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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 **LAURA ANN DeCRESCENZO, aka**
13 **LAURA A. DIECKMAN,**
14 Plaintiff,
15 vs.
16 **CHURCH OF SCIENTOLOGY**
17 **INTERNATIONAL, a corporate**
18 **entity, AND DOES 1 - 20**

19 Defendants

CASE NO. CV09-3984 GHK (EX)

**PLAINTIFF'S OPPOSITION TO
MOTIONS OF DEFENDANT CSI
FOR DISMISSAL UNDER RULE 12
(b)(6) OR FOR MORE DEFINITE
STATEMENT**

DATE: August 10, 2009
TIME: 9:30 am
**PLACE: Roybal Federal Building,
Courtroom 650**

**ASSIGNED TO THE HONORABLE
JUDGE GEORGE H. KING**

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1 **I. OVERVIEW**

2 Plaintiff Laura Ann DeCrescenzo worked for Defendant Church of
3 Scientology International (“CSI”). Plaintiff worked long hours and was paid for
4 her work. Plaintiff was dependant upon her work at CSI for her food, shelter and
5 income. Defendant CSI controlled Plaintiff’s work, hours and pay. Therefore,
6 under applicable law cited in the challenged First Amended Complaint
7 (“Complaint”) and below, Plaintiff was an employee of Defendant CSI.

8 As an employee of CSI, Plaintiff was entitled to the protection of state and
9 federal labor laws. Defendant CSI violated the labor laws and in fact completely
10 ignored said laws. Plaintiff seeks restitution of proper wages under law cited in
11 the Complaint and herein.

12 In addition to being overworked and underpaid, Plaintiff was subjected to
13 other violations of law and torts. Plaintiff was deceived about her rights by
14 Defendant CSI and subjected to the crime of “Forced Labor” as defined in 18
15 USC §1589.

16 This case has some unusual facts, but the Scientology enterprise, including
17 Defendant CSI, is not a typical employer. Defendant CSI goes to great lengths to
18 avoid compliance with labor laws and avoid being sued for its illegal conduct.
19 Much of this suit relates to that conduct. In fact this suit was filed, in part, to
20 establish for the benefit of other former employees of Defendant CSI that they
21 have rights. They need not fear the onerous and unenforceable confidentiality
22 agreements, liquidated damage clauses, waivers and purported settlement
23 agreements that Defendant CSI and other Scientology organizations force upon
24 present and departing employees. The usual practice is to videotape the signing
25 process and refuse to give the victim access to signed documents or the videotape.
26 The purpose is to scare the departing employee into silence.

27 The labor law and forced labor claims are quite well supported by law and
28 evidence. There are statute of limitation issues such as timing of “accrual”,

1 discovery of claims, tolling, fraudulent concealment and estoppel to assert a
2 statute of limitation defense. These issues are raised in the challenged Complaint
3 and supporting authorities are cited below. The existence of statute of limitation
4 issues mandates dismissal of this Rule 12 (b)(6) motion to dismiss. *Vernon v.*
5 *Heckler*, 811 F.2d 1274, 1278 (9th Cir. 1987).

6 Most of the statute of limitation issues are relatively straight forward;
7 however, one of the issues may not be obvious at first glance. That involves the
8 legal theory underlying the First Cause of Action for Rescission of Unlawful and
9 Fraudulent Documents. The execution of Plaintiff's departing documents, or
10 other employment "agreements" are subject to a four year from discovery of
11 fraud or mistake limitation period. C.C.P. §337(3). If the fraud or mistake was
12 discovered within the past four years, as is alleged, this claim is timely. The
13 theory of the First Cause of Action is that this case is, at least in part, an action
14 based on written instruments subject to the four year "discovery" rule in C.C.P.
15 §337(3) and is therefore timely.

16 There are several alternative reasons why this case is not time-barred.
17 These reasons involve issues of discovery, delayed accrual, tolling, estoppel and
18 fraudulent concealment, which are briefed below.

19 **II. FACTUAL SUMMARY**

20 Somewhat oversimplified, selected key facts may be summarized as
21 follows:

22 1) Plaintiff became a full time employee of Defendant Church of
23 Scientology International ("CSI") by the age of 13. (First Amended Complaint
24 ("Complaint") #27, 33 & 34)

25 2) Plaintiff was dependant upon her employment with CSI for food,
26 shelter and a small income. (Complaint #28)

27 3) Plaintiff was required to have an abortion at age 17 to keep her
28 employment with CSI. (Complaint #'s 5 & 61(n))

1 4) Plaintiff remained an employee of CSI until she became a suicide
2 risk in 2004. (Complaint #'s 36 & 37)

3 5) Plaintiff was effectively isolated from the outside world while
4 working 100+ hour weeks for CSI. (Complaint #'s 27, 28, 29, 39, 83 & 84)

5 6) Defendant violated state and federal labor laws in its employment of
6 Plaintiff. (Complaint #'s 61 & 61)

7 7) Among other violations of law, Plaintiff was not paid minimum
8 wage, overtime rates or given one day of rest for six days of work. (Complaint
9 #61)

10 8) Plaintiff was coerced into providing cheap labor by, among other
11 wrongful things, confinement schemes to cause Plaintiff fear of serious harm,
12 threats of serious harm and severe punishment in violation of 18 USC §1589.
13 (Complaint #'s 29, 34, 35, 68, 77, 83, 84, 87 & 88)

14 9) Plaintiff was kept ignorant of her rights by Defendant's failure to
15 give employees required notices of their rights. Defendant illegally failed to post
16 required Wage Orders at the workplace. (Complaint #'s 17, 30, 39 & 61(c))

17 10) Plaintiff was further deceived and misled by her employer, CSI, by
18 its use of documents such as waivers, confidentiality clauses, penalty clauses and
19 purported settlement agreements. (Complaint #'s 3, 30, 37, 38, 39, 40, 48, 102,
20 103 & 104)

