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a California corporation

**FILED**  
LOS ANGELES SUPERIOR COURT

DEC 10 2008

JOHN A. CLARKE, CLERK

BY RUGENA LOPEZ, DEPUTY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 ALEXANDER J. GODELMAN, an Individual;  
11 and MARC LE SHAY, an Individual,

12 Plaintiffs,

13 vs.

14 DISKEEPER CORPORATION, a Delaware  
15 corporation; and DOES 1-50, inclusive,

16 Defendants.  
17  
18

CASE NO. BC 374449

**DEFENDANT'S NOTICE OF  
MOTION AND MOTION TO  
STRIKE PORTIONS OF THIRD  
AMENDED COMPLAINT;  
MEMORANDUM OF POINTS  
AND AUTHORITIES**

Motion Date: January 27, 2009

Time: 8:30 a.m.

Dept: 56, Hon Jane Johnson

Initial Complaint: July 17, 2007

Trial Date: June 15, 2009

19 **TO PLAINTIFFS ALEXANDER J. GODELMAN, MARC LESHAY AND**  
20 **THEIR ATTORNEY OF RECORD:**

21 PLEASE TAKE NOTICE that on January 27, 2009, at 8:30 a.m., or as soon thereafter  
22 as the matter may be heard, in Department 56 of the above-entitled court, located at 111 N.  
23 Hill Street, Los Angeles, California, there will be a hearing on this motion of defendant  
24 Diskeeper Corporation to strike portions of plaintiffs Alexander Godelman and Marc  
25 LeShay's third amended complaint without leave to amend.

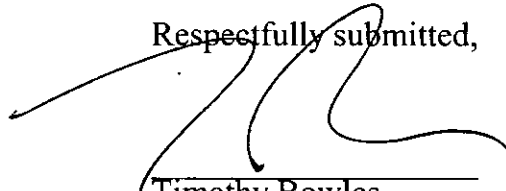
26 The motion is based upon this notice and motion, the attached memorandum of points  
27 and authorities, the interlineated third amended complaint attached as Exhibit A, the files and  
28 records in this action and any further documentation, judicially noticed matters, and argument

CIT/CASE: BC374449 LEA/DEF#:  
RECEIPT #: CCH47728009  
DATE PAID: 12/11/08 08:06:49 AM  
PAYMENT: \$40.00  
RECEIVED:  
CASH:  
CHECK:  
0.00  
0310

1 the Court may permit and receive at or before hearing.

2 Dated: December 5, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Timothy Bowles', is written over the words 'Respectfully submitted,'.

3  
4 Timothy Bowles  
5 Cynthia Bamforth  
6 Attorneys for Defendant Diskeeper Corporation  
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1       **MOTION TO STRIKE PORTIONS OF THIRD AMENDED COMPLAINT**

2       Pursuant to Code of Civil Procedure §§ 435-437 and other applicable law, Diskeeper  
3 Corporation (defendant) moves to strike the following portions of plaintiffs Alexander J.  
4 Godelman and Marc Le Shay's November 5, 2008 third amended complaint (TAC) without  
5 leave to amend. Each numbered portion of this motion is an "item." Defendant attaches as  
6 Exhibit A an interlineated copy of the third amended complaint with each proposed  
7 modification of that pleading identified by item number.

8                       **A. IMPROPER INJUNCTIVE REMEDY**

9       1.       ***Complaint, First Cause of Action, paragraph 20, page 16, line 27 - page 17,***  
10 ***line 5:*** The Court should strike reference to the alternate reinstatement and injunctive relief  
11 remedy ("In the alternative, PLAINTIFFS seek full back pay and lost employment benefits  
12 through the date of trial, and reinstatement to their former positions accompanied by a  
13 mandatory and/or prohibitory injunction prohibiting Diskeeper from forcing or requiring any  
14 employee, as a condition of employment, to study, adopt and/or apply the so-called 'Hubbard  
15 Management Technology' and/or the related 'Hubbard Study Technology' (both of which  
16 PLAINTIFFS intend to prove at trial are 'cover' names for the fundamental teachings of the  
17 Scientology religion) in the workplace") as irrelevant, false and improper. Injunctive relief  
18 is not available for an alleged religiously based business model or for requiring employees  
19 to engage in such activity. *See, e.g., EEOC v. Townley* (9<sup>th</sup> Cir. 1988) 859 F.2d 610, 621  
20 (improper to enjoin all mandatory workplace religious services or to require such services  
21 be strictly voluntary).

22       2.       ***Complaint, Third Cause of Action, paragraph 34, pages 22, line 26 - page 23,***  
23 ***line 4:*** The Court should strike reference to the injunctive relief remedy ("In the alternative,  
24 PLAINTIFFS seek ... reinstatement ... accompanied by a mandatory and/or prohibitory  
25 injunction...in the workplace") as irrelevant, false and improper. As specified in item 1,  
26 above, such injunctive relief is improper.

27       3.       ***Complaint, Fifth Cause of Action, paragraph 48, page 28, lines 17 - 23:***  
28

1 The Court should strike reference to the injunctive relief remedy ("In the alternative,  
2 PLAINTIFFS seek ... reinstatement ... accompanied by a mandatory and/or prohibitory  
3 injunction...in the workplace") as irrelevant, false and improper. As specified in item 1,  
4 above, such injunctive relief is improper.

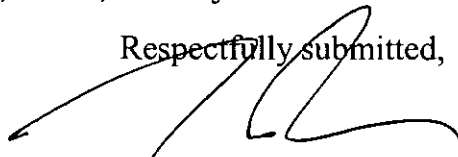
5 4. ***Complaint, prayer for relief, page 30, lines 13-17:*** The Court should strike  
6 reference to the injunctive relief remedy ("For prospective injunctive relief in the form of a  
7 prohibitory and/or mandatory injunction requiring Defendants to cease, desist and forever  
8 refrain from forcing or requiring any employee, as a condition of employment, to study,  
9 adopt and/or apply the so-called 'Hubbard Management Technology' and/or the related  
10 'Hubbard Study Technology' in the workplace, according to proof at trial") as irrelevant,  
11 false and improper. As specified in item 1, above, such injunctive relief is improper.

12 5. ***Complaint, prayer for relief, page 31, lines 11-15:*** The Court should strike  
13 reference to the injunctive relief remedy ("For prospective injunctive relief in the form of a  
14 prohibitory and/or mandatory injunction...according to proof at trial") as irrelevant, false and  
15 improper. As specified in item 1, above, such injunctive relief is improper.

16 6. ***Complaint, prayer for relief, page 32, lines 8-12:*** The Court should strike  
17 reference to the injunctive relief remedy ("For prospective injunctive relief in the form of a  
18 prohibitory and/or mandatory injunction...according to proof at trial") as irrelevant, false and  
19 improper. As specified in item 1, above, such injunctive relief is improper.

20 Dated: December 5, 2008

Respectfully submitted,



21  
22  
23 Timothy Bowles  
Cynthia Bamforth  
24 Attorneys for Defendant Diskeeper Corporation

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1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                                   **I. INTRODUCTION**

3           Plaintiffs' pleading asserts Craig Jensen, a Scientologist, founded Diskeeper  
4 Corporation over 25 years ago. Plaintiffs allege Mr. Jensen publicly ascribes his personal  
5 success and the company's now-international reach to the work and writings of L. Ron  
6 Hubbard, his religion's founder. Mr. Godelman and Mr. LeShay, having worked for  
7 Diskeeper Corporation briefly in 2006, now seek to have the Court dismantle Mr. Jensen's  
8 and defendant's entire way of doing business as these methods, the Hubbard Management  
9 Technology and the Hubbard Study Technology, are supposedly religious. Thus plaintiffs  
10 assert a single employee can come into such a business, declare he does not like the model  
11 because he finds it religious, and require that business to change its entire basis of  
12 functioning as a condition of his employment. Nothing in the law requires such an absurd  
13 and unfair result. Without leave to amend, the Court should thus strike all injunctive relief  
14 allegations as irrelevant, false and improper.<sup>1</sup>

15                               **II. PLAINTIFFS SEEK TOTAL SHUTDOWN OF THIS EMPLOYER'S**  
16                               **TRAINING AND ADMINISTRATIVE MODEL ON RELIGIOUS GROUNDS**

17           In pertinent part, plaintiffs' third amended complaint (TAC) alleges:

18           ● "DISKEEPER is a corporation whose products are marketed and distributed in six  
19 continents ... [Diskeeper Corporation promotes it] has 'for over 25 years ... been the  
20 leader in the creation ... of products which greatly increased computer performance  
21 ... and reliability ... around the world. So important is Diskeeper [software] to the  
22 world of computing that it was named among the top 5 products that everyone should  
23 have on their computer systems or networks.'" TAC, ¶ 5, 3:19-25.

24           ● "DISKEEPER is owned and operated by CRAIG JENSEN, the ... current Chairman  
25

---

26           <sup>1</sup> A court may strike out any irrelevant, false or improper matter inserted in  
27 any pleading and strike the whole or any part of a pleading not drawn in conformity with  
28 applicable law. Cal. Code of Civil Procedure § 436. Immaterial allegations include a  
demand for judgment requesting relief not supported by plaintiffs' pleadings. Cal. Code  
of Civil Procedure § 431.10.

1 of DISKEEPER ... a self-proclaimed 'entrepreneur and humanitarian' who ...  
2 attributes his personal success to the now-deceased founder of the Scientology  
3 religion, L. Ron Hubbard ... 'When I started the business ... I had not counted on the  
4 awesome power of the Hubbard Management System, which has made Diskeeper  
5 Corporation one of the most successful software companies in the world.'" TAC, ¶  
6 5, 3:27-4:9.

7 • "... the so-called 'Hubbard Management System' is nothing more than a thinly-  
8 veiled cover for the Scientology religion and its teachings." TAC, ¶ 5, 4:10-11.

9 • "... [the] innocuous descriptions of the mandatory training courses were a pretext  
10 and a cover up for a more malevolent and unlawful purpose – to indoctrinate the  
11 workforce of DISKEEPER to the teachings and methods of Scientology, a body of  
12 teachings and related techniques developed by American science fiction author L.  
13 Ron Hubbard and founded in 1952 as a self-help philosophy and later viewed and  
14 described as a new religion." TAC, ¶ 8, 6:13-17.

15 • "Rather than teach its employees about DISKEEPER and/or its business, the  
16 mandatory 'training courses' imposed on its employees (including PLAINTIFFS)  
17 were the teachings of the Scientology religion." TAC, ¶ 8, 6:21-23.

18 • "Employees are left with two choices – either learn and apply Scientology  
19 principles in the performance of their duties, or be criticized, reprimanded or  
20 discharged for failing to use the methods of thought and language which conform to  
21 Scientology. Put another way, the employees are given the choice of assimilating into  
22 the culture of Scientology – or perishing and losing their jobs." TAC, ¶ 9, 7:17-21.

23 • "In the alternative, PLAINTIFFS seek full back pay and lost employment benefits  
24 through the date of the trial, and reinstatement to their former positions accompanied  
25 by a mandatory and/or prohibitory injunction prohibiting DISKEEPER from forcing  
26 or requiring any employee, as a condition of employment, to study, adopt and/or apply  
27 the so-called 'Hubbard Management Technology' and/or related 'Hubbard Study  
28 Technology' (both of which PLAINTIFFS intend to prove at trial are 'cover' names

1 for the fundamental teachings of the Scientology religion) in the workplace. TAC,  
2 ¶ 20, 16:27-17:5 (first cause of action); ¶ 34, 22:26-23:4 (third cause of action); ¶ 48,  
3 28:17-23 (fifth cause of action).

