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FILED
LOS ANGELES SUPERIOR COURT

JAN 20 2009

JOHN A. ... CLERK
[Signature]
BY GLORIETTA ROBINSON, DEPUTY

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**

9 ALEXANDER J. GODELMAN, an Individual; and)
MARC LE SHAY, an Individual,)
10)
11 Plaintiffs,)
12 vs.)
13 DISKEEPER CORPORATION, a Delaware)
14 corporation; and DOES 1-50, inclusive,)
15 Defendants.)
16)

CASE NO. BC 374449
**REPLY TO OPPOSITION,
MOTION TO STRIKE PORTIONS
OF THIRD AMENDED
COMPLAINT**
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

17 Plaintiffs ask the Court to ignore applicable case and EEOC regulatory authority providing
18 that an owner of a business, in circumstances such as exist in the instant case, may incorporate
19 religious practices in the administration of his or her business to further the economic objectives of
20 the business. Plaintiffs argue such authority has been vitiated by *Employment Div., Ore Dept.*
21 *Human Res. v. Smith Employment Division v. Smith* (1990) 494 U.S. 872 (*Smith II*), which rejected
22 application of so-called strict scrutiny review (“compelling state interest”/“least restrictive
23 alternative”) to neutral laws of general applicability that collaterally may restrict free exercise rights.
24 Plaintiffs are wrong for three reasons. First, the legal authority permitting a business owner to use
25 religious practices in the workplace in certain relevant contexts is based upon statutory construction,
26 which is equally applicable to FEHA, and thus is unaffected by *Smith II*. Second, *Smith II*, by its
27 terms and under subsequent decisions, still requires strict scrutiny review of the application of laws
28 whose direct purpose and effect is to regulate or limit religious practice. FEHA, on its face, is

1 precisely such a statute. According to plaintiffs, FEHA directly authorizes injunctions against
2 purported religious practices in the workplace. Opposition, 1:21-22; 5:12-24. As such, strict scrutiny
3 applies under the Supreme Court's First Amendment standards. Third, the strict scrutiny standard
4 for review applies under the California Constitution in any event. Plaintiffs do not even attempt to
5 show their demands for broad injunctive relief can survive strict scrutiny or proper statutory
6 construction, and in effect thus concede the Motion's showing that the Court should strike the
7 injunction demands from the current complaint.

8 **I. PLAINTIFFS FAIL TO ADDRESS RELEVANT NON-CONSTITUTIONAL**
9 **AUTHORITY THAT LAWS PROHIBITING WORKPLACE RELIGIOUS**
10 **DISCRIMINATION DO NOT PRECLUDE A BUSINESS FROM IMPLEMENTING**
11 **RELIGIOUSLY BASED PRACTICES DESIGNED TO FURTHER THE ECONOMIC**
12 **AND BUSINESS OBJECTIVES OF THE BUSINESS**

13 Plaintiffs mischaracterize and fail to address defendant's first argument (Motion memo,
14 section III, at pp. 3 - 8) that applicable antidiscrimination statutes do not absolutely prohibit the
15 owners and managers of a business enterprise from implementing religiously based practices in the
16 conduct of the business, particularly where, as alleged here, the choice to introduce those practices
17 is economically motivated to further the business goals of the enterprise. *EEOC v. Townley*
18 *Engineering* (9th Cir. 1988) 859 F.2d 610, 619-21; EEOC Compliance Manual, Section 12:
19 Religious Discrimination (July 22, 2008), para. 12-IV(C)(7) at p. 81 ("Some employers have
20 integrated their own religious beliefs or practices into the workplace, and they are entitled to do so.");
21 Rather, such a business may utilize such practices so long as it provides reasonable accommodation
22 to employees who object to participation in such practices or where it would constitute an "undue
23 hardship" for the business to make such an accommodation. As *Townley* and the EEOC Guidelines
24 make clear, under FEHA, as well as Title VII, it would constitute an undue hardship where to make
25 such an accommodation would interfere with the economic goals of the enterprise, rather than merely
26 the spiritual goals of its principals.

