

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

FEB 22 2010

John A. Clarke, Executive Officer/Clerk  
By VICTOR SINO-CRUZ, Deputy

Kendrick L. Moxon, State Bar No. 128240  
MOXON & KOBRIN  
kmoxon@earthlink.net  
3055 Wilshire Boulevard, Suite 900  
Los Angeles, California 90010  
Telephone: (213) 487-4468  
Facsimile: (213) 487-5385

Attorney for Plaintiff  
Pro se

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

KENDRICK MOXON

Plaintiff,

vs.

GRAHAM BERRY,

Defendant.

Case No. BC429217

OPPOSITION TO VEXATIOUS  
LITIGANT'S REQUEST TO FILE  
NEW LITIGATION;

REQUEST FOR FINDING OF  
CONTEMPT AGAINST GRAHAM  
BERRY;

NOTICE OF FILING OF  
IDENTIFICATION OF VEXATIOUS  
LITIGANT PURSUANT TO C.C.P.  
§391.7(C) AND AUTOMATIC STAY

Dept: 78  
Date: N/A

PART II

INTRODUCTION

In 1999, Graham Berry, was found to have violated Rule 11, F.R.Civ.P., and 28 U.S.C. §1928, through the filing of a frivolous and bad faith action against attorney, plaintiff Kendrick Moxon, and was appropriated monetarily sanctioned. Thereafter, in light of this and other bad faith litigation Mr. Berry pursued and lost, he was found to be a "vexatious litigant" pursuant to C.C.P. §391, et seq. Mr. Berry never paid the



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MINUTE ORDER

Case No.: CV-98-3985 CAS (SHx)

April 15, 1999

Title: MICHAEL P. PATTINSON v. CHURCH OF SCIENTOLOGY ET AL.

---

PRESIDING: HONORABLE CHRISTINA A. SNYDER, U.S. DISTRICT JUDGE

Jim Holmes,  
Deputy Clerk

Carmelita Lee,  
Court Reporter

---

PLAINTIFF COUNSEL PRESENT:

DEFENDANT COUNSEL PRESENT:

PROCEEDINGS: DEFENDANT MOXON'S REQUEST FOR SANCTIONS; DEFENDANT  
MOXON'S MOTION FOR COSTS, EXPENSES, AND ATTORNEYS'  
FEES PURSUANT TO 28 U.S.C. § 1927

I. PROCEDURAL BACKGROUND

The initial complaint filed in this action on May 21, 1998, was 166 pages long, named over fifty defendants, and contained twenty-four claims for relief arising out of plaintiff Michael Pattinson's twenty-five year involvement with the Church of Scientology. On August 5, 1998, defendant Kendrick Moxon ("Moxon") served a motion for sanctions under Fed. R. Civ. P. 11 on plaintiff's counsel, Graham Berry ("Berry"). Pursuant to Rule 11(c)(1)(A), plaintiff was allowed a twenty-one day period to withdraw or amend his pleading. Plaintiff subsequently filed a first amended complaint on August 18, 1998. The first amended complaint consisted of 312 pages and included thirty claims for relief. Following the filing of the first amended complaint Moxon filed a motion for Rule 11 sanctions with the Court.

On September 28, 1998, this Court issued an order denying Moxon's motion for sanctions and granting plaintiff leave to file a second amended complaint. The Court directed plaintiff to



replead in conformity with the Rule 8 requirement of a "simple, concise and direct statement" of the facts upon which the claims were based. Plaintiff responded by filing a second amended complaint on October 28, 1998. The second amended complaint was 176 pages long, listed twenty-four claims for relief, and contained many of the deficiencies of the previously filed complaints. At the same time, plaintiff's counsel requested leave to file a "revised" second amended complaint, claiming that word processing and other difficulties had made it impossible to file a complaint in conformity with the Court's order. The "revised" second amended complaint filed on November 4, 1998, was 177 pages long and contained twenty-two claims for relief. In addition to filing the "revised" second amended complaint, plaintiff's counsel filed a motion for leave to file a "radically restructured, repleaded and reduced" third amended complaint.

On November 17, 1998, Moxon filed a motion to dismiss the second amended complaint, along with a renewed motion for Rule 11 sanctions. In an order issued on January 21, 1999, this Court granted Moxon's motion to dismiss the second amended complaint, and allowed plaintiff leave to file a third amended complaint. The Court also continued Moxon's renewed motion for Rule 11 sanctions, stating that it would be heard in conjunction with any motion to dismiss the third amended complaint.

