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8 SEVENTH-DAY ADVENTISTS

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF RIVERSIDE

11 JEFFRY M. KAATZ, JAMES W. BEACH, and) CASE NO. RIC 1112557
12 GARY L. BRADLEY,)
13 Plaintiffs,)
14 v.) **DEFENDANTS PACIFIC UNION**
15 RICARDO GRAHAM; PACIFIC UNION) **CONFERENCE OF SEVENTH-DAY**
16 CONFERENCE OF SEVENTH-DAY) **ADVENTISTS AND NORTH AMERICAN**
17 ADVENTISTS, a not-for-profit corporation;) **DIVISION CORPORATION OF**
18 DANIEL R. JACKSON; LARRY) **SEVENTH-DAY ADVENTISTS' REPLY**
19 BLACKMER; NORTH AMERICAN) **SUPPORTING THEIR DEMURRER TO**
20 DIVISION CORPORATION OF SEVENTH-) **PLAINTIFF'S SIXTH, SEVENTH, AND**
21 DAY ADVENTISTS, a not-for-profit) **EIGHTH CAUSES OF ACTION, AND**
22 corporation; and LA SIERRA UNIVERSITY, a) **NOTICE OF JOINDER IN LA SIERRA**
23 not-for-profit corporation; and DOES 1-100,) **UNIVERSITY'S REPLY BRIEF**
24) **SUPPORTING THE DEMURRER TO THE**
25) **OTHER CAUSES OF ACTION IN**
26) **PLAINTIFFS' COMPLAINT**
27 Defendants.)
28 Judge: Commissioner Paulette
Durand-Barkley
Dept.: 2

Date: October 20, 2011
Time: 9:00 a.m.
Dept.: 2

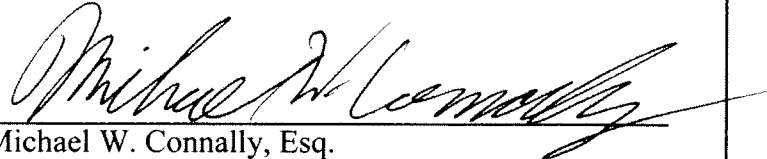
Action Filed: July 28, 2011
Trial Date: None

25 TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:
26 Defendants Pacific Union Conference of Seventh-day Adventists and North American
27 Division Corporation of Seventh-day Adventists (hereinafter sometimes collectively referred to as
28 "Adventists") hereby submit the following reply brief in support of their Demurrer to plaintiffs'

1 complaint. Adventists also joined in the demurrer filed by La Sierra University to the remaining
2 causes of action pled against Adventists and hereby joins in La Sierra University's reply brief as to
3 the demurrer to those causes of action.

4 DATED: October 13, 2011

LEWIS BRISBOIS BISGAARD & SMITH LLP

5
6 By 

7 Michael W. Connally, Esq.
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9 Sean Paisan, Esq.
10 Attorneys for Defendants, LA SIERRA UNIVERSITY;
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12 DAY ADVENTISTS; NORTH AMERICAN
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TABLE OF AUTHORITIES

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Seaman's Direct Buying Service, Inc. v. Standard Oil Co. (1984) 36 Cal.3d 752 7

1 Plaintiffs' opposition tries to avoid these fundamental Constitutional issues by repeatedly
2 asserting their Complaint has nothing to do with the First Amendment. Plaintiffs argue Adventists
3 are trying to "... fabricate a First Amendment challenge to the Complaint." (See, e.g., Plaintiffs'
4 opposition to Adventists' demurrer ("Opp/SDA") at p. 2:13-14, 24-26.) However, they then
5 contradict that by arguing that their complaint alleges that the court should scrutinize the
6 governance system Adventists have adopted and dictate through injunctions and tort damages how
7 these admittedly affiliated Seventh-day Adventist religious organizations are to cooperate with one
8 another to accomplish their religious mission. Fortunately, the First Amendment gives religious
9 organizations, rather than courts, the right to decide who can best serve as leaders of those
10 organizations and how best to accomplish their religious missions.

11 **2. PLAINTIFFS' ASSERTIONS THAT ADVENTISTS' DEMURRER IMPROPERLY**
12 **RAISES FACT DISPUTES OR GOES OUTSIDE THE COMPLANT ARE**
13 **MERITLESS**

14 LSU's demurrer provided a detailed and accurate summary of Plaintiffs' Complaint. (LSU
15 Demurrer, pp. 1-6.) Adventists joined in that summary of allegations and then summarized the few
16 additional, mostly conclusionary allegations in the sixth through eighth causes of action pled
17 against Adventists and not LSU. (Adventists' demurrer, p. 2:6-3:7.)

