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Defendant and Cross-Complainant *pro se*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

KENDRICK MOXON

Plaintiff,

v.

GRAHAM BERRY,

Defendants.

GRAHAM E. BERRY, an individual;

Cross-Complainant,

v.

KENDRICK L. MOXON, an individual;

Cross-Defendant.

Case No. BC 429217

**UNVERIFIED ANSWER AND VERIFIED
COMPULSARY CROSS-COMPLAINT TO
SET ASIDE ORDERS AND JUDGMENTS.**

Action filed: January 5, 2010

Filed concurrently with:

- (1) Judicial Council Form MC-701;
- (2) Appendix No. I of Exhibits (Ex. A);
- (3) Appendix No. II of Exhibits (Ex. B-D);
- (4) Appendix No. III of Exhibits [Ex. E-J].

1 COMES NOW the defendant **GRAHAM BERRY** and, answering the complaint herein, alleges
2 as follows:

3 1. Under the provisions of Section 431.30 of the California Code of Civil Procedure, the
4 defendant generally denies each and every allegation of the said complaint and the whole thereof
5 and denies plaintiff is entitled to any relief at all.
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7 2. At all relevant times herein the plaintiff was an officer of the relevant courts of law.
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9 3. In seeking the underlying order now at issue herein, and the other inter-related orders as set
10 forth in the concurrently filed cross-complaint, the plaintiff and his agents engaged in a continuum
11 of inter-related crimes, "extrinsic frauds and/or mistakes" upon the courts, and there were
12 "extrinsic mistakes," and resulting "unjust judgments," as more fully set forth in the cross-
13 complaint concurrently filed herewith and made a part hereof.
14

15 4. In seeking the underlying order now at issue herein, and the earlier inter-related orders as set
16 forth in the concurrently filed verified compulsory cross-complaint, the plaintiff and his agents,
17 and as an officer (s) of the court (s), expressly and knowingly relied upon, and requested multiple
18 federal and state courts to rely upon, a continuum of inter-related representations, crimes,
19 "extrinsic frauds and/or mistakes" upon the courts, and there were "extrinsic mistakes," as set
20 forth in the cross-complaint concurrently filed herewith and made a part hereof.
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22 5. The aforesaid crimes, "extrinsic fraud and/or mistakes upon the courts," were committed by an
23 officer (s) of the court and were not privileged as being in furtherance of justice or the interests of
24 justice.
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1 6. The aforesaid crimes, “extrinsic fraud and/or mistakes,” and “extrinsic mistakes,” resulted in
2 “unjust judgments,” without proper discovery and fair adversary hearings, being entered against
3 the defendant and cross-complainant in the underlying cases.

4
5 7. The aforesaid crimes, “extrinsic fraud and/or mistakes” unfairly deprived plaintiffs (Berry and
6 Pattinson) in the under-lying proceedings of deposition and other discovery, a fair and impartial
7 hearing, and/or an adversary trial upon the merits of their claims, or the opportunity to fully
8 litigate and conduct full discovery on their claims.

9
10 8. The relevant allegations in the *Pattinson v. Church of Scientology* case, and the largely
11 concurrent *Berry v. Cipriano, Barton and Miscavige* cases had merit *inter alia* because of the
12 matters set forth in the subsequent testimony of defendant’s client Robert Cipriano, the crime
13 fraud motion against cross-defendant and his client in the *Hurtado v. Berry* case which directly
14 resulted in cross-defendant’s voluntary dismissal of Hurtado’s claims, the testimony of the
15 Hurtado family witnesses, Donald Wager, Esq. and Anthony Apodaca in the *Hurtado* case, and
16 cross-defendant’s unsuccessful efforts in the *McPherson v. Church of Scientology* case (Dandar
17 disqualification hearing) to establish an allegation of subornation of perjury against cross-
18 complainant; and otherwise as set forth in the supporting exhibits thereto, the contents of which
19 are expressly incorporated herein and made a part hereof, as if fully set forth herein.
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22 9. Among other things, the aforesaid crimes, “extrinsic frauds” directly or indirectly contributed
23 to excusable and relevant “extrinsic mistake (s)” (and “excusable neglect”) by the defendant, and
24 by his then client Michael Pattinson, that resulted in an unjust judgment without a full, fair and
25 impartial adversary and evidential hearings (s).

26
27 10. Irregularity in the proceedings of the relevant court (s), and/or an adverse party (including
28 attorney and party misconduct), rulings by a disqualified court, orders of the court (s), and abuses

1 of discretion occurred that were so prejudicial, of such a nature, and done under such
2 circumstances, that they deprived the defendant and cross-complainant (and his then client
3 Michael Pattinson) of the constitutionally guaranteed right to due process and a fair and impartial
4 trial (s) upon the merits.

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6 **11.** Defendant's allegations set forth in the concurrently filed verified compulsory cross-
7 complaint, and in the supporting exhibits filed therewith, are expressly incorporated and made a
8 part hereof as if fully set forth herein.

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10 **12.** The matters set forth herein should also be addressed in the context of a continuing fraud (s)
11 upon the courts by an officer of the courts.

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13 **13.** In all the circumstances that are alleged herein, and that will be submitted by way of evidence
14 herein, the defendant has acted diligently.

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16 **14.** In all the circumstances herein, the relief sought herein will not prejudice the plaintiff.

17 **15.** The facts constituting criminal conduct, "extrinsic fraud (s) and/or mistake (s)," by an officer
18 of the court, and giving rise to "extrinsic mistake (s)" and "unjust judgment (s)" as alleged herein
19 could not have been reasonably discovered by defendant , before entry of the orders and
20 judgments at issue.

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22 **16.** In all of the circumstances of crime, "extrinsic fraud and mistake" therein, as set forth in the
23 concurrently filed cross-complaint and made a part hereof, the wrongful conduct of Robert
24 Cipriano, Anthony Apodaca and Michael Hurtado, *inter alia*, should be imputed to their attorney
25 the Plaintiff herein.

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FIFTH AFFIRMATIVE DEFENSE

(Statutes of Limitation)

21. The Complaint and each and every claim for relief therein is/are barred by each and every applicable statute of limitations.

22. In all the circumstances as alleged herein, the application of equitable principles preclude any tolling of any applicable statute of limitations for the benefit of the plaintiff herein.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands- Civil Code §3517)

23. Plaintiff's claim is barred by plaintiffs' unclean hands, and those of his law partners, employees, private investigators and other agents, and those of his co-counsel, specifically directed at the defendant in respect to those matters and events constituting criminal conduct, "extrinsic fraud and mistake" and which form the basis of the present litigation including but not limited to the "extrinsic fraud and/or extrinsic mistake," "extrinsic mistake," and "unjust judgments" as more fully set forth in the concurrently filed verified cross-complaint herein and the exhibits hereto as if fully set forth herein.

SEVENTH AFFIRMATIVE DEFENSE

(Illegality)

24. Plaintiff's claim is barred by the doctrine of illegality arising from his unconscionable, unethical, unlawful and fraudulent continuum of inter-related crimes, "extrinsic fraud and/or mistake" and other unlawful conduct, omissions and non-disclosures, commencing in or about April 1994 and continuing to the present day, intentionally directed at the Defendant specifically, and not in furtherance of the interests of justice, including but not limited to his non-privileged and inter-related crimes, "extrinsic frauds and mistakes," and other consequential "extrinsic mistake,"

1 upon at least five different courts in the underlying overlapping continuum of cases between 1998
2 and 2000 and continuing through to the present day including but not limited to *Berry v.*
3 *Cipriano/Barton/Miscavige/Moxon/Ingram ,et al., Pattinson v. Church of Scientology, Reveillere*
4 *v. Pattinson, In Re Michael Pattinson Bankruptcy Proceedings, In Re Graham E. Berry*
5 *Bankruptcy Proceedings, State Bar v. Berry, Hurtado v. Berry and McPherson v. Church of*
6 *Scientology (Ken Dandar Disqualification hearing, Jeavons v. CSI, and in several of “the Henson*
7 *cases.”*
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9 **EIGHTH AFFIRMATIVE DEFENSE**