4 ● “WHEREFORE, plaintiffs GODELMAN and LESHAY pray for judgment ... f. For  
5 prospective injunctive relief in the form of a prohibitory and/or mandatory injunction  
6 requiring Defendants to cease, desist and forever refrain from forcing or requiring any  
7 employee, as a condition of employment, to study, adopt and/or apply the so-called  
8 ‘Hubbard Management Technology’ and/or related ‘Hubbard Study Technology’ in  
9 the workplace. TAC, p.30:13-17 (first cause of action); p. 31:11-15 (third cause of  
10 action); p. 32:8-12 (fifth cause of action).

### 11 **III. TITLE VII PRECEDENT AND RULES OF CONSTITUTIONAL** 12 **CONSTRUCTION BAR PLAINTIFFS’**

#### 13 **PROPOSED INJUNCTIVE RELIEF AS A MATTER OF LAW**

14 As a general matter, the federal and California employment discrimination statutes  
15 prohibit secular businesses from discriminating in the terms and conditions of employment  
16 on the basis of, *inter alia*, religious belief, practice, or observance. *E.g.*, 42 U.S.C. §  
17 2000e(j); Government Code § 12940(*I*). The statutes, however, do not prohibit the owner  
18 of a secular business from introducing religion into the workplace, both as a matter of  
19 religious belief and in the belief that the use of such religious principles furthers the  
20 commercial objectives of that business.

21 While such an employer may establish and maintain a religiously based business  
22 model and require its employees to participate in that activity, the employer ordinarily must  
23 also take into account religious objections of its employees to participation in such practices.  
24 Thus, when an employee raises a good faith religiously based objection to such practices, the  
25 employer must make reasonable efforts to accommodate that objection, to the extent possible  
26 and practicable. “The intent and effect of this definition [of religion] was to make it an  
27 unlawful employment practice under section 703(a)(1) for an employer not to make  
28

1 reasonable accommodations, *short of undue hardship*, for the religious practices of his  
2 employees and prospective employees.” *Trans World Airlines, Inc. v. Hardison*, 432 U.S.  
3 63, 74, 97 S.Ct. 2264, 2272 (1977)(emphasis added).

4 As the federal statute’s language (“without undue hardship on the conduct of the  
5 employer’s business”) and the Supreme Court’s statement in *Hardison* make clear, Congress  
6 recognized that it may not always be possible for an employer to accommodate an  
7 employee’s objections without abandoning the employer’s choice to use a religious based  
8 business model. In such an instance, Congress did not intend and the courts will not require  
9 the employer to do so. *See also*, Government Code § 12940(I) (obligation under Fair  
10 Employment and Housing Act to reasonably accommodate religious belief or observance  
11 does not require employer to incur undue hardship on the conduct of its business).

12 Thus, an employer may establish and maintain a religiously based business model and  
13 require its employees to participate in that activity so long as that employer reasonably  
14 accommodates any worker’s plausible request for exclusion from such a system. *EEOC v.*  
15 *Townley* (9<sup>th</sup> Cir. 1988) 859 F.2d 610, 621 (lower court’s injunction enjoining all mandatory  
16 religious services in the workplace was too broad: Title VII’s religious accommodation “is  
17 served by protecting only those who have religious objections to the services....Nor do we  
18 think that to require that the services be voluntary as to all employees, whether it is their wish  
19 or not, is necessary to further the purposes of Title VII.”).<sup>2</sup> *See, also*, EEOC Compliance  
20 Manual, Section 12: *Religious Discrimination*, (July 22, 2008), ¶12-IV(C)(7) at p. 83 (“There  
21 may be cases, however, where an employer can show that it would pose an undue hardship  
22

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23 <sup>2</sup> There is apparently no parallel judicial guidance under FEHA on a conflict  
24 over an employer’s alleged religious practices introduced in the workplace. In the absence  
25 of applicable California case law on this issue, state courts may look to federal Title VII  
26 law. *Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 635 (“Because the  
27 antidiscrimination objectives and relevant wording of title VII...are similar to those of the  
28 FEHA, California courts often look to federal decisions in interpreting these statutes for  
assistance in interpreting the FEHA.”) (citations omitted); *Guz v. Bechtel Nat., Inc.*  
(2000) 24 Cal.4th 317, 354 (“Because of the similarity between state and federal  
employment discrimination laws, California courts look to pertinent federal precedent  
when applying our own statutes.”).

1 to provide an alternative training or to excuse an employee from any part of a particular  
2 training, *even if the employee asserts it is contrary to his religious beliefs to attend (e.g.,*  
3 *where the training provides information on how to perform the job... or on other workplace*  
4 *policies, procedures, or applicable legal requirements.”)* (emphasis supplied).<sup>3</sup>

5 The point is illustrated by the *Townley* case. There, the Ninth Circuit held that it was  
6 possible for the employer to accommodate the individual employee’s religious objection to  
7 participation in mandatory religious services, but only because such an accommodation did  
8 not create an undue hardship to “the conduct of the employer’s business.” 859 F.2d at 615.  
9 The court found that the employer did not demonstrate that the weekly prayer services were  
10 directly related to the commercial goals of the business as opposed to the spiritual betterment  
11 of its employees. The court emphasized that “*Townley*, the corporate entity, must connect  
12 the asserted spiritual hardship to an adverse impact on the conduct of the business. . . . The  
13 statute, in brief, posits a gain-seeking employer exclusively concerned with preserving and  
14 promoting its economic efficiency.” *Id.* at 615-616.

15 In the instant case, in contrast to *Townley*, the purported religious practice is not a  
16 mere weekly prayer service conducted because the business owner hoped to encourage the  
17 spiritual betterment of his employees, but the entire management system upon which the  
18 company is founded and operates. TAC, ¶ 5, 4:10-11; ¶ 8, 6:13-17, 21-23; ¶ 9, 7:17-21. Thus,  
19 the Hubbard Management System is precisely “concerned with preserving and promoting  
20 [the company’s] economic efficiency.” *Townley*, 859 F.2d at 616. To enjoin the defendant  
21 from using that management system, as plaintiffs seek to do, would be to prohibit it from  
22 doing business at all in the manner in which Mr. Jensen has chosen to operate it, based on

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23  
24 <sup>3</sup> Courts may properly turn to EEOC Guidelines when necessary. *Ray v.*  
25 *Henderson* (9<sup>th</sup> Cir. 2000) 217 F.3d 1234, 1243 (“Although EEOC Guidelines are not  
26 binding on the courts, they ‘constitute a body of experience and informed judgment to  
27 which courts and litigants may properly resort for guidance.’”) (citations omitted); *Miller*  
28 *v. Department of Corrections* (2005) 36 Cal.4th 446, 465 (“The one pertinent California  
decision generally indicates that the standards and reasoning embodied in the EEOC  
policy statement provide appropriate guidelines in interpreting and applying the relevant  
provisions of the FEHA.”). By an accompanying filing, defendant requests judicial notice  
of the pertinent federal agency guidelines.

1 his conviction that the Hubbard management system will maximize the business' commercial  
2 opportunities and profits and the 25-plus year proven success of that system. TAC, ¶ 5, 3:19-  
3 25, 3:27-4:9. The "undue hardship" imposed on the business would be patent and pervasive.

4 To the extent that the Hubbard Management System is inherently religious in nature,  
5 Mr. Jensen's choice to use it to conduct his business is protected by the First Amendment and  
6 the California Constitution.<sup>4</sup>

7 Employers and supervisors possess fundamental rights under the free exercise clause.  
8 *Brown v. Polk County* (8<sup>th</sup> Cir. 1995) 61 F.3d 650, 658-59, *cert. denied*, 516 U.S. 1158  
9 (1996) (directing a county supervisor to cease any activities that could be considered to be  
10 religious proselytizing, witnessing or counseling gave too much dominance to the  
11 establishment clause that would unlawfully allow it to trump the free exercise clause;  
12 likewise the court deemed it unconstitutionally intrusive to require him to remove religious  
13 items from his office); *Meltebeke v. Bureau of Labor and Industries* (Or. Sup.Ct. 1995) 903  
14 P.2d 351 (employer has a federal and state constitutional right to religious conscience and  
15 practice in the workplace); *Townley* at 621 ("Where the religious practices of employers...and  
16 employees conflict, Title VII does not, and could not, require individual employers to  
17 abandon their religion. Rather, Title VII attempts to reach a mutual accommodation of the

18 <sup>4</sup> Defendant does not concede the Hubbard Administrative Technology it uses  
19 is inherently religious at all. As we detailed in the October 6, 2008 motions for summary  
20 judgment, the model was adapted from the management system used by the Church of  
21 Scientology so that it could be used in any secular business or organization. The fact that  
22 it originated in the administration of a church does not make it a religious system in all  
23 other contexts. Similarly, defendant does not concede that no reasonable accommodation  
24 could be made for an employee who raises good faith religious objections to some aspect  
25 of the system. Again, as detailed in the October 6 summary judgment motion against him;  
26 defendant in fact offered accommodations to Mr. LeShay – the only one of the two  
27 plaintiffs that asked for such – which he rejected, insisting instead that he be exempted  
28 from the entire basis upon which the company is administered. This motion is addressed  
to plaintiffs' insistence that the entire management system is inherently and pervasively  
religious in nature, that no accommodation could ever protect employees from such  
religious practices, and therefore that the court enjoin and flatly prohibit the defendant  
company from using its management system and structure, bringing the entire business of  
Diskeeper Corporation to a grinding halt. The Court should strike the subject injunction  
allegations else a predatory plaintiff could theoretically seek out a company organized on  
some religious principles, work for but a few days as Mr. LeShay admittedly did here, and  
then file an action claiming grievous injury and demanding the company's destruction as  
that former employee's "ultimate solution."

1 conflicting religious practices. This is consistent with the First Amendment's goal of  
2 ensuring religious freedom in a society with many different religions and religious groups.”).<sup>5</sup>

3 The above First Amendment employer prerogative would apply even if an employer  
4 requires its employees to engage in actual religious services. EEOC Compliance Manual,  
5 Section 12: *Religious Discrimination*, (July 22, 2008), ¶12-IV(C)(7) at p. 81 (“Some  
6 employers have integrated their own religious beliefs or practices into the workplace, and  
7 they are entitled to do so,” citing *Townley* at 619-21 [“private employer has First Amendment  
8 free exercise right to express its religion in the workplace”]). Thus, *Townley* and its progeny  
9 trump plaintiffs’ ability to pursue injunctive relief.

10 Not only is the Court to construe FEHA’s application in a manner consistent with the  
11 First Amendment and the California Constitution (see part IV, below), but, if possible, also  
12 in a manner that avoids any potential constitutional conflict. *NLRB v. Catholic Bishop of*  
13 *Chicago* (1979) 440 U.S. 490, 502-503, 99 S.Ct. 1313 (Court construed NLRA as not  
14 including secular teachers at Catholic schools, despite the absence of any exception in the  
15 statute, to avoid the potential constitutional confrontation if the Act were to cover such  
16 teachers); *Ashwander v. Tennessee Valley Authority* (1935) 297 U.S. 288, 346-348, 56 S.Ct.  
17 466 (Brandeis, J., concurring) (Court has developed for its own governance rules including  
18 first ascertaining whether a statutory construction is possible that avoids the constitutional  
19 question altogether).<sup>6</sup>

20 Striking plaintiffs’ reinstatement and injunction allegations without leave to amend  
21 is consistent with this rule of avoiding a constitutional confrontation where possible. Mr.

