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OF ORIGINAL FILED
Los Angeles Superior Court

FEB 22 2010

John A. Clarke, Executive Officer/Clerk

Paul Sanchez
PAUL SANCHEZ

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 CENTRAL DISTRICT

12 KENDRICK MOXON

13 Plaintiff,

14 v.

15 GRAHAM BERRY,

16 Defendants.

Case No. BC429217

DEFENDANT AND CROSS-
COMPLAINANT'S APPENDIX NO. IV
OF EXHIBITS [K-Z] AND REQUEST FOR
JUDICIAL NOTICE FILED AS PART OF
THE UNVERIFIED ANSWER AND
VERIFIED COMPULSARY CROSS-
COMPLAINT HEREIN.

17 GRAHAM E. BERRY, an individual;

18 Cross-Complainant,

19 v.

20 KENDRICK L. MOXON, an individual;

21 Cross-Defendant.

Action filed: January 5, 2010

[Filed concurrently with Reply in Support of
Request to file Compulsory Cross-
Complaint by Judicial Council of California
Form MC-701 (C.C.P. §391.7) and Exhibits
A-J therewith.]

EXHIBIT U

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17 FOR THE COUNTY OF LOS ANGELES

18 GRAHAM E. BERRY,

19 Plaintiff,

20 vs.

21 ROBERT J. CIPRIANO, et al.,

22 Defendants.

23 AND RELATED CASES.
24
25
26

FILED
LOS ANGELES SUPERIOR COURT

AUG 20 1999

JOHN A. CLARKE, CLERK

BY ROBERT E. LEE, DEPUTY

) Case No. BC 184355

) ORDER FINDING GRAHAM E.
) BERRY TO BE A VEXATIOUS
) LITIGANT

) Date: August 20, 1999

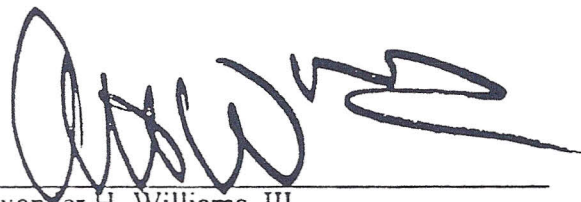
) Time: 8:30 a.m.

) Dept: 35

1 The Court having read and considered the moving papers of Petitioners Church of
2 Scientology International, Isadore Chait and Glenn Barton, opposing papers of Graham E. Berry and
3 supplemental papers filed by the parties and having heard oral argument thereon, the Court hereby
4 finds Graham E. Berry to be a vexatious litigant within the meaning of C.C.P. §§ 391(b)(1)(3)(4).
5 Effective immediately, Graham E. Berry is required to comply with the procedures set forth in
6 C.C.P. §391.7.

7 Further, as the Court has found Mr. Berry to be a vexatious litigant pursuant to *inter alia*
8 C.C.P. §391(b)(4), which section applies to either an attorney appearing in pro per or as a counsel of
9 record, this Court hereby orders that in any action or proceeding in which Mr. Berry appears, either
10 as a party or counsel, he attaches to the first document he files in that action or proceeding a true
11 copy of this Order.

12 Dated: August 20, 1999



Alexander H. Williams, III
Superior Court Judge

EXHIBIT V

000202

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INTRODUCTION

This petition presents issues of egregious judicial misconduct and non-waivable bias¹ on the part of the Honorable Alexander H. Williams, III ("Judge Williams"). Plaintiff / Petitioner, Graham E. Berry ("Mr. Berry"), and *Defendant Pro Per*, Robert J. Cipriano ("Mr. Cipriano"), filed a joint written statement to disqualify Judge Williams prior to his ruling on a petition to deem Mr. Berry a vexatious litigant for suing Mr. Cipriano and the other defendants. Judge Williams struck both the Statement of Disqualification, and filed a verified answer. He then proceeded to hear the vexatious litigant matter, entering an order declaring Mr. Berry to be a vexatious litigant.

Judge Williams fiancée works for the moving party, Church of Scientology International ("CSI"). One of Judge Williams' former law clerks works for the second moving party's attorneys, Paul Hastings, Janofsky & Walker. The second moving party, Rev. Glen Barton ("Barton"), works for the first moving party, CSI, along with the Judge's fiancée, and Barton and his counsel acted in concert with the criminal conduct now known to have occurred in the litigation.² The third moving party, Isadore Chait, belongs to a front organization (the CAN Reform Group) created by the first moving party, CSI, that employs Judge Williams fiancée. Counsel for the third moving party, Kendrick L. Moxon ("Moxon"), also works for the first moving party, CSI, that employs Judge Williams fiancée.

Moxon instigated and orchestrated the bribery, blackmail, subornation of perjury, perjury, solicitation, witness tampering and obstruction of justice only recently revealed by Mr. Cipriano to have spawned and permeated the underlying cases. Judge

¹ See CCP § 170.3(b)(2)(A).

² Chait also actively engaged in the extensive criminal conduct of movants and their counsel during the underlying litigation.

Williams had full knowledge of the criminal conduct perpetrated by his fiancée's employer, CSI, and its in-house counsel, Moxon, prior to Judge Williams' refusal to

disqualify himself.³ Amazingly, Judge Williams considered it irrelevant that the Cult procured perjury, committed other criminal conduct and then sought to have Mr. Berry deemed vexatious for seeking redress in connection with that very same conduct. The Cult⁴ is now exploits Judge Williams' bias in its favor, and against Mr. Berry, to discredit him and to severely prejudice the constitutional rights of Mr. Berry and his clients in a plethora of irreparable ways.⁵

³ Mr. Cipriano's August 9, 1999 Declaration was filed with the court on August 11, 1999. In refusing to disqualify himself, Judge Williams stated in arrogant fashion that he was in his "final term," had been "re-elected" and is "like a federal court in a state court." *Tr. 102:14-21, attached in Appendix Vol. VII as Exhibit "21."* Such arrogance is not rare with Judge Williams. See *Soliz v. Alexander H. Williams, III*, No. B119136, Cal.App. Lexis 784 (Cal. App. 2d Dist. 1999) ("Judge Williams conduct involved vulgar, abusive and demeaning language toward attorneys and constituted an improper display of personal hostility and embroilment." (referring to conduct for which Judge Williams was publicly admonished in 1997) In *Soliz, Id.*, Judge Williams "verbally assaulted" the plaintiff, telling him that his settlement demand was "bullshit" and that they had "shit for brains" and that he [Judge Williams] was their "enemy." Similarly, Judge Williams' outbursts herein are described in *Appendix Vol. IV, Exhibit "17, at 0017:24-26.*

⁴ "The Cult" hereinafter collectively refers to any and all of the various Scientology organizations. See, e.g., *Missouri Church of Scientology v. State Tax Commission of Missouri*, 550 S.W.2d 837, 842 (1977) (In this case, the church referred to itself as fitting within the definition of religion enunciated in *Fellowship of Humanity v. County of Alameda*, 153 Cal.App.2d 673 (Cal. App. 1st Dist. 1957), as simply including . . . "[2] a cult, involving gregarious association openly expressing [a] belief; . . . and [4] an organization within the cult designed to observe the tenets of belief. The content of the belief is of no moment." *Id.* See also, *Church of Scientology International v. Time Warner*, 932 F. Supp. 589 (S.D.N.Y. 1996); *Hart v. Cult Awareness Network*, 13 Cal.App.4th 777, 16 Cal.Rptr.2d 705 (Cal. App. 2d Dist. 1993) review denied (April 21, 1993); *Church of Scientology Flag Services Org., Inc. v. City of Clearwater*, 756 F. Supp. 1498 (M.D. Fla. 1991); *U.S. v. Article or Device*, 333 F. Supp. 357 (D.D.C. 1971) ("The government did not sue to condemn the E-meter until the early 1960's, by which time a religious cult known as the Founding Church of Scientology had appeared."); *People v. Thompson*, 133 Cal.App.3d 419, 424, 184 Cal.Rptr.72 (Cal. App. 4th Dist. 1982) (describing Scientology practices citing *Evans, Cults of Unreason* (1973) at p. 81).

