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Filed October 20, 2008

5 Attorney for Respondent  
DONALD J. MYERS  
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9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

10  
11 **LISSA UVIZL,**  
12  
13 Plaintiff,

Case Nos. **BS116340 /BS116339**

**Hon. Richard E. Rico**

14 vs.

) **DEFENDANT'S OBJECTION TO LATE**  
) **FILING AND IMPROPER SERVICE OF**  
) **PLAINTIFF'S OBJECTION TO**  
) **DECLARATIONS IN SUPPORT OF**  
) **NOTICE OF SPECIAL MOTION AND**  
) **SPECIAL MOTION OF DONALD J.**  
) **MYERS TO STRIKE PLAINTIFF'S**  
) **COMPLAINT PURSUANT TO CODE**  
) **CIV. PROCEDURE §425.16.**

15 **DONALD J. MYERS,**  
16  
17 Respondent.

(C.C.P. §527.6 and 425.16)

18 **LEWIS MIRANDA,**  
19  
20 Plaintiff,

**DATE: Friday, October 24, 2008.**

**TIME: 8-30 a.m.**

**DEPT: 76**

21 vs.

22 **DONALD J. MYERS,**  
23  
24 Respondent.

Action Filed: August 11, 2008

Trial Date: None

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendant hereby submits objects to, and moves to exclude, the very late filed, and improperly served, document and exhibits captioned “Plaintiff’s Objection to Declarations of Graham Berry and Garry Scarff Filed In Support of Defendant’s Special Motion to Strike, etc.” (Plaintiff’s Late Objection”). For the reasons set forth below, Defendant contends that Plaintiff’s Late Objection is such an egregious and duplicitous breach of so many directly applicable rules that its contents should be excluded, ignored and disregarded.

Defendant’s Reply memorandum and Supplemental Written Objections were hand served at 2 P.M. and emailed at 3.26 P.M. on Thursday October 16, 2008. The Reply contained a major section arguing that Defendant’s pending motion should be granted because Plaintiff’s had fatally failed to file any proper objections to any of the contents of Defendant’s Supporting Declarations and Exhibits. Reply, pp. 7:11-8:26 (IV. PLAINTIFF’S HAVE CONCEDED DEFENDANT’S EVIDENCE ON THE MOTION). It would be logical to conclude that it was this paragraph of the Reply that led Plaintiff’s to file their Late Objection and that they thought by improperly using ordinary mail service they could prevent Defendant from learning of their Late Filing in time to bring the matters and any rebuttal before the Court reviewed and decided the papers. Plaintiff’s Late Objection is only four pages and could have been typed and then mailed before midnight at the Los Angeles Airport Post Office. This conduct would be outrage. However, the real explanation would seem even more deceitful and contemptuous. First, Defendant’s Reply, page 2:17-26 states:

“In addition, attorney Kendrick L. Moxon, Esq. has failed to file a declaration denying any of the foundational matters for the evidential matters set forth in paragraph seven of the “[Proposed] Order herein.” In fact through a number of proceedings he has never denied any of the Cipriano, Apodaca, Hurtado, etc. ‘course of corrupt conduct’ testimony, exhibits and other incriminating documents. See generally, Berry Moving Declaration ¶ 293 to 315, Exhibits E - H. Appropriately, Evidence Code §413 provides that

1 “[i]n determining what inferences to draw from the evidence or  
2 facts in the case against a party, the trier of fact may consider,  
3 among other things, the party’s failure to explain or to deny by his  
4 testimony such evidence or facts in the case against him, or his  
5 willful suppression of evidence relating thereto.”

6 Second, Defendant’s Reply, at page 8:13-26, states:

7 “Plaintiffs have clearly failed to make any proper evidentiary  
8 objections of record. Amazingly they seek to excuse this  
9 intentional and fatal omission by claiming, “Unfortunately, Mr.  
10 Berry has picked up where he left off when suspended and  
11 continues to make baseless allegations against Scientology and  
12 counsel. The resulting Special Motion to Strike itself has so many  
13 false and irrelevant statements that refuting them would take many  
14 pages, and they must therefore largely be ignored in this  
15 Opposition.” Fn 4 omitted. Plaintiffs therefore concede they  
16 ignored the Rules of Court and intentionally chose not to file  
17 proper and separate evidentiary objections rather than to address,  
18 controvert, deny or explain the “public interest” evidence  
19 submitted with Defendant’s motion. Plaintiffs cannot have it both  
20 ways. Consequently, all of Defendant’s evidence is properly before  
21 the Court. Through Defendant’s declarations and exhibits herein,  
22 Defendant has presented overwhelming evidence that his (and the  
23 other picketer’s) conduct is constitutionally protected and that  
24 there is no probability that Plaintiffs will prevail. Motion, section  
25 II, C-D.” Emphasis added.