21 11) Defendant knew that its agreements would not stand up in court but
22 used them anyway to scare, deceive and manipulate present and past employees.
23 (Complaint #'s 48, 50, 102, 103 & 104)

24 12) Plaintiff was subjected to intentional infliction of emotional distress.
25 (Complaint #'s 85 – 89)

26 13) Defendant has been engaged in witness tampering and obstruction of
27 justice. (Complaint #'s 91 – 99)

28

1 The Complaint alleges illegal and unfair business practices under B&P
 2 §17200 (commonly referred to as “UCL”). The state UCL statutes and case law
 3 makes all illegal, unfair and fraudulent business practices separately actionable
 4 under B&P §17200. This includes federal laws and penal statutes, such as
 5 obstruction of justice laws, that may not have a private cause of action. Also,
 6 B&P §17202 authorizes the court to enjoin illegal conduct as an unfair business
 7 practice, without the requirement of a class action.

8 For the purposes of the present Rule 12 motion to dismiss and strike, the
 9 Complaint properly alleges the requisites of duty, breach of duty and damages.
 10 The factual allegations in numbers 1 – 13 above state a prima facie case. It must
 11 be noted that Defendant does not address the elements of the claims in question.
 12 The Complaint also contains background information and allegations that are
 13 both relevant and tend to show that Plaintiff’s claims are indeed “plausible”.

14 **III. COMPLAINT ALLEGES FRAUD WHICH SUPPORTS DELAYED**
 15 **ACCRUAL BY REASON OF FRAUDULENT CONCEALMENT**

16 The potentially applicable statutes of limitations include the following:

- 17 1) C.C.P. §338(d) – three years from discovery of fraud or mistake;
- 18 2) C.C.P. §337(3) – four years from discovery of fraud or mistake for
 19 action based on written document;
- 20 3) 18 USC - ten years from accrual of forced labor claim; and
- 21 4) B&P §17208 - four years from discovery of illegal/unfair business
 22 claim. *Broberg v. The Guardian Life Ins. Co. of America*, 171 Cal.App.4th 912
 23 (2009).

24 Federal law applies the discovery rule to accrual of federal claims. *Norco*
 25 *Construction Inc v. King County*, 801 F.2d 1143 (9th Cir. 1986). Therefore, there
 26 are issues of discovery and accrual under all potentially applicable statutes of
 27 limitations. This case presents issues of discovery by Plaintiff as it relates to
 28 “accrual”, and issues of discovery by Plaintiff as it relates to fraudulent

1 concealment or estoppel to plead statute. As noted by the court in *Platt Elec.*
2 *Supply, Inc. v. EOFF Elec., Inc.*, 522 F.3d 1049, 1054 (9th Cir. 2008), “A close
3 cousin of the discovery rule is the well accepted principle of fraudulent
4 concealment...The rule of fraudulent concealment is applicable whenever the
5 defendant intentionally prevents the plaintiff from instituting suit.” Id at 1055
6 (Emphasis added). Plaintiff alleges, and can prove, that Defendant CSI
7 committed fraudulent concealment of her rights and claims.

8 As recognized by the *Platt* court, Defendant CSI should be barred by
9 fraudulent concealment from escaping its years of paying illegal wages and
10 extorting cheap labor. Similarly, Defendant may be estopped by its wrongful
11 conduct to hide behind a statute of limitation defense in this case. See,
12 *Holdgrafer v. Unocal Corp.*, 160 Cal.App.4th 907, 925 (2008).

13 Plaintiff alleges a plan, scheme and course of conduct to coerce cheap labor
14 and cover it up with documents, deceit and misinformation. This conduct is
15 related to both the wrongful conduct underlying the Seventh Cause of Action for
16 Fraud and Deceit and to the conduct alleged in support of Plaintiff’s claim of
17 fraudulent concealment and estoppel to plead a statute of limitation defense.

18 Selected factual allegations from the Complaint are referenced above. For
19 purposes of the fraud and fraudulent concealment claims, the following
20 allegations are particularly pertinent:

21 1) Plaintiff left home and worked full time for Defendant CSI from age
22 12 - 13. (Complaint #34)

23 2) Defendant CSI restricted Plaintiff’s access to the outside world.
24 (Complaint #83)

25 3) Plaintiff was required to sign employment documents purporting to
26 waive her rights. She was not allowed to have copies of documents she was
27 required to sign, and Defendant knew these purported employment documents
28 and waivers would not stand up in court. CSI management consciously decided

1 to use unenforceable employment agreements to intimidate, deceive and coerce
2 employees. (Complaint #51)

3 4) Plaintiff only recently learned that she has legal claims against her
4 former employer, CSI, irrespective of the fact she was required to sign documents
5 that purportedly waived all claim and had penalty clauses that could ruin her
6 financially if she sued a Scientology entity. Defendant intended these illegal
7 documents to prevent Plaintiff from making claims against Defendant CSI.
8 (Complaint #'s 88 & 102)

9 5) Defendant uses bogus waivers and releases to deceive departing
10 employees into thinking they have no claims. (Complaint #'s 39, 40, 102 & 103)

11 6) Defendant makes a big production out of signing the release papers,
12 including video taping part of the procedure, to falsely create the impression of a
13 legal and binding exercise and resulting documents. (Complaint #103)

14 7) Defendant knew the documents were bogus but used them to scare
15 employees and inhibit valid lawsuits. (Complaint #104)

16 8) Plaintiff has learned the identity of two former high ranking officials
17 who participated in this scam and can presumably testify as to deceit and
18 intimidation perpetuated upon employees. (Complaint #107)

19 9) Defendant CSI fraudulently conceals rights, fails to post Wage
20 Orders and mislead workers into thinking they have no rights regarding wages
21 and hours. (Complaint #30)

22 10) Plaintiff has been damaged by this wrongful conduct. (Complaint
23 #100)

24 While this should suffice, leave to amend would not be futile. Plaintiff
25 could allege more factual evidence and detail if required. The allegations are
26 factual in nature and show a pattern and scheme to deceive and intimidate
27 employees. "A pleading is sufficient under Fed.R.Civ.P. 9(b) if it identifies the
28 circumstances constitute fraud so that the defendant can prepare an adequate

1 answer from the allegations.” *Spiegler v. Home Depot, U.S.A., Inc.*, 552 F. Supp.
2 2d 1036, 1042 (C.D. Cal. 2008).

