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Pro se

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

KENDRICK MOXON

Plaintiff,

vs.

GRAHAM BERRY,

Defendant.

Case No. BC 429217

**PLAINTIFF'S SEPARATE
STATEMENT OF UNDISPUTED
MATERIAL FACTS IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Date: July 1, 2010
Dept: 58
Time: 8:30 am

**Plaintiff's Undisputed Material Facts
And Supporting Evidence**

**Opposition Party's Response and
Supporting Evidence**

1. In May of 1998, attorney Graham
Berry filed a Complaint in the case of
Pattinson v. Church of Scientology
International, et al., Cv-98-3958 CAS
(SHX), U.S. District Court, Central

District of California. (Excerpts of
Complaint, Ex. A to Moxon Declaration)

2. The Complaint, which was 166 pages
in length, sued over 50 defendants in 24
counts, alleging various conspiracies and
torts against Mr. Pattinson. (Moxon
Declaration, ¶ 1; Complaint, Ex. A to
Moxon Declaration)

3. One of the defendants in the
Pattinson case was Kendrick Moxon. Mr.
Moxon, who had represented many
churches of Scientology for over a decade,
was the only defendant served with the
Complaint. (Moxon Dec., ¶ 1, Complaint,
Ex. A.)

4. The First Amended pleading was 312
pages in length, asserting 30 causes of
action for racketeering, conspiracy, fraud,
infliction of emotional distress, civil rights
and other assorted alleged claims against
58 named defendants and Does 1-500.
(Excerpts of First Amended Complaint,
Ex. B to Moxon Declaration.)

5. Included as purported co-
conspirators, were President William
Clinton, Secretary of State Madeline
Albright, National Security Advisor Sandy

Berger, and a host of others. (Excerpts of Complaint, Ex. B to Moxon Declaration.)

6. The Hon. Christina A. Snyder, U.S. District Judge to whom the case was assigned, characterizing the complaint as a “rambling tale of irrelevancy,” (Transcript of Proceedings, Ex. C to Moxon Declaration.), dismissed the amended complaint and gave Mr. Berry leave to replead. (*Id.*)

7. On April 15, 1999, Judge Snyder entered an order of sanctions pursuant to both Rule 11, F.R.Civ.P., and 28 U.S.C. §1927. (Ruling of April 15, 1999, Ex. D to Moxon Declaration)

8. The Court subsequently entered judgment against Mr. Berry in the amount of \$28,484.72. (Ruling of July 19, 1999, Ex. E to Moxon Declaration)

9. Mr. Berry sought to vacate the sanctions ruling and judgment pursuant to Rule 60, F.R.Civ.P., arguing, inter alia, “the sanctity of the justice system, the equitable principals underpinning Rule 60(b) ... demand that the Rule 11 memorandum order of April 15, 1999 and the Rule 11 sanctions order of July 19,

1 1999, be vacated ..." (Berry's Motion to
2 Vacate, Ex. F, p. 2 to Moxon Declaration
3 ¶ 5.)

4 10. The 1999 Motion to Vacate also
5 argued, inter alia, that Mr. Berry was the
6 alleged victim of psychological warfare
7 and "various criminal, fraudulent and
8 unethical activities." (Berry's Motion to
9 Vacate, Ex. F, p. 2 to Moxon Declaration
10 ¶ 5.)

11 11. Judge Snyder denied the motion to
12 vacate by Order dated June 30, 2000.
13 (Ruling denying Berry's Motion to
14 Vacate, Ex. G to Moxon Declaration.)

15 12. Mr. Berry appealed the rulings to
16 the Ninth Circuit Court of Appeals.
17 However, he failed to prosecute the appeal
18 or to file a brief and the appeal was
19 dismissed by the Court the on Jan 17,
20 2001. The mandate was issued by the
21 same Order. (Order dismissing appeal,
22 Ex. H to Moxon Declaration.)