⁴ Moxon serves the Cult in its Office of Special Affairs, and serves as its in house counsel, as well as counsel on various matter litigated by or against the Cult. The Justice Department named him as an unindicted co-conspirator in connection with the provision of forged handwriting samples to the FBI in *U.S. v. Hubbard*, Criminal Case No. 78-401, Lexis 9308 (D.D.C. 1979). In *RTC v Scott*, (unpublished), the court imposed attorneys fees and costs in the amount of \$2.5MM for his tactics and vexatious conduct, and in *Wollersheim v. Church of Scientology*, 212 Cal.App.3d 872, 66 Cal.Rptr2d 1, the court imposed approximately \$500K in costs and fees for similar conduct.

⁵ On August 25, 1999, attorneys' Moxon and Rosen argued that Judge Williams' order declaring Mr. Berry to be a vexatious litigant warranted Judge Minning, Dept. 45, either sustaining Church of Scientology

Petitioner, Mr. Berry, now brings before this Court his Request for Immediate Stays, and his Petition for alternative Writs of Mandate, of Prohibition and for other Extraordinary Relief on the grounds of the overwhelming appearance of bias and prejudice against Mr. Berry⁶ and in favor of the Cult, praying: (1) That this Court immediately issue a stay of proceedings, under Seal of this Court, enjoining the Superior Court of the State of California for the County of Los Angeles, Dept 45, from proceeding further in *Pattinson v. Church of Scientology Int'l, et al*, No. BC 207364, until further order of this Court, and commanding that court to seal all portions of that record which reflect disclosure of the vexatious litigant petition and order; (2) that this Court immediately issue a stay of all proceedings in the underlying cases; (3) that this Court immediately enjoin the real parties in interest from disclosing the existence of the Vexatious Litigant Order in any context whatsoever, pending resolution of the appeal from that order; (4) that this Court immediately issue a Writ of Prohibition under the seal of this Court commanding Respondent, Judge Williams, to desist and refrain from taking any further action on or in proceedings in the underlying cases including enforcement of the vexatious litigant order, until further order of this Court, and directing and requiring Judge Williams and the real parties in interest to show cause before this Court, at a time and place then or thereafter specified by Court order, why it should not be absolutely and forever restrained from any further proceedings in the underlying case, and on return of the alternative writ and hearing on the order to show cause, issue a preemptory writ of prohibition under seal of this Court restraining Judge Williams absolutely and forever from taking any further proceedings in the underlying case and restraining the real parties in interest from disclosing the existence of the vexatious litigant proceedings and the

International demurrer in *Pattinson v. Miscavige*, or requiring the posting of a bond as a precondition to that case proceeding.

⁶ Judge Williams has also exhibited the same prejudice and bias against Mr. Cipriano, a defendant in the underlying cases. Mr. Cipriano is currently a defendant *Pro Per* who has negotiated a settlement of Mr. Berry's claims against him. Mr. Berry has never represented, and does not now represent Mr. Cipriano. Nor does Mr. Berry presume to have standing to assert Mr. Cipriano's rights herein. However, to the extent that Judge Williams precluded Mr. Cipriano from attempting to secure his property and safety, circumstance bears noting as further indicia of Judge Williams prejudice and bias against Mr. Berry.

Order arising therefrom absolutely and forever, or in the alternative, (5) that this Court issue an alternative writ of mandate under the seal of this Court commanding the Chief Judge of the Superior Court of the State of California for the County of Los Angeles to appoint another Judge to hear all motions and other matters brought in the underlying cases; (6) that this Court award the costs and fees of bringing this Petition to Petitioner; and (7) that this Court grant such other and further extraordinary relief as this Court deems just and proper under the circumstances.

REQUEST FOR STAYS

Petitioner hereby requests that this court stay *all* proceedings in the court below both, in the underlying cases, and in *Pattinson v. CSI et al*, No. No. BC 207364, pending resolution of disqualification proceedings against Judge Williams, on the grounds that Judge Williams has demonstrated extreme prejudice and bias against Mr. Berry and in favor of the Cult's lawyers in the underlying cases, and that the Cult's lawyers are attempting to exploit the vexatious litigant declaration to severely prejudice Mr. Berry's constitutional rights by precluding Mr. Berry's opportunity to be heard fairly in future proceedings in the underlying cases, and by introducing the vexatious litigant circumstance and order, in inflammatory and exaggerated fashion, into records in other cases, severely prejudicing Mr. Berry and his clients in those matters.

FACTS SUPPORTING THE IMPOSITION OF IMMEDIATE STAYS, ALTERNATIVE WRITS OF MANDATE, OF PROHIBITION AND SUCH OTHER EXTRAORDINARY RELIEF AS MAY BE JUST AND PROPER UNDER THE CIRCUMSTANCES

BY THIS VERIFIED PETITION, Petitioner, Graham E. Berry, alleges as follows:

1. Mr. Berry has litigated matters against the Cult since 1991.⁷

In many, he has prevailed against the Cult. *Declaration of Graham E. Berry dated June 16, 1999, attached in Appendix, Vol. III as Exhibit "7," Paragraph 4 at 26:16-37:15.*

2. The Cult employs a number of various means to destroy the lives of persons bringing claims and counsel representing persons bringing claims against it. Among these means are the Cult's policy and practice of "Fair Game" and "Dead Agenting." *Church of Scientology Int'l v. Wollersheim*, 42 Cal.App.4th 628, 648-49 (Cal. App. 2d Dist. 1986)

3. Fair Game is described as a religious practice in which the Cult's members are encouraged to do all that they can to cause the ruin of persons targeted. In the legal context, the Cult's lawyers are encouraged to use the process of litigation to "harass and discourage rather than to win." In the Cult's own words, "The Law can be used very easily to harass and enough harassment on somebody who is simply on the thin edge anyway, well knowing that he is not authorized, will generally be sufficient to cause his professional deace. *If possible, of course, ruin him utterly.*⁸ See generally, *Appendix Vol. II, Exhibit "3" at 50:12-82:3.*

4. Dead Agenting is a practice engaged in by Cult members that is very similar to but much more extreme than mud raking or character assassination, wherein the Cult gathers negative, embarrassing or compromising information about an individual

⁷ A review of the history of Mr. Berry's relationship, to the Church of Scientology and its attorneys both *in Pro Per*, as well as that of counsel for parties litigating against them, is critical to this Court's understanding of the nature, scope and impact of Judge Williams' bias and prejudice not only upon Mr. Berry, but also upon other clients he represents against the Church of Scientology and its affiliates. A comprehensive history of Mr. Berry's litigation against the Cult is found in The Declaration of Graham E. Berry dated June 16, 1999, attached in *Appendix Vols. III and IV as Exhibit "7."*

⁸ See *Church of Scientology v. Wollersheim*, 42 Cal.App. 4th 628, 648-649; *Religious Technology Center, et al. v. Scott, et al.* No. 94-55781 (9th Cir. 1996) (Affirming sanctions in the amount of \$2..9MM and noting that the Cult engaged in evasion, misrepresentation, broken promises, and lies that massively increased costs of the other parties and the court.) See *Appendix Vols. III and IV, Exhibit 7 at Exhibit "Q."*

and publishes and disperses that information as widely as possible to "kill" the targeted person by destroying his credibility or moral character in any and all contexts.⁹

