuit court also noted that workers for a religious corporation with a printing shop were covered by the FLSA. In a quotable decision, the court explained why the overall religious status of the entity did not matter. If it is engaged in commercial activities, (selling religious books and artifacts is a commercial enterprise), then the enterprise is subject to the labor laws irrespective of its tax or religious status. This decision also explains why the constitutional guarantee on religious beliefs does not protect activity inconsistent with the labor laws.

In Elvig v. Calvin Presbyterian Church, 397 F. 3d 790 (9th Cir. 2003), the Ninth Circuit also found that religious organizations are not exempt from the labor laws. The court stated, "[t]he First Amendment does not exempt religious institutions

from the minimum wage and laws that regulate the minimum wage or the use of child labor…supra at 792. This panel of the 9th circuit also noted the usual limitations on the "minister exemption". The court made the common observation that the minister exemption is a narrow exception that only applies
to a limited factual scenario. At most, it applies to those performing the functional duties of ministers.

The liberal application of labor laws is illustrated by Goldberg v. Whitaker House Cooperatives, Inc. 366 U.S. 28. In that case the U.S. Supreme Court found workers who knitted at home as part of a cooperative for an "advance allowance" to be employees working for an employer under the Fair Labor Standards Act.

In the Pacific Press case, 676 F. 2d 1272 (9th Cir. 1982), the Ninth Circuit applied the labor laws to a claimed religious enterprise. The court refused to apply the minister exception to an employee of a religious publishing house. The court found that the person's duties were not those of a minister but were more analogous to support staff. (See discussion and application of that case in EEOC v Fremont Christian School, 781 F.2d 1362 (9th Cir. 1886). The religious entities in Pacific Press and Fremont made self serving yet irrelevant claims of being an integral part of a religious mission. The workers in support of that grand mission were claimed to be ministers, not subject to various laws, apparently because they were working to promote the religion. These types of over-generalized and
over-blown claims of religious purpose for application of the minister exemption were rejected in Fremont and in numerous cases from other Federal District courts addressing the issue2. Claiming to work for the furtherance of a religion, even if true, does not trigger exception from law, as was recognized by the Ninth Circuit in the Pacific Press and Fremont cases.

The FLSA is to be construed broadly. Exceptions are to be narrowly construed and the burden is on the party claiming an exemption. Neither common law concepts nor contracts purporting to describe the relationship are determinative of employment status. The economic reality test is the applicable standard. See e.g. Mathis v. Housing Authority of Umatille County 242 F. Supp.2d 777 at 782 (D.Or. 2002) citing the US Supreme Court (Alamo case) and two 9th circuit opinions. Real v Driscoll, 603 F. 2d 748, 754-4 and Hale v. Arizona.

CSI has claimed that its workers have waived their rights under Federal and State labor laws. Any such waivers would be ineffective as a matter of law. Labor law rights cannot be abridged by contract or otherwise waived. Barrentine v.

[2] Counsel for CSI has cited numerous "minister exception" cases from other federal circuits. Addressing the case law from "foreign" circuits is beyond the scope of this letter, however, the limitations to "ministers" is essentially universal.

Arkansas- Best Freight System, 450 US 728, 740. There is considerable authority for this principle of law. The U.S. Supreme Court has settled this question with respect to Federal wage, overtime and child labor protections. The basic rule is that employees cannot waive the protections of state or federal labor laws. See e.g. County of Riverside v. Superior Court (2002) 27 Cal 4th 793, 804-5.

Playing the waiver or "label" game is a losing strategy in both state and federal courts. For example, Federal Express historically required its drivers to sign various contracts and waivers. The documents typically purported to make the driver independent contractors-not employees. Of course, such transparent ploys have not saved Federal Express from labor claims. The label is not important or even particularly relevant. There are numerous cases on this point of law. See, e.g., Estrada v FedEx Ground Package System, Inc., 154 Cal. App. 4th 1 (2007). ("The essence of the trial court's statement of decision is that if it looks like a duck, walks like a duck, swims like a duck, and quacks like a duck, it is a duck.") Page 154 Cal.App.4th 10.

The Ninth Circuit first applied the minister exemption in Bollard v. California Province of the Soc. of Jesus, 196 F.3d 940 (9th Cir. 1999).The case limits application to ministers and religious disputes between ministers and churches. The courts express reluctance to get involved with the hiring and firing of ministers, however this lawsuit was allowed to proceed against the Jesuits. This case helps victims and employees, not employers even if religious.

