



P99000094885

**Dandar & Dandar**

A Professional Association  
Attorneys at Law

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Tampa, Florida 33607  
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October 19, 1999

EFFECTIVE DATE

11-1-99

Secretary of State  
Division of Corporations  
Post Office Box 6327  
Tallahassee, Florida 32314

40000302074  
10/21/99 01057 014  
\*\*122.50 \*\*18

RE: <sup>me Pherson Trust</sup> THE LISA FOUNDATION, INC.

Dear Sir/Madam:

Enclosed herein please find an original and one copy of Articles of Incorporation for The Lisa Foundation, Inc. Also enclosed is our check in the amount of \$122.50 for filing fees, certified copy and registered agent designation.

Thank you for your assistance.

Sincerely yours,

*Kennan G. Dandar*  
Kennan G. Dandar

KGD/dmw

Enclosures

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

OCT 21 1999

OCT 28 1999

OCT 2 1999

FILED

1999 OCT 21 AM 8 26

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION

OF

LISA MCPHERSON TRUST, INC.

**EFFECTIVE DATE**  
11-1-99

ARTICLE I

NAME OF CORPORATION

The name of the corporation is

LISA MCPHERSON TRUST, INC.

ARTICLE II

DURATION

This corporation shall have perpetual existence commencing on November 1, 1999.

ARTICLE III

PURPOSE OF CORPORATION

This corporation is organized for the purpose to provide educational seminars, counselling and for the purpose of transacting any or all lawful business.

ARTICLE IV

CAPITAL STOCK

1. The maximum number of shares of stock authorized to be issued by this corporation is 100 shares of common stock, all of which shall have the par value of \$1.00 per share, and all of which shall have the same rights and privileges.

2. Each share of common stock shall entitle the holder to one vote at any shareholder's meeting and to otherwise participate in any such meetings and in the assets of the corporation, and such shares of common stock shall be fully paid and non-assessable. Such shares of common stock shall be paid for in lawful money of the United

assessable. Such shares of common stock shall be paid for in lawful money of the United States of America or in property, labor or services, at a fair and just evaluation to be fixed by this corporation's shareholders acting as an executive committee of the corporation as to the value of the property or services received in consideration for the issuance of stock shall be conclusive and binding upon all persons whomsoever.

#### ARTICLE V

##### ADDRESS AND RESIDENT AGENT

The street address of the initial principal office of this corporation is P.O. Box 191, Clearwater, Florida, and the initial registered agent of this corporation at such address shall be STACY BROOKS, 5340 West Kennedy Blvd., Suite 201, Tampa, FL 33609

#### ARTICLE VI

##### SUBSCRIBERS

The names and residences of the subscribers to these Articles of Incorporation of LISA MCPHEESON TRUST, INC. are:

<u>NAMES</u>	<u>ADDRESS</u>
ROBERT MINTON	137 Fremont Road Sandown, NH 03873

#### ARTICLE VII

##### OFFICERS

1. The officers of the corporation shall be a President, Vice-President, and Secretary/Treasurer. The names of the persons who are to serve as officers of the corporation are:

PRESIDENT/SECRETARY/TREASURER: ROBERT MINTON



2. The officers shall be elected at the annual meeting of the Board of Directors, or as provided by the By-laws of the corporation.

## ARTICLE VIII

### BOARD OF DIRECTORS

1. The business affairs of this corporation shall be managed by the Board of Directors. The corporation shall have one director initially which may be increased from time to time by the By-Laws, but shall never be less than one director. The Board of Directors shall be members of the corporation and elected to hold office in accordance with the By-laws.

2. The name and address of the person who are to serve as director for the first year or until the first annual meeting of the corporation is:

NAME

ROBERT MINTON

ADDRESS

137 Fremont Road  
Sandown, NH 03873

## ARTICLE IX

### BY-LAWS OF CORPORATION

1. The Board of Directors of this corporation may provide such By-laws for the conduct of its business and the carrying out of its purposes as they may deem necessary from time to time.

2. Upon proper notice, the By-laws may be amended, altered or rescinded by a majority vote of those members of the Board of Directors present at any regular meeting or any special meeting called for that purpose.

ARTICLE X

POWERS

All corporate powers shall be exercised by or under the authority of, and the business and affairs of this corporation shall be managed under the direction of the Shareholders of this corporation.

ARTICLE XI

DISTRIBUTION OF STOCK

The shares of the capital stock of this corporation shall be issued initially to the following persons and in the amounts set opposite their names:

ROBERT MINTON                      100 Shares

ARTICLE XII

AMENDMENTS

This corporation reserves the right to amend or repeal any provision contained in these Articles of Incorporation, or any amendment hereto, and any right conferred upon the Shareholders is subject to this reservation.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation, this 18th day of October, 1989.

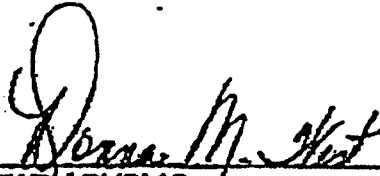
  
\_\_\_\_\_  
ROBERT MINTON

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

BEFORE ME, a notary public authorized to take acknowledgements in the state and county set forth above, personally appeared ROBERT MINTON, known to me and

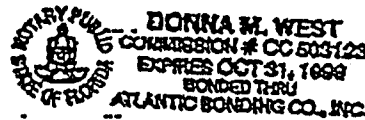
known by me to be the persons who executed the foregoing Articles of Incorporation, and they acknowledged before me that they executed these Articles of Incorporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18<sup>th</sup> day of October, 1999.



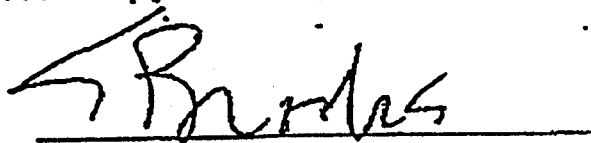
NOTARY PUBLIC  
My commission expires:

Personally Known   
Produced ID \_\_\_\_\_  
Type of ID Produced \_\_\_\_\_



### ACCEPTANCE OF REGISTERED AGENT

I hereby agree as Registered Agent of LISA MCPHERSON TRUST, INC. to accept service of process and to comply with all requirements of law.





Path:

newsmaster1.prod.itd.earthlink.net!nntp.earthlink.net!newsfeed1.earthlink.net!newsfeed.dir  
ect.ca!pln-w!spln!extra.newsguy.com!newsp.newsguy.com!news1

From: Bob Minton <bob@minton.org>

Newsgroups: alt.religion.scientology

Subject: The future of The Lisa McPherson Trust

Date: Wed, 02 Feb 2000 16:15:51 -0500

Organization: The Lisa McPherson Trust, 33 N. Fort Harrison Ave., Clearwater, Florida  
33755 Telephone (727) 467-9335, Fax (727) 467-9345

Lines: 64

Message-ID: <3k7h9so40bdqfab98efcdd9rfl5oq1v2st@4ax.com>

Reply-To: bob@minton.org

NNIP-Posting-Host: p-554.newsdawg.com

Mime-Version: 1.0

Content-Type: text/plain; charset=us-ascii

Content-Transfer-Encoding: 7bit

X-Newsreader: Forte Agent 1.7/32.534

Xref: nntp.earthlink.net alt.religion.scientology:1067807

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We are being asked to employ all sorts of people to help us and incur significant additional equipment at The Lisa McPherson Trust. The budget at LMT is already very sizeable. Therefore, unless people other than mc are willing to support The Lisa McPherson Trust financially right now, we are constrained.

At the moment, we are working without the help of one our key officers, Kim Baker, until her immigration matters are sorted out. Kim will be the cornerstone of our outreach program into the CW community and we are anxiously awaiting her arrival in about 6 weeks.

There are many very qualified people who would like to work with us. I could spend all the money I ever plan to spend on The Lisa McPherson Trust in the first year or two and be done with it in the hopes that others will step up to the plate and support it. I am not however a big believer in chance. Nevertheless, the financial support will eventually come but people want to see what we do and how we do it first. I understand that and nevertheless I fully expect that within 5 years, LMT will be self-sustaining. BUT, The Lisa McPherson Trust is planning to be in CW for the long term working with Scientologists to reform the evil that Miscavige perpetrates in and through the Church of Scientology; and to educate the naive in this country, starting with Clearwater, Florida about the dangers that the present Church of Scientology poses to the most basic freedoms of any democracy.

**DEFENDANT'S  
EXHIBIT**

The family of Lisa McPherson has given us their full support and, as you know, promised to give the vast majority of any settlement or award from trial to The Lisa McPherson Trust. Obviously, given The Church of Scientology's propensity to drag injustice out as long as possible, that money will not be forthcoming for a very long time. But the blood-stained money from Scientology will come. And, when that money comes, The Lisa McPherson Trust, named in honor of Lisa McPherson's never ending quest to be free of the abuse, deception and betrayal of the Church of Scientology, will wash the blood from Scientology's money and be forever endowed. That endowment to The Lisa McPherson Trust will provide the keys to unlock the chains binding lost souls to the Church of Scientology's abusive and deceptive practices as well as those trapped in other abusive mind-control cults.

We expect we will have many supporters along the way. But without doubt our biggest supporter is that famous smiling face of Lisa McPherson. I've looked at her childhood photographs, pictures with family and friends, her high school graduation picture, her "Clear" picture and many others. There was so much hope and happiness and love in those dancing and mischievous eyes of Lisa's. Tragically, the Church of Scientology and people that Lisa trusted as friends, ripped that hope and happiness and love from her heart and replaced those dancing and mischievous eyes with the gaunt and sunken eyes seen on the autopsy table and captured forever in the autopsy photographs of her battered, bruised and dehydrated body. Scientology has yet to account for this murder and neither have her "friends."

It is part of our responsibility at The Lisa McPherson Trust to tell Lisa's story and to force The Church of Scientology and Lisa's "friends" to account for Lisa's murder. Today, in a separate message, I will call upon Brenda Hubert, who knew Lisa for 20+ years to explain her part in Lisa's betrayal.

Lisa, we will never forget you!

Robert S. Minton, Chairman  
The Lisa McPherson Trust

P.S. Take a look on [alt.binaries.scientology](http://alt.binaries.scientology) or [alt.binaries.misc](http://alt.binaries.misc) at the new look planned for The Lisa McPherson Trust Building in Clearwater.



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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL  
CIRCUIT OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY  
CIVIL DIVISION

ESTATE OF LISA McPHERSON, by and  
through its Personal Representative,  
DELL LIEBREICH,

Plaintiff,

vs.

Case No.: 97-01235

CHURCH OF SCIENTOLOGY FLAG  
SERVICE ORGANIZATION, INC.; JANIS  
JOHNSON; ALAIN KARTUZINSKI; and  
DAVID HOUGHTON, D.D.S.,

Defendants.

VIDEOTAPED DEPOSITION OF ROBERT MINTON  
Volume II

C O N F I D E N T I A L

BEFORE: MR. JOHN W. BOULT, SPECIAL MASTER  
Barr, Murman, Tonelli, Herzfeld & Rubin  
Attorneys at Law  
201 East Kennedy Boulevard, Suite 2000  
Tampa, Florida 33602

Reported by:

Susan D. Wasilewski, RPR, CRR  
May 24, 2000

**SW** Sclafani Williams Court Reporters, Inc.  
Registered Professional Reporters Serving Central Florida

Lakeland                      Tampa                      Sarasota                      Winter Haven  
Sebring                      Bartow                      St. Petersburg                      Bradenton



1 it's obvious from the question or unless I specify  
2 otherwise, is as of January 13th, 1998. I'm not  
3 asking --

4 A. Through today?

5 Q. Yes.

6 A. Yes, I understand that.

7 Q. So with that parameter in mind and for all  
8 the questions I'm giving you, did you have or were  
9 you in any contract with Mr. Dandar?