10 **(Waiver & Estoppel)**

11 **25.** Plaintiff's claim is barred by the doctrine of waiver and estoppel arising from his
12 unconscionable, unethical, unlawful and fraudulent conduct, deceit, suppression, omissions and
13 non-disclosures, including the “extrinsic fraud and/or mistake,” and resulting “extrinsic mistake,”
14 and involving a continuum of extrinsically criminal and/or fraudulent conduct and mistake
15 commencing in or about April 1994 and continuing to the present day, intentionally directed at the
16 Defendant and not in furtherance of the interests of justice, including but not limited to his non-
17 privileged and inter-related frauds upon at least five different courts in the related underlying
18 overlapping continuum of cases including *Berry v. Cipriano/Barton/Miscavige/Moxon/Ingram, et*
19 *al., Pattinson v. Church of Scientology, Reveillere v. Pattinson, In Re Michael Pattinson*
20 *Bankruptcy Proceedings, In Re Graham E. Berry Bankruptcy Proceedings, State Bar v. Berry,*
21 *Hurtado v. Berry and McPherson v. Church of Scientology (Ken Dandar Disqualification hearing,*
22 *Heavens v. CSI, and in several of “the Henson cases.”*
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1 26. Plaintiff is further judicially estopped from denying that the *Berry v. Cipriano, et al.* cases are
2 part of a continuum of crimes, “extrinsic frauds and/or mistakes” by Plaintiff, his employees and
3 agents upon the courts, directed against the Defendant specifically and relevant to the relief sought
4 by the Plaintiff herein because of the Plaintiff’s express claims, in each of the underlying matters
5 including the underlying *Pattinson v. Church of Scientology* case, that the orders and judicial
6 statements from the *Berry v. Cipriano, et. al.* cases were so inter-related that matters in the *Berry*
7 *v. Cipriano* litigation, resulting from what defendant alleges constitute applicable “extrinsic fraud
8 and mistake,” could be used to obtain the relevant order in *Pattinson v. Church of Scientology* case
9 because the *Berry* and *Pattinson* cases allegedly involved “substantially similar facts, transactions
10 or occurrences,” and by the subsequent use of the fraudulently procured orders in the *Pattinson*
11 and *Berry* cases to obtain a legally baseless vexatious litigant ruling in the *Berry v. Cipriano*,
12 *Barton and Miscavige* cases, and during the course of the *Hurtado v. Berry* case (where plaintiff
13 engaged in a “crime and/or fraud”), to obtain directly related voidable/void orders in the United
14 States Bankruptcy Court, to file false criminal and state bar complaints against defendant and, in
15 the *Lisa McPherson v. Church of Scientology [Dandar disqualification hearing]*, in an
16 unsuccessful effort to establish that defendant had suborned perjury during the *Church of*
17 *Scientology v. Fishman & Geertz* litigation and in other filings and communications with, *inter*
18 *alia*, government officials both in the United States and abroad.
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22 NINTH AFFIRMATIVE DEFENSE

23 (Denial of due process)

24 27. In all of the circumstances herein, and as set forth in defendant’s cross-complaint herein,
25 plaintiff’s conduct in the inter-twined and inter-related concurrent underlying matters used such
26 deceptive, despicable and reprehensible methods to influence and persuade that court (s),
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1 administrative agencies and law enforcement a and/or was otherwise so egregious that it infected
2 the relevant proceedings with such unfairness as to amount to a denial of due process.

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4 **TENTH AFFIRMATIVE DEFENSE**

5 **(Unconscienability)**

6 **28.** In all of the circumstances herein, and as set forth in defendant's cross-complaint herein, it
7 would be against conscience and equity to either enforce or extend the alleged judgment.

8
9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 **(Impossibility- Civil Code §3531)**

11 **29.** Plaintiff, his employees, agents and clients, has/have, through his/their conduct and
12 communications, made it impossible for the defendant to reasonably satisfy the fraudulently
13 obtained judgment (s) and order (s) at issue herein.

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15 **TWELTH AFFIRMATIVE DEFENSE**

16 **(Civil Code Section 3517)**

17 **30.** Plaintiff should not be permitted to "take advantage of his own wrong (s)."

18
19 **CROSS-COMPLAINT**

20 **FOR HIS VERIFIED COMPULSORY CROSS-COMPLAINT HEREIN** Defendant and
21 Cross-Complainant **GRAHAM E. BERRY** ("Berry") alleges as follows:

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23 **JURISDICTION AND BACKGROUND**

24 **1.** This is a compulsory cross-complaint pursuant to applicable law which provides it may be
25 asserted at any time including defensively upon an action upon the alleged judgment (s) and that
26 in such a proceeding principles of *res judicata*, collateral estoppel and prior review do not apply.

2. The court has inherent equitable power to grant the relief requested herein when *inter alia* there has been “attorney misconduct,” and/or “extrinsic fraud and/or mistake” by an “officer of the court” amounting to “fraud upon the court,” “irregularity in the proceedings depriving the [defendant and cross-complainant] of the constitutionally guaranteed right to a fair and impartial trial,” “an “inconsistent, incorrect or erroneous legal basis for decision, inconsistent with or unsupported by the facts,” an “unjust judgment,” and/or a judgment or order (s) issued by a “disqualified judge.”

3. The circumstances of this case fit within the broad meaning given to “extrinsic fraud and/or mistake” committed by an officer of the court (s) for the purpose of granting relief in equity to “void and/or unjust judgments and orders” as requested herein. No monetary damages are claimed in this particular proceeding.

4. Filed concurrently herewith and made a part hereof are three volumes of exhibits (and requests for judicial notice) intended to initially demonstrate the good faith and *prima facie* merits of this answer and verified compulsory cross-complaint, and of defendant and cross-complainant's *prima facie* entitlement to a full evidentiary and adversarial proceeding and hearing upon the relief requested herein.

5. The judgment roll (s), to the extent alleged herein, are extensive and are not attached pending judicial guidance as to the manner and circumstances in which they are to be filed or lodged or judicially reviewed.

PARTIES

6. Defendant and compulsory cross-complainant GRAHAM E. BERRY (“Berry” or “cross-complainant”) is an individual who is an attorney licensed to practice law in various jurisdictions including the State of California and who resides in the County of Los Angeles, California.

1 7. Plaintiff and cross-defendant **KENDRICK L. MOXON** (“Moxon” or “cross-defendant”)
2 is an individual who is an attorney licensed to practice law in various jurisdictions including the
3 State of California and who resides in the County of Los Angeles, California. At all relevant times
4 herein, Moxon held himself out as either a partner in the law firm of Bowles & Moxon or in its
5 successor firm Moxon & Koran. In engaging in the acts of crime, extrinsic fraud and mistake
6 alleged herein cross-defendant was acting in his capacity as an officer of the federal and state
7 courts and as a party to be named in the *Berry v. Cipriano/Barton/Miscavige/Ingram* litigation
8 after a Civil Code §1714.10 motion.
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10 8. At all times herein mentioned, the Cross-Defendant’s law partners, law associates, law
11 office employees, and private investigators, and his co-counsel in the *Berry, Pattinson, Hurtado,*
12 *McPherson, Henson and related* cases, were the agents, servants, or employees of the Cross-
13 Defendant and was/were at all times acting within the purpose and scope of said agency and/or
14 employment, and acting with the express and/or implied knowledge or consent of the Cross-
15 Defendant. The alleged acts of the Cross-Defendant constitute a single course of conduct
16 throughout the events at issue herein, commencing in or about April 1994 and continuing to the
17 present day.
18

19 **COMMON ALLEGATIONS**

20
21 9. Between 1990 and 1992 cross-complainant and other counsel at the law firm of Lewis,
22 D’Amato, Brisbois & Bisgaard, were engaged in the defense of an attorney (and his errors and
23 omissions insurance carrier) being repeatedly sued for breach of fiduciary duty by former client
24 the Church of Scientology International (“CSI”) and the Religious Religious Technology Center
25 (“RTC”). RTC and CSI were represented by the cross-defendant and other counsel. Cross-
26 complainant’s attorney client prevailed at both the trial and appellate levels. It was a major defeat
27 for CSI and the cross-defendant.
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1 **10.** Between 1993 and 1994 cross-complainant and other counsel at the law firm of Lewis,
2 D'Amato, Brisbois & Bisgaard, were engaged in the defense of a psychologist (and his errors and
3 omissions insurance carrier) being sued for defamation by CSI. CSI was represented by the cross-
4 defendant and other counsel. Cross-complainant's client prevailed at both the trial and appellate
5 levels. It was another major defeat for CSI and the cross-defendant.

6 **11.** Cross-complainant and Cross-defendant have also appeared against each other in excess
7 of twenty cases. Cross-complainant's clients prevailed in about half of those cases.

8 **12.** The matters set forth herein have received extensive world wide Internet attention and
9 media attention in *inter alia* Los Angeles, CA., Phoenix, AZ and New York, N.Y. Between
10 September and December 1999 the Los Angeles New Times paper engaged in an extensive and
11 intensive three month investigation of cross-defendants crimes, frauds and abuses against cross-
12 complainant. In December 1999 the results were published in the New Times Los Angeles and in
13 the Phoenix New Times. A copy of that investigative report and cover story, "Double Crossed," is
14 attached to Appendix III as Exhibit I.

