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**FILED**  
LOS ANGELES SUPERIOR COURT

JAN 20 2009

JOHN A. ... CLERK  
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8 Attorneys for Defendant  
9 DISKEEPER CORPORATION,  
a California corporation

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES**

12 ALEXANDER J. GODELMAN, an Individual; and )  
13 MARC LE SHAY, an Individual, )

14 Plaintiffs, )

15 vs. )

16 DISKEEPER CORPORATION, a Delaware )  
17 corporation; and DOES 1-50, inclusive, )

18 Defendants. )  
19 )  
20 )

CASE NO. BC 374449

**OBJECTION AND REQUEST TO  
STRIKE EVIDENCE SUBMITTED  
BY PLAINTIFFS IN SUPPORT OF  
OPPOSITION TO DISKEEPER  
CORPORATION'S MOTION TO  
STRIKE**

Motion Date: January 27, 2009  
Time: 8:30 a.m.  
Dept: 56, Hon Jane Johnson

Initial Complaint: July 17, 2007  
Trial Date: June 15, 2009

21 **I. OBJECTIONABLE MATERIALS**

22 Defendant Diskeeper Corporation's motion to strike seeks to strike the injunctive relief  
23 allegations and prayer for reinstatement in the third amended complaint, as a matter of law. In  
24 support of their opposition, plaintiffs submit a voluminous and legally improper declaration from  
25 their counsel, Barry Kaufman, and extraneous exhibits. For example, paragraph 5 of the Kaufman  
26 Declaration substitutes counsel's testimony for evidence in this case. It contains statements, without  
27 authentication or support, that "discovery has by now unequivocally confirmed that new employees  
28

1 at Diskeeper are required to study, learn and apply the so-called 'Hubbard Management Technology'  
2 ('HMT') in performance of their work for Diskeeper (and that their failure or refusal to do so can  
3 result in discipline or discharge)." Kaufman Decl., ¶5, lines 11-14. Further, there are pages from  
4 these alleged study materials attached as Exhibit C which are completely unauthenticated in Mr.  
5 Kaufman's declaration and which do not bear on the motion to strike.

6  
7 Counsel's testimony and the exhibits are part of plaintiffs' campaign to demonize Diskeeper  
8 Corporation and its management as supposed proselytizing Scientologists, instead of a company  
9 whose founder happens to be a Scientologist. The truth is that Diskeeper Corporation provided  
10 Godelman and LeShay with non-religious study materials and the company's code of conduct, "The  
11 Way to Happiness," which embody sound business management and life principles such as "Set a  
12 Good Example," "Love and Help Children" and "Respect the Religious Beliefs of Others." Neither  
13 Mr. Godelman nor Mr. LeShay were required to become Scientologists or plied with the Church of  
14 Scientology's religious materials. It is now convenient--*for the sake of gain*--for Godelman, the five  
15 month employee, and LeShay, the nine day employee, to protest materials which by Mr. LeShay's  
16 admission he hardly looked at. While Diskeeper Corporation could go on, and further discredit  
17 plaintiffs with their own deposition testimony, it will not play the same game plaintiffs seek to  
18 forward in their opposition. These factual disputes are the proper subject of other motions and trial,  
19 and are not the proper subject or proper evidence for consideration on a motion to strike.

20 Thus, Diskeeper Corporation objects and requests that the Court strike or disregard the  
21 following: paragraph 5 of the Kaufman Declaration and Exhibits C - D of the Kaufman Declaration  
22 as improper extrinsic evidence on a motion to strike, as irrelevant, and portions thereof as  
23 unauthenticated.

## 24 II. LEGAL ARGUMENT

### 25 1. Only the Face of the Pleadings May Be Considered.

26 On a motion to strike, courts consider "the face of the challenged pleading or...any matter  
27 of which the court is required to take judicial notice." Cal. Code Civ. Proc. § 437; *Garcia v.*

1 *Sterling*, 176 Cal. App. 3d 17, 21 (1985) (stating same rule and finding that consideration of  
2 deposition testimony on a motion to strike was improper). Extrinsic evidence is, thus, not  
3 permissible. Plaintiffs acknowledge this in their opposition as plaintiffs' counsel, Mr. Kaufman,  
4 himself characterizes the statements in paragraph 5 as "extraneous facts." Based on Mr. Kaufman's  
5 admission and the "extraneous" nature of paragraph 5 and Exhibits C - D, all of these should be  
6 stricken or disregarded by the Court in its consideration of the present motion.  
7

8 **2. There is No Foundation or Authentication.**

9 For evidence to be admissible, a proper foundation and authentication must be established.  
10 See Cal. Evid. Code §§ 403, 1401. Here, Mr. Kaufman has failed to lay a foundation in his  
11 declaration for statements such as: "[D]iscovery has by now unequivocally confirmed that new  
12 employees at Diskeeper are required to study, learn and apply the so-called 'Hubbard Management  
13 Technology' ('HMT') in performance of their work for Diskeeper (and that their failure or refusal to  
14 do so can result in discipline or discharge)." Kaufman Decl., ¶5, lines 11-14.

15 Further, although, Mr. Kaufman's Declaration includes excerpts from alleged Scientology  
16 related materials at Exhibit C, he fails to properly establish a foundation for these documents,  
17 specifically that his clients even saw these materials during the period of their employment with  
18 Diskeeper Corporation.

19 **3. Conclusion**

20 Based on the foregoing objections, Diskeeper Corporation respectfully requests that the Court  
21 strike or disregard Paragraph 5 to the Kaufman Declaration and Exhibits C - D thereto.

22 Dated: January 20, 2009

Respectfully submitted,

23 LAW OFFICES OF TIMOTHY BOWLES, P.C.  
24

25 Timothy Bowles  
26 Attorney for Defendant Diskeeper Corporation  
27

PROOF OF SERVICE

STATE OF CALIFORNIA     )  
  ) ss.  
COUNTY OF LOS ANGELES )

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. My business address is One S. Fair Oaks Avenue, Pasadena, California 91105.

On January 20, 2009 I served the foregoing document described as **OBJECTION AND REQUEST TO STRIKE EVIDENCE SUBMITTED BY PLAINTIFFS IN SUPPORT OF OPPOSITION TO DISKEEKPER CORPORATION'S MOTION TO STRIKE** on counsel for plaintiffs in this action,


MR. BARRY B. KAUFMAN  
LAW OFFICES OF BARRY B. KAUFMAN  
*A Professional Corporation*  
16133 Ventura Boulevard, Suite 700  
Encino, California 91436

IN PERSON.

By sending the above described document to Mr. Kaufman at his business email address of [BBKaufman@Earthlink.net](mailto:BBKaufman@Earthlink.net) on this date as a PDF attachment, and by sending the same document to him today via U.S. Mail, with these steps agreed to by Mr. Kaufman as constituting in-person service on this date.

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

Executed January 20, 2009 in Pasadena, California.

  
\_\_\_\_\_  
Ray Loomis