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

LISSA UVIZL,

Plaintiff,

v.

DONALD J. MYERS.

Defendant.

LEWIS MIRANDA,

Plaintiff,

v.

DONALD J. MYERS,

Defendant.

) Case No. BS 116340

) Case No. BS 116339

) PLAINTIFFS' OPPOSITION TO  
) DEFENDANT'S SPECIAL  
) MOTION TO STRIKE

) Date: October 24, 2008  
) Time: 8:30 am  
) Dept: 76

Plaintiffs Lissa Uvizl and Lewis Miranda hereby oppose defendant Donald Myers' Special Motion to Strike for the reasons set forth in the following Memorandum of Points and Authorities.

Because several DVD's are included as Exhibits and are bulky, the Exhibits referenced herein have been separately filed.

## I – INTRODUCTION

Contrary to defendant Donald Myers' Special Motion to Strike, this civil harassment action has nothing to do with any reasonable exercise of free speech; nor does it concern any purported "pickets" against the Churches of Scientology. It concerns specific acts of harassment against these plaintiffs, these acts only and these plaintiffs only.

Free speech does not include what Mr. Myers himself refers to as "stalking" plaintiff Lissa Uvizl. "Picketing" does not include Mr. Myers following and berating Ms. Uvizl and calling her a "whore." It does not include this large man, wearing no shirt, closely following this slight woman while he is wearing a chilling mask. "Free speech" does not encompass telling Ms. Uvizl that if she is offended with him following her with his shirt off, she should see his "little heart underwear." "Picketing" does not include Mr. Myers telling Ms. Uvizl if she doesn't like him following her she should get off the street. Free speech does not include Mr. Myers making a close-up video of her derriere as she walked away from him and posting the video on the internet along with Ms. Uvizl's name. It does not include repeatedly coming to her work place, trying to get inside, banging on the window or pointing and yelling at her.

Nor does legitimate free speech include numerous acts of harassing and berating Mr. Miranda regarding his religion and Hispanic origins, screaming at him while wearing a mask, telling him he is there to disrupt and harass him, spraying him with spittle or yelling that he wants to have sex with people inside the building where Mr. Miranda works.

Free speech is not freedom to repeatedly harass, annoy or terrorize others as Mr. Myers has done. While these actions do not implicate First Amendment rights, even if they did, plaintiffs have demonstrated a *prima facie* case of civil harassment pursuant to the elements of CCP §527.6, requiring denial of defendant's Motion to Strike.

Moreover, the 300 pages of irrelevant and hateful allegations by defendant and his counsel manifests abuse of the anti-SLAPP procedure. Rather than honestly address what Mr. Myers said and did, his counsel, Graham Berry, has continued his own bizarre history of litigation harassment against these plaintiffs, solely because of their religious beliefs. Mr. Berry was held to be a "vexatious litigant" pursuant to CCP §391 for filing+ multiple frivolous

1 actions against other Scientologists and their attorneys and was suspended from the practice of  
2 law by the California Bar for 18 months for the same unsupportable allegations he makes and  
3 appends to Mr. Myers' Motion. Every court in which Mr. Berry has raised these issues has  
4 rejected them and levied against him.

5 Plaintiffs request that this Court do the same, deny the Motion to Strike and award  
6 plaintiffs attorneys' fees and costs jointly and severally against Myers and his attorney.

## 7 **II – PLAINTIFFS' INJUNCTION ACTION IS NOT A SLAPP SUIT**

### 8 **A. Anti-SLAPP Motion Standards**

9 There is a two part analysis to be undertaken by the Court in consideration of a motion  
10 to strike. First, whether the action is a potential SLAPP type suit (i.e., if it addresses First  
11 Amendment petition rights), and if it passes that preliminary test, then second, whether the  
12 plaintiff has established a *prima facie* case of the elements of his claim. *Drum v. Bleau, Fox &*  
13 *Associates* (2003) 107 Cal.App.4th 1009, 1018-1019; *Ludwig v. Superior Court* (1995) 37  
14 Cal.App.4th 8, 16. A probability of prevailing is established if the plaintiff presents evidence  
15 establishing a *prima facie* case which, if believed by the trier of fact, will result in a judgment  
16 for the plaintiff." *Mattel, Inc. v. Luce, Forward, Hamilton Scripps* (2002) 99 Cal.App.4th  
17 1179, 1188.

18 The standard for examination of the plaintiffs' case is akin to a summary judgment  
19 motion. *Drum*, 107 Cal.App. 4th at 1018. ("Thus, special motions to strike pursuant to section  
20 425.16, 'operate like a demurrer or motion for summary judgment in reverse.'"), quoting  
21 *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 718-719.