10 A. No.

11 Q. Have you given Mr. Dandar any money since  
12 January 13th, 1998?

13 A. Yes.

14 Q. Tell me all the amounts that you have  
15 given him.

16 A. I don't know all the amounts. The total  
17 amounts to a little over a million dollars,  
18 \$1,050,000.

19 Q. Did you make these checks to him yourself?

20 A. Did I what?

21 Q. Did you make the checks to him yourself?

22 A. Yes.

23 Q. Each check was drawn on one of your  
24 personal accounts?

25 A. I believe it was, yes.

1 MR. BOULT: How is this related to the --

2 MR. MOXON: This is to Bennetta

3 Slaughter. It's threats by the company owned  
4 by Mr. Wilson to Bennetta Slaughter, who is  
5 a --

6 MR. HERTZBERG: He's testified already  
7 that he knows her to be a witness in this  
8 case.

9 MR. BOULT: Excuse me. This comes under  
10 the category of pressures upon witnesses?

11 MR. MOXON: Yes sir.

12 MR. BOULT: Overruled.

13 A. No, I didn't.

14 Q. The Lisa McPherson Trust hired this firm?

15 A. I don't have any knowledge of it but they  
16 may have.

17 Q. I believe you testified in your Lisa  
18 McPherson\*Trust person most knowledgeable  
19 deposition that you were the person who provided  
20 the funds for the Lisa McPherson Trust, correct?

21 A. I did.

22 Q. So any funds that Lisa McPherson Trust  
23 used to hire Ann Mason were acquired by you, does  
24 that stand to reason?

25 A. I don't have any knowledge of this, you

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CERTIFICATE OF REPORTER OATH

STATE OF FLORIDA

COUNTY OF POLK

I, the undersigned authority, hereby  
certify that the witness named herein personally  
appeared before me and was duly sworn.

WITNESS my hand and official seal this  
25th day of May, 2000.

*Susan D. Wasilewski*



Susan D. Wasilewski  
MY COMMISSION # CC869721 EXPIRES  
October 23, 2003  
BONDED THRU TROY FAIR INSURANCE, INC.  
San D. Wasilewski, RPR, CRR  
Notary Public - State of Florida

My Commission Expires: 10-23-03

## 1 REPORTER'S DEPOSITION CERTIFICATE

2 STATE OF FLORIDA

3 COUNTY OF POLK

4 I, Susan D. Wasilewski, Registered  
 5 Professional Reporter, Certified Realtime Reporter  
 6 and Notary Public in and for the State of Florida  
 7 at large, hereby certify that the witness appeared  
 8 before me for the taking of the foregoing  
 9 deposition, and that I was authorized to and did  
 10 stenographically and electronically report the  
 11 deposition; and that a review of the transcript was  
 12 requested; and that the transcript is a true and  
 13 complete record of my stenographic notes and  
 14 recordings thereof.

15 I FURTHER CERTIFY that I am neither an  
 16 attorney nor counsel for the parties to this cause,  
 17 nor a relative or employee of any attorney or party  
 18 connected with this litigation, nor am I  
 19 financially interested in the outcome of this  
 20 action.

21 DATED THIS 25th day of May, 2000, at  
 22 Lakeland, Polk County, Florida.

23

24

25



Susan D. Wasilewski  
 MY COMMISSION # CC869721 EXPIRES  
 October 23, 2003  
 BONDED THRU TROY FARM INSURANCE, INC.

*Susan D. Wasilewski*

Susan D. Wasilewski, RPR, CRR  
 My Commission Expires: 10-23-03  
 Transcript ordered: 5-24-00



IN THE COURT OF THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

DELL LIEBREICH, as Personal  
Representative of the Estate  
of Lisa McPherson,  
Plaintiff,

vs.

Superior Court  
Civil Action  
No. 97-6890

CHURCH OF SCIENTOLOGY, d/b/a  
CHURCH OF SCIENTOLOGY, FLAG  
SERVICE ORGANIZATION, INC., et al.  
Defendant.

THE DEPOSITION OF ROBERT S. MINTON, a witness  
called by the Defendant, taken pursuant to the  
applicable provisions of the Florida Rules of Civil  
Procedure, before Kathleen L. Good, Registered  
Professional Reporter and Notary Public in and for the  
Commonwealth of Massachusetts, at the offices of  
Cooley, Manion, Moore & Jones, LLP, 21 Custom House  
Street, Boston, Massachusetts 02110 on Tuesday,  
January 13, 1998, commencing at 9:16 a.m.

K. L. GOOD & ASSOCIATES  
REGISTERED PROFESSIONAL REPORTERS  
P. O. BOX 6094  
BOSTON, MASSACHUSETTS 02209  
TEL. (781) 598-6405  
FAX (781) 598-0815

1           either depending on what happens in the case.

2   Q       Can you explain that?

3   A       What I have said and what he has said is that if  
4           they -- "they" being the estate of Lisa McPherson --  
5           are successful in getting money back over and above  
6           their legal expenses in this case and they had \$100,000  
7           left to pay me, I would get paid back my \$100,000. If  
8           they do not succeed in this case, they're under no  
9           obligation to pay me back.

10           So from my standpoint, there would be a question  
11           of whether it's a gift or a loan.

12   Q       Do you own a piece of the litigation?

13           MR. JONAS: Objection to form.

14   Q       Do you own a piece of the litigation?

15   A       This \$100,000 is my piece, if that's what you want to  
16           call it.

17   Q       Did you file a lien in the case?

18   A       No.

19   Q       Do you know what a UCC filing is?

20   A       I do.

21   Q       In fact, you've filed one with regard to the  
22           Wollersheim matter?

23   A       Correct.

24   Q       But you have not filed one in this case?

1 things of that nature.

2 Q Do you have those e-mails?

3 A No.

4 Q Has he sent you e-mails?

5 A He has. Mr. Dandar and I are both -- I can tell by his  
6 e-mail messages -- are very poor typists and don't send  
7 many e-mail messages.

8 Q Do you have his e-mail messages?

9 A No.

10 Q Is there any agreement whatsoever that you have with  
11 Mr. Dandar and/or the family of Lisa McPherson as to  
12 how the funds would be used from any judgment that they  
13 might get in this case?

14 A None whatsoever.

15 Q Have you had any discussion with Mr. Dandar as to how  
16 any recovery in this case would be used?

17 MR. DANDAR: Same question.

18 MR. WEINBERG: Let me just ask him.

19 A Yes.

20 Q What is that discussion?

21 A Well, I suggested to him, after having heard Mike  
22 Rinder particularly talk about Dell Liebreich being a  
23 money grubbing woman, that I asked him if she needed  
24 money, No. 1. He said, No, she's retired and she's



1 fine. So I said, well, in order to get these  
2 Scientologists off of the case that everybody is in  
3 this for the money, she ought to just agree to donate  
4 the bulk of any money that she gets out of this case to  
5 a cult awareness type organization to keep other Lisa  
6 McPhersons from happening. That's it.

7 Q Was this at dinner in Boston?

8 A No. This was at this lunch in Clearwater.

9 Q Which we haven't gotten to?

10 A Or Tampa.

11 Q This is in December?

12 A Right.

13 Q And his response was, what?

14 A Well, he says, I've already had that idea but I haven't  
15 discussed it with Dell Liebreich yet.

16 Q Has he since told you that he discussed it with  
17 Ms. Liebreich?

18 A Yes.

19 Q What did he say?

20 A He said she agreed to do just that.

21 Q When did he tell you this?

22 A I think the 5th of December.

23 Q What cult awareness group was agreed on?

24 A No specific groups were discussed. The only one that

1 COMMONWEALTH OF MASSACHUSETTS

2 COUNTY OF ESSEX

3  
4 I, Kathleen L. Good, Registered Professional  
5 Reporter and Notary Public in and for the Commonwealth  
6 of Massachusetts, do hereby certify that there came  
7 before me on the 13th day of January 1998, the person  
8 hereinbefore named, who was by me duly sworn to testify  
9 to the truth and nothing but the truth of his knowledge  
10 touching and concerning the matters in controversy in  
11 this cause; that he was thereupon examined upon his  
12 oath, and his examination reduced to typewriting under  
13 my direction; and that the deposition is a true record  
14 of the testimony given by the witness.

15 I further certify that I am neither attorney or  
16 counsel for, nor related to or employed by any of the  
17 parties to the action in which this deposition is  
18 taken; and further that I am not a relative or employee  
19 of any attorney or counsel employed by the parties  
20 hereto or financially interested in the action.

21 In Witness Whereof, I have hereunto set my hand  
22 and affixed my notarial seal this 15th day of January  
23 1998.

24  
  
Notary Public

My Commission Expires:

April 17, 2003



IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA  
GENERAL CIVIL DIVISION

FILED  
ST. PETERSBURG BRANCH  
01 JUN 21 11:12:31  
Clerk of Court  
JAMES J. ...

DELL LIEBREICH, as personal  
Representative, of the ESTATE OF LISA  
McPHERSON,

Plaintiff,

Case No. 00-5682-CI-11  
Division 11

vs.

CHURCH OF SCIENTOLOGY FLAG  
SERVICE ORGANIZATION, JANIS  
JOHNSON, ALAIN KARTUZINSKI and  
DAVID HOUGHTON, D.D.S.,

Defendants.

---

AND RELATED COUNTERCLAIM.

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**ORDER OF SUMMARY JUDGMENT ON PLAINTIFFS' FALSE  
IMPRISONMENT CLAIM.**

The Defendants Church of Scientology Flag Service Organization ("the Church") and Alain Kartuzinski ("Kartuzinski") (collectively "the defendants") moved this Court pursuant to Rule 1.510, Florida Rules of Civil Procedure, for an entry of summary judgment against plaintiff on Count III of the Fifth Amended Complaint, the False Imprisonment count. Having heard argument of counsel and being otherwise fully advised in the premises, the Court finds as follows:

## I. FINDINGS OF FACT

1. Lisa McPherson "joined Scientology at the age of 18" in 1982. "Thereafter she became a Sea Org member ... then quit and later became a public participant." (Fifth Amended Complaint, ¶ 13.)

2. Lisa McPherson's continuing commitment to Scientology is shown by letters she wrote to friends several weeks or even days before her automobile accident on November 18, 1995. (Ex. 5, 11/12/95 Letter to Robin Rhyne; Ex. 6, 11/9/95 Letter to Laura Betterly); (Ex. 7, 11/4/95 Letter to Robin Rhyne; Ex. 22, 10/21/95 Letter to D. Cook; Ex. 23, 9/2/95 Letter to Robin Rhyne).

3. Lisa "was a dedicated Scientologist." She participated in a "wide variety" of Scientology religious courses and services, initially at a local church in Dallas, and then later at the Flag Service Organization after she moved to Clearwater in 1993 with her employer, the AMC Publishing Company. (Ex. 8, Bennetta Slaughter Aff., at ¶¶ 6 and 8.)

4. Throughout her life as a Scientologist, Lisa McPherson contributed her time and energy to charitable and community projects sponsored by the Scientology church organizations with which she was affiliated in Dallas and Clearwater. (*Id.* at ¶ 8.)

5. Plaintiff Dell Liebreich, Lisa's aunt, conceded that Lisa was "devoted to Scientology," that Lisa "loved Scientology," and that Lisa was "happy with Scientology." (Ex. 9, Dell Liebreich Depo., May 16, 1997 at p. 112:14-25; Ex. 10, Dell Liebreich Depo., May 24, 1999 at pp. 227:23-25; 228:1-2.)

6. Another of Lisa's aunts, Ann Carlson, testified that Lisa was "devoted to her religion" (Ex. 11, Ann Carlson Depo., May 24-25, 1999 at pp. 10:21-24;129:22-24; 130:9-11.)

7. Lisa's uncle, Sam Davis, testified that Lisa was a Scientologist her entire adult life. (Ex. 12, Sam Davis Depo., May 25, 1999 at pp.12:23-25; 13:1-3.)

8. It is a fundamental belief of the Scientology religion that matters concerning the mind, including mental states, conditions, and problems, are exclusively of a spiritual nature, and that modern psychology and psychiatry improperly intrude upon the purview of religion. Indeed, Scientology scripture contains an absolute prohibition upon all forms of psychological and psychiatric treatment, based upon the bedrock belief that such treatments cause substantial spiritual damage, and that mental problems should be addressed only by Scientology religious practices. (Ex. 13, Reiss Aff., at ¶¶ 44 and 51.)

9. Specific Scientology religious practices exist to provide spiritual assistance to those experiencing mental problems or conditions. (Ex. 13, Reiss Aff., at ¶¶ 44 and 51.)