27 Significantly, plaintiffs' opposition makes no effort to address the core insight of *Townley*
28 or the EEOC Guidelines that a business may adopt religious practices in its business model, and that

1 such a business cannot be required to abandon those practices, even in the face of a religious
2 objection by an employee, where to do so would create undue hardship in the form of “an adverse
3 impact on the conduct of the business.” *Townley*, 859 F.2d at 615. Nor do plaintiffs even attempt
4 to address defendant’s showing that here, unlike *Townley*, plaintiffs allege the purported religious
5 practices at issue concern the very method by which the business is administered and conducted, and
6 thus are “directly related to the commercial goals of the business as opposed to the spiritual
7 betterment of its employees” or owners. *Townley* at 616.

8 Instead of attempting to address these dispositive arguments, plaintiffs seek to avoid them
9 by arguing that *Townley* in effect was overruled or rendered inapplicable by the United States
10 Supreme Court’s decision in *Smith II*, which rejected application of so-called strict scrutiny review
11 to neutral laws of general applicability which collaterally may restrict free exercise rights. Even
12 aside from the self-evident point, addressed below, that a law that directly restricts religious practice
13 in the workplace is not a neutral law of general applicability but rather a law whose very purpose and
14 effect is directed at religious practice, plaintiffs’ cannot brush or wish away *Townley* and similar
15 authority. That is because both the principal analysis in *Townley* and the EEOC Guidelines were
16 based on construction and application of the statutory scheme, and, while cognizant of the underlying
17 First Amendment free exercise concerns, were not constitutionally based. Only the second part of
18 the *Townley* decision and the second point of defendant’s motion and memorandum were based upon
19 strict scrutiny constitutional analysis of the anti-discrimination statutes. Defendant’s primary point
20 here is not that the anti-discrimination statutes are unconstitutional as applied to the instant dispute
21 under the free exercise clause, but rather that those statutes, including FEHA, incorporate free
22 exercise principles by permitting defendant here, and others in similar situations, to utilize religious
23 practices in their business model precisely because employers believe such practices not only further,
24 but are essential to, the economic goals of the enterprise. Indeed, such a construction of FEHA and
25 similar statutes itself is necessary as a matter of constitutional jurisprudence to avoid potential
26 serious constitutional conflicts. *Townley* at 613; defendant’s Motion memo, 7:10-19, note 6 and
27 cases cited therein. *See also*, section IV below (“Striking Out the Injunction Allegations Will Avoid
28 Insoluble Constitutional Entanglement”).

1 While application of these principles ultimately, we submit, would require dismissal of this
2 entire action, defendant does not seek such relief in this motion. Rather, this motion is directed to
3 a specific alternative remedy which plaintiffs seek in their third amended complaint: an injunction
4 requiring defendant “to cease, desist and forever refrain” from requiring any employee to “study,
5 adopt and/or apply” the very administrative and management techniques and practices by which
6 plaintiffs allege Diskeeper Corporation conducts and always has conducted its business.¹ As
7 plaintiffs allege and is shown by the deposition transcript selections plaintiffs appended to their
8 opposition, the owner and operator of Diskeeper Corporation strongly believes such practices and
9 techniques are essential and fundamental to its business model and economic success.² Whatever
10 relief to which plaintiffs ultimately may or may not be entitled (and we again submit the answer is
11 none), they certainly cannot be entitled to destroy a successful business such as Diskeeper
12 Corporation under the rubric of FEHA and under the legal principles set forth above.

13 **II. STRICT SCRUTINY REVIEW IS REQUIRED WHERE A PLAINTIFF SEEKS**
14 **TO APPLY A STATUTE WHICH PURPOSE IS TO REGULATE**
15 **ALLEGED RELIGIOUS EXERCISE IN THE WORKPLACE**

16 **A. Strict Scrutiny Applies Under the First Amendment**

17 Under First Amendment standards, a statute that specifically targets religious practice is
18 subject to the traditional “strict scrutiny” constitutional analysis. The Supreme Court confirmed this
19 standard in *Smith II* (Motion memo, 9:17-20) and then applied it to invalidate a city ordinance in
20

21 ¹ E.g., TAC at ¶ 5 (3:27-4:9); ¶ 9 (7:17-21); ¶ 20, 16:27-17:5 (first cause of action);
22 ¶ 34, 22:26-23:4 (third cause of action); ¶ 48, 28:17-23 (fifth cause of action); p.30:13-17 (first
cause of action); p. 31:11-15 (third cause of action); p. 32:8-12 (fifth cause of action).