SCIENTOLOGY IS ALSO SUBJECT TO THE CALIFORNIA LABOR CODE[3]

CSI and its division Golden Era Productions have employees, including minors, who are working under illegal conditions. The Labor Code violations have been ongoing for years. The wage, hour, break, record keeping and child labor laws are flagrantly ignored. Historically, the Scientology enterprise claims to be above the law in the name of religion. This ongoing attempt to abuse workers, including minors, in the name of religion is contrary to law. It has been recognized for years that religious beliefs are what is protected by the Constitution. Illegal conduct is not granted blanket immunity by claims of religiosity. See e.g., Molko v. Holy Spirit Assn. (1988) 46 Cal.3d 1092

The California Supreme Court has recently addressed the issue of using purported religious beliefs as a defense to illegal conduct. The defense failed. In North Coast Women's Care Medical Group, Inc. v. Superior Court (2008) 44 Cal. 4th 1145 the issue was whether doctors could refuse to impregnate lesbians on

[3] This section is largely adapted form the initial notice.

religious grounds. Defendant doctors were attempting to use religion as a defense to violating the California Unruh Civil Rights Act. The California Supreme Court rejected claims of religious belief as a defense to conduct that violated the Unruh law.

After reviewing the United States Supreme Court's recent holdings, the California Supreme Court concluded that there is no federal constitutional right to an exemption from a neutral and valid law of general applicability. Id at 1155. The Court reached the same result under the California Constitution. Defendants were not entitled to violate the Unruh law, "a valid and neutral law of general applicability" on religious grounds. As applied to the facts of this claim, there is no constitutional right to violate the California Labor Code.

As recognized in the North Coast decision, it is the law of this state that "valid and neutral laws of general applicability", such as the Labor Code, may not be violated by those who happen to think their religion gives them a self-granted immunity. As recognized in North Coast and Molko, the First Amendment protects religious beliefs. Illegal conduct is not protected or privileged by a mantra of religiosity. Working employees to emotional and physical exhaustion and paying third world wages is simply illegal conduct.

The California Supreme Court decision in North Coast, especially when considered together with the Alamo case discussed above, should end any argument of religions being immune from labor laws. In Tony and Susan Alamo Foundation v. Secretary of Labor (1985) 471 U.S. 290, a case discussed above in the discussion of Federal law, the U.S. Supreme Court ruled that unpaid associates of a nonprofit religious organization were entitled to the minimum wage, overtime and record keeping requirements of the Fair Labor Standards Act. The Supreme Court noted that the Federal labor act contained no exception for nonprofit or religious organizations and that the Labor Department had consistently interpreted the Act to reach such businesses. Similarly, the California Labor Code has no express exception for Scientology to hide behind. Quite simply, pursuant to decisions of the California and U. S. Supreme Courts, Scientology is subject to the labor laws.

In accord, is Catholic Charities of Sacramento, Inc. v. Superior (2004) 32 Cal.4th 527. The California Supreme Court again concluded that religious beliefs do not excuse acts contrary to law. (Id at 548) Claims of exemption from law on religious grounds were rejected.

The Scientology enterprise has argued for protection under the minister exception. The Federal case law on the “minister exception” is addressed above. Such a claim borders on being frivolous. Claimants were not “ministers”. The minister exception simply has no potential application to this particular wage and hour claim.

The California Supreme Court has described the “minister exception” under California law in very limited terms. In the Catholic Charities case, the California Supreme Court noted that the ministerial exception as “currently articulated” would be limited to Title VII cases and “employees with duties functionally equivalent to those of ministers”. 32 Cal. 4th at 544. That is simply not the case here. This is not Title VII and the employees were in no sense employed as ministers.

Further, as discussed in Hope International University v. Superior Court (2004) 119 Cal. App. 4th 719, the rationale of the minister exception is to avoid litigating religious disputes between a church and a specific minister. Both the minister exception and its rationale are missing in the context of working on commercial projects and other “nonminister” duties. This dispute concerns employees doing “normal” jobs under abnormal working conditions. The Hope court contrasted the “minister” rule to the “janitor rule”. The “janitor” is entitled to the full protection of the law and courts. As recognized in Hope, secular work, which is what claimants performed for 100+ hours a week for far less than minimum wage, comes under the protections of the labor laws.