Plaintiff filed a third amended complaint in this action on February 9, 1999. This complaint was seventy-four pages long, and listed thirteen claims for relief. Moxon filed a Motion to Dismiss the Third Amended Complaint and Renewal of Request for Sanctions on February 9, 1999. On March 1, 1999, Moxon filed a Motion for Costs, Expenses, and Attorneys' Fees Pursuant to 28 U.S.C. § 1927. Plaintiff filed a notice of voluntary dismissal of the case pursuant to Fed. R. Civ. P. 41(a) on March 19, 1999. The motions pending before this Court are defendant Moxon's motion for costs, expenses, and attorneys' fees, and his request for sanctions.

## II. SECTION 1927 COSTS, EXPENSES, AND FEES

Moxon seeks costs, expenses, and attorneys' fees from Berry pursuant to 28 U.S.C. § 1927. Section 1927 provides that:



Any attorney .... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. § 1927. This section authorizes the imposition of costs on attorneys responsible for the unnecessary multiplication of proceedings. The Ninth Circuit has held that section 1927 sanctions "must be supported by a finding of subjective bad faith." New Alaska Dev. Corp. v. Guetschow, 869 F.2d 1298, 1306 (9<sup>th</sup> Cir. 1989). "Bad faith is present when an attorney knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent." Estate of Blas v. Winkler, 792 F.2d 858, 860 (9<sup>th</sup> Cir. 1986) (citations omitted); see also West Coast Theater Corp. v. City of Portland, 897 F.2d 1519, 1528 (9<sup>th</sup> Cir. 1990); Soules v. Kauaians for Nukolii Campaign Comm., 849 F.2d 1176, 1185-86 (9<sup>th</sup> Cir. 1988). "Tactics undertaken with the intent to increase expenses or delay may also support a finding of bad faith. Even if an attorney's arguments are meritorious, his conduct may be sanctionable if in bad faith." New Alaska Dev. Corp., 869 F.2d at 1306. An award under section 1927 is appropriate "where there is no obvious violation of the technical rules, but where, within the rules, the proceeding is conducted in bad faith for the purpose of delay or increasing costs." Matter of Yagman, 796 F.2d 1165, 1187 (9<sup>th</sup> Cir. 1986).

In the present case, the Court finds that the claims alleged against Moxon were asserted in bad faith, and resulted in an unnecessary multiplication of the proceedings for Moxon. Each of the successive amended complaints in this action fails to state facts supporting a basis for liability against Moxon, an attorney who has previously represented Scientology organizations. A review of the claims in the third amended complaint demonstrates that plaintiff has failed to allege any facts that would support a viable claim for relief against Moxon. The complaint contains a detailed description of plaintiff's involvement with the Church of Scientology and various individual members of the Church. Plaintiff alleges claims for fraud, unfair business practices, breach of fiduciary duty, false imprisonment, intentional infliction of emotional distress, interference with business relations, negligence, breach of contract and breach of the covenant of good faith and fair dealing, restitution, unjust

enrichment, and declaratory and injunctive relief. All of these claims arise out of plaintiff's lengthy involvement with Scientology. The complaint centers around plaintiff's contentions that he was lured into Scientology by a number of fraudulent representations, and suffered for over twenty-five years as a result of continued misrepresentations. Plaintiff claims, for example, that defendants falsely represented that they could "cure" homosexuality. Plaintiff contends that his reliance on these misrepresentations caused him to expend large sums of money for Scientology treatments. The complaint sets forth detailed descriptions of alleged mistreatment by plaintiff at the hands of Scientology members, including allegations that plaintiff was forced to perform labor for the Church without adequate compensation, and that Scientology members failed to maintain the confidentiality of certain disclosures made during his membership. Plaintiff describes the negative effect of his involvement with Scientology on his artistic career and personal life, and requests restitution of the amount of money he paid to Scientology during the course of his membership.

The seventy-four page complaint contains detailed allegations concerning plaintiff's involvement with Scientology, but lacks specific allegations with respect to Moxon's liability. For example, the complaint contains the allegation that "[d]efendants, and particularly Defendant Moxon, in concert with others, continue to engage in illegal, outrageous, oppressive, tortious and harassing activities against those who they deem to be 'enemies' of Scientology." Third Amended Complaint, ¶ 53.<sup>1</sup> Yet plaintiff fails to demonstrate that Moxon engaged in the allegedly fraudulent conduct that led to plaintiff's continued involvement with Scientology, and ultimately formed the basis for the claims in this lawsuit. The earlier, lengthier complaints filed in this action similarly lack any factual basis for naming Moxon as a defendant.

---

<sup>1</sup> Plaintiff alleges that Moxon has filed a retaliatory lawsuit against him following the filing of the instant action. However, even if plaintiff could state a claim against Moxon for filing a retaliatory suit, the complaint at hand is devoid of any allegations of malicious prosecution.