23 ² Plaintiffs’ attempt to support their opposition with extrinsic evidence not subject
24 to judicial notice is inappropriate on a motion to strike. See note 8, below and defendant’s
25 January 20, 2009 “Objection and Request to Strike Evidence Submitted by Plaintiffs in Support
26 of Plaintiffs’ Opposition to Diskeeper Corporation’s Motion to Strike.” However, the deposition
27 testimony of Mr. Jensen they do cite illustrates why granting this motion *with leave to amend*
28 would be a fruitless exercise and a waste of judicial resources. In light of that cited testimony –
and plaintiffs’ representations of its meaning (that defendant’s principal has made religious
practices the center of its business) – any attempt by plaintiffs to replead their injunction to
position the Hubbard Administrative Technology and Hubbard Study Technology as *not* central
to or somehow unrelated to defendant’s business operations would be a disingenuous assertion
that would subject plaintiffs and their counsel to sanctions.

1 *Church of the Lukumi Babalu v. City of Hialeah* (1993) 508 U.S. 520 (Motion memo, 9:5-7; Oppo,
2 8:7-11). *Smith II*, concerning an asserted religious exemption from Oregon’s unemployment
3 compensation statutes, rejected the strict scrutiny scheme as applied “to generally applicable,
4 religion-neutral laws,” 494 U.S. at 886, n. 3, whose purposes were “unconcerned with regulating’
5 protected activity.” *Church of Scientology Flag Service Organization v. City of Clearwater* (11th
6 Cir. 1993) 2 F.3d 1514, 1543 (quoting *Smith II*). However, *Smith II* retained the strict scrutiny
7 review standard for a statute directly targeting religious practice. 494 U.S. at 877- 878. *Church of*
8 *Scientology Flag Service Organization v. City of Clearwater*, 2 F.3d at 1543 (holding city ordinance
9 directed at solicitations by charitable organizations was not a “religion-neutral” law under *Smith II*,
10 and was therefore subject to strict scrutiny review). Accordingly, in *Babalu* the Court held a
11 purported neutral zoning ordinance prohibiting animal sacrifice within city limits was not “neutral”
12 with respect to religion, but rather inherently directly restricted religious free exercise, and was thus
13 subject to strict scrutiny. Under that standard, the Court invalidated the ordinance. 508 U.S. at 543.

14 There can be no question FEHA and other statutes whose very purpose and effect is to
15 prohibit discrimination in the workplace fall into the *Lukumi Babalu* category of cases, and not the
16 *Smith II* category. A law of neutral application, in the context of a free exercise challenge, is a law
17 that does not deal with religious belief or practice at all. *Smith II*, 494 U.S. at 886, n. 3 (“religion-
18 neutral laws”). *Smith II* presents the archetypical example: a law *only indirectly* prohibiting peyote
19 use. The free exercise issue arose because the collateral effect of the statute was to restrict certain
20 Native American tribes from engaging in what to them was a religious rite. In such a circumstance,
21 said the Court in *Smith II*, the law would be subject only to “rational basis” review.

22 That is not the circumstance here. A law prohibiting religious discrimination and prohibiting
23 (with the important exceptions relevant here) the exercise of religious practices in the workplace by
24 definition *is not* a law of neutral application with respect to religion, as contemplated by *Smith II*.
25 Rather, under *Lukumi Babalu*, a challenge to the application of such a law on free exercise grounds
26 must be analyzed under strict scrutiny analysis. 508 U.S. at 543. *See also, Catholic Charities of*
27 *Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 546 (a law targeting religious beliefs as
28 such is never permissible; court “must survey meticulously the circumstances of governmental

1 categories to eliminate, as it were, religious gerrymanders”; quoting *Babalu*, 508 U.S. at 533-534).

