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a California corporation

FILED
LOS ANGELES SUPERIOR COURT

DEC 10 2008
JOHN A. CLARKE, CLERK
[Signature]
BY RUGENA LOPEZ, DEPUTY

7
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.

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.

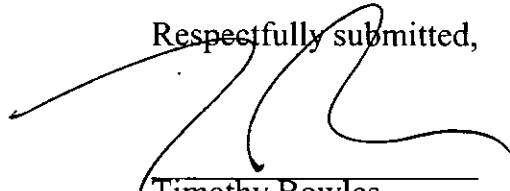
26 The motion is based upon this notice and motion, the attached memorandum of points
27 and authorities, the interlineated third amended complaint attached as Exhibit A, the files and
28 records in this action and any further documentation, judicially noticed matters, and argument

CI/CASE: BC374449 LEA/DEF#:
RECEIPT #: CCH47728009
DATE PAID: 12/11/08 08:06:49 AM
PAYMENT: \$40.00
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0310

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

2 Dated: December 5, 2008

Respectfully submitted,



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5 Timothy Bowles
6 Cynthia Bamforth
7 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* (9th 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.

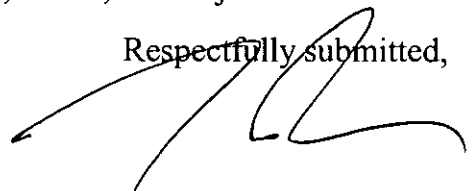
5 4. ***Complaint, prayer for relief, page 30, lines 13-17:*** The Court should strike
6 reference to the injunctive relief remedy (“For prospective injunctive relief in the form of a
7 prohibitory and/or mandatory injunction requiring Defendants to cease, desist and forever
8 refrain from forcing or 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,



Timothy Bowles
Cynthia Bamforth
Attorneys for Defendant Diskeeper Corporation

TABLE OF CONTENTS

PAGE

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| TABLE OF AUTHORITIES | iii |
| MEMORANDUM OF POINTS AND AUTHORITIES | 1 |
| I. INTRODUCTION | 1 |
| II. PLAINTIFFS SEEK TOTAL SHUTDOWN OF THIS EMPLOYER'S TRAINING AND ADMINISTRATIVE MODEL ON RELIGIOUS GROUNDS | 1 |
| III. TITLE VII PRECEDENT AND RULES OF CONSTITUTIONAL CONSTRUCTION BAR PLAINTIFFS' PROPOSED INJUNCTIVE RELIEF AS A MATTER OF LAW | 3 |
| IV. PLAINTIFFS' PROPOSED INJUNCTION UNCONSTITUTIONALLY TARGETS ALLEGED RELIGIOUS PRACTICES | 9 |
| 1. Plaintiffs' Injunction Remedy Poses a Significant Impact on Alleged Religious Practices | 11 |
| 2. There is No Compelling Interest for Plaintiffs' Proposed Injunction that Outweighs Interest in Maintaining Alleged Religious Practices | 11 |
| 3. Plaintiffs' Third Amended Complaint Demonstrates Their Injunction is Not the Alternative Least Restrictive to Religious Free Exercise | 12 |
| V. CONCLUSION | 12 |

TABLE OF AUTHORITIES

PAGE

Cases

Ashwander v. Tennessee Valley Authority
(1935) 297 U.S. 288, 56 S.Ct. 466 7

Brown v. Polk County
(8th Cir. 1995) 61 F.3d 650, *cert. denied*, 516 U.S. 1158 6

Catholic Charities of Sacramento, Inc. v. Superior Court
(2004) 32 Cal.4th 527 8, 9, 10, 11

Church of the Lukumi Babalu v. City of Hialeah
(1993) 508 U.S. 520 9

Commodore Home Systems, Inc. v. Superior Court
(1982) 32 Cal.3d 211 9

Easley v. Anheuser-Busch, Inc.
(8th Cir. 1985) 758 F.2d 251 8

*Equal Employment Opportunity Commission v. Townley Engineering
& Manufacturing Company,*
(9th Cir. 1988) 859 F. 2d 610; 4, 5, 6, 7, 8, 11

Employment Div., Ore Dept. Human Res. v. Smith
(1990) 494 U.S. 872, 110 S.Ct. 1595 9

First Covenant Church of Seattle v. City of Seattle
(Wash. 1992) 840 P.2d 174; 10