Despite the fact that the complaints do not specify the basis for Moxon's liability, Moxon was apparently the first party served with the complaint. Plaintiff eventually dismissed the majority of the named defendants, and only served the complaint on eight defendants. See Declaration of Graham E. Berry as to Service and Proofs of Service. After several attempts by Moxon to dismiss the complaint, plaintiff voluntarily dismissed the complaint. Thus, at least four separate versions of the complaint were served on Moxon, each time requiring him to formulate a response to the allegations contained therein. The record reflects that Berry continued to amend the complaint, yet failed to provide any basis for Moxon's liability to plaintiff. The above-described conduct of plaintiff's counsel in this case supports a finding of bad faith.

Section 1927 allows for the recovery of excess attorneys' fees, costs, and expenses incurred as a direct result of the conduct leading to the multiplication of proceedings. See United States v. Associated Convalescent Enter., Inc., 766 F.2d 1342, 1347-48 (9<sup>th</sup> Cir. 1985). On September 28, 1998, this Court allowed plaintiff to amend the complaint, and ordered plaintiff to file a "short and plain" statement of the claim. The Court finds that because Berry failed to comply with the Court's order of September 28, 1998, filings after that date represent an unreasonable multiplication of the proceedings with respect to defendant Moxon.

### III. RULE 11 SANCTIONS

Alternatively, the Court finds that the repeated filing of complaints naming Moxon without demonstrating any factual support for the allegations violated Rule 11. Federal Rule of Civil Procedure 11 requires that all pleadings and other motions filed with a court must be signed by an attorney or an unrepresented party, certifying that "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances": (1) the paper is not presented for an improper purpose; (2) the claims have a valid legal basis; and (3) there is factual support for the allegations. Fed. R. Civ. P. 11(b). Pursuant to Rule 11, the court may impose sanctions on attorneys or unrepresented parties for submitting papers that are frivolous, legally unreasonable, baseless, or filed for an improper purpose. See Simpson v. Lear Astronics Corp., 77 F.3d



1170, 1177 (9<sup>th</sup> Cir. 1996). The imposition of sanctions under Rule 11 lies in the discretion of the court. Fed. R. Civ. P. 11(c).

As the history of this case demonstrates, plaintiff's counsel repeatedly filed complaints naming Moxon as a defendant, yet failed to provide factual support for these claims, or show the existence of a valid legal basis for these claims. The Court therefore finds that the award of attorneys' fees, costs, and expenses to defendant Moxon would be warranted under Rule 11 in the alternative.

#### IV. CONCLUSION

Moxon shall have up to and including May 3, 1999, to submit documentation as to his reasonable attorneys' fees, costs, and expenses incurred in responding to papers filed by plaintiff after September 28, 1998. The Court will consider Moxon's efforts to mitigate expenses in determining the appropriate amount of fees. Plaintiff's counsel shall have up to and including May 10, 1999, to file a response to Moxon's submission. Thereafter, the matter will be submitted, and the Court will issue a ruling thereon.

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY  
FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL  
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF  
RECORD IN THIS ACTION ON THIS DATE.

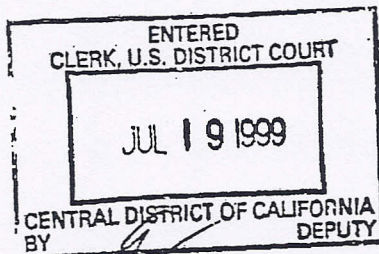
DATED: 4/16/99

[Signature]  
DEPUTY CLERK



THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(c)

Send  
Ent Closed



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MINUTE ORDER

Case No.: CV-98-3985 CAS (SHx)

July 15, 1999

Title: MICHAEL P. PATTINSON v. CHURCH OF SCIENTOLOGY ET AL.

PRESIDING: HONORABLE CHRISTINA A. SNYDER, U.S. DISTRICT JUDGE

Jim Holmes,  
Deputy Clerk

Not present  
Court Reporter

PLAINTIFF COUNSEL PRESENT:  
None

DEFENDANT COUNSEL PRESENT:  
None

PROCEEDINGS: AWARD OF COSTS, EXPENSES, AND ATTORNEYS' FEES

On April 15, 1999, this Court issued an order finding that defendant Kendrick Moxon ("Moxon") was entitled to costs, expenses, and attorneys' fees pursuant to 28 U.S.C. § 1927, or in the alternative, pursuant to Fed. R. Civ. P. 11. In that order, the Court directed the parties to submit briefing to determine the proper amount to be awarded.