15 **13.** In a New York Village Voice March 11, 2008 cover story on Scientology, that paper's
16 editor wrote of his earlier work for the New Times LA and the Phoenix New Times and stated:

17 "In another story, we put the lie to the church's claim that it no
18 longer practices "fair game"- L. Ron's famous edict that his troops
19 should engage in dirty tricks to bury its perceived enemies. In
20 "Double Crossed," we detailed one of the most hellacious cases of
21 fair game in recent years, the smearing of attorney Graham Berry
22 with the use of a coerced, false affidavit claiming Berry was a
23 pederast who went after boys as young as 12. When the man who
24 made that false affidavit, Robert Cipriano, was sued by Berry in a
25 defamation suit, the church, in order to keep him from recanting
26 his false claims, offered to represent him in the law suit for free,
donated thousands to Cipriano's nonprofit projects, and even got
him a house, a car, and a job at Earth link (which had been founded
by Scientologists)." Emphasis added.

27 A copy of that analysis is attached to Appendix No. III as Exhibit J.

1 **14.** Upon information and belief, the matters alleged herein, including crimes by an officer of
2 the court, “extrinsic frauds and/or mistakes,” “frauds upon the court (s) by an officer of the court,”
3 “unjust judgments and orders,” have received extensive global condemnation on the World Wide
4 Web of the Internet and in United States and foreign media, most recently through visits to cross-
5 complainant from German and Australian television news shows during the past two weeks.

6 **15.** Upon information and belief, in or about April 2001 the then Chief of the Los Angeles
7 Police Department (“L.A.P.D.”) requested an investigation of certain of these matters after
8 receiving numerous public complaints regarding what cross-defendant had done to cross-
9 complainant during the various underlying matters now at issue herein. On November 2, 2001,
10 cross-complainant provided a detailed explanation of the underlying events. A copy of cross-
11 complainant’s explanation is attached to Appendix. No. III as Exhibit G and the contents thereof
12 are incorporated herein as if fully set forth herein. Again upon information and belief, the
13 L.A.P.D. conducted a six month investigation and recommended to the City Attorney and District
14 Attorney that certain persons including cross-defendant be prosecuted for the criminal conduct that
15 had been done to cross-complainant during the course of the underlying matters identified herein.
16 However, certain attorneys intervened on behalf of the Church of Scientology and a senior deputy
17 district attorney advised cross-complainant that a decision had been made not to proceed with a
18 prosecution for political reasons. “One day I may be able to tell you why,” cross-complainant was
19 also informed by the senior Deputy District Attorney.

20 **16.** A further detailed explanation of the sequence of underlying events and some of the
21 subsequent adverse impact upon the cross-complaint, all in support of the equitable relief
22 requested herein, is attached to Appendix III as Exhibit H and the contents thereof are
23 incorporated herein as if fully set forth herein. This version of the partial chronology has not
24 incorporated and inter-woven the over-lapping events in the *Pattinson* case during 1998 and 1999,
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1 the *Henson* case in 2000, the *Lisa McPherson* wrongful death case [Dandar disqualification
2 hearing] the regular and continuing unjust judgment debtor examinations that cross-defendant
3 takes of cross-complainant during the past ten years, and the continuing wide-spread professional
4 and personal disparagement of cross-complainant by cross-defendant, his employees and agents
5 based upon the court orders at issue herein and obtained through cross-defendants own crimes,
6 extrinsic fraud and/or mistake, as an officer of the court, as alleged and/or incorporated herein.

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8 17. Upon information and belief, the May 5, 1994 Declaration of Robert Cipriano
9 (subsequently recanted) was fabricated by cross-defendant Moxon's agent Eugene Ingram.

10 18. Cross-complainant filed the underlying suit in order to obtain a retraction from Cipriano
11 and the co-defendants. Co-defendant Mathilde Krim entered into an early settlement in the amount
12 of \$75,000.

13 19. In his subsequent declaration and deposition testimony, Cipriano has testified that shortly
14 after cross-complainant filed suit Cipriano prepared a letter (produced in his *Hurtado v. Berry*
15 testimony) requesting cross-complainant to accept his apology and retraction and to dismiss the
16 *Berry v. Cipriano* law suit as cross-complainant Berry had demanded in email correspondence
17 before cross-defendant Moxon intervened, solicited and paid for Cipriano's legal representation,
18 business, transportation and living expenses for the next twelve months. Cipriano provided his
19 settlement offer, retraction and apology in letter delivered to cross-defendant Moxon, in Moxon's
20 new capacity as Cipriano's lawyer. Cipriano requested cross-defendant to send the offer of written
21 retraction and apology to cross-complainant Berry. Cross-defendant Moxon failed to do so. But
22 for Moxon's conflicts of interest, subsequent crimes, extrinsic frauds and/or mistakes, corruption
23 and procurement of unjust judgments and orders and arguing their inter-relationship for purposes
24 of punishing the cross-complainant herein, the litany of crime, fraud, abuse and damage set forth
25 herein and in the expressly incorporated exhibits hereto would not have occurred.
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20. Moxon's conduct as alleged herein and *inter alia* described in the declaration and deposition testimony of various witnesses attached to the three appendices hereto, was intended to and had the effect of protecting all of the defendants in the *Berry v. Cipriano, et. al.*, *Berry v. Barton, et. al.* case and in the *Berry v. Miscavige, Ingram and Moxon, et al.* case from adverse judgments or settlements in those consolidated cases, and in the Pattinson, Henson, McPherson and other cases relevant to the relief cross-complainant seeks herein, and of causing and/or attempting frauds upon the court (s) as an officer of the court in numerous cases in federal and state courts across county lines, state lines, national borders, and using the wires and mails and monies belonging to non-profit and I.R.S. §501 (c) (3) exempt organizations.

FIRST CAUSE OF ACTION

(“Extrinsic fraud and/or mistake” upon the court (s) by an officer of the court)

21. On or about January __, 1998 the cross-complainant, as plaintiff, filed in the Los Angeles County Superior Court a complaint entitled *Graham E. Berry v. Robert A. Cipriano et. al.*, LASC Case No. 184355 (“*Berry v. Cipriano, et. al.*”), in which damages were sought for, *inter alia*, defamatory statements made to Bowles & Moxon [now *Moxon & Kobrin*] private investigator Eugene Ingram that were later published by certain persons named in the *Berry v. Barton* case who acted through certain persons named in the *Berry v. Miscavige, Moxon, Ingram, et. al.* case. Except for the named parties and the nature of their involvements, the three cases were subsequently deemed related and consolidated for all purposes.

22. On or about February __, 1998 the cross-complainant, as plaintiff, filed in the Los Angeles County Superior Court a complaint entitled *Graham E. Berry v. Glenn Barton et. al.*, LASC Case No. 186168 (“*Berry v. Barton, et. al.*”), in which damages were sought for, *inter alia*, the world wide publication [continuing from 1994 through to the present day] of defamatory statements made to Bowles & Moxon [now *Moxon & Kobrin*] private investigator Eugene Ingram

1 by certain persons named in the *Berry v. Cipriano* case, certain or all of whom became corruptly
2 involved in crimes and frauds upon the court (s) through certain persons named in the *Berry v.*
3 *Miscavige, Moxon, Ingram, et. al.* case. Except for the named parties and the nature of their
4 involvements, the three cases were subsequently deemed related and consolidated for all purposes.

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6 23. On or about April __, 1998 the cross-complainant, as plaintiff, filed in the Los Angeles
7 County Superior Court a complaint entitled *Graham E. Berry v. David Miscavige, Eugene Ingram*
8 *et. al.*, LASC Case No. 196402 (“*Berry v. Miscavige [Eugene Ingram, Kendrick Moxon], et. al.*”),
9 in which damages were sought for, *inter alia*, the world wide publication [continuing from 1994
10 through to the present day] of defamatory statements made to Bowles & Moxon [now *Moxon &*
11 *Kobrin*] private investigator Eugene Ingram by certain persons named in the *Berry v. Cipriano*
12 case, certain or all of whom became corruptly involved in crimes and frauds upon the court (s)
13 through certain persons named in the *Berry v. Miscavige, Moxon, Ingram, et. al.* case. Except for
14 the named parties and the nature of their involvements, the three cases were subsequently deemed
15 related and consolidated for all purposes. But for his criminal conduct, “extrinsic frauds and/or
16 mistakes,” and “extrinsic mistakes,” cross-defendant would have been named as party defendant
17 after a Civil Code §1714.10 motion had been filed as indicated therein.

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19 24. The cross-complainant filed the original complaints in the *Berry v. Cipriano* and *Berry v.*
20 *Barton* litigation as a *pro se* litigant (although at the time he was a partner at the law of Musick,
21 Peeler & Garrett LLP). The complaint in the *Berry v. Miscavige (Ingram & Moxon)* litigation, and
22 the amended complaints in the *Berry v. Cipriano* and *Berry v. Barton* litigation were filed by the
23 subsequent law firm of Berry, Lewis & Scali which provided representation to the cross-
24 complainant throughout most of the litigation before cross-complainant was emotionally,
25 physically and financially overwhelmed by discovery abuse, excess and expense being perpetrated
26 by the Cross-Defendant as part of the scheme and course of crime, extrinsic fraud and extrinsic
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1 mistake alleged below, and by consequential "severe depression" for which he had/has been
2 receiving treatment.