Goldman v. Weinberger
(1986) 475 U.S. 503, 106 S.Ct. 1310 12

Guz v. Bechtel Nat., Inc
(2000) 24 Cal.4th 317 4

| | |
|-----------------------------------------------------------------------------------------------------|------------|
| <i>Humphrey v. Lane</i> (Ohio 2000) 728 N.E.2d 1039 | 10 |
| <i>Meltebeke v. Bureau of Labor and Industries</i> (Or. Sup.Ct. 1995) 903 P.2d 351 | 6 |
| <i>Mendoza v. Town of Ross</i> (2005) 128 Cal.App.4th 625 | 4 |
| <i>Miller v. Department of Corrections</i> (2005) 36 Cal.4th 446 | 5 |
| <i>NAACP v. Claiborne Hardware Company</i> (1982) 458 U.S. 886 | 9 |
| <i>New York Times v. Sullivan</i> (1964) 376 U.S. 254, 84 S.Ct. 710..... | 9 |
| <i>NLRB v. Catholic Bishop of Chicago</i> (1979) 440 U.S. 490, 99 S.Ct. 1313 | 7, 8 |
| <i>People v. Woody</i> (1964) 61 Cal.2d 716 | 8, 10 |
| <i>Ray v. Henderson</i> (9 th Cir. 2000) 217 F.3d 1234 | 5 |
| <i>State v. Hershberger</i> (Minn. 1990) 462 N.W.2d 393 | 10, 11, 12 |
| <i>Trans World Airlines, Inc. v. Hardison,</i> 432 U.S. 63, 97 S.Ct. 2264 | 4 |
| <i>United States v. Commonwealth of Virginia</i> (4 th Cir. 1980) 620 F.2d 1018 | 8 |
| <i>United States v. Ballard</i> (1944) 322 U.S. 78 | 8 |
| <i>Welsh v. United States</i> (1970) 398 U.S. 333, 90 S.Ct. 1792..... | 7 |

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.¹

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 ¹ 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* (9th 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.”)² *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

23 ² 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).³

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

23
24 ³ Courts may properly turn to EEOC Guidelines when necessary. *Ray v.*
25 *Henderson* (9th 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.⁴

7 Employers and supervisors possess fundamental rights under the free exercise clause.
8 *Brown v. Polk County* (8th 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 ⁴ 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."⁵

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).⁶

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.

22 ⁵ 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 ⁶ 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* (4th 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.

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.⁷ "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 532.⁸

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).⁹

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

22 ⁷ *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 ⁸ *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 ⁹ 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).¹⁰

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

20 ¹⁰ 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,¹¹ 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.¹² 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

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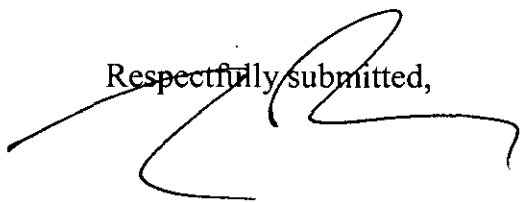
23 ¹¹ TAC, ¶ 20, 16:27-17:5 (first cause of action); ¶ 34, 22:26-23:4 (third cause
24 of action); ¶ 48, 28:17-23 (fifth cause of action) .

25 ¹² 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).

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
Attorneys for Defendant
Diskeeper Corporation
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Los Angeles Superior Court
NOV 05 2008

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

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

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

14 Plaintiffs,

15 vs.

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

19 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

20 DEMAND FOR JURY TRIAL

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

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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, 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, 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, ronhubbard.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

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

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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

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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 repeated use of quotations from Scientology's founder, L. Ron Hubbard, directly taken from his
2 religious writings, to the general and day-to-day use of vernacular taken from Scientology
3 teachings (like, for example, "Dev-T" which refers to "Developed Unnecessary Traffic," a term
4 used in Scientology), to the massive libraries of Scientology books offered for sale or as a
5 loaner, and to the frequent reference to "organization charts" for the Church of Scientology,
6 employees at DISKEEPER are constantly bombarded with Scientology imagery and ideology
7 in the work environment (whether they want it or not). These employment practices are a subtle
8 form of indoctrination and proselytization. At the commencement of employment all employees
9 are given a handbook entitled "The Way to Happiness" which was created by L. Ron Hubbard
10 and which includes amongst its instruction the admonition "*Sex is a big step on the way to
11 happiness and joy. There is nothing wrong with it if it is followed with faithfulness and
12 decency.*" The same DISKEEPER-distributed handbook contains the disclaimer "*Any reprinting
13 or individual distribution of it does not infer connection with or sponsorship of any religious
14 organization.*" While this employer-promulgated handbook is certainly odd, it is not until one
15 begins to work at DISKEEPER that the full volume and adverse impact of the Scientology
16 propaganda can be understood -- and by then it is too late as the subscription to such beliefs
17 quickly becomes a condition of continued employment. Employees are left to face two choices
18 -- either ~~convert to and~~ learn and apply Scientology principles in the performance of their duties,
19 or be criticized, reprimanded or discharged for failing to use the methods of thought and
20 language which conform to Scientology. Put another way, the employees are given the choice
21 of assimilating into the culture of Scientology -- or perishing and losing their jobs.