3 The facts alleged in the Complaint are more than sufficient to allege a case
4 of fraud, fraudulent concealment and the lesser included offense of negligent
5 misrepresentation.¹ The principle of fraudulent concealment applies to this case.
6 The Complaint alleges, and the underlying facts support, a claim for fraudulent
7 concealment that would delay “accrual” of all causes of action stated in the
8 Complaint, or alternatively result in tolling or estoppel to plead a statute of
9 limitation defense. *Platt Elec. Supply, Inc. v. EOFF Elec., Inc.*, 522 F.3d 1049,
10 1054 (9th Cir. 2008).

11 **IV. RULE 12 STANDARDS MANDATE DENIAL OF MOTION**

12 The Court must assume that Plaintiff’s allegations are true and must draw
13 all reasonable inferences in Plaintiff’s favor. The “reasonable” qualification is
14 consistent with any “plausibility” test. See *Usher v. City of Los Angeles*, 828
15 F.2d 556, 561 (9th Cir. 1987).

16 “The motion to dismiss for failure to state a claim is viewed with disfavor
17 and is rarely granted.” *Gilligan v. Jamco Development Corporation*, 108 F.3d
18 246 (9th Cir. 1997) (emphasis added); *Colle v. Brazos County Texas*, 981 F.2d
19 237, 243 (5th Cir. 1993). A 12(b)(6) dismissal is proper only in “extraordinary”
20 cases. *United States v. City of Redwood City*, 640 F.2d 963 (9th Cir. 1981);
21 *Cauchi v. Brown*, 51 F.Supp.2d 1014, 1016 (ED CA 1999); *United States v.*
22 *White* 893 F.Supp. 1423, 1428 (CD CA 1995).

23 “Instead of lavishing attention on the complaint until the plaintiff gets it
24 just right, a district court should keep the case moving...” *Bennett v. Schmidt*, 153
25 F.3d 516, 518 (7th Cir. 1998).

26
27 ¹ The Complaint does not presently have a cause of action for Negligent Misrepresentation; however, it is
28 sufficient if the facts support the legal theory. See, *Haddock v. Board of Dental Examiners of California*, 777 F.2d
462, 464 (9th Cir. 1985)

1 The fact that dates alleged in the complaint are beyond the statutory period
2 is not enough to support a Rule 12(b)(6) dismissal. Dismissal can be granted
3 “only if the assertions of the complaint, read with the required liberality, would
4 not permit the plaintiff to prove that the statute was tolled.” *Cervantes v. City of*
5 *San Diego*, 5 F.3d 1273 (9th Cir. 1993).

6 Where the running of the statute cannot be determined from the face of the
7 complaint, a Rule 12 motion to dismiss is not the correct procedure. See *Avco*
8 *Corporation v. Precision Air Parts Inc.*, 676 F.2d 494, 495 (11th Cir. 1982);
9 *Supermail Cargo Inc v. United States*, 68 F.3d 1204, 1206 (9th Cir. 1995).
10 Concealment, estoppel and similar tolling doctrines are usually not amendable to
11 resolution on Rule 12(b)(6) motion. (The above four paragraphs are largely
12 adopted from sections 9:210 on page 9-61 and 9:214 on page 9-67, Federal Civil
13 Procedure Before Trial, The Rutter Group 2009.)

14 **V. THE COMPLAINT ALLEGES A PRIMA FACIE CASE UNDER** 15 **THE WAGE AND HOUR LAWS**

16 Defendant argues that Plaintiff does not state a “plausible” claim; however,
17 Defendant fails to address what is supposedly missing from the elements of a
18 prima facie case. There is nothing missing. A prima facie case has been plead on
19 numerous counts.

20 The Complaint alleges a prima facie case of entitlement to minimum wage
21 and overtime. As addressed in legal briefing below, the requirement for
22 protection of the labor law is essentially the requirement of employment. The
23 duty to pay employees, and matters relevant to issues of employment, are
24 addressed in the following paragraphs of the operative Complaint:

25 1) The duty of employers to pay employees in accordance with labor
26 laws is alleged in paragraph #'s 4, 7, 8, 9, 10, 11, 13, 27, 28 and 42. The duties
27 involved are drawn from statutes and case law, hence the numerous legal
28 authorities cited in the Complaint.

1 2) That Plaintiff was an employee of Defendant CSI and the factual and
2 legal basis for the allegation of employment are alleged in paragraph #'s 5, 10,
3 11, 14, 15, 16, 17, 23, 24, 28, 29, 31, 34 and 42.

4 3) That Defendant breached the duty to pay Plaintiff employee
5 minimum wage and overtime rates is alleged in paragraph #'s 12, 27, 61 and 63.

6 In the listed paragraphs, the Complaint alleges the elements of a prima
7 facie wage and hour case. The employer has a legal duty to pay employees legal
8 wages. Defendant was Plaintiff's employer under the applicable legal standards,
9 which are dealt with in some detail below. A wage and hour case has been
10 alleged.