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22 <sup>5</sup> See also, Kaminer, D.N., “When Religious Expression Creates a Hostile  
23 Work Environment: The Challenge of Balancing Competing Fundamental Rights,” 4  
24 NYU J. Legis. & Pub. Pol’y 81 (2000-2001) (“An employer’s religious speech and  
25 expression is entitled to the same unique constitutional protection as that of an  
employee”).

26 <sup>6</sup> Accord: *Welsh v. United States* (1970) 398 U.S. 333, 342-343, 90 S.Ct.  
27 1792 (Court construed the conscientious objector exemption from the Selective Service  
28 Act as including those with certain deeply held philosophical beliefs to avoid  
constitutional question of whether exclusion of such beliefs would violate Free Exercise  
Clause).

1 Godelman and Mr. LeShay allege Diskeeper Corporation's entire management system is "the  
2 Scientology religion and its teachings." TAC, ¶ 5, 4:10-11. To permit the prospect of  
3 enjoining a company from utilizing religion as its administrative model will lead this Court  
4 into a potential constitutional thicket difficult, if not impossible, to negotiate. Such  
5 injunction would not be a common "cease and desist" order addressing a particular unlawful  
6 employment practice. Cf., *United States v. Commonwealth of Virginia* (4<sup>th</sup> Cir. 1980) 620  
7 F.2d 1018, 1024 (enjoining state trooper height and weight guidelines that discriminated  
8 against women); *Easley v. Anheuser-Busch, Inc.* (8th Cir. 1985) 758 F.2d 251, 255-56  
9 (enjoining preemployment test with racially discriminatory impact). Rather, plaintiffs'  
10 requested injunction would require the Court to make factual determinations as to what  
11 workplace practices are religious or "religiously based" and to monitor the entirety of  
12 company operations to ensure such practices are, and remain, eliminated from application.  
13 See, *People v. Woody* (1964) 61 Cal.2d 716, 726 (inquiry into the nature of a defendant's  
14 religious beliefs is an inquiry both difficult and repugnant to the spirit of our law, citing  
15 *United States v. Ballard* (1944) 322 U.S. 78); *NLRB v. Catholic Bishop of Chicago*, 440 U.S.  
16 at 502 (NLRB jurisdiction over secular teachers employed by Catholic schools would require  
17 Board to consider questions of religious belief and good faith; "[i]t is not only the  
18 conclusions that may be reached by the Board that may impinge on rights guaranteed by the  
19 Religion clauses, but also the very process of inquiry . . ."). See also, *Catholic Charities of*  
20 *Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 563 (a determination of what is  
21 a 'religious' belief may present a most delicate question).

22 As *Townley* and the complementary EEOC guidelines clearly recognize an employer's  
23 prerogative for the introduction of even mandatory religion in the workplace and as  
24 undertaking any process to determine and "weed out" company religious practices would  
25 create a constitutional conundrum likely immune from resolution, this Court should strike  
26 without leave to amend each of plaintiffs' reinstatement and injunction allegations and the  
27 applicable portions of their accompanying prayer as lawfully and constitutionally untenable.  
28



1           **IV. PLAINTIFFS' PROPOSED INJUNCTION UNCONSTITUTIONALLY**  
2                   **TARGETS ALLEGED RELIGIOUS PRACTICES**

3           Plaintiffs ask this Court to apply the injunction remedy of the Fair Employment and  
4 Housing Act (Gov't Code § 12970(a)) to directly regulate or prohibit an alleged religious  
5 practice and belief.<sup>7</sup> "If the law at issue ... regulates or prohibits conduct because it is  
6 undertaken for religious reasons," then strict scrutiny applies. *Church of the Lukumi Babalu*  
7 *v. City of Hialeah* (1993) 508 U.S. 520, 532. "If the object of the law is to infringe upon or  
8 restrict practices because of their religious motivation, the law is not neutral and it is invalid  
9 unless it is justified by a compelling state interest and is narrowly tailored to advance that  
10 interest. *Id.*, 508 U.S. at 532.<sup>8</sup>

11           Cal. Const. article I, section 4 provides in relevant part: "The free exercise and  
12 enjoyment of religious profession and worship, without discrimination or preference, shall  
13 forever be guaranteed in this State ... but the liberty of conscience hereby secured shall not  
14 be construed as to excuse acts of licentiousness, or justify practices inconsistent with the  
15 peace and safety of this State." This provision is at least as protective of religious free  
16 exercise as the First Amendment, if not more so. *Catholic Charities of Sacramento, Inc. v.*  
17 *Superior Court* (2004) 32 Cal.4th 527, 547 - 548, citing *Employment Div., Ore Dept. Human*  
18 *Res. v. Smith* (1990) 494 U.S. 872, 877, 879, 110 S.Ct. 1595 (referred to in some scholarship  
19 as "Smith II") (government may not regulate religious beliefs by punishing their affirmation,  
20 nor may it target conduct for regulation only because it is undertaken for religious reasons).<sup>9</sup>

21           Madam Justice Brown's comments in *Catholic Charities of Sacramento* are apropos.

22           <sup>7</sup> *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211,  
23 213 (private litigants may seek all remedies accorded the government under FEHA), cited  
in plaintiffs' October 14, 2008 motion for leave to amend complaint at p.2).

24           <sup>8</sup> *See also, New York Times v. Sullivan* (1964) 376 U.S. 254, 265, 277, 84  
25 S.Ct. 710 (courts are bound to uphold constitutional standards in civil suits between  
private parties); *NAACP v. Claiborne Hardware Company* (1982) 458 U.S. 886, 924, note  
26 67, 102 S.Ct. 3409 (civil suit injunction cannot limit constitutionally protected activity).

27           <sup>9</sup> Article I, section 4 is not dependent on the meaning of any provision of the  
28 federal Constitution and thus confers rights "not dependent on those guaranteed by the  
United States Constitution." *Catholic Charities of Sacramento, Inc. v. Superior Court*  
(2004) 32 Cal.4th 527, 560-561, quoting Cal.Const. article I, section 24.

1 “Here we are dealing with an intentional, purposeful intrusion into [alleged] expression of  
2 ... religious tenets and sense of mission. The government is not accidentally or incidentally  
3 interfering with [alleged] religious practice; it is doing so willfully by making a judgment  
4 about what is and what is not religious. This is precisely the sort of behavior that has been  
5 condemned in every other context.” *Catholic Charities of Sacramento, above*, 32 Cal.4th at  
6 578 (Brown, J., dissenting).<sup>10</sup>

7 To justify using this Court’s power to bar the company from utilizing a set of religious  
8 practices and beliefs as its business model, “no showing merely of a rational relationship to  
9 some colorable state interest [will] suffice; in this highly sensitive constitutional area, ‘only  
10 the gravest abuses, endangering paramount interests, give occasion for permissible  
11 limitation.’” *People v. Woody*, above, 61 Cal.2d at 719. Moreover, even if plaintiffs could  
12 demonstrate such a compelling, overriding interest for imposing an injunction on such  
13 purported religious practices, they would have to show no available, less restrictive  
14 alternative to that regulation in order to justify their proposed shutdown as a matter of law.  
15 *Catholic Charities of Sacramento, above*, 32 Cal.4th at 562. Mr. Godelman’s and Mr.  
16 LeShay’s direct targeting of an alleged religious practice does not survive such strict scrutiny  
17 review as a matter of law.

18 **1. Plaintiffs’ Injunction Remedy Poses a Significant Impact on Alleged Religious**  
19 **Practices:** As plaintiffs position the Hubbard Administrative Technology and its “related

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20 <sup>10</sup> The U.S. Supreme Court’s decision in *Smith II* only applies to strictly  
21 neutral laws of general application and is probably not the law under the California  
22 Constitution in any event. With provisions markedly different from the First  
23 Amendment’s Religion Clause and which parallel the language in Cal. Const. article I,  
24 section 4, at least three other states have declared their constitutions require strict scrutiny  
25 review of religious free exercise claims for exemption from neutral, generally applicable  
26 laws. *State v. Hershberger* (Minn. 1990) 462 N.W.2d 393, 397 (Minnesota Constitution  
27 article 1, section 16 requires state to demonstrate interests of the highest order and that  
28 cannot otherwise be served to overbalance legitimate free religious exercise claims); *First  
Covenant Church of Seattle v. City of Seattle* (Wash. 1992) 840 P.2d 174, 187  
(Washington Constitution article 1, section 11 requires state to demonstrate its compelling  
interest for action that is the least restrictive alternative in the face of a free religious  
exercise claim of exemption from a neutral, generally applicable law); and *Humphrey v.  
Lane* (Ohio 2000) 728 N.E.2d 1039, 1045 (under Ohio Constitution section 7, article I,  
court adheres to the “compelling state interest” and “least restrictive alternative” standard  
on free exercise of religion claims).

1 Hubbard Study Technology” as the alleged “‘cover’ names for the fundamental teachings of  
2 the Scientology religion” in this workplace,<sup>11</sup> their sought-after full shutdown of the  
3 company’s use of these technologies proposes a significant burden on alleged religious  
4 practices. *Catholic Charities of Sacramento*, above, 32 Cal.4th at 562.

5       **2. There is No Compelling Interest for Plaintiffs’ Proposed Injunction that**  
6 ***Outweighs Interest in Maintaining Alleged Religious Practices:*** Second, while plaintiffs  
7 can cite an important state interest generally in maintaining FEHA’s non-discriminatory  
8 standards in the workplace, *Townley* illustrates that interest is not sufficiently compelling to  
9 justify plaintiffs’ proposed total workforce injunction over the conduct of even mandatory  
10 religious practices to which *only they* allegedly object.<sup>12</sup> Moreover, as shown by the  
11 Minnesota Supreme Court’s treatment of nearly identical language in its constitution in  
12 *Hershberger* (note 10, above), the closing passage of Cal. Const. article I, section 4 limits the  
13 specific interests the government can propose as overriding alleged religious practices to the  
14 regulation of licentious conduct and of actions threatening the public peace and safety.  
15 Nowhere in their third amended complaint do plaintiffs allege – nor could they in good faith  
16 allege – that defendant’s utilization of the supposedly “religious” Hubbard Administrative  
17 Technology and Hubbard Study Technology are either licentious or pose a danger to

18 ///

19 ///

20 ///

21 ///

22 ///

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23       <sup>11</sup> TAC, ¶ 20, 16:27-17:5 (first cause of action); ¶ 34, 22:26-23:4 (third cause  
24 of action); ¶ 48, 28:17-23 (fifth cause of action) .