22
23 Employer Failure to Accommodate Godelman's
24 Request Not to Attend Scientology Training Courses

25 10. Because GODELMAN was the first person amongst PLAINTIFFS to be
26 hired by DISKEEPER, he was also the first person to experience the unlawful act of literally
27 being forced to learn about and study the Scientology religion (albeit, under the guise of it being
28 somehow related to the performance of his work as Chief Information Officer). From the outset

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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

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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

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1 PLAINTIFFS are informed and believe, and thereon allege, that the terms "Cram," "CJ Comm,"
2 "Esto," "KR", "AC," "OEC" and "ML" are all Scientology-based terms and that the reference
3 to "CIO" referred to GODELMAN in his then-position of "Chief Information Officer."
4

5 Termination of Le Shay and Godelman

6 13. On October 11, 2006, Flavia Taylor gave an ultimatum to LE SHAY that
7 he either agree to attend and participate in the "Basic Study Manual" courses he had objected
8 to based on his religious beliefs, or leave DISKEEPER. Ms. Taylor's exact words to LE SHAY
9 were "You have a choice to make." LE SHAY went to GODELMAN and told him he had no
10 choice but to resign because no one in upper management (besides GODELMAN) would listen
11 to his complaints or do anything to remedy the situation. GODELMAN then attempted to seek
12 the intervention of Mercedes Del Castillo, Executive Vice President of Operations, but even she
13 reiterated that the "Basic Study Manual" courses that LE SHAY had objected to were
14 "mandatory" and a condition of employment. Faced with DISKEEPER's failure and refusal to
15 remove religious teachings and proselytizing from the workplace, LE SHAY then tendered his
16 resignation (although, from a legal perspective as well as LE SHAY's perspective, the end of
17 his employment with DISKEEPER was forced by its unlawful and discriminatory conduct).
18 GODELMAN was angry that no one in upper management at DISKEEPER was willing to alter
19 or modify the company's religious training to accommodate LE SHAY's requests, and did not
20 conceal his displeasure. Eight days later, on October 19, 2006, without any notice or discussion,
21 GODELMAN's employment was terminated by DISKEEPER without any explanation for the
22 termination action. Notably, to that point in time, GODELMAN had received nothing but praise
23 and commendations for his excellent work performance. The only logical explanation for said
24 termination action was that DISKEEPER was retaliating against GODELMAN for doing his
25 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
27 person in compensation or in terms, conditions, or
privileges of employment."

28 * * *

1 (d) 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.*

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

21 Prima Facie Case of Religious Discrimination

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

1 agreement to attend the company-sponsored religious "training courses" based on Scientology
2 principles and/or their agreement to subscribe to the teachings and practices of the Scientology
3 religion. As the Court aptly observed in *Shapolia v. Los Alamos National Laboratory* (10th Cir.
4 1993) 992 F.2d 1033, 1038, "it is the religious beliefs of the employer, and the fact that [the
5 employee] does not share them, that constitute the basis of the [religious discrimination] claim."
6

7 Plaintiffs' Religion a "Motivating Factor"

8 In the Termination Actions Taken Against Them

9 17. PLAINTIFFS, and each of them, held their own *bona fide* beliefs about
10 religion, the practice of which conflicted with the job requirement that they attend, participate
11 in and subscribe to the teachings of the Scientology religion. PLAINTIFFS, and each of them,
12 informed their superiors at DISKEEPER that the job requirement that they attend, participate
13 in and subscribe to the teachings of the Scientology religion conflicted with their own *bona fide*
14 beliefs about religion, but DISKEEPER failed and refused to accommodate their religious
15 beliefs. PLAINTIFFS are informed and believe, and thereon allege, that their complaints about
16 the DISKEEPER-sponsored and required training in the Scientology religion -- as well as their
17 refusal to subscribe to the Scientology religion imposed upon them by DISKEEPER as a
18 condition of employment -- was a substantial or motivating factor in the termination of their
19 respective employment tenures. The anticipated contention that PLAINTIFFS were terminated
20 for "insubordination" due to their refusal to attend and participate in the "Basic Study" training
21 course would not be the true reason for the terminations, but rather would be pretextual and a
22 coverup for unlawful discrimination in violation of California Government Code § 12940 *et seq.*
23 Of course, in the case of LE SHAY, no reason was given by Ms. Taylor for the ultimatum she
24 gave him to either attend the religious training or resign and, in the case of GODELMAN, no
25 reason whatsoever was given for his termination. Such discrimination has resulted in damage
26 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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12/11/08

