

CAUSE NO. S-12-5645CV-C

PAUL MARRICK and GREG ARNOLD

Plaintiffs,

VS.

RELIGIOUS TECHNOLOGY CENTER,  
CHURCH OF SCIENTOLOGY  
INTERNATIONAL, CHURCH OF  
SCIENTOLOGY OF TEXAS, and DAVID  
MISCAVIGE,

Defendants.

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IN THE DISTRICT COURT

343rd JUDICIAL DISTRICT

SAN PATRICIO COUNTY, TEXAS

**DAVID MISCAVIGE'S SPECIAL APPEARANCE**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant David Miscavige ("Mr. Miscavige") files this Special Appearance under Rule 120a of the Texas Rules of Civil Procedure for the sole purpose of objecting to the jurisdiction of this Court over Mr. Miscavige, and in support thereof, would respectfully show the Court as follows:

**INTRODUCTION**

1. In this case there are two plaintiffs -- neither of whom are Texas residents. They sued several defendants -- none of whom are Texas residents (with one irrelevant exception). They allege a breach of an oral contract -- but the contract was not made, performed or breached in Texas.

2. This special appearance objecting to personal jurisdiction over Mr. Miscavige is made as to this entire proceeding and is filed before any other plea, pleading, or motion. This special appearance is responsive both to the Plaintiff's Original Petition, which was served on the Secretary of State on September 6, 2012, and Plaintiff's First Amended Petition, which to

Defendants' knowledge has not yet been served, but which Plaintiffs apparently released to the press at the time of its filing. In accordance with Rule 120a of the Texas Rules of Civil Procedure, this special appearance is verified; the affidavit of Warren McShane is attached hereto as Exhibit "A," filed in support of this special appearance, and is incorporated herein by reference for all purposes.

3. Mr. Miscavige is the Chairman of the Board of Religious Technology Center ("RTC") and the ecclesiastical leader of the Scientology religion. Plaintiffs have asserted only conclusory allegations -- *no facts* -- regarding personal jurisdiction over Mr. Miscavige because there are no such *facts*.

4. The Court can draw its own conclusion why Plaintiffs sued Mr. Miscavige in this case in Texas. Plaintiffs have no connection to Texas. Mr. Miscavige has no connection to Texas. The alleged oral contract was not made, performed or breached in Texas. The Plaintiffs' harassment of Mr. Miscavige, the head of a religion, through the Texas courts implicates First Amendment issues, which is why we are submitting the affidavit of Mr. McShane.

5. Mr. Miscavige is not a Texas resident. Rather, Mr. Miscavige is a resident and citizen of California. *See* Affidavit of Warren McShane, attached as Exhibit "A".

6. Texas courts may only exercise *in personam* jurisdiction over a nonresident, such as Mr. Miscavige, if: (1) the Texas long-arm statute authorizes the exercise of jurisdiction; and (2) the exercise of jurisdiction is consistent with federal and state constitutional due process guarantees. *See Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007) (citing *Schlobohm v. Schapiro*, 784 S.W.2d 355, 356 (Tex. 1990)). Neither requirement is met with respect to Mr. Miscavige.

7. First, Plaintiffs have failed to properly plead or otherwise attempt to show that the Texas long-arm statute authorizes the exercise of jurisdiction over Mr. Miscavige, nor can they do so, because Mr. Miscavige does not “do business” in the State of Texas. *See* TEX. CIV. PRAC. & REM. CODE § 17.042, and Exhibit “A”.

8. Second, the exercise of personal jurisdiction over Mr. Miscavige is not consistent with federal and state constitutional due process guarantees, because Mr. Miscavige has not purposefully availed himself of the benefits or protections of Texas laws, nor has he established “minimum contacts” with the State of Texas. Moreover, the court’s exercise of jurisdiction over Mr. Miscavige would not comport with “fair play and substantial justice.” *See, e.g., Burger King v. Rudzewicz*, 471 U.S. 462, 474-76 (1985); *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Moki Mac*, 221 S.W.3d at 575; *see also Dawson-Austin v. Austin*, 968 S.W.2d 319, 326 (Tex. 1998).

9. Specifically, Mr. Miscavige has not “purposefully avail[ed] [him]self of the privilege of conducting activities within the state of Texas . . .” and therefore has not invoked the benefits and protections of Texas law. *See Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (quoting *Int’l Shoe Co.*, 326 U.S. at 319).