5. Pursuant to the practices described in Paragraph 4, above, the Cult, its members and its agents (including its attorneys) set about to destroy Mr. Berry. *Appendix Vol. II, Exhibit "3" at 102:18-176:10*. One of the many things they did to Mr. Berry was to blackmail members of one of his former law firms in an effort to cause him to cease and desist. *Appendix Vol. II, Exhibit "3" at 137:1-140:6*. The Cult engaged in similar practices when Mr. Berry joined another law firm, causing him to disassociate from that firm. *Appendix Vol. II, Exhibit "3" at 156:21-157:24; Vol. III, Exhibit "7" at 36:3-14*. Ultimately, Mr. Berry founded his own law firm and the Cult proceeded to bludgeon Mr. with over-burdensome litigation tactics, as well as communicating with and intimidating his partners into abandoning the firm, leaving Mr. Berry standing alone. *Appendix Vol. III, Exhibit "7" at 37:3-6 and Appendix Vol. V, Exhibit 11 at 39:75-40:3*

6. Unbeknownst to Mr. Berry, and also pursuant to the Cult's "Fair Game" and "Dead Agenting" patterns and practices, in May of 1994, a private investigator impersonating a Los Angeles Police Detective contacted Robert J. Cipriano in New York City. That was the beginning of a relationship between the Cult and Mr. Cipriano that lasted until mid June of 1999. During that relationship, the Cult intimidated, coerced, bribed, and otherwise elicited perjurious statements and Declarations from Mr. Cipriano about Mr. Berry.¹⁰ The Cult's Police-Detective-Impersonating private investigator told Mr. Cipriano the information was for their files and would probably never be used. *Cipriano Declaration, attached in Appendix Vol. V as Exhibit "11" at 16:22-19:18*.

⁹ *Church of Scientology of California v. Commissioner of Internal Revenue*, 83 T.C. 381, (U.S.T.C. 1984).

¹⁰ The substance of these lies obtained by the Cult from Mr. Cipriano and later used by the Cult pertained to Mr. Berry's homosexuality, sodomizing juvenile males and other accounts of pedophilia, and using controlled substances, both himself, and as a means of taking advantage of juvenile males.

7. On or around October, 1994, the unincorporated CAN Reform Group,¹¹ which included as members Isadore Chait and the Reverend Glenn Barton, widely published a slanderous, libelous and false declaration regarding Mr. Berry.¹² See *Cipriano Complaint, attached in Appendix Vol. I as Exhibit "1" at 9:8-14:19*. Mr. Berry discovered that Mr. Cipriano authored the libelous statement. *Id.* What Mr. Berry did not know at that time, however, was the fact that an agent (private investigator Eugene Ingram) acted for and on behalf of the Cult and Cult-member-lawyer, Moxon,¹³ to extort, blackmail, coerce, bribe and intimidate Mr. Cipriano into signing the false declaration drafted by Moxon or Eugene Ingram, who at the time impersonated a Los Angeles Police Department Detective.¹⁴

8. In essence, the Cult, by unethical and criminal means, instigated the acts, which gave, rise to the underlying cases. *Cipriano Declaration, Appendix Vol. V, Exhibit "11" at 16:22-19:18*. Initially, Mr. Berry filed the Cipriano suit. Thereafter, Cult member-lawyer, Moxon, solicited Mr. Cipriano and offered to defend him at no charge. *Declaration of Robert J. Cipriano dated August 9, 1999, attached in Appendix Vol. V, Exhibit "11" at 20:21-25:19*. In the course of the litigation below, Cult lawyer, Moxon, and co-counsel Samuel D. Rosen coached Mr. Cipriano to lie during the Cipriano deposition that Moxon had noticed. *Id. at 30:11-31:10*. Moxon subsequently introduced that perjurious deposition into the record below.

¹¹ This is an organization formed and operated within the Church of Scientology International. The Cult formed the group to orchestrate the downfall of the Cult Awareness Network. See, e.g. *Appendix Vol. I, Exhibit "2" at 83:4-9*.

¹² Contained in the declaration among other false statements and implied prurient activities were false references to Mr. Berry's use of controlled substances and his alleged proclivity for pedophilia.

¹³ Moxon serves the Cult in its Office of Special Affairs, and serves as its in house counsel, as well as counsel on various matter litigated by or against the Cult.

¹⁴ This is not the first time Mr. Ingram impersonated a law officer. He is alleged to have done so on two prior occasions and warrants were issued for his arrest in Florida (vacated) and Oklahoma.

9. Mr. Berry also filed claims against Glen Barton, No. 186168, and The Church of Scientology Int'l. ("CSF") and "Captain" David Miscavige ("Miscavige"), No. 196402. A comprehensive history of the underlying cases is set forth in the Declaration of Graham E. Berry dated June 16, 1999, and is attached in the *Appendix hereto as Exhibit "7"* at 38:16-58:5.

10. Under the weight of the Cult's over-litigation of the underlying cases as well as others, and the court's involuntary dismissal of Moxon-client Chait, Mr. Berry voluntarily dismissed the underlying cases, dismissing Cipriano without prejudice, Barton without prejudice and the claims against the Church of Scientology International and David Miscavige, without prejudice. The claims against CSI and Miscavige were dismissed in reliance upon the Cult's representations that dismissal was a condition precedent to good faith settlement negotiations. *See Appendix Vol. III, Exhibit "7" at 50:10-55:20; Vol. IV, Exhibit "7" at 5:23-22:3.* Good faith settlement negotiations of the Miscavige-CSI claims never commenced. Rather, those defendants brought a petition to declare Graham E. Berry a vexatious litigant on May 14, 1999. *Declaration of Graham E. Berry dated June 16, 1999 and Tolling Agreement dated February 20, 1999, attached thereto as Exhibit "N", attached in Appendix Vol. III as Exhibit "7" at 51:13-55:20.*

11. On or around June 12, 1999, Mr. Cipriano contacted Mr. Berry and informed Mr. Berry about the true facts comprising his relation to the Cult and his relationship with Cult attorneys, Kendrick L. Moxon and Barbara Reeves, and about the false statements and declarations that the Cult coerced, harassed, intimidated and bribed Mr. Cipriano in order to obtain them. At that time, Mr. Cipriano also informed Mr. Berry about Moxon's statements regarding Judge Williams.¹⁵ (Cipriano Decl. App. Vol V, Exh. 11, p. 13:10-14).

¹⁵ Moxon boasted about Judge Hiroshige being a "lame judge" and about filing a motion to replace Judge Hiroshige. Moxon related the transfer of the case to Judge Williams, intimating to Mr. Cipriano that Judge Williams was "A friend of the Church of Scientology."

