

1 JON DAGGETT, ESQ./SBN: 227375  
2 DEAN SCHIRMER, ESQ./SBN: 146407  
3 HIROSHIMA, JACOBS, ROTH and LEWIS  
4 1420 River Park Drive, Second Floor  
5 Sacramento, CA 95815  
6 Telephone: (916) 923-2223  
7 Facsimile: (916) 929-7335

8 Attorneys for Defendants, DANIEL R. JACKSON and LARRY BLACKMER

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

JEFFRY M. KAATZ, JAMES W.  
BEACH, and GARY L. BRADLEY,

Plaintiff,

v.

RICARDO GRAHAM; PACIFIC UNION  
CONFERENCE OF SEVENTH-DAY  
ADVENTISTS, a not-for-profit  
corporation; DANIEL R. JACKSON;  
LARRY BLACKMER; NORTH  
AMERICAN DIVISION CORPORATION  
FO SEVENTH-DAY ADVENTISTS, a  
not-for-profit corporation; and LA  
SIERRA UNIVERSITY, a not-for profit  
corporation; and DOES 1-100,

Defendants.

Case No.: RIC 1112557

**DANIEL R. JACKSON AND LARRY  
BLACKMER'S REPLY TO PLAINTIFF'S  
OPPOSITION TO MOTION TO QUASH**

**Date: November 18, 2011**

**Time: 8:30 a.m.**

**Judge: Craig G. Riemer**

**Dept: 5**

To JEFFRY M. KAATZ, JAMES W. BEACH and GARY L. BRADLEY, and their  
attorney of record.

Defendants LARRY BLACKMER and DANIEL R. JACKSON hereby submit their  
reply to plaintiffs' opposition to the defendants Motion to Quash Service of Summons of  
Complaint filed by plaintiffs.

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I.

**FACTUAL ALLEGATIONS**

Declaration of Richard McCune -

Plaintiffs make a number of assertions in their response to defendants Motion to Quash that are based upon shaky premises and unsupported evidence. Initially, the plaintiffs provide a Declaration from their attorney citing numerous "alleged" contacts of the defendants with the State of California. However, the declaration of plaintiffs' attorney acknowledges that there is not one shred of proof that any of those allegations are true. Plaintiffs attempt to bring forth a litany of alleged contacts to support their Complaint against individuals (the instant defendants) whose only connection to this matter is that they are employees of organizations being sued for actions taking place at La Sierra University and had some contact with the parties involved in the plaintiffs' resignations.

As evidence to support their opposition to the motion to quash, the Declaration of Richard McCune has absolutely no evidentiary value. Not one of the alleged facts in said Declaration is professed to be "true" by Mr. McCune. In fact, were he to do so, he would be committing perjury. Mr. McCune deftly states that if he were allowed to conduct discovery "it is likely that discovery would produce admissible evidence". Not that it "will" produce evidence, only that it is "likely" to produce evidence. Unlike the defendants' declarations which state facts under oath, the plaintiffs are merely throwing possible scenarios against a wall and hoping that something sticks. The defendants should not be subject to the cost or inconvenience of a lawsuit more than 3,000 miles away simply because the plaintiffs think they can come up with evidence to support the allegations of their Complaint. Additionally, plaintiffs request for a continuance of four months to torment the defendants and subject them to even further costs and inconvenience is simply not supported by the facts of this case or common decency. Dismissing the defendants from this lawsuit will not prevent the plaintiffs from conducting discovery as non-litigants may be deposed as well as parties. The

1 inconvenience to plaintiffs from having to comply with discovery procedures for non-  
2 litigants is nothing compared to the prejudice suffered by the defendants if they are  
3 required to defend a lawsuit in another State on the premise that the plaintiffs may  
4 somehow find the evidence needed to support their position.

5 As to Mr. McCune's assertion that "he has read numerous documents and  
6 spoken with individuals who profess personal knowledge of the events" which led him  
7 to believe that the requisite minimum contacts exist, why are none of those documents  
8 or declarations from those individuals attached to plaintiff's opposition to the Motion to  
9 Quash? That would be evidence, unlike plaintiffs counsel's declaration.