10. The exercise of jurisdiction over Mr. Miscavige is not warranted on the basis of either “specific” or “general” jurisdiction. Plaintiffs have failed to allege any facts supporting their conclusory statement, ostensibly applicable to all defendants, that “this cause of action arises out of or relates to their contacts with Texas.” The plaintiffs’ failure to allege facts supporting jurisdiction relieves Mr. Miscavige of any obligation to rebut unsupported conclusory allegations—the burden to negate jurisdiction is expressly tied to the allegations in the plaintiff’s pleading. *See Kelly v. Interior Constr. Co.*, 301 S.W.3d 653, 658 (Tex. 2010).

11. Nevertheless, the attached affidavit of Mr. McShane is offered to demonstrate that Mr. Miscavige has also not made “continuous and systematic contacts...” with this forum that would warrant the exercise of general jurisdiction. *See Moki Mac*, 221 S.W.3d at 575-76 (citing *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 n.8 (1984); *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 796 (Tex. 2002); *CSR Ltd. v. Link*, 925 S.W.2d 591, 595 (Tex. 1996)). In short, Mr. Miscavige has no meaningful contacts with the State of Texas.

12. Finally, in light of all relevant factors provided for under law, the Court’s exercise of personal jurisdiction over Mr. Miscavige would not comport with due process requirements because doing so would “offend traditional notions of fair play and substantial justice.” *See Int’l Shoe Co.*, 326 U.S. at 316; *Guardian Royal Exch. Assur., Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex. 1991).

13. For the foregoing reasons, and the reasons outlined in the following paragraphs, Mr. Miscavige respectfully requests that this Court sustain his special appearance and enter an Order dismissing Plaintiffs’ causes of action against Mr. Miscavige.

**A. EXERCISE OF PERSONAL JURISDICTION AS TO MR. MISCAVIGE IS NOT WARRANTED UNDER THE LONG-ARM STATUTE**

14. As outlined above, in order for a Texas court to exercise *in personam* jurisdiction over a nonresident defendant, such as Mr. Miscavige, the exercise of jurisdiction must comport with both the Texas long-arm statute and due process. *Moki Mac*, 221 S.W.3d at 574 (citing *Schlobohm v. Schapiro*, 784 S.W.2d 355, 356 (Tex. 1990)). As discussed below, Plaintiffs have failed to comport with the Texas long-arm statute because: (1) Plaintiffs’ pleading is facially insufficient to show long-arm jurisdiction and (2) Mr. Miscavige does not “do business” in Texas as set forth in the long-arm statute.

**1. Plaintiffs' Petition is Insufficient to Establish Jurisdiction under the Texas Long-Arm Statute.**

15. At the outset, Plaintiffs have failed to properly plead in accordance with the Texas long-arm statute, as they have omitted to plead any *facts* bringing Mr. Miscavige within reach of the long-arm statute. *See Kelly v. Gen. Interior Const., Inc.*, 301 S.W.3d 653, 659 (Tex. 2010). Plaintiffs have failed to properly plead or otherwise attempt to show that the Texas long-arm statute authorizes the exercise of jurisdiction over Mr. Miscavige, nor can they do so, as Mr. Miscavige is not a Texas resident and does not do business in the state of Texas. *See* TEX. CIV. PRAC. & REM. CODE § 17.042, and Exhibit "A". Because Plaintiffs have failed to allege any jurisdictional facts, Mr. Miscavige is entitled to a special appearance by demonstrating that he is a nonresident of the state of Texas. *Kelly*, 301 S.W.3d at 658; *see also* Ex. "A".

16. Plaintiffs have not pled any facts that, if true, would make Mr. Miscavige subject to the jurisdiction of a Texas court.<sup>1</sup> When pleading a case against a nonresident, a plaintiff must allege facts that, if true, would make the nonresident defendant subject to *in personam* jurisdiction of a Texas court. *Paramount Pipe & Sup. Co. v. Muhr*, 749 S.W.2d 491, 496 (Tex. 1988); *M.G.M. Grand Hotel, Inc. v. Castro*, 8 S.W.3d 403, 408 n.2 (Tex. App.—Corpus Christi 1999, no pet.). The plaintiff has the initial burden of pleading sufficient allegations to bring a nonresident defendant within the provisions of the long-arm statute. *Hotel Partners v. KPMG Peat Marwick*, 847 S.W.2d 630, 633 (Tex. App.—Dallas 1993, writ denied). When a plaintiff

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<sup>1</sup> Neither of Plaintiffs' Petitions allege any facts to support their conclusory jurisdictional allegations. Plaintiffs merely state that general jurisdiction over "Defendants" exist "because they have a substantial connection with Texas due to their continuing and systematic contacts purposefully directed toward Texas." Plaintiffs also allege that the Court has "specific jurisdiction over the Defendants because they have a substantial connection with Texas due to the fact this cause of action arises out of or relates to their contacts in Texas." *See* Plaintiff's Original Petition and Plaintiffs' First Amended Petition. In addition, Plaintiffs fuse the different Defendants for jurisdictional purposes. A plaintiff seeking to ascribe one corporation's actions to another by disregarding distinct corporate entities has the burden of proving this allegation. *BMC Software Belgium, N.Y. v. Marchand*, 83 S.W.3d 789, 798 (Tex. 2002).