3 **25.** On May____, 1998, the Cross-Complainant, as a partner in the then law firm of Berry,
4 Lewis & Scali which was providing legal services to Michael Pattinson, filed in the United States
5 District Court for the Central District of California a complaint entitled *Michael Pattinson v.*
6 *Church of Scientology International, David Miscavige, Kendrick Moxon, et. al.* U.S.D.C. Case No.
7 CV-98-3958 CAS (SHx) (*Pattinson v. Church of Scientology, et. al.*"), in which former
8 scientologist Mr. Pattinson sought damages for various torts alleged to have been committed
9 against him by the Church of Scientology and certain of its members and employees including
10 scientology attorney Kendrick L. Moxon.

12 **26.** In the *Berry v. Cipriano, Barton, Miscavige (Ingram, Abelson, Moxon)* cases, cross-
13 defendant Moxon and his agents commenced cross-complainant Berry's deposition in May 1998,
14 and he claimed he had not completed it 12 deposition days later, in February 1999. In addition,
15 cross-complainant Berry was precluded from making any privacy objections and was ordered,
16 among other things, to respond to:

- 18 A. Over 2,000 form interrogatories;
- 19 B. 289 special interrogatories;
- 20 C. 121 Requests for Admission (each accompanied by 5 interrogatories, totaling an
21 additional 605 interrogatories);
- 22 D. 532 Requests for Authentication;
- 23 E. 316 categories of document demands (responding documents to be carefully
24 organized in accordance therewith).

25 **27.** The immediately preceding abusive discovery by cross-defendant and his agents was
26 adversely compounded by the subsequently disclosed relationships between the trial judge,
27 defendants and their attorneys and judicial orders that cross-defendant's massive discovery
28 demands, and crippling expense involving court-ordered private judges, be answered and paid

1 both during and after the twelve days of uncompleted cross-complainant Berry's deposition while
2 refusing plaintiff, the cross-complainant herein, the opportunity to take any depositions of the
3 defendants or to order the defendant's adequate compliance with Plaintiff's written discovery. At
4 the same time Defendant's took the depositions of at least 12 other persons and noticed the
5 depositions of over 30 others. Then they obstructed cross-complainant from adding Moxon and
6 Abelson as Civ. Code § 1714.10 defendant's the case by unsuccessfully removing *Berry v.*
7 *Miscavige* to Federal Court (arguing it was related to *Pattinson*), but thereby obstructing
8 Plaintiff's ability to so move to amend (Civ. Code § 1714.10) for nearly three months and into
9 January 1999. Cross-defendant also persuaded Judge Williams that cross-complainant Berry could
10 not have an early and preferential trial date by law despite the express provisions of C.C.P. § 460.5
11 ("because the law disfavors actions for defamation").
12

13 **28.** Upon information and belief, during 1998 cross-defendant (or his agents) solicited the
14 representation, or acted upon the solicitation of representation, of Copenhagen, Denmark Church
15 of Scientology employee Mr. Reveillere and had him file an action in Orange County California
16 on an old promissory note on an unpaid business loan by Mr. Reveillere to Mr. Pattinson while
17 both were Scientologists in Paris, France.
18

19 **29.** The *Reveillere v. Pattinson* action on a note quickly proceeded to a judgment which Mr.
20 Pattinson was unable to satisfy. Thereafter Mr. Pattinson was financially forced to file bankruptcy
21 and to list the *Pattinson v. Church of Scientology/Moxon* law suit as an asset of the *Pattinson*
22 bankruptcy estate.
23

24 **30.** Upon information and belief, as a result of the *Reveillere v. Pattinson* action on a note Mr.
25 Pattinson could not afford the continuing litigation expenses in the *Pattinson v. Church of*
26 *Scientology/Miscavige/Moxon* and he did not want cross-defendant Moxon to seize the *Pattinson*
27 *v. Church of Scientology/Miscavige/Moxon* lawsuit as an asset of the Pattinson bankruptcy estate
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1 with which to satisfy creditor *Reveillere* unpaid note and to extinguish Pattinson's litigation in
2 which he was being represented by the cross-complainant herein. In or about July ___, 1999 Mr.
3 Pattinson voluntarily dismissed the *Pattinson v. Church of Scientology, Miscavige, Moxon, et. al.*
4 litigation without prejudice.

5 **31.** Upon information and belief based upon the deposition testimony of various adverse
6 witnesses in the *Hurtado v. Berry* [LASC Case No. BC 208227] litigation, in early December
7 1998 cross-defendant's agent Eugene Ingram initiated the solicitation and fabrication of the
8 *Hurtado v. Berry* case. Cross-defendant also filed the same *Hurtado v. Berry* case in the United
9 States Bankruptcy Court and, using the same knowingly fabricated allegations, initiated a state bar
10 complaint and investigation of cross-complainant. Cross-defendant voluntarily dismissed the
11 *Hurtado* case three weeks before trial and after discovery referee Hon. Stephen Lachs (ret.)
12 recommended the trial judge waive the attorney-client privilege between Moxon and Hurtado
13 based upon the the crime-fraud exception to the attorney-client privilege. Notwithstanding, the
14 cross-defendant maintained the *Hurtado v. Berry* Federal Bankruptcy Court litigation for a further
15 six months. The State Bar eventually dismissed the Scientology/Hurtado State Bar complaint
16 which was the product of cross-defendant's criminal conduct, "extrinsic frauds and/or mistakes"
17 as set forth in Exhibit F pages 62-104.

18 **32.** On February ___, 1999 the cross-defendant filed a successful motion to dismiss the *Berry*
19 *v. Barton, et. al.* case upon an alleged but objectively contrived discovery failure by the cross-
20 complainant caused, in whole or in part, by the subsequently discovered and documented frauds
21 upon the court (s) by the cross-defendant. Cross-defendant obtained the entry of the judgment in
22 *Berry v. Barton* through "extrinsic fraud and/or mistake," and "extrinsic mistake" as, *inter alia*, set
23 forth below, in the declarations of Robert Cipriano attached to Appendix No. II as Exhibits C and
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1 D and to Appendix No. III as Exhibit E, and in the further explanations of cross-complainant in
2 Appendix No. III, Exhibits G and H.

3 33. On February ___, 1999 the cross-defendant filed a successful motion to dismiss the *Berry*
4 *v. Cipriano, et. al.* case based upon the entry of the dismissal in *Berry v. Barton*. Both the Barton
5 and Cipriano involuntary dismissals were obtained through “extrinsic fraud and/or mistake,” and
6 “extrinsic mistake” as, *inter alia*, set forth below and in the declarations of Robert Cipriano
7 attached to Appendix No. II as Exhibits C and D and to Appendix III as Exhibit E, and in the
8 further explanations of cross-complainant in Appendix No. III, Exhibits G and H.
9

10 34. On March ___, 1999 the cross-complainant signed a voluntary dismissal of the *Berry v.*
11 *Miscavige/Ingram/Moxon* case, without prejudice, prepared by cross-defendant’s co-counsel, upon
12 her insistence that voluntary dismissal was a pre-condition to settlement discussions with
13 Scientology leader David Miscavige and her repeated representations that the *Berry v.*
14 *Miscavige/Ingram/Moxon* case could be re-filed if settlement talks broke down.
15

16 35. Cross-defendant and his co-counsel for defendant Miscavige obtained the voluntary
17 dismissal of the *Berry v. Miscavige* case through: (a) the cross-complainants excusable “extrinsic
18 mistake” arising from the misleading and adverse impact upon cross-complainant of cross-
19 defendants criminal conduct as set forth below and in the Appendices filed herewith (particularly
20 Exhibits G and H); (b) the cross- complainant’s “extrinsic fraud and/or mistake) as an officer of
21 the court, and in the declaration and fifty corroborating exhibits of cross-defendants former client
22 Robert Cipriano executed August 9, 1999 (the “August 1999 Cipriano Declaration”), attached to
23 Appendix No. II as Exhibit C and made a part hereof as if fully set forth herein.
24

25 36. Following the voluntary dismissal of *Berry v. Miscavige/Ingram/Miscavige et. al.*,
26 counsel for Scientology Leader David Miscavige refused to conduct any settlement discussions.
27 Soon thereafter, cross-defendant and his various co-counsel filed a vexatious litigant petition
28

1 against the Cross-Complainant. The grounds set forth in the vexatious litigant petition, and
2 expressly relied upon by a “disqualified court,” did not satisfy any of the relevant statutory criteria
3 and the subsequent erroneous decision is apparent upon the face of the record and judgment roll.