22 Mr. Myers cannot meet the first test establishing that his conduct is protected First  
23 Amendment activity. And, in any event, plaintiffs here present a *prima facie* case that if the  
24 facts are accepted by the Court, they establish the basis for an injunction.

25 Although plaintiff dedicates much of his motion and hundreds of pages of declarations  
26 and exhibits to irrelevant, scurrilous and demeaning allegations regarding Scientology  
27 generally, nowhere does he specifically identify *his own* acts and conduct giving rise to the  
28 instant action. Rather, Mr. Myers argues that the "alleged harassment is presumed to be based

1 on constitutionally protected speech ..." (Motion at 8.) This is not true. He is entitled to no  
2 such presumption. While Mr. Myers claims generally only that he engaged in alleged First  
3 Amendment "picketing," that is *not* what is alleged against him here. This case concerns acts  
4 against individuals as addressed below.

5 **B. Mr. Myers' Harassing Conduct Warranting an Injunction**

6 Plaintiffs Lissa Uvizl and Lewis Miranda are religious workers at the Church of  
7 Scientology International administrative offices located at 6331 Hollywood Boulevard in Los  
8 Angeles. (Ex. A, Declaration of Lissa Uvizl; Ex. B, Declaration of Lewis Miranda.) Ms. Uvizl  
9 is the director of a museum at that address, and Mr. Miranda is the receptionist of the building  
10 in which the museum and Church of Scientology International offices are located. (*Id.*) Until  
11 approximately April of 2008, neither plaintiff knew nor had ever heard of Donald Myers. At  
12 that time and continuing until the issuance of the TRO, Mr. Myers came to plaintiffs' places of  
13 work and carried on a course of conduct with the deliberate, knowing and willful intent to  
14 harass, annoy and alarm both of them.

15 **1. Acts of Harassment Against Plaintiff Lissa Uvizl**

16 In July 2008, Ms. Uvizl was returning to her museum office when Donald Myers started  
17 running after her and following her. (Ex. A, Declaration of Lissa Uvizl.) His demeanor was  
18 that of a crazy person. His proximity and size were intimidating, (he is 6' 2" tall, and weighs  
19 about 220 pounds – Ms. Uvizl weighs 109 pounds). (*Id.*) He was partially dressed (his shirt  
20 was open). He was trying to get her to look at what he called a "titty magazine." A security  
21 guard came between them and engaged Mr. Myers while she got out of there. (*Id.*)

22 Ms. Uvizl is frequently at the reception area of the museum which opens to the  
23 sidewalk and street. Myers has screamed at her through the doors and windows of the  
24 Museum. (*Id.*) He has also opened the doors at the Museum and yelled inside several times  
25 prior and shook the locked doors to get in. (*Id.*) Mr. Myers said at one time that he had been  
26 stalking her for two days. (*Id.*) Ms. Uvizl tries to lock the doors to the Museum when Mr.  
27 Myers appears but she often has guests and visitors and this is not always possible. Mr. Myers  
28 has also tried to push open the door when it was locked. Given his admission that he has been



1 stalking her and that she is often alone in the Museum, this causes her great alarm. (*Id.*)

2 On August 10, 2008, Ms. Uvizi was in the museum, and received a call from some  
3 important guests, leaders of a Native American nation, who had an appointment to tour the  
4 museum, and had parked in the secured parking lot of the building. Because Mr. Myers was  
5 nearby with no shirt and a scary mask, Ms. Uvizi determined to meet her guests in the lot to  
6 avoid the need for them to confront Myers. (*Id.*)

7 Mr. Myers saw her and began harassing her as she tried to get away. As revealed  
8 graphically in a video made by Myers himself which he posted on youtube.com (Ex. C), and a  
9 simultaneous video taken by a security guard, (Ex. D), Myers, dressed in shorts but no shirt,  
10 and wearing a gold mask, came up behind Ms. Uvizi, and the following ensued:

11 Myers: Why are you locking your doors?

12 Uvizi: Um, because I'm leaving right now.

13 Myers: Ah. She's locking the doors. Why are you locking the  
14 doors? How will guests get in?

15 Uvizi: I just told you I am leaving.

16 As Ms. Uvizi walked quickly away, Mr. Myers following closely behind. Ms. Uvizi  
said:

17 Uvizi: I don't know why you are always annoying me with your  
18 shirt off.

19 Myers: Because it's hot. And I'm here all day.

20 [Man with Myers]: Hey, I think she is afraid.