26 Consequently, Plaintiff’s own Opposition conceded that they had considered but  
27 deliberately decided not to file any evidentiary reasons. It “would require too many pages, and they  
28 must therefore be largely ignored.” Opposition, p. 15:7-10. We lawyers are presumed to know the  
various rules of court with which we must contend. However, Defendant’s Moving papers  
included a reminder for Plaintiff’s counsel in the form of the document captioned “Evidentiary  
objections and [proposed order thereon]” which itself referred to “California Rules of Court Rule  
3.1354. Accordingly, from Plaintiff’s own Opposition (p.15:7-10) we know that Plaintiff’s  
considered and intentionally decided not to take the time and paper to file any proper evidentiary  
objections. Furthermore, the chain of email exchanges between counsel, and the proofs of service,  
we know that counsel were hand serving and promptly emailing electronic copies of all documents

1 except for one, Plaintiff's Late Objection which (because of the filing date) was a document  
2 requiring email and hand service more than any of the others.

3 Accordingly, in the circumstances above, the Plaintiff's Late Filed Objection appears all  
4 the more deceitful. First, Plaintiff's state they considered and decided against filing any objections.  
5 Second, they file Plaintiff's Late Objection after Defendant files his Opposition and own  
6 evidentiary objections. Third, Plaintiff's only use regular U.S. Post Office delivery for their Late  
7 Objections knowing that will prejudice or preclude any response or rebuttal by Defendants. Fourth,  
8 Plaintiff's Late Filed Objection breaches a myriad of applicable rules including those as to both  
9 format, specificity and grounds.  
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## 11 **II. PLAINTIFF'S LATE OBJECTION VIOLATES VARIOUS RULES**

12 In the context of these submissions, it is significant that as of October 16, 2008 the Plaintiffs  
13 had hand served and emailed (both on the same day) a copy of their opposition papers and  
14 Defendant's had done the same with their Reply papers, as evidenced by the email chain record.  
15 Berry Declaration, Exhibit A.  
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17 Plaintiff's opposition papers to the Defendant's pending C.C.P. §425.16 were filed on  
18 Monday, October 13, 2008, the last day under C.C.P. §1005 (b). In accordance with C.C.P. §1005  
19 (c), the opposition was hand served and emailed mid afternoon that same day, as required by  
20 C.C.P. Plaintiff's Opposition only comprised a Memorandum and Separately bound set of  
21 Exhibits. Reply, p. 6:26-7:1, attached Berry Decl., 10/16/08, Exhibits A & B. Plaintiff's  
22 Opposition failed to include any evidentiary objections, at least in proper manner and form.  
23 Plaintiff's Supporting Memorandum correctly stated that "[t]he standard for examination of the  
24 plaintiff's case is akin to a summary judgment motion. *Drum*, 107 Cal.App. 4<sup>th</sup> at 1018."  
25 Opposition, p.2:18-21." [Note, *Drum* has been disapproved on other grounds].  
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1           On Thursday, October 16, 2008, Defendant timely filed, hand served and emailed his Reply  
2 Brief and separate ‘Supplemental Written Objections to Evidence’ (CRC Rule 3. 1354).  
3 Defendant’s Reply, *inter alia*, argued that by failing to properly file any evidential objections  
4 “Plaintiffs have Conceded Defendant’s Evidence on the Motion.” Reply pp. 7:11-8:26.

5           Late Saturday afternoon on October 18, 2008, Defendant’s counsel received a document  
6 captioned “Plaintiff’s Objection to Declarations of Graham Berry and Garry Scarff filed in  
7 Support of Defendant’s Special Motion to Strike; Request to Strike Declarations. The Objection  
8 was dated October 16, 2008, the postal envelope was date stamped October 16, 2008. Attorney  
9 Moxon’s declaration was dated October 15, 2008 and his own personally signed Affidavit of Mail  
10 Service was executed on [Saturday] October 18, 2008 and swore that the document had been  
11 mailed on October 16, 2008. Suspiciously, in these circumstances of late filing, this is the only  
12 document attorney Moxon did not hand serve and email on the same date as filing (presumably  
13 Friday October 17, 2008 or Monday October 20, 2008). Berry Decl., Exhibit A. Plaintiffs late filed  
14 and improperly served Objection failed to include an *Ex Parte* Application for any form of relief  
15 including counsel “falling upon his sword” under C.C.P.§ 473.