10 Declarations of Blackmer and Jackson –

11 Plaintiffs next attack the Declarations of Blackmer and Jackson as being self-  
12 serving, vague and incomplete. However, when compared to the declaration of R.  
13 McCune they are obviously superior as they actually state facts under the penalty of  
14 perjury rather than mere conjecture.

15 Plaintiffs attempt to argue that the Declarations are unresponsive to the direct  
16 question as to whether the defendants have the requisite minimum contacts with this  
17 jurisdiction to have "purposefully availed" themselves of the jurisdiction of California  
18 courts. However, review of the Declarations shows that contention is untrue. Both  
19 Defendants have stated under oath:

20 My contacts with California are minimal as I own no property in  
21 California or have any business interests in California. .... All actions  
22 related to this lawsuit took place in Maryland, with the exception of the  
23 faculty meeting which I attended and which was recorded by Lenny  
24 Darnell. However, that faculty meeting, and my actions there, is not a  
subject of this litigation. I have not been present in California for any  
reason related to this lawsuit since that time.

25 Nothing provided by the plaintiffs has shifted that burden back to the defendants.  
26 There is not one shred of evidence that the defendants have the requisite minimum  
27 contacts with this jurisdiction and the plaintiffs' attempts to paint these defendants with  
28 the same brush as the other defendants, including Ricardo Graham, is merely an

1 attempt to punish these defendants for giving a negative report as to the accreditation  
2 of La Sierra University. Plaintiffs seek revenge, by requiring these defendants to  
3 expend both time and money to defend themselves from the plaintiffs' unsupported  
4 allegations. The plaintiffs are aware that as individual defendants they will have limited  
5 or no funds to defend or pay any judgment against them and are solely brought into  
6 this lawsuit as leverage against the institutional defendants. In addition, everything  
7 they did was in the course and scope of their duties and they cannot be personally  
8 liable for any of their purported actions, even if true. Allowing the plaintiffs to continue  
9 this revenge based upon unsupported allegations should not be allowed.

10 Lastly, plaintiffs argue that the defendants declarations have focused on the  
11 merits of the case rather than their contacts with the forum State. As shown above,  
12 that is untrue, both defendants have stated under oath that they had minimal to  
13 contacts with this State. As to the statements regarding the merits of the case, they  
14 were made to 1) counteract the untruths in plaintiffs' Complaint and 2) to tell what  
15 exactly occurred and to show how those actions did not lead to a "purposeful  
16 avilment" of the jurisdiction of this court. Furthermore, plaintiffs' assertion that the  
17 defendants silence will lead to factual discovery of significant California contacts is  
18 unbelievable, as silence has never been an indication of guilt or innocence and should  
19 not be inferred so in this matter.

20 Receipt of Recording –

21 Plaintiffs argue that the defendants' admission in their declarations that they  
22 received the recording of the plaintiffs' meeting and forwarded it on to defendant  
23 Ricardo Graham was sufficient evidence that they were somehow involved in a  
24 nefarious plot to wrongfully terminate the plaintiffs in this matter. Initially, there has  
25 been no determination that the recording was made or obtained illegally. The party  
26 that recorded the conversation was invited to the plaintiffs' meeting and was not an  
27 intruder or unknown to the plaintiffs. Additionally, the recording was distributed by this  
28 individual to numerous individuals prior to finding itself in the possession of these

1 defendants. A fact glossed over by the plaintiffs. If possession of this recording was  
2 sufficient to impose liability, then the plaintiff should have sued numerous more  
3 individuals including the person who initially recorded the conversation. However,  
4 because they are not seeking revenge on them, they have not.