fails to plead jurisdictional allegations that a nonresident defendant committed an act in Texas or that the defendant's acts outside of Texas had reasonably foreseeable consequences in Texas, the defendant can meet his burden to negate all potential bases of jurisdiction by presenting evidence that he is a nonresident. *Kelly*, 301 S.W.3d at 658 (Because the plaintiff defines the scope and nature of the lawsuit, the defendant's corresponding burden to negate jurisdiction is tied to the allegations in plaintiff's pleading).

17. Mr. Miscavige has therefore met his burden of negating all potential bases of jurisdiction by proffering the affidavit of Warren McShane, Exhibit A, which establishes the fact that he is and has always been a nonresident of the State of Texas. *Sisking v. Villa Found. For Educ., Inc.*, 642 S.W.2d 434, 438 (Tex. 1982) (“[T]he only evidence offered to negate jurisdiction was [a defendant's] testimony that she and the other individuals were residents of Arizona. . . In view of [the plaintiff's] failure to allege any act by these individuals in Texas, we believe that the [defendants] have sustained their burden.”); *Frank A. Smith Sales, Inc. v. Atl. Aero, Inc.*, 31 S.W.3d 742, 747 (Tex. App.—Corpus Christi 2000, no pet.) (“The plaintiff's] third party petition states only that [the defendant] has committed acts of negligence, without specifying what those negligent acts were, or where they occurred. Therefore, [the] petition fell well short of pleading sufficient allegations to show jurisdiction in Texas”).

**2. Mr. Miscavige is not “Doing Business” in Texas Pursuant to the Long-Arm Statute.**

18. Further, not only have Plaintiffs failed to plead any facts bringing Mr. Miscavige within reach of the long-arm statute, no such facts exist. The Texas long-arm statute specifically requires that a nonresident be “doing business” in the state of Texas. *See* Tex. Civ. Prac. & Rem. Code § 17.042. The statute provides three ways in which a nonresident may be deemed to have done business in the state of Texas:

- (1) Contracting by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;
- (2) Committing a tort in whole or in part in this state; or
- (3) Recruiting Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

See TEX. CIV. PRAC. & REM. CODE § 17.042(1)-(3).

19. Mr. Miscavige has not contracted by mail, or otherwise, with a Texas resident where either party is to perform the contract in whole or in part in the State of Texas. See Ex. "A". Neither Plaintiff is a Texas resident. Mr. Miscavige has not recruited a Texas resident, directly or through an intermediary located in this state, for employment inside or outside of this state. *Id.*

20. Nor has Mr. Miscavige committed a tort, in whole or in part, in Texas. *Id.* As Plaintiffs stated in their pleadings, the operative facts of this litigation concern alleged nonpayment of services Plaintiffs claim to have rendered on behalf of RTC and/or another Scientology entity. See generally, Plaintiffs' Original Petition and Plaintiffs' First Amended Petition. Nonpayment for services rendered under an alleged contractual relationship is purely a contract claim and therefore does not constitute a "tort" under Texas law and under Section 17.042. See, e.g., *Southwestern Bell Tel. Co. v. DeLanney*, 809 S.W.2d 493, 494 (Tex. 1991) (Alleged failure to perform a contract does not sound in tort); see also, e.g., *Sharyland Water Supply Corp. v. City of Alton*, 354 S.W.3d 407, 417-418 (Tex. 2011). Likewise, Plaintiffs' claims for promissory estoppel and quantum meruit are contractual in nature, and their allegations supporting their breach of fiduciary duty claim are based on a purported contractual "transaction." The Plaintiffs' claims for fraud and negligent misrepresentation are conclusory, and their references to "communications" in those claims infer no tortious conduct.