4 **37.** Upon information and belief, the petition to deem cross-complainant a vexatious litigant
5 was drafted by cross-defendant and/or his agents. In that petition, and in oral argument, it was
6 strenuously contended that the *Pattinson v. Miscavige* federal case involved substantially similar
7 facts and occurrences, transactions and occurrences as the *Berry v. Cipriano, Barton, Miscavige*
8 (*Ingram, Abelson/Moxon*) case.
9

10 **38.** The vexatious litigant opinion expressly recognized that the express statutory provisions
11 were not satisfied by ruling that it was “not what the cross-complainant had done but the way he
12 had done it.”

13 **39.** At the commencement of the *Berry v. Cipriano/Barton/Miscavige/Ingram/Moxon* litigation
14 cross-defendant and his agents filed a Code Civ. Proc. §425.10 motion which was denied upon a
15 finding the “probability that [cross-complainant Berry would] prevail upon the claim” in the Berry
16 litigation.
17

18 **40.** In consolidated Berry cases, the presiding judge (Hon. Alexander Williams, III) failed to
19 properly disclose conflicts arising from his fiancée (now wife) being an employee of the Church of
20 Scientology Office of Special Affairs which was a party to the litigation, the employer of various
21 defendants, the employer and client of cross-complainant and where he physically works as part of
22 the Church of Scientology Office of Special Affairs legal unit. When these conflicts emerged just
23 prior to the vexatious litigant petition being heard the presiding judge refused to disqualify himself
24 and the Second District Court of Appeals denied the resulting preemptory writ.
25

26 **41.** Prior to the *Berry v. Cipriano* vexatious litigant hearing Berry and Cipriano filed a motion
27 and settlement agreement for Code Civ. Proc. §877.6 approval. During the course of the *Berry v.*
28

1 *Cipriano* vexatious litigant hearing Judge Alexander Williams, III refused to consider or rule upon
2 the settlement agreement between the former plaintiff and lead defendant in the *Berry v.*
3 *Cipriano/Barton/Miscavige/Ingram/Abelson/Moxon/Rinder* cases.

4 42. During the course of the *Berry v. Cipriano* vexatious litigant hearing Robert Cipriano
5 begged to be heard in explanation of his former lawyer the cross-defendant Moxon's crimes,
6 frauds and abuse in the case but Judge Alexander Williams, III refused to hear from him after
7 objection by cross-defendant Moxon.

8 43. Cross-complainant timely filed and fully briefed an appeal against the vexatious litigant
9 ruling. Thereafter the Second District Court of Appeals dismissed cross-complainants appeal for
10 failure to file any opening brief. Upon information and belief, cross-complainant contends that
11 filed papers have regularly disappeared from Church of Scientology related law enforcement,
12 legislative and court files in various of these United States and abroad.

13 44. Cipriano's subsequent confession (s), and the acts of fabrication, suppression and
14 concealment by Plaintiff and Cross-Defendant herein, in essence, demonstrate that at all material
15 times the claims in *Berry v. Cipriano/Barton/Miscavige/Moxon* litigation, and the relevant
16 allegation (s) in the *Pattinson* case had, and continue to have, merit and were not frivolous, and
17 that a reasonable jury presented with Cipriano's recanted and revised testimony, and the fifty
18 documents corroborating it, would have determined the *Berry v. Cipriano, Barton,*
19 *Miscavige/Moxon* defamation, etc. litigation in favor of the cross-complainant; and that a
20 reasonable jury presented with the evidence, would have determined the issue of cross-defendant
21 Moxon's involvement in scientology litigation-related crime, fraud and abuse, contrary to express
22 representations and paid for with Pattinson's donations, in favor of the plaintiff Michael Pattinson.

23 45. The vexatious litigant petition against cross-complainant, by cross-defendant, in the *Berry*
24 *v. Cipriano* litigation expressly relied upon the rulings and language of the "unjust order" entered
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1 against cross-complainant in the *Pattinson* case and Hon. Alexander Williams, III expressly ruled
2 that his grounds for doing so were those set forth in the vexatious litigant filed by cross-defendant
3 and his agents.

4 **46.** On March ____, 1999, in the *Pattinson v. Church of Scientology International, Miscavige,*
5 *Ingram, Moxon, et. al.* cross-defendant's motion for sanctions, resulting in the [unjust] order relied
6 upon by cross-defendant in his unverified complaint herein, was heard. It expressly incorporated
7 matters allegedly adverse to cross-complainant from within the *Berry v. Cipriano, et. al.* litigation
8 Mere moments before cross-complainant was to approach the podium to address the court in his
9 own defense upon cross-defendant's sanctions motion therein, the cross-defendant herein
10 personally served a new law suit on cross-complainant as he prepared to stand and address the
11 judge; the new case that cross-defendant served on cross-complainant was *Michael Hurtado v.*
12 *Graham Berry*, LASC Case No. BC 208227.

14 **47.** Upon information and belief, including that obtained from the deposition testimony in the
15 *Hurtado v. Berry* case, cross-defendant used information obtained during discovery in the *Berry v.*
16 *Cipriano, Barton, Miscavige/Moxon* cases to solicit and fabricate the representations and claims in
17 the *Hurtado v. Berry* case, the salacious allegations of which were then introduced into the *Berry*
18 and *Pattinson* cases, published on the internet, provided to the media and otherwise used
19 vexatiously as set forth in the appendices of exhibits filed herewith and incorporated herein.

21 **48.** Twelve months later, cross-defendant, through his then imprisoned client, voluntarily
22 dismissed the improperly solicited *Hurtado v. Berry* case after a retired superior court judge (Hon
23 Stephen Lachs), sitting as a discovery referee, ruled that the attorney client privilege between
24 cross-defendant Moxon and Hurtado was waived because cross-defendant Moxon was engaged in
25 a crime or fraud upon the court. The evidence to be ruled upon as constituting a fraud upon the
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1 court in the *Hurtado v. Berry* case included that which cross-defendant presented to the courts in
2 the *Berry v. Cipriano* and *Pattinson v. Church of Scientology, Miscavige, Moxon, et. al.* cases.

3 49. Cross-defendant, through his then solicited client Michael Hurtado, and through his co-
4 counsel, and knowing that the *Hurtado v. Berry* case was solicited, paid for and fabricated, also
5 caused a police investigation of cross-complainant on allegations of pandering. Upon information
6 and belief, the L.A.P.D. found no evidence to support the charge.

7 50. Upon information and belief, the cross-defendant and/or his employees, associates and/or
8 clients, have initiated and pursued at least three investigations of cross-complainant by the
9 L.A.P.D. which found no evidence of wrong-doing, at least eight major State Bar investigations of
10 cross-complainant where no evidence of wrong-doing was found, and many dozens of requests for
11 sanctions (one for \$1.3 million) which were denied by numerous different federal and state courts.

12 51. During the *Hurtado* case the cross-defendant cross-examined his own former client
13 Cipriano upon the allegations of felony conduct and fraudulent representations which Cipriano
14 alleged the cross-defendant had suborned and made as his attorney and these allegations were
15 supported by over fifty documents (Appendix No. II, Exhibit B hereto), some in cross-defendant
16 Moxon's own handwriting. The testimony that the cross-defendant elicited from his own former
17 client became part of the evidence set forth in Exhibit A attached to Appendix I filed herewith;
18 which was the motion precipitating Hon. Stephen Lachs (Ret.) recommendation that the attorney
19 client privilege as between *Hurtado* and the cross-defendant herein should be waived based upon
20 the crime-fraud exception to the attorney-client privilege.