18 Plaintiffs' opposition does not identify any part of either factual summary that is inaccurate.
19 Plaintiffs assert that the demurrers by Adventists and LSU both ask the court to make factual
20 findings in contradiction to the purportedly "properly pleaded allegations in Plaintiffs' Complaint.
21 Plaintiffs' opposition also asserts that Adventist are "attempting to introduce fax outside the four
22 corners of the complaint." (Opp/SDA p. 1.) However, Plaintiffs do not, and cannot, support that
23 contention by citing to anywhere in either demurrer where LSU or Adventists asks this court to
24 decide a factual dispute. LSU expressly stated that, "[f]or purposes of this demurrer, LSU accepts,
25 as it must, the truth of Plaintiffs' fact allegations in the complaint unless they are contradicted by
26 Plaintiffs' other fact allegations."^{1/} (See, e.g., LSU Demurrer, p. 1, n.1.) Adventist joined in that

27 ^{1/} It is true that LSU pointed out, in a footnote, an instance where Plaintiffs had quoted part
28 of the LSU faculty handbook's mission statement but Plaintiffs had omitted the beginning of the
mission statement, where it states "Our community is rooted in the Christian gospel and Seventh-
day Adventist values and ideals." (Complaint, ¶ 31.) However, LSU did not base any arguments in

1 portion of LSU's demurrer. Adventists, like LSU, do not need the court to decide any factual
2 disputes because, as Plaintiffs' "... complaint also contains admissions that make clear what the
3 true story is." (LSU Demurrer, pp. 4:20-21, 5:21-22, 6:9-10.)

4 The real problem Plaintiffs have is that their complaint does not consist of properly pleaded
5 facts. Instead it is littered with improperly pleaded conclusions, many of which are contradicted by
6 fact admissions that are pled. More importantly, while Plaintiffs now assert they are not raising
7 First Amendment issues their complaint seeks damages and injunctive relief against Adventists
8 based on Plaintiffs' misguided belief that they can have a court tell religious organizations how to
9 govern themselves and cooperate with other Seventh-day Adventist organizations.

10 **3. PLAINTIFFS' ARGUMENT THAT THEY CAN PLEAD ALTERNATE THEORIES**
11 **OF RECOVERY FAILS TO ADDRESS THE PROBLEM THAT THEY CANNOT**
12 **PLEAD INCONSISTENT FACTUAL ALLEGATIONS**

12 Plaintiffs assert that they are entitled to plead "in the alternative" and therefore their
13 complaint is not subject to a demurrer. However, although one may plead alternative theories and
14 still maintain a viable complaint, he cannot plead factual allegations that are so internally
15 inconsistent that they negate one another. (*O'Hare v. Marine Electric Co.* (1964) 229 Cal.App.2d
16 33, 36; *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390.)
17 As discussed in detail in the demurrer, that is exactly what Plaintiffs have done.

18 Plaintiffs attempt to avoid that rule by pointing out that *Manti v. Gunari* (1970) 5
19 Cal.App.3d 442, did not involve a demurrer. However, Plaintiffs ignore the other case Adventists
20 cited for the same proposition, *Gentry v. eBay, Inc.* (2002) 99 Cal. App. 4th 816, 827-828, which
21 cited that holding from *Manti* with approval. *Gentry* was a demurrer case and it affirmed the
22 dismissal of a complaint with prejudice after a demurrer with sustained without leave to amend.
23 Therefore, Plaintiffs cannot avoid the correctly stated rule by characterizing their inconsistent
24 allegations as "alternative theories."

25 _____
26 its demurrer nor its motion to strike on the extrinsic evidence alluded to in that footnote. The only
27 arguments LSU made based on facts contradicting the Complaint were supported by the bylaws
28 Plaintiffs referred to but did not attach to the Complaint. As LSU's demurrer and request for
judicial notice pointed out, case law expressly allows courts to disregard facts and conclusions in a
complaint that are contradicted by judicially noticeable facts. (See LSU demurrer at p. 7, citing *Del*
E. Webb Corp. v. Structural Materials Co. (1981) 123 Cal.App.3d 593, 604.)