16           In all of the circumstances ‘Plaintiff’s [late] Objection’ was in violation of California Rules  
17 of Court (“CRC”) Rule 3.1300 which provides, in pertinent part, that “all moving and supporting  
18 papers must be served and filed in accordance with Code of Civil Procedure section 1005.” C.C.P.  
19 §1005 (b) provides, in pertinent part, that “[a]ll papers opposing a motion shall be filed ... and  
20 served ... at least nine court days ... before the hearing.”

21           In addition, C.C.P. §1005 (c) provides, again in pertinent part, that “all papers opposing a  
22 motion and all reply papers shall be served by personal delivery, facsimile transmission, express  
23 mail, or other means ... reasonably calculated to ensure delivery to the other party ... not later  
24 than close of the next business day after the time the opposing or reply papers, as applicable, are  
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1 filed. This section applies to the service of opposition and reply papers regarding motions for  
2 summary judgment or summary adjudication.”

3 Plaintiff’s Late Objection is also defective and objectionable in other respects. First, the  
4 pending C.C.P. §425.16 motion is subject to C.C.P. Division 11 (Law and Motion). Plaintiff’s  
5 motion to strike fails to comply with C.R.C. Rules 3.1112, 3.1300 and 3.1322. Second, there is no  
6 *Ex Parte* application to enlarge or shorten time as required by C.R.C. Rules 3.1200 *et seq.* and  
7 3.1300 (b). Third, Plaintiff’s Late Objection totally flouts C.R.C. Rule 3. 1354 notwithstanding  
8 Defendant having filed C.R.C. Rule 3.1354 evidentiary objections in proper format with both his  
9 Moving and Reply papers. C.R.C. Rule 3. 1354 (b) sets forth the mandatory format for Written  
10 Objections to Evidence. Furthermore, and in pertinent part, C.R.C. Rule 3. 1354 (a) provides:

12 “Unless otherwise excused by the court on as showing of  
13 good cause, all written objections to evidence in support of or in  
14 opposition to a motion for summary judgment [or C.C.P. §425.16  
15 motion] must be served and filed at the same time as the objecting  
16 party’s opposition or reply papers are served and filed.”

16 In connection with C.R.C. Rules 3. 11354 (a) and (b), C.R.C. Rule 1.5 (b) (1) provides  
17 that the use of the word requires “mandatory” conduct which was flouted by Plaintiff’s  
18 unaccompanied by an *Ex Parte* Application for relief under C.C.P. §473 or C.R.C. Rule 3. 1354.

19 **III. DEFENDANT’S REBUTTAL & SUPPORTING EVIDENCE WILL SHOW FRAUD**

20 In the above circumstances, Plaintiff’s Late Filed Objection should be expressly ignored  
21 and rejected by the Court. However, in case the Court does not ignore and reject the Plaintiff’s  
22 Late Objection as requested herein, no later than Wednesday noon (October 22, 2008) Defendant  
23 will file, hand serve and email his short rebuttal memorandum, supporting declarations of Garry  
24 Scarff and Graham Berry and impeachment evidence, which, because of the time and space  
25 constraints herein, will necessarily omit over three feet of directly impeaching documents!  
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1 The Rebuttal Declaration of Mr. Scarff will show that the two declarations he executed on  
2 July 5, 1997, were the product of witness intimidation, bribery and obstruction of justice (across  
3 state lines) and were recanted soon thereafter. The Rebuttal Declaration of Mr. Scarff will  
4 include documents directly impeaching attorney Moxon's representations in Plaintiff's Late  
5 Objection herein. Mr. Moxon is aware of these impeaching documents from a 17 day deposition  
6 of Mr. Scarff that Mr. Moxon himself participated in.