21 Uvizi: I am not afraid, that's for sure.

22 Myers: If you're not afraid then you'll, you'll look at this Maxim  
Magazine. Have you heard of ...

23 Uvizi: I don't need to look at that magazine. I don't read trash.

24 Myers: It says that your Church is secretive and terrifying.

25 Uvizi: You know what, you're terrifying right now. Weirdo!

26 Myers: Don't you like being stalked? Your Church stalked me for  
27 two days.

28 Uvizi: I highly doubt that.

1 Myers: Oh, yes they did. They killed one guy's named Ryan's cat.  
2 It's in this magazine. I was stalked for two days and they followed  
3 me outside of BestBuy.

4 Uvizi: Crazy!

5 Myers: Oh yeah, I'm crazy. You're the one that signed a billion  
6 year contract, my dear.

7 Uvizi: You are a lunatic, naked man. Get away from me.

8 Myers: [Laughs] You should have seen what I wore in San Diego.  
9 Walking down the street in little heart underwear.

10 Mr. Myers continued following Ms. Uvizi all the way to the parking lot entrance. To  
11 try to stop his progress and keep him out of the lot where her guests were waiting, she stopped,  
12 turned around, obviously very upset and the following ensued:

13 Myers: Did you, did you want to see this magazine for one second?

14 Uvizi: No, I am actually not interested. And you can leave me  
15 alone now.

16 Myers: Well then you can get off the public street.

17 Uvizi: Um, actually, I don't think it's, anything natural to follow  
18 women around the street.

19 Myers: I don't think that it is anything natural to be hanging  
20 around on Hollywood Boulevard whoring for L. Ron Hubbard at a  
21 stress table but you've have probably done that.

22 Uvizi: I don't know what you are talking about ... And you are the  
23 weirdo in the mask.

24 Myers: Yes. Maybe I'm crazy 'cause I read OT 8 documents.

25 Uvizi: I don't know what you are talking about but you're  
26 definitely crazy. That's for sure. ... I actually have to go now.

27 Myers: Where are you on the Bridge?

28 Uvizi: You are crazy!

Myers: Billion year contract you signed, honey. Can you imagine  
you are going to have to put up with a billion years of *this*. A  
billion years of *this*. It's really, its really ... (She swipes her card  
at the electric lock to the parking lot gate several times). You

1           seemed to be having some trouble with LRH Tech.<sup>1</sup> Ooh, the big  
2           door opened! Ooh, just like on James Bond.

3           At this point, Ms. Uvizl retreated into the parking lot behind a shielded gate as  
4           Myers continued to film her. Myers zooms the camera in on her derriere as she walks away.

5           Myers: Cue the door. (Parking lot gate closes.) Excellent.  
6           [laughs] Oh, you can't make this shit up.

7           Mr. Myers posted his video on youtube.com, under the title "Operation Barney - Anti-  
8           Shirtless Lady." (Ex. C; <http://www.youtube.com/watch?v=8pTXQ-9y7cY>.) The next week,  
9           Myers took another crazy looking person with him to the museum, and pointing to where Ms.  
10          Uvizl was sitting 10 or 15 feet away and told the other man, "she's the pretty one." (Ex. E.)

11          Mr. Myers argues that his conduct was benign, asserting in a single reference to these  
12          incidents, "The alleged activity although not necessarily pretty, never rises to the level of  
13          violence, or of anything. Mere opinion is expressed, questions are asked. Any threat was  
14          nothing more than a threat to speak truth." (Motion at 7-8.) Mr. Myers also argues that his  
15          harassment of Ms. Uvizl merely "engag[ing] in debate of the issues." (Motion at 9.) These are  
16          bald misrepresentations of clear acts of harassment, including sexist slurs, religious slurs,  
17          sexual innuendo, an admission of stalking, calling her a whore, telling her she should see his  
18          underwear and telling her to get off the public sidewalk if she didn't like what he was doing in  
19          following her. Mr. Myers' assertions that he considers this mere "expression of opinion" and  
20          mere "engaging in debate," could not better demonstrate why an injunction is needed in this  
21          case – he has no concept whatsoever of decency and has no slightest degree of restraint. Such  
22          restraint must be imposed by the Court or Ms. Uvizl can look forward to more of the same of  
23          this terrifying harassment.

24          Indeed, after the TRO was granted, the remorseless Mr. Myers posted another video of  
25          Ms. Uvizl on youtube.com, which he had surreptitiously taken when she was walking across  
26          the street talking on her cell phone. The video identified Ms. Uvizl, by name and derided her

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27          <sup>1</sup> This is a facetious reference by Mr. Myers to Scientology religious practice, colloquially  
28          called "LRH Tech", derived from L. Ron Hubbard and the Scientology religious technology. It is  
        akin to saying to a Catholic, "Looks like you're having trouble with Papal doctrine."