25       <sup>12</sup> Again, Justice Brown’s observations in *Catholic Charities of Sacramento*  
26 are appropriate. “At the very least, the constitutional weight of the state’s interest must be  
27 affected by the size and severity of the problem the state is trying to solve. To authorize  
28 the state to use a howitzer to smite a gnat should be no part of our constitutional  
jurisprudence. Where strict scrutiny applies, the state ‘may abridge religious practices  
only upon a demonstration that some compelling state interest outweighs the defendants’  
interests in religious freedom.”32 Cal.4th at 586 (Brown, J., dissenting).

community peace and safety.<sup>13</sup>

**3. Plaintiffs' Third Amended Complaint Demonstrates Their Injunction is Not the Alternative Least Restrictive to Religious Free Exercise:** Last, even if Mr. Godelman and Mr. LeShay could demonstrate an amply compelling interest to regulate these alleged religious practices, their third amended complaint on its face establishes that interest *can* otherwise be served. Plaintiffs allege reinstatement and injunction as an alternative remedy to their collection of supposed lost future earnings. Surely, even presuming liability under any of plaintiffs' several theories of recovery, collection of money damages is the alternative least restrictive of the religious foundation and nature Mr. Godelman and Mr. LeShay attempt to ascribe to defendant's comprehensive business model.

## V. CONCLUSION

Mr. Godelman and Mr. LeShay could never be lawfully entitled to an injunction shutting down on religious grounds a company's entire business model as pled in their third amended complaint. By this suit – and their injunction allegations in particular – plaintiffs seek at a tremendous waste of this Court's resources to impose groundless restraints on a former employer by appeals to hoped-for bigotry and intolerance rather than to any rational application of the law. This case must and will fall by its own ill-conceived weight. This

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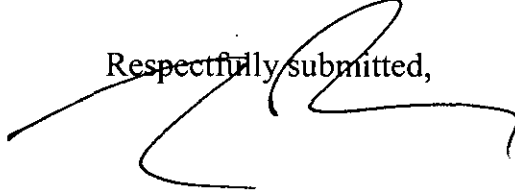
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<sup>13</sup> The *Hershberger* Court found Minnesota constitution's section 16 expressly limited the governmental interests that may outweigh religious liberty by language word-for-word identical to Cal. Const. article I, section 4: "... but the liberty of conscience hereby secured shall not be construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of this State." Observing the U.S. Supreme Court has permitted more varied interests to justify the imposition of government power over a federal Free Exercise Clause claim (e.g., *Goldman v. Weinberger* (1986) 475 U.S. 503, 508, 106 S.Ct. 1310 [military's interest in uniformity and discipline outweighs individual's interest in wearing a yarmulke]) while Minnesota's constitution section 16 expressly limits the permissible countervailing interests of the government (i.e., only instances of licentiousness or practices contrary to public peace and safety), the *Hershberger* Court concluded its citizens are afforded greater protection for religious liberties against government action than the federal constitution. 462 N.W.2d at 397. Thus, in Minnesota, even a neutral law of general applicability is subject to strict scrutiny if such law impinges upon religious practice that is neither licentious or a threat to community peace and safety. 462 N.W.2d at 400 (Simonett, J., concurring).

1 Court's grant of this motion to strike without leave to amend is a just and fair initial step in  
2 that process.

3 Dated: December 5, 2008

Respectfully submitted,



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Cynthia Bamforth  
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10

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John A. Clarke, Executive Officer/Clerk  
BY SHAUNYA WESLEY, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

ALEXANDER J. GODELMAN, an  
Individual; and MARC LE SHAY, an  
Individual,

Plaintiffs,

vs.

DISKEEPER CORPORATION, a  
Delaware corporation; and DOES 1-50,  
inclusive,

Defendants.

CASE NO. BC 374 449

*Assigned for all purposes to the  
Hon. Jane L. Johnson, Department 56*

~~PROPOSED~~ THIRD AMENDED  
COMPLAINT FOR DAMAGES FOR:

1. DISCRIMINATORY DISCHARGE AND  
FAILURE TO ACCOMMODATE  
(RELIGION) IN VIOLATION OF THE  
FAIR EMPLOYMENT AND HOUSING  
ACT;
2. WRONGFUL TERMINATION IN  
VIOLATION OF PUBLIC POLICY;
3. RETALIATION IN VIOLATION OF  
THE FEHA;
4. RETALIATION IN VIOLATION  
LABOR CODE § 1102.5; and
5. FAILURE TO PREVENT  
DISCRIMINATION

DEMAND FOR JURY TRIAL

Plaintiffs Alexander J. Godelman and Marc Le Shay allege and complain as follows:

///

1 GENERAL ALLEGATIONS

2 1. Plaintiffs:

3 (a) Plaintiff ALEXANDER J. GODELMAN ("GODELMAN") is a natural  
4 person who has been, and at all times relevant hereto was, a resident of the County of Los  
5 Angeles and a citizen of the State of California.

6 (b) Plaintiff MARC LE SHAY ("LE SHAY") is a natural person who has  
7 been, and at all times relevant hereto was, a resident of the County of Los Angeles and a citizen  
8 of the State of California.

9 (c) The use of the term "PLAINTIFFS" in this Complaint is intended to  
10 refer to both GODELMAN and LE SHAY collectively.

11  
12 2. Defendants:

13 (a) PLAINTIFFS are informed and believe, and on that basis allege, that  
14 defendant DISKEEPER CORPORATION (hereinafter, "DISKEEPER") is, and at all times  
15 mentioned herein was, a Delaware corporation which is qualified and authorized to do business  
16 (and is doing business) in the State of California, with its principal place of business located in  
17 Los Angeles County at 7590 N Glenoaks Blvd., Burbank, CA 91504. Among other things,  
18 DISKEEPER is an employer of five or more employees and is engaged in the business of  
19 developing, manufacturing and distributing computer software products for distribution on a  
20 world-wide basis. PLAINTIFFS are further informed and believe, and thereon allege, that  
21 DISKEEPER is not a non-profit "religious association or corporation" exempt from the State  
22 and Federal laws prohibiting religious discrimination in the hiring and employment of its  
23 employees (including, without limitation, Section 12926.2(d) of the California Fair Employment  
24 & Housing Act, Government Code § 12900 *et seq.* ("FEHA")).

25  
26 Doe Defendants

27 3. The true names and capacities, whether individual, corporate, associate or  
28 otherwise, of the Defendants sued herein as DOES 1 through 50 are unknown to PLAINTIFFS,

1 who therefore sue said DEFENDANTS by such fictitious names. DOES 1 through 10 were at  
2 all relevant times the officers, directors and/or managing agents of DISKEEPER. PLAINTIFFS  
3 will seek leave of court to amend this complaint to allege the true names and capacities of DOES  
4 1 through 50 when they have been ascertained, if necessary. The use of the term  
5 "DEFENDANTS" in this Complaint is intended to refer to defendant DISKEEPER and to all  
6 DOE Defendants in this action.

7  
8 Agency Relationship

9 4. PLAINTIFFS are informed and believe, and thereon allege, that at all times  
10 relevant hereto, each of the defendants was the employer or employee, joint venturer, partner,  
11 agent, co-conspirator and/or servant of each of the remaining defendants, and in doing each and  
12 all of the things hereinafter alleged was acting within the scope and purpose of his, her or its  
13 authority as such employer, employee, joint venturer, partner, agent, co-conspirator and/or  
14 servant, and with the permission, consent and ratification, whether express or implied, of each  
15 of the remaining defendants. On information and belief, each of the defendants sued as DOES  
16 1 through 50 is in some manner legally responsible for the injuries to PLAINTIFFS.

17  
18 Nature of Diskeeper's Business

19 5. DISKEEPER is a ~~global~~ corporation whose products are marketed and  
20 distributed in six continents - North America, South America, Europe, Asia, Africa and  
21 Australia. According to its own website found at [www.diskeeper.com](http://www.diskeeper.com), DISKEEPER has "for  
22 over 25 years . . . been the leader in the creation of file system performance products which  
23 greatly increased computer performance, productivity, and reliability of computer systems  
24 around the world. [¶] So important is Diskeeper to the world of computing that it was named  
25 among the Top 5 products that everyone should have on their computer systems or networks."  
26 PLAINTIFFS are informed and believe, and thereon allege, that DISKEEPER is owned and  
27 operated by CRAIG JENSEN, the former Chief Executive Officer and current Chairman of  
28 DISKEEPER (hereafter, "JENSEN"), a self-proclaimed "entrepreneur and humanitarian" who,



1 according to his personal website found at [www.craigjensen.com](http://www.craigjensen.com), attributes his personal success  
2 to the now-deceased founder of the Scientology religion, L. Ron Hubbard (for whom JENSEN  
3 provides a link to Mr. Hubbard's own website, [ironhubbard.org](http://ironhubbard.org)):

4 "I created Diskeeper Corporation to use my computer abilities to  
5 help others and make a good living for my family. When I started  
6 the business, however, I had not counted on the awesome power of  
7 the Hubbard Management System, which has made Diskeeper  
8 Corporation one of the most successful software companies in the  
9 world."

10 As alleged in greater detail in this Complaint, the so-called "Hubbard Management System" is  
11 nothing more than a thinly-veiled cover for the Scientology religion and its teachings.

#### 12 13 Hiring of Godelman

14 6. GODELMAN has been employed as a senior level technology executive  
15 for over 25 years with a background in design, planning, implementation and service delivery  
16 of technology systems and services as well as team-building and coaching. GODELMAN has  
17 worked for start-ups and for Fortune 100 companies (including Time Warner, Disney, ABC,  
18 Electronic Arts, CCH, Bank of America and Wells Fargo, among others) managing large teams  
19 of IT professionals in a variety of complex technology environments. After an intensive  
20 solicitation and recruiting effort, DISKEEPER extended an offer of employment to  
21 GODELMAN in May of 2006 (and he commenced providing services on May 22, 2006).  
22 GODELMAN's position at DISKEEPER was that of "Chief Information Officer" with an annual  
23 salary of \$170,000 and a target bonus of \$35,000, plus health and other employer-provided  
24 insurances, paid vacation, and the like. In this position, GODELMAN was in charge of all  
25 aspects of the company's "information technology" operations and reported to JENSEN, at that  
26 time the Chief Executive Officer and Chairman of the Board, and Lisa Terrenzi, Deputy CEO,  
27 Board Member and Chairperson of the so-called "Executive Council" which managed the

28 ///

1 business operations of DISKEEPER. GODELMAN took over the role formerly held by Andy  
2 Staffer, Director of Research and Development, who after training GODELMAN in the essential  
3 functions of the job, told him that he was confident that GODELMAN possessed the requisite  
4 technical and business skills to successfully perform the CIO position "with [his] eyes closed."  
5 This observation was prescient as GODELMAN did, in fact, successfully perform all of his  
6 assigned duties and responsibilities throughout his tenure with DISKEEPER, at least until  
7 October 19, 2006 when he was prevented from doing so by being terminated for his refusal to  
8 subscribe to the Scientology religion and the religious beliefs and teachings thrust upon him by  
9 DISKEEPER and in retaliation for standing up for the rights of plaintiff LE SHAY (whose  
10 request to be accommodated by being excused from the company requirement that he study,  
11 learn and apply the fundamental principles of the Scientology religion was rejected by  
12 DISKEEPER management).

