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12 Attorneys for Defendant, CHURCH OF SCIENTOLOGY INTERNATIONAL
13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15
16 FOR THE COUNTY OF RIVERSIDE
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18

19 J.K. PROPERTIES, INC.,

20 Plaintiff,

21 v

22 CHURCH OF SCIENTOLOGY INTERNATIONAL,
23 aka CHURCH OF SCIENTOLOGY dba GOLDEN
24 ERA PRODUCTIONS, aka GOLDEN ERA
25 PRODUCTIONS VOLUNTEER FIRE BRIGADE,
26 and All Unknown Occupants, DOES 1 through 1000,

27 Defendants.

Case No.: RIC 461032
Action Filed: 11/22/06

**SPECIAL APPEARANCE OF
DEFENDANT CHURCH OF
SCIENTOLOGY INTERNATIONAL
TO QUASH PURPORTED SERVICE
OF COMPLAINT**

Date: 12-28-06
Time: 130
Dept: MWLD

28 TO: PLAINTIFF J.K. PROPERTIES AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE That on the date, time and place set forth above, at the above-entitled Court, Defendant, CHURCH OF SCIENTOLOGY INTERNATIONAL, dba GOLDEN ERA PRODUCTIONS, will and hereby does specially appear pursuant to C.C.P. §1167.4 and §418.10, and move to quash purported service of process of plaintiff's Complaint for Unlawful Detainer.

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

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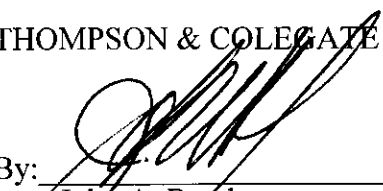
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This motion is supported by the attached Memorandum of Points and Authorities, the Declarations of Jeanne Gavigan, Kevin Caetano, Kendrick Moxon and Catherine Fraser, the complete files and records in this action and any argument which may be presented at hearing thereon.

DATED: December 12, 2006.

Kendrick L. Moxon, Esq.
MOXON & KOBRIN

THOMPSON & COLEGATE LLP

By: 

John A. Boyd
Attorneys for Defendant, CHURCH OF
SCIENTOLOGY INTERNATIONAL

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Plaintiff has failed to lawfully serve defendant Church of Scientology International with the
5 Summons and Complaint in this action. Any purported service thereof should accordingly be
6 quashed.

7
8 **II.**

9 **STATEMENT OF FACTS**

10 Golden Era Productions is a division of the Church of Scientology International (“CSI”), the
11 Mother Church of the Scientology religion. (Exhibit “A”, Declaration of Jeanne Gavigan.) The
12 registered agent for service of process of CSI is attorney Jeanne Gavigan, whose office is at Moxon
13 & Kobrin, 3055 Wilshire Blvd., Suite 900, Los Angeles, CA 90010. (*Id.*)

14 On or about November 27, 2006, a process server appeared at the offices of the registered
15 agent for CSI in Los Angeles, and finding her not in the office, left the premises and did not leave
16 the Complaint. (Exhibit “B”, Declaration of Kendrick Moxon.) On information and belief, he did
17 not return, nor was any mailing of a summons received from the process server. (*Id.*)

18 On November 27, 2006, a process server appeared at the premises of Golden Era Productions
19 in Gilman Hot Springs, California, and indicated he had legal papers to be served. (Exhibit “C”,
20 Declaration of Kevin Caetano.) Mr. Caetano informed the process server that he was not authorized
21 to receive legal papers or process, but that it should be provided to the registered agent in Los
22 Angeles. (*Id.*) The process server nevertheless dropped the papers on the ground by the security
23 guard and stated that “the attorney” would send a follow-up mailing. (*Id.*)

24 Thereafter, plaintiff’s counsel faxed to Golden Era’s attorney, Kendrick Moxon, a purported
25 proof of service, indicating that substitute service was made on one “Kevin Carter - Security.” The
26 proof of service also stated that the Summons and Complaint was served on Mr. “Carter” and
27 asserting that he was “apparently in charge of the office or usual place of business.” (Exhibit “D”).

28

1 The proof of service also states that the process server, Fidel Ramsey, mailed the Summons and
2 Complaint “to the person to be served at the place where the copies were left.” (*Id.*)

3 No “follow-up” mailing of the Summons and Complaint has been received by the
4 registered agent, by any officer, director or managing agent of CSI, or even by “Kevin Carter.”
5 (Exhibit “A”, Declaration of Jeanne Gavigan; Exhibit “E”, Declaration of Catherine Fraser; Exhibit
6 “C”, Declaration of Kevin Caetano.)

8 III.

9 THE PROOF OF SERVICE SHOULD BE QUASHED

10 C.C.P. § 416.10 governs service of process upon corporations generally. *Warner*
11 *Bros. Records, Inc. v. Golden West Music Sales* (1974) 36 Cal.App.3d 1012, 1016, 112
12 Cal.Rptr. 71). § 416.10 provides specific categories of individuals through whom a
13 corporation may validly be served:

14
15 (a) To the person designated as agent for service of process...