11 **VI. PLAINTIFF WAS AN EMPLOYEE ENTITLED TO LEGAL**
12 **COMPENSATION**

13 Plaintiff was employed by Defendant CSI for approximately 13 years
14 (1991 – 2004). This was a full-time job and Plaintiff's only source of income and
15 support. Plaintiff's work was controlled by Defendant. As addressed below,
16 these factors make Plaintiff an "employee" of Defendant as a matter of
17 "economic reality", which is the applicable test. (See, e.g. Complaint #'s 11 &
18 22)

19 The U.S. Supreme Court has held that the labor laws apply to employees of
20 purported non-profit entities and that the test of employment is "economic
21 reality". *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290,
22 301, 105 S.Ct. 1953, 85 L.Ed.2d 278, 289 (1985) (Citing *Goldberg v. Whitaker*
23 *House Cooperative*, 366 U.S. 28 at 33, 81 S.Ct. 933, 6 L.Ed.2d 100 (1961).
24 Under the rule of *Alamo*, Plaintiff was entitled to be paid minimum wage and
25 overtime rates.

26 The factors that may be considered in evaluating "economic reality"
27 include control of work by employer and economic dependence by the employee.
28 The economic reality standard is well satisfied by the underlying facts concerning

1 Plaintiff's day-to-day work for Defendant. Plaintiff was employed by Defendant
 2 as her sole occupation and source of income. Working for Defendant was how
 3 Plaintiff earned her food, shelter and cash income. (See e.g. Complaint #28.)
 4 Under the alleged facts of Plaintiff's working conditions and dependence on her
 5 job with Defendant for her livelihood, Plaintiff has alleged facts showing
 6 "employment". Plaintiff was an employee as a matter of "economic reality", and
 7 employees have entitlement to minimum wage and overtime pay. *Hale v. State*
 8 *of Arizona*, 967 F.2d 1356, 1360 (9th Circuit 1992) and *Bonnette v. California*
 9 *Health and Welfare Agency*, 704 F.2d 1465, 1469 (9th Cir. 1982).

10 Plaintiff seeks restitution and recovery of unpaid wages under state and
 11 federal labor laws. The Cause of Action seeks restitution of unpaid wages as an
 12 illegal and unfair business practice pursuant to B&P §17200, et. seq. has been
 13 expressly approved by the California Supreme Court. *Cortez v. Purolator Air*
 14 *Filtration Products Co.*, 23 Cal.4th 163, 173-5 (2000). As recognized in *Cortez*,
 15 the failure to pay an employee minimum wage and overtime is a violation of
 16 labor laws and an illegal business practice under B&P §17200.² Accordingly,
 17 Plaintiff has alleged a prima facie case of failure to pay an employee legal wages
 18 as an illegal business practice under B&P §17200

19 As stated above, the test of employment status is an "economic reality"
 20 standard. In *W.J. Usery v. Pilgrim Equipment Co.*, 527 F.2d 1308, 1311 & 1315
 21 (5th Cir. 1976) the court explained its rulings in terms pertinent to this case. The
 22 court stated:

23 "…the lesson taught by the Supreme Court's 1947 trilogy is
 24 that any formalistic or simplistic approach to who receives the
 25 protection of this type legislation must be rejected. In *Bartels*
 26 *v. Birmingham*, 332 U.S. 126, 67 S.Ct. 1547, 91 L.Ed. 1947

27
 28 ² The B&P Code §17200 claim has the advantage over labor laws of a 4-year statute of limitation and case law holding that the limitations period is subject to the accrual upon discovery rule. *Cortez, Supra*, 23 Cal 4th 163,179 and *Broberg v. The Guardian Life Ins. Co. of America*, 171 Cal. App.4th 912 (2009)

1 (1947), the Court held that in the application of social
2 legislation employees are those who as a matter of economic
3 reality are dependent upon the business to which they render
4 service.” *Usery*, 527 F.2d 1311

5 The *Usery* court further stated:

6 “Neither contractual recitations nor subjective intent can
7 mandate the outcome in these cases. Broader economic
8 realities are determinative.” *Usery*, 527 F.2d 1308, 1315.
9 (emphasis supplied)

10 The Ninth Circuit used the “economic reality” test described in the *Usery*
11 case with apparent approval in *Real v. Driscoll Strawberry Associates Inc.*, 603
12 F2d 748, 754 (9th Cir. 1979). The court stated:

13 “Courts have adopted an expansive interpretation of the
14 definitions of "employer" and "employee" under the FLSA, in
15 order to effectuate the broad remedial purposes of the Act.
16 See, e. g., *Dunlop v. Carriage Carpet Co.*, 548 F.2d 139, 144
17 (6th Cir. 1977); *Usery v. Pilgrim Equipment Co.*, 527 F.2d
18 1308, 1311 n.6 (5th Cir.), Cert. denied, 429 U.S. 826, 97 S.Ct.
19 82, 50 L.Ed.2d 89 (1976). Cf. *United States v. Silk*, 331 U.S.
20 704, 712, 67 S.Ct. 1463, 91 L.Ed. 1757 (1947) (Social
21 Security Act). The common law concepts of "employee" and
22 "independent contractor" are not conclusive determinants of
23 the FLSA's coverage. See *W.J. Usery v. Pilgrim Equipment*
24 *Co.*, *Supra*, 527 F.2d at 1311 n.6; *Mednick v. Albert*
25 *Enterprises*, 508 F.2d 297, 299 (5th Cir. 1975). Rather, in the
26 application of social legislation employees are those who as a
27 matter of economic reality are dependent upon the business to
28 which they render service. (*Bartels v. Birmingham*, 332 U.S.

1 126, 130, 67 S.Ct. 1547, 1550, 91 L.Ed. 1947 (1947) (Social
2 Security Act) (emphasis added.) See *Goldberg v. Whitaker*
3 *House Cooperative*, 366 U.S. 28, 33, 81 S.Ct. 933, 6 L.Ed.2d
4 100 (1961) (FLSA).”