#### 13 14 Hiring of Le Shay

15 7. After having personally observed his excellent work as an employee at  
16 other companies, GODELMAN recommended to his superiors at DISKEEPER that plaintiff  
17 LE SHAY be hired in or about September of 2006 to provide assistance and support for several  
18 ongoing projects undertaken by GODELMAN. LE SHAY commenced providing services as  
19 an employee at DISKEEPER on October 2, 2006, in the position of Automation Planning  
20 Officer (reporting to plaintiff GODELMAN). LE SHAY was employed with an annual salary  
21 of \$130,000 and an annual bonus of unlimited potential depending on his performance. Like  
22 GODELMAN, LE SHAY was entitled by virtue of his employment to receive health and other  
23 employer-provided insurances, paid vacation, and the like. In this position, LE SHAY provided  
24 support for the Information Technology operations of DISKEEPER's business and was  
25 responsible for both oversight of architectural design of the company's IT systems, and for  
26 developing and executing the IT project management and delivery processes in a repeatable and  
27 consistent manner. Like GODELMAN, LE SHAY successfully performed all of his assigned  
28 duties and responsibilities throughout his short tenure with DISKEEPER, at least until

1 October 11, 2006, when he was asked to submit his "resignation" in lieu of being terminated for  
2 his refusal to take company-required training courses based on the Scientology religion.

3  
4 Scientology Training a Condition of Employment

5 8. During the recruitment process, both GODELMAN and LE SHAY were  
6 informed by representatives of DISKEEPER that they were expected and required to attend a  
7 basic training course referred to internally at DISKEEPER as "Company Basics Zero" (which  
8 was described as a "staff orientation" training about the company and its methods of conducting  
9 business). GODELMAN and LE SHAY were also told that, following their successful  
10 completion of the "staff orientation" training, they would be required to attend a more advanced  
11 training program referred to internally at DISKEEPER as "Company Basics I and II" (which  
12 were described as merely "additional training" courses dealing with the methods of the business  
13 of the company). However, these innocuous descriptions of the mandatory training courses were  
14 a pretext and a cover up for a more malevolent and unlawful purpose -- to indoctrinate the  
15 workforce of DISKEEPER to the teachings and methods of Scientology, a body of teachings and  
16 related techniques developed by American science fiction author L. Ron Hubbard and founded  
17 in 1952 as a self-help philosophy and later viewed and described as a new religion. The religion  
18 of Scientology is based in Churches located in America, Canada, the United Kingdom,  
19 Australia, Africa and other countries throughout the world through a network of affiliated  
20 organizations that claim ownership and sole authority to disseminate the teachings and methods  
21 developed by L. Ron Hubbard. Rather than teach its employees about DISKEEPER and/or its  
22 business, the mandatory "training courses" imposed on its employees (including PLAINTIFFS)  
23 were teachings of the Scientology religion.

24  
25 Work Environment Permeated With Scientology

26 9. The working conditions and work environment at DISKEEPER were  
27 inextricably intertwined with the Scientology religion such that a non-Scientologist cannot  
28 escape constant impositions of said religion. From the abundance of religious artwork, to the



1 of these religion indoctrination sessions (which were taught nightly from 5:00 p.m. to 8:00 p.m.,  
2 Monday through Friday without payment of any overtime wages to any of the employees forced  
3 to attend, whether exempt or non-exempt), GODELMAN repeatedly protested having to attend  
4 these so-called "training seminars" and resisted DISKEEPER's efforts to convert him from his  
5 religion (Jewish) to Scientology. On June 8, 2006, in a meeting with Andy Staffer, the then-  
6 interim Chief Information Officer who was transferring his duties and responsibilities to  
7 GODELMAN, Mr. Staffer stated that, while he had no questions about GODELMAN's skills  
8 or competencies to do his job, he was concerned about his resistance to adopting the Scientology  
9 religion, stating (as best GODELMAN can recall):

10 " The success of our company as well as the success of many of us  
11 is attributed to our religion and our dedication to its concepts and  
12 teachings. I don't see you putting any value on this as of yet, nor  
13 do I see you expressing any interest learning our religion. Unless  
14 you learn it well, you can't really have an opinion about it and can't  
15 really decide for yourself whether or not it would ever work for  
16 you." Andy stated that he cannot see how Alex can make an  
17 intelligent decision about religion or anything else for that matter  
18 without learning what it is and what affect it has on people."

16 In response, GODELMAN stated that he did not join DISKEEPER to discover a new religion  
17 and wanted only to focus on his job as the new Chief Information Officer. Mr. Staffer would  
18 not relent, however, stating that the Scientology courses being taught at DISKEEPER were all  
19 needed to be "successful and productive." In this meeting, Mr. Staffer gave GODELMAN a  
20 book espousing Scientology methods and teachings, reminding GODELMAN that he [Staffer]  
21 was a member of the Board of Directors of DISKEEPER and stating: "This book will help you  
22 to understand what we are and what we stand for. Please read it as soon as possible and  
23 specifically focus on the chapters discussing the aims of Scientology. I need you to get it cold  
24 and see what we stand for and why you would want to be one of us" (or words to that effect).  
25 Mr. Staffer then concluded the meeting with GODELMAN with an ominous warning: "You  
26 can't be against something without knowing what it is. I need you to read [the book]. Please  
27 don't make me ask you again. I just want you to be successful and this is what you need to learn  
28 to be a success." That same day, GODELMAN approached his supervisor, JENSEN, CEO and

1 Chairman of the Board, to discuss his uncomfortable conversation with Mr. Staffer.  
2 GODELMAN sought guidance about what to do, expressly stating to JENSEN that he was not  
3 interested in attending "training courses" that were not job-oriented, but rather were focused on  
4 the teachings and methods of the Scientology religion. Rather than intervene or otherwise  
5 assure GODELMAN that adherence to (and adoption of) the Scientology religion was not a  
6 condition of his employment, JENSEN stated that most of his successes (personal and business)  
7 were attributable to Scientology and its teaching. JENSEN told GODELMAN that his  
8 attendance at and participation in the company-provided "training courses" was not negotiable  
9 and that once GODELMAN learned more about Scientology, he would begin understanding and  
10 appreciating its benefit (adding that it was "for your own good" and that, at the end of the weeks  
11 of training, GODELMAN would become more intelligent as an executive and as an individual  
12 (and that his professional and personal life would "improve drastically"). Chairman JENSEN  
13 concluded the meeting with GODELMAN by telling him that the "training courses" were  
14 something he "felt strongly about" and warning him not to complain about the process in any  
15 e-mails (which he said could be "misconstrued" and/or "taken out of context"). JENSEN stated  
16 to GODELMAN that he "strongly recommend[ed]" that he "go with the program" and asked him  
17 to reserve his judgments for a later time. Approximately a week later, on or about June 14,  
18 2006, Lisa Terrenzi, Deputy CEO and Chairman of the so-called Executive Council, asked  
19 GODELMAN if he had any questions about his meeting with Chairman JENSEN and stated that  
20 she trusted that he would "do the right thing" (implying that she expected him to attend the  
21 company-provided Scientology sermons referred to internally as "training courses"). Numerous  
22 other examples of the coercion of DISKEEPER to induce GODELMAN to attend and  
23 participate in Scientology courses and training exist. GODELMAN, however, continued to  
24 refuse to participate in company-sponsored events that were Scientology-based, including a  
25 supposed seminar at the Church of Scientology campus on Hollywood Blvd. in Los Angeles.  
26 This refusal resulted in a series of criticisms of GODELMAN that had nothing to do with his  
27 work performance and everything to do with his religious beliefs. No effort was made to

28 ///

1 accommodate GODELMAN's preference to choose when to practice and study his own religious  
2 beliefs (Judaism) by any of DISKEEPER's employees except GODELMAN.

3 Employer Failure to Accommodate Le Shay's

4 Request Not to Attend Scientology Training Courses

5 11. As noted in Paragraph 7, above, LE SHAY had a much shorter employment  
6 tenure at DISKEEPER than GODELMAN. On October 4, 2006, two days after he was hired  
7 as the Automation Planning Officer, LE SHAY approached GODELMAN to complain about  
8 the first "training course" he had been required to attend the night before. LE SHAY informed  
9 GODELMAN that he welcomed any training that DISKEEPER desired to provide to assist him  
10 in successfully performing his job, but that he felt that the seminar he attended was not about  
11 his job and, instead, was about the Scientology religion. GODELMAN -- having experienced  
12 the same concerns with the training he had been required to attend -- then solicited the input and  
13 intervention of Breana Wells, Vice President of Human Resources. Both LE SHAY and  
14 GODELMAN attempted to explain to Ms. Wells that the material being taught in the training  
15 courses was religious in nature and proselytized the Scientology principles of management and  
16 study developed by L. Ron Hubbard. Ms. Wells acknowledged that the "Hubbard systems"  
17 management philosophy was required training and that DISKEEPER employees were expected  
18 to apply those principles in the work place, but was adamant in stating that "the courts have  
19 declared these materials to be non-religious" and that several businesses and schools used the  
20 same course materials that PLAINTIFFS had objected to. LE SHAY repeated that he was not  
21 willing to participate in the company-required training courses if they continued to be based on  
22 Scientology principles. Ms. Wells then stated that she did not know what to do and that she  
23 would have to get back to him. Later, Ms. Wells agreed to remove some of the classes in the  
24 training schedule for LE SHAY, but that he would still be required to attend the so-called "Basic  
25 Study Manual" courses. LE SHAY stated that he was uncomfortable with the Scientology-based  
26 content that he experienced in the "Technology of Study" course he had began, and declined to  
27 take the "Basic Study Manual" course (which he understood was just more of the same content  
28 that he had previously objected to). Ms. Wells then left the room, but a few hours later LE

1 SHAY was approached by Flavia Taylor, Head of the Establishment Office (a DISKEEPER  
2 division responsible for assimilating new employees into the company and its culture), who  
3 asked if there was a "problem" with his training. LE SHAY then related what had transpired  
4 to date, to which Ms. Taylor replied "keep in mind that all of our employees are expected to  
5 study and use the Hubbard system." No effort was made to accommodate LE SHAY's  
6 preference to choose when to practice and study his own religious beliefs (Judaism) by any of  
7 DISKEEPER's employees except GODELMAN.

8  
9 Evidence of Employer Requirement of Religious Conformity

10 12. Near the end of GODELMAN's employment, he was criticized again for  
11 failing to conform his beliefs and methods of doing business to Scientology principles. In an  
12 e-mail dated September 2, 2006, one of GODELMAN's superiors, Gary Edwards, wrote to  
13 JENSEN to note GODELMAN's non-compliance and to suggest additional Scientology training  
14 that he should be forced to take, as follows:

15 **"From:** Network Executive  
16 **Sent:** Saturday, September 02, 2006 7:13 PM  
17 **To:** Crams  
18 **Cc:** CIO  
19 **Subject:** FW: RUSH - KR - Alex Godelman

20 CIO cc

21 Crams ←

22 CJ Comm

23 I am being Alex's Esto and got the following KR regarding the AC. I realize that Alex has not  
24 previously studied the policies listed below but we need the CIO to know this is how we  
25 operate.

26 Suggest:

27 HCO PLAINTIFF Operational, Definition Of	OEC Vol 0 page 570
28 HCO PLAINTIFF Environmental Control	OEC Vol 0 page 563
HCO PLAINTIFF Operating At Risk	OEC Vol 0 page 552
HCO PLAINTIFF Spectatorism	OEC Vol 0 page 550

Please let me know when you pull him in. You can use his Esto time from 11:00 to 12:00 if  
he doesn't have any other time to do it.