1 In any event, as discussed in the demurrer and LSU's reply brief, the facts in Plaintiffs'
2 complaint establish that their alternative theories are all barred by the First Amendment.

3 **4. PLAINTIFFS ASSERTION THAT THE ADVENTISTS' RELIGIOUS AFFILIATION**
4 **WITH LSU IS IRRELEVANT TO THE CONTRACTUAL INTERFERENCE**
5 **CLAIMS IS MERITLESS**

6 Plaintiffs assert that Adventists rely on facts outside the Complaint to show the religious
7 affiliation between Adventists and LSU. It is true that Adventists ask the court to take judicial
8 notice of LSU's bylaws because Plaintiffs' complaint mischaracterized those bylaws, quoting part
9 while omitting the parts that state: "*The University is operated by its Board of Trustees as an*
10 *integral part of the Pacific Union Conference of Seventh-day Adventists.*" (LSU bylaws, RJN exh.
11 2, Art. IV, p. 1, emphasis added.) Furthermore, LSU's bylaws state LSU is required to act
12 consistently with PUC's policies. (LSU bylaws, RJN exh. 2, Art. VI, § 6.9, p. 8.) Plaintiffs'
13 quotations omit those important provisions to avoid revealing conclusionary allegations that LSU is
14 entirely separate, and has conflicting interests with, PUC are a sham. However, as set forth in the
15 request for judicial notice, Adventists are entitled to have the court take judicial notice of the
16 bylaws and the court can disregard conclusionary allegations that are inconsistent with judicially
17 noticeable facts.

18 However, it is not necessary to go outside the pleadings to show the religious affiliation
19 between Adventists and LSU rises to a level that is constitutionally protected. Plaintiffs admit that
20 "La Sierra University is affiliated with the Seventh -Day Adventist Church, and defendant Pacific
21 Union provides financial support to La Sierra University. It is one of fourteen Seventh-day
22 Adventist higher education institutions in the United States and has approximately 2,000 students."
23 (Complaint, ¶21.) Plaintiffs further admit that LSU is accredited by the Adventist Accrediting
24 Association ("AAA"), which is the accrediting organization run by the General Conference of
25 SDAs. (Complaint ¶¶ 22, 2, 72-74.) The complaint admits that LSU's mission statement has a
26 religious focus, by quoting part of LSU's faculty handbook, which says LSU's mission is: "To
27 know God, ourselves, and the world through reflection, instruction, and monitoring; . . ."
28 (Complaint, ¶31.)

1 Plaintiffs also admit that “pursuant to the La Sierra University bylaws” the composition of
2 the board of trustees is designed to insure that LSU is a SDA institution. Plaintiffs admit that the
3 bylaws require that 22 of the 23 members of the board of trustees must be members of the SDA
4 church. They further admit that the bylaws dictate that the PUC’s President is the chairman of
5 LSU’s board and that other SDA leaders are always members of LSU’s board. (Complaint, ¶¶115-
6 116.)

7 Plaintiffs further admit that they are suing the Church Defendants because of
8 communications between SDA leaders with official positions within the Church Defendants.
9 Specifically, Plaintiffs allege that LSU’ is liable because of the actions of its Chairman of the
10 Board, Ricardo Graham, who is also president of the PUC. (Complaint, ¶1.) Plaintiffs allege that
11 the NAD acted through its president, Daniel Jackson, and its vice-president for education, Larry
12 Blackmer. Plaintiffs allege that those three individuals, along with counsel for LSU and NAD
13 spoke amongst themselves and later discussed matters with the president of LSU. Significantly,
14 Plaintiffs do not allege that these church officials communicated with anyone outside the church
15 when deciding their course of action with Plaintiffs. Plaintiffs also admit, albeit in a back-handed
16 way, that the trustees of LSU voted to accept Plaintiffs’ resignations. (Complaint, ¶65.)

17 Plaintiffs further admit that their resignations were requested because Plaintiffs “. . . were
18 very critical of defendants Blackmer, Jackson, and Graham . . .” (Complaint, ¶2, p.2:18.) Plaintiffs
19 further admit that plaintiff Bradley was considered by church officials to be “. . . one of the most
20 vocal critics of the Seventh-day Adventist church’s efforts to influence the academic curriculum of
21 La Sierra University.” (Complaint, ¶4, p. 3:1-3.) Elsewhere, Plaintiffs reiterate that during the
22 conversation recorded by Darnell he and the Plaintiffs “. . . were critical of defendants Blackmer,
23 Jackson, and Graham regarding their handling of the issues surrounding AAA’s negative
24 accreditation of La Sierra University . . .” (Complaint, ¶92, p.18:7-9.)