21 52. During the pendency of, *inter alia*, the continuum of inter-related cases at issue, cross-
22 defendant Moxon's corroborated felony criminal conduct, "extrinsic frauds and/or mistakes," and
23 that of his agents, included violations of 18 U.S.C. §§ 1621, 1603, 1503, 1512, 371 2(a), 2(b)
24 (perjury, obstruction of justice, witness and evidence tampering, conspiracy, aiding and abetting
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1 and the use of an intermediary). Specifically, cross-defendant Moxon's felony and fraudulent acts,
2 violations of the Business & Professions Code and the rules of professional conduct, "extrinsic
3 frauds and/or mistakes," and those of his agents, in connection with and/or during the course of
4 the underlying matters, included but are expressly not limited to:

- 5 **A.** The May 5, 1994 presentation of the first Cipriano Declaration with numerous
6 fabrications and exaggerated statements regarding cross-complainant's alleged sexual
7 history to Robert Cipriano, which Cipriano was forced to sign under duress and the
8 coercive threats of cross-defendant's agent Eugene Ingram;
- 10 **B.** The use of less than candid investigators to obtain information and the subsequent use of
11 that information obtained through uncontroverted evidence of intimidation and coercion;
- 12 **C.** The solicitation of Cipriano as a client in the ensuing litigation in order to pervert and
13 obstruct the course of justice as more fully set forth herein and the exhibits hereto.
- 14 **D.** The deposition preparation of Cipriano by cross-defendant Moxon on June 29, 1998 during
15 which, *inter alia*, cross-defendant Moxon instructed Cipriano to lie about the ages of
16 cross-complainants falsely alleged sexual relationships, and which *inter alia* violated Rule
17 3-210 of the Rules of Professional Conduct, C.C.P. §1209(8) and 18 U.S.C. §§371, 1512,
18 2(B), 1503, 1621 and 1623 (conspiracy, obstruction of justice, witness and evidence
19 tampering, perjury);
- 20 **E.** The further testimonial preparation of Cipriano by cross-defendant Moxon comprised of
21 instructions to lie on June 30, 1998, also in violation of Rule 3-210 of the Rules of
22 Professional Conduct and C.C.P. §1209(8);
- 23 **F.** Violating the oath taken by all attorneys at law under Business and Professions Code
24 §6067, in which attorneys promise, "... faithfully to discharge the duties of any attorney at
25 law to the best of his knowledge and ability;"

- 1 **G.** The unlawful business dealings between attorney and client, cross-defendant Moxon and
2 Cipriano, prohibited by Rule 5-200 of the Rules of Professional Conduct and C.C.P.
3 §1209(8), undertaken in order to maintain Cipriano's livelihood in exchange for perjurious
4 testimony against cross-complainant Berry;
- 5 **H.** The promise of up to three quarters of a million dollar (\$750,000) donation by cross-
6 defendant Moxon to found and fund Cipriano's charity Day of the Child (incorporated in
7 Nevada as part of cross-defendant Moxon's criminal conduct herein) ;
- 8 **I.** The provision of a \$2,500 loan to Cipriano;
- 9 **J.** The provision of Cipriano's free room and board at Joanne Wheaton's Franklin House;
- 10 **K.** The rental of a Palm Springs condominium, a five bedroom Palm Springs home complete
11 with swimming pool, and monthly provisions for Cipriano's board and living expenses by
12 the law firm of Moxon & Kobrin;
- 13 **L.** The provision by cross-defendant Moxon, at no cost to Cipriano, of a \$20,000 lawyer in
14 New Jersey to clear and expunge Cipriano's criminal record to prevent impeachment;
- 15 **M.** The subsequent provision of the balance of those monies in the amount of \$1,500 to
16 Cipriano;
- 17 **N.** Cross-defendant Moxon's provision of free legal services to incorporate Cipriano's "Day of
18 the Child" Charity in Nevada (to serve as vehicle for the commission of some of the
19 applicable criminal, fraudulent and unethical conduct herein);
- 20 **O.** Cross-defendant Moxon's provision of a new Saturn automobile for Cipriano on October 6,
21 1998;
- 22 **P.** Cross-defendant Moxon's provision of a Packard-Bell computer for Cipriano at a cost of
23 \$1,000.
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- 1 **Q.** Cross-defendant Moxon and/or his agents solicitation of fellow employee Reveillere to file
2 a retaliatory law suit against opposing party Michael Pattinson in *Pattinson v. Church of*
3 *Scientology* to serve as a vehicle for interfering with and obstructing the course of justice
4 and Michael Pattinson's civil rights therein.
- 5 **R.** The use of abusing rulings and questioning in the *Berry v. Cipriano* case to obtain
6 information about cross-complainant's relationship with adult Michael Hurtado.
- 7 **S.** Soliciting the representation of *Michael Hurtado* and suborning his perjury to file a
8 fabricated law suit against cross-complainant Berry in order to pervert and obstruct the
9 course of justice in the *Berry v. Cipriano et al., Pattinson v. Church of Scientology, et. al.,*
10 *Henson*, other litigation and matters.
- 11 **T.** Soliciting the representation of *Anthony Apodaca*, making payments to him, and suborning
12 his perjury to support the fabricated *Hurtado v. Berry* law suit against cross-complainant
13 Berry in order to pervert and obstruct the course of justice in the *Berry v. Cipriano et al.,*
14 *Pattinson v. Church of Scientology, et. al., Henson* and other litigation and matters.
- 15 **U.** The payment of Michael Hurtado's legal representation by two other counsel.
- 16 **V.** The fabrication and fraudulent filing of a false criminal complaint, a false state bar
17 complaint, federal and state law suits captioned *Hurtado v. Berry*, and maintaining them
18 longer after a reasonable attorney would have realized they were fabricated and baseless.
- 19 **W.** The intimidation of a witness in a criminal proceeding which resulted in the conviction and
20 imprisonment of Michael Hurtado.
- 21 **X.** Upon information and belief, abusing the deposition process in the *Hurtado v. Berry* case
22 with a notice of deposition of Keith Henson for the same date as the appearance of Keith
23 Henson was being scheduled, not "noticed" and set up for the arrest of Mr. Henson for
24 failing to appear as allegedly "noticed" and so obstructing justice in the *Henson* matters.
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1 Y. Upon information and belief, the subornation of perjury by Stacy Brooks Young against
2 cross-complainant Berry in the Florida case of *Lisa McPherson v. Church of Scientology*
3 *[Dandar disqualification hearing]*;

4 Z. Upon information and belief, as documented *inter alia* by the uncontroverted and
5 corroborated testimony and documents filed herewith and incorporated herein as Exhibits
6 A-J, cross-defendant's criminal conduct, "extrinsic frauds and mistakes, and other
7 wrongful conduct engaged in and relating to the underlying matters include violations of
8 the following: (1) Rules of Professional Conduct 1-120; 1-400 (C), (D) (1) & (2), (3), (4),
9 (5); 2 - 100 (A); 3-110 (A); 3-200 (A) and (B); 3-210, 3-300, 3- 310 (B), (1), (2), (3), (4),
10 (C) (1), (2), (3), (E), (F) (1), (2), (3); 3-400 (B); 3-500; 3-600 (A), (B), (C), (D), (E), 3-700
11 (B) (1), (2); 4-100 (B) (4); Rule 4-210 (A); 5-100 (A); 5-200 (A), (B), (C) and (E), 5-210,
12 5 -220, 5 - 310; (2) State Bar Act sections 6067, 6068 (a), (c), (d), (f), (g), (n), 6106,
13 6106.5, 6151, 6152; (3) Insurance Code Sections 1871.7, 550 (a) (1), (a) (5), (b) (1) - (5),
14 (c) (1)-(4).

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17 53. Upon information and belief, the testimony of cross-defendant's former client Robert
18 Cipriano regarding the matters alleged and/or set forth herein (both before and after his recant) is
19 set forth in the following deposition transcripts and declarations: (a) May 5,1994; (b) April
20 27,1998; (c) Deposition taken July 1 and 2, 1998; (d) Declaration dated July 16,1999; (e)
21 Declaration dated August 9,1999 (and the fifty exhibits); (f) Settlement Agreement dated August
22 11,1999 (the Recitals are significant); (h) Declaration dated September 26,1999 and exhibit
23 (transcript); (i) Declaration dated December 23,1999; (j) Cipriano – Moxon settlement agreement
24 dated December 23,1999; (k) Declaration dated June 15, 2000; (l) Declaration dated July 18,
25 2000; (m) Declaration dated August 6, 2000. A copy of the August 6, 2000 declaration is attached
26 to the Appendix of Exhibits filed herein as Exhibit E.
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1 **54.** Upon information and belief, the relevant testimony of cross-defendants former client and
2 witnesses in the *Hurtado v. Berry* cases includes that of: (a) Michael Hurtado; (b) Ana Marina
3 Hurtado; (c) Vanessa Hurtado; (d) Jenny Berosteguy; (d) Donald Wager, Esq., (e) Anthony
4 Apodaca.

5 **55.** The conduct of cross-defendant Moxon which is alleged to provide the grounds for the
6 relief sought herein by the cross-complainant was a deliberate, despicable and diabolical
7 continuum of felonies, frauds and corruption committed by an officer of the court upon multiple
8 federal and state courts across county and state lines.

9 **56.** The conduct of cross-defendant Moxon which is alleged to provide the grounds for the
10 relief sought herein by the cross-complainant was directed at the very integrity of the judicial
11 process and machinery itself by an officer of the court.

12 **57.** The wrongful conduct and the unjust and damaging consequences thereof, committed by
13 cross-defendant Moxon against cross-complainant Berry and his former client Pattinson, are
14 continuing to this day and will continue indefinitely unless relief is granted as requested herein.