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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

12/11/98

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.”*

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

8
9 Discharge In Violation of "Public Policy"

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

14
15 Damages

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

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THIRD CAUSE OF ACTION
FOR WRONGFUL RETALIATION IN
VIOLATION OF THE FEHA
(Against Defendant DISKEEPER and DOES 1-50)
Incorporation By Reference

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

California Public Policy Against Retaliation

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

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

Retaliation in Violation of FEHA

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

12/11/08

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~~

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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

12/11/08

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:

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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

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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.

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**FIFTH CAUSE OF ACTION FOR
FAILURE TO PREVENT DISCRIMINATION**

(Against DISKEEPER and DOES 1-50)

Incorporation by Reference

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

Duty to Prevent Religious Discrimination

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

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

Failure to Prevent Discrimination

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

12/11/08

1 Exhaustion of Statutory Remedies

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

7
8 Damages

9 48. At the time of their discharges, PLAINTIFFS were earning substantial
10 wages with bonuses annually, health insurance and other benefits, and could have been eligible,
11 had they been retained, for annual pay raises and enhancements to their other benefits of
12 employment. As a direct result of their discriminatory discharge in violation of the FEHA,
13 PLAINTIFFS have suffered actual, incidental and consequential damages (past and future),
14 which include, but are not limited to, lost wages, lost employment benefits, and lost bonus
15 compensation, which damages are believed to be in excess of \$500,000 annually. The precise
16 amount of damages sustained by PLAINTIFFS has not yet been ascertained and is subject to
17 proof at trial. ~~In the alternative, PLAINTIFFS seek full back pay and lost employment benefits~~
18 ~~through the date of trial, and reinstatement to their former positions accompanied by a mandatory~~
19 ~~and/or prohibitory injunction prohibiting DISKEEPER from forcing or requiring any employee, as~~
20 ~~a condition of employment, to study, adopt and/or apply the so called "Hubbard Management~~
21 ~~Technology" and/or the related "Hubbard Study Technology" (both of which PLAINTIFFS intend~~
22 ~~to prove at trial are "cover" names for the fundamental teachings of the Scientology religion) in the~~
23 ~~workplace.~~

3

24
25 Emotional Distress Damages

26 49. As an additional direct result of DEFENDANTS' failure to take steps to
27 prevent discrimination from occurring, PLAINTIFFS have suffered significant personal,
28 emotional and economic injuries (including, but not limited to, loss of wages, loss of bonuses,

12/21/08

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.

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Attorneys' Fees and Costs

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

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Punitive Damages

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

12/13/09

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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12/11/08
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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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12/11/09

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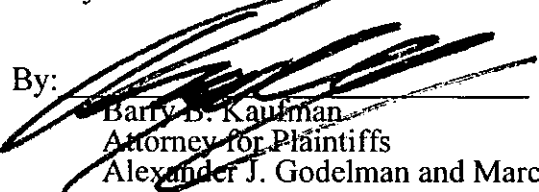
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E. ON THE FIFTH CAUSE OF ACTION:

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

Dated: October 14, 2008

LAW OFFICES OF BARRY B. KAUFMAN
A Professional Corporation

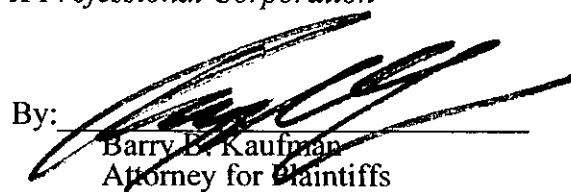
By: 
Barry B. Kaufman
Attorney for Plaintiffs
Alexander J. Godelman and Marc Le Shay

DEMAND FOR JURY TRIAL

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

Dated: October 14, 2008

LAW OFFICES OF BARRY B. KAUFMAN
A Professional Corporation

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

10/14/08

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PROOF OF PERSONAL SERVICE
C.C.P. Section 1011

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is: 16133 Ventura Boulevard, Suite 700, Encino, California 91436.

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.

BARRY B. KAUFMAN
Type or Print Name


Signature

10/14/08

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