5 Plaintiff worked for Defendant to earn her livelihood. As a matter of
6 “economic reality”, Plaintiff was an employee as alleged in the Complaint.

7 **VII. THE PROTECTION OF THE LABOR LAWS IS NOT WAIVABLE**

8 The right to minimum wage and overtime cannot be given away by the
9 employee or taken away by the employer. As often recognized by the courts, the
10 Fair Labor Standards Act, 29 U.S.C. §§201 et. seq. (“FLSA”), was enacted to
11 protect workers such as Plaintiff from the evils of “overwork” and “underpay”.
12 See e.g., *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 739,
13 101 S.Ct. 1437, 67 L.Ed.2d 641 (1981).

14 Accordingly, the U.S. Supreme Court has expressly found that FLSA
15 rights, e.g. minimum wage and overtime, cannot be abridged by contract or
16 otherwise waived.

17 “This Court's decisions interpreting the FLSA have frequently
18 emphasized the nonwaivable nature of an individual
19 employee's right to a minimum wage and to overtime pay
20 under the Act. Thus, we have held that FLSA rights cannot be
21 abridged by contract or otherwise waived...” *Barrentine v.*
22 *Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 101 S.Ct.
23 1437, 67 L.Ed.2d 641 (1981).

24 Similarly, the rights to minimum wage and overtime under the California
25 Labor Code cannot be lost, waived, disclaimed or contracted away. Calif. Labor
26 Code §1194. The Complaint properly and adequately addresses the “waiver”
27 issue in several paragraphs, including #s 4, 8, 10, 20 and others. (This relates to
28 the “duty” issue and amplifies the “plausibility” of Plaintiff’s wage and hour

1 claims consistent with the supposed new pleading rules. See, *Ashcroft v. Iqbal*,
2 556 U.S. ___, 129 S.Ct. 1937, 173 L.Ed 2d 868 (2009). Accordingly, the
3 allegation regarding waiver should not be stricken.)

4 **VIII. PLAINTIFF ALLEGES A CASE OF FORCED LABOR**

5 18 USC §1589 has been clarified in recent amendments. The current
6 version, which is not the version quoted in paragraph #71 of the Complaint, states
7 in part as follows:

8 “Whoever knowingly provides or obtains the labor or
9 services of a person by any one of, or by an combination of,
10 the following means -

- 11 (1) by means of force, threats of force, physical
12 restraint or threats of physical restraint to that
13 person or another person;
14 (2) by means of serious harm or threats of
15 serious harm to that person or another person;
16 (3) by means of the abuse or threatened abuse of
17 law or the legal process; or
18 (4) by means of any scheme, plan, or pattern
19 intended to cause the person to believe that, if the
20 person did not perform such labor or services, that
21 person or another person would suffer serious
22 harm or physical restraint;
23 shall be punished as provided under subsection (d).”

24 The current version includes a clarifying definition of “serious harm”,
25 which is defined as follows:

26 “The term “serious harm” means any harm, whether
27 physical or nonphysical, including psychological, financial, or
28 reputational harm, that is sufficiently serious under all the

1 surrounding circumstances, to compel a reasonable person of
2 the same background and in the same circumstances to
3 perform or to continue performing labor or services in order to
4 avoid incurring that harm.” (Emphasis added)

5 The definition of “serious harm” is consistent with recent case law on the
6 subject. One court has expressed the view that the forced labor statute was
7 enacted in response to case law holding that physical restraint was required to
8 convict under 18 USC §1589 for involuntary servitude. That court continued to
9 note that “The language of §1589 covers nonviolent coercion...” *U.S. v.*
10 *Calimlim*, 538 F.3d 706, 712 (2008) (Emphasis added). The apparent point being
11 made by the *Calimlim* Court is that less is required for “serious harm” under the
12 forced labor statute than was previously required in “involuntary servitude” cases.

13 In *Calimlim*, the “serious harm” was the threat of having no money to send
14 back home and possible reporting of immigration law violations. *Id* at 711. That
15 was sufficient to uphold a criminal conviction under the forced labor statute.

16 18 USC §1589 “Forced Labor” has a civil remedy and a ten year statute of
17 limitation provided in 18 USC §1595(a) & (c). The statutory scheme also
18 provides for “mandatory restitution” of the “full amount of the victims losses.”
19 18 USC §1593 (3).

20 The crime and tort of “forced labor” is distinct from and different than
21 wrongful imprisonment and involuntary servitude. Forced labor is akin to
22 extortion. Labor is wrongfully coerced by threats of “serious harm” or plan to
23 cause fear of such harm. “Forced labor” does not require chains, locks, tall fences
24 or prison-like surroundings. A threat of , or scheme to cause fear of, “serious
25 harm” will suffice. What the forced labor statute requires is force, threats of
26 force, physical restraint, serious harm, or scheme, plan or pattern intended to
27 create a belief in the victim that they would suffer serious harm if they did not
28 provide the labor or services demanded of them. This includes nonphysical,

1 psychological, financial or reputational harm. 18 USC §1589 (a)(c)(2). Plaintiff
2 was subjected, at minimum, to threats of “serious harm” and a scheme, plan or
3 pattern intended by the Scientology enterprise, including Defendant CSI, to
4 intimidate Plaintiff into providing coerced labor at illegal wages and under
5 abusive working conditions. Plaintiff was subjected to “serious harm” to keep her
6 in line. The “RPF”, as referenced in the Complaint (#’s 25, 61(k), 84 & 88), is
7 but one example of the threat Scientology hangs over the head of a worker such
8 as Plaintiff.