1 by pretending she had filed the TRO because of *that* brief surreptitious video he had taken of  
2 her. (Ex. F.) She has had prior knowledge with a close friend being raped and understands the  
3 signs of someone like Myers and is very, very concerned and upset about this large, obviously  
4 psychotic man stalking her. (*Id.*) This conduct has caused substantial emotional distress to Ms.  
5 Uvizl, causing her to worry about being alone in the museum, worry about going outside if she  
6 will be accosted, and worry if Myers is stalking her or surreptitiously watching and filming  
7 her. (Ex. A, Declaration of Lissa Uvizl.)

8 None of this is protected activity. None of this misconduct manifests “public interest”  
9 speech, as it was all solely directed at Ms. Uvizl. None of it was remotely “picketing” activity.

## 10 **2. Acts of Harassment of Plaintiff Lewis Miranda**

11 Over a period of several months prior to the issuance of the TRO, Mr. Myers frequently  
12 harassed plaintiff Lewis Miranda. Again wearing a mask, he repeatedly berated Mr. Miranda,  
13 his religion and his Hispanic origins, screaming at him, telling him he is there to disrupt and  
14 harass him. (Ex. B, Declaration of Lewis Miranda.) Myers screamed he wanted to have sex  
15 with people inside the building where Mr. Miranda worked. (*Id.*) Myers appeared many times  
16 in front of the door, screamed and yelled obscenities at Mr. Miranda, when he was attempting  
17 to deal with the people going in and out of the building as part of his job. (*Id.*) On one  
18 occasion, when Mr. Miranda went outside to try to get him to go away, Myers screamed at him  
19 inches from his face, spraying him with spittle. (*Id.*) With an unusually loud voice, Myers  
20 screams when he sees Mr. Miranda on the phone, for the stated purpose of preventing him  
21 from talking on the phone. (*Id.*) He has screamed he is not going away. (*Id.*)

22 In performing this pattern of harassment, Mr. Myers is often half-dressed, with no shirt.  
23 He often wears a “Pope” hat along with a creepy gold Mardi Gras mask. Defendant admitted  
24 that his purpose in carrying on this course of conduct is to annoy and harass plaintiffs, disrupt  
25 their activities, prevent them from working and to cause them distress. (*Id.*) Myers came to  
26 the door by Mr. Miranda’s desk the 2 days prior to seeking the TRO, on August 9<sup>th</sup> and 10<sup>th</sup>,  
27 2008 and engaged in continuing conduct of yelling at Mr. Miranda through the door,  
28 indicating he has no intention of stopping. (*Id.*)

1 Mr. Myers has rushed at Mr. Miranda over 6 times from a distance away, gotten very  
2 close to him and screamed at him. (*Id.*) Mr. Miranda has a real concern for his safety because  
3 of Myers size and psychotic behavior. (*Id.*) His acts are extremely harassing and annoying and  
4 his gestures suggest threats of violence. (*Id.*) Mr. Miranda is very worried that Myers will  
5 attack him as he is unpredictable and acts like he is on drugs and for no reason hates Mr.  
6 Miranda. (*Id.*)<sup>2</sup> Mr. Miranda fears for his safety, cannot leave his house or workplace without  
7 constantly looking around him, jumps at sounds of people running at him, cannot enjoy being  
8 outside with his wife for fear of Myers jumping at him and harassing him. (*Id.*)

9 3. **Mr. Myers' Conduct Is Not Protected Speech and Is**  
10 **Susceptible to a Civil Harassment Injunction**

11 This case is not about picketing. This form of "speech" and pattern of conduct  
12 concerns specific acts of harassment against two individuals by Donald Myers. Mr. Myers  
13 asserts that he was part of a group he calls "Anonymous" who has been "mobilized to stop"  
14 alleged "abuses of Scientology," to justify a pattern of acts of harassment and stalking  
15 perpetrated by Myers against individuals. However, Mr. Myers' claim to association with a  
16 criminal hate group hardly aides his cause, because plaintiffs are reasonably fearful of  
17 members of this hate group arising out of its many threats of violence.<sup>3</sup>

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18  
19 <sup>2</sup> The allegation that Mr. Miranda slammed his hand into Defendant's video camera is an utter  
20 falsehood. There is no such evidence, and it is flatly denied. (Ex. B, Declaration of Lewis Miranda.)