12. On August 9, 1999, Mr. Cipriano completed and signed his Declaration detailing a pattern and practice of criminal conduct that includes but is not limited to harassment, coercion, bribery, intimidation, solicitation, witness tampering, subornation of perjury, perjury, mail fraud, wire fraud, stalking and other criminal violations in connection with the underlying cases. *Declaration of Robert J. Cipriano dated August 9, 1999, attached in Appendix, Volume V as Exhibit "11."*

13. On August 12, 1999, Mr. Berry filed a copy of the Settlement detailing the settlement he and Mr. Cipriano had reached with respect to Mr. Berry's claims against Mr. Cipriano. Cipriano also filed notice substituting himself in pro per. (App. Vol. IV, Exh. 8.) Cipriano also filed a Joinder and Opposition to his former counsels' Motion to declare Mr. Berry a Vexatious Litigant and requested the vexatious litigant hearing be continued. (App. Vol. IV, Exh. 9.) On this day, Mr. Berry also notified opposing counsel of his intent to appear *ex parte* in the underlying cases and present several motions to Judge Williams on August 16, 1999. *See Correspondence from Graham E. Berry to all Opposing Counsel dated August 12, 1999, attached to Ex Parte Application Papers dated August 16, 1999, filed concurrently with Statement of Disqualification, attached in Appendix, Vol. VIII, as Exhibit "13."*

14. On August 16, 1999, upon his arrival at the Department 35 courtroom at approximately 8:50 a.m., Judge Williams clerk informed Mr. Berry that Judge Williams had already heard the Cult's attorneys, informed Mr. Berry that he had invited his opposing counsel to bring sanctions motions against him, and ordered him not to file any motions before the August 20, 1999, hearing on the vexatious litigant petition.¹⁶ Judge Williams had allowed Gary Soter, Esq., another Cult-hired lawyer, earlier to appear before him and claim that he was representing Mr. Cipriano's interests,

¹⁶ In doing so, Judge Williams precluded Mr. Berry from filing papers that would make explicitly clear that he was anything but a vexatious litigant in that the challenged libelous statements were not only false but obtained through criminal conduct. In short, the Cult committed criminal acts that instigated a legitimate suit and then sought to have Mr. Berry declared a vexatious litigant for seeking relief based on those criminal and civil violations of the law.

when in fact, Mr. Soter had been noticed of Mr. Cipriano's termination of their client-lawyer relationship, and after Judge Williams had received notice of Mr. Cipriano's substitution, *Pro Per*. Judge Williams entered rulings based, in part, on Mr. Soter's misrepresentation that he appeared to represent Mr. Cipriano's interests with full knowledge that Mr. Soter could not have been representing Mr. Cipriano's interests in light of the substitution Mr. Cipriano filed with the court on August 11, 1999. See *Declaration of Graham E. Berry, dated August 30, 1999, attached in Appendix, Vol. VIII, as Exhibit "18, 19, 21, 22."*

15. Mr. Berry and Mr. Cipriano filed a Joint Verified Statement of Disqualification on August 19, 1999, based *in part* on Judge Williams failure to re-notice all parties that his fiancée worked for a Cult organization and that one of his former law clerks went to work for a firm that represents the Cult in numerous matters *after* the CSI became a party to the underlying cases, *in part* upon Judge Williams failure to re-notice the parties of that same information upon CSI's filing the vexatious litigant motion,¹⁷ *in part*, upon the newly discovered evidence of corruption, subornation of perjury, perjury and obstruction of justice, as well as Moxon's proclamation that Judge Williams was "a friend of Scientology" detailed for the first time in the Cipriano Declaration of August 9, 1999, *in part* upon Judge Williams non-waivable duty to disqualify himself and his failure to do so, and *in part*, upon the blatantly biased and prejudicial judicial conduct Judge Williams exhibited on August 17, 1999. App. Vol. IV, Exh. 10.

16. On the afternoon of August 19, 1999, Judge Williams telephonically ordered Mr. Berry to appear before him the next morning, August 20, 1999, at 8:30 a.m. sharp. App. Vol. VIII, Exh. 16, p. 149:27-30.

¹⁷ Given the dismissal of all claims, the vexatious litigant motion constitutes a new proceeding. App. Vol. VIII, Exh. 21, p. 278:4-15.

17. On the morning of August 20, 1999, Judge Williams struck the Verified Statement of Disqualification, filed his own Verified Answer to the Statement of Disqualification, heard argument on the vexatious litigant petition and granted it, and then denied all of the motions Judge Williams had previously ordered Mr. Berry not to file until after the August 20, 1999, vexatious litigant hearing. Mr. Berry and Mr. Cipriano filed an objection to the Court proceeding in the matter. *See Transcript of Proceedings before the Honorable Alexander H. Williams, dated August 20, 1999, attached in Appendix as Vol. VIII, Exhs. "18."*

18. At that time, Mr. Berry indicated his intention to file a motion for an order to show cause why certain Cult counsel and their clients should not be held in contempt, for sanctions, for disqualification of counsel, and for reference of the matter to the appropriate law enforcement authorities. Judge Williams indicated in advance that he would deny that motion if Mr. Berry filed it. App. Vol. VIII, Exh. 21, pp. 242:18-21; 255:49; 257:3, 276:10-22.

19. This Petition arises from the prejudice, bias and the appearance thereof exhibited by the Honorable Alexander H. Williams, III ("Judge Williams"), against Petitioner, Mr. Berry. This Petition also arises from Judge Williams's bias and the appearance of bias in favor of the Cult and its attorneys (one of whom is an active high-ranking member of the Cult) who currently represents or has represented the parties in interest in the underlying action.

20. On August 19, 1999, and pursuant to CCP §§ 170.1 and 170.3, Mr. Berry filed his Verified Statement of Disqualification ("Statement").¹⁸ On the next day, Judge Williams struck Mr. Berry's Verified Statement pursuant to CCP § 170.4(b) (*see*

¹⁸ Noteworthy is the fact Judge Williams Clerk refused to accept the filing, and received it only as "filed on demand." App. Vol. VIII, Exh. 16, p. 147:20-28. Also noteworthy is the fact that Robert J. Cipriano, a defendant in the underlying cases concurrently filed his own Verified Statement regarding Judge Williams disqualification, in part upon on the basis that Judge Williams heard Gary Soter, Esq. and the misrepresentations he made respecting his representation of Mr. Cipriano. Vol. IV, Exh. "10". The Judge,

Order Striking Statement of Disqualification, attached in Appendix as Exhibit "19."), but also concurrently filed his Verified Answer to Mr. Berry's Statement of Disqualification pursuant to CCP § 170.3(c)(3). *Verified Answer of Judge Alexander H. Williams III to "Joint Verified Statement of Disqualification," attached in Appendix as Vol. VIII, Exhibit "18."*¹⁹

21. No further action has been taken either by Judge Williams or the Superior Court of the State of California for the County of Los Angeles ("SCCLA") respecting the disqualification of Judge Williams.²⁰

22. Judge Williams actions severely prejudiced Mr. Berry's attempts to reach a resolution in the underlying case with Mr. Cipriano that is consistent with fact, truth, fairness and justice. At this time, the apparent bias against Mr. Berry continues and, as evidenced by Judge Williams failure to grant Mr. Berry's motions respecting the excess page limit of 25 pages that Department 45 had already authorized for the same motion, and Judge Williams' indication that he will deny that motion for an order to show cause and for sanctions prior even to reading the papers, Judge Williams has made very clear that he shall continue to abuse his discretion based on his prejudice and bias.

23. As the injured Plaintiff in the underlying cases for libel, Petitioner, Mr. Berry has a beneficial interest in the resolution of the disqualification proceedings and the ultimate outcome of the underlying cases. Petitioner was the Plaintiff in the underlying cases in Respondent Court before Respondent Judge entitled *Berry v. Cipriano, et al*,

however, refused to hear Mr. Cipriano when he asked to be heard on August 20, 1999. *See Transcript of Proceedings dated August 20, 1999, attached in Appendix as Vol. 8, Exh. "21", p. 278:4-15.*

¹⁹ This action on Judge Williams part presents a procedural anomaly. There is no provision in the California Rules of Civil Procedure that instructs Mr. Berry as to how to respond to this contradictory posture.

²⁰ Judge Williams' Order declaring Mr. Berry a vexatious litigant itself arises from the bias and prejudice held by Judge Williams against Mr. Berry and in favor of the Cult and its attorneys. Mr. Berry will appeal from the Order declaring him a vexatious litigant.

Nos. BC 184355, BC 186168 and BC 196402. The Defendants included in that action are Robert J. Cipriano, Isadore Chait, David Miscavige, Rev. Glen Barton, CSI and Eugene Ingram, named in this Petition as real parties in interest.