9 Plaintiff kept working for Defendant CSI for years to avoid such “serious
10 harm” and the Complaint so alleges. (Complaint #’s 26, 26, 29, 34, 35, 68, 83,
11 84, 87 & 88) If necessary, more detail and facts can be alleged in a further
12 amended complaint. A forced labor claim exists and has been adequately alleged.

13 **IX. PLAINTIFF’S FORCED LABOR CLAIM IS NOT TIME BARRED**

14 The current statute of limitations on a federal forced labor claim is 10 years
15 from accrual. 18 USC §1595(3). While state law controls state law claims,
16 federal law controls when a federal claim “accrues” for purposes of starting the
17 running of a statute of limitations. A federal claim is generally considered to
18 accrue when plaintiff learns of the basis of the action. *Norco Construction Inc v.*
19 *King County*, 801 F.2d 1143 (9th Cir. 1986). *Kimes v. Stone*, 84 F.3d 1121, 1128
20 (9th Cir. 1996). The “discovery” rule therefore applies to federal claims including
21 Plaintiff’s claim for forced labor.

22 Accordingly, Plaintiff’s forced labor claim did not “accrue” when she
23 escaped, but rather when she learned of the claim. That would present an issue of
24 fact not apparent from the face of the Complaint. Further, Plaintiff would have
25 ten years from accrual under 18 USC §1595(3). Essentially, application of the
26 correct statute of limitations requires ascertaining the accrual date. As this cannot
27 be ascertained on the face of the Complaint, the motion to dismiss must be
28

1 denied. See *Vernon v. Heckler*, 811 F.2d 1274, 1278 (9th Cir. 1987). Also, this is
2 before one adds fraudulent concealment to the equation.

3 Regarding the expansion of the limitations period from four years to ten,
4 Defendant is dead wrong on this point. The rule is that the time to file on an
5 existing claim is extended by new statute of limitation rules that enlarge the time
6 to file. The enlargement to ten years would apply under Plaintiff's allegations of
7 fact, which are true in fact and for purposes of this motion. See, *Thompson v.*
8 *City of Shasta Lake*, 314 F.Supp 2d 1017, 1024 (E.D. Cal. 2004); *Mudd v.*
9 *McColgan*, 30 Cal.2d 463, 468 (1947); *Douglas Aircraft Co. v. Cranston*, 58
10 Cal.2d 462, 463, 24 Cal.Rptr. 851, 374 P.2d 819 (1962). Defendant argues these
11 same authorities for the erroneous premise that statute of limitation cannot be
12 enlarged by subsequent legislation. Statutes of limitation may be enlarged as
13 indicated in the authorities cited in this paragraph.

14 Further, "(W)here federally protected rights have been invaded, it has been
15 the rule from the beginning that courts will be alert to adjust their remedies so as
16 to grant the necessary relief...The injured party is to be placed, as near as may be,
17 in the situation he would have occupied if the wrong had not been committed."
18 *Albemarle Paper Company v. Moody*, 422 U.S. 405, 418, 95 S.Ct. 2362, 45
19 L.Ed.2d 280 (1975). Therefore, if Plaintiff's federal rights have been violated
20 under the forced labor laws, Plaintiff's claim is not rendered trivial or
21 "implausible" by potential statute of limitation issues. Also, the Court has
22 equitable powers to prevent Defendant from escaping liability by wrongful
23 conduct. *Platt, Id.*

24 **X. PLAINTIFF ALLEGES A PRIMA FACIE CASE UNDER B&P**
25 **§17200**

26 Plaintiff alleges a series of past and present unfair business practices. All
27 of the wrongs alleged in the Complaint could constitute an illegal or unfair
28 business practice actionable under B&P §17200. This would include failure to

1 pay legal wages, failure to post wage orders, human trafficking, involuntary
2 servitude, coerced abortions, obstruction of justice, fraud in connection with
3 employment agreements, intentional infliction of emotional distress and all other
4 violations of law referenced in the Complaint.

5 “California’s statutory unfair competition laws broadly prohibit unlawful,
6 unfair, and fraudulent business acts. (Citation omitted). Unlawful acts are
7 “anything that can properly be called a business practice and that at the same time
8 is forbidden by law . . . be it civil, criminal, federal, state, or municipal, statutory,
9 regulatory, or court-made”...(Citations omitted)” *Sybersound Records, Inc. v.*
10 *UAV Corp.*, 517 F.3d 1137, 1151 (9th Cir. 2008).

11 The scope of California state law claims for illegal or unfair business
12 practices includes federal law and unfair practices that are not necessarily illegal.
13 Further, it would include illegal and unfair practices such as witness tampering
14 and obstruction of justice even if the federal obstruction of justice statute, for
15 example, does not provide for a private right of action. *Sybersound, Supra* at
16 1152.

17 Human trafficking, for example, would be independently actionable, and
18 actionable as an illegal or unfair business practice under B&P §17200. Even if
19 the state law on human trafficking was not a penal statute until 2005, human
20 trafficking would still be illegal under federal law and “unfair” under state law
21 standards at all times including prior to enactment of the state penal code section
22 in 2005. Plaintiff also alleges involuntary servitude (Complaint #72) and forced
23 labor would constitute a form of extortion.

24 Further, the controlling state law for this case would be the recent case of
25 *Broberg v. The Guardian Life Ins. Co. of America*, 171 Cal.App.4th 912 (2009) in
26 which the Court of Appeals held that a cause of action would not accrue under
27 B&P §17200 until discovery of the claim. As noted in the Rule 12 discussion
28 above, accrual issues are not proper subject for a Rule 12(b)(6) motion to dismiss.

1 In addition to the accrual upon discovery rule applicable to this case under
2 authority of *Broberg, Supra*, there are similar but distinct issues raised by the
3 equitable principle of deceit and fraudulent concealment. For example,
4 Defendant's failure to post Wage Orders would be actionable as deceit or fraud
5 by omission under California law and would be actionable as an illegal business
6 practice under B&P §17200. (See, *Falk v. General Motors Corp.*, 496 F.Supp 2d
7 1088, 1094-98 (N.D. Cal 2007).)