21 <sup>3</sup> "Anonymous" came into public view in 2007 when Fox News reported Anonymous'  
22 destruction of the web sites of thousands of MySpace users solely for the enjoyment of "disrupting  
23 innocent peoples' lives," and their threats to bomb sports stadiums. (Ex. G.) One Anonymous  
24 member was recently convicted of these crimes. (Ex. H.) In a chilling response to Fox News,  
Anonymous released a video statement, (Ex. I), of a man hidden behind a white "vendetta" mask,  
stating:

25 We are the face of chaos and the harbingers of judgment. We laugh in the face of  
26 tragedy. We mock those who are in pain. We ruin the lives of other people simply  
27 because we can. . . . Hundreds die in a plane crash. We laugh. The nation mourns over  
school shooting, we laugh. We're the embodiment of humanity with no remorse, no  
caring, no love, or no sense of morality. We only have the desire for more and more.

28 Since January 2008, members of Anonymous have engaged in a campaign of threats and

1 Indeed, the LAPD Deputy Chief referred to Anonymous as a "terrorist organization,"  
2 saying: "[The] LAPD ... took the threat against the Church of Scientology extremely seriously,  
3 working in partnership with the FBI on that investigation and ... you had bomb threats, you had  
4 criminal threats, you had hacking into computer systems... So, this group that did that, I would  
5 classify that group as a terrorist group. They are targeting innocent civilians, striking fear in  
6 the hearts of innocent civilians who are practicing their faith, their religion." (Ex. O.)

7 In any event, whether Mr. Myers engaged in other picketing activities of the Churches  
8 of Scientology generally is not germane to whether the acts *at issue* constitute protected  
9 activity. "[I]t is the principal thrust or gravamen of the plaintiff's cause of action that  
10 determines whether the anti-SLAPP statute applies [citation], and when the allegations  
11 referring to arguably protected activity are only incidental to a cause of action based  
12 essentially on nonprotected activity, collateral allusions to protected activity should not subject  
13 the cause of action to the anti-SLAPP statute." *Martinez v. Metabolife International, Inc.*  
14 (2003) 113 Cal.App.4th 181, 188. "Speech" for the *purpose* of harassment and annoyance is

15 \_\_\_\_\_  
16 violence against the Church, its members and property. Anonymous members have made numerous  
17 bomb threats, arson threats, and acts of vandalism against Scientology Churches. (Ex. J.) They have  
18 made threatening phone calls and publicly threatened to kill Church leaders and Scientologists  
19 engaged in religious services. In January, Anonymous sent letters containing simulated anthrax to 26  
20 Scientology Churches in Southern California, triggering an FBI investigation of the group. (Ex. K.)

21 Anonymous members sent threatening emails to the Church, including, "[I will] kill you... I  
22 have the authority to use lethal force"; and "I AM WATCHING YOU AND I CONTROL the bombs."  
23 (Ex. L.) In February 2008, Anonymous placed a video threat on the Internet, (Ex. M), stating:

24 We are an elite Anonymous. On the 13th of March 2008 one 5 kilogram pack of  
25 nitroglycerin will detonate in the Churches of Scientology across the United States of  
26 America... This will be the world's biggest terrorist attack on a religion. Lives will be  
27 lost. A separate personal attack on [the President of the Church] will be launched on  
28 the 13th of March 2008 at an undisclosed time. His execution along with the deaths of  
other countless Scientologists will strike fear into the hearts of every member of this  
cult.

Acts of criminal vandalism have been launched by Anonymous against Churches of  
Scientology in Los Angeles and elsewhere, causing substantial damage. Hate graffiti has also been  
sprayed on Churches in California and elsewhere. (Ex. N.)



1 not protected by the First Amendment. As stated by the California Supreme Court in *Aguilar*  
2 *v. Avis Rent-A-Car System* (1999) 21 Cal.4th 121, 134,

3 [T]he right to free speech is not absolute. *Near v. Minnesota*  
4 (1931) 283 U.S. 697, 708, 51 S.Ct. 625, 75 L.Ed. 1357 [“Liberty  
5 of speech and of the press is also not an absolute right, and the  
6 state may punish its abuse. (Cases omitted). Many crimes can  
7 consist solely of spoken words .... the state may penalize threats,  
8 even those consisting of pure speech, provided the relevant statute  
9 singles out for punishment threats falling outside the scope of First  
10 Amendment protection. .... Civil wrongs also may consist solely of  
11 spoken words, such as slander and intentional infliction of  
12 emotional distress. A statute that is otherwise valid, and is not  
13 aimed at protected expression, does not conflict with the First  
14 Amendment simply because the statute can be violated by the use  
15 of spoken words or other expressive activity. *Roberts v. United*  
16 *States Jaycees* (1984) 468 U.S. 609, 628, 104 S.Ct. 3244, 82  
17 L.Ed.2d 462 (“Accordingly, like violence or other types of  
18 potentially expressive activities that produce special harms distinct  
19 from their communicative impact, such practices are entitled to no  
20 constitutional protection.”)]