2 Strict scrutiny applies with even greater force to one of the specific forms of relief plaintiffs
3 seek in their third amended complaint: an injunction requiring defendant “to cease, desist and forever
4 refrain” from requiring any employee to “study, adopt and/or apply” the very administrative and
5 management techniques and practices by which Diskeeper Corporation is and always has conducted
6 its business, on the basis that those allegedly constitute religious practices.³

7 Application of strict scrutiny analysis, of course, does not automatically condemn such a
8 proposed injunction under the First Amendment. As *Townley* itself recognized in the free exercise
9 portion of that opinion, 859 F.2d at 619-21, the government certainly has a strong and compelling
10 interest in eradicating religious discrimination in the workplace. The hard question is whether the
11 government’s compelling interest can be furthered by means less restrictive than sanctioning or
12 prohibiting a business from using *any* religious practices in pursuit of its business goals. That such
13 a less restrictive means is sufficient is demonstrated by the fact the EEOC, as shown above,
14 recognizes such blanket prohibition as going too far and that *Townley* construed Title VII similarly.

15 **B. Strict Scrutiny Also Applies Under the California Constitution**

16 Plaintiffs also erroneously claim California follows *Smith II* under Cal. Const. article I,
17 section 4. *Oppo.*, 1:16-20; 8:16 - 9:5. The Supreme Court of California has done no such thing, but
18 rather has repeatedly stated the proper standard of review for art. I, sec. 4 remains an open question.
19 *North Coast Women’s Care Medical Group, Inc. v. Superior Court* (2008) 44 Cal.4th 1145, 1158
20 (“[t]o date, this court has not determined the appropriate standard of review under the *state*
21 *Constitution’s* guarantee of free exercise of religion”; high court’s *Smith II* test “is not controlling
22 here”).⁴ *See also, Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527,

23 _____
24 ³ Constitutional standards apply to orders for injunction in civil cases. Motion
25 memo, p. 9, note 8, citing *New York Times v. Sullivan* (1964) 376 U.S. 254, 265, 277 and
26 *NAACP v. Claiborne Hardware Company* (1982) 458 U.S. 886, 924, note 67. Accordingly, the
27 First Amendment strict scrutiny review guidelines under *Smith II* and *Lukumi Babalu* apply. By
28 their silence, plaintiffs concede this point. The opposition cites neither of these decisions and
fails to address their proper application to the TAC’s injunction allegations.

⁴ *North Coast* denied doctors’ requests for a religiously based exemption from the
Unruh Act as the court found that even under a strict scrutiny standard, their claim for exemption
failed. 44 Cal.4th at 1158 - 1160.

1 561 - 562 (a future case might lead the California Supreme Court to choose the rule of *Sherbert*, the
2 rule in *Smith II* or “an as-yet unidentified rule that more precisely reflects the language and history
3 of the California Constitution and our own understanding of its import”).

4 As referenced in the Motion (memo at 11:10 - 12:1 and notes 10, 13), the supreme courts of
5 three states, Minnesota, Washington and Ohio, have held their respective constitutions – with text
6 virtually identical to California’s art. I, sec. 4⁵ – support the strict scrutiny standard of review,
7 repudiating *Smith II*. See, e.g., *State v. Hershberger* (Minn. 1990) 462 N.W.2d 393, 397 (declining
8 to follow *Smith II* and retaining strict scrutiny standard under Minnesota Constitution article 16,
9 section 16 because language of provision is “of a distinctly stronger character than the federal
10 counterpart”); *First Covenant Church of Seattle v. City of Seattle* (Wash, 1992) 840 P.2d 174, 186
11 (citing *Hershberger’s* reasoning from Minnesota, retaining the *Sherbert* “compelling interest” test⁶

12 _____
13 ⁵ Compare California’s Const., article I, section 4:

14 “The free exercise and enjoyment of religious profession and worship,
15 without discrimination or preference, *shall forever be guaranteed* in this State ...
16 *but the liberty of conscience hereby secured shall not be construed as to excuse*
acts of licentiousness, or justify practices inconsistent with the peace and safety of
this State.” Emphasis supplied.

17 With that of Minnesota Const. article 16, section 16:

18 “The right of every man to worship God according to the dictates of his
19 own conscience shall never be infringed ...*but the liberty of conscience hereby*
secured shall not be so construed as to excuse acts of licentiousness or justify
practices inconsistent with the peace of the state.” Emphasis supplied.