25 In short, Plaintiffs’ complaint amply establishes that these are religiously affiliated
26 organizations. Consequently, Plaintiffs cannot pursue tort or injunctive remedies based on
27 Plaintiffs’ contentions that courts can decide these Seventh-day Adventist organizations have
28 conflicting interests and award tort damages against them because they “persuaded and

1 each other to implement Adventists values to further their cooperative educational mission.
2 Notably, Plaintiffs do not cite a single case that allows recovery for interference with contractual
3 relations based on cooperating religious organizations' communications with each other. That is
4 because the First Amendment prohibits courts from getting involved in such church governance
5 issues. Plaintiffs contention that this court should examine the Seventh-day Adventist Church's
6 structure and governance and adjudicate that Adventists are "strangers" who have no right to even
7 "encourage and persuade" LSU that its mission will be advanced by having administrators and
8 faculty who agree with Seventh-day Adventist Church leadership would require the court to ignore
9 the cases that Adventists and LSU cited in their demurrer.

10 Plaintiffs attempt to distinguish *Proctor v. General Conference of Seventh-Day Adventists*
11 (D. Ill. 1986) 651 F. Supp. 1505, 1526, which rejected an identical contention by arguing that
12 *Proctor* was based on a factual finding of ownership.. However, Plaintiffs cite no case that requires
13 a church to have formal ownership over all of its cooperating organizations. Courts cannot insist on
14 churches using a particular form of governance without violating the First Amendment. The
15 *Proctor* court reviewed the Seventh-day Adventist Church's structure and observed that:
16 "Theologically, the Seventh-day Adventist Church is a single unified church. Church documents
17 that prescribe the Church's structure and governance confirm that all parts of the Church are parts of
18 a single entity." (*Proctor, supra*, 651 F. Supp. at 1515.) Therefore, this court should sustain this
19 demurrer without leave to amend.

20 **A. Adventists' Acts Are Protected by the First Amendment**

21 Plaintiffs assert they have alleged facts that show that PUC and NAD engaged in intentional
22 acts, interfering with LSU's contractual relations with Plaintiffs. However, as more fully set forth in
23 LSU's demurrer, LSU is an Adventist university whose origins, funding, bylaws and leadership
24 structure is tied to PUC and NAD. Accordingly, the First Amendment precludes courts from
25 evaluating whether LSU, PUC and NAD have conflicting or complementary approaches to
26 accomplishing LSU's Seventh-day Adventist religious mission. Plaintiffs do not cite any contrary
27 authority.
28

1 **B. Plaintiffs' Conclusory Allegations of Intentional Acts Are Insufficient**

2 An essential element to these three causes of action is an *intentional act taken by the*
3 *defendant designed to cause* a breach of the contract or to interfere with the economic relationship.
4 Plaintiffs Complaint fails to plead this essentially element requiring that this demurrer be sustained.
5 Plaintiffs have pleaded only legal conclusions and have failed to allege any acts, intentional or
6 otherwise, to support their claims.

7 Adventists' demurrer cited case law holding that in pleading a cause of action for intentional
8 interference, a plaintiff "must not only plead and prove intentional acts, but also that such acts were
9 designed to disrupt the formation of a prospective economic relationship." (*Hofmann Co. v. E. I. du*
10 *Pont de Nemours & Co.*, (1988) 202 Cal. App. 3d 390, 402.) In business torts, the defendant's
11 motive is crucial. (*Seaman's Direct Buying Service, Inc. v. Standard Oil Co.* (1984) 36 Cal.3d 752,
12 765-767.) Here, the complaint admits that LSU's chairman's motive was that he believe it was not
13 in the best interests of LSU to allow vocal critics of the Seventh-day Adventist church fill important
14 leadership positions. (Complaint, ¶53.) That motive is not tortious. It is constitutionally privileged.
15 Plaintiffs' fail to cite any case allowing recovery under even remotely similar circumstances.

16 Accordingly, this court should sustain Adventists' demurrer, because Plaintiffs have failed to
17 plead any intentional acts to support these causes of action.