21 The conduct at issue herein falls outside free speech protection. Indeed, “In California,  
22 speech that constitutes ‘harassment’” within the meaning of section 527.6 is not  
23 constitutionally protected, and the victim of the harassment may obtain injunctive relief.”  
24 *Huntingdon Life Science v. Stop Huntingdon Animal Cruelty* (2005) 129 Cal.App.4th 1228,  
25 1250.

26 Assertions that actions such as Mr. Myers’ are protected “free speech” have been  
27 rejected by California courts. In *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, a mother  
28 sought an injunction pursuant to §527.6 to enjoin her daughter’s boyfriend from contacting her  
daughter and members of her family after she found three “vile and vitriolic” letters from the  
boyfriend to her daughter in which he threatened the mother and her husband. (*Id.* at p. 1403.)  
Defendant opposed, claiming his conduct was protected by “freedom of speech.” (*Id.* at p.  
1404.) The trial court issued an injunction. (*Id.*)

On appeal, the court rejected defendant’s claim that the injunction violated his First  
Amendment rights of freedom of speech, noting that when speech, such as that inflicting  
emotion distress, causes damage, civil sanctions may be imposed because with the imposition  
of such restraint, “[t]here is no threat to the free and robust debate of public issues; there is no

1 potential interference with a meaningful dialogue of ideas concerning self-government.” *Id.* at  
2 pp.760-761. *Brekke*, 125 Cal.App.4th at 1409.

3 Similarly, enjoining Mr. Myers from the acts of harassment noted above poses no  
4 conceivable threat to any legitimate right to free speech. As stated by the U.S. Supreme Court,  
5 “The First Amendment permits ‘restrictions upon the content of speech in a few limited areas,  
6 which are of such slight social value as a step to truth that any benefit that may be derived  
7 from them is clearly outweighed by the social interest in order and morality.’” *Virginia v.*  
8 *Black* (2003) 538 U.S. 343, 358-59. This is such an instance.

9 4. **Plaintiffs Have Established a Prima Facie Case That They Will Prevail on**  
10 **the Merits of Their Claims**

11 If the Court finds that the activity at issue does not implicate First Amendment  
12 concerns, the motion to strike must be denied. If, however, the Court determines that First  
13 Amendment free speech rights are implicated, the Court must then determine if the plaintiffs  
14 have established a *prima facie* case on the merits of their §527.6 claims.

15 Under §527.6, the plaintiffs must show that they have been subject to “a knowing and  
16 willful course of conduct directed at a specific person which seriously alarms, annoys, or  
17 harasses the person and which serves no legitimate purpose. The course of conduct must be  
18 such as would cause a reasonable person to suffer substantial emotional distress, and must  
19 actually cause substantial emotional distress to the plaintiff. ‘Course of conduct’ is a pattern  
20 of conduct composed of a series of acts over a period of time, however short, evidencing a  
21 continuity of purpose.” §527.6, subds.(b), (d); *Grant v. Clappitt* (1997) 56 Cal.App.4th 586,  
22 592. Mr. Myers has misconstrued this requirement to mean “ongoing course of conduct” and  
23 asserts that since it is not “ongoing” that plaintiffs have not met their burden. (Motion at 9.)  
24 This misapprehension of law is predicated upon citation to authority which concerns other  
25 forms of injunctions which have different elements than §527.6. Specifically, *Scripps Health*  
26 *v. Marin* (1999) 72 Cal.App.4th 324, addressed §527.8 regarding employer injunctions, found  
27 only a single incident of harm, and no pattern of conduct. Defendant’s reference to  
28 *Huntingdon Life Science v. Stop Huntingdon Animal Cruelty* (1999) 129 Cal.App.4th 1228

1 (Motion at 9), is also puzzling, as the Court therein found that the threats at issue gave rise to  
2 genuine concern of future harm and issued an injunction.

3 A “course of conduct” is defined as “a pattern of conduct composed of a series of acts  
4 over a period of time, however short, evidencing a continuity of purpose, including following  
5 or stalking an individual ...” §527.6, subd. (b)(3). Here, the conduct by Mr. Myers was  
6 continuing literally through the day of the issuance of a TRO, and one would hope that it has  
7 not continued thereafter in violation of the Court’s Order. In any event, Mr. Myers has  
8 indicated to the plaintiffs that he has no intention of stopping his harassment of them as  
9 addressed above. (Ex. A; Ex. B.) Absent an injunction, the acts will, Myers promises,  
10 continue.