23 13. Mr. Berry also filed for bankruptcy
24 on July 13, 1999, during the pendency of
25 the motion seeking sanctions against him.
26 *In re Graham Edward Berry*, LA99-
27 32264ER, U.S.B.C, C.D.Cal. (Berry's
28

1 bankruptcy petition, Ex. I to Moxon
2 Declaration.)

3 14. In the bankruptcy action, Mr. Berry
4 sought discharge of the *Pattinson*
5 judgment. However, the sanctions order
6 and judgment against Mr. Berry were
7 found to be non-dischargeable by Order
8 entered on December 18, 2000.
9 (Bankruptcy denial of dischargability of
10 *Pattinson* judgment, Ex. J to Moxon
11 Declaration.)

12 15. The California State Bar instituted
13 proceedings against Mr. Berry, concerning
14 which he entered into a "Stipulation Re
15 Facts, Conclusions of Law and
16 Disposition and order Approving Actual
17 Suspension" with the State Bar, in support
18 of a *nolo contendere* plea. (Stipulation
19 between Bar and Berry, Ex. K, to Moxon
20 Declaration.)

21 16. In conjunction with the *nolo*
22 *contendere* plea, Mr. Berry affirmed on
23 October 25, 2001, that "I, the Respondent
24 in this matter... plead nolo contendere to
25 the charges set forth in this stipulation and
26 I completely understand that my plea shall
27 be considered the same as an admission of
28

culpability ..." (Stipulation between Bar and Berry, Ex. K, p. 1A to Moxon Declaration.)

17. The Stipulation of Facts in the Bar proceeding noted, "The parties intend to be bound and are hereby bound by the stipulated facts contained in this stipulation." (Stipulation between Bar and Berry, Ex. K, p. 8 to Moxon Declaration.)

18. One of the Bar counts contained a stipulation as to the *Pattinson* case judgment. The stipulation noted, in part, that the complaints "each failed to state facts supporting a basis for liability against Moxon resulting in a finding of the court that [Berry] acted in bad faith. The court found that [Berry] had violated 28 U.S.C. section 1927 prohibiting the unreasonable and vexatious multiplication of proceedings as well as Federal Rule of Civil Procedure, Rule 11 ..." (Stipulation between Bar and Berry, Ex. K, p. 9 to Moxon Declaration.)

19. The stipulated "Legal Conclusion" as to the *Pattinson* case, Count Four, found that by failing to pay these costs, expenses and attorneys fees [to Mr.

1 Moxon] as ordered, Mr. Berry willfully
2 disobeyed or violated" a court order
3 requiring him to perform an act, "which he
4 ought in good faith to do." (Stipulation
5 between Bar and Berry, Ex. K, p. 9, to
6 Moxon Declaration.)

7 20. Mr. Berry has not paid the
8 judgment. (Moxon Declaration, ¶ 10.)

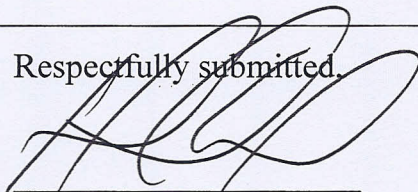
9 21. Judgment debtor examinations of
10 Mr. Berry over the past 8 years have failed
11 to reveal accessible assets to satisfy the
12 judgment. (Moxon Declaration, ¶ 10.)

13 22. The instant renewal action was filed
14 on January 5, 2010, less than 9 years after
15 the judgment became final. (Moxon
16 Declaration, Ex. H.)

17 23. The July 19, 1999 judgment of
18 \$28,484.72, plus interest from the date of
19 entry up to the date of the filing of
20 plaintiff's motion for summary judgment
21 on April 5, 2010, is \$48,876.76. (Moxon
22 Declaration., ¶ 11.)

23 Dated: April 7, 2010

24 Respectfully submitted,

25 
26 Kendrick Moxon
27 Counsel pro se
28 MOXON & KOBRIN

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