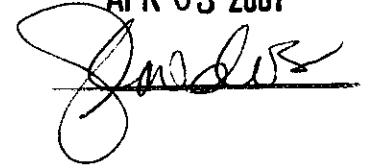


1 **WILLIAM M. GARRETT, JR.**
2 **ATTORNEY AT LAW**
3 **463 NORTH SIERRA WAY**
4 **SAN BERNARDINO, CA 92410**
5 **(909) 889-0631**
6 **SBN: 93172**

7 **ATTORNEY FOR PLAINTIFF**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 03 2007



8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF RIVERSIDE, RIVERSIDE JUDICIAL DISTRICT**

APR - 4 2007

10) **CASE NO. RIC 461032**
11)
12) **J.K. PROPERTIES, INC.**) **PLAINTIFF'S REPLY TO**
13) **Plaintiff**) **DEFENDANT CHURCH OF**
14) **vs**) **SCIENTOLOGY INTERNATIONAL'S**
15)) **NOTICE OF MOTION AND MOTION**
16) **CHURCH OF SCIENTOLOGY**) **FOR RECONSIDERATION**
17) **INTERNATIONAL aka CHURCH**)
18) **OF SCIENTOLOGY dba GOLDEN**)
19) **ERA PRODUCTIONS**)
20) **aka GOLDEN ERA PRODUCTIONS**) **DATE: APRIL 3, 2007**
21) **VOLUNTEER FIRE BRIGADE; AND**) **TIME: 1:30 PM**
22) **ALL UNKNOWN OCCUPANTS**) **DEPT: MV1 UD**
23) **DOES 1 THRU 1000**)
24) **Defendant**)

25 **PARTIAL STATEMENTS OF FACTS**

26 This is an Unlawful Detainer action based upon Defendants failure to vacate the premises
27 after service of their own Notice of Intent to Vacate the premises. The Unlawful Detainer is
28 predicated upon CCP § 1161 (5).

1 The Complaint in this action indicates that Defendant's Notice was served upon Plaintiff
2 on August 7, 2006. The Exhibit attached does indicate that it was served via Telefax and mail.

3 Defendant's argument appears to be that since they defectively served their Notice of
4 Intent to Vacate Plaintiff has no right to rely on it as a basis for an Unlawful Detainer action.

5 Defendants did not raise this point in their Demurrer or at oral argument at the hearing of
6 this matter. Further, as the Complaint indicates that the Notice was served upon Plaintiff, this
7 must accepted as true for the purpose of the Demurrer.
8

9 10 **POINTS AND AUTHORITIES**

11 **I**

12 **ACTUAL RECEIPT OF A NOTICE CURES ANY DEFECT IN SERVICE**

13 California Courts have held that actual receipt of an improperly served Notice is
14 sufficient to support an Unlawful Detainer action even though the method of service does not
15 strictly comply with CCP §1162 or in this case would be Civil Code §1946. The Courts appear
16 to have used two theories, the first being that actual receipt of the notice cures any defect in
17 service, or in the alternative, the actual receipt of a letter sent in the mail from the Post Office is a
18 form of personal service. In *University of Southern California vs. Weiss (1962) 208 Cal Ap 2nd*
19 *759, 769, 25 Cal rep 475* the tenant admitted receiving in the mail a 30-Day Notice to Vacate.
20 The Court held that CCP §1162 's requirement of personal service was met by the mail delivery.
21 This seems particularly true in this case since it is the Defendant who gave the Notice. It seems
22 preposterous to indicate that we gave a Notice, but you cannot base a case on it as we did it
23 improperly. Under Civil Code §1946, the Notice may be given as prescribed in CCP §1162 or by
24 certified mail. In seems axiomatic that if improper service by a landlord, which is actually
25
26
27

1 received by a tenant, is sufficient basis for an unlawful detainer, a tenant's own notice, even if
2 improperly served, would support an unlawful detainer action.

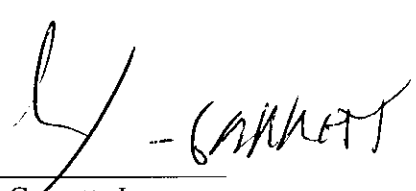
3 Defendants' argument was not raised as part of their Demurrer, and should not now be
4 considered by the Court as a basis of reconsideration. Further, as the Complaint indicates that
5 the Notice was served, this allegation must be accepted as true for the purpose of the Demurrer
6 hearing. Plaintiff's Complaint does state a cause of action and the Court should not reconsider
7 and grant Defendant's Demurrer.
8

9
10 **CONCLUSION**

11 The Court correctly overruled Defendant's Demurrer. The Court's prior ruling should not
12 be over turned. However, if the Court is to reconsider and sustain Defendant's Demurrer,
13 Plaintiff hereby requests twenty (20) days leave to file an Amended Complaint.
14

15
16 Respectfully submitted,

17
18 Dated: 3/24/07



William M. Garrett, Jr.
Attorney for Plaintiff

PROOF OF SERVICE (C.C.P. 1013, 1013a, 2015.5)

I declare that: I am employed in the County of San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 463 North Sierra Way, San Bernardino, California 92410.

On March 28, 2007, I served the PLAINTIFF'S REPLY TO DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION addressed as follows:

John A. Boyd, Esq.
THOMPSON & COLEGATE LLP
PO BOX 1299
RIVERSIDE, CA 92502
FAX (951) 781-4012

Kendrick L. Moxon, Esq.
MOXON & KOBRIN
3055 Wilshire Blvd., Suite 900
LOS ANGELES, CA 90010
FAX (213) 487-5385

BY MAIL I deposited such sealed envelope with postage thereon fully prepaid for first class mail in the mail at San Bernardino, California. I am "readily familiar" with the firm's practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Bernardino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE I delivered such envelope by hand to the person(s) indicated above at approximately _____ a.m. at _____.

BY FACSIMILE. I caused said document to be transmitted by Facsimile machine to the number indicated after the address(es) noted above. A copy of the confirmation of said transmittal is attached hereto.

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



Virginia Miller