5 Another glaring deficiency in plaintiffs' argument is their avoidance of mentioning  
6 anything contained in that recording. Plaintiffs made numerous disparaging remarks  
7 regarding their employers and acted in a manner totally in conflict with the standards of  
8 conduct they were required to conform to as teachers/administrators of a Church  
9 University. Their resignations from their positions was based upon the fact that they  
10 were fully aware of their transgressions and sought to avoid the repercussions such  
11 conduct would bring forth. No matter how artfully pleaded, the plaintiffs in this matter  
12 were not terminated, they resigned and now seek to skew the facts so that they can  
13 support this instant litigation.

## 14 II.

### 15 REQUEST FOR A CONTINUANCE

16 Plaintiffs next seek to request a continuance of 4 months to allow them to  
17 conduct discovery to prove their allegations against these defendants. What they fail to  
18 state is their true reason for doing so. This request is merely an attempt to obtain  
19 discovery priority. Plaintiffs' counsel has been in dispute with counsel for the  
20 institutional defendants from the beginning of this lawsuit as counsel for the institutional  
21 defendants noticed his clients' depositions at the beginning of this litigation and  
22 therefore has deposition priority. Counsel for plaintiffs has disliked the defendants'  
23 right to deposition priority and is now seeking to do an end-run around the issue by  
24 requesting a 4 month continuance to do discovery on the "jurisdiction" issue and stay  
25 all other discovery.  
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27 More importantly, the plaintiffs are seeking to request something that is not at  
28 issue before the court. Defendants Motion only seeks to have the court determine

1 whether there are sufficient contacts to allow the plaintiffs to bring them before this  
2 court. Defendants have presented evidence that there are insufficient contacts with  
3 this forum and the plaintiffs have presented no evidence in contradiction. To allow the  
4 plaintiffs to request a continuance to conduct discovery presents an issue which is not  
5 before the court at this time.

6 Plaintiffs' opposition cites a number of cases for the proposition that they should  
7 be allowed to conduct additional discovery to prove the defendants should be brought  
8 into this action. They state that the authority relied on by the defendants supports this  
9 proposition, specifically the cases of Serafini v Superior Court and Goehring v Superior  
10 Court. However, what plaintiffs fail to recognize is that the continuances were granted  
11 based upon the fact that plaintiffs provided evidence to refute the defendant's  
12 contentions in those cases, which is not the case in this matter. As stated previously,  
13 the Declaration of R. McCune states that his conversations and review of the  
14 documents regarding the resignations of his clients has made certain facts "likely".  
15 However, he did not attach one document or one declaration from any of these alleged  
16 witnesses to support his opposition. His declaration was insufficient, as stated in the  
17 case of In re Automobile Antitrust Cases I & II, (2005) 135 Cal. App. 4th 100, 107:

18 On December 16, 2004, the trial court conducted further hearing on the  
19 motions to quash. It found that the only potential basis of jurisdiction over  
20 Honda, Nissan and Volkswagen would be special jurisdiction, not general  
21 jurisdiction. It issued tentative rulings denying the request for time to  
22 conduct further discovery of facts supporting the exercise of jurisdiction;  
23 finding that plaintiffs failed to meet their burden of proving jurisdiction; and  
24 indicating an intention to grant the motions to quash filed by all four foreign  
25 defendants. Two weeks later, the trial court filed a formal order granting  
26 the motions to quash, consistent with its tentative decision.

27 Thus it is evident that the granting of a continuance is not a foregone conclusion  
28 as the plaintiffs would have the court believe. The plaintiffs cannot shift their burden to  
provide the requisite evidence to the defendants because they were unprepared at the  
time of the filing of their Complaint. In fact, these defendants should not have been  
named at all. As stated in In re Automobile Antitrust Cases I & II, (2005) 135 Cal. App.