18 **5. PLAINTIFFS' COMPLAINT FAILS TO STATE FACTS SUFFICIENT TO**
19 **MAINTAIN CAUSES OF ACTION FOR BASED UPON INTERFERENCE WITH**
20 **CONTRACTUAL RELATIONSHIPS**

21 Plaintiffs' contention that they have pled their contracts' legal effect is meritless. Contrary to
22 plaintiffs' assertions in the opposition, the complaint does not allege the substance of their contracts'
23 relevant terms. As stated in Witkin, California Procedure, (3rd ed.), Pleading, section 468 at p.507,
24 pleading according to legal effect is more difficult, since it requires "a careful analysis of the
25 instrument, comprehensiveness in statement, [and] avoidance of legal conclusions. . ." California
26 courts have acknowledged the difficulty of pleading a contract according to its legal effect. For
27 example, in *Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 640, the court affirmed a summary
28 judgment in favor of the defendant because the plaintiff failed to properly plead the contract
according to its legal intendment and effect. Plaintiffs' complaint in this case is replete with legal

1 conclusions and certainly is not comprehensive. Missing from the complaint are clear factual
2 allegations regarding the terms and conditions of Plaintiffs' alleged employment contracts.
3 Significantly, Plaintiffs do not allege the express terms of their contracts that allegedly reflect that
4 their employment was not at will and could only be terminated for good cause. As stated in the
5 demurrer, to be sufficient, a complaint must contain a statement of facts that, without the aid of any
6 conjectured facts not stated, shows a complete cause of action. (*Going v. Dinwiddie* (1890) 86 Cal.
7 633, 637.)

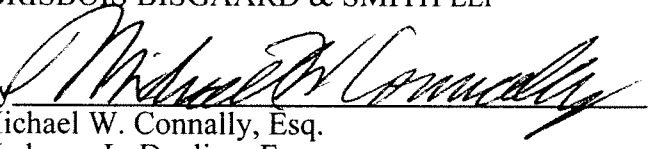
8 Hence, the demurrer to the sixth cause of action (intentional interference with contractual
9 relations) and eighth cause of action (inducing breach of contract) should be sustained.

10 **6. CONCLUSION**

11 The First Amendment gives religious organizations, rather than courts, the right to decide
12 who can best serve as leaders of those organizations and how best to accomplish their religious
13 missions. Plaintiffs say their lawsuit seeks tort damages for employment torts but it plainly seeks to
14 do much more. Plaintiffs are asking this court to restructure a SDA university and limit or prohibit
15 SDA leaders from considering SDA values and doctrines when making decisions about who should
16 be officers of the university. The First Amendment forbids courts from exercising that kind of
17 control over religious institutions.

18 DATED: October 13, 2011

LEWIS BRISBOIS BISGAARD & SMITH LLP

19
20 By 
21 Michael W. Connally, Esq.
22 Madonna L. Devling, Esq.
23 Sean Paisan, Esq.
24 Attorneys for Defendants, LA SIERRA UNIVERSITY;
25 PACIFIC UNION CONFERENCE OF SEVENTH-
26 DAY ADVENTISTS; NORTH AMERICAN
27 DIVISION CORPORATION OF SEVENTH-DAY
28 ADVENTISTS

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CALIFORNIA STATE COURT PROOF OF SERVICE
Jeffry M. Kaatz, James W. Beach and Gary L. Bradley v. Ricardo Graham, et al.
RCSC Case No.: RIC 1112557

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to the action. My business address is 650 Town Center Drive, Suite 1400, Costa Mesa, California 92626.

On October 13, 2011, I served the following document(s): **DEFENDANTS PACIFIC UNION CONFERENCE OF SEVENTH-DAY ADVENTISTS AND NORTH AMERICAN DIVISION CORPORATION OF SEVENTH-DAY ADVENTISTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEMURRER TO PLAINTIFF'S SIXTH, SEVENTH, AND EIGHTH CAUSES OF ACTION, AND NOTICE OF JOINDER IN LA SIERRA UNIVERSITY'S REPLY BRIEF SUPPORTING THE DEMURRER TO THE OTHER CAUSES OF ACTOIN IN PLAINTIFF'S COMPLAINT.**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

See Attached Service List

The documents were served by the following means:


(BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

(BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below and (specify one):

Placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope of package with the postage fully prepaid.

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

Executed on October 13, 2011, at Costa Mesa, California.



Carla Waller

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SERVICE LIST

Jeffry M. Kaatz, James W. Beach and Gary L. Bradley v. Ricardo Graham, et al.
RCSC Case No.: RIC 1112557

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