ML,

Gary Edwards  
CJ Comm  
Diskeeper Corporation "



PLAINTIFFS are informed and believe, and thereon allege, that the terms "Cram," "CJ Comm," "Esto," "KR", "AC," "OEC" and "ML" are all Scientology-based terms and that the reference to "CIO" referred to GODELMAN in his then-position of "Chief Information Officer."

### Termination of Le Shay and Godelman

13. On October 11, 2006, Flavia Taylor gave an ultimatum to LE SHAY that he either agree to attend and participate in the "Basic Study Manual" courses he had objected to based on his religious beliefs, or leave DISKEEPER. Ms. Taylor's exact words to LE SHAY were "You have a choice to make." LE SHAY went to GODELMAN and told him he had no choice but to resign because no one in upper management (besides GODELMAN) would listen to his complaints or do anything to remedy the situation. GODELMAN then attempted to seek the intervention of Mercedes Del Castillo, Executive Vice President of Operations, but even she reiterated that the "Basic Study Manual" courses that LE SHAY had objected to were "mandatory" and a condition of employment. Faced with DISKEEPER's failure and refusal to remove religious teachings and proselytizing from the workplace, LE SHAY then tendered his resignation (although, from a legal perspective as well as LE SHAY's perspective, the end of his employment with DISKEEPER was forced by its unlawful and discriminatory conduct). GODELMAN was angry that no one in upper management at DISKEEPER was willing to alter or modify the company's religious training to accommodate LE SHAY's requests, and did not conceal his displeasure. Eight days later, on October 19, 2006, without any notice or discussion, GODELMAN's employment was terminated by DISKEEPER without any explanation for the termination action. Notably, to that point in time, GODELMAN had received nothing but praise and commendations for his excellent work performance. The only logical explanation for said termination action was that DISKEEPER was retaliating against GODELMAN for doing his best to establish a work environment free of religious discrimination.

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1                                    **FIRST CAUSE OF ACTION**  
2                                    **FOR DISCRIMINATORY DISCHARGE AND FAILURE**  
3                                    **TO ACCOMMODATE (RELIGION) IN**  
4                                    **VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT**

5                                    (Against DISKEEPER and DOES 1-50)

6                                    **Incorporation by Reference**

7                                    14. PLAINTIFFS repeat, reallege and incorporate herein by reference each and  
8 every allegation set forth in paragraphs 1-13 above, as if set forth herein in full.

9  
10                                   **Proscription Against Religious Discrimination**

11                                   15. DISKEEPER is a company engaged in interstate commerce and subject to  
12 the statutes, laws and regulations governing all employers with five or more employees. At all  
13 times mentioned herein, the FEHA was in full force and effect and was binding upon  
14 DISKEEPER and each of its employees. Said statute requires employers to refrain from taking  
15 any actions which discriminate (or have the effect of discriminating) against any employee on  
16 the basis of any statutorily protected classification including, without limitation, one's religion,  
17 among other things. For example, Section 12940 reads as follows:

18                                   "It shall be an *unlawful employment practice*, unless based upon a  
19 bona fide occupational qualification, or, except where based upon  
20 applicable security regulations established by the United States or  
the State of California:

21                                   (a) For an employer, because of the race, *religious creed*,  
22 color, national origin, ancestry, physical disability, mental  
23 disability, medical condition, marital status, sex, age, or  
24 sexual orientation of any person, to refuse to hire or employ  
the person or to refuse to select the person for a training  
25 program leading to employment, or to bar or *to discharge*  
the person from employment or from a training program  
26 leading to employment, *or to discriminate against the*  
person in compensation or in terms, conditions, or  
27 *privileges of employment."*

28                                   \* \* \*

1 (I) For an employer . . . to discharge a person from  
2 employment . . . , or to discriminate against a person in  
3 compensation or in terms, conditions, or privileges of  
4 employment because of a conflict between the person's  
5 religious belief or observance and any employment  
6 requirement, unless the employer or other entity covered by  
7 this part demonstrates that it has explored any available  
8 reasonable alternative means of accommodating the  
9 religious belief or observance, including the possibilities of  
10 excusing the person from those duties that conflict with his  
11 or her religious belief or observance or permitting those  
12 duties to be performed at another time or by another person,  
13 but is unable to reasonably accommodate the religious  
14 belief or observance without undue hardship on the conduct  
15 of the business of the employer . . . . Religious belief or  
16 observance, as used in this section, includes, but is not  
17 limited to, observance of a Sabbath or other religious holy  
18 day or days, and reasonable time necessary for travel prior  
19 and subsequent to a religious observance." *Italics added.*

20 These sections codify the "public policy" of the State of California to prohibit employers from  
21 discriminating against its employees on the basis of their religions or beliefs about religion.  
22 Although this action is not predicated on Federal law, similar proscriptions against religious  
23 discrimination exist under Federal law, as codified in Title VII of the Civil Rights Act of 1964,  
24 as amended (which forbids an employer: "to . . . discharge any individual . . . because of such  
25 individual's . . . religion . . ."), at 42 U.S.C. § 2000e-2(a)(1).

#### 26 Prima Facie Case of Religious Discrimination

27 16. To establish a claim for religious discrimination under the FEHA,  
28 PLAINTIFFS must show that (a) they held a *bona fide* religious belief, (b) the employer was  
aware of that belief, and (c) their beliefs conflicted with their employment requirement. *See*  
*Friedman v. Southern Calif. Permanente Med. Group* (2002) 102 Cal.App.4th 39, 45, and *Young*  
*v. Southwestern Savings and Loan Association* (1975) 509 F.2d 140. In this case, PLAINTIFFS'  
*bona fide religious beliefs* in Judaism were known to DISKEEPER. However, a conflict arose  
when DISKEEPER would not let PLAINTIFFS continue to remain employed without their

agreement to attend the company-sponsored religious "training courses" based on Scientology principles and/or their agreement to subscribe to the teachings and practices of the Scientology religion. As the Court aptly observed in *Shapolia v. Los Alamos National Laboratory* (10<sup>th</sup> Cir. 1993) 992 F.2d 1033, 1038, "it is the religious beliefs of the employer, and the fact that [the employee] does not share them, that constitute the basis of the [religious discrimination] claim."

**Plaintiffs' Religion a "Motivating Factor"**

### In the Termination Actions Taken Against Them

17. PLAINTIFFS, and each of them, held their own *bona fide* beliefs about religion, the practice of which conflicted with the job requirement that they attend, participate in and subscribe to the teachings of the Scientology religion. PLAINTIFFS, and each of them, informed their superiors at DISKEEPER that the job requirement that they attend, participate in and subscribe to the teachings of the Scientology religion conflicted with their own *bona fide* beliefs about religion, but DISKEEPER failed and refused to accommodate their religious beliefs. PLAINTIFFS are informed and believe, and thereon allege, that their complaints about the DISKEEPER-sponsored and required training in the Scientology religion -- as well as their refusal to subscribe to the Scientology religion imposed upon them by DISKEEPER as a condition of employment -- was a substantial or motivating factor in the termination of their respective employment tenures. The anticipated contention that PLAINTIFFS were terminated for "insubordination" due to their refusal to attend and participate in the "Basic Study" training course would not be the true reason for the terminations, but rather would be pretextual and a coverup for unlawful discrimination in violation of California Government Code § 12940 *et seq.* Of course, in the case of LE SHAY, no reason was given by Ms. Taylor for the ultimatum she gave him to either attend the religious training or resign and, in the case of GODELMAN, no reason whatsoever was given for his termination. Such discrimination has resulted in damage and injury to PLAINTIFFS as alleged herein.

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1 Other Discriminatory Practices

2 18. PLAINTIFFS are informed and believe that, in addition to the discriminatory acts  
3 described in this cause of action, DISKEEPER has engaged in other discriminatory practices  
4 which are not fully known by PLAINTIFFS (including, without limitation, a pattern and practice  
5 of failing to accommodate persons who hold religious beliefs other than Scientology).  
6 PLAINTIFFS are further informed and believe that there is a statistically significant under-  
7 representation of non-Scientologist employees in the workforce of DISKEEPER. PLAINTIFFS  
8 intend to take discovery regarding these other discriminatory practices which, directly or  
9 indirectly, affected the terms, conditions and privileges of their employment at DISKEEPER.

10  
11 Exhaustion of Statutory Remedies

12 19. PLAINTIFFS have filed a timely charge of discrimination with the  
13 California Department of Fair Employment and Housing against DISKEEPER and have  
14 obtained "right to sue" letters dated December 26, 2006 (as to GODELMAN) and December 28,  
15 2006 (as to LE SHAY). Thus, PLAINTIFFS have satisfied and/or exhausted any and all  
16 preconditions to bringing this action as required by California Government Code § 12940 *et seq.*

17  
18 Damages/Injunctive Relief

19 20. At the time of their discharges, PLAINTIFFS were earning substantial  
20 wages with bonuses annually, health insurance and other benefits, and could have been eligible,  
21 had they been retained, for annual pay raises and enhancements to their other benefits of  
22 employment. As a direct result of their discriminatory discharge in violation of the FEHA,  
23 PLAINTIFFS have suffered actual, incidental and consequential damages (past and future),  
24 which include, but are not limited to, lost wages, lost employment benefits, and lost bonus  
25 compensation, which damages are believed to be in excess of \$500,000 annually. The precise  
26 amount of damages sustained by PLAINTIFFS has not yet been ascertained and is subject to  
27 proof at trial. ~~In the alternative, PLAINTIFFS seek full back pay and lost employment benefits~~  
28 ~~through the date of trial, and reinstatement to their former positions accompanied by a mandatory~~

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1 ~~and/or prohibitory injunction prohibiting DISKEEPER from forcing or requiring any employee, as~~  
2 ~~a condition of employment, to study, adopt and/or apply the so-called "Hubbard Management~~  
3 ~~Technology" and/or the related "Hubbard Study Technology" (both of which PLAINTIFFS intend~~  
4 ~~to prove at trial are "cover" names for the fundamental teachings of the Scientology religion) in the~~  
5 ~~workplace.~~

6  
7 Emotional Distress Damages

8 21. As an additional direct result of their discriminatory discharge in violation  
9 of FEHA, PLAINTIFFS have suffered significant personal, emotional and economic injuries  
10 (including, but not limited to, loss of wages, loss of bonuses, loss of employment benefits and  
11 other forms of employment compensation), emotional distress and/or physical health problems  
12 resulting from emotional distress caused by and occurring after their termination, loss of self-  
13 esteem, embarrassment, humiliation and mental anguish. The precise amount of damages  
14 sustained by PLAINTIFFS has not yet been ascertained and is subject to proof at trial.

15  
16 Attorneys' Fees and Costs

17 22. Pursuant to Government Code Section 12965, PLAINTIFFS are entitled to  
18 recover their reasonable attorneys' fees and costs in addition to all other damages permitted.

