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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MLG

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M. Preciado

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

12 J.K. PROPERTIES, INC.
13 Plaintiff,

14 vs.

15 CHURCH OF SCIENTOLOGY
16 INTERNATIONAL, ET AL
17 Defendants.

Case No. RIC 461032

**REVISED
SEPARATE STATEMENT OF
UNDISPUTED FACTS IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT ON
COMPLAINT AND ON CROSS-
COMPLAINT**

18 CHURCH OF SCIENTOLOGY
19 INTERNATIONAL,
20 Cross-complainant,

21 vs.

22 J.K. PROPERTIES, INC.,
23 Cross-defendants.

Date: March 10, 2009
Time: 8:30
Dept: 7

25 Defendant/Cross-complainant Church of Scientology International ("the Church"),
26 herewith submits its REVISED Separate Statement of Undisputed Facts, in support of its
27 Motions for Summary Judgment on the Complaint as well as on the Cross-complaint.
28 The revisions relate to adding line numbers to deposition transcript citations to evidence

1 and a further authenticating declaration to several exhibits – letters between the parties
2 and their attorneys – in light of the matters addressed at the hearing on February 10, 2009.

3
4 **Undisputed Issue**

Supporting Evidence

5 6 7 8 9 10 11 12 13 14	1. In 1988, Golden Era Productions, a division of the Church of Scientology International, entered into a lease agreement to rent an apartment complex known as Kirby Garden Apartments in Hemet, California, consisting of 68 apartments.	Ex. A, Declaration of Catherine Fraser, ¶ 3.
15 16 17 18 19	2. A further lease was executed in 1998, at which time the Church provided a security deposit of \$36,680.	Ex. B, lease, ¶ 5.
20 21 22 23 24 25	3. In approximately 2002, the property was purchased by J.K. Properties (“J.K.”), dba Excel Residential Properties and turned over the management of the premises to its agent, Anza Management Company.	Ex. C, Deposition of Deb Berutich, p. 6:24 – 8:1; Ex. D, Deposition of Anil Mehta, p. 10:1-25, 13:12-22.
26 27 28	4. William “Bill” Jones, a Certified Property Manager, was the property manager of Kirby and Ms. Berutich was his superior at Anza.	Ex. C, Deposition of Deb Berutich, p. 14:6, 18:4-16; Ex. E, Deposition of Bill Jones, p. 6:6-17, 7:20 - 8:3
	5. On July 13, 2006, plaintiff gave a 90-day notice to the Church to vacate 15 of those 68 units.	Ex. A, Declaration of Catherine Fraser, ¶ 4

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<p>6. On or about October 1, 2006, those 15 units were vacated. Inspection of the units by Mr. Jones found no damage.</p>	<p>Ex. A, Declaration of Catherine Fraser, ¶ 4.</p>
<p>7. On August 7, 2006, the Church provided 90-day notice it was vacating the remaining 53 apartments.</p>	<p>Ex. F; Ex. A, Fraser Declaration ¶ 5; Ex. T, Third Dec. of Kendrick Moxon, ¶ 4</p>
<p>8. The Church subsequently withdrew that notice.</p>	<p>Ex. G; Ex. A, Fraser Declaration, ¶ 5; Ex. T, Third Moxon Dec., ¶ 5</p>
<p>9. J.K. took the position that the notice could not be withdrawn and demanded the property be vacated by November 5, 2006.</p>	<p>Ex. H; Ex. A, Declaration of Catherine Fraser, ¶ 5; Ex. T, Third Moxon Dec., ¶ 6</p>
<p>10. On November 5, 2006, Church representative Linda Greilich, spoke to Pinkel Jogani of J.K., to negotiate extension of the lease. Ms. Greilich faxed a letter on November 5, 2006, stating: "Dear Mr. Jogani, this is to put in writing what we agreed per our phone conversation of today's date that we, Golden Era Productions, will give you 90 days notice to move out, and we will pay you 60 days bonus of rent when we move out."</p>	<p>Ex. I; Ex. A, Declaration of Catherine Fraser, ¶ 6</p>