Under section 1927, the court may allow the recovery of attorneys' fees, costs, and expenses incurred as a result of unreasonable or unnecessary multiplication of proceedings by an attorney. In calculating an appropriate award under section 1927, the court determines the amount of fees and expenses incurred as a direct result of the sanctionable conduct. See Yagman v. Baden, 796 F.2d 1165, 1187-88 (9th Cir. 1986), amended, 803 F.2d 1085 (9th Cir. 1986). The court may award those fees, costs, and expenses clearly attributable to the unnecessary multiplication of proceedings. See Salstrom v. Citicorp Credit Services, Inc., 74 F.3d 183, 185 (9th Cir. 1996) (holding that

4 DOCKETED

7 MLD COPY PTYS Scanned

C MLD NOTICE PTYS

JS-6

JUL 19 1999

JUL 19 1999

ENTERED ON ICMS C

73



percentage award based on evaluation of attributable costs and fees was appropriate under section 1927).<sup>1</sup>

Under Rule 11, the court may consider a number of factors in determining the amount of fees to be awarded, including: (1) whether the award will deter future misconduct by the sanctioned party; (2) whether the fees incurred were "reasonably necessary to resist the offending action"; and (3) any mitigation of fees and expenses. See Yagman, 796 F.2d at 1183-1185; Pope v. Federal Express, 49 F.3d 1327, 1328 (8<sup>th</sup> Cir. 1995). The award is limited to those fees and expenses "incurred as a direct result of the [Rule 11] violation." Fed. R. Civ. P. 11(c)(2). In addition, Rule 11 "specifically allows a district court to include the costs associated with sanctions proceedings." Margolis v. Ryan, 140 F.3d 850, 854 (9<sup>th</sup> Cir. 1998) (citing 1993 amendment to Rule 11).

This Court concluded in its previous order that plaintiff's counsel, Graham Berry ("Berry"), acted in bad faith by pursuing meritless claims against defendant Moxon in this action. The Court determined that filings by Berry following the dismissal of the first amended complaint on September 28, 1998, created an unnecessary multiplication of the proceedings for Moxon, and therefore granted Moxon his costs, expenses, and attorneys' fees incurred as a result of Berry's actions after that date.

In the briefs submitted to the Court, Moxon has requested a total amount of \$52,809.72, consisting of \$50,312.50 in attorneys' fees and \$2,497.22 in expenses. Moxon has submitted summaries of time sheets for hours expended by his attorney, Eric

---

<sup>1</sup> There is little case law in the Ninth Circuit articulating the correct formula for calculating an award of attorneys' fees, costs, and expenses under section 1927. District courts in other circuits have concluded that the lodestar method, applied after the time spent in the initial pleadings, is an appropriate method for determining fees under this section. See e.g., Boykin v. Bloomsburg Univ. of Pennsylvania, 905 F. Supp. 1335, 1347 (M.D. Pa. 1995) (calculating fees by multiplying reasonable hourly rate by number of hours reasonably expended on responding to unnecessary multiplication of litigation).



Lieberman ("Lieberman"). See Exhibit A to Declaration of Eric M. Lieberman ("Lieberman Decl."). The summaries reflect that Lieberman performed 143.75 hours of work on this case between October 1, 1998, and April 5, 1998. See Lieberman Decl. at ¶ 8. Lieberman practices in New York, and his ordinary hourly rate ranges from \$375 to \$400 per hour, which he states is reasonable for an attorney with his education and experience in either New York or Los Angeles. Id. at ¶ 7. Lieberman seeks to recover at a rate of \$350 per hour for his services in this action. Id. Lieberman states that he has practiced law for over twenty-eight years. Id. at ¶¶ 2-4.

Moxon has also submitted a request for expenses incurred for Lieberman's travel from New York to appear at a hearing before this Court on April 5, 1999. These expenses include airfare in the amount of \$1,896.00, hotel and meal costs of \$461.22, and taxi fare of \$140.00, for a total of \$2,497.22. See id. at ¶ 10.

Defendant also contends that he has attempted to mitigate his costs in defending this action in several respects. For example, Moxon, who is an attorney, does not seek to recover for the hours he personally expended on this litigation.<sup>2</sup> Defendant also points to unsuccessful efforts by Lieberman through the course of the action to convince Berry to dismiss the action against defendant Moxon. See id. at ¶¶ 13-17.

Berry raises several objections to the fees and expenses requested by Moxon.<sup>3</sup> Berry first objects to the hourly rate charged by Lieberman, arguing that his New York rates are unreasonable for litigation conducted in Los Angeles. Berry also contends that the requested travel expenses would not be incurred by local counsel. In addition, Berry argues that Lieberman and

---

<sup>2</sup> Moxon states that he performed over fifty hours of work on this case, resulting in a loss to his own practice. See Declaration of Kendrick L. Moxon, ¶ 3.

<sup>3</sup> Berry also renews his objections to the Court's decision to award fees to Moxon. The Court finds that Berry has not presented any legitimate basis for reconsideration of this Court's earlier order.



Moxon conducted the defense in bad faith and failed to mitigate costs in this litigation.