21. In sum, because Plaintiffs have failed to plead sufficient facts to bring Mr. Miscavige within reach of Texas' long-arm statute, Mr. Miscavige's special appearance should be granted by virtue of his proof that he is a nonresident of this state. *Kelly*, 301 S.W.3d at 659. However, even if Plaintiffs had pled facts bringing Mr. Miscavige within reach of the long-arm statute, Mr. Miscavige's proof by the proffered affidavit Warren McShane establishes that he does not "do business" in the state of Texas, as: (1) he has not contracted with a Texas resident where either party is to perform the contract in whole or in part in Texas; (2) he has not committed a tort in whole or in part in the state of Texas; and (3) he has not recruited a Texas resident, directly or through an intermediary located in the state, for employment inside or outside the state of Texas. *See* Exhibit "A"; *see also* TEX. CIV. PRAC. & REM. CODE § 17.042(1)-(3). For these reasons, Mr. Miscavige's objections to jurisdiction should be sustained and his special appearance should be granted. *Moki Mac*, 221 S.W.3d at 574 (citing *Schlobohm*, 784 S.W.2d at 356).

**B. MR. MISCAVIGE HAS NOT PURPOSEFULLY AVAILED HIMSELF OF THE PRIVILEGE OF CONDUCTING ACTIVITIES IN THE STATE OF TEXAS**

22. This Court cannot exercise personal jurisdiction over Mr. Miscavige because he has not purposefully availed himself of the privilege of conducting activities in the state of Texas. *See Hanson*, 357 U.S. at 253 (1958) (citing *Int'l Shoe Co.*, 326 U.S. at 319).

23. The purposeful availment element is the "touchstone of jurisdictional due process" and requires "some act by which the *defendant purposefully avails* itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its law." *See IRA Resources, Inc. v. Griego*, 221 S.W.3d 592, 596 (Tex. 2007) (emphasis original) (citing *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002); *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005); *Hanson*, 357



U.S. at 253). Texas courts apply a three-pronged analysis to this issue: (1) only the defendant's forum-state contacts matter, not anyone else's; (2) the contacts must be purposeful, not merely random, isolated, or fortuitous; (3) a nonresident defendant must seek some benefit, advantage, or profit by "availing" itself of the jurisdiction, thus impliedly consenting to its laws. *Id.*

24. Mr. Miscavige has not in any way purposefully "availed" himself of the benefits and protections of Texas law. Mr. Miscavige conducts no business in the State of Texas, has no property (real or personal) in this state, maintains no employees, servants, or agents in Texas, has never filed a lawsuit in this state, does not maintain any bank accounts in this state, and is not registered to conduct business in this state. *See Ex. "A"*. As such, Mr. Miscavige has not sought any benefit or advantage or otherwise availed himself, through business or otherwise, of the protections of Texas law. *Id.* Furthermore, Mr. Miscavige has not expressly or impliedly consented to Texas law in any form or fashion. *Id.* Mr. Miscavige's objections to this Court's exercise of personal jurisdiction are therefore properly sustained.

**C. EXERCISE OF PERSONAL JURISDICTION OVER MR. MISCAVIGE IS NOT PROPER ON THE BASIS OF "SPECIAL" OR "GENERAL" JURISDICTION**

25. In addition to the foregoing, due process requires that personal jurisdiction be based on either "specific" or "general" jurisdiction. *See, e.g., Kelly*, 301 S.W.3d at 659; *Moki Mac*, 221 S.W.3d at 579; *BMC Software*, 83 S.W.3d at 797. Plaintiffs allege, but only in a conclusory fashion, that personal jurisdiction is properly exercised over Mr. Miscavige on the basis of both specific and general jurisdiction. *See Plaintiffs' Original Petition and Plaintiffs' First Amended Petition*, at ¶ 4. Plaintiffs' assertion is incorrect as to both types of jurisdiction.

**1. Specific Jurisdiction Does not Exist Because Plaintiffs' Purported Claims Do Not Arise From or Relate to Any Contacts Between Mr. Miscavige and the State of Texas.**

26. The exercise of in personam jurisdiction over Mr. Miscavige is not proper on the basis of specific jurisdiction, as Plaintiffs' purported causes of action do not arise from or relate to any contacts between Mr. Miscavige and the State of Texas. See *Moki Mac*, 221 S.W.3d at 575-76; see also *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 337 (Tex. 2009); *CSR, Ltd. v. Link*, 925 S.W.2d 591, 595 (Tex. 1996).

27. In the context of specific jurisdiction, the proper focus is on "the relationship among the defendant, the forum and the litigation." See *Moki Mac*, 221 S.W.3d at 575-76 (citing *Guardian Royal*, 815 S.W.2d at 228; *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 414 (1984); *Schlobohm*, 784 S.W.2d at 357). As indicated above, specific jurisdiction is found to exist when the litigation arises out of or relates to the nonresident's contacts with Texas. *Id.* The Texas Supreme Court has held that litigation "arises from" or "relates to" the nonresident's Texas contacts when said contacts are substantially connected to the operative facts of the plaintiff's lawsuit. See *Spir Star AG v. Kimich*, 310 S.W.3d 868, 874 (Tex. 2010) (citing *Moki Mac*, 221 S.W.3d at 585); see also *Moki Mac*, 221 S.W.3d 585 (citing *Guardian Royal*, 815 S.W.2d at 229-33; *Rush v. Savchuk*, 444 U.S. 320, 329 (1980); *Shell Compania Argentina de Petroleo, S.A. v. Reef Exploration, Inc.*, 84 S.W.3d 830, 837 (Tex. App.—Houston [1st Dist.] 2002, pet. denied)). Plaintiffs plead no jurisdictional facts showing a substantial connection between the operative facts of this lawsuit and any contacts between Mr. Miscavige and Texas, nor do any such facts exist.