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<p>11. On November 6, 2006, J.K.'s, attorney characterized the letter from Ms. Greilich as an "offer." J.K. also sought additional consideration and threatened that Golden Era had only until November 8th to respond or an unlawful detainer action would be filed.</p>	<p>Ex. J; Ex. A, Declaration of Catherine Fraser, ¶ 7; Ex. T, Third Moxon Dec. ¶ 7</p>
<p>12. J.K., through counsel, stated, on November 14, 2006: "Please note that there is <u>no</u> agreement between the parties to date, including any discussion between the parties on November 5, 2006. Golden Era's letter does <u>not</u> bind my clients... Please be clear: there will be no agreement until <u>both</u> parties execute a written extension of the lease, after all terms have been resolved... Otherwise, please note that my clients will move forward on their unlawful detainer claim."</p>	<p>Ex. K; Ex. A, Declaration of Catherine Fraser, ¶ 8; Ex. T, Third Moxon Dec., ¶ 8</p>
<p>13. No further lease was signed and the unlawful detainer Complaint was filed on November 22, 2006.</p>	<p>Ex. L, Unlawful Detainer complaint</p>
<p>14. The only stated basis for the unlawful detainer claim was failure of the Church to vacate after the 90-day notice period expired on November 5, 2006.</p>	<p>Ex. L, Unlawful Detainer complaint</p>

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<p>15. During the unlawful detainer case the parties engaged in settlement discussions and as a result, stipulated to continue a hearing on the Church's demurrer reconsideration motion six times.</p>	<p>Docket, stipulations to continue filed 3/22/2007; 5/15/2007; 5/21/ 2007; 6/11/2007; 7/9/ 2007 and 7/30/2007.</p>
<p>16. Settlement discussions of the parties failed to result in agreement on an amended lease.</p>	<p>Ex. A, Declaration of Catherine Fraser, ¶ 9</p>
<p>17. On July 15, 2007, as a courtesy to plaintiff, the Church gave a new 30-day notice that it would be vacating the premises on August 15, 2007.</p>	<p>Ex. N; Ex. T, Third Moxon Dec. ¶ 9,</p>
<p>18. On August 15, 2007, the Church vacated the entire premises and gave the keys to each unit back to the property manager, Bill Jones.</p>	<p>Ex. A, Declaration of Catherine Fraser, ¶ 9; Ex. E, Deposition of William Jones, p. 20:12-14</p>
<p>19. On August 15, 2007, Mr. Jones, walked through and examined each apartment.</p>	<p>Ex. E, Deposition of William Jones, p. 17:6-14</p>
<p>20. Mr. Jones' inspection concluded, "I must commend your organization on the overall condition of the apartments. I found no damage to any of the apartments including the appliances that were not more than normal wear and tear."</p>	<p>Ex. E, Deposition of William Jones, p. 17:24-19:22; Ex. O, Letter August 20, 2007</p>

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<p>21. Following the walk-through a "Final Statement of Account" was delivered to the Church, signed by Anil Mehta, President of J.K. Properties and Deb Berutich of Anza Management.</p>	<p>Ex. Q, Final Statement; Ex. T, Third Moxon Dec. Ex. C, Berutich Depo., p. 71:10-76:18; Ex. D, Anil Mehta Depo., p. 57:2-58:12</p>
<p>22. The Final Statement of Account and Attachment asserted \$187,365.78 was owed to J.K. by the Church, asserting the rent was under-paid in June through October by virtue of a 3% monthly increase pursuant to "Addendum (2)", that rent for September and October was due because of failure of the Church to provide another 90-day notice to vacate, and for two months "bonus rent" per "Addendum (1) dated November 5, 2006."</p>	<p>Ex. Q; Ex. C, Berutich Depo., p. 72: 2-25.</p>
<p>23. The Final Statement noted that \$36,380 was due to the Church in the category of "Refundable Deposits and Credits," and therefore reduced the total amount allegedly due from \$187,365.78 to \$150,685.78.</p>	<p>Ex. Q; Ex. C, Berutich Depo., p. 73: 4-24</p>
<p>24. The Final Statement and Attachment sought \$90,069.74 as "Additional 2 months rent move-out payment, per Addendum No. 1 (Nov 5, 2006)."</p>	<p>Ex. Q; Ex. D, Mehta Depo., p. 63:21-64:22</p>