16 (b) To the president or other head of the corporation, a vice
17 president, a secretary or assistant secretary, a treasurer or assistant
18 treasurer, a general manager, or a person authorized by the
corporation to receive service of process”

19 The purpose of section 416.10 at the time it was enacted, is as follows:

20 Service on a corporation or unincorporated association can only be
21 accomplished by serving some individual as its representative . . .
22 Service is effected by delivering a copy of the summons and a
23 copy of the complaint to one of these persons by a method of
service specified in Section 413.10.

24 *Gibble v. Car-Lene Research, Inc.*, (1998) 67 Cal.App.4th 295, 303, 79 Cal.Rptr.2d 892.

25 If the “party attempting service cannot with reasonable diligence serve an individual
26 in any other category,” then the party “is required to seek assistance of the court and the
27 Secretary of State in obtaining jurisdiction over such a corporate defendant.” *Gibble*, at 311-
28 312; Corporations Code § 1702. § 1702 provides:

1 "If an agent for the purpose of service of process . . . cannot with
2 reasonable diligence be found at the address designated for
3 personally delivering the process, or if no agent has been
4 designated, and it is shown by affidavit to the satisfaction of the
5 court that process against a domestic corporation cannot be served
6 with reasonable diligence upon the designated agent by hand . . .
7 the court may make an order that the service be made upon the
8 corporation by delivering by hand to the Secretary of State, or to
9 any person employed in the Secretary of State's office in the
10 capacity of assistant or deputy, one copy of the process for each
11 defendant to be served, together with a copy of the order
12 authorizing such service. Service in this manner is deemed
13 complete on the 10th day after delivery of the process to the
14 Secretary of State."

15 In this instance, plaintiff failed to comply with the statutory requirements for service upon
16 the corporation defendant and therefore service must be deemed invalid. The process server
17 evidently attempted once to serve the registered agent – once – was told she was not in and gave up
18 without leaving a copy of the Summons and Complaint, nor mailing it. One attempt does not
19 constitute reasonable diligence for purposes of §416.10.

20 Moreover, since the defendant is a corporation, pursuant to C.C.P. § 416.10, service had to be
21 accomplished upon one who is in a representative position in the corporation to accept such service.
22 The only proof of service is as to the security guard, "Kevin Carter." He is not an authorized
23 representative of the corporation, nor would he fall under the category of "president or other head of
24 the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a
25 general manager," as contemplated under § 416.10.

26 As set forth under Corporations Code § 1702, even assuming plaintiff's one attempt to serve
27 the corporation's designated agent for service of process could be characterized as "reasonable
28 diligence," (and as the statute sets forth, plaintiff's attempted service on a security guard does not
even count), plaintiff's remedy thereafter was to seek an order from this Court to serve the Secretary
of State's office. However, this, plaintiff did not do.

Accordingly, service of process of the Summons and Complaint on this defendant is invalid
and the proof of service should be quashed.

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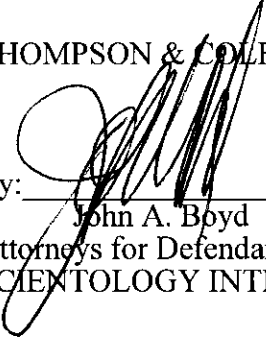
IV.
CONCLUSION

For the foregoing reasons, the proof of service of the Summons and Complaint should be quashed.

DATED: December 12, 2006.

Kendrick L. Moxon, Esq.
MOXON & KOBRIN

THOMPSON & COLEGATE LLP

By: 
John A. Boyd
Attorneys for Defendant, CHURCH OF
SCIENTOLOGY INTERNATIONAL

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DECLARATION OF JEANNE GAVIGAN

I, Jeanne Gavigan, hereby state:

1. I am over the age of 18 years and am a party to this lawsuit. The facts contained herein are true of my own personal knowledge and if called upon to testify, I could and would competently testify thereto.

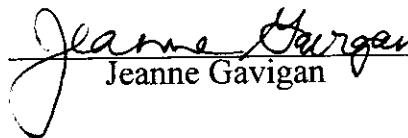
2. I am an attorney authorized to practice law in the State of California.

3. Golden Era Productions is a division of the Church of Scientology International (“CSI”), the Mother Church of the Scientology religion. For several years, I have been the registered agent for service of process of CSI in California, as indicated on the Secretary of State’s public records. My office address is at Moxon & Kobrin, 3055 Wilshire Blvd., Ste. 900, Los Angeles, CA 90010.

4. I have never been served in any manner, nor have I received any mailing at my office or anywhere else, of an unlawful detainer summons and complaint against CSI or Golden Era.

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

Executed this 12th day of December, 2006, at Los Angeles, California.