19  
20 Punitive Damages

21 23. The discriminatory decisions and actions inflicted upon PLAINTIFFS by  
22 DISKEEPER were made in complete disregard of PLAINTIFFS' prior job performance and with  
23 the malicious intent to deprive them of their employment and with malicious or reckless  
24 disregard of the personal and economic injury that would be caused to PLAINTIFFS. In doing  
25 the things herein alleged, DISKEEPER was motivated by personal animosity, spite and ill-will  
26 toward PLAINTIFFS in a desire to injure, vex, harass and annoy them, and acted with the  
27 wrongful motive, intent and purpose of depriving PLAINTIFFS of the rights, benefits,  
28 protections and entitlements of their employment at DISKEEPER and of the security of their

1 employment, knowing that it had no right to do so and fully intending the harm, both financial  
2 and emotional, which it knew would result from the termination of their employment.  
3 PLAINTIFFS are informed and believe, and on the basis of such information and belief allege,  
4 that the acts and conduct of the individuals who participated in such discrimination were  
5 expressly authorized by corporate officers of DISKEEPER (including, but not limited to, Danny  
6 Chadwell, DISKEEPER's Director of Corporate Affairs and "agent for service of process"  
7 (hereafter, "CHADWELL") *prior to* the occurrence of such unlawful conduct, and were  
8 subsequently authorized and ratified by the entire Board of Directors of DISKEEPER (including,  
9 but not limited to JENSEN, Chairman of the Board) *after* such unlawful conduct occurred.  
10 DEFENDANTS' conduct was malicious and oppressive and, by reason thereof, PLAINTIFFS  
11 are entitled to punitive damages in an amount according to proof at trial.

12 SECOND CAUSE OF ACTION  
13 FOR WRONGFUL TERMINATION IN  
14 VIOLATION OF PUBLIC POLICY

15 (Against DISKEEPER and DOES 1-50)

16 Incorporation by Reference

17 24. PLAINTIFFS repeat, reallege and incorporate by reference each and every  
18 allegation set forth in paragraphs 1-13 and 15-18, above, as if set forth herein in full.

19  
20 Public Policy Against Religious Discrimination

21 25. At all times mentioned herein, California Government Code § 12900 *et seq.*  
22 was in full force and effect and was binding upon DEFENDANTS, and each of them, and each  
23 of its employees. Section 12921(a) of the FEHA provides as follows:

24 “(a) *The opportunity to seek, obtain and hold employment without*  
25 *discrimination because of race, religious creed, color, national*  
26 *origin, ancestry, physical disability, mental disability, medical*  
27 *condition, marital status, sex, age, or sexual orientation is hereby*  
28 *recognized as and declared to be a civil right.”*

Emphasis added. Government Code Sections 12940(a) and (l) also prohibit religious discrimination, as described in Paragraph 15, above. In addition, Article I, Section 4 of the California Constitution declares that all citizens are guaranteed the right of the "[f]ree exercise and enjoyment of religion without discrimination or preference ...." The above-enumerated statutes and Constitutional provision (and others) set forth the "public policy" in the State of California to prohibit discrimination against any employee on the basis of his or her religion, among other things.

Discharge In Violation of "Public Policy"

26. PLAINTIFFS are informed and believe, and thereon allege, that DISKEEPER's termination of them amounts to not only religious discrimination in violation of California Government Code § 12940 *et seq.*, but also a wrongful termination in violation of California's "public policy" against religious discrimination, as defined herein.

### Damages

27. At the time of their discharges, PLAINTIFFS were earning substantial wages with bonuses annually, health insurance and other benefits, and could have been eligible, had they been retained, for annual pay raises and enhancements to their other benefits of employment. As a direct result of their discriminatory discharge in violation of the FEHA, PLAINTIFFS have suffered actual, incidental and consequential damages (past and future), which include, but are not limited to, lost wages, lost employment benefits, and lost bonus compensation, which damages are believed to be in excess of \$500,000 annually. The precise amount of damages sustained by PLAINTIFFS has not yet been ascertained and is subject to proof at trial.

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## 10

11

1 THIRD CAUSE OF ACTION  
2 FOR WRONGFUL RETALIATION IN  
3 VIOLATION OF THE FEHA

4 (Against Defendant DISKEEPER and DOES 1-50)

5 Incorporation By Reference

6 30. PLAINTIFFS repeat, reallege and incorporate herein by reference each and every  
7 allegation set forth in paragraphs 1-13 and 15-18, above, as if set forth herein in full.  
8

9 California Public Policy Against Retaliation

10 31. It is the public policy of the State of California to prohibit and prevent retaliation  
11 against employees who oppose or refuse to participate in activities that are violative of State or  
12 Federal law. For example, Government Code Section 12940(h), which was in effect and  
13 enforceable against DEFENDANTS at all times relevant to this action, provides that it is an  
14 "unlawful employment practice":

15 "For any employer, . . . or person to discharge, expel, or otherwise  
16 discriminate against any person because the person has opposed  
17 any practices forbidden under this part or because the person has  
18 filed a complaint, testified, or assisted in any proceeding under this  
19 part." *Italics added.*  
20

21 Retaliation in Violation of FEHA

22 32. PLAINTIFFS, and each of them, engaged in protected activity by voicing their  
23 complaints about (and opposition to) DISKEEPER's imposition of training and education about  
24 the Scientology religion as a condition of their employment with the company. PLAINTIFFS'  
25 terms, conditions and privileges of employment -- including, without limitation, their ability to  
26 retain their jobs -- were expressly conditioned on their agreement and willingness to participate  
27 in the company-sponsored religious teachings and proselytizing activities. Because plaintiff LE  
28 SHAY refused to participate in said religious training or to subscribe to the Scientology religious

1 beliefs, he was forced to resign. And when plaintiff GODELMAN voiced his strong objection  
2 to the unjustifiable requirement of religious study imposed on LE SHAY by DISKEEPER, and  
3 his outrage that DISKEEPER forced LE SHAY to resign instead of accommodating his request  
4 to be excused from the company-required Scientology training, he was terminated. The conduct  
5 of DISKEEPER as described herein was unlawful and in violation of the FEHA's anti-retaliation  
6 provisions, among other laws and regulations. The retaliatory actions taken against  
7 PLAINTIFFS were in violation of the public policy of the State of California and Federal law  
8 and resulted in damage and injury to PLAINTIFFS as alleged herein.

9  
10 Exhaustion of Statutory Remedies

11 33. PLAINTIFFS have filed a timely charge of discrimination with the  
12 California Department of Fair Employment and Housing against DISKEEPER and have obtained  
13 "right to sue" letters dated December 26, 2006 (as to GODELMAN) and December 28, 2006 (as  
14 to LE SHAY). Thus, PLAINTIFFS have satisfied and/or exhausted any and all preconditions  
15 to bringing this action as required by California Government Code § 12940 *et seq.*

16  
17 Damages

18 34. At the time of their discharges, PLAINTIFFS were earning substantial  
19 wages with bonuses annually, health insurance and other benefits, and could have been eligible,  
20 had they been retained, for annual pay raises and enhancements to their other benefits of  
21 employment. As a direct result of their discriminatory discharge in violation of the FEHA,  
22 PLAINTIFFS have suffered actual, incidental and consequential damages (past and future),  
23 which include, but are not limited to, lost wages, lost employment benefits, and lost bonus  
24 compensation, which damages are believed to be in excess of \$500,000 annually. The precise  
25 amount of damages sustained by PLAINTIFFS has not yet been ascertained and is subject to  
26 proof at trial. ~~In the alternative, PLAINTIFFS seek full back pay and lost employment benefits~~  
27 ~~through the date of trial, and reinstatement to their former positions accompanied by a mandatory~~  
28 ~~and/or prohibitory injunction prohibiting DISKEEPER from forcing or requiring any employee, as~~

2

1 ~~a condition of employment, to study, adopt and/or apply the so-called "Hubbard Management~~  
2 ~~Technology" and/or the related "Hubbard Study Technology" (both of which PLAINTIFFS intend~~  
3 ~~to prove at trial are "cover" names for the fundamental teachings of the Scientology religion) in the~~  
4 ~~workplace.~~

5  
6 Emotional Distress Damages

7 35. As an additional direct result of the retaliation inflicted upon them in  
8 violation of the FEHA, PLAINTIFFS have suffered significant personal, emotional and  
9 economic injuries (including, but not limited to, loss of wages, loss of bonuses, loss of  
10 employment benefits and other forms of employment compensation), emotional distress and/or  
11 physical health problems resulting from emotional distress caused by and occurring after their  
12 termination, loss of self-esteem, embarrassment, humiliation and mental anguish. The precise  
13 amount of damages sustained by PLAINTIFFS has not yet been ascertained and is subject to  
14 proof at trial.

15  
16 Attorneys' Fees and Costs

17 36. Pursuant to Government Code Section 12965, PLAINTIFFS are entitled to  
18 recover their reasonable attorneys' fees and costs in addition to all other damages permitted.

19  
20 Punitive Damages

21 37. The retaliatory decisions and actions inflicted upon PLAINTIFFS by  
22 DEFENDANTS were in violation of the FEHA were made in complete disregard of  
23 PLAINTIFFS' prior job performance and with the malicious intent to deprive them of their  
24 employment and with malicious or reckless disregard of the personal and economic injury that  
25 would be caused to PLAINTIFFS. In doing the things herein alleged, DEFENDANTS were  
26 motivated by personal animosity, spite and ill-will toward PLAINTIFFS in a desire to injure,  
27 vex, harass and annoy them, and acted with the wrongful motive, intent and purpose of depriving  
28 PLAINTIFFS of the rights, benefits, protections and entitlements of their employment at

1 DISKEEPER and of the security of their employment, knowing that it had no right to do so and  
2 fully intending the harm, both financial and emotional, which it knew would result from the  
3 termination of their employment. PLAINTIFFS are informed and believe, and on the basis of  
4 such information and belief allege, that the acts and conduct of the individuals who participated  
5 in such discrimination were expressly authorized by corporate officers of DISKEEPER  
6 (including, but not limited to, CHADWELL, Director of Corporate Affairs) *prior to* the  
7 occurrence of such unlawful conduct, and were subsequently authorized and ratified by the entire  
8 Board of Directors of DISKEEPER (including, but not limited to, JENSEN, Chairman of the  
9 Board) *after* such unlawful conduct occurred. DEFENDANTS' conduct was malicious and  
10 oppressive and, by reason thereof, PLAINTIFFS are entitled to punitive damages according to  
11 proof at trial.

12  
13 **FOURTH CAUSE OF ACTION**  
14 **FOR WRONGFUL RETALIATION IN**  
15 **VIOLATION OF LABOR CODE § 1102.5**

16 (Against Defendants DISKEEPER and DOES 1-50)

17 **Incorporation By Reference**

18 38. PLAINTIFFS repeat, reallege and incorporate by reference each and every  
19 allegation set forth in paragraphs 1-13, above, as if set forth herein in full.

20  
21 **California Public Policy Against Retaliation**

22 39. It is the public policy of the State of California to prohibit and prevent retaliation  
23 against employees who oppose or refuse to participate in activities that are violative of State or  
24 Federal law. For example, Labor Code Section 1102.5(c), which was in effect and enforceable  
25 against DEFENDANTS at all times relevant to this action, provides:

26 ///

27 ///

28 ///



1 employment. As a direct result of their discriminatory discharge in violation of the FEHA,  
2 PLAINTIFFS have suffered actual, incidental and consequential damages (past and future),  
3 which include, but are not limited to, lost wages, lost employment benefits, and lost bonus  
4 compensation, which damages are believed to be in excess of \$500,000 annually. The precise  
5 amount of damages sustained by PLAINTIFFS has not yet been ascertained and is subject to  
6 proof at trial.