Upon review of the submissions of the parties, the Court finds that defendant Moxon is entitled to recover a reasonable amount of the fees and expenses he has requested. Lieberman has provided time sheets indicating that he expended 143.75 hours over the course of six months. A review of the summaries provided indicates that this time was expended in filing oppositions to motions filed by Berry, as well as in preparing motions in response to the complaint. The record reflects that defendant Moxon filed the following documents after September 28, 1998:

(1) Opposition of Defendant Kendrick L. Moxon to Plaintiff's Motion for Leave to File Revised Second Amended Complaint and Third Amended Complaint, and Notice of Cross-motion to Dismiss and to Renew Motion for Rule 11 Sanctions (filed November 17, 1998);

(2) Opposition of Defendant Kendrick L. Moxon to Plaintiff's Motion for Leave to File Third Amended Complaint, and Renewal of Request for Sanctions Under Rule 11 (filed January 11, 1999);

(3) Motion to Dismiss Third Amended Complaint and Renewal of Request for Sanctions Under Rule 11 (filed February 12, 1999);

(4) Motion for Costs, Expenses and Attorneys' Fees Pursuant to 28 U.S.C. § 1927 (filed March 1, 1999);

(5) Defendant Kendrick L. Moxon's Opposition to Plaintiff's Motion for Leave to File Nunc Pro Tunc to File Revised Third Amended Complaint (filed March 8, 1999);

(6) Reply Memorandum in Support of Defendant Kendrick L. Moxon's Motion for Costs, Expenses and Attorneys' Fees Pursuant to 28 U.S.C. § 1927 (filed March 15, 1999);

(7) Reply of Defendant Kendrick L. Moxon in Support of Motion to Dismiss Third Amended Complaint (filed March 15, 1999);



(8) Ex Parte Application to Strike Declaration of Michael Pattinson (filed March 22, 1999); and

(9) Reply Memorandum Regarding Plaintiff's Second Opposition to Motion for Costs, Expenses and Attorneys' Fees Pursuant to 28 U.S.C. § 1927 (filed March 29, 1999).

From the time sheets submitted by Lieberman, the Court cannot determine the precise number of hours expended on each opposition or motion filed. Based on an examination of these documents, the Court concludes that some of the hours claimed by Lieberman do not fairly represent time expended as a direct result of Berry's sanctionable conduct. The motions to dismiss the amended complaints involved largely the same issues. In addition, defendant's requests for sanctions were based on the similar arguments to those originally advanced by defendant in September 1998. Consequently, the Court concludes that a reduction in the number of hours expended is appropriate in calculating the fee award.

The Court finds that the following hours claimed by Lieberman constitute time spent defending against unnecessary filings by Berry:

(1) October 30: "Receive and review new complaint." (3.50 hours);

(2) November 3: "Review 2<sup>nd</sup> amended complaint; PCs EP, RM re: strategy, motion; Letter to Berry." (4.00 hours);

(3) November 4: "PCs GB, RM, EP. Review complaint and outline." (2.00 hours);

(4) November 5: "Review GB declaration; PC EP; Review complaint and outline." (2.00 hours);

(5) November 6: "PCs EP. Review Berry's motion to replead." (1.00 hours);

(6) November 9: "Review revised 2<sup>nd</sup> amended complaint, memo from client. Outline response and cross motion." (2.00 hours);

(7) November 10: "Letter to GB. Work on draft for response and cross motion." (3.00 hours);

(8) November 12: "Work on opposition to Berry motion and cross motion; Research and writing. Revising draft. PCs EP, KL re: same." (8.50 hours);

(9) November 13: "Review, revise, edit draft; PCs EP, RM, BR." (4.50 hours);

(10) December 11: "PCs EP, RM. Research re: § 1927." (2.50 hours);

(11) January 5: "Review Berry motion to amend. Review proposed 3<sup>rd</sup> amended complaint; PCs EP. Research and began drafting opposition memo." (3.50 hours);

(12) March 1: "Review and edit § 1927 motion; PCs RM." (2.00 hours);

(13) March 2: "Review pleadings. PCs EP re: response to motion; PCs SR, RM." (1.50 hours);

(14) March 10: "PC BD. PC EP. PC RM. Review Berry's latest papers. Conf. call re: response." (2.50);

(15) March 11: "Work on response. PCs EP, RM, BR." (3.00 hours);

(16) March 12: "PCs EP, RM. Review letters, pleadings, response." (2.00 hours);

(17) March 16: "Review Pattinson pleadings. Revise and edit responses. PCs EP, RM." (2.50 hours)

(18) March 18: "Receive and review materials for hearing. PCs EP." (2.50 hours)

(19) March 19: "Review Berry pleadings. PC RM, EP re: motion to strike." (2.00 hours);

(20) March 22: "Read new complaint. PCs EP, RM. Conf. call w/BR, et al. Letters from SR." (3.00 hours);



(21) March 23: "Order. PCs EP, RM. Review Pattinson declaration." (2.50 hours);

(22) April 2: "Review file and materials in preparation for hearing." (4.25 hours);

(23) April 4: "Travel to LA. Meeting w/client. Prepare for hearing. (Hours for travel include only working time)." (6.25 hours); and

(24) April 5: "Review materials for hearing. Attend hearing." (3.75 hours).