Jeanne Gavigan

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DECLARATION OF KEVIN CAETANO

I, Kevin Caetano, hereby state:

1. I am over the age of 18 years and am a party to this lawsuit. The facts contained herein are true of my own personal knowledge and if called upon to testify, I could and would competently testify thereto.

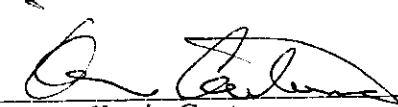
2. I am a security guard working at Golden Era Productions, a division of the Church of Scientology International.

3. On November 27, 2006, a process server appeared at the premises of Golden Era Productions in Gilman Hot Springs, California, and indicated he had legal papers to be served. I informed the process server that I was not authorized to receive legal papers or process, but that it should be provided to the registered agent in Los Angeles. The process server nevertheless dropped the papers on the ground by my guard booth and stated that "the attorney" would send a follow-up mailing. I am not an officer, director or managing agent of CSI or Golden Era, and have no corporate responsibility or title. I am not authorized to accept service of process.

4. Although I receive mail at the Golden Era premises, I have received no mailing of any summons or complaint.

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

Executed this 12th day of December, 2006, at Gilman Hot Springs, California.

 12/12/06

Kevin Caetano

1 **DECLARATION OF KENDRICK MOXON**

2 I, Kendrick Moxon, hereby state:

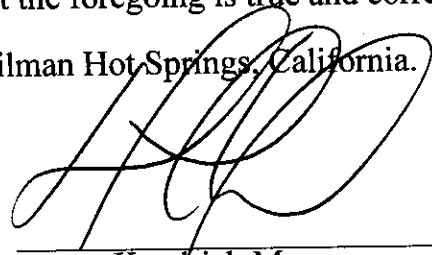
3 1. I am over the age of 18 years and am a party to this lawsuit. The facts contained
4 herein are true of my own personal knowledge and if called upon to testify, I could and
5 would competently testify thereto.

6 2. I am an attorney licensed to practice law in the State of California. My office is
7 at Moxon & Kobrin, 3055 Wilshire Blvd, Ste 900, Los Angeles, CA. Jeanne Gavigan, who
8 is the registered agent for the Church of Scientology International, is of counsel to our
9 firm.

10 3. On or about November 27, 2006, a process server appeared at our offices seeking
11 Ms. Gavigan. She was not in the office when the process server came to find her. Finding
12 her not in the office, the process server left the premises and did not leave any summons or
13 complaint or any other paper. On information and belief, he did not return, nor was any
14 mailing of a summons received from the process server.

15 I declare under the penalty of perjury that the foregoing is true and correct.

16 Executed this 12th day of December, 2006, at Gilman Hot Springs, California.

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19 _____
Kendrick Moxon

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1 **DECLARATION OF CATHERINE FRASER**

2 I, Catherine Fraser, hereby state:


3 1. I am over the age of 18 years and am a party to this lawsuit. The facts contained
4 herein are true of my own personal knowledge and if called upon to testify, I could and
5 would competently testify thereto.

6 2. I am an employee of Church of Scientology International, working at Golden
7 Era Productions, in Gilman Hot Springs, California.

8 3. My position entails, in part, receipt of all legal mail for Golden Era. Any mail
9 which concerns legal, government or official nature is routed directly to me to be
10 appropriately handled. I have received no mailing addressed to "Kevin Carter", "Kevin
11 Caetano" or any other persons, enclosing an unlawful detainer summons or complaint. If
12 any such package had been received at the facility, I would have been informed. No such
13 mailing was received at our facility in Gilman Hot Springs, California.

14 I declare under the penalty of perjury that the foregoing is true and correct.

15 Executed this 12th day of December, 2006, at Gilman Hot Springs, California.

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19 Catherine Fraser
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am employed in the County of Riverside, State of California. I am over the age of 18 years and not a party to the within action. My business address is **3610 Fourteenth Street, P. O. Box 1299, Riverside, California 92502.**

On December 13, 2006, I served the foregoing document described as **SPECIAL APPEARANCE OF DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL TO QUASH PURPORTED SERVICE OF COMPLAINT** on the interested parties in this action.

by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

BY REGULAR MAIL: I deposited such envelope in the mail at 3610 Fourteenth Street, Riverside, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY FACSIMILE MACHINE: I transmitted a true copy of said document(s) by facsimile machine, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.

BY OVERNIGHT MAIL: I deposited such documents at the Overnite Express or Federal Express Drop Box located at _____. The envelope was deposited with delivery fees thereon fully prepaid.

BY PERSONAL SERVICE: I caused such envelope(s) to be delivered by hand to the above addressee(s).

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

(Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 13, 2006, at Riverside, California.


Carmen Ventura Brunner

SERVICE LIST

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J.K. PROPERTIES, INC., v CHURCH OF SCIENTOLOGY INTERNATIONAL, ET AL.

RIC 461032

Our File No.: 1502/065257

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