10. Scientology uses its own terminology to define various mental conditions. One purpose of this terminology is to avoid any confusion with other fields that may be describing similar behavior, but attributing it to other than spiritual causes. One such term is "PTS Type III." (*Id.* at ¶¶ 47 and 51.)

11. Scientology scripture states that a person experiencing a PTS Type III

condition is considered to be "psychotic." According to Scientology scripture, a Type III may carry on absurd conversations with himself, become violent toward others and become self-destructive. He may believe he is surrounded by demons, or that he is somewhere else (or many other places all at once), or that he is somebody else (or many other persons all at once) (*Id.* at ¶ 51.)

12. Scientology scripture describes the specific steps to be used to bring spiritual relief to an individual experiencing this spiritual condition. It calls for, *inter alia*, isolation, rest, quiet, sleep, food and water, vitamins and minerals. Once these steps create a calm atmosphere in which spiritual counseling may take place, specific religious counseling procedures are set forth. (*Id.* at ¶ 52.)

13. The principal religious practice set forth in Scientology practice for the PTS Type III condition, as described above in paragraph 11, is known as the Introspection Rundown. (*Id.* at ¶¶ 53-55.)

14. Scientologists believe that going to a mental hospital or getting psychiatric treatment is a "crime" and that being committed to a mental institution is even worse. (Ex. 14, Plaintiff's Response to David Houghton's Request for Admissions, No. 15.)

15. Plaintiff's witness, Jesse Prince, testified as follows:

Q: You believed that when one had a mental problem or a psychological problem, as a Scientologist you believed in spiritual treatment as opposed to psychiatric treatment, you believed that, didn't you?

A: Yes, I did.

Q: Okay. And you – and you accepted that as a fundamental belief of Scientology when you were a Scientologist, right?

A: Yes, I did.

(Ex. 15, Jesse Prince Depo., Nov. 17-18, 1999 at p. 495:5-14.)

16. Another of Plaintiff's witnesses, Vaughn Young, testified that Scientologists do not believe in psychiatric treatment and that the worst thing that could happen to a Scientologist would be to be committed to a mental hospital. Specifically:

Q: The fact of the matter is – is that Scientologists do believe that going to a mental hospital or getting psychiatric treatment is a bad thing, don't they? Scientologists believe that?

A: Worst than bad, a crime.

\* \* \*

Q: For someone that believes in Scientology and the technology of Scientology, there is probably nothing that would be worse than that person could do than to go to a psychiatrist, correct?

A: I'll give you one more notch down. That would be *committed to a mental institution*.

(Ex. 16, Vaughn Young Depo., Dec. 21-22, 1999 at pp. 64:6-10; 483:6-12) (emphasis supplied).

17. Lisa McPherson's personal antipathy to psychiatrists and psychiatric treatment was consistent with that of her fellow Scientologists (Ex. 8, Slaughter Aff., at ¶ 8; Ex. 17, Brenda Spencer Depo., March 16, 2000 at pp. 279:8-25; 280:1-8.)



18. On numerous occasions Lisa expressed to her close friend and confidante, Bennetta Slaughter, her repugnance that she would ever be treated by a psychiatrist. (Ex. 8, Slaughter Aff., at ¶ 8.)

19. Lisa also stated to Brenda Spencer her view that spiritual distress that was manifesting itself as mental illness should be dealt with through the Scientology religion. (Ex. 17, Spencer Depo., March 16, 2000 at pp. 283:11-25, 284:1-10.)

20. Lisa volunteered substantial time with the Citizen's Commission on Human Rights ("CCHR"), an organization established by Scientologists to expose what they perceived to be the abuses of psychiatry. (Ex. 8, Slaughter Aff., at ¶ 8; Ex. 17, Spencer Depo., March 16, 2000 at pp. 280:12-25; 281:1-25.)

21. Lisa McPherson received several awards and recognitions for her work on behalf of CCHR. For example, in 1993 she received a formal Commendation "for her activities in supporting the Citizens Commission On Human Rights in their ongoing efforts to eradicate psychiatric abuse of human rights." (Ex. 18.)

22. During the summer of 1995, Lisa McPherson participated in Scientology religious services at the Fort Harrison retreat to help her when she suffered from a mental condition. (Ex. 19, Bennetta Slaughter Depo., March 15, 2000 at pp. 134:24-25, 135:1-6, 186:5-9, 186:24-25, 187:1-19; Ex. 17, Brenda Spencer Depo., March 16, 2000 at pp. 284:13-22; Ex. 20, Supplemental Reiss Aff., at ¶ 3.)

23. Lisa McPherson told Katie Chamberlain that when she stayed at the Fort Harrison during the summer of 1995, she "was taken care of very well and that the end

result was very exciting for her and she loved it.” (Ex. 21, Katie Chamberlain Depo., March 17, 2000 at p. 99:7-16.)

24. On October 21, 1995, Lisa wrote a letter to Debbie Cook, a senior Church official, stating:

I have a stack of “thank you” letters that have been growing on my desk to people (your staff) who I have wanted to acknowledge for their help over this past year during my journey through the “black hole”. I’m sure you have seen many people struggle as they move up the bridge. What I experienced was the worst struggle I have ever encountered this lifetime (and I grew up in a pretty rambunctious neighborhood). THANK GOODNESS I WAS NOT ALONE IN THIS STRUGGLE AT FLAG. I was surrounded by your incredible staff. ... THANK YOU ALL FOR HELPING TO SAVE MY LIFE! ...I know one thing from all of this that will protect me and keep me from the black hole again: if we only do JUST EXACTLY what LRH [L. Ron Hubbard, the founder of Scientology] has written and NOTHING ELSE it will all come out all right. Being a professional Scientologist carries a huge responsibility as all staff posts do. I intend to do all I can to help clear this planet. Thank you for contributing to me and for pushing me through to a done. I will do this with others now I promise you!

I LOVE EACH AND EVERY ONE OF YOU VERY VERY MUCH!

(Ex. 22, emphasis in original.)

25. Lisa wrote a letter dated September 2, 1995 to a friend, stating:

You will never believe the level of care and service I’ve received at Flag. I’m ready to go on tour and tell the world how anything CAN BE HANDLED! Although the last several months are still sort of blank for me I can tell you the days ahead will be much brighter and I’ll keep you posted on

my progress. The Deputy Sr C/S [Alain Kartuzinski] is auditing me – can you believe it?!? I barely can – these guys are something else. Who do you know that should come to Flag? I'll help get them here.

(Ex. 23, emphasis in original.)

26. On October 17, 1995, Lisa wrote a letter to a friend in Dallas in which she stated: “Aside from the few remains of a soon to be gone nuisance, psyches [psychiatrists], the world is very bright from where I sit.” (Ex. 24.)

27. On November 4, 1995, Lisa reiterated her views to her friend:

We are taking the psyches [psychiatrists] down fast and it's great to watch. Of course the next thing though is handling all the mess they've created. What dev-t [a distraction], we should have been busier (me included) so this is what happens when we don't all put our shoulders together like LRH said we could to handle this.

(Ex. 7.)

28. Plaintiff has belatedly submitted an affidavit of Jesse Prince, dated April 4, 2000, which purports to be a summary and analysis of Lisa McPherson's so-called “auditing” files, which purportedly contain records of her confidential communications to her Scientology ministers at the Church, during the period February - August, 1995, as well as of “ethics” interviews with representatives of her employer, AMC, during the same period. This Court has concluded that the Prince affidavit is inadmissible. Even if the Court were to have considered the Prince affidavit, however, it fails to create a triable issue of controverted fact on any issue relevant or material to the instant motion, for the following reasons:

a. The summaries of Lisa McPherson's alleged communications reveal only that Lisa McPherson on several occasions may have questioned the value of her religious experiences; may have had suicidal thoughts; may have been unhappy with aspects of her life; and may have been unhappy and dissatisfied with her employer and her job.

b. Such expressions are typical of many religious experiences, as set forth in the affidavit of Frank Flinn, a noted religious scholar. As Professor Flinn notes, the essence of religious experience often includes doubt and questioning as to the basis of one's faith, and the meaning and value of life and existence. (Ex. 90, Affidavit of Professor Frank Flinn of May 6, 2001.) Even if Lisa McPherson expressed the thoughts that Prince attributes to her, that would provide no basis to conclude that Lisa McPherson had chosen to abandon her commitment to Scientology.

c. This is particularly true because the expressions that Prince attributes to Lisa McPherson were made prior to Lisa McPherson's unambiguous expression of continuing commitment to the Scientology religion, during the months of September, October, and November, 1995, as set forth in paragraphs 2, 23-27, *ante*; of her continuing participation in Scientology practices and activities up to the date of her accident, as set forth in paragraphs 2-4, *ante*; and of plaintiff's concessions in her deposition, as set forth in paragraph 5, *ante*.

d. Prince's statements that Lisa McPherson wanted to leave or abandon

her religious commitment to Scientology are merely Prince's own argumentative conclusions; they are not supported by even his own summaries of the communications reflected in her auditing and ethics files. Accordingly, they are not evidence, and they certainly do not create a controverted question of material fact.

29. On November 18, 1995, Lisa McPherson spent "a good part of the day" with her employer, Bennetta Slaughter, distant from the Fort Harrison preparing props for a Church charity project, Winter Wonderland. (Ex. 8, Bennetta Slaughter Aff., at ¶ 9.)

30. At about 1:00 p.m. that afternoon, Lisa left the place where she was working on the props, accompanied by her friend, Katie Chamberlain, to go "driving down to Dunedin ... to pick up some things for Winter Wonderland inexpensively ..." (Ex. 21, Katie Chamberlain Depo., March 17, 2000 at p. 133:9-15.) Katie and Lisa then picked up some food and vitamins at a grocery store and went to Lisa's apartment for lunch. (*Id.*, p. 134.) Afterwards, Katie left Lisa at Lisa's apartment, where Lisa was going to take a nap. (*Id.*, p. 134:17-21.) Katie left Lisa at about 3:30 p.m. (*Id.*, p. 135:10-11.)

31. Later in the afternoon, Bennetta Slaughter, Lisa's friend and employer, picked Lisa up at her apartment and drove Lisa to the AMC office so Lisa could pick up her Jeep. Lisa was driving the Jeep to Bennetta's home to borrow a book when she had her traffic accident. (Ex. 19, Bennetta Slaughter Depo., March 15, 2000 at pp. 234:20-25, 235:1-25, 236:1-2.)

32. Lisa had not been staying at the Fort Harrison retreat at all that day prior to her traffic accident. (Ex. 25, Arthur Baxter Aff., at ¶¶ 5 and 7; Ex. 26, Glen Stilo Aff., at ¶¶ 3 and 4.) Arthur Baxter was the Security Chief at the Fort Harrison. It was he who arranged for Lisa's accommodations at the Fort Harrison after she was released from Morton Plant Hospital on November 18<sup>th</sup>. A "caretaker log" that purportedly shows that Lisa was at the Fort Harrison on November 18<sup>th</sup> as early as 2:45 p.m. and 3:15 p.m. was prepared by Susanne Schnurrenberger Greene on November 19<sup>th</sup>. Susanne Schnurrenberger Greene mistakenly wrote the date of November 18 on the report. (Ex. 27, Susanne Schnurrenberger Greene Aff., at ¶ 2.) As previously noted, the uncontroverted evidence is that Lisa McPherson was with Katie Chamberlain between 1:00 p.m. and 3:30 p.m. on November 18, 1995. (¶ 30, *ante*.)

33. Plaintiff objected to this Court's consideration of the Greene affidavit (Ex. 27), on the ground that plaintiff was surprised by the affidavit when defendants filed it in support of this motion on April 12, 2001, claiming that plaintiff had no opportunity to take the deposition of Susanne Schnurrenberger Greene. In fact, Ex. 27 was first filed in this Court, in unsigned form, on April 4, 2000, and was filed in connection with the instant motion on April 12, 2001. Plaintiff has never attempted to depose Greene, and never made a motion under Rule 1.510(f) to continue consideration of this motion so that he could take her deposition. Indeed, plaintiff still has not sought to take the deposition of Ms. Greene. At the hearing on this motion on May 9, 2001, plaintiff apparently withdrew any objection to the admissibility of the affidavit. (Transcript at 159-60.)