- Exhibit A to Lieberman Decl.

The Court finds that the above 74.25 hours represent hours necessitated by Berry's actions and fairly represent the excess time spent as a result of the sanctionable conduct.<sup>4</sup> The Court also finds that Lieberman's hourly rate of \$350 is comparable to rates of attorneys in the Los Angeles community with comparable skill and experience to that of Lieberman. Therefore, the Court hereby awards attorneys' fees in favor of defendant Moxon for

---

<sup>4</sup> Specifically, the Court finds that items (1) through (9) listed above reflect hours expended in preparing the Opposition of Defendant Kendrick L. Moxon to Plaintiff's Motion for Leave to File Revised Second Amended Complaint and Third Amended Complaint, and Notice of Cross-motion to Dismiss and to Renew Motion for Rule 11 Sanctions, filed November 17, 1998; items (10) and (12) reflect hours spent in preparing defendant's Motion for Costs, Expenses and Attorneys' Fees Pursuant to 28 U.S.C. § 1927, filed March 1, 1999; items (11) and (13) reflect preparation for Defendant Kendrick L. Moxon's Opposition to Plaintiff's Motion for Leave to File Nunc Pro Tunc to File Revised Third Amended Complaint, filed March 8, 1999; items (14)-(16) reflect hours expended for Reply of Defendant Kendrick L. Moxon in Support of Motion to Dismiss Third Amended Complaint, filed March 15, 1999; item (19) reflects hours expended for the Ex Parte Application to Strike Declaration of Michael Pattinson, filed March 22, 1999; and items (17), (18), and (20)-(24) reflect preparation for the April 5, 1999 hearing on defendant's motions before this Court.



74.25 hours at a rate of \$350 per hour, for a total sum of \$25,987.50.

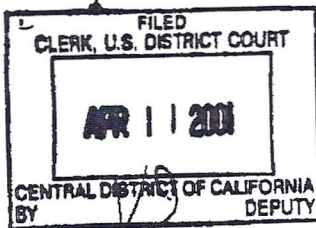
In addition, the Court concludes that Moxon's choice of New York counsel was not unreasonable in this case, and the travel expenses for one hearing before this Court are not excessive. The Court hereby awards expenses in the amount of \$2,497.22.

For the reasons set forth above, the Court awards defendant Moxon the total sum of \$28,484.72 in attorneys' fees and expenses.

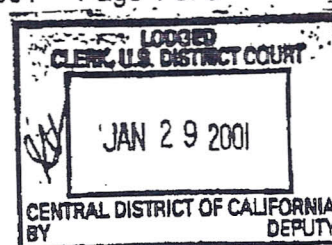
IT IS SO ORDERED.







THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(d).  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT



U.S. Court of Appeals Docket Number: 00-56356  
Lower Court Docket No.: CV-98-03985-CAS ✓  
Short Title: Berry v. Church of Scientology

FILED  
JAN 17 2001

Priority ☒  
Send ☒  
Enter ☒  
Closed ☒  
JS-5/JS-6 ☐  
JS-2/JS-3 ☐  
Scan Only ☐

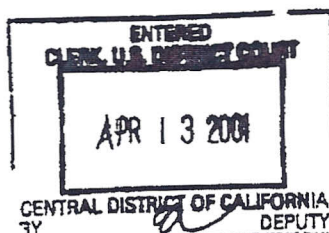
O R D E R

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

A review of the file in this case reveals that the appellant has failed to perfect the appeal as prescribed by the Federal Rules of Appellate Procedure.

Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to comply with the rules requiring processing the appeal to hearing.

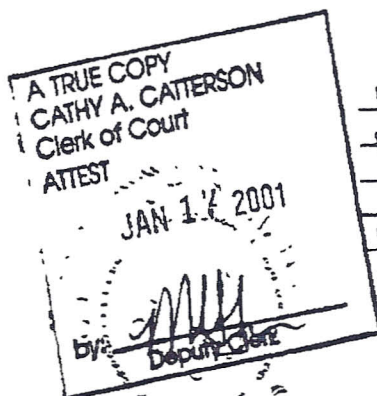
A certified copy of this order sent to the district court, agency or Tax Court shall act as and for the mandate of this court.