<p>1 25. The \$90,069.74 demand was based entirely 2 upon "Addendum No. 1" which Mr. Mehta said 3 was "Linda Greilich's letter" of November 5, 2006 4 and that this letter was "the only basis for this 5 demand for \$90,000." 6</p>	<p>Ex. D, Mehta Depo., p. 63:21- 64:22.</p>
<p>7 26. Although J.K. based its claim for "\$90,069.74 8 as "Additional 2 months rent move-out payment," it 9 conceded there was no such agreement, noting in 10 November 2006, that the agreement was "not 11 complete" but rather, "[t]here is an intention, and 12 the intention has to be worded into a proper 13 agreement" in order to be enforceable. 14</p>	<p>Ex. D, Mehta Depo., p. 63:21- 64:22, 29:12-31:2.</p>
<p>15 27. Mr. Mehta admitted the unlawful detainer 16 lawsuit was filed because, he believed, "there was 17 no agreement fully written." 18</p>	<p>Ex. D, Mehta Depo., p. 52:9 - 53:7.</p>
<p>19 27. Mr. Mehta also testified, "There was no lease 20 signed. So question of addendum is -- should not 21 come into the picture." 22</p>	<p>Ex. D, Mehta Depo., p. 42:1-5.</p>

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<p>28. In response to the question, "Other than the November 5th, 2006, letter by Linda Greilich, do you -- can you tell me of any specific agreement that requires a payment of two additional months of rent that you've demanded on this attachment to our move-out report?", he responded, "There was no additional signed agreement, no."</p>	<p>Ex. D, Mehta Depo., p. 66:25-67:7.</p>
<p>29. The Final Statement assesses additional rent of \$23,025.18 for August 15-31, 2007 \$43,723.17 for September 2007 and \$22,517.43 for October 1-15, 2007, totaling \$89,265.78, on the claim that "Intent to Vacate required 90 days Notice (Per lease dated September 29, 1998)" but the Church gave 30 days notice before vacating on August 15, 2007.</p>	<p>Ex. Q; Ex. N; Ex. T, Second Supp. Dec. of Kendrick Moxon Ex. A, Fraser Dec. ¶ 9</p>
<p>30. However, J.K. filed the unlawful detainer action, suing for immediate eviction, and not for further "notice."</p>	<p>Ex. L, Unlawful Detainer complaint</p>

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<p>31. Yet, J.K. previously argued, “Civil Code 1946 dealing with renewable hiring indicates that: ‘as to tenancies from month-to-month either party may terminate the same by giving at least 30 days’ written notice thereof at any time and the rent shall be due and payable to and including the date of termination.’ ... [yet] the lease shows that the Agreement has become a month-to-month tenancy. As such Defendant could have given as short as a 30-day Notice if it chose to do so.”</p>	<p>Ex. M, Plaintiff’s Opposition to Demurrer of Defendant Church of Scientology International, January 11, 2007, p. 3 (and see Court’s docket of that date)</p>
<p>32. The Final Statement and Attachment claims increase of rent not paid on the basis that “Addendum Agreement (2) set forth a 3% rent increase from the base rent of \$38,848.47 commencing June 1, 2007.”</p>	<p>Ex. Q.</p>
<p>33. No “Addendum Agreement (2)” has been produced by J.K., and no such agreement was ever signed by the Church.</p>	<p>Ex. A, Declaration of Catherine Fraser, ¶ 9</p>
<p>34. Mr. Mehta conceded J.K.’s interpretation of “Addendum 2” is that it was the “intention” of the negotiations between the parties, but that there was no actual agreement between the parties, and no document reflecting the proposed agreement was actually signed.</p>	<p>Ex. D, Mehta Depo., p. 58:8-63:20.</p>

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<p>35. Ms. Berutich testified she is unaware of any incorrect rent payments, and that Anza will not accept “anything but the correct amount.”</p>	<p>Ex. C, Berutich Deposition, p. 34.</p>
<p>36. If a rent check is too low, Anza informs the tenant that the rent is insufficient, and then holds on to the check until it gets the full amount or returns it to the tenant. And, if the checks are eventually deposited, one can “assume that a decision has been made that the correct amount was paid.”</p>	<p>Ex. C, Berutich Deposition, at 37:2-18.</p>
<p>37. The Church’s rent checks were all deposited, and no communications were sent to the Church indicating that the wrong amount of rent was paid up to August of 2007 – which Anza would have done if the amount was insufficient.</p>	<p>Ex. A, Declaration of Catherine Fraser; Ex. C, Berutich Deposition, at 37:5-38:8.</p>
<p>38. Ms. Berutich testified that if there had been an amendment to the lease, she would have been informed. However, the amount of the rent never changed up to the time the Church vacated the property, and no notice of insufficient rent was ever sent to the Church.</p>	<p>Ex. C, Deposition of Deb Berutich, p. 39:2 - 40:10, 75:2-25.</p>