34. The Court finds that it is uncontroverted that Lisa McPherson was not at the Fort Harrison retreat until after her accident and after her release from Morton Plant Hospital on November 18, 1995.

35. At the scene of the accident, Lisa removed her clothing and began walking naked in the street. (Ex. 28, Emergency Medical Report; Ex. 14, Plaintiff's Response to Houghton's Request for Admissions, No. 26.)

36. Emergency Medical Service personnel who had responded to the accident transported Lisa by ambulance to the emergency room at Morton Plant Hospital (Ex. 28, Emergency Medical Report; Ex. 14, Plaintiff's Response to Houghton's Request for Admissions, No. 27.)

37. Contrary to the argument made by plaintiff's counsel at the hearing on this matter (Transcript at 165), Lisa did not ask to go with the paramedics to Morton Plant Hospital. Rather, it took the paramedic about a half hour to persuade her. Lisa "didn't want to go ... [she said] No. No. No." (Deposition of B. Portolano, filed by plaintiff on April 6, 2000, p. 61:17-25.)

38. One of the first medical professionals to attend to Lisa McPherson at Morton Plant Hospital was Registered Nurse Kimberly Brennan. Nurse Brennan had three years experience. (Ex. 29, Brennan Depo., June 22, 2000 at p. 6.)

39. Brennan first saw Lisa when Lisa was being transferred from an EMS stretcher onto one of the emergency room beds at Morton Plant Hospital. (*Id.* at p. 7:18-25.)

40. Brennan met with Lisa alone and asked Lisa questions to evaluate her condition. She determined that Lisa was "alert and orient[ed] to time, place and position." (*Id.* at 13:2-25.) Lisa was "coherent," "cognizant," knew "where she was," and "what day it was." (*Id.*) Brennan felt that Lisa was "competent to make a decision as to whether to stay or not." (*Id.* at pp. 18:23-19:3.)

41. Dr. Flynn A. Lovett, an experienced physician who was board certified in emergency medicine, was on duty when Lisa McPherson was brought to the Morton Plant Hospital emergency room. (Ex. 30, Lovett Depo., November 18, 1997 at pp. 5:10-12, 20-21; 7:20-23; Ex. 14, Plaintiff's Response to Houghton's Request for Admissions, Nos. 28 and 29.)

42. When Dr. Lovett first introduced himself to Lisa, she said, "I just didn't want to come to the hospital but they've made me come to the hospital." (Ex. 30, Lovett Depo., November 18, 1997 at pp. 10:25; 11:1-5; Ex. 14, Plaintiff's Response to Houghton's Request for Admissions, No. 30.)

43. Each time Dr. Lovett spoke with Lisa, she told him "[T]his is my problem, not your problem." (Ex. 30, Lovett Depo., November 18, 1997 at p. 17:23-25.)

44. Dr. Lovett conducted a physical examination of Lisa McPherson and found "nothing wrong." (*Id.* at p. 11:17-21); (Ex. 14, Plaintiff's Response to Houghton's Request for Admissions, No. 31.)

45. During the physical examination, Nurse Brennan received word that Lisa had visitors. (Ex. 29, Brennan Depo., June 22, 2000 at p. 16:8-13.) Nurse Brennan asked



Lisa “would she like a visitor and she said yes.” (*Id.* at p. 16:13-15.) “They introduced themselves as being her friends from the Church of Scientology ... [a]nd [Lisa] told [Brennan] that as well.” (*Id.* at p. 16:19-23.) Lisa “recognize[d]” her visitors, she seemed “comfortable with them” and “happy to see them.” (*Id.* at p. 44:12-19.) “She didn’t seem upset with them at all.” (*Id.* at p. 44:20-21.) She did not “appear to be afraid at all.” (*Id.* at p. 21:15-16.)

46. Joe Price, a certified psychiatric nurse working in psychiatry for approximately 30 years (Ex. 31, Price Depo., June 12, 2000, at pp. 6:13-16 and 7:4-10), was also on duty at the Morton Plant Hospital on November 18, 1995. (*Id.* at p. 14:23-25; Ex. 14, Plaintiff’s Response to Houghton’s Request for Admissions, No. 32.)

47. Price was called to the emergency room and found Lisa there with visitors whom “[s]he described ... as friends from the congregation.” (Ex. 31, Price Depo., June 12, 2000, at p. 18:15-17.)

48. Price performed a psychiatric consultation with Lisa consisting of a standard mental status exam. (*Id.* at pp. 23:10-25:13.) Price had performed hundreds of mental evaluations prior to performing Lisa’s mental evaluation in 1995. (*Id.* at p. 42:21-25.)

49. After his evaluation, Price consulted with Dr. Lovett and Dr. Nabil Dajani, the psychiatrist who was on call. (*Id.* at pp. 22:14-23:9); (Ex. 14, Plaintiff’s Response to Houghton’s Request for Admissions, No. 35.) Price indicated to them that Lisa was neither suicidal nor homicidal. (Ex. 30, Lovett Depo., November 18, 1997 at p. 25:14-

22; Ex. 31, Price Depo., June 12, 2000, at pp. 22:20-23:9; Ex. 14, Plaintiff's Response to Houghton's Request for Admissions, No. 34.)

50. Lisa told Price that her fellow Scientologists at the hospital were "my friends from the congregation" and stated to him: "I want to go home [with] my friends from the congregation." (Ex. 32, Morton Plant Hospital report by Joseph Price.) Nurse Price testified "[s]he didn't want to be there. She didn't want to be in the hospital." (Ex. 31, Price Depo., June 12, 2000, at p. 24:5-6.)

51. Dr. Lovett asked Price to go back to Lisa's room and speak to Lisa out of the presence of her friends "to make sure that what Lisa McPherson wanted was to leave the hospital with her friends ... from the congregation." (*Id.* at pp.27:25-28:8.) Price asked Lisa "specifically was she feeling like she was being forced or was she frightened by the fact that these people were there with her, and she said no." (*Id.* at p. 26:18-25.) "[I]n a roundabout way" Price inquired whether Lisa wanted to leave the Church. She said, "No, I don't want to leave [the Church.] I want to be with my friends from the congregation." (*Id.* at p. 27:1-11.) According to Price, "[s]he wanted to leave the hospital. She didn't want to leave her friends." (*Id.* at p. 27:12-15.)

52. When Price initially spoke with Lisa she informed him that she had no objection to speaking in the presence of her "friends from the congregation." Lisa McPherson did not express a desire to go with any one person, rather it was "just the group." (*Id.* at p. 33:7-9). During Nurse Price's private meeting with Lisa, he determined that leaving with her friends from the Church was "precisely what she wanted." (*Id.* at pp.

27:25-28:8.) At the time that Lisa made this decision she was “aware of her surroundings” and “competent.” (*Id.* at p. 28:13-20.) He concluded in his report that Lisa McPherson had positive “ability to abstract thinking” [sic] and that Lisa’s “cognition [was] intact.” (Ex. 32.) According to Price, “[b]ottom line ... Lisa McPherson le[ft] the hospital willingly that evening.” (Ex. 31, Joe Price Depo., June 12, 2000, at p. 32:22-24, emphasis supplied.)

53. Dr. Lovett reported to Dr. Dajani, that he had spoken with Scientologists present at the hospital who “will watch her on a regular basis and totally assume her care.” (Ex. 30, Lovett Depo., November 18, 1997 at pp. 26:18-25; 27:1; Ex. 14, Plaintiff’s Response to Houghton’s Request for Admissions, No. 37.)

54. Dr. Lovett told Joe Price that Scientologists would “assume [Lisa’s] total care,” and that two Scientologists said “there would be multiple people watching her and they would watch her 24 hours a day.” (Ex. 30, Lovett Depo., November 18, 1997 at p. 27:16-25.)

55. Dr. Lovett saw Lisa “many times” that night. As he described it, “I’d go back in, go out, see how she was doing, talk to the people that were there with her, talked to Joe [Price]. My nurse [Brennan] was present.” (Ex. 30, Lovett Depo., November 18, 1997 at p. 23:4-9.) While Dr. Lovett would have preferred to keep Lisa in the Hospital overnight for observation, he declined to commit her involuntarily under the Baker Act because she was not a threat to herself or others and she would be cared for by her fellow Scientologists. (*Id.* at pp. 26:18-27:14.) He spoke to Lisa in the presence of Nurse Price,

and told her "that because of what just happened, that he felt it was in her best interest to stay in the hospital overnight for observation and then go from there." (Ex. 31, Joe Price Depo., June 12, 2000, at pp. 31:22-32:5.) Lisa, however, "didn't want to stay." (*Id.*)

56. Dr. Lovett wrote in his report:

*The patient does not want to stay in the hospital. Her friends at scientology will watch her twenty-four hours a day and be sure that she gets the care that they want her to have and the patient wants to have. I told them that I felt this was okay. The patient does not want to stay in the hospital, and we will not Baker Act her to do this.*

*I spoke to Dr. Dajani on the phone. He feels the patient is not a harm to herself or to others. She cannot be Baker Acted. I will have the patient sign out against medical advice. I told her I could not be responsible for [her] actions, and I felt that she was able to make a rationale decision at this time. Again, the scientology group will observe her very closely and will give her whatever care that they want to do for this problem she is having.*

(Ex. 33, emphasis supplied.)

57. Plaintiff argues that Dr. Lovett found that Lisa was able to make a rational decision only to "go home," as opposed to a rational decision to go, for example, to a friend's or relative's home or to go to the Fort Harrison. There is no basis to attribute such an illogical opinion to Dr. Lovett; clearly, if Lisa was able to rationally decide to go "home," she also could rationally decide to go to a home substitute. Dr. Lovett's deposition testimony that Lisa could rationally decide to go "home" can only be interpreted to mean to leave the hospital with her friends who would care for her. This is specifically the conclusion Dr. Lovett wrote in his hospital report, and that he

communicated to Lisa and her Scientology friends, and it is uncontroverted.

58. Nurse Brennan asked Lisa herself “do you understand you’re signing out against medical advice *and that you’re doing this on your own free will, and she had no objection and she signed her name.*” (Ex. 29, Brennan Depo., June 22, 2000 at pp. 20:19-21:5, emphasis supplied.) As Nurse Brennan testified, Lisa McPherson “*willfully le[ft] the hospital,*” and stated that she “wanted to go ... with her friends from the congregation ... the people that were at her bedside.” (*Id.* at p. 21:3-14, emphasis supplied.) Nurse Brennan also observed that Lisa “did not” appear to be afraid at all. (*Id.* at 21:15-16.)

59. The Patient’s Self Release Form, executed by Lisa McPherson at Morton Plant Hospital on November 18, 1995, states: “I have been informed that it is not in my best medical interest to leave the hospital at this time and that I do so against medical advice.” (Ex. 34.) The Form includes the statement: “I am leaving the hospital of my own volition.” (*Id.*)

60. Judy Goldsberry-Webber (“JGW”) was a staff member of the Church who worked in the Church’s Medical Liaison Office. (Ex. 91, JGW Affidavit, ¶ 4.) As such, her job was to liaise with outside doctors, hospitals, and medical personnel on behalf of Church members and staff.

61. On November 18, 1995, JGW received a message to go to Morton Plant Hospital because someone had been in an accident. When she arrived at the hospital, she learned that the person was Lisa McPherson. (Ex. 91, JGW Affidavit, ¶ 6.)

62. Lisa told JGW that she “wanted to leave the hospital.” (*Id.*, ¶ 8.) Lisa told

JGW that she “wanted to be somewhere where she could see her auditor, Alain Kartuzinski, and have peace and quiet. She wanted to see him because she had confidence in him. She also mentioned that she wanted to have some auditing ...” (*Id.* See also Ex. 93, JGW Depo. at p. 449.)

63. JGW spoke several times with Dr. Lovett. Dr. Lovett told JGW he wanted to keep Lisa under psychiatric observation, but that there was nothing physically wrong with Lisa which would justify keeping her under medical observation. (*Id.*, ¶ 10.)