FOR THE COURT:

Cathy A. Catterson  
Clerk of Court

By: Marlan Foreman  
Deputy Clerk



✓ Docketed  
✓ Copies / NTC Sent  
— JS - 5 / JS - 6  
— JS - 2 / JS - 3  
✓ CLSD



APR 13 2001

103

INTERNAL USE ONLY: Proceedings include all events.  
00-56356 Berry, et al v. Church of Scientology, et al

MICHAEL PHILLIP PATTINSON  
Plaintiff

Christian Joseph Scali, Esq.  
FAX 213-637-5659  
213-637-5656  
Suite 1755  
[COR LD NTC ret]  
LEWIS & SCALI  
3550 Wilshire Boulevard  
Los Angeles, CA 90010

Graham Edward Berry, Esq.  
FAX 310-393-4507  
310-395-4800  
[COR LD NTC ret]  
GRAHAM E. BERRY LAW OFFICES  
Post Office Box 1028  
1223 Wilshire Boulevard  
Los Angeles, CA 90403

GRAHAM EDWARD BERRY  
Appellant

Graham Edward Berry  
[COR LD NTC prs]  
GRAHAM E. BERRY LAW OFFICES  
Post Office Box 1028  
1223 Wilshire Boulevard  
Los Angeles, CA 90403

v.

CHURCH OF SCIENTOLOGY  
INTERNATIONAL, a California  
Corporation  
Defendant - Appellee

No Appearance  
No Address

RELIGIOUS TECHNOLOGY CENTER, a  
California Corporation  
Defendant - Appellee

No Appearance  
(See above)

CHURCH OF SPIRITUAL TECHNOLOGY,  
a California Corporation  
Defendant - Appellee

No Appearance  
(See above)

KENDRICK L. MOXON, an  
individual  
Defendant - Appellee

Eric M. Lieberman  
212/254-1111  
[COR LD NTC ret]  
Rabionowitz, Boudin, Standard,  
Krinsky & Lieberman  
740 Broadway - Fifth Floor  
New York, NY 10003-9518

Helena K. Kobrin, Esq.  
FAX 487-5385  
213/487-4468  
Suite 900  
[COR LD NTC ret]





SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 11/12/99

DEPT. 45

HONORABLE DAVID L. MINNING

JUDGE D. MILLAN

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. HERNANDEZ

Deputy Sheriff

NONE PRESENT

Reporter

9:00 am

BC207364

Plaintiff

Counsel GRAHAM E. BERRY (X)

MICHAEL PHILIP PATTINSON  
VS

Defendant

CAPTAIN DAVID MISCAVIAGE  
R/F 4/20/99 DENIED

Counsel WILLIAM T. DRESCHER (X)

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANT, CHURCH OF SPIRITUAL TECHNOLOGY,  
FOR FEES AND COSTS UNDER C.C.P. 425.16(c);

THE MATTER COMES ON CALENDAR. THE MOTION IS GRANTED.  
DEFENDANT IS AWARDED FEES AND COSTS OF \$12500.00  
PAYABLE JOINTLY AND SEVERLY BY PLAINTIFF PATTINSON AND  
COUNSEL FOR PLAINTIFF, GRAHAM E. BERRY.

NOTICE IS WAIVED.





# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 09/10/99

DEPT. 73

HONORABLE DAVID DOI

JUDGE VICKIE PARTIDA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

K. HOLLIS

Deputy Sheriff

NONE PRESENT

Reporter

9:00 am	BC207363	Plaintiff	GRAHAM E. BERRY	(X)
		Counsel		

ROBERT JEAVONS		Defendant	KENDRICK L. MOXON	(X)
VS		Counsel		
CHURCH OF SCIENTOLOGY				
INTERNATIONAL				

RECUSAL CCP 170.1 JUDGE MEIERS

**NATURE OF PROCEEDINGS:**

MOTION OF THE DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL AN MURIEL DEFRESNE TO STRIKE AND MOTION TO STRIKE COMPLAINT URSUANT TO C.C.P. SECTION 425.16;

Matter comes on calendar. The Defendants, Special Motion to Strike brought pursuant to CCP Sec 425.16 is granted. The Court orders as follows: (1) The Plaintiff's Complaint is stricken; (2) The Plaintiff's action is dismissed, with prejudice; and (3) The Defendants shall have and recover from the Plaintiff, Robert Jeavons, and/or his attorney, Graham Berry, reasonable attorney fees in the sum of \$3,000.00, and costs in the sum of \$23.00.

Defendants shall lodge with the Court within 10 days a proposed order reflecting the Court's ruling and orders.

Clerk to give notice.