11 Plaintiffs have established a prima facie case of a pattern and course of conduct. Mr.  
12 Myers has harassed Mr. Miranda many times over a period of months as described above. Mr.  
13 Myers admitted he had been stalking Ms. Uvizi and the evidence so reveals. His repeated acts  
14 described above are horrendous and should not have to be endured by any woman. Indeed, the  
15 motivation for section 527.6 was the experience of a young woman who was hounded by a  
16 male admirer who followed her, incessantly telephoned her, etc. *Schild v. Rubin* (1991) 232  
17 Cal.App.3d 755, 762. The stalking and harassment of Mr. Myers is much worse.

18 But many of the other cases in which injunctions have been upheld are less egregious  
19 than the acts set forth herein. *See, e.g., Kobey v. Morton* (1991) 228 Cal.App.3d 1055, (victim  
20 followed by private detective hired by defendant, victim’s children threatened, victim  
21 threatened with legal action, falsely accused of causing the defendant’s marriage to fail);  
22 *Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105 (psychiatrist/victim’s former patient  
23 followed victim in her car and tried to stop victim’s car in middle of street, repeatedly drove  
24 around her house and kept it under surveillance, made numerous phone calls, and sent  
25 threatening letters); *Elster v. Friedman* (1989) 211 Cal.App.3d 1439, (downstairs neighbors  
26 played stereo at extremely high volume, made false reports to animal regulation officers that  
27 upstairs neighbors/victims were harming their dogs, parked in victims’ parking spaces, and  
28 repeatedly rang their doorbell).

1 Mr. Myers' primary authority, *Thomas v. Quintero*, (2005) 126 Cal.App. 4<sup>th</sup> 635, does  
2 not assist his cause. In *Thomas*, the defendant recruited a tenants' rights association to  
3 demonstrate outside a Church to implore Church members to intercede and investigate the  
4 actions of a church official who was a landlord of many local tenants. The Court found the  
5 demonstration a matter of public interest to the community involved in the tenant dispute and  
6 thus within the scope of 425.16. However, it found that the plaintiff landlord failed to meet  
7 his burden of showing a probability of success on the merits because he failed to demonstrate  
8 a "course of conduct" that "seriously alarmed, annoyed, or harassed" him. The case is  
9 irrelevant, as plaintiffs have met such burden herein.

10 Plaintiffs herein have clearly set forth a prima facie case of warranting the imposition  
11 of an injunction against Mr. Myers. It cannot be disputed that there was a knowing and willful  
12 course of conduct by Myers of numerous incidents of verbal harassment, running at Mr.  
13 Miranda in a threatening manner, spraying him with spittle, screaming at him when he tries to  
14 talk to people or talk on the phone, yelling inches from his face, belittling his religion and  
15 ethnicity – all of which seriously alarmed, annoyed and harassed him, served no legitimate  
16 purpose and which caused him substantial emotional distress. The case for Ms. Uvizl is even  
17 stronger, with admitted acts of stalking and sexual innuendo. She too has suffered substantial  
18 emotional distress.

19 **III -- THE NUMEROUS OUTLANDISH AND IRRELEVANT ASSERTIONS**  
20 **OF COUNSEL AND THE DECLARATIONS OF BERRY AND SCARFF**  
21 **SHOULD BE STRICKEN AND IGNORED**

22 Numerous irrelevant, gratuitous and distasteful allegations appear throughout  
23 defendant's Motion which have no bearing on the issues of this case and are inserted as the  
24 modus operandi of the attorney Mr. Myers unfortunately has retained to defend this action.  
25 Attorney Graham Berry has been involved in considerable litigation against the Churches of  
26 Scientology for over a decade and hauls with him from courtroom to courtroom his own  
27 personal hatred of both Scientology and its attorneys. Mr. Berry has filed many harassing  
28 lawsuits against Scientologists and their counsel and in each makes the same sort of outlandish

1 allegations that appear herein. Plaintiffs' counsel has defended frivolous lawsuits Berry filed  
2 in the past in which Berry was uniformly admonished and sanctioned and suspended from the  
3 practice of law – evidently giving rise to his current unseemly and irrelevant attacks upon  
4 counsel and the Scientology religion herein.

5 In 1998, Mr. Berry brought a civil TRO application in L.A.S.C., against opposing  
6 counsel in an effort to avoid being deposed in a case he had filed against several  
7 Scientologists. Mr. Berry was sanctioned \$2,800 by Judge William C. Beverly and the TRO  
8 was denied. (Ex. P, *Berry v. Rosen.*)

9 In September 1998, Mr. Berry sued several Churches of Scientology, plaintiff's counsel  
10 herein, Kendrick Moxon, as well as President Clinton, Madeleine Albright, John Travolta and  
11 others, in a 312 page complaint alleging a vast international conspiracy, (Ex. Q,) which U.S.  
12 District Judge Christina Snyder, C.D.Cal., referred to as “a rambling tale of irrelevancy.” (Ex.  
13 R, *Pattinson v. Church of Scientology International.*) Mr. Berry persisted with allegations  
14 similar to those asserted herein and in April 1999, was sanctioned pursuant to Rule 11,  
15 F.R.Civ.P., the Court finding, “... the claims alleged [by Mr. Berry] against Moxon were  
16 asserted in bad faith”, (Ex. S, Order, April 15. 1999), and issued sanctions against Mr. Berry in  
17 the amount of \$28,484.72. (Ex. T.) The sanctions have never been paid.