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8 The Rebuttal Declaration of Graham Berry will show similar but even more egregious  
9 conduct by Mr. Moxon. This egregious conduct involves bribery, blackmail, champerty,  
10 solicitation of clients, suborning perjury and obstructing justice. It includes the testimony of  
11 Robert Cipriano, Anthony Apodaca, Michael Hurtado and related witnesses, Donald Wager,  
12 Esq., and Robert Vaughn Young. The brief memorandum and Berry Rebuttal Declaration will  
13 also address the various broad and non-specific materiality, hearsay and competency objections.  
14 It will show why the Berry and Scarff declarations are relevant to Public Interest matters, Public  
15 Issue matters, First Amendment issues, abuse of process/fraud on the court/champerty issues,  
16 and a pattern of past and present abuse of TROs such as the one herein and including the one  
17 herein. Some of this Rebuttal Evidence is described in the Berry Declaration dated September  
18 19, 2008, paragraphs 290 to 316 and exhibits E, F, G, H and I. On the basis of this evidence,  
19 Defendant's counsel will submit that Plaintiff's exhibits P through Z were procured by  
20 demonstrable fraud upon the underlying courts and therefore represents an attempt to perpetrate  
21 a further fraud (by omission) upon this court. In all of the circumstances, Defendant's counsel  
22 will urge the Court to refer the contentions, submissions and exhibits of both counsel to the  
23 California State Bar for a full investigation thereof.

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26 Defendant's counsel regrets having to burden himself and the court with such an additional  
27 filing but in the circumstances produced by Plaintiff's Late Objection he cannot leave the court  
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1 record bare of both objection and rebuttal evidence, unless the Court's clerk were to advise all  
2 counsel that Plaintiff's Late Objection had been rejected, excluded and would not be relied upon  
3 by the Court.

4 **IV. CONCLUSION**

5 For the foregoing reasons, this objection should be sustained and Plaintiff's Late Filed  
6 Objection should be expressly ignored and rejected by the Court.

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9 Dated: October 20, 2008.

Respectfully submitted,

10 \_\_\_\_\_/s/\_\_\_\_\_

11 **Graham E. Berry,**  
12 Attorney for Defendant Donald J. Myers

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**DECLARATION OF GRAHAM E. BERRY**

I, **GRAHAM E. BERRY**, declare and state as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California. I have personal knowledge of the facts set forth herein, except those that are based upon information and belief, and if called as a witness, I could and would testify competently thereto.
2. This Declaration is submitted in the consolidated cases of *Lewis Miranda v. Donald J. Myers* (L.A.S.C. Case no: BS116339) and *Lissa Uvizl v. Donald J. Myers* (L.A.S.C. BS116340).
3. Attached hereto and marked with the letter A is a true and correct copy of a series of email exchanges between Plaintiff’s counsel Moxon herein and me.
4. On Saturday afternoon, October 18, 2008, at approx. 4 P.M., a U.S. Post Office mail carrier delivered an envelope containing a document captioned ‘Plaintiff’s Objection To Declarations of Graham Berry and Garry Scarff Filed in Support of Defendant’s Special Motion To Strike; Request To Strike Declarations.’ This was the only manner in which this document was received by me.

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

Executed this 20th day of October 2008, at Los Angeles, California.

/s/

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**GRAHAM E. BERRY**

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2  
3 **PROOF OF SERVICE BY HAND**

4 STATE OF CALIFORNIA )  
5 ) ss.:  
6 )  
7 COUNTY OF LOS ANGELES )

8 *Lissa Uvizl & Lewis Miranda v. Donald J. Myers, LASC Case No. BS 116339/116340*

9 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
10 and not a party to the within action. My business address is 3384 McLaughlin Avenue, Los  
11 Angeles, CA 90066.

12 On October 20, 2008, I served on interested parties in said action the within:

13 **DEFENDANT’S OBJECTION TO LATE FILING AND IMPROPER SERVICE OF**  
14 **PLAINTIFF’S OBJECTION TO DECLARATIONS IN SUPPORT OF**  
15 **NOTICE OF SPECIAL MOTION AND SPECIAL MOTION OF DONALD J. MYERS TO**  
16 **STRIKE PLAINTIFF’S COMPLAINT PURSUANT TO CODE CIV. PROCEDURE**  
17 **§425.16.**

18 By emailing the document to [kmoxon@earthlink.net](mailto:kmoxon@earthlink.net) and faxing it to (213) 487-5385 at approx.  
19 11-15 A.M.

20 **Kendrick L. Moxon, Esq.**  
21 **Moxon & Kobrin**  
22 **3055 Wilshire Boulevard, Suite 900**  
23 **Los Angeles, CA 90010**

24 Attorneys for Plaintiffs,  
25 Lissa Uvizl and Lewis Miranda

26 Executed on October 20, 2008, at Los Angeles, California.

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

\_\_\_\_\_  
29 Graham E. Berry

\_\_\_\_\_  
/s/

30 3384 McLaughlin Avenue, Los Angeles, CA 90066.