A copy of this minute order is sent via United States Mail, to the following:

Graham E. Berry  
One Wilshire Boulevard  
Twenty First Floor  
Los Angeles, California 90017-3383

MINUTES ENTERED 09/10/99 COUNTY CLERK
---





SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

GRAHAM E. BERRY,.

Plaintiff,

vs.

GLENN BARTON, an individual, the  
CAN Reform Group, an unincorporated  
association of individuals, Cult  
Awareness Network, an organization  
whose legal status is currently  
unknown, Cult Awareness Network  
Corporation, a California  
corporation, Nancy O'Meara, an  
individual, Robert Lippman, an  
individual, Isadore "Izzy" Chait,  
an individual, Donna Casselman, an  
individual, W. Russell Shaw, an  
individual, and DOES 1 through 400,  
inclusive,

Defendants.

CASE NO. BC 186188

HEARING HELD BEFORE DISCOVERY REFEREE

HON. DAVID N. EAGLESON

SEPTEMBER 15, 1998

(Pages 1 through 145)

REPORTED BY:

Jan M. Rhoades  
CSR No. 5705

HOMAN ASSOCIATES

CERTIFIED SHORTHAND REPORTERS

4287 JACKSON AVENUE

CULVER CITY, CALIFORNIA 90232

(310) 838-7734



1 English, did you write this? Yes or no.

2 MR. SCALI: But the Plaintiff can't answer whether  
3 or not he wrote it.

4 THE REFEREE: He's got to do some research.  
5 Mr. Berry is not a naive person. He's a very bright  
6 person. But he's undertaken an enormous adventure here.  
7 Enormous. It will consume him for the next several  
8 years. He might as well face up to it. And you, too,  
9 apparently. So if you're prepared -- if this is what you  
10 want to do in life for the next few years, you've got to  
11 supply the information that's legitimately requested.

12 What I'm going to do is I'm going to grant  
13 this motion in its entirety. I'll give you 30 days to  
14 respond fully, either yes, these are; I admit that these  
15 came from me or, no, they didn't and here is why, and  
16 here's the investigation that I've done, and my position  
17 is based on this kind of an investigation.

18 Do I make myself clear?

19 MR. SCALI: Yes, Your Honor.

20 THE REFEREE: The 30 days -- I don't have my  
21 calendar with me.

22 MS. REEVES: Today's the 15th.

23 THE REFEREE: 15th. Then that will make it the  
24 15th of October.

25 MR. SCALI: Your Honor --

1 THE REFEREE: That is a Thursday.

2 Go ahead.

3 MR. SCALI: Was there a sanction request on this  
4 one?

5 MR. MOXON: Your Honor, there is an escape  
6 clause -- that's essentially what the Court is allowing  
7 them is the escape clause -- if they didn't respond in  
8 time. Of course, they concede they didn't respond in  
9 time.

10 THE REFEREE: Let me go back further. This  
11 business, Plaintiff is without sufficient information and  
12 belief as to the authenticity of this document and on  
13 that basis denies the authenticity is worth the paper  
14 it's written on. Presumptively, he's the author, and he  
15 has to disabuse us that he's not, and that's based on  
16 research, thought, what-have-you.

17 It seemed incredible that all of these would  
18 pop up, and he's taken the position of I don't know  
19 anything at all. I don't know what's going on here.  
20 Some guy's coming in and using my computer. That doesn't  
21 make any sense to me.

22 MR. BERRY: Your Honor, I am one of the counsel of  
23 record here.

24 THE REFEREE: No. No. Sorry, Mr. Berry, but  
25 you're represented by counsel.



1 MR. MOXON: Your Honor, pursuant to Section 2033,  
2 if this escape clause is implemented, there's a  
3 requirement that the party who's attempting to implement  
4 it by not filing a timely response pays the cost of the  
5 person who had to bring the motion.

6 THE REFEREE: Well, that's a sanction motion.

7 MR. MOXON: Which is what I asked for, \$800, in the  
8 filing of this pursuant to 2033. If they --

9 THE REFEREE: Did you submit an affidavit here?

10 MR. MOXON: Yes, Your Honor.

11 THE REFEREE: I see your time -- what exhibit is  
12 that?

13 MR. SCALI: But he didn't brief the issue, Your  
14 Honor, of sanctions.

15 THE REFEREE: He doesn't have to brief the issue.  
16 It's elementary. I'm trying to save my eyesight.

17 MS. REEVES: Exhibit K.

18 THE REFEREE: Exhibit K?

19 MR. MOXON: It's near the very end.

20 THE REFEREE: Well, we'll award sanctions in the  
21 sum of \$500 payable by Mr. Berry to the firm of Moxon &  
22 Kobrin payable on or before the 15th of October 1998.

23 I very seldom give sanctions -- very  
24 seldom -- but this is outrageous, Counsel. Outrageous.

25 I'll return these to you, Mr. Moxon.