23. Respondent, the Superior Court of the State of California for the County of Los Angeles is the Superior Court in which the underlying case was and is pending, and is exercising judicial functions in connection with and in which the underlying case and matters related thereto have been and will be heard as described herein.

24. Respondent, Judge Williams is a Judge of the Superior Court of the State of California and the Judge exercising his judicial functions in connection with and currently presiding over the underlying cases and matters related thereto as described herein.

25. Respondent, Judge Williams, is now and at all times mentioned in this petition, has been the Superior Court Judge presiding over the underlying case and matters related thereto, and in that capacity, has been, and is at all time relevant to these proceedings been exercising powers in excess of his jurisdiction and abuse of his discretion, inter alia, in the following manner:

- (a) by refusing to disqualify himself;
- (b) by denying Mr. Berry's August 16, 1999 Ex Parte Application before it was even filed;
- (c) by arbitrarily refusing to allow Mr. Berry to seek any further ex parte relief

during the week of August 16-20, 1999. (See *Notice of Ruling by the Honorable Alexander H. Williams, III dated August 17, 1999, attached in Appendix as Vol. V, Exhibit "11, p. 13 et seq."*);

(d) by attempting to refuse to accept the filing of the statement of disqualification; by refusing to recuse or disqualify himself (See *Transcript of Proceedings before the Honorable Alexander H. Williams, III dated August 20, 1999, attached in Appendix as Vol. VIII, Exh 22*

(e) by entering the Order declaring Mr., Berry a vexatious litigant (See *Transcript of Proceedings before the Honorable Alexander H. Williams, III, attached in Appendix as Exhibit "21."*); and

(f) by telling Mr. Berry, even before he filed his motion for an order to show cause why the Cult's lawyers should not be held in contempt, for sanctions against them, and other relief, that he would deny that motion. *Id.*)

In so doing, Judge Williams threatens to and will, unless restrained and prohibited by order of this Court, has and will continue to refuse to fairly entertain, hear, and determine the motions Mr. Berry intends to file respecting the contumacious acts of the Cult's lawyers, the need for the imposition of sanctions, and reference of these matters to the Federal and State law enforcement agencies due to multiple violations of the U.S. Code and the California Code, including but not limited to intimidation, coercion, harassment, bribery, witness tampering, perjury, the subornation of perjury, wire fraud, mail fraud, fraud on the court and obstruction of justice. See *Declaration of Robert J. Cipriano, dated August 9, 1999, attached in Appendix Vol. V, as Exhibit "11"; Preliminary Draft of Motion for an Order to Show Cause why Defendants Lawyers should not be held in contempt; for Sanctions, Etc. attached in Appendix as Vol. VIII, Exhibit "13, pp. 89-106;" Transcript of Proceedings before the Honorable Alexander H. Williams, III, dated August 23, 1999, attached in Appendix as Vol. VIII as Exhibit "21."*

26. Petitioner will file a notice of appeal from the vexatious litigant order, if necessary, and appear as the appellant in a cause before this Court of Appeals.

27. Mr. Berry seeks relief on the grounds that the judicial acts of Judge Williams were legally erroneous, comprised a severe abuse of discretion, comprised acts that were arbitrary and capricious and beyond the bounds of the court's jurisdiction, and so warrants review by writ.

28. Respondents have a duty under CCP 170.1 and 170.3 to hear and determine the Disqualification of Judge Williams and determine that matter on the merits. In making its own determination and entering its Order striking the Statement of Disqualification dated August 20, 1999 (*Appendix, Vol. VIII, Exhibit "19"*) and entering the Order declaring Mr. Berry to be a vexatious litigant, dated August 23, 1999 (*Appendix, Vol VIII, Exhibit "22"*); and by filing its verified Answer to the Statement of Disqualification, dated August 20, 1999(*Appendix, Vol.VIII, Exhibit "18"*), thereby making its own determination regarding his disqualification, and by taking the inconsistent step of filing his Verified Answer to the Statement of Disqualification, Judge Williams acted inconsistently with applicable law, abused the court's discretion and acted beyond its jurisdiction. *CCP § 170.3(d)*; *Roth v. Parker*, 57 Cal.App.4th 542, 547, 67 Cal.Rptr. 250, 253 at n. 5 (Cal. App. 2d Dist. 1997); *Eckert v. The Superior Court of San Diego County*, 69 Cal.App.4th 262, 81 Cal.Rptr.2d 467 (Cal. App. 4th Dist. 1999).

29. Mr. Berry seeks extraordinary relief from this Court in the first instance because, in addition to the matters set out above, the following circumstances make it proper and necessary that a writ issue from this Court:

(a) The matters involved are of public and general interest to the people of the State of California;

(b) Their speedy determination is necessary to prevent irreparable injury and facilitate legitimate and fully warranted relief to Mr. Berry ;

(c) They present questions of law not previously decided in the state.

Furthermore, petition directly to this Court is the proper procedure to challenge the failure of a Judge to disqualify or recuse himself or initiate a disqualification hearing. CCP § 170.3(d); *Roth v. Parker*, 57 Cal.App.4th 542, 547, 67 Cal.Rptr. 250, 253 at n. 5 (Cal. App. 2d Dist. 1997); *Eckert v. The Superior Court of San Diego County*, 69 Cal.App.4th 262, 81 Cal.Rptr.2d 467 (Cal. App. 4th Dist. 1999).

30. The actions of Judge Williams described above respecting the entry Of the Order Declaring Mr. Berry a vexatious litigant are voidable, unconstitutional, beyond the power of jurisdiction of the Respondents, and a prejudicial abuse of discretion in that the Court denied Mr. Berry and Mr. Cipriano their rights to be heard regarding the coercion, bribery and subornation of perjury, and the false statements and lies resulting therefrom, and that the Cult's lawyers, acting on Mr. Cipriano's behalf, introduced into the record in the underlying case, precluded Mr. Berry from substantiating his claims that he was not a vexatious litigant. Essentially, those who were truly well beyond vexatiousness, and defended an action based on perjury obtained by illegal means were successful in obtaining a ruling that the Plaintiff's bringing the action, *ab initio*, was vexatious. Mr. Cipriano's Declaration speaks for itself and makes clear that this simply is not so. More over, Judge Williams statement that he would rule against Mr. Berry on any subsequently filed motions also comprises an arbitrary, capricious, unconstitutional and highly prejudicial abuse of discretion.

31. Mr. Berry orally stated his objections to the Court's actions taken on

August 20, 1999, on the record, and those taken on August 23, 1999, on the record and filed a written objection as well. ?Appendix , Vol. VIII, Exh. 20. The court overruled or ignored Mr. Berry's objections. It became apparent to Mr. Berry that objecting was a futile exercise due to the overwhelming appearance of bias and prejudice on the part of Judge Williams, against Mr. Berry, against Mr. Cipriano, and in favor of the Cult's lawyers, as well as his blatant disregard for truth, fairness and justice. *See Transcripts of Proceedings before the Honorable Alexander H. Williams, III, dated August 1999, attached in Appendix, Vol. VIII, as Exhibit 21.*"

32. Petitioner has no right of appeal from Judge Williams actions respecting his disqualification, or his intimation that he will rule against Mr. Berry on future motions filed, save this Petition for Writs of Mandate, Prohibition and other Extraordinary Relief, and this Request for Stay, and does not have any other speedy, adequate remedy at law other than the relief sought in this Petition. Furthermore, an appeal from the order declaring Mr. Berry a vexatious litigant will take such time as to have such an immediate and onerous impact upon Mr. Berry's ability to fairly and effectively litigate matters on behalf of his clients as well as those in which he represents himself, particularly in light of the fact that the Cult's lawyers have already introduced the vexatious litigant ruling in at least one other case, (Appendix, Vol. VIII, Exh 23), and have demonstrated their intention, as well as a past pattern and practice, of introducing into the records in every other matter in which Mr. Berry is litigating against the Cult's lawyers any and all rulings against Mr. Berry obtained in other cases.²¹

33. Petitioner, Mr. Berry, will suffer irreparable harm and injury unless he is allowed to correct the record in the underlying case and reach a fair settlement with Defendant, Real Party in Interest, Robert J. Cipriano, and suffer irreparable harm and injury if the Order declaring Mr. Berry a vexatious litigant and the imposition of the requirements relative thereto upon him are not stayed. Petitioner will also suffer

irreparable harm and a denial of due process and equal protection if Judge Williams refuses to disqualify himself, and or disqualification proceedings are not initiated, as he will be forced to bring his motion for an order to show cause and for sanctions before Judge Williams, who has already stated on the record that he will rule against Mr. Berry.