15 **58.** As alleged herein, circumstances extrinsic to the *Berry v. Cipriano* litigation and the
16 *Pattinson v. Church of Scientology* litigation unfairly cost those plaintiffs, which included the
17 cross-complainant herein, an adversarial hearing and impartial trial upon the merits and resulted,
18 *inter alia*, in the judgments and orders” from which relief is sought as requested herein

19 **59.** Cross-Complainant (and his former client Michael Pattinson) has/have been denied a full
20 hearing and /or an adversary trial on the merits of all their claims, or the opportunity to fully
21 litigate and conduct discovery on all their claims, by the criminal conduct, “extrinsic frauds and/or
22 mistakes, and extrinsic mistakes, committed by or caused by cross-defendant Moxon.

23 **60.** In the *Berry v. Cipriano* litigation, and in the *Pattinson v. Church of Scientology* litigation,
24 Cross-Defendant and his co-counsel obtained orders that they had discovery preference and that
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1 Cross-Complainant in the *Berry v. Cipriano* litigation and Cross-Complainant's client in the
2 Pattinson litigation could not take any discovery until cross-defendant and his co-counsel had
3 concluded their deposition discovery including a deposition of the cross-complainant which
4 proceeded for over twelve full days and for nearly the entirety of the *Berry* and *Pattinson* cases.

5 **61.** Cross-defendant's "extrinsic fraud," criminal conduct and other unconscionable conduct so
6 improperly and adversely impacted the cross-complainant and his then client Michael Pattinson
7 that they were caused to act in "extrinsic mistake," were separately forced to voluntarily dismiss
8 their meritorious claims as evidenced, in substantial part, by the subsequent testimony of Cipriano
9 (corroborated by over fifty incriminating documents many bearing Cross-Defendant's signature
10 and handwriting) and the subsequent testimony of numerous adverse witnesses in the *Hurtado v.*
11 *Berry* case which was solicited and filed by the Cross-Defendant and voluntarily dismissed on the
12 eve of a hearing on a motion (attached to Appendix No. II herein as Exhibit B) to pierce the
13 attorney client privilege upon the crime-fraud exception and involving, *inter alia*, the acts alleged
14 herein as constituting extrinsic fraud and mistake.

15
16 **62.** Cross-complainant has no adequate remedy at law in that, through no fault of his own, and
17 through cross-defendant's "extrinsic frauds and/or mistakes" upon the courts," he was improperly
18 and unfairly prejudiced before those courts, denied proper hearings and litigation of his claims and
19 discovery rights, and denied legal redress after Cipriano recanted and confessed to the conduct of
20 Cross-Defendant and himself, and before knowledge of the largely concurrent *Hurtado*, *Wager*,
21 *Apodaca* conduct leading to the filing of cross-complainant Berry's "crime fraud exception to the
22 attorney client privilege" motion and subsequent dismissal in the *Hurtado v. Berry* state and
23 federal court cases filed by cross-defendant Moxon.
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26 **63.** The relevant allegations in the *Pattinson v. Church of Scientology* case had merit *inter*
27 *alia* because of the matters set forth in the subsequent testimony of cross-complainant's client
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1 Robert Cipriano, the successful crime fraud motion against cross-defendant and his client in the
2 *Hurtado v. Berry* case which directly resulted in cross-defendant's voluntary dismissal of
3 Hurtado's claims in federal and state courts, the testimony of the Hurtado family witnesses, Robert
4 Cipriano, Donald Wager, Esq. and Anthony Apodaca in the *Hurtado* case, and cross-defendant
5 Moxon's unsuccessful efforts in the *McPherson v. Church of Scientology* case (Dandar
6 disqualification hearing) to establish an allegation of subornation of perjury by cross-complainant
7 in *Church of Scientology v. Fishman & Geertz*.

8
9 **64.** Equitable relief herein upon the ground of "extrinsic mistake" is proper for the further
10 reason, *inter alia*, because cross-defendant's criminal conduct and "extrinsic frauds" upon the
11 court, as an officer of the court, caused cross-complainant [and judicial officers] to make
12 excusable "extrinsic mistakes" causing, *inter alia*, the voluntary dismissal of the *Pattinson v. CSI*,
13 *Berry v. Miscavige* and *Berry v. Cipriano* cases and unfairly cost cross-complainant and his then
14 client Michael Pattinson a fair, full and impartial adversarial hearing, after discovery, upon the
15 merits in their respective litigation at issue herein.

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17 **65.** Among other things, the Cipriano evidence and the subsequent Apodaca, Hurtado family,
18 Wager and related evidence establish that "extrinsic fraud and/or mistake" and other criminal
19 conduct was being committed outside the court (s) by the cross-defendant, an officer of the
20 relevant court (s), who was expressly, falsely and concurrently denying the same or similar
21 conduct inside the court, and to the court, and intentionally making false representations of fact
22 allegedly supported by the matters of "extrinsic fraud and/or mistake" as set forth herein and
23 causing the cross-complaint (and his then client Michael Pattinson) to be unfairly and
24 unconstitutionally prejudiced and deprived of their legal and civil rights thereby .
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1 **66.** The alleged criminal conduct, intentional extrinsic frauds and/or extrinsic mistakes upon
2 the court, by the cross-defendant acting as an officer of the court, were an unconscionable plan or
3 scheme designed to improperly influence the court.

4 **67.** The alleged criminal conduct, intentional extrinsic frauds and/or extrinsic mistakes upon
5 the court, by the cross-defendant acting as an officer of the court, were against the machinery,
6 integrity and impartiality of the court and of the judicial process, were not in the interests or
7 furtherance of justice, and were not privileged.

8
9 **68.** The acts and continuum of conduct set forth herein and alleged to constitute “extrinsic
10 fraud and/or extrinsic mistake upon the court” also constitute duress, excusable neglect, accident
11 or extrinsic accident and extrinsic surprise.

12 **69.** The adverse, wrongful and damaging impact of cross-defendants criminal conduct,
13 “extrinsic frauds and/or extrinsic mistake” and other wrongful conduct against the cross-
14 complainant, commencing in 1994 and continuing through to the present day, caused a grave
15 miscarriage of justice and amount to unusual circumstances explaining and preventing Cross-
16 Defendant, *inter alia*, from seeking earlier relief at equity.

17
18 **70.** In all of the circumstances set forth herein there can be no prejudice to cross-defendant
19 Moxon because, *inter alia*, cross-defendant should not be permitted to “take advantage of his own
20 wrong (s)” [Civil Code Section 3517].

21 **71.** The matters set forth herein should also be addressed in the context of a continuing serious
22 fraud upon the court (s) by an officer of the court (s).

23
24 **72.** Upon information and belief, on or about September 15, 2000 the wrongful conduct of
25 cross-defendant Moxon in the continuing *Hurtado v. Berry* case intersected with cross-defendant’s
26 extrinsic frauds upon the court in the *Hoden [Scientology] v. Henson* misdemeanor terrorism case
27 when cross-defendant Moxon’s deposition of Mr. Henson in the *Hurtado v. Berry* case in Los
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1 Angeles was cancelled enabling Mr. Henson to appear, initially represented by cross-complainant
2 Berry, at the unnoticed arraignment in Hemet on "terrorism" charges when notice had not been
3 mailed and a pre-signed warrant of arrest for non-appearance had already been obtained.

4 73. Upon information and belief, in or about 1977 cross-defendant was on the staff of the
5 Church of Scientology in Washington, DC when the F.B.I. raided the premises and seized
6 documents that established that the cross-defendant Moxon's employer was engaged in "the
7 largest ever known criminal infiltration of the United States government. It was called Operation
8 Snow White. In connection with the subsequent criminal prosecutions (*U.S. v. Hubbard* (1979)
9 474 F. Supp. 64) cross-defendant Moxon was expressly named as an un-indicted co-conspirator
10 regarding the attempted obstruction of justice and identified in portions of a 264 page stipulation
11 of evidence concerning cross-defendant Moxon's provision to the F.B.I. of faked and forged
12 handwriting exemplars.
13

14 74. Upon information and belief, during 1996 in *Religious Technology Center v. Scott* [USDC
15 CDCA DC No. CV-85-7197-AWT (Bx)], the U.S. Ninth Circuit Court of Appeals [No. 94-55920]
16 (unpublished) upheld the attorney's fees and cost in the amount of \$2.5 million against cross-
17 defendant Moxon for his tactics and vexatious conduct therein.
18

19 75. Upon information and belief, in *Wollersheim v. Church of Scientology*, (1996) 42 Cal.App.
20 4th 628, the Second District Court of Appeal upheld an award of approximately \$500,000 in
21 sanctions against cross-defendant Moxon for his tactics and vexatious conduct in a case where the
22 appellate court even addressed the drowning of the trial judge's dog. *Wollersheim v. Church of*
23 *Scientology*, (1989) 212 Cal. App. 3d 872.
24

25 76. Cross-complainant has alleged sufficient facts herein indicating sufficiently meritorious
26 claim (s) entitling him cross-complainant Berry to the relief and orders he requests herein and to
27 further entitle him and his former client Michael Pattinson to full adversary hearing (s) [should
28

1 they so elect] in the underlying *Pattinson v. Church of Scientology/Miscavige* and *Berry v.*
2 *Cipriano/Barton/Miscavige* cases (except as to Cipriano with whom cross-complainant executed a
3 settlement agreement during the continuum of underlying matters).