18 Thereafter, Mr. Berry was also sanctioned by Judge David Minning, L.A.S.C., in  
19 another action against a Church of Scientology for filing a frivolous lawsuit. (Ex. U.) Later in  
20 1999, Mr. Berry was sanctioned by L.A.S.C. Judge David Doi in *Jeavons v. Church of*  
21 *Scientology International*, also for the filing of a frivolous action. (Ex. V.)

22 In the case of *Berry v. Barton* (also a Scientologist), in L.A.S.C., Justice David  
23 Eagleson (Ret.), acting as a discovery referee, issued sanctions against Mr. Berry for filing  
24 unauthenticated inflammatory Internet postings similar to those he filed herein. Justice  
25 Eagleson noted, “I very seldom give sanctions - very seldom - but this is outrageous, counsel.  
26 Outrageous.” (Ex. W.) Judge Alexander Williams dismissed the action and found Mr. Berry to  
27 be a vexatious litigant pursuant to C.C.P. §391, (Ex. X), stating, “With all the due respect, Sir,  
28 I have to sadly state that if there is such a thing on God's green earth as a vexatious litigant

1 you, Sir, sadly, are it.” (Ex. Y.)

2 At this point, the Bar stepped in and prosecuted Mr. Berry for his long-term misconduct  
3 in litigation involving Churches of Scientology. Mr. Berry stipulated the facts against him  
4 were accurate, but justified his misconduct by asserting that he was an alcoholic with a serious  
5 mental illness. (Ex. Z.) The Bar suspended him for 18 months in 2002, (*Id.*), and he has  
6 performed little legal work since.

7 Unfortunately, Mr. Berry has picked up where he left off when suspended and continues  
8 to make baseless allegations against Scientologists and counsel. The resulting Special Motion  
9 to Strike itself has so many false and irrelevant comments that refuting them would require  
10 many pages, and they must therefore largely be ignored in this Opposition.<sup>4</sup>

11 A defendant who brings a frivolous special motion to strike can be assessed the cost of  
12 petitioner’s attorney’s fees. (§425.16, subd. (c); *Moore v. Shaw* (2004) 116 Cal.App.4th 182,  
13 198-199, 10 Cal.Rptr.3d 154.) Sanctions should accordingly be awarded jointly and severally  
14 against Mr. Berry and Myers arising out of the defendant’s Special Motion to Strike in an  
15 amount to be determined by the Court.

#### 16 IV – CONCLUSION

17 Myers’ Special Motion to Strike should be denied and plaintiffs awarded their  
18 reasonable fees and costs.

19 Dated: October 13, 2008

Moxon & Kobrin

20  
21 By:

22 Kendrick L. Moxon  
23 Attorneys for Plaintiffs  
24 Lissa Uvizl and Lewis Miranda

25  
26 <sup>4</sup> For example, the assertion that counsel sought to apply the TRO to Myers in Orange  
27 County, (Motion at 10) is an utter falsehood. The bizarre stories regarding an event at Hamburg  
28 where none of the parties were present is both inaccurate and utterly irrelevant. The supposed  
assertions of one Gary Scarff and his supposed travails and bizarre assertions of “electronic  
monitoring” are ridiculous, false and also utterly irrelevant.



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**PROOF of SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action.

On October 13, 2008, I served the foregoing document described as:

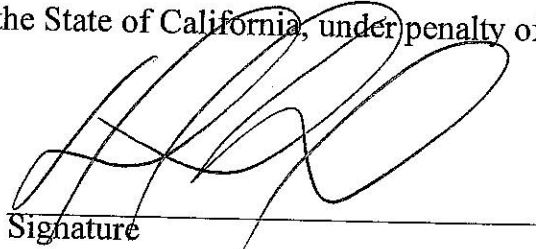
**PLAINTIFFS' OPPOSITION TO DEFENDANT'S SPECIAL MOTION TO STRIKE**

by hand delivery on counsel for defendant, at the following address:

Graham Berry  
3384 McLaughlin Ave.  
Los Angeles, CA 90066

Executed on October 13, 2008, at Los Angeles, California.

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



Signature