WHEREFORE, Petitioner respectfully prays that:

1. This Court immediately stay the imposition of the Order declaring Mr. Berry a vexatious litigant, and seal both it and the record of the hearing on the vexatious litigant petition;

2. That this Court immediately issue a writ of mandate enjoining the Superior Court of the State of California for the County of Los Angeles from proceeding further in *Pattinson v. Church of Scientology Int'l, et al*, No LASC BC 207364, until further order of this court, and to seal all portions of its record that reflect disclosure of the vexatious litigant motion and order;

3. This Court immediately enjoin the real parties in interest from disclosing the existence of the Vexatious Litigant Order in any context whatsoever, pending resolution of the appeal from that order;

4. That this Court immediately issue a Writ of Prohibition under the seal of this Court commanding Respondent, Judge Williams, to desist and refrain from taking any further action or proceedings in the underlying case including enforcement of the vexatious litigant Order, until further order of this Court, and directing and requiring Judge Williams and the real parties in interest to show cause before this Court, at a time and place then or thereafter specified by Court order, why it should not be absolutely and forever restrained from any further proceedings in the underlying case; On return of the alternative writ and hearing on the order to show cause, a preemptory writ of prohibition issue under the seal of this Court restraining Judge Williams absolutely and forever from taking any further proceedings in the underlying case, and restraining the real parties in

²¹ This practice is consistent with the Cult's Doctrine of "Fair Game" as set forth above in Paragraph ____.

interest from disclosing the existence of the vexatious litigant proceedings and the Order arising therefrom absolutely and forever;

5. That this Court issue an alternative writ of mandate under the seal of this Court commanding the Chief Judge of the Superior Court of the State of California for the County of Los Angeles to appoint another Judge to hear all motions and other matters brought in the underlying case;

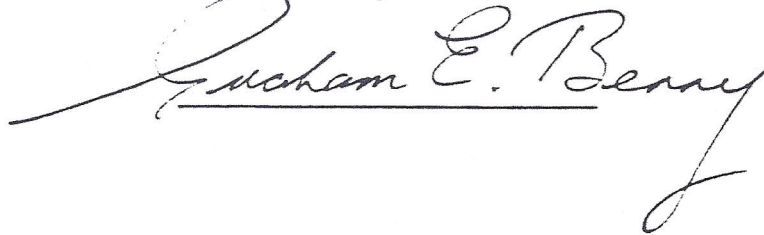
6. That this Court award costs and fees of bringing this Petition to Petitioner;

7. That this Court grant such other and further extraordinary relief as this Court deems just and proper under the circumstances

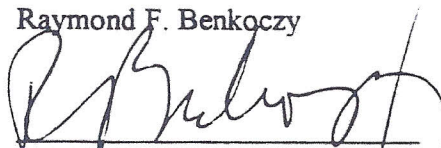
Dated: August 30, 1999

Respectfully submitted,

Graham E. Berry, Petitioner



Raymond F. Benkoczy



Raymond F. Benkoczy, Attorney for
Petitioner, Graham E. Berry*

*pending leave to appear *pro hac vice*

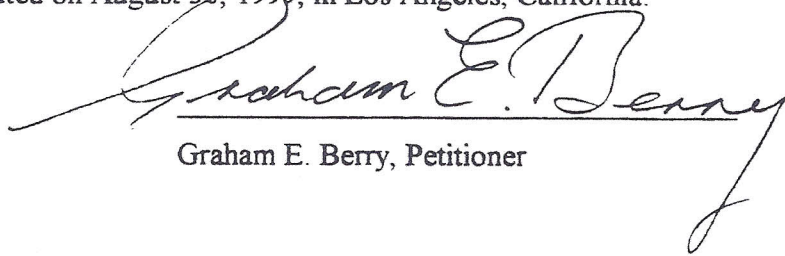
above, as a means to "utterly destroy"

VERIFICATION

I, Graham E. Berry, declare as follows:

I am the Petitioner herein. I have read the foregoing Petition For Writ Of Mandate and or Prohibition and Other Extraordinary Relief and the Appendix filed therewith and known contents of all of the foregoing. The facts alleged in the petition are within my own personal knowledge and I know these facts to be true. Because of my familiarity with the relevant facts pertaining to the trial court proceedings, I, therefore verify this petition.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on August 30, 1999, in Los Angeles, California.


Graham E. Berry, Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This is a case unlike any ever seen before. Petitioner presents issues of great public importance requiring prompt resolution. Moreover, the constitutional rights of Petitioner and his other clients are implicated. (See, e.g., *Anderson v. Super. Ct.*, 213 Cal. App. 3d, 1321, 1328; 262 Cal. Rptr., 410 (1989). This case also presents the unique legal issue of whether Judge Williams can both strike a Statement of Disqualification and simultaneously file a Verified Answer, to that Statement. Moreover, the constitutional right of Petitioner and his other clients are implicated. For the reasons set forth below, this Court should grant Petitioner the extraordinary relief prayed for.

APPLICABLE LEGAL STANDARDS

California Code of Civil Procedure § 170.3, subdivision (d), prescribes a petition for writ of mandate as the exclusive means of appellate review of an unsuccessful disqualification matter. *See generally Roth v. Parker*, 57 Cal.App.4th 542, 547, 67 Cal.Rptr.2d 250 (Cal. App. 2d Dist. 1997); *People v. Hull*, 1 Cal. App.4th 266, 272-73, 2 Cal.Rptr.2d 526 (1991). "The test for determining whether disqualification is required under section 170.1, subdivision (a)(6)(C) [as Petitioner herein sought] is an objective one, and turns on whether a reasonable member of the public, aware of the facts, would fairly entertain doubts concerning the judge's impartiality. [The existence of] *actual bias is not required*. [] However, 'while this objective standard indicates the decision on disqualification not be based on the judge's personal view of his own impartiality, it also suggest that the litigants' necessarily partisan views not provide the applicable frame of reference.'" *Curle v. Superior Court*, 72 Cal.App.4th 543, 549, 85 Cal.Rptr.2d 368 (Cal. App. 3d Dist. 1999)(emphasis added); *See also Flier v. Superior Court*, 23 Cal.App.4th 165, 28 Cal.Rptr.2d 383, 385-86 (Cal. App. 4th Dist. 1994). It is, thus, immaterial that no claim has been made that a judge harbors any actual bias or prejudice towards a party or their counsel. *Id.* If a statement of disqualification is filed after a . . . hearing has

commenced . . . by the submission of a motion for decision, the judge whose impartiality has been questioned may order the . . . hearing to continue, notwithstanding the filing of the statement of disqualification. . . . [I]f it is determined that the judge is disqualified, all orders and rulings of the judge found to be disqualified made *after* the filing of the statement *shall be vacated*. CCP §170.3(a); *Eckert v. Superior Court*, 69 Cal.App.4th 262, 264, 81 Cal.Rptr.2d 467 (Cal. App. 4th Dist. 1999).