28. As is readily apparent from Plaintiffs' live pleading, Plaintiffs' suit concerns alleged nonpayment for services they claim to have rendered for RTC and/or another corporate entity, Church of Scientology International. See generally, Plaintiffs' Original Petition and Plaintiffs' First Amended Petition. That is, the "operative facts" of this litigation concern

payment (or alleged lack thereof) for services allegedly rendered by Plaintiffs for RTC. *Id.* These alleged “operative facts” have no connection to any contacts between Mr. Miscavige and the State of Texas, if any such contacts even exist.

29. As set forth in RTC’s Special Appearance, RTC does not have sufficient contacts with the State of Texas to be amenable to jurisdiction in Texas.<sup>2</sup> Even if RTC did have sufficient contacts, which it does not, personal jurisdiction over an individual cannot be based on jurisdiction over a corporation with which the individual is associated, unless the corporation is the alter ego of the individual. *Nichols v. Tseng Hsiang Lin*, 282 S.W.3d 746, 750 (Tex. App.—Dallas 2009, no pet.); *Siskand v. Villa Found. For Educ., Inv.*, 642 S.W.2d 434, 438 (Tex. 1982). Furthermore, although Plaintiffs have certainly sued many Defendants, they are not entitled to ascribe one corporation’s actions to another or a corporation’s action to its officers for the purposes of establishing personal jurisdiction. *Tri-State Bldg. Specialties, Inv. v. NCI Bldg. Sys., L.P.*, 184 S.W.3d 242, 250 (Tex. App.—Houston [1st Dist.] 2005, no. pet.). Finally, Mr. Miscavige, as Chairman of the Board, is not liable for the debts of RTC. *See* TEX. BUS. ORGAN. CODE §§ 22.152 (“members of a corporation are not personally liable for a debt, liability, or obligation of the corporation.”); *Willis v. Donnelly*, 199 S.W.3d 262, 271 (Tex. 2006) (directors not personally liable for corporation’s contractual obligations).

30. There is no connection between the Plaintiffs’ claim for non-payment and any contacts Mr. Miscavige may have had with Texas. Plaintiffs have failed to plead facts, nor do

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<sup>2</sup> Specifically, neither of the Plaintiffs are residents of the state of Texas. Payment was therefore not made to Plaintiffs in the state of Texas. In fact, all services rendered by Plaintiffs were done through their Colorado corporation, which is organized under the name of “Select Investigations, Inc.” As such, any claim for alleged nonpayment for these services, even if supported (which is denied), could not have occurred in Texas. More pointedly, the “operative facts” of this litigation, i.e., the alleged nonpayment for Plaintiffs’ services, have no connection to the state of Texas because the material events in dispute did not and could not have occurred in Texas and have no connection to Texas.

any facts exist, showing the contrary. The proposed exercise of personal jurisdiction over Mr. Miscavige on the basis of special jurisdiction is therefore improper.

**2. General Jurisdiction Does Not Exist Because Mr. Miscavige Has No Continuing or Systematic Contacts with the State of Texas.**

31. Mr. Miscavige also has no continuous or systematic contacts with the State of Texas; as such, exercise of personal jurisdiction on the basis of general jurisdiction is similarly unavailable.

32. The general jurisdictional analysis requires a more demanding showing than special jurisdiction, and specifically requires the Plaintiff asserting jurisdiction over a nonresident to establish “continuous and systematic” contacts between the nonresident and the State of Texas. *See BMC Software*, 83 S.W.3d at 796; *Guardian Royal*, 815 S.W.2d at 228; *Schlobohm*, 784 S.W.2d at 358; *PHC-Minden v. CSR, Ltd.*, 925 S.W.2d at 595.

33. As stated above, Mr. Miscavige is a California citizen who resides and works in California. *See Ex. “A”*. Mr. Miscavige conducts no business in the State of Texas, does not maintain a business office in Texas, has no property (real or personal) in Texas, has never paid Texas property taxes, has never filed a lawsuit in Texas, does not maintain any bank accounts in Texas, and has never resided in Texas. Furthermore, Mr. Miscavige has never registered to vote in Texas, and has never maintained a mailing address or driver’s license in Texas. *See Ex. “A”*.