20 And that of Washington Const. article 1, section 11 guaranteeing:

21 “... absolute freedom of conscience in all matters of religious sentiment,
22 belief and worship ... *but the liberty of conscience hereby secured shall not be*
construed as to excuse acts of licentiousness, or justify practices inconsistent
23 *with the peace and safety of this state.*” Emphasis supplied.

24 ⁶ *Sherbert* was the first Supreme Court case to enunciate the strict scrutiny test with
25 respect to free exercise rights. *Sherbert v. Verner* (1963) 374 U.S. 398, 403 (government burden
26 on the free exercise of religion may only be justified by a “compelling state interest in the
27 regulation of a subject within the State’s constitutional power to regulate); *Wisconsin v. Yoder*
(1972) 406 U.S. 205, 215 (only those interests of the highest order and not otherwise served can
28 overbalance legitimate claims to the free exercise of religion). See also, *Townley*, 859 F.2d at 620
- 621 (strict scrutiny analysis includes determination of whether a) regulation has significant
impact on religion; b) there is an overriding, compelling government interest justifying that
impact; and c) the regulation is the least restrictive alternative to that impact).

1 applied to its constitution and rejecting *Smith II* because the majority's analysis departs from a long
2 history of established law and adopts a test that places free exercise in a subordinate, instead of
3 preferred, position); and *Humphrey v. Lane* (Ohio 2000) 728 N.E.2d 1039, 1045 (*Smith II* standard
4 is not applicable to Ohio Constitution section 7, article I; court adheres to the "compelling state
5 interest" and "least restrictive alternative" standard on free exercise of religion claims).⁷ It is thus
6 appropriate under California law to maintain the traditional strict scrutiny standard of constitutional
7 review to strike the injunction pleadings at issue here.

8 **III. BY THEIR SILENCE, PLAINTIFFS CONCEDE STRICT SCRUTINY REQUIRES**
9 **THE ELIMINATION OF THEIR INJUNCTION ALLEGATIONS**

10 Plaintiffs do not even try to argue their demands for injunctive relief can survive strict
11 scrutiny.⁸ Plaintiffs' allegations that Hubbard Administrative Technology and Hubbard Study
12 Technology are the "fundamental teachings of the Scientology religion" and that this Court should
13 thus bar defendant's application of this methodology proposes a significant burden on alleged
14 religious practices. Motion memo, pp. 10 - 11. There is no compelling state interest that could be
15

16 ⁷ Minnesota's Justice Simonett, concurring, observed his state's article I, section 16
17 appears to have originated from quite similar clauses in the early constitutions from states along
18 the eastern seaboard, such as article XXXVIII of New York's Constitution of 1777. 462 N.W.2d
19 at 399. He pointed out that while the "peace and safety" provision appeared in several older state
20 constitutions, the framers of the federal constitution did not choose to use it. He found that
21 provision significant, indicating clearly that "a valid secular law which is neutral towards religion
22 in its general application is, nevertheless, not necessarily exempt from the liberty of conscience
23 of claims." *Id.*

24 ⁸ Plaintiffs mistakenly assert a motion to strike is not appropriate to remove
25 injunction remedy allegations (Oppo, 2:7-9; 5:3-8; 5:25-27). The plain language of CCP §
26 436(a) permits removal of any "irrelevant, false or improper matter" inserted in a pleading. *See*
27 *also*, CCP § 431.10(c) (an "immaterial allegation" means "irrelevant matter" at that term is used
28 in CCP § 436; CCP § 431.10(b)(2) (immaterial allegations include one neither pertinent to nor
supported by an otherwise sufficient claim or defense); CCP § 431.10(b)(3) (immaterial
allegations include a demand for judgment not supported by the allegations). *Pacific Gas &*
Elect. Co. v. Superior Court (2006) 144 Cal.App.4th 19, 23-26 (motion to strike properly granted
to remove prayer for a recovery to which plaintiff had no right) Plaintiffs also erroneously
"support" their opposition with extrinsic evidence not subject to judicial notice (Oppo., 2:19 -
3:26 and Mr. Kaufman's accompanying declaration and exhibits). *Garcia v. Sterling* (1985) 176
Cal.App.3d 17, 21 (a motion to strike may not be determined on hearsay statements in party's
deposition); *City & County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913
(motion to strike may not be determined on counsel's declaration or factual representations made
by counsel in motion papers). *Please also see*, defendant's accompanying January 20, 2009
extrinsic evidence objection.