4 77. The wrongful conduct of the cross-defendant intentionally and/or recklessly directed at the
5 cross-defendant, as alleged and incorporated herein, and the unjust judgments and orders
6 wrongfully obtained against the cross-complainant by the cross-defendant, have/has wrongfully
7 and seriously damaged and/or destroyed the professional and personal life, finances, health and
8 prospects of the cross-complainant for the past sixteen years and for the rest of his natural life.
9

10 PRAYER

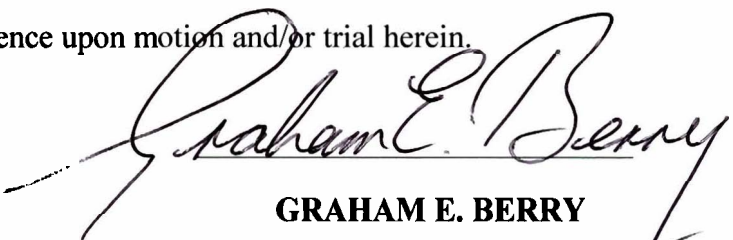
11
12 **WHEREFORE**, the defendant and cross-claimant Berry prays for judgment against the
13 plaintiff and the cross-defendant Moxon as follows:

- 14
15 1. That plaintiffs' claims be dismissed and that plaintiff take nothing by them.
- 16
17 2. That the attorneys fees and costs award/order, submitted by and made to cross-defendant on
18 July 19, 1999 in *Pattinson v. Church of Scientology International, Moxon, et. al.* be vacated
19 and set aside, and be declared null and void, upon the grounds, *inter alia*, that it was a material
20 consequence of the extrinsic frauds and mistakes upon the court, and extrinsic mistakes alleged
21 herein, it is an "unfair judgment," and in the interests of equity and justice.
- 22
23 3. That the February ___, 1999 order for prevailing party costs and fees, etc., submitted by
24 cross-defendant in *Berry v. Barton, et. al.* be vacated and set aside, and be declared null and
25 void, upon the grounds, *inter alia*, that it was a material consequence of the extrinsic frauds
26 and mistake upon the court, and extrinsic mistakes alleged herein, it is an "unfair judgment,"
27 and in the interests of equity and justice.
28

- 1 4. That the involuntary dismissal and judgment entered in the *Berry v. Barton* case on February
2 ___, 1999 be vacated and set aside, and the judgment entered against cross-complainant be
3 declared null and void, upon the grounds, *inter alia*, that it was a material consequence of the
4 extrinsic frauds and mistake upon the court, and extrinsic mistakes alleged herein, it is an
5 “unfair judgment,” and in the interests of equity and justice.
6
- 7 5. That the involuntary dismissal and judgment entered in the *Berry v. Cipriano* case on February
8 ___, 1999 be vacated and set aside, and the judgment entered against cross-complainant be
9 declared null and void, upon the grounds, *inter alia*, that it was a material consequence of the
10 extrinsic frauds and mistakes upon the court, and extrinsic mistakes alleged herein, it is an
11 “unfair judgment,” and in the interests of equity and justice.
12
- 13 6. That the voluntary dismissal and judgment entered in the *Berry v. Miscavige* case on
14 March ___, 1999 be vacated and set aside, and the judgment entered against cross-complainant
15 be declared null and void, upon the grounds, *inter alia*, that it was a material consequence of
16 the extrinsic frauds and mistakes upon the court, and extrinsic mistakes alleged herein, it is an
17 “unfair judgment,” and in the interests of equity and justice.
18
- 19 7. That the order entered in the *Berry v. Cipriano* case on August 19, 1999 and declaring the
20 cross-complainant to be a vexatious litigant be vacated and set aside, and the order entered
21 against Cross-Complainant be declared null and void, upon the grounds, *inter alia*, that it was
22 a material consequence of the extrinsic frauds and mistakes upon the court, and extrinsic
23 mistakes alleged herein, it is an “unfair judgment,” and in the interests of equity and justice.
24
- 25 8. That the relevant statutes of limitations in connection with the Berry litigation and the
26 Pattinson case be equitably tolled a further twelve months from the court’s orders herein.
27
28

- 1 9. An injunction enjoining the cross-defendant, and any other persons acting in concert with him,
2 from continued publication and distribution of the judgments and orders at issue herein.
- 3 10. For appropriate orders of disgorgement and restitution of all monies paid by cross-complainant
4 to cross-defendant in and after the *Berry v. Cipriano/Barton/Miscavige* cases on the grounds
5 that they were material consequence of the extrinsic frauds and mistakes upon the court, and
6 extrinsic mistakes alleged herein, they were “unfair judgments” and/or orders, and in the
7 interests of equity and justice.
- 8 11. For costs of suit herein incurred.
- 9 12. For such other and further relief and appropriate equitable remedies as the Court may deem
10 proper, fair and to prevent further injustice against the defendant and cross-complainant and to
11 restore the parties to the positions they would have been in absent the criminal conduct,
12 extrinsic frauds and mistakes upon the courts, extrinsic mistakes, and unjust judgments alleged
13 herein and/or to submitted in evidence upon motion and/or trial herein.

14 DATED: February 12, 2010

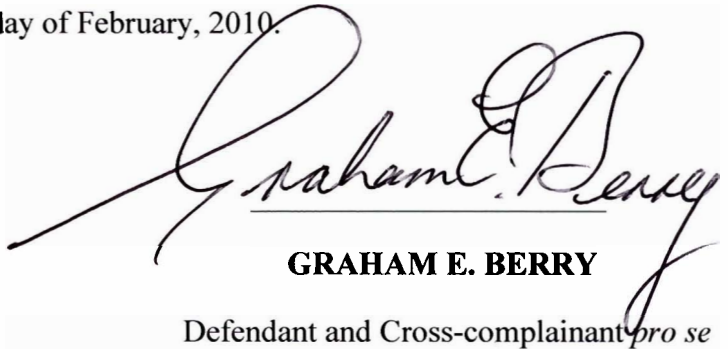
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17 **GRAHAM E. BERRY**
18 Defendant and Cross-complainant *pro se*
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VERIFICATION

I, GRAHAM E. BERRY, am the cross-complainant in the above-entitled action. I have read the foregoing and I know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information or belief or which have been testified to by others, and as to those matters I believe them to be true.

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

Executed at Los Angeles, CA this 12th day of February, 2010.


GRAHAM E. BERRY
Defendant and Cross-complainant *pro se*

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PROOF OF SERVICE BY HAND

STATE OF CALIFORNIA

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)
)

ss.:

COUNTY OF LOS ANGELES

MOXON V. BERRY BC42917

I am employed in the County of Los Angeles, State of California. I am over the age of 18. My business address is 3384 McLaughlin Avenue, Los Angeles, CA 90066. I am an officer of the court herein.

UNVERIFIED ANSWER AND VERIFIED COMPULSARY CROSS-COMPLAINT TO SET ASIDE ORDERS AND JUDGMENTS.

On February 12, 2010, I personally served on interested parties in said action the within: by placing a true copy thereof in sealed envelope(s) addressed as stated below and by delivering the envelope (s) by hand to the offices of the addressee (s).

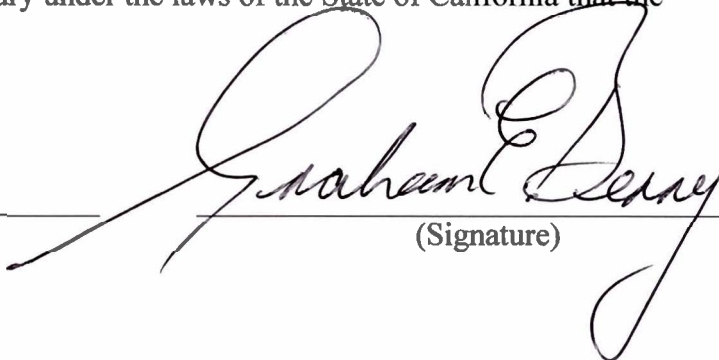
Kendrick L. Moxon, Esq,
Moxon & Kobrin
3055 Wilshire Boulevard, Suite 900
Los Angeles, CA 90010

Telephone: (213) 487-4468
Facsimile: (213) 487-5385
Email: kmoxon@earthlink.net

Executed on February 12, 2010 at Los Angeles, California.

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

Graham E. Berry
(Type or print name)



(Signature)