64. Dr. Lovett told JGW he wanted to speak with Lisa alone to find out what Lisa wanted to do. (*Id.*, ¶ 11.) After speaking with Lisa, Dr. Lovett agreed to release Lisa against medical advice. He explained this to Lisa in JGW’s presence. Lisa “said that she understood what Dr. Lovett was saying, but that she did want to leave the hospital and that she wanted to be with her friends from the Church.” (*Id.*, ¶ 12.)

65. Plaintiff claims that JGW testified to the State Attorney’s Office that Lisa wanted to go “home,” and that therefore when the Church’s ministers and staff brought Lisa to the Fort Harrison it was against Lisa’s will. But JGW actually told the State Attorney that JGW “assumed” that Lisa wanted to go home (JGW SAO interview filed by plaintiff on January 18, 2000, at p. 47). JGW also testified that, in any event, JGW never understood Lisa to mean that she only wanted to go “home,” as opposed to some other place where she would be cared for by her friends from the Church and where she could see her minister. Thus, JGW stated, “she just wanted out of a hospital ... just get me home, away from the noise and everything.... When I asked her, she said she wanted

to go home, meaning a generic – wanted to leave that building. She wanted rest, quiet, be able to recover from whatever it was, and to meet with her minister. And that was it. It was her desire to use Scientology ...” (Ex. 93, JGW Depo. pp. 317, 448-49.)

66. The Court therefore finds that the testimony of JGW strongly supports defendants’ position that Lisa expressed her wish to leave the hospital, to go with and be cared for by her Scientology friends, to see her minister, and to receive Scientology religious services. The references to going “home” do not create a controverted issue of fact that Lisa was brought to the Fort Harrison against her will, especially given the strong and uncontroverted additional evidence that Lisa went there without objection and willingly. (See ¶¶ 67-71, *post*.)

67. As the Court has noted, Dr. Lovett specifically “told” Lisa’s Scientology friends at Morton Plant Hospital that he “felt [it] was okay” for Lisa to leave the hospital so that “her friends at Scientology will watch her twenty-four hours a day and be sure that she gets the care that they want her to have and the patient wants to have.” (Ex. 33, Report).

68. Plaintiff’s expert, Dr. Conrad Weller, conceded that when the Church members present at Morton Plant Hospital were “told by the doctors that they were releasing her to them,” these lay people had “a reasonable right to rely on what these professionals told [them].” (Ex. 35, at pp. 233-234, 175-177.) Dr. Weller testified that it would be “clear” to anyone reading the medical records that Dr. Lovett “believed that [Lisa] should go back with ... her friends” to “get the care they wanted to give her and the

care that the patient want[ed] to have” (*Id.* at pp.170-171), and that “a layperson who is told by a doctor that a patient doesn’t want to stay in the hospital [would] reasonably believe that the doctor has determined that the patient doesn’t want to stay in the hospital.” (*Id.* at pp. 172, 175 and 194.) Plaintiff’s other expert, Dr. Mills, made a similar concession. (Ex. 95, Mills Depo., pp. 197-98.)

69. Upon Lisa’s release, Alain Kartuzinski, Lisa’s minister, asked Lisa “if it was okay with her” to go “to the Fort Harrison. She said yes.” (Ex. 36, Alain Kartuzinski Depo., April 26, 2000 at pp. 66:20-67:1.) Rev. Kartuzinski asked Lisa if he should drive her there or if she had her own car. Lisa said that she wanted to come with Rev. Kartuzinski so they took his car and left. (*Id.* at p. 75:11-75:25.)<sup>1</sup> As plaintiff conceded in a previously filed pleading, “Lisa ... agreed to go to the Fort Harrison in Kartuzinski’s car.” (Plaintiff’s Response to Flag’s Motion that Scientology is a Religion and that the Introspection Rundown is a Religious Practice (filed January 18, 2000 at p. 57)).

70. Emma Schamehorn, a Church staff member, met Lisa when she came out of the emergency room. Emma testified that Lisa was “chatting” and “glad to see us.” Lisa “seemed quite pleased.” (Ex. 37, Emma Schamehorn Depo., November 15, 2000 at

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<sup>1</sup> Plaintiff has challenged the admissibility of these statements under section 90.602, Florida Statutes. The Court has concluded that the statements are admissible. Moreover, plaintiff herself has submitted Mr. Kartuzinski’s testimony before the State Attorney’s Office where Mr. Kartuzinski said the same thing. (SAO Transcript filed by plaintiff on January 18, 2000, at p. 65:18-25.) In addition, they not only are uncontroverted, but they are completely consistent with the uncontroverted testimony of



pp. 18:22-19:10.) When Emma, Rev. Kartuzinski and Lisa got in the car, Lisa said, "I'm glad you came to get me." (*Id.* at p. 22:9-14.) According to Schamehorn's uncontroverted deposition testimony, Lisa did not "object at all" about going to the Fort Harrison, and never expressed any reluctance about leaving the hospital, getting in Rev. Kartuzinski's car or going to the Fort Harrison. (Ex. 38, Emma Schamehorn Depo., December 7, 2000 at pp. 50:23-51:9, 51:17-25.) Schamehorn testified that Lisa voluntarily went to the Fort Harrison and expressed no reluctance about going to a hotel room. (*Id.*, at pp. 51:20-25, 53:2-19; Ex. 86, Jeanne Decuypere Aff., at ¶¶ 8-9.) She appeared "happy" and "coherent." (Ex. 38, Emma Schamehorn Depo., December 7, 2000 at pp. 52:23-53:1.)

71. After they arrived at the Fort Harrison, Rev. Kartuzinski saw Lisa in her room and had another conversation with Lisa. He said, "Okay. So you're here now. We are going to do some auditing, but your role right now is to eat and sleep and take vitamins and become physically able to get auditing. That's what you do." Lisa responded, "'absolutely' or 'of course' or some word that indicated she definitely agreed to that." (Ex. 36, Alain Kartuzinski Depo., April 26, 2000 at pp. 80:24-81:6.)

72. Based upon all the evidence before it, the Court therefore finds that it is uncontroverted that Lisa McPherson did not leave Morton Plant Hospital or go to the Fort Harrison against her will.

73. Rev. Kartuzinski was the person in charge of insuring that Lisa received the

proper care and service at the Fort Harrison. (Ex. 39, Kartuzinski Aff., at ¶ 4.)

74. Rev. Kartuzinski directed that Lisa be encouraged to sleep, rest, eat, drink, and receive vitamins and minerals, so that she could receive auditing. (*Id.* at ¶ 12.) He arranged for a Church staff member to be with Lisa at all times. (Ex. 36, Kartuzinski Depo., April 26, 2000 at p. 108:17-20, 22-23.)

75. A few days after Lisa arrived, Kartuzinski heard that Lisa was acting violently. He visited her and determined that she had “lost contact with reality” and was “babbling on and on.” When he arrived she said, “Ah, Mr. Kartuzinski, you’re here. Get that green psychiatrist off my back.” (Ex. 36, Kartuzinski Depo., at pp. 110:14-111:7.) He directed that two or three religious workers stay with and watch Lisa continuously, to insure that she did not hurt herself. (*Id.* at p. 113:6-17.) He received reports from the religious workers who stayed with her, but he never received a report that Lisa wanted to leave or that she had made any effort to leave. (Ex. 39, Kartuzinski Affi. at ¶¶ 14, 16.)

76. Over the 17 days she was at the Fort Harrison, there were about 20 people who stayed with, watched, and/or protected Lisa at the Fort Harrison. (Ex. 39, Kartuzinski Aff., at ¶ 14.)

77. During this time period, Lisa acted in a psychotic manner and was divorced from reality. (*See* affidavits of Kartuzinski and religious workers, Exhibits 39-56; Ex. 57, Defendant Alain Kartuzinski’s 3/1/00 Request for Admissions to Plaintiff; and Ex. 58, Plaintiff’s Response to Request for Admissions, Nos. 7-20, 26-39, 45, 46, 47, 56, 57, 109, 112.)

78. Plaintiff concedes that during the entire time period while she was at the Fort Harrison, Lisa was “psychotic,” “irrational,” “unable to communicate rationally with anyone,” “incapable of making rational decisions,” and “unable to care for herself,” and that defendants had a duty to take care of her and prevent her from harming herself. (Ex. 57, Defendant Alain Kartuzinski’s 3/1/00 Request for Admissions to Plaintiff; and Ex. 58, Plaintiff’s Response to Request for Admissions, Nos. 45, 46, 47, 56, 57, 109, 112, 113.)

79. According to the uncontroverted affidavits of the Church staff members who stayed with Lisa, at no point after Lisa arrived at the Fort Harrison did she state or indicate that she wished to leave the Fort Harrison. (See affidavits of religious workers, exhibits 39 to 56; Ex. 59, Report of Assistant State Attorney at p. 4.)

80. Plaintiff’s expert concedes that while at the Fort Harrison, Lisa McPherson “was not competent to withdraw consent.” (Ex. 35, Conrad Weller Depo., April 28, 2000, at pp. 40:25-41:7.)

81. Emma Schamehorn was the first of the religious workers who stayed with Lisa at the Fort Harrison on November 18, 1995. (Ex. 37, Schamehorn Depo., November 15, 2000, at pp. 22:24-23:4, 23:12-25, 24:23-25:5.) Jeanne Decuypere, Lisa’s Chiropractor, was also there. Dr. Decuypere “chatted” with Lisa “for a while” and at first Lisa seemed “coherent” and “normal.” (*Id.* at p. 23:17-25 and Ex. 38, Schamehorn Depo., December 7, 2000, at p. 52:19-24.) According to Emma, Lisa did not “express to [Emma] any reluctance or objection to going to the hotel room.” (*Id.* at p. 53:12-14.)

Emma stayed with Lisa until 1:00 a.m., and returned on November 19<sup>th</sup>. By then, Lisa seemed “agitated.” (Ex. 37, Schamehorn Depo., November 15, 2000 at pp. 25:3-5, 29:17-20, 30:17-19.) Lisa *never* said anything or acted in any way that indicated to Emma that she “wanted to go home or go see her mother, or be anywhere else other than where she was.” (Ex. 51, Schamehorn Aff., at ¶ 10.)

82. Valerie Demange was another of the religious workers who stayed with Lisa McPherson at the Fort Harrison. (Ex. 45, Demange Aff., at ¶¶ 3, 4.) While Demange was with Lisa, Lisa never tried to “go out the door” and never asked Valerie “to take her somewhere.” (Ex. 65, Demange Depo., July 21, 2000 at p. 63:8-11; Ex. 45, Demange Aff., at ¶ 5.)

83. Laura Arrunada was with Lisa on November 25<sup>th</sup> and 26<sup>th</sup> and again on December 2<sup>nd</sup> through December 5<sup>th</sup>. (Ex. 40, Arrunada Aff., at ¶ 5.) While Arrunada was present, Lisa never expressed a desire to leave the room or the Fort Harrison. (*Id.*, at ¶ 6.) Lisa “never did or said anything to make [Arrunada] think [Lisa] did not want to be in the room at the Fort Harrison or want me or any of the other Church staff to assist her.” (*Id.*, at ¶ 9.)

84. Alice Van Grondelle was with Lisa for 16 hours beginning on November 22<sup>nd</sup> after which she wrote a report indicating that Lisa was “blabbering, incoherent non stop” and only slept for four hours. “She talked incoherently hour after hour.” (Plaintiff’s Response to Flag’s Motion that Scientology is a Religion and that the Introspection Rundown is a Religious Practice, pp. 40-41, filed on January 18, 2000.) During the time

Ms. Van Grondelle was with Lisa, Lisa was talking “[g]ibberish ... nothing made any sense.” (Ex. 67, Van Grondelle Depo., July 19, 2000 at p. 24:22-24.) At no time was Lisa coherent. (*Id.*, at p. 79:15-17.) Lisa never made a request to leave the Fort Harrison. (Ex. 54, Van Grondelle Aff., at ¶ 5.) If she had made a rational and coherent request, Van Grondelle would not have stopped her. (*Id.*, at ¶ 5.)