7  
8 Emotional Distress Damages

9 42. As an additional direct result of the retaliation inflicted upon them in  
10 violation of the FEHA, PLAINTIFFS have suffered significant personal, emotional and  
11 economic injuries (including, but not limited to, loss of wages, loss of bonuses, loss of  
12 employment benefits and other forms of employment compensation), emotional distress and/or  
13 physical health problems resulting from emotional distress caused by and occurring after their  
14 termination, loss of self-esteem, embarrassment, humiliation and mental anguish. The precise  
15 amount of damages sustained by PLAINTIFFS has not yet been ascertained and is subject to  
16 proof at trial.

17  
18 Punitive Damages

19 43. The retaliatory decisions and actions inflicted upon PLAINTIFFS by  
20 DISKEEPER and DOES 1-50 in violation of the FEHA were made in complete disregard of  
21 PLAINTIFFS' prior job performance and with the malicious intent to deprive them of their  
22 employment and with malicious or reckless disregard of the personal and economic injury that  
23 would be caused to PLAINTIFFS. In doing the things herein alleged, said DEFENDANTS were  
24 motivated by personal animosity, spite and ill-will toward PLAINTIFFS in a desire to injure,  
25 vex, harass and annoy them, and acted with the wrongful motive, intent and purpose of depriving  
26 PLAINTIFFS of the rights, benefits, protections and entitlements of their employment at  
27 DISKEEPER and of the security of their employment, knowing that it had no right to do so and  
28 fully intending the harm, both financial and emotional, which it knew would result from the

1 termination of their employment. PLAINTIFFS are informed and believe, and on the basis of  
2 such information and belief allege, that the acts and conduct of the individuals who participated  
3 in such discrimination were expressly authorized by corporate officers of DISKEEPER  
4 (including, but not limited to, CHADWELL, Director of Corporate Affairs) *prior to* the  
5 occurrence of such unlawful conduct, and were subsequently authorized and ratified by the entire  
6 Board of Directors of DISKEEPER (including, but not limited to, JENSEN, Chairman of the  
7 Board) *after* such unlawful conduct occurred. DEFENDANTS' conduct was malicious and  
8 oppressive and, by reason thereof, PLAINTIFFS are entitled to punitive damages in an amount  
9 according to proof at trial.

10  
11 **FIFTH CAUSE OF ACTION FOR**  
12 **FAILURE TO PREVENT DISCRIMINATION**

13 (Against DISKEEPER and DOES 1-50)

14 Incorporation by Reference

15 44. PLAINTIFFS repeat, reallege and incorporate by reference each and every  
16 allegation set forth in paragraphs 1-13, above, as if set forth herein in full.

17  
18 Duty to Prevent Religious Discrimination

19 45. At all times mentioned herein, California Government Code § 12900 *et seq.*  
20 was in full force and effect and was binding upon DEFENDANTS, and each of them, and each  
21 of its employees. Section 12940(k) of the FEHA provides that it is an unfair labor practice:

22 "(k) For an employer . . . to fail to take all reasonable steps  
23 necessary to prevent discrimination and harassment from  
24 occurring." *Italics added.*

25 Failure to Prevent Discrimination

26 46. By virtue of the acts and omissions alleged hereinabove, DISKEEPER  
27 breached its statutory obligation to prevent religious discrimination from occurring, resulting in  
28 injury and damages to PLAINTIFFS, and each of them, as set forth herein



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1 loss of employment benefits and other forms of employment compensation), emotional distress  
2 and/or physical health problems resulting from emotional distress caused by and occurring after  
3 their termination, loss of self-esteem, embarrassment, humiliation and mental anguish. The  
4 precise amount of damages sustained by PLAINTIFFS has not yet been ascertained and is  
5 subject to proof at trial.

6  
7 Attorneys' Fees and Costs

8 50. Pursuant to Government Code Section 12965, PLAINTIFFS are entitled to  
9 recover their reasonable attorneys' fees and costs in addition to all other damages permitted.

10  
11 Punitive Damages

12 51. The discriminatory decisions and actions inflicted upon PLAINTIFFS by  
13 DISKEEPER were made in complete disregard of PLAINTIFFS' prior job performance and with  
14 the malicious intent to deprive them of their employment and with malicious or reckless  
15 disregard of the personal and economic injury that would be caused to PLAINTIFFS. In doing  
16 the things herein alleged, DISKEEPER was motivated by personal animosity, spite and ill-will  
17 toward PLAINTIFFS in a desire to injure, vex, harass and annoy them, and acted with the  
18 wrongful motive, intent and purpose of depriving PLAINTIFFS of the rights, benefits,  
19 protections and entitlements of their employment at DISKEEPER and of the security of their  
20 employment, knowing that it had no right to do so and fully intending the harm, both financial  
21 and emotional, which it knew would result from the termination of their employment.  
22 PLAINTIFFS are informed and believe, and on the basis of such information and belief allege,  
23 that the acts and conduct of the individuals who participated in such discrimination were  
24 expressly authorized by corporate officers of DISKEEPER (including, but not limited to,  
25 CHADWELL, Director of Corporate Affairs) *prior to* the occurrence of such unlawful conduct,  
26 and were subsequently authorized and ratified by the entire Board of Directors of DISKEEPER  
27 (including, but not limited to, JENSEN, Chairman of the Board) *after* such unlawful conduct  
28 occurred. DISKEEPER's conduct was malicious and oppressive and, by reason thereof,

1 PLAINTIFFS are entitled to exemplary and punitive damages in an amount according to proof  
2 at trial.

3  
4 WHEREFORE, plaintiffs GODELMAN and LE SHAY pray for judgment against  
5 DEFENDANTS, and each of them, as follows:

6 A. ON THE FIRST CAUSE OF ACTION:

7 a. For incidental and consequential damages, including lost wages and benefits  
8 (past and future), in excess of \$5,000,000, according to proof;

9 b. For general and compensatory damages, according to proof;

10 c. For punitive and exemplary damages, according to proof;

11 d. For an award of interest, including prejudgment interest, at the legal rate;

12 e. For attorneys' fees, expenses and other costs of suit;

13 f. ~~For prospective injunctive relief in the form of a prohibitory and/or~~  
14 ~~mandatory injunction requiring Defendants to cease, desist and forever refrain from forcing or~~  
15 ~~requiring any employee, as a condition of employment, to study, adopt and/or apply the so-called~~  
16 ~~"Hubbard Management Technology" and/or the related "Hubbard Study Technology" in the~~  
17 ~~workplace, according to proof at trial; and~~

18 g. For such other and further relief as the Court considers proper under the  
19 circumstances.

20  
21 B. ON THE SECOND CAUSE OF ACTION:

22 a. For incidental and consequential damages, including lost wages and benefits  
23 (past and future), in excess of \$5,000,000, according to proof;

24 b. For general and compensatory damages, according to proof;

25 c. For punitive and exemplary damages, according to proof;

26 d. For an award of interest, including prejudgment interest, at the legal rate;

27 and

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1 e. For such other and further relief as the Court considers proper under the  
2 circumstances.

3  
4 C. ON THE THIRD CAUSE OF ACTION:

5 a. For incidental and consequential damages, including lost wages and benefits  
6 (past and future), in excess of \$5,000,000, according to proof;

7 b. For general and compensatory damages, according to proof;

8 c. For punitive and exemplary damages, according to proof;

9 d. For an award of interest, including prejudgment interest, at the legal rate;

10 e. For attorneys' fees, expenses and other costs of suit;

11 f. ~~For prospective injunctive relief in the form of a prohibitory and/or mandatory~~  
12 ~~injunction requiring Defendants to cease, desist and forever refrain from forcing or requiring any~~  
13 ~~employee, as a condition of employment, to study, adopt and/or apply the so called "Hubbard~~  
14 ~~Management Technology" and/or the related "Hubbard Study Technology" in the workplace,~~  
15 ~~according to proof at trial; and~~

16 g. For such other and further relief as the Court considers proper under the  
17 circumstances and

18  
19 D. ON THE FOURTH CAUSE OF ACTION:

20 a. For incidental and consequential damages, including lost wages and benefits  
21 (past and future), in excess of \$5,000,000, according to proof;

22 b. For general and compensatory damages, according to proof;

23 c. For punitive and exemplary damages, according to proof;

24 d. For an award of interest, including prejudgment interest, at the legal rate;

25 and

26 e. For such other and further relief as the Court considers proper under the  
27 circumstances.

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1 E. ON THE FIFTH CAUSE OF ACTION:

- 2 a. For incidental and consequential damages, including lost wages and benefits  
3 (past and future), in excess of \$5,000,000, according to proof;
- 4 b. For general and compensatory damages, according to proof;
- 5 c. For punitive and exemplary damages, according to proof;
- 6 d. For an award of interest, including prejudgment interest, at the legal rate;
- 7 e. For attorneys' fees, expenses and other costs of suit; and
- 8 f. ~~For prospective injunctive relief in the form of a prohibitory and/or~~  
9 ~~mandatory injunction requiring Defendants to cease, desist and forever refrain from forcing or~~  
10 ~~requiring any employee, as a condition of employment, to study, adopt and/or apply the so-called~~  
11 ~~"Hubbard Management Technology" and/or the related "Hubbard Study Technology" in the~~  
12 ~~workplace, according to proof at trial; and~~
- 13 g. For such other and further relief as the Court considers proper under the  
14 circumstances.

15 Dated: October 14, 2008

LAW OFFICES OF BARRY B. KAUFMAN  
*A Professional Corporation*

17 By: 

18 Barry B. Kaufman  
19 Attorney for Plaintiffs  
20 Alexander J. Godelman and Marc Le Shay

21 DEMAND FOR JURY TRIAL

22 Plaintiff hereby demands a jury trial on all issues triable by jury.

24 Dated: October 14, 2008

LAW OFFICES OF BARRY B. KAUFMAN  
*A Professional Corporation*

27 By: 

28 Barry B. Kaufman  
Attorney for Plaintiffs  
Alexander J. Godelman and Marc Le Shay

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On October 14, 2008, I served the foregoing document described as:

### THIRD AMENDED COMPLAINT FOR DAMAGES

by delivering a copy thereof to the following party in this action:

Timothy Bowles, Esq.  
Cynthia Bamforth, Esq.  
Law Offices of Timothy Bowles  
One South Fair Oaks Ave., Suite 301  
Pasadena, CA 91105

as follows:

I personally delivered a copy to the addressee.

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

Executed on October 14, 2008, at Encino, California.

Type or Print Name

**Signature**

1000

PROOF OF SERVICE

STATE OF CALIFORNIA     )  
  ) ss.  
COUNTY OF LOS ANGELES )

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. My business address is One S. Fair Oaks Avenue, Pasadena, California 91105.

On December 5, 2008 I served the foregoing document described as  
**DEFENDANT'S NOTICE OF MOTION AND MOTION TO STRIKE PORTIONS  
OF THIRD AMENDED COMPLAINT; MEMORANDUM OF POINTS AND  
AUTHORITIES** on counsel for plaintiffs in this action,

MR. BARRY B. KAUFMAN  
LAW OFFICES OF BARRY B. KAUFMAN  
*A Professional Corporation*  
16133 Ventura Boulevard, Suite 700  
Encino, California 91436

☒ BY OVERNIGHT DELIVERY:

☒ I deposited such documents in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service.

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

Executed December 5, 2008 in Pasadena, California.

  
Rebekah Koken

12/11/08