APPLICABLE LEGAL STANDARDS

On review of a disqualification matter, the question is one of law if the facts are not in dispute. *Flier v. Superior Court*, 23 Cal.App.4th 165, 28 Cal.Rptr.2d 383, 385-86 (Cal. App. 4th Dist. 1994). While a reviewing court must view the evidence in a light most favorable to a decision below, factual determinations are binding on a reviewing court only when supported by substantial evidence. *Id.* “[O]ur Supreme Court [] has treated the ultimate conclusion as a question of law. *People v. Brown*, 6 Cal.App.4th 322, 336-37, 24 Cal.Rptr.2d 710 (1993)(citations omitted); *Evans v. Superior Court*, (1930) 107 Cal.App. 372, 376, 290 P. 662 (“Where the facts are undisputed . . . the disqualification of [a] judge becomes a question of law rather than fact.”)

ISSUE PRESENTED

WHETHER A REASONABLE MEMBER OF THE PUBLIC, AWARE OF THE FACTS, WOULD FAIRLY ENTERTAIN DOUBTS CONCERNING JUDGE WILLIAMS’ IMPARTIALITY.

In determining whether a reasonable member of the public, aware of the facts, would entertain doubts concerning Judge Williams’ impartiality, it is critical to examine what the facts and circumstances are about which that reasonable person’s doubts might be entertained. In this case, a plethora of procedural irregularities, as well as Judge Williams demeanor and statements made to Mr. Berry on the record present with crystal clarity the overwhelming appearance of bias warranting disqualification pursuant to CCP § 170.1(a)(6)(C). For these reasons, a reasonable member of the public,

aware of the facts, would have to entertain extreme doubts concerning Judge Williams' impartiality respecting Mr. Berry.

**A. The Procedural Irregularities of Judge Williams Judicial Conduct
Present a Clear Picture of Judge Williams Bias and Prejudice
Precluding Any Possibility of Finding Judge Williams Impartial.**

CCP § 170.3(b)(1) and (2)(A) provide in pertinent part that:

(b)(1) A judge who determines himself . . . to be disqualified after disclosing the basis for his . . . disqualification on the record may ask the parties and their attorneys whether they wish to waive the disqualification the disqualification, except as provided in Paragraph (2). A waiver of disqualification shall recite the basis for the disqualification, *and is effective only when signed by all parties and their attorneys and filed in the record.*

(2) *There shall be no waiver of disqualification where the basis therefore is either of the following:*

(A) *The judge has a personal bias or prejudice concerning a Party.*

CCP § 170.3(b)(1) and (2)(A).

The proceedings in the underlying cases demonstrate a distinct departure from the proper manner and form prescribed by this rule. It is true that Judge Williams brought to the parties' and their attorneys' attention matters giving rise the grounds for his disqualification, both on September 29, 1998 (respecting his fiancée) (*Appendix, Vol.II, Exhibit 5 at 220:11-223:10*), and even earlier (respecting his former law clerk as well as previously adjudicated Mr. Berry's former client, Mr. Geertz) on July 28, 1998 (*Appendix, Vol.II, Exhibit 4 at 2:18-23 and 213:11-214:27, respectively*). Judge Williams did not, however disqualify himself or make any indication, whatsoever that he should do so. While he may have addressed the parties and attorneys in a manner that may be interpreted as seeking a waiver, no such waiver was ever written, signed or filed in the record by any party of attorney in the underlying cases. (*Appendix, Vol.II, Exhibit 5*

at 220:11-223:10) Judge Williams merely stated, "If there are any concerns, please raise them in a timely fashion." *Id.* at 221:25-223:10. Given the obvious nature of the conflicts and self interests admitted by Judge Williams,²² and his failure to comply with the mandatory provision of the applicable rule that he disqualify himself, a reasonable member of the public, informed of these facts would certainly entertain doubts concerning Judge Williams' impartiality.

The same holds true respecting Judge Williams' failure to obtain a written waiver from the parties and their attorneys, and to have them file it on the record. Judge Williams failure to comply with the proper manner and form prescribed by the applicable rules provides strong indicia of his prejudice and bias in favor of the Cult and against Mr. Berry. Thus, Judge Williams allegation contained in his verified answer to the Joint Statement of Disqualification contained in Paragraph 5 (b) (*Appendix, Vol. VII, Exhibit 18 at 4*), wherein he implies a waiver on Mr. Berry's part, cannot carry the day. If anything, this implied conclusion of law is only further indication of Judge Williams playing fast and loose with Mr. Berry's rights; yet another of many indicia of bias, and at very least, the appearance of bias leading the reasonable member of the public to entertain doubts concerning Judge Williams impartiality.

Furthermore, it is also clear that Judge Williams attempt to imply a waiver on Mr. Berry's part, notwithstanding the absence of a written waiver signed by all the parties and their attorneys in compliance with CCP § 170.3(b)(1), bears any substance or weight whatsoever in light of CCP § 170.3(b)(2). This subdivision provides that "[t]here shall be *no waiver* . . . where the basis therefore is . . . [that] [t]he judge has a personal bias or prejudice concerning a party. *CCP § 170.3(b)(2)*(emphasis added). Given Judge Williams' admitted personal interest in his fiancée, and his financial interest in her income derived from CSI, his fiancée's employer, it taxes reason to posit that Judge Williams did not have a personal bias in favor of CSI and against Mr. Berry that would not cause the reasonable member of the public to entertain doubts concerning Judge

²² Judge Williams stated that, "It is articulacable that part of my life will be supported by revenues . . . that in part derive from the church" (*Appendix, Vol. II, Exhibit 5 at 222:26-223:1*) referencing his fiancée,

Williams impartiality. This failure to comply with the applicable rules goes far beyond an abuse of discretion. Rather, it comprises an arrogant disregard for compulsory conduct in compliance with rules that are not discretionary. Ultimately, when considered in relation to CCP § 170.3(b)(2), Judge Williams conflict, and such potential for the appearance of bias, or the existence of actual bias is not waivable. *Id*

B. The Procedural Anomaly Presented By Judge Williams in Striking the Statement of Disqualification and Filing His Verified Answer to That Statement Also Presents the Appearance of Bias.

Judge Williams' judicial conduct respecting his contradictory response to the Statement of Disqualification also presents further indicia of the appearance of bias that would cause the reasonable member of the public, aware of these facts, to entertain serious doubt concerning Judge Williams impartiality. Judge Williams references CCP § 174.4 [sic] in his order striking the Statement of Disqualification in apparent compliance with CCP § 170.4 (b). He simultaneously acted in accord with CCP § 170.3(c)(3). The parties, however never agreed or consented to the question of disqualification being heard by another judge (CCP § 170.3(c)(5)), nor did Judge Williams clerk notify the executive officer of the Judicial Council of the need for a selection of another judge to hear the matter. *Id*. Judge Williams verified answer admits of his own awareness that striking the Statement of Disqualification may have been error. The court's failure to notify the executive officer of the Judicial Council, however, smacks of a deliberate attempt to sandbag Mr. Berry in a procedural quandary from which might further be implied the appearance of bias causing the reasonable member of the public, aware of these facts, to entertain doubt concerning Judge Williams impartiality. At very least, this circumstance makes clear that Mr. Berry had no adequate immediate remedy available other than bringing this Petition before this Court.

indicating that he had complied with CCP § 170.1(3)(B), but implicating CCP § 170.1(a)(3)(A), mandating

C. Judge Williams Conduct Respecting Motions Mr. Berry Attempted to Bring, *Ex Parte*, and his Passing Judgment on the Motion Mr. Berry Expressed his Intention to File Respecting the Contumacious and Sanctionable Conduct of the Cult and its Lawyers. Also Presents the Appearance of Bias.