85. Alfonso Barcenas was in training to become a security staff member in November 1995. (Ex. 68, Barcenas Depo., October 4, 2000, at p. 7:19-21.) He was directed by Paul Kellerhals, who was in charge of the Church’s security staff (Ex. 49, Kellerhals Aff., at ¶ 2), to insure that the area around Lisa’s room remained quiet. (*Id.*, at p. 13:10-16.) No one told him that Lisa could not leave her room, and he would not have stopped Lisa from leaving if he believed she would not hurt herself. (*Id.*, at pp. 15:12-16:6; Ex. 41, Barcenas Aff., at ¶ 5). He never did stop Lisa from leaving, because she never attempted to leave or asked to leave in his presence or to his knowledge. (*Id.*, at ¶¶ 5, 12.)

86. Leslie Woodcraft stayed with Lisa for several hours on November 23<sup>rd</sup>, together with Janis Johnson. (Ex. 69, Woodcraft Depo., August 31, 2000, at p. 30:19-24.) Lisa never tried or asked to leave the room while Leslie was there. (*Id.*, at p. 48:9-11.)

87. Heather Petzold Hof was with Lisa on the night of November 22<sup>nd</sup>, then briefly on November 24<sup>th</sup>, and then “daily” after the 25<sup>th</sup> or 26<sup>th</sup>. (Ex. 47, Hof Aff., at ¶ 4.) During that time, Lisa never expressed or manifested a desire to leave the Fort

Harrison retreat. On one occasion while Heather was there, Lisa attempted to walk through the door of her room into a public area of the Fort Harrison. At the time, Lisa "had no clothes on." Heather "put her back" in the room so that she could get "her dressed"; Lisa did not try to leave again. (*Id.*, at ¶¶ 5, 7, 8.) While Heather was with Lisa, Lisa was "screaming" things like "I'm having a bad hair day," "alphabet soup," and "I love Michael Jackson." (Ex. 70, Hof Depo. at pp. 32:10-11, 32:17-24, 33:5-7.)

88. Joan Stevens was with Lisa for about 12 hours, from about 11:00 p.m. on November 23<sup>rd</sup> until the late morning of November 24<sup>th</sup>. (Ex. 52, Stevens Aff., at ¶ 4.) During that time, Lisa was "constantly moving, constantly talking, none of it sequitur." (Ex. 71, Stevens Depo., November 2, 2000, at pp. 37:22-38:3.) Lisa's actions were "unpredictable." (*Id.*, at p. 42:15-24; Ex. 52, at ¶ 5.) At one point, Lisa was standing in front of the window, "partially undressed." She then walked towards the door and the public areas of the Fort Harrison. Stevens held her back because she "was completely naked from the waist up," and because she was obviously "not in her right state of mind." (Ex. 71, Stevens Depo., November 2, 2000, at pp. 55:6-13, 55:22-56:3.) "I used my own judgment when doing this. I had never heard anyone say that Lisa was not allowed to leave the room. It was just obvious that it would be wrong and dangerous to her to let her wander around on her own in the incoherent state she was in." (Ex. 52, at ¶ 8.)

89. Paul Kellerhals saw Lisa at the Fort Harrison on November 18<sup>th</sup> and on November 19<sup>th</sup> or 20<sup>th</sup>. He saw her again the following day, and then on November 24<sup>th</sup> and December 3<sup>rd</sup>. (*Id.*, at ¶¶ 5-7, 9-10.) To his knowledge, Lisa "never ... express[ed]

any desire to leave the Fort Harrison.” (*Id.*, at ¶ 4.)

90. Janis Johnson was the Staff Medical Liaison Officer for the Church. (Ex. 48, Johnson Aff., at ¶ 3.) Johnson looked in on Lisa several times between November 21<sup>st</sup> and December 5<sup>th</sup>, and checked with those who were caring for Lisa. (*Id.*, at ¶ 5.) Johnson was with Lisa for about six and a half hours during the early morning hours of the 24<sup>th</sup>. Johnson “never heard Lisa say that she wanted to leave and also never saw her try to leave.” (*Id.*, at ¶ 5.) During the time she spent with Lisa on the 24<sup>th</sup>, Lisa “opened the door and she stuck her head out,” but did not actually go out the door. She then “went back in” the room. (Ex. 72, Johnson Depo., April 25, 2000, at pp. 168:22-169:10.)

91. Sam Ghiora was a trainee member of the Church’s security staff. (Ex. 46, Ghiora Aff., at ¶ 2.) On November 22, 1995, his supervisor, Arthur Baxter, directed him to stay outside Lisa’s room to keep the area quiet, to bring necessities, and if necessary to make sure Lisa did not hurt herself. (Ex. 73, Ghiora Depo., September 27, 2000, at p. 10:11-20.) While he was there, Lisa never asked to leave her room or the Fort Harrison. (Ex. 46, Ghiora Aff., at ¶ 7.)

92. Rita Boykin first arrived to stay with Lisa on the 24<sup>th</sup> or 25<sup>th</sup> of November. She was then with Lisa on a daily basis, excepting a couple of days around November 27<sup>th</sup> and 28<sup>th</sup>. Throughout this time, Lisa never tried to walk out the door or said she wanted to leave or did not want to take part in the religious practice. (Ex. 74, Boykin Depo., at p. 177:20-23.) In fact, one of the few coherent comments Lisa made was to Rita Boykin. Lisa extended her hand to Rita and said, “You’re being so good to me and I

don't even know your names." (*Id.*, at p. 154:19-25.)

93. Silvia de la Vega stayed with Lisa on November 23<sup>rd</sup>, and then each day from November 25<sup>th</sup> to December 2<sup>nd</sup>. (Ex. 44, de la Vega Aff., at ¶¶ 3, 4.) During the times she stayed with or saw Lisa, Lisa never tried to leave her room or the Fort Harrison, and never requested to do so. (*Id.*, at ¶ 5.)

94. Susanne Reich visited Lisa on the evening of November 19<sup>th</sup>, returned later that night and stayed with her until 9:00 a.m. the next morning. (Ex. 75, Reich Depo., December 5, 2000, at p. 53:6-20.) During that time, Lisa never "walk[ed] towards the door." (*Id.*, at pp. 56:13-57:4.) She also made no requests or verbal statements that "she did not want to be there or did not want us to help her." (Ex. 50, Reich Aff., at ¶ 5.)

95. Patrizia Stracener stayed with Lisa the night of November 24<sup>th</sup>. While Lisa was talking constantly, sucking her thumb, singing, and licking the wall, Lisa "never" tried "to leave the cabana" or the Fort Harrison and never requested to do so. (Ex. 76, Stracener Depo., September 5, 2000, at pp. 48:9-49:3, 59:12-13; Ex. 53, Stracener Aff., at ¶¶ 5-6).

96. Barbro Wennberg stayed with Lisa on two occasions, on or about November 20<sup>th</sup> and November 24<sup>th</sup>. During that time, Lisa never asked or attempted to leave the room or the Fort Harrison. (Ex. 77, Wennberg Depo., at p. 82:11-13; Ex. 55, Wennberg Aff., at ¶¶ 4-5).

97. Written reports (sometimes referred to as "logs") were also prepared by the various religious workers who stayed with Lisa McPherson at the Fort Harrison from



November 18 – December 5, 1995. (Ex. 39, Affidavit of Alain Kartuzinski, at ¶ 14 and attached exhibits.)

98. No report contains an entry stating or suggesting that Lisa McPherson asked or expressed a desire to leave her room or the Fort Harrison. (*Id.*, at ¶ 16 and exhibits.)

99. No report contains an entry stating or suggesting that Lisa McPherson tried to leave the Fort Harrison, and, with the exception noted in paragraphs 101-103 below, no report contains an entry that Lisa McPherson attempted to leave her room.

100. Susanne Schnurrenberger Greene was a church staff member in November – December 1995. She stayed with Lisa from late in the evening of November 18 through November 20, 1995. (Ex. 27, Susanne Schnurrenberger Greene Aff., at ¶ 1.)

101. On November 19<sup>th</sup>, Greene wrote a Report, which as the Court previously found (¶ 32, *ante*) she misdated November 18, which contained entries for 2:45 p.m. and 3:15 p.m. of November 19. (*Id.*, at Exhibit 1.) The entry for 3:15 p.m. states, “[s]he is still talking, non stop. She tried to go out of the door.” (*Id.*) The same report describes Lisa’s non-stop talk, including statements that, “I created time 3 Billion years ago ... I am LRH ...” She also stated, “I need my auditor, Mr. Kartuzinski.” (*Id.*)

102. Also on November 19, 1995, Greene wrote a report which contained an entry for 6:45 p.m., as follows:

While I was writing this outside she came outside. When I brought her in, she took my arm and put it on her tummy and went with her tongue over my face. I brought her back to

bed.

She jumped up again and while I am writing this she is standing next to me, talking non sequitur things.

This same report also indicates that Lisa “walked like a robote [sic] ... she talks and talks, then she stares at a spot ... She also tries to push buttons on me ... She says I am her and she is controlling my body ... She kissed me on my mouth ... talking non sequitur things.” Ms. Greene listed some of the “non sequitur” things Lisa was saying:

- She wanted to call her Minister. He has No 10.
- She called me Mom when she awoke this afternoon.
- She wants to go to a party.
- She has a date with her mother at the pool.

(Ex. 39, Kartuzinski Aff., at Exhibit A.)

103. Plaintiff relies on the November 19 reports of Greene as evidence that Lisa tried to leave the Fort Harrison and was held there against her will. To the contrary, the reports indicate her willingness to be there, as evidenced by her requests to “call her Minister” and her statement “I need my auditor, Mr. Kartuzinski.” While the reports indicate that she left her room to go into the public areas of the Fort Harrison, they show that, at those times, she was acting in a disoriented state, and that Ms. Greene quite properly and appropriately brought her back into her room, without resistance.

## **II. CONCLUSIONS OF LAW**

1. Rule 1.510(c), Florida Rules of Civil Procedure, provides that summary judgment shall be “rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there

is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” In construing Rule 1.510(c), Florida Courts have held the following:

[O]ne moving for summary final judgment must demonstrate that there is no genuine issue as to any material fact. A material fact is one essential to the result that is placed in controversy by the pleadings and affidavits. Thus, to preclude the entry of summary judgment there must be some fact essential to a resolution of the legal questions raised by the case which is genuinely controverted.

*Wells v. Wilkerson*, 391 So. 2d 266, 267 (Fla. 4th DCA 1980), *citing*, *Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966); *see also*, *McGory v. Metcalf*, 665 So. 2d 254, 258 (Fla. 2d DCA 1995) (“A dispute about a material fact is genuine only if the evidence is such that a jury could return a verdict for the nonmoving party”).

2. Once a party moving for summary judgment makes a prima facie case and demonstrates the absence of genuine issues of material fact, the opposing party bears the burden of producing admissible evidence sufficient to demonstrate the existence of a genuine issue of material fact requiring trial. *Connell v. Sledge*, 306 So. 2d 194, 196 (Fla. 1st DCA 1975). The party opposing the summary judgment must adduce evidence to prove the existence of such an issue, and cannot merely assert that one exists. *Landers v. Milton*, 370 So. 2d 368, 370 (Fla. 1979); *Harvey Bldg., Inc., v. Haley*, 175 So. 2d 780 (Fla. 1965); *Farrey v. Bettendorf*, 96 So. 2d 889 (Fla. 1957).

3. If the party opposing summary judgment fails or is unable to come forward with admissible evidence demonstrating the existence of a genuine issue of material fact,

the moving party is entitled to summary judgment. *Pelz v. City of Clearwater*, 568 So. 2d 949, 951 (Fla. 2d DCA 1990), citing *DeMesme v. Stephenson*, 498 So. 2d 673 (Fla. 1st DCA 1986); *McMillan v. Suncoast Schools Federal Credit Union*, 741 So. 2d 542 (Fla. 2d DCA 1999) (Affirming the trial court's summary judgment because the party opposing summary judgment "failed to show any issue of fact, by affidavit or other evidence, to counter [the Appellee's] motion"). In fact, "where the material facts are not in dispute and the moving party is entitled to a judgment as a matter of law, it is the court's duty to enter summary judgment." *Castellano v. Raynor*, 725 So. 2d 1197, 1199 (Fla. 2d DCA 1999).