34. Mr. Miscavige has visited the State of Texas on one limited occasion in 2009 when he traveled to Texas to officiate at the opening of the new Church of Scientology of Dallas (this is not the Texas Church named as a defendant in Plaintiff’s Petition). *See Ex. “A”*.

35. Mr. Miscavige simply has no continuing or systematic contacts with the State of Texas; indeed, Mr. Miscavige has no jurisdictionally-meaningful contacts with the State of Texas

at all. *Id.* Exercise of personal jurisdiction therefore may not be based on the application of general jurisdiction.

36. Since the prospective exercise of *in personam* jurisdiction over Mr. Miscavige is not proper on the basis of general or special jurisdiction, this Court cannot exercise personal jurisdiction over Mr. Miscavige and his objections to the same are properly sustained. *Kelly*, 301 S.W.3d at 659; *Moki Mac*, 221 S.W.3d at 579; *BMC Software*, 83 S.W.3d at 797.

**D. EXERCISE OF PERSONAL JURISDICTION OVER MR. MISCAVIGE DOES NOT COMPORT WITH FAIR PLAY AND SUBSTANTIAL JUSTICE**

37. In addition to the foregoing elements, the United States Supreme Court has held that a court may not exercise personal jurisdiction over a nonresident defendant when doing so would “offend traditional notions of fair play and substantial justice.” *See, e.g., Int’l Shoe*, 326 U.S. at 316. Courts have formulated a five-factor test for analyzing whether exercising personal jurisdiction over a nonresident would “offend traditional notions of fair play and substantial justice”: (1) the burden on the defendant; (2) the interest of Texas in adjudicating the dispute; (3) the plaintiff’s interest in obtaining convenient and effective relief; (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the states in furthering fundamental and substantial social policies. *See Guardian Royal*, 815 S.W.2d at 231 (citing *Burger King v. Rudzewicz*, 471 U.S. 462, 477 (1985)); *see also World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). All of these factors mitigate against the exercise over jurisdiction over Mr. Miscavige comporting with “fair play and substantial justice”.

38. First, forcing Mr. Miscavige, the Chairman of the Board of RTC and ecclesiastical leader of the Scientology religion, who is a California resident and citizen, to litigate in this forum when Mr. Miscavige has no presence in this state and has not conducted any

business in this state poses a heavy and unreasonable burden on Mr. Miscavige. This is especially true since the Plaintiffs are residents of Colorado and California and the current dispute has no relationship with Texas. Any alleged act or omission on the part of Mr. Miscavige could not have occurred in this state. *See* Ex. "A". For the same reasons, the State of Texas has no interest in adjudicating this dispute. Simply construed, Plaintiffs' suit arises out of promises and representations allegedly made in California by California residents to the Plaintiffs who at all material times resided in Colorado and California. Any payments due would have been due to Plaintiffs either in California or Colorado. The State of Texas has no interest in adjudicating this out of state dispute involving alleged breaches of out of state promises by and between out of state litigants.

39. Although Plaintiffs have elected to file this suit in Texas and therefore presumably find some advantage in forum shopping in the Texas courts, Plaintiffs cannot have elected to file in Texas in the interest of "obtaining convenient and effective relief." *See Guardian Royal*, 815 S.W.3d at 231. Plaintiffs are not residents of Texas and there is simply no Texas nexus between the alleged events and giving rise to potential liability and Plaintiffs' claims against Mr. Miscavige or any of the other Defendants.

40. Texas courts hold that in considering the final two factors in the analysis – the interstate judicial system's interest in obtaining the most efficient resolution and "the shared interest of the several states in furthering fundamental social policies" – the court must weigh the interests of Texas against the interest of other states with a potential interest in deciding the dispute. *See, e.g., Waterman Steamship Co. v. Ruiz*, 355 S.W.3d 387, 427 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (citing *Michel v. Rocket Eng'g Corp.*, 45 S.W.3d 658, 684 (Tex. App.—

Fort Worth 2001, no pet.). When done so here, these factors clearly mitigate against the exercise of personal jurisdiction over Mr. Miscavige in Texas.