8 As defined in California Civil Code §1710, a deceit "is either:

9 1. The suggestion, as a fact, of that which is not true, by one who does
10 not believe it to be true;

11 2. The assertion, as a fact, of that which is not true, by one who has no
12 reasonable ground for believing it to be true;

13 3. The suppression of a fact, by one who is bound to disclose it, or who
14 gives information of other facts which are likely to mislead for want of
15 communication of that fact; or,

16 4. A promise, made without any intention of performing it."

17 The failure to disclose a material fact is wrongful deceit under state law.
18 As employers have a duty to disclose and post Wage Orders, the failure to post
19 Wage Orders is deceit, an illegal business practice, and grounds for a finding of
20 fraudulent concealment which would estopp Defendant from escaping liability for
21 paying legal wages. Any applicable statutes of limitation are effectively tolled, or
22 "accrual" is delayed, while Defendant's wrongful concealment runs its course.
23 *Pashley v. Pacific Electric Railway Co.*, 25 Cal.2d 226, 231 (1944).

24 The state law statute of limitations for deceit regarding Defendant's failure
25 to post Wage Orders would be three years from discovery of the deceit, or related
26 mistaken beliefs caused Plaintiff by said deceit. (Civil Code §338(d).

27 Alternatively, the statue of limitation for the illegal business practice of not
28 posting Wage Orders in the work place would be four years from discovery under

1 B&P §17208. (*Broberg*, Id). This presents questions not amendable to resolution
2 in a Rule 12(b)(6) motion to dismiss.

3 Plaintiff states claims for illegal pay, human trafficking, fraud, deceit and
4 obstruction of justice. Plaintiff alleges recent discovery of her claims, and past
5 mistakes caused by Defendants deceit, which is consistent with the facts and is
6 “plausible”. (See Complaint #88.) Plaintiff was taken away from her parents at
7 age 12, worked in isolation and under coercive conditions, was fed false
8 information and not allowed to know her rights under the labor laws. She was
9 kept in the dark for years. Instant awareness would not occur upon freedom. A
10 claim has been stated.

11 **XI. PLAINTIFF CHALLENGES DEFENDANT’S ILLEGAL**
12 **TERMINATION PROCEDURES AND DOCUEMNTS**

13 Defendant takes a serious last shot at departing employees. The process is
14 referred to as “routing out” and it can take months. The process is designed to
15 prevent departures, and as a last resort to render the departing employee harmless.
16 The process is internally referred to as “litigation prevention”.

17 The Complaint alleges that:

- 18 1) Plaintiff was allowed to leave as a suicide risk. (#’s 36 & 27)
- 19 2) Plaintiff was still required to go through an exit process. (#37)
- 20 3) Plaintiff was taken to a room and required to sign papers before
21 leaving the room. (#37)
- 22 4) Plaintiff was not allowed to have copies of what she signed. (#’s 37
23 & 40)
- 24 5) Plaintiff was told that she had no rights or claims against
25 Scientology. (#’s 37 & 39)
- 26 6) Although CSI knew the purported exit documents were improper and
27 unenforceable, management chose to use the documents to intimidate and deceive
28

1 departing employees for the purpose of scaring employees into silence and
2 surrender. (#51)

3 7) Any claims brought by Plaintiff would have been improperly
4 “burdened” by these bogus waivers, purported “settlement” and “penalty”
5 documents.

6 Plaintiff therefore brings a claim arising out of these illegal and
7 unenforceable termination agreements. Plaintiff alleges a prima facie case of
8 rescission in #'s 50 – 59. The time period to bring an action for rescission on
9 grounds of fraud or mistake is four years from discovery of the fraud or mistake.
10 C.C.P §337 (3). Therefore a claim is stated and, on the face of the Complaint, the
11 claim is timely. It should not be dismissed.

12 On a related point, Defendant complains that Plaintiff did not attach copies
13 of the bogus releases, waiver and obnoxious “agreements” to the Complaint.
14 That is absurd. Defendant controls access to these documents and takes the
15 position that departing employees are not entitled to copies. (At minimum, that
16 seems suspicious and suggests foul play.) According to Defendant’s logic, it can
17 escape all liability by keeping the papers and not giving employees copies. That
18 would be convenient for Scientology but cannot be the law. Where a party keeps
19 relevant documents, the burden shifts to that party on issues governed by said
20 documents. See *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1190-1
21 (2008). Further, Plaintiff will obviously seek these documents in discovery.

22 Further, under the California Labor Code, an employer is required to keep
23 employment records and give copies of employment instruments to employees.
24 Defendant cannot use its calculated scheme to keep employment documents from
25 employees to Defendant’s advantage. (See e.g. California Labor Code §432.) As
26 a practical matter, the fact that Defendant puts departing employees through an
27 elaborate “exit” ceremony and keeps the purported “evidence” further
28 demonstrates the improper purpose of this deceitful and coercive practice.

1 **XII. THE “PLAUSIBILITY” TEST ADDS NOTHING TO DEFENDANTS**
 2 **MOTION TO DISMISS**

3 Plaintiff worked but did not get properly paid. Plaintiff worked under
 4 threat of serious harm. As demonstrated herein, that makes a prima facie case. A
 5 prima facie case is inherently a plausible case. Defendant seems to argue that
 6 under *Ashcroft v. Iqbal*, 556 U.S. ___, 129 S.Ct. 1937, 173 L.Ed 2d 868 (2009),
 7 the Complaint must be dismissed as implausible. That is truly nonsense. In
 8 *Ashcroft*, the Court was dealing with an alleged terrorist and rights of
 9 governmental immunity. The Court noted that there must be enough facts in the
 10 Complaint to state a plausible claim. The Court stated: “A claim has facial
 11 plausibility when the pleaded factual content allows the court to draw the
 12 reasonable inference that the defendant is liable for the misconduct alleged.”
 13 *Ashcroft, Supra*, 556 U.S. ___, 129 S.Ct. 1937, 1949, 173 L.Ed 2d 868 (2009).