4. It is well established in Florida that "[t]he tort of false imprisonment" is "the unlawful restraint of a person against his will, the gist of which action is the unlawful detention of the plaintiff and the deprivation of his liberty." *Escambia County School Board v. Bragg*, 680 So. 2d 571, 572 (Fla. 1st DCA 1996) (citing *Johnson v. Weiner*, 155 Fla. 169, 171 (Fla. 1944); see also, 24A Fla. Jur. 2d, *False Imprisonment* § 1 (1995) and cases cited therein). Thus, in order to prevail on a false imprisonment claim, a plaintiff must affirmatively show that he was restrained *against* his will; the burden is not on the defendant to show "consent."

5. Further, the unlawful restraint must be unreasonable and unwarranted under the circumstances. See 24A Fla. Jur. 2d, *False Imprisonment* § 1 (1995); *Kanner v. First Nat'l Bank of South Miami*, 287 So. 2d 715, 717 (3d DCA 1974). Plaintiff's argument that *Kanner* is the only case so holding is manifestly incorrect. The cases are legion

holding that it is the plaintiff's burden to show that the restraint was unreasonable and unwarranted under the circumstances. See, e.g. *Winn & Lovett Grocery Co. v. Archer*, 126 Fl. 308, 317, 171 So. 214, 218 (1936) ("it must be shown that the restraint was unreasonable and such as was not warranted by the circumstances");<sup>2</sup> *Harris v. Lewis State Bank*, 436 So.2d 338, 341 (Fla. 1st DCA 1983) (a "plaintiff alleging false imprisonment must show ... that the restraint was 'unreasonable and unwarranted under the circumstances'"); *Rivers v. Dillard Dept. Store, Inc.*, 698 So.2d 1328, 1331 (Fla. 1st DCA 1997) (same, citing *Harris*); *Jennings v. City of Winter Park*, 250 So.2d 900, 903 (Fla. 4th DCA 1971) ("Civil liability for false imprisonment ... depends on a showing that the detention was unreasonable and unwarranted by the circumstances"); *City of Miami v. Albro*, 120 So.2d 23, 27 (Fla. 3d DCA 1960) (same); *Blumel v. Mylander*, 919 F. Supp. 423, 427 (M.D. Fla. 1996) (Kovachevich, C.J.) (applying Florida law of false imprisonment: "The detention must be 'unreasonable and unwarranted under the circumstances,'" quoting *Harris* and *Kanner*); *Everett v. Florida Institute of Technology*, 503 So.2d 1382, 1383 and n. 4 (Fla. 5th DCA 1987) (citing *Kanner*: Hospital's proper compliance with Baker Act provisions would make an involuntary commitment reasonable and justified under the circumstances, but failure to follow Baker Act would subject hospital and its personnel to false imprisonment claim).

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<sup>2</sup> While *Winn* was a false arrest case, it is recognized that false arrest and false imprisonment are different labels for the same cause of action. *Weissman v. K-Mart Corp.*, 396 So.2d 1164 (Fla. 3d DCA 1981); 14 Fla. Jur., *False Imprisonment* (2nd Ed. 2000), § 1.

6. Based on the undisputed facts of this case, plaintiff has not made and cannot make a showing that Lisa McPherson was unlawfully restrained "against [her] will" by the defendants. In fact, all of the evidence indicates the opposite. Lisa McPherson refused psychiatric observation or admission at the hospital; she expressly stated her desire to receive the religious care and assistance from her fellow congregants that she and they wanted her to have. The hospital's trained doctors and nurses determined that she made such a decision. The defendants were entitled to rely on the determination made by the trained medical staff at Morton Plant Hospital. Moreover, it is irrelevant and immaterial whether Lisa's choice to go to the Fort Harrison was a "competent" decision, since plaintiff must show that she was brought there "against her will." There is absolutely no evidence to support that essential element of plaintiff's cause of action.

7. Indeed, not only is there no evidence that Lisa was brought to the Fort Harrison against her will, but the evidence is uncontroverted that, by every objective measure, Lisa agreed, consented and wished to go there. At the least, the Church and its religious workers were entitled to rely upon such apparent consent. As the Restatement makes clear: "If the words or conduct are reasonably understood by another to be intended as consent, they constitute apparent consent and are as effective as consent itself." Restatement of the Law (Second), *Torts* § 892 (2000). The Restatement further explains:

Even when the person concerned does not in fact agree to the

conduct of the other, his words or acts or even his inaction may manifest a consent that will justify the other in acting in reliance upon them. This is true when the words or acts or silence and inaction, would be understood by a reasonable person as intended to indicate consent and they are in fact so understood by the other. This conduct is not merely evidence that consent in fact exists, to be weighed against a denial. It is a manifestation of apparent consent, which justifies the other in acting on the assumption that consent is given and is as effective to prevent liability in tort as if there were consent in fact.

*Id.*, Comment c.

8. Plaintiff argues, however, that in order to defeat plaintiff's false imprisonment claim, defendants must show not only that Lisa McPherson was not compelled to go to the Fort Harrison against her will, and not only that she "consented" to go by her words or her actions, but that her consent was "informed consent" within the meaning of Section 765.101, Florida Statutes.

9. Plaintiff's argument is incorrect. First, Florida Statute § 765.101 is inapplicable in this context. That statute was enacted as a method for a competent adult to provide, in advance, a written declaration directing the withholding designation for a health care surrogate. § 765.102(2), Fla. Stat. (1995) ("the Legislature intends that a procedure be established to allow a person to plan for incapacity by designating another person to direct the course of his medical treatment upon his incapacity."); § 765.102(3) Fla. Stat. (1995) ("the Legislature declares that the laws of this state recognize the right of a competent adult to make an advance directive instructing his physician to provide, withhold, or withdraw life-prolonging procedures, or to designate another to make the

treatment decision for him in the event that such person should be found to be incompetent and suffering from a terminal condition.”)

As held by the Second District Court of Appeal in *Corbett v. D'Alessandro*, 487 So.2d 368, 370 (Fla.2d DCA 1986), “chapter 765 appears to have been enacted to apply in certain specified situations and was not intended to encompass the entire spectrum of instances in which these privacy rights may be exercised.” Section 765.15 (now renumbered 765.106), evidences that intent. *Corbett*, 487 So.2d 370. It provides:

The provisions of this chapter are cumulative to the existing law regarding an individual's right to consent, or refuse to consent, to medical treatment and do not impair any existing rights or responsibilities which a health care provider, a patient, including a minor, competent or incompetent person, or a patient's family may have under the common law, Federal Constitution, State Constitution, or statutes of this state.

§ 765.106 Fla. Stat. (1995). As stated by the Second DCA in *Corbett*, “[w]e must construe section 765.15 to protect all constitutional rights a patient might have or else the statute would be unconstitutional.” *Corbett*, 487 So.2d at 370.

Thus, Chapter 765 is not applicable to this case because this case does not involve the advanced written designation of a health care surrogate or an advanced directive to withhold life-prolonging procedures.

10. Second, “informed consent” as used in Chapter 765 means consent voluntarily given to a medical “procedure.” § 765.101(9). Informed consent under Chapter 765 is contrasted with the decision applicable to this case – the decision to *refuse*



psychiatric treatment. This case does not involve informed consent of Lisa to go with her friends to the Fort Harrison; rather it involves "refusal of consent" to be kept in the psychiatric ward of the hospital.

11. The complete answer to plaintiff's misplaced "informed consent" argument is found in the Baker Act, Chapter 394, Florida Statutes.<sup>3</sup> The Baker Act establishes the criteria by which a person may be admitted, either voluntarily or involuntarily, to a mental hospital for either psychiatric examination or placement, as well as the requirements and circumstances which compel release of such a person. Under the Baker Act, "informed consent" is relevant only in the sense that a person cannot voluntarily *agree* to a psychiatric admission without informed consent; if the person is incapable of informed consent, he must be treated as an "involuntary" admission even if he agrees. See 1999 Annual Report Prepared for the Florida Agency for Health Care Administration by the University of South Florida, *The Florida Mental Health Act (The Baker Act)*, pp. 37-38.

12. Under the Baker Act, a person, such as Lisa McPherson, who refuses to be admitted to a mental hospital, can be admitted involuntarily for examination only under

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<sup>3</sup> Plaintiff's argument that the Court should not consider the Baker Act because defendants only raised it at oral argument must be rejected. Defendants fully put plaintiff on notice of their legal position that Morton Plant Hospital was required to release Lisa to the care of her friends from Scientology, and emphasized in their moving papers that Morton Plant medical personnel explicitly found that she could not be committed under the Baker Act. Moreover, the Baker Act was specifically raised by defendants at oral argument *in response* to plaintiff's attempt to argue, in plaintiff's *opposition* to the defendants' motion, that Lisa had to exercise "informed consent" to reject psychiatric

severely restricted circumstances:

a. The person must be "mentally ill" within the meaning of § 394.455(3), Fl. Stat., which includes incapacity "to perceive reality or to understand," and resulting inability "to meet the ordinary demands of living," and

b. i. There is a *substantial* likelihood that the person *will* cause serious bodily harm to himself or others in the *near* future, as evidenced by recent behavior;

or

ii. the person is *likely* to suffer from neglect or refuse to care for himself, posing a real and present threat of substantial harm to his well being; *and* there are *no* family or friends available to avoid such harm.

§ 394.463, Fla. Stat.

13. The requirements for involuntary placement, *i.e.* for treatment, are similar but even more strict, requiring that the person is "incapable of surviving alone or with the help of willing and responsible family or friends," that the person is "likely" to suffer from neglect, and that such neglect poses "a real and present threat of substantial harm."

§ 394.467, Fla. Stat.

14. Indeed, if a hospital or its medical staff involuntarily commit a person for

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commitment to Morton Plant and to agree to go to the Fort Harrison.

involuntary examination or treatment in violation of the Baker Act, they will be subject to a tort action for false imprisonment. *Liles v. P.I.A. Medfield Inc.*, 681 So.2d 711, 712 (Fla.2d DCA 1995) (“A claim for the tort of false imprisonment can be asserted based on allegations that a person was involuntarily held without compliance with the Baker Act”); *Everett v. Florida Institute of Technology*, 503 So.2d 1382, 1383 (Fla. 5th DCA 1987) (“Everett’s allegations that he was involuntarily held for eight days [by a mental hospital] without compliance with the Baker Act provisions, adequately allege the tort of false imprisonment”).

15. The Baker Act thus contemplates that a “mentally ill” incompetent person who cannot exercise “informed consent” to anything nevertheless must be released to family or friends if the family or friends can take care of the person and prevent him or her from neglecting or abusing himself. Such friends or family thus are authorized by law, as well as by release to their care by a hospital, to watch over such persons and prevent them from harming or abusing themselves. (See, e.g., *In re Smith*, 342 So.2d 491 (1977), where the Florida Supreme Court reversed an involuntary commitment order, despite the clear and convincing evidence of mental illness and indeed, as the court noted, incapacity to make a responsible application or decision. The Court stated, “This case should be returned to the trial court for the purpose of determining whether appellant is capable of surviving safely in freedom with the help of willing and responsible family members and friends.”)

16. In this case, the doctors at Morton Plant Hospital found that there was no

imminent threat that Lisa would inflict serious harm on herself or others. And they found that the availability of friends from the congregation to watch Lisa McPherson on a 24-hour basis made commitment both unnecessary and improper. As a matter of law, therefore, Morton Plant Hospital was required to release Lisa McPherson to the care of her friends from the congregation; failure to do so would have constituted false imprisonment.

17. It therefore follows that such friends cannot be subject to a lawsuit for false imprisonment on the ground that the person released to them was too ill or incompetent to give informed consent to such care, especially where the person readily agreed to it at the time. To be sure, the friends may have a certain minimal duty of care, which, if breached, might support a claim for negligence – an issue which the court does not address here. As to false imprisonment, plaintiff's argument is completely contradicted by the Baker Act itself – if accepted, it would render the Act unenforceable and nugatory with respect to those key provisions relating to release to friends or family.