Golden Era and CSI may also attempt to argue that they provided room and board. This is irrelevant. California Minimum Wage Order NW-2007 disallows credit for room and board towards minimum wage absent a “voluntary written agreement”. There was no such agreement. The wage order also puts limits on what credit can be claimed towards minimum wage. At 39¢ per hour, room and board does not make up the difference, and minimum wage is only one of numerous labor code violations committed and continuing.

MARC HEADLEY[4]

Marc Headley was employed by Golden Era Productions from 1989 – 2005. His paychecks were issued by the Church of Scientology International (CSI). Golden Era Productions (Golden Era) is apparently owned by or otherwise affiliated with CSI.

Mr. Headley started as an electronics technician. He worked on the technical

[4] The sections describing Headley and _____’s work experience are largely reprinted from the initial notice letter.

side of preparing videos and films. He held various positions that involved making films or videos to be sold at a profit or used for the financial benefit of his employer. He never worked as a “minister” for Scientology and knows from experience that Scientology does not have ministers in the normal and accepted meaning of that term.

For fifteen years, Mr. Headley worked an average of 100+ hours a week. When he left in 2005 he was sleeping approximately 3 – 4 hours per night and working 130 hours per week. He was not paid minimum wage, not allowed breaks, not allowed proper meal periods and was seldom given a day of rest. The work week was seven days, not six as required by law.

Generally, Mr. Headley worked on commercial projects primarily to generate income for Golden Era Productions/CSI. He was confined to the Golden Era Production facilities in Hemet, CA. He had no meaningful freedom over his working hours, working conditions, living conditions or work assignments. Mr. Headley’s “official” wage was $50 per week but he was not even paid that amount. He was told that his employer, the Church of Scientology International, was a church so it did not have to pay proper wages or comply with labor laws.
Mr. Headley recently learned that his former employer, CSI, deceived and coerced him into working under illegal working conditions. A Summary of Wage Claims and annual wage computations were attached as Exhibits to the initial notice.

_____ _____

_____ went to the "International Ranch" when he was just 7 years old (May 1990). At age seven _____ was put to work cleaning bathrooms and such. The work kept getting heavier as he grew older. He was hauling rocks and weed-whacking by age 10. _____ worked for Golden Era Productions/CSI from 1990 to 2006. A Summary of his unpaid wage claim, without regard to any potential statute of limitations, was included with the initial notice letter. The summary is broken down by year. Therefore, should art of his wage claim be
found to be beyond an applicable statue of limitations, the recoverable wages for any protected time period can be drawn from the summary.

At age 10, he was also put in charge of the animal area (cleaning up after horses, goats, ducks, etc). The child hours from ages 7 – 11 were about 12 hour days. He would also "de-weed" (clear the heavy brush) of the mile-plus road that went from the Indian Reservation (and start of the property) to the front entry gate. He would use shovels and hoes to clear the big brush during fire season.

Rock hauling and building rock walls became a major part of his labor from ages 11 – 13 years. He found proper sized rocks in the creek that runs through the property and hauled them onto a pile. They loaded these rocks into wheelbarrows, hauled them another quarter mile and then built rock walls with them.

When he was 13 years old _____ started working at Golden Era Productions (in the Film Lab) during the day and then working again at the Ranch at night. _____ was trained on the projectors. Meanwhile at the "Ranch" he was also working on their security systems. He frequently did the burning of “confidential” documents in the fire pit they had there. In addition, _____ worked building and maintaining greenhouses, and doing field work.

This went on for years and sometimes required "all-nighters" wherein he would not sleep at all. Between ages 13 and 16 years old he was trained on the Film Processors. He was up all night on many occasions and was made to also mix chemicals for the film processing. _____ was up working at 3am one time when Dave Miscavige (the leader of the enterprise) came in and asked how much sleep_____ had gotten. _____ told him 4 hours in the past 3 days and Mr. Miscavige said "I've had about 100 all-nighters in my life, I am sure you can handle one". _____ worked with the chemicals and film from ages 13 to 19.

When _____ was 19 years old, he was put to work on heavy labor. Sometimes _____ would not get paid at all (much like many other staff). He did heavy labor at Golden Era Productions for a year, building rock walls, trenching, irrigation, carpentry, construction (drywall, mudding, tiling, ducting, clean-up, etc), Then _____ took care of the "Clipper Ship" which is an extravagantly nice facility at Golden Era where they entertain high-profile guests. Dave Miscavige (Chairman of the Board) was frequently there. (That this slave-like
labor enures to the benefit of the boss and a celebrity like Tom Cruise further illustrates the lack of any serious “constitutional” issues.) During this time _____ did cleaning, laundry and other household duties for those at the top of the pecking order.