14 Initially, it might be noted that Defendant moves to strike many allegations
 15 that tend to show this elusive “plausibility”. The motion to strike attacks
 16 allegations of legal duty and nature of the Defendant, which tends to show
 17 “plausibility”. In Defendant’s motion to strike, Rule 8 is the rule; in the motion to
 18 dismiss, Rule 8 is not the Rule. The inconsistency is obvious. Also, it is unclear
 19 as to what Defendant claims would suffice under its amorphous version of the
 20 “plausibility” test.

21 With “plausibility” as a reference point, the Complaint alleges illegal and
 22 outrageous conduct on the part of CSI. Among other things,

- 23 1) CSI took Plaintiff from her family and put her to work at age 12.
 24 Child labor and education laws were ignored. (Complaint #'s 31 & 32)
 25 2) CSI had Plaintiff sign an employment contract at age 12. (Complaint
 26 #31)
 27 3) CSI cut Plaintiff off from her parents at age 12 – 13. (Complaint
 28 #34)

1 4) Plaintiff would be an employee under Scientology’s own documents
2 and definitions, yet they refuse to admit CSI has employees. (Complaint #’s 14,
3 15 & 16)

4 5) Plaintiff was required to sign documents and not allowed to have
5 copies of what she signed. (Complaint #’s 20, 26, 31, 37, 40 & 52)

6 6) Plaintiff was coerced to have an abortion while still a minor.
7 (Complaint #5)

8 7) Plaintiff worked for CSI at below minimum wage from 1991 to
9 2004. (Complaint #12)

10 8) Defendant threatens to make employees pay for training courses if
11 they breach their purported “covenants” of employment by refusing to continue
12 employment. Defendant attempted to collect a “debt” from Plaintiff when she
13 escaped. Plaintiff paid \$10,000 on this illegal debt. (Complaint #’s 23, 25 & 26)

14 9) Defendant makes employees sign waivers, gag orders and
15 “liquidated damage” (i.e. penalty) clauses in the guise of employment contracts.
16 (Complaint #26)

17 10) Plaintiff was required to work 100+ hour weeks at below minimum
18 wage, no overtime pay and was illegally required to work seven days a week.
19 (Complaint #27)

20 11) Plaintiff was economically dependant on her employment with
21 Defendant CSI for the bare necessities of life, such as food, shelter and small
22 income. (Complaint #28)

23 12) Plaintiff was confined to where she worked. (Complaint #’s 29 &
24 34)

25 13) Plaintiff was subjected to the punishment, and serious harm, of the
26 Rehabilitation Project Force (“RPF”) which is an extreme and demeaning
27 working environment with no personal liberties. It is designed to punish,
28 humiliate, coerce and admonish. (Complaint #35)

1 14) To escape for CSI, Plaintiff had to sign releases and waivers under
2 coercion and duress and she was not allowed to have copies of the documents she
3 was forced to sign. (Complaint #'s 37 & 40)

4 15) Defendant has an elaborate, theatrical exit procedure designed to
5 mislead former employees and deceive and intimidate them into silence and not
6 suing to vindicate their rights. (Complaint #'s 38, 39, 40, 48, 51, 102, 103, 104 &
7 107)

8 16) Plaintiff was regularly interrogated on a primitive lie-detector during
9 her employment at CSI, which is illegal. (Complaint #'s 61(o), 68 & 87)

10 17) Plaintiff suffered from the “indicators” of human trafficking when
11 she worked for Defendant CSI. (Complaint #77)

12 18) Plaintiff was deprived of personal liberties and threatened with
13 serious harm if she did not provide coerced labor for Defendant CSI. The
14 “serious harm” threat included the “RPF”, where workers are deprived of basic
15 human rights. (Complaint #'s 83 & 84)

16 19) Plaintiff was further deceived of her rights by Defendant’s failure
17 and refusal to post legally mandated notices, including Wage Orders, in the
18 workplace. (Complaint #'s 17, 30 & 61(c))

19 20) High ranking officials of the Scientology enterprise, including
20 Defendant CSI, knew that employment documents such as waivers and
21 confidentiality agreements were improper and unenforceable, yet they decided to
22 use the bogus agreements to deceive and scare employees into silence and great
23 reluctance to speak out or file suit against Scientology. (Complaint #'s 39, 40,
24 48, 51, 102, 103, 104 & 107)

25 This states a case way beyond plausible. Plaintiff suffered an ordeal she
26 should never have had to suffer. Plaintiff has a powerful case, that Defendant
27 cannot win on the merits.

28

1 **XIII. MOTION FOR MORE DEFINITE STATEMENT SHOULD BE**
2 **DENIED**

3 The Motion for More Definite Statement should be denied for many of the
4 same reasons the Rule 12(b)(6) motion to dismiss must be denied. The
5 Complaint adequately alleges the causes of action set forth therein. Further,
6 while Defendant would prefer to stick its head in the sand, Defendant had almost
7 complete control of Plaintiff's work and life for the period of employment.
8 Defendant knows what happened, should know it has not valid defenses, and
9 should be called upon to Answer this Complaint.

10 **XIV. CONCLUSION**

11 Defendants' Rule 12 motions to dismiss motions for a more definite
12 statement and, motions to strike portions of the Complaint should be denied.
13 Alternatively, Plaintiff must be granted leave to amend to address whatever
14 pleading issue may concern the Court.

15 July 27, 2009

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17 _____
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