On August 12, 1999, Mr. Berry gave opposing counsel notice of his Intent to appear, *ex parte*, on August 16, 1999, and present applications for orders (1) to extend the page limit respecting a memorandum in support of a motion grounded on the contumacious conduct of the Cult and its attorneys, specifically in connection with Moxon's criminal conduct related to obtaining false declarations, and lies in the deposition of Defendant, Mr. Cipriano; (2) to require that Mr. Cipriano's former counsel, Kendrick Moxon and Gary Soter immediately turn Mr. Cipriano's files over to Mr. Cipriano;²³ (3) to command all parties to preserve all documents in anyway related to the underlying cases and to restrain the other Defendants and their counsel from approaching Mr. Cipriano; and (4) to continue the vexatious litigant hearing in light of the newly discovered evidence of criminal conduct on the part of the Cult and its attorneys, Moxon and Samuel D. Rosen. *Appendix, Vol. VIII, Exhibit 13 at 10 et seq.* Judge Williams was fully aware of Mr. Cipriano's August 9, 1999 Declaration detailing their criminal conduct, as Mr. Berry filed that declaration on August 11, 1999. *Petition Allegations of Fact, Paragraph 13.* Mr. Berry also filed his Settlement papers with the court on the same day. *Id.* The materiality and relevance of these papers is blatantly obvious in that they indicate (a) that the Cult and Moxon, by criminal means, instigated the acts giving rise to the underlying cases; (b) that Moxon had suborned Mr. Cipriano's perjury in his deposition in the underlying cases; and (c) that Mr. Berry's claims in the underlying cases were anything but frivolous, brought for the purposes of harassment, or motivated by vexatious intent.

It is circumstantially evident that the Cult "laid the bait" for Mr. Berry to bring legitimate claims based in fact, bludgeoned him in a procedural morass, taking

his disqualification.

²³ A partial draft of a similar motion, (for filing in *Pattinson v. Miscavige*, LASC No. BC 207364) was attached to the *ex parte* application. App. Vol. VIII, Exh. 13, pp. 89-106.

advantage of his vulnerability even to the extent that they induced him to voluntarily dismiss his claims against CSI as a precondition to settlement negotiations. *Appendix, Vol. IV, Exhibit 17 at 38*. It is concretely evident that the Cult and its lawyers achieved these ends vis a vis their impersonation of a law enforcement detective, intimidation, coercion, bribery, and subornation of perjury of Mr. Cipriano amounting to an horrendous obstruction of justice. *Petition Allegations of Fact, Paragraph 12*.

Judge Williams was again reminded of these facts on August 19, 1999, as Mr. Cipriano's August 9, 1999, Declaration was attached to the Statement of Disqualification. *Appendix, Vol V, Exhibit 11 at 13-255*. In this light, Judge Williams' judicial conduct of lambasting Mr. Berry on August 16, 1999 for being 20 minutes late for the 8:30 call, his informing Mr. Berry that he had invited opposing counsel to seek sanctions, and his refusal to allow Mr. Berry to file his *ex parte* applications for legitimate and fully warranted relief until he had decided the vexatious litigant matter wrecks either of his total ignorance of or disregard for the substance for the papers Mr. Berry filed, or his extreme prejudice and bias and prejudice against Mr. Berry and Mr. Cipriano, in favor of the Cult and its lawyers.²⁴

The Cult and Judge Williams knew of Mr. Berry's intention to bring his contempt and sanctions motion²⁵ based on the Cult's and its attorneys' contumacious and sanctionable conduct as documented by Mr. Cipriano's August 9, 1999 Declaration and the Documentary evidence in support thereof.²⁶ By precluding Mr. Berry from applying for a continuance of the hearing on the vexatious litigant matter, Judge Williams knowingly prejudiced Mr. Berry in that he would be forced to file his contempt and sanctions motion under the constraints of being a vexatious litigant, including the posting

²⁴ It is also obvious that Judge Williams entertained *ex parte* communication with Mr. Berry's opposing counsel prior to his arrival. Unfortunately, there is no record of that communication. The fact that Judge Williams engaged in such dialogue absent Mr. Berry also provides his bias against Mr. Berry, especially in light of the apparent substance of those communications that may be implied from the substance of Judge Williams' clerk's subsequent communication with Mr. Berry later that same morning. *Appendix, Vol. V, Exhibit "11," at 7-9*.

²⁵ *App. Vol. VIII, Exh. 13, pp. 89-106*.

**D. Judge Williams Did Not Deny the Factual Allegations
Contained in the Statement of Disqualification and They
Must be Taken as True by This Court.**

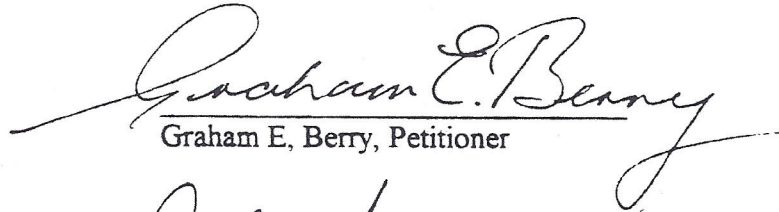
In filing his order striking the Statement of Disqualification Simultaneously with his Verified Answer to the Statement, Judge Williams also simultaneously admits his error in striking the Statement. The Verified Answer itself admits the possibility of this error in Paragraph 8, App. Vol. VIII, Exh. 18, p. 163:5-10. Even more critical, however, is Judge Williams failure to deny in his Verified Answer the allegations of fact contained in the Statement of Disqualification. The Verified Answer is comprised merely of legal conclusions or statements that more appropriately may be characterized as excuses or affirmative defenses. Again, Judge Williams fails to comply with the applicable rule. CCP 170.3(c)(3). Absent any factual denial by Judge Williams, Mr. Berry's allegations of fact demonstrating the appearance of bias, if not actual bias, against Mr. Berry and in favor of the Cult and its lawyers, this Court must take those facts to be true. As such, because there are no facts in dispute, this Court may decide these issues as a matter of law. Taking all of the facts as true this Court can only find that Mr. Berry has satisfied the standard enunciated in CCP § 170.1(a)(6)(C) warranting the disqualification of Judge Williams.

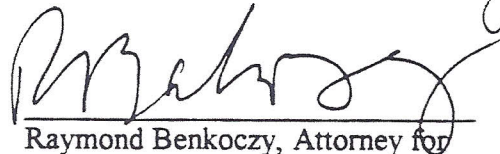
Mr. Berry has pleaded and substantiated all of the necessary elements required and necessary to obtain immediate stays both in the underlying cases and in *Pattinson v. CSI*, LASC No.BC 207364. He has furthermore demonstrated that he has a beneficial interest in the underlying cases and these proceedings. He has also demonstrated the irreparable harm and ongoing prejudice that will result if the writs prayed for are not granted, as well as the absence of, and exhaustion or futility of any other adequate remedy. Clearly these matters present questions of law never before addressed by this Court, and issues of great and widespread public importance. Moreover it serves the interests of judicial economy for this Court to decide these matters

cases; (6) award the costs and fees of bringing this Petition to Petitioner; and (7) grant such other and further extraordinary relief as this Court deems just and proper under the circumstances.

Dated: August 30, 1999

Respectfully Submitted,


Graham E. Berry, Petitioner


Raymond Benkoczy, Attorney for
Petitioner, Graham E. Berry*
*pending leave to appear *pro hac vice*