1 4th 100, 110:

2 The plaintiff must do more than merely allege jurisdictional facts. It must  
3 present evidence sufficient to justify a finding that California may properly  
4 exercise jurisdiction over the defendant. (See Sonora, supra, 83  
5 Cal.App.4th at p. 540.) The plaintiff must provide affidavits and other  
6 authenticated documents in order to demonstrate competent evidence of  
7 jurisdictional facts. Allegations in an unverified complaint are insufficient to  
8 satisfy this burden of proof. Declarations cannot be mere vague assertions  
9 of ultimate facts, but must offer specific evidentiary facts permitting a court  
10 to form an independent conclusion on the issue of jurisdiction. (Paneno v.  
11 Centres for Academic Programmes Abroad Ltd., supra, 118 Cal.App.4th at  
12 p. 1454; Jewish Defense Organization, Inc. v. Superior Court (1999) 72  
13 Cal.App.4th 1045, 1055 [85 Cal. Rptr. 2d 611]; Ziller Electronics Lab  
14 GmbH v. Superior Court (1988) 206 Cal. App. 3d 1222, 1233 [254 Cal.  
Rptr. 410].) Once the plaintiff satisfies the initial burden of proof of  
showing a defendant's minimum contacts in California, the burden shifts to  
the defendant to present a compelling case demonstrating that the  
exercise of jurisdiction by our courts would be unreasonable. (Snowney,  
supra, 35 Cal.4th at p. 1062; Vons, supra, 14 Cal.4th at pp. 449, 476;  
Bridgestone, supra, 99 Cal.App.4th at p. 774; see Burger King, supra, 471  
U.S. at pp. 476–477.

15 Plaintiffs support for their opposition to the Motion to Quash contained nothing  
16 but vague assertions and suppositions. There has been no shifting of the burden to  
17 these defendants and thus they should not be penalized and kept in a lawsuit that they  
18 should never have been involved with in the first place.

20 III.

21 CONCLUSION

22 Based on the foregoing, defendants respectfully request that the Court grant the  
23 defendants Motion to Quash and deny the plaintiffs' request for a continuance of this  
24 matter to conduct discovery based upon vague assertions and suppositions made by

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the plaintiffs' counsel.

Dated: November 10, 2011

By: 

JON DAGGETT / SBN 227375  
DEAN SCHIRMER / SBN 146409  
**HIROSHIMA, JACOBS, ROTH and LEWIS**  
1420 River Park Drive, Second Floor  
Sacramento, California 95815  
Telephone: (916) 923-2223  
Facsimile: (916) 929-7335  
Attorneys for Defendants, DANIEL R.  
JACKSON and LARRY BLACKMER

**PROOF OF SERVICE**  
CCP 1013(a), 1013(c), 2015.5/FRCP 5  
California Rules of Court 2.253, 2.255, 2.260, 2.301(3), 2.306(a)

1 CASE NAME: KAATZ v. GRAHAM, et al.  
2 COURT NAME: RIVERSIDE COUNTY SUPERIOR COURT  
3 CASE NO: RIC 1112557

4 I am a resident of, or employed in the County of Sacramento, State of California. I am over the age of eighteen years  
5 and not a party to this action. My business address is: 1420 River Park Drive, 2<sup>nd</sup> Floor; Sacramento, CA 95815.

6 On the date below, I served the following listed documents by the method indicated below, on the parties in this action:

**DANIEL R. JACKSON AND LARRY BLACKMER'S REPLY TO PLAINTIFF'S OPPOSITION TO  
7 MOTION TO QUASH**

- 8  BY U.S. MAIL: By placing  the original/  a true copy thereof enclosed in a sealed envelope(s), with postage fully  
9 prepaid, addresses as per the attached service list, for collection and mailing at Hiroshima, Jacobs, Roth & Lewis in  
10 Sacramento, California following ordinary business practices. I am readily familiar with the firm's practice for collection  
11 and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the U.S. Postal  
12 Service on the same day in the ordinary course of business. See CCP 1013(a).
- 13  BY OVERNIGHT DELIVERY: By delivering the document(s) listed above in a sealed envelope(s) or package(s)  
14 designated by the express service carrier, with delivery fees paid or provided for, addresses as per the attached service  
15 list, to a facility regularly maintained by the express service carrier or to an authorized courier or driver authorized by the  
16 express service to receive documents. Sent Via FEDERAL EXPRESS. See CCP 1013(c).
- 17  BY PERSONAL DELIVERY:
- 18  By personally delivering the document(s) listed above to the parties listed on the service list. See CCP 1011.  
19  By personally delivering the documents(s) listed above to the offices at the address(es) shown on the service list.  
20 See CCP 1011(a).  
21  By placing the document(s) listed above in a sealed envelope(s) and instructing a registered process server to  
22 personally deliver the envelope(s) to the offices at the address(es) set forth on the attached service list. The signed proof  
23 of service by the registered process server is attached.
- 24  BY ELECTRONIC SERVICE: (via electronic filing service provider) By electronically transmitting the document(s) listed  
25 above to a LexisNexis File and Serve, an electronic service provider, at [www.fileandserve.lexisnexis.com](http://www.fileandserve.lexisnexis.com) pursuant to  
26 the Court's Order mandating electronic Service. The transmission was reported as complete and without error. See  
27 California Rules of Court 2.253, 2.255, 2.260.
- 28  BY ELECTRONIC SERVICE: (to individual persons) By electronically transmitting the document(s) listed above to the  
email address(es) of the person(s) set forth on the attached service list. The transmission was reported as complete  
without error. See Rules of Court 2.260.
- BY FACSIMILE: By transmitting the document(s) listed above from HIROSHIMA, JACOBS, ROTH & LEWIS in  
Sacramento, California to the facsimile machine telephone number(s) set forth on the attached service list. The  
telephone number I used was (916) 929-7335. The facsimile machine complies with Rule 2.301(3) of the California  
Rules of Court. Service by facsimile transmission was made pursuant to the agreement of the parties, confirmed in  
writing. Pursuant to California Rules of Court, Rule 2.306(a), I caused the machine to print a transmission record of the  
transmission, a copy of which is attached to this Declaration.
- STATE I declare under the penalty of perjury under the laws of the State of California that he above is true and  
correct.
- FEDERAL I declare under the penalty of perjury under the laws of the United States that I am employed in the office of  
a member of the bar of this court whose direction the service is made.

Executed on November 14, 2011, at Sacramento, California.

\_\_\_\_\_  
CHRISTINA WILL

/s/

\_\_\_\_\_  
(Signature)

PROOF OF SERVICE  
CCP 1013(a), 1013(c), 2015.5/FRCP 5  
California Rules of Court 2.253, 2.255, 2.260, 2.301(3), 2.306(a)

SERVICE LIST

COUNSEL	PHONE/FAX/EMAIL	PARTY(IES)
Richard D. McCune, Esq. David C. Wright, Esq. Michele M. Vercoski, Esq. McCuneWright LLP 2068 Orange Tree Lane, Suite 216 Redlands, CA 92374	PH: (909) 557-1250 FX: (919) 557-1275 EM: <a href="mailto:rdm@mccunewright.com">rdm@mccunewright.com</a> <a href="mailto:dcw@mccunewright.com">dcw@mccunewright.com</a> <a href="mailto:mmv@mwtriallawyers.com">mmv@mwtriallawyers.com</a>	<i>Counsel for PLAINTIFFS</i>  JEFFRY M. KAATZ, JAMES W. BEACH, and GARY L. BRADLEY
Michael W. Connally, Esq. Madonna L. Devling, Esq. Sean Paisan, Esq. LEWIS BRISBOIS BISGAARD & SMITH, LLP 650 Town Center Drive, Suite 1400 Costa Mesa, CA 92626	PH: (714) 545-9200 FX: (714) 850-1030 EM: <a href="mailto:connally@lbbslaw.com">connally@lbbslaw.com</a> <a href="mailto:devling@lbbslaw.com">devling@lbbslaw.com</a> <a href="mailto:spaisan@lbbslaw.com">spaisan@lbbslaw.com</a>	<i>Counsel for DEFENDANTS</i>  LA SIERRA UNIVERSITY, PACIFIC UNION CONFERENCE OF SEVENTH-DAY ADVENTISTS and NORTH AMERICAN DIVISION CORPORATION OF SEVENTH- DAY ADVENTISTS