18. In addition, the medical personnel at Morton Plant Hospital found that Lisa McPherson *was* competent to make a rational decision to leave Morton Plant Hospital, reject psychiatric evaluation or treatment, and go with her friends from the congregation for the care they wanted to give her and that she wanted to receive. The hospital then explicitly communicated these findings to Lisa and to the Scientologists who were at the Morton Plant Hospital. Under the Restatement sections quoted above (Rest. 2d Torts § 892 and Comment c), these laymen, in the medical sense, certainly were entitled to rely

upon the findings of the medical personnel at Morton Plant Hospital, as both plaintiff's experts, Dr. Weller and Mr. Mills, concede. The church members and the Church cannot then be subjected to a tort claim for false imprisonment based upon later expert testimony that Lisa was not competent to give the consent she unquestionably gave and which the hospital doctors found to be rationally given.

This is particularly true because, as the Court has held, under the Baker Act, it would not have mattered if the hospital had found that Lisa McPherson was not competent. Under the Baker Act, Morton Plant Hospital would *still* have had to release her to her friends to take care of her, rather than involuntarily commit her for future evaluation or treatment.

19. The defendants thus are entitled to summary judgment on plaintiff's false imprisonment claim because the evidence is undisputed that Lisa's stay at the Fort Harrison was not compelled against her will.

20. Moreover, after coming to the Fort Harrison, while Lisa McPherson exhibited bizarre and psychotic behavior, there is no competent evidence that Lisa McPherson demanded to be released and was unlawfully restrained from leaving. As the uncontroverted facts made clear, she never made a coherent request to leave the hotel. In fact, plaintiff's own expert witness has testified that from November 18 to December 5, 1995, Lisa McPherson was "not competent to withdraw consent." (Ex. 35, Weller Depo., April 28, 2000, at pp. 40-41.) Thus, there are no facts to support the plaintiff's conclusory allegation that Lisa McPherson was unlawfully held against her will by the

defendants from November 18, 1995 to December 5, 1995. Rather, the clear undisputed evidence indicates that she never demanded to leave the Fort Harrison and was not held against her will.

21. Florida law governing the tort of false imprisonment completely complements the clear meaning of the Baker Act in this context. To constitute false imprisonment, a confinement "must be unreasonable and unwarranted under the circumstances." 14 Fla. Jur. False Imprisonment § 3 (1957); *Kanner v. First Nat'l Bank of South Miami*, 287 So.2d 715, 717 (3d DCA 1974). Here, whatever efforts were undertaken to stop Lisa McPherson from injuring herself or from wandering around the public areas of the Fort Harrison while she was undressed and in a psychotic state were clearly exercised to insure that she not inflict substantial harm to her own well-being. As such, they were reasonable and warranted under the circumstances, especially because Lisa McPherson had been released to her Scientology "friends" precisely so that they could take reasonable steps to "avoid" "substantial harm to her well-being," pursuant to the mandate of the Baker Act. See Section 394.463, Fla. Stat. Indeed, plaintiff has conceded that defendants had a duty to protect Lisa McPherson in such circumstances. See Findings of Fact, ¶ 78, *ante*.

22. Defendants were not required to return Lisa McPherson to Morton Plant Hospital for further psychiatric evaluation, examination, or placement because of her

ongoing psychotic<sup>4</sup> behavior for several independent dispositive reasons:

a. As noted, the substantial possibility that Lisa would engage in precisely such behavior was contemplated by the hospital when it released Lisa to the care of her "friends" under the Baker Act. Clearly, if the doctors and nurses at Morton Plant Hospital were not concerned that Lisa would engage in disoriented or psychotic behavior after her release, they would not have insisted that she be released into the care of friends who would agree to watch her on a 24 hours per day basis. Her friends were supposed to insure that if Lisa did act in such a fashion, she would not inflict substantial harm to her well-being; this was a *substitute* for commitment to Morton Plant, as mandated by the Baker Act.

b. Thus, if Lisa had been brought back to Morton Plant Hospital, the same result would have been required under the Baker Act, *i.e.*, Lisa, even if incompetent under § 394.455, Fla. Stat., could not have been involuntarily committed to the hospital for psychiatric evaluation or placement so long as her friends were still available and willing to protect her "well-being." Indeed,

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<sup>4</sup> While defendants may have had a duty to bring Lisa McPherson to a doctor or hospital if and when Lisa exhibited obvious signs of physical – as opposed to mental – medical distress, and while breach of such a duty may support a claim of negligence, depending on the circumstances, those issues are not before the court on this motion. Nor is the question whether imposition of such a duty on religious workers engaged in religious activities violates the First Amendment religion clauses and Florida RFRA. *See e.g., Baumgartner v. First Church of Christ, Scientist*, 141 Ill. App.3d 898, 490 N.E.2d 1319, 1325 (affirming dismissal of negligence claims against Christian Science Church for death of man undergoing faith healing: "For the court to determine whether defendants breached any duty owed to decedent ... is precluded by the first amendment").

*commitment* of Lisa McPherson for psychiatric examination or placement under such circumstances would have been actionable as false imprisonment. *Liles v. P.I.A. Medfield, Inc.*, 681 So.2d 711, 712 (Fla.2d DCA 1995) (“A claim for the tort of false imprisonment can be asserted based on allegations that a person was involuntarily held [for psychiatric evaluation or placement] without compliance with the Baker Act”); *Everett v. Florida Institute of Technology*, 503 So.2d 1382, 1383 (Fla. 5th DCA 1987) (“Everett’s allegations that he was involuntarily held [by a mental hospital] for eight days without compliance with the Baker Act provisions, adequately allege the tort of false imprisonment”).

c. Lisa clearly and unmistakably was religiously opposed to psychiatric treatment of any kind, and had expressed that opposition by her words and deeds for years, including on the very day of her accident. It would have violated Lisa’s privacy and religious freedom rights to force her to return to Morton Plant Hospital for psychiatric commitment, and it would violate the religious free exercise rights of her co-religionists to hold them liable for not bringing her there.

The court further addresses these issues in the following paragraphs.

23. Under Article I, section 23 of the Florida Constitution, a person has the constitutional privacy right to choose or refuse medical treatment. *In re Dubreuil*, 629 So.2d 819, 822 (Fla.1993) (*citing Guardianship of Browning*, 568 So.2d 4, 11 (Fla.1990)); *see also Public Health Trust of Dade County v. Wons*, 541 So.2d 96, 97 (Fla.1989). “[T]he privacy right overlaps with the right to freely exercise one’s religion.”



*Dubreuil*, 629 So. 2d at 822. Moreover, “[i]n cases where these rights are litigated ... ‘[t]he state has a duty to assure that a person’s wishes regarding medical treatment are respected ... unless the state has a compelling interest great enough to override this constitutional right. The means to carry out any such compelling state interest must be narrowly tailored in the least intrusive manner possible to safeguard the rights of the individual.’” *Id.* (quoting *Browning*, 568 So. 2d at 13-14.)

24. In *In re Guardianship of Browning*, the Supreme Court made clear that where the person involved is not competent, this right “may be exercised by proxies or surrogates such as close family members or friends.” *Id.* at 13. In fact, as a matter of law, failing to provide the refused medical treatment cannot give rise to civil liability. *John F. Kennedy Memorial Hospital v. Bludworth*, 452 So. 2d 921, 926 (Fla. 1984) (For family members, guardians, physicians, hospitals or their administrators to “be relieved of potential civil and criminal liability” for following the wishes of a patient to refuse medical treatment, they “need only act in good faith”).

25. A person’s “constitutionally protected right to choose or reject medical treatment” is not “lost or diminished” by virtue of subsequent “physical or mental incapacity or incompetence.” *Browning*, 568 So.2d at 12. Rather, as emphasized in *Bludworth*, the friends or family of the person are authorized to carry out the previously expressed or presumed intention of the person who becomes incompetent. Such friends or family, moreover, are explicitly protected from liability unless they act in bad faith, which the *Bludworth* court defined as with an “inten[tion] to harm” her. *Bludworth*, 452

So. 2d at 926.

26. Once Lisa McPherson's decision had been made, through many years as a Scientologist and again at the hospital, the Church members had a right, even a duty, to honor it. The uncontroverted evidence shows that they did so in absolute good faith, with no intention to harm her. They had every reason to believe and understand, and no reason to disbelieve, that their actions were entirely consistent with the beliefs, intentions and wishes of Lisa McPherson, as clearly expressed throughout her life and, in particular, on November 18, 1995. They had every reason to believe and rely upon the decision of the medical personnel at Morton Plant Hospital that Lisa McPherson was entitled and able to exercise her choice. Any later changes in mental condition did not negate that choice.<sup>5</sup> *Id.*

27. The Florida Supreme Court's holding that the right recognized in *Dubreuil* and similar cases is rooted in both Florida's constitutional right to privacy and "the right to freely exercise one's religion," *Dubreuil* 629 So.2d 8 at 822, has been dramatically buttressed by Florida's enactment of the Religious Freedom Restoration Act, ("RFRA"), Section 761.01-.05, Florida Statutes. RFRA was enacted to enhance the protections of the Free Exercise Clause of the First Amendment and of Section 3, Article I of the Florida Constitution. It applies to all civil and criminal litigation, and even applies retroactively. It provides that the State, including state courts, may not impose burdens

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<sup>5</sup> In *Corbett v. D'Alessandro*, 487 So. 2d 368, 370 (Fla. 2d DCA 1986), the Court of Appeal for this jurisdiction noted that the right of privacy found in Article I, Section 23

upon a person's (including a church's) exercise of religion except in furtherance of a compelling state interest, and even then only by the least restrictive means necessary to protect that state interest. This test, known as "strict scrutiny" protection is the highest level of constitutional protection for a constitutional right.<sup>6</sup> Under RFRA, an act is protected as the "[e]xercise of religion" if it is "substantially motivated by a religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief." Fla. Stat. § 761.02(3).

28. Thus, the religiously motivated acts of the Church's religious workers and ministers in providing religious services to Lisa McPherson, consistent with her own beliefs and expressed wishes, is entitled to strict scrutiny protection under RFRA. The state may not "burden" that religious practice by imposing civil liability upon them or the Church for doing so, precisely because there exists no compelling state interest in doing so.

29. Applying these settled legal principles to the facts of this case compels the granting of the instant motion. On November 18, 1995, Lisa McPherson exercised her constitutional right of privacy to refuse medical treatment at Morton Plant Hospital and to go instead with her co-religionists to the Church's facilities to receive the Scientology

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of the Florida Constitution "extends to incompetent persons."

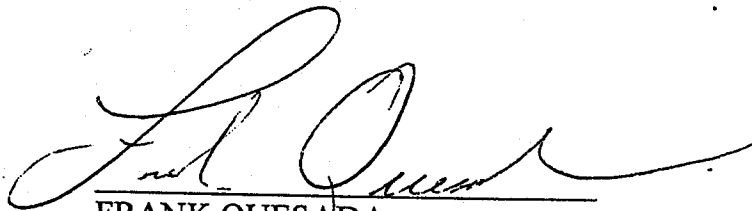
<sup>6</sup> Under "strict scrutiny" protection, the State may burden a person's constitutional right – in this instance, to the free exercise of religion – only to further a *compelling*, rather than a merely permissible or rational government interest, and then only by the least restrictive means necessary to further that interest. See *Dubreuil, supra*. It is application of that "strict scrutiny" test to free exercise rights that RFRA was intended to insure.

care they wanted to give her and that she wanted to receive. The Church religious workers were not only entitled, but legally bound, to respect Lisa McPherson's constitutionally protected choice. Plaintiff accuses the defendants of "imprisoning" Lisa McPherson "against her will" because the religious workers did exactly what the hospital expected them to do and what Lisa wanted - *i.e.*, watch her 24 hours a day to prevent her from harming herself or others and give her the religious assistance that the Church wanted her to have and that she wanted to have. Plaintiff seeks to hold the defendants accountable for the intentional tort of false imprisonment for taking measures to prevent Lisa from committing acts which would have caused her injury or to wind up precisely where she refused to go - a psychiatric ward.

The defendants thus are entitled to summary judgment of plaintiffs' False Imprisonment claim. It is therefore

ORDERED AND ADJUDGED as follows: Defendants' Motion for Summary Judgment as to Count III of the Fifth Amended Complaint, the False Imprisonment count, is granted.

DONE AND ORDERED at St. Petersburg, Pinellas County, Florida, on this 20 day of June 2001.



FRANK QUESADA  
CIRCUIT COURT JUDGE

cc: Counsel of record