41. This is simply because Texas has no interest in deciding this alleged contract dispute by and between litigants with no substantial or relevant ties or connections to the state. Plaintiffs are citizens of California and Colorado. Mr. Miscavige, Religious Technology Center (“RTC”) and Church of Scientology International are citizens of California, and the alleged dispute and damages do not relate to any events or activities which occurred in Texas.<sup>3</sup> See Plaintiffs’ Original Petition and Plaintiffs’ First Amended Petition, at ¶ 2; see also Ex. “A”; see also, e.g., *Michel*, 45 S.W.3d at 684; *State of Rio De Janeiro of Federative Republic of Brazil v. Philip Morris, Inc.*, 143 S.W.3d 497, 503 (Tex. App.—Beaumont 2004 pet. denied) (citing *Allianz Risk Transfer (Bermuda) Ltd. v. S.J. Camp & Co.*, 117 S.W.3d 92, 97 (Tex. App.—Tyler 2003, no pet.); *John Doe I v. Roman Catholic Archdiocese of St. Louis*, 109 S.W.3d 928, 931 (Tex. App.—Dallas 2003, no pet.) (“Judicial efficiency would be served by litigating this dispute in the state in which most parties reside, most witnesses are likely to reside, and the alleged torts occurred); see also *James v. Illinois Cent. R.R. Co.*, 965 S.W.2d 594, 599 (Tex. App.—Houston [1st Dist.] 1998, no pet.) (lack of interest where nonresident plaintiffs litigating in Texas for injury with no relationship to Texas); see also *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 377 (5th Cir. 1987) (plaintiff’s inability to show any witnesses or other evidence located in Texas weighs in favor of dismissal). Because of the lack of relationship between the parties, the subject matter made the basis of this lawsuit, and the State of Texas, the interstate judicial system’s

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<sup>3</sup> Plaintiffs named Church of Scientology of Texas (a separate religious non-profit Texas corporate located in Austin) as a sham defendant in an utterly baseless attempt to create a tenable basis for Texas jurisdiction where none exists. Mr. Miscavige has never visited the Church of Scientology of Texas.

interest in obtaining the most efficient resolution of this matter and the shared interest of the several states in furthering fundamental social policies weigh heavily in favor of dismissal. *Id.*

42. Since all of the aforementioned factors of the “fairness” inquiry weigh heavily against this Court’s exercise of personal jurisdiction over Mr. Miscavige, Mr. Miscavige’s objections to personal jurisdiction should be sustained and Plaintiffs’ claims herein against him should be dismissed for lack of jurisdiction.

### CONCLUSION

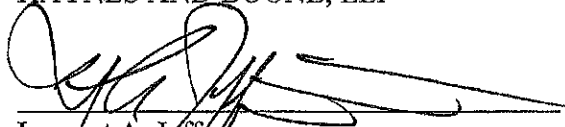
As outlined above, the law requires two elements for exercise of personal jurisdiction by a Texas court: (1) the exercise must be authorized by the Texas long-arm statute; and (2) the exercise must comport with state and federal due process guarantees. *Moki Mac*, 221 S.W.3d at 574 (citing *Schlobohm*, 784 S.W.2d at 356). Neither of these elements are met as to Mr. Miscavige. As such, Mr. Miscavige’s objections to personal jurisdiction are properly sustained.

**THEREFORE**, Defendant DAVID MISCAVIGE respectfully requests that this Court grant his Special Appearance under Rule 120a of the Texas Rules of Civil Procedure, that Mr. Miscavige be dismissed from this action, and that Mr. Miscavige be granted such other and further relief to which it may show itself justly entitled.



Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT  
DAVID MISCAVIGE**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all known counsel of record in this cause in accordance with the Texas Rules of Civil Procedure on this the 1st day of October, 2012.



Lamont Jefferson

CAUSE NO. S-12-5645CV-C

PAUL MARRICK and GREG ARNOLD

Plaintiffs,

VS.

RELIGIOUS TECHNOLOGY CENTER,  
CHURCH OF SCIENTOLOGY  
INTERNATIONAL, CHURCH OF  
SCIENTOLOGY OF TEXAS, and DAVID  
MISCAVIGE,

Defendants.

IN THE DISTRICT COURT

343rd JUDICIAL DISTRICT

SAN PATRICIO COUNTY, TEXAS

**AFFIDAVIT OF WARREN McSHANE IN SUPPORT OF  
DAVID MISCAVIGE'S SPECIAL APPEARANCE**

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

BEFORE ME, the undersigned authority, on this day personally appeared Warren McShane, who, after being by me duly sworn, stated on his oath as follows:

My name is Warren McShane. I am a resident of Los Angeles, California, am over the age of 21, have not been convicted of a felony and have personal knowledge of the matters stated in this Affidavit.

1. I am the President, as well as a Director and Officer, of Religious Technology Center ("RTC"). RTC is a religious non-profit California corporation that is tax exempt under IRC § 501(c)(3) and our religion is Scientology. RTC is located at 1710 Ivar Ave., Suite 1100, Los Angeles, CA.