_____ installed audio visual systems for the new buildings being built and also did modifications and installs on the digital sound studios at Golden Era. These were all full time positions and 16 hour days. _____ was getting about 5 - 6 hours of sleep and working for the rest of the day, minus short meal breaks. This lasted until 2002.

_____ was then sent to Florida to do clerical work. The duties in Florida consisted mainly of keeping track of staff member's problems and escorting staff that were being discarded or sent back to their families due to having suicide thoughts. _____ did this full time, 12 - 16 hour days, until 2005 when _____ was flown back to LA to go back to Golden Era Productions.

_____ left in October 2006 by escaping in the night. In 2007 _____ was declared a "Suppressive Person" for leaving scientology. _____ was employed by CSI from 1990 to 2006. He worked for a commercial enterprise doing many types of labor as described above. Summaries and charts showing unpaid wages and Labor Code violations were submitted with the initial letter of notice.

_____ _____[5]

_____ _____ was employed by CSI from 1984 to 2008. She started at age 14 and worked 100+ hour weeks for 24 years. Generally, she had the same work schedule and wages as the other claimants. She typically worked 14+ hour days and 7 day weeks without adequate rest, breaks or pay. She was not paid minimum wage or any overtime. She was paid approximately $2,000 per year. Charts showing her unpaid wage calculations are available upon request.

By way of illustration, minimum wage was $6.75 per hour form 2002 – 2006. It was $7.50 in 2007 and $8.00 beginning January 1, 2008. Using the $6.75 minimum wage, the wages due Ms. _____ under law for 2002 – 2006 inclusive, was $53,359 per year. In 2007, wages due at minimum wages was $59,288. Unpaid wages due for 2008 total $14,640. Unpaid wages due for just 2006, 2007 and 2008 (for purposes of illustration and not admission on any statute of limitation argument) would be approximately $116,858. The
total amount of unpaid wages for her 20+ years of work would be almost $3 million with interest and penalties.

THE POTENTIAL CIVIL PENALTIES ARE SIGNIFICANT

Mr. Headley submitted a Summary Page as an Exhibit to the previous notice. It shows that he worked 76,050 hours and was paid $29,727. That computes to 39¢ per hour. The difference between what Marc Headley was paid and what was due at minimum wage, without regard to any statute of limitation defenses, exceeds $1.6 million. The work schedule was attached as an Exhibit in the first notice. The wage computations were submitted with the first notice. Mr. _____ has submitted similar summaries with similar claims with the first notice letter.

[5] This is a new claimant who only recently terminated her employment wit CSI.

The numerous Labor Code sections violated by the employer are listed in an Exhibit previously submitted. Golden Era and CSI flagrantly violated wage, hour, break and numerous working condition laws in the Labor Code. The Federal law was also violated.

It should be noted that claimants do not necessarily concede that the Scientology enterprise is a religion. Religion or not, however, the Scientology enterprise must follow the labor laws.

According to Marc Headley's investigation, there may be 25,000 former CSI employees who worked under these illegal conditions and 4,000 to 5,000 current employees who continue to work under these conditions.

The civil penalty for violations of the Labor Code is $200 per aggrieved employee per pay period. Five thousand current employees working under illegal labor Code conditions, even if limited to one year for penalties, not wages, computes to $2,000,000 per month in potentially recoverable civil penalties. LAB §2698(f)(2) The wage loss claim is separate and also runs into the millions regardless of what statute of limitation and triggering event is found to be applicable. The personal claims of claimants for past due pay, various torts, and retaliation, may be brought separately or concurrently with the class action claim for civil
penalties. LAB §2699 (g) (1).

The civil penalties potentially recoverable by the state (75%) are in the millions. Scientology brandishes its wealth and spends millions on lawyers and private investigators to fight its enemies. Claimants submit that this money would be better spent paying legal wages and taking proper care of its workers.

These former employees hereby submit a further notice of claim under applicable statutes including LAB §2699 et. seq. They intend to proceed under the Labor Code to seek their individual damages as authorized by the statute, and will proceed to seek civil penalties as authorized by statute unless the State takes up the battle for civil penalties.

Sincerely,
Barry Van Sickle
BVS/kvs
Enclosures
CC: William T. Drescher
Marc Headley (via email)
_____ _____ (via email)
_____ _____ (via email)