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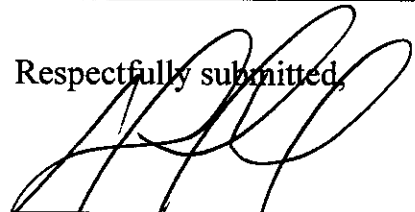
<p>39. Ms. Berutich testified no notice was sent to the Church that any rent was delinquent, and she could not justify why she had signed the Final Statement saying rent was due.</p>	<p>Ex. C, Deposition of Deb Berutich, p, 71:10-72:6.</p>
<p>40. Mr. Mehta testified that his attorney sent a new proposed lease to the Church during the unlawful detainer action and he had seen a counter-offer provided by the Church but, that it was "not acceptable" to J.K. and was not signed for that reason.</p>	<p>Ex. D, Mehta Depo., at 43:11-16, 82:1-85:21.</p>
<p>41. Ms. Berutich, affirmed that Mr. Jones' assessment of the lack of damages to the property was correct, that no claim was being made for damage to the property as a deduction from the security deposit.</p>	<p>Ex. C, Deposition of Deb Berutich, p. 41:16-18, 57:5-59:12.</p>
<p>42. The notation in the Final Statement of the "Refundable Deposit or Credit," the "Attachment to Move-Out Report Dated 9-4-07" appended to the Final Statement affirmed that \$36,680 was to be credited to the Church under the heading "Less Security Deposit."</p>	<p>Ex. Q</p>

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<p>43. Mr. Mehta testified "Anza Management found that the condition of the apartments was commendable and that there were no damages found to any of the apartments, there was not more than normal wear and tear" and concurred, in the statement, "there's no dispute that the security deposit is due to the Church, whatever -- whatever the accounting may be."</p>	<p>Ex. D, Mehta Depo., p. 54-55, 67-68.</p>
<p>44. J.K. failed to return the security deposit within 21 days after the Church vacated the premises.</p>	<p>Ex. Q.</p>
<p>45. The lease between the parties provides for the payment of attorneys fees to a prevailing party in an action arising out of the lease.</p>	<p>Ex. B, ¶ 18.</p>
<p>46. Since the time of the filing of the cross-complaint, Kendrick Moxon of the firm of Moxon & Kobrin expended a total of 85.3 hours on litigation of the cross-complaint.</p>	<p>Ex. S, Declaration of Kendrick Moxon, ¶ 8.</p>
<p>47. At a reasonable hourly rate of \$300/hour, the Church and Moxon & Kobrin are entitled to payment of attorneys fees in the amount of \$25,590.</p>	<p>Ex. S, Declaration of Kendrick Moxon, ¶ 8.</p>

<p>1 48. Church and its counsel from Thompson & 2 Colegate are entitled to reimbursement of attorneys 3 fees in the billed an additional \$5,629.20. 4</p>	<p>Ex. A, Declaration of Catherine Fraser</p>
<p>5 49. The total fees reasonably expended by the 6 Church are accordingly \$31,219.20. 7 8 9</p>	<p>Ex. A, Declaration of Catherine Fraser, , ¶11; Ex. S, Declaration of Kendrick Moxon, ¶ 8.</p>
<p>10 50. The Church concedes attorneys fees to J.K. 11 Properties in the amount of \$4,500 as set forth in 12 the Final Statement of Account after the unlawful 13 detainer case was concluded as a deduction from the 14 fees owed to the Church, for a total fees due to the 15 Church from J.K. Properties of \$30,293.44. 16</p>	<p>Ex. A, Declaration of Catherine Fraser; Ex. S, Declaration of Kendrick Moxon, ¶ 8.</p>
<p>17 51. The Church is entitled to reimbursement of its 18 costs of the cross-complaint, totaling \$ 3,574.24.</p>	<p>Ex. S, Declaration of Kendrick Moxon, ¶ 8.</p>

19 Dated: February 11, 2009

20 Respectfully submitted,


21
22 MOXON & KOBRIN
23 Kendrick L. Moxon
24 John A. Boyd
25 THOMPSON & COLEGATE
26
27 Attorneys for Defendant
28 CHURCH OF SCIENTOLOGY
INTERNATIONAL

1 **PROOF OF SERVICE**

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

4 On February 11, 2009, I served the foregoing document described as:

5 **REVISED**
6 **SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF**
7 **MOTION FOR SUMMARY JUDGMENT ON COMPLAINT AND ON CROSS-**
8 **COMPLAINT**

9 by hand delivery on interested parties in this action as follows:

10 Mason Yost
11 2016 Riverside Drive
12 Second Floor
13 Los Angeles, CA 90039

14 Executed on February 11, 2009 at Los Angeles, California.

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

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Signature