1 demonstrated to trump defendant's and Mr. Jensen's rights to apply these practices. *Id.*, at 11 - 12.
2 In any event, plaintiffs acknowledge a less restrictive alternative to their proposed shut down by
3 alleging they can be made whole by money damages in lieu of the proposed injunction. *Id.*, at 12.

4 Plaintiffs' distorted take on *Townley* notwithstanding, the 9th Circuit invalidated the blanket
5 injunction in that case similarly aimed at curbing particular religious practices in the workplace. 859
6 F.2d at 621 ("... goal of Title VII is served by protecting only those who have religious objections
7 to the services. To protect those who do not have objections is not necessary. Nor do we think that
8 to require that the service be voluntary as to all employees, whether that is their wish or not, is
9 necessary to further the purposes of Title VII"). *Townley* remains good law after the Supreme
10 Court's decisions in *Smith II* and *Lukumi Babalu* since strict scrutiny analysis still applies, as in this
11 case, to such an injunction specifically aimed at curbing an employer's utilization of alleged religious
12 practices with its workforce.

13 **IV. STRIKING OUT THE INJUNCTION ALLEGATIONS WILL AVOID INSOLUBLE** 14 **CONSTITUTIONAL ENTANGLEMENT**

15 Plaintiffs also fail to address – and thus concede – the rule of statutory construction that
16 favors avoidance of a constitutional conflict. Motion memo, 7:10-19 and note 6, citing, *e.g.*,
17 *Ashwander v. Tennessee Valley Authority* (1935) 297 U.S. 288, 346-348 (Brandeis, J., concurring)
18 (Court has developed for its own governance rules including first ascertaining whether a statutory
19 construction is possible that avoids the constitutional question altogether). Retaining plaintiffs'
20 injunction allegations will guarantee this Court's constitutionally untenable immersion into
21 determination of what Diskeeper Corporation policies and practices are or are not religious. *See*,
22 Motion memo at 7 - 8, citing, *e.g.*, *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 ("[i]t
23 is not only the conclusions that may be reached by the Board that may impinge on rights guaranteed
24 by the Religion clauses, but also the very process of inquiry . . .").

25 Plaintiffs' contention that defendant's use of the Hubbard administrative and training
26 constitute direct application of "the Scientology religion and its teachings" (TAC, ¶ 5, 4:10-11; ¶
27 20, 16:27-17:5 (first cause of action); ¶ 34, 22:26-23:4 (third cause of action); ¶ 48, 28:17-23 (fifth
28 cause of action)), would require this Court to determine what company operational standards and

1 procedures, if any, constitute religiously based practice. The proposed injunction would then require
2 this Court's supervision and regulation over the complete elimination of those standards and
3 procedures from this workplace as well as their replacement with alternative company methodology
4 the Court must determine is *not* religiously based. From there, plaintiffs' proposed injunction will
5 call on the Court to monitor every company policy or procedural adjustment to confirm none are the
6 re-institution to any degree of supposed religion.

7 This Court should decline to enter or engage in that process by striking plaintiffs' injunction
8 allegations consistent with the long-recognized rule to avoid constitutional entanglement whenever
9 possible.

10 V. CONCLUSION

11 The injunction plaintiffs demand fundamentally would violate both statutory and First
12 Amendment and California constitutional protections of an employer's right to incorporate religious
13 practices in the workplace to further economic goals. This Court should strike, without leave to
14 amend, each of plaintiffs' reinstatement and injunction demands as irrelevant and improper as a
15 matter of law.

16 Dated: January 20, 2009

17 Respectfully submitted,

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19 Timothy Bowles
20 Attorneys for Defendant Diskeeper Corporation
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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 **REPLY TO OPPOSITION, MOTION TO STRIKE PORTIONS OF THIRD AMENDED COMPLAINT** 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 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