2. I was elected President of RTC in 1993 and have held that position since then. I have been a Director and Officer of RTC since 1983. I am the custodian of the RTC records and am responsible for the operation of RTC including the creation and execution of all legal

**Exhibit A**

agreements and contracts both internally and externally. I am responsible for the day to day activities and functions of RTC and its staff.

3. Mr. Miscavige is the Chairman of the Board of RTC and has been a Trustee of RTC since its formation in 1982.

4. I have personal knowledge about Mr. David Miscavige and his activities based on my corporate and ecclesiastical position and my nearly 25 years of working for Mr. Miscavige.

5. Mr. Miscavige's religious duties require that he is on call seven days a week, 365 days a year.

6. Mr. Miscavige's travel arrangements are made, and his travel expenses are paid, by RTC. A review of RTC records show that Mr. Miscavige traveled to Texas once in the last 25 years. In April 2009 he traveled to Texas to officiate at the opening of the new Church of Scientology of Dallas (this is not the same Texas Church named as a defedant in Plaintiff's Petition). Mr. Miscavige was in Dallas for two days.

7. Mr. Miscavige works in offices, and lives in housing, that are paid for by RTC and I know from RTC records that Mr. Miscavige has never worked out of, or lived in, the state of Texas. RTC also pays for all of Mr. Miscavige's phones (including cell phones or Blackberrys) and Mr. Miscavige has never had a Texas phone number. RTC also maintains personnel records of Mr. Miscavige, including copies of driver licenses, passports and other forms of identification. Mr. Miscavige has a California driver's license and his passport lists his California address. Based on my personal knowledge, Mr. Miscavige has never operated out of Texas, has no banks accounts in Texas and owns no real property in Texas.

8. I also have personal knowledge that Mr. Miscavige has never filed any type of lawsuit in the State of Texas. He does not have any employees, servants, or agents in Texas and

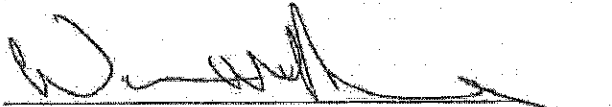
he has never committed a tort in whole or in part in any state including Texas. I also know that Mr. Miscavige is registered to vote in California and has never been registered to vote in Texas.

9. I also have knowledge based on RTC records and my personal experience that Mr. Miscavige has never purposefully availed himself of the privilege of conducting activities within the State of Texas. He has not made any purposeful contacts with the State of Texas seeking any benefit, advantage, or profit, and has not otherwise availed himself of the benefits and protections of Texas law. I know that he has never expressly or impliedly consented to the laws of the State of Texas.

10. Plaintiffs' alleged claims do not relate to or arise out of any contacts between defendants and Texas. There is no substantial relationship between the operative facts of this litigation and the State of Texas. Any and all agreements between the parties (to the extent that such actually exist) were entered into in California.

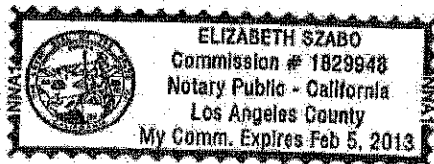
I declare under the penalty of perjury under the laws of the States of California and Texas, that the foregoing is true and correct.

Further affiant sayeth not.

  
Warren McShane

Subscribed and sworn to before me this 30 day of September, 2012, to certify which witness my hand and proved to me on the basis of satisfactory evidence to be the person who appeared before me.

  
NOTARY PUBLIC,  
STATE OF CALIFORNIA



CAUSE NO. S-12-5645CV-C

PAUL MARRICK and GREG ARNOLD	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
VS.	§	
	§	
RELIGIOUS TECHNOLOGY CENTER,	§	343rd JUDICIAL DISTRICT
CHURCH OF SCIENTOLOGY	§	
INTERNATIONAL, CHURCH OF	§	
SCIENTOLOGY OF TEXAS, and DAVID	§	
MISCAVIGE,	§	
	§	
Defendants.	§	SAN PATRICIO COUNTY, TEXAS

**ORDER**

On this \_\_\_\_\_ day of October, 2012 came to be heard Defendant David Miscavige's Special Appearance. The Court, having read the Special Appearance, responses thereto, and having reviewed the evidence and heard argument of counsel, finds merit in the Special Appearance. Accordingly,

It is therefore ORDERED that the Special Appearance is SUSTAINED, and this cause is DISMISSED as against Defendant David Miscavige.

SIGNED this \_\_\_\_\_ day of October, 2012.

\_\_\_\_\_  
JUDGE PRESIDING