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1 STEVEN A. SCHUMAN, SBN. 142834
2 KEVIN S. DICKER, SBN. 179315
3 LEONARD, DICKER & SCHREIBER
4 Limited Liability Partnership
5 9430 Olympic Boulevard, Suite 400
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7 (310) 551-1987
8 Attorneys for Plaintiff
9 Hospitality Construction & Development, Inc.
10

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

PPM

JUL 22 2008

JUL 24 2008

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF RIVERSIDE
13

14 HOSPITALITY CONSTRUCTION &
15 DEVELOPMENT, INC., a Florida
16 corporation dba HRB GENERAL
17 CONTRACTORS,

18 Plaintiff,

19 vs.

20 GOLDEN ERA PRODUCTIONS; BUILDING
21 MANAGEMENT SERVICES, a California
22 corporation; BUILDING MANAGEMENT
23 SERVICES GOLDEN ERA
24 PRODUCTIONS; CHURCH OF
25 SCIENTOLOGY INTERNATIONAL, a
26 California corporation, and DOES 1
27 THROUGH 10, inclusive,

28 Defendants,

CASE NO.: RIC 392 393

Hon. Michael B. Donner – Dept. 4

EX PARTE APPLICATION FOR ORDER
SHORTENING TIME FOR HEARING ON
PLAINTIFF'S MOTION FOR LEAVE TO
FILE FIRST AMENDMENT TO THE
COMPLAINT TO ADD ALLEGATION AND
PRAYER FOR PUNITIVE DAMAGES;
DECLARATION OF KEVIN S. DICKER IN
SUPPORT THEREOF

Date: July 22, 2008

Time: 8:30 a.m.

Dept.: "2"

TO THE COURT, TO DEFENDANTS, AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiff, Hospitality Construction & Development, Inc. dba HRB General Contractors ("HRB") hereby applies Ex Parte for an Order Shortening Time for the Hearing on its Motion for Leave to File a First Amendment to the Complaint in this action. The sole purpose of the proposed amendment is to add an allegation and

EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR HEARING ON PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDMENT TO COMPLAINT TO ADD ALLEGATION AND PRAYER FOR PUNITIVE DAMAGES; DECLARATION OF KEVIN S. DICKER IN SUPPORT THEREOF

1 prayer for punitive damages against Defendants pursuant to CCP §425.14.

2

3 As the Court will recall, Plaintiff's Complaint in this action originally contained an
4 allegation and prayer for punitive damages. However, on July 15, 2008, the Court struck
5 the punitive damages allegation and prayer at Defendants' request as a result of HRB's
6 failure to file a motion under CCP §425.14, which requires leave of Court to file an
7 amended complaint in order to seek punitive damages from a religious entity. In granting
8 Defendants' motion to strike Plaintiff's punitive damage claim, the Court specifically noted
9 that its ruling was without prejudice, permitting HRB to bring a motion to amend prior to
10 trial, which HRB now seeks to do.

11

12 ✓ Trial in this action is currently set for August 18, 2008. Given the proximately to
13 trial, there is now insufficient time for the Court to hear HRB's Motion to Amend via
14 regularly noticed motion. Accordingly, HRB brings the instant application for an order
15 shortening time, and respectfully requests that the Court set a hearing date on its Motion
16 no later than July 29, 2008.

17

18 This Application is supported by the attached Declaration of Kevin S. Dicker.

19

20 DATED: July 21, 2008


STEVEN A. SCHUMAN
KEVIN S. DICKER
LEONARD, DICKER & SCHREIBER
Limited Liability Partnership

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Kevin S. Dicker
Attorneys for Hospitality Construction &
Development

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DECLARATION OF KEVIN S. DICKER

I, Kevin S. Dicker, declare that:

1. I am an active member of the State Bar of California, and an attorney with the law firm of Leonard, Dicker & Schreiber, Limited Liability Partnership, counsel of record for Plaintiff Hospitality Construction & Development, Inc., a Florida Corporation doing business as HRB General Contractors ("HRB") in the present action. The facts stated herein are known to me of my personal knowledge, and if called upon as a witness, I could and would competently testify to them.

2. As the Court is aware, this action arises out of HRB's oral contract with Defendants Golden Era Productions, Building Management Services and Church of Scientology International (collectively, the "Church"), relating to the construction build-out of the interiors of four dormitory buildings located on the Church's property. HRB's Third Cause of Action for fraud and deceit alleges that at the time HRB contracted with the Church to perform construction work, the Church had no intention to perform under the parties' agreement. Complaint ¶28. Specifically, the Complaint alleges that the Church entered into the agreement with the intent to induce HRB to undertake considerable pre-construction preparatory work, including obtaining commitments from sub-contractors and material suppliers and to thereafter, terminate HRB, cheat it out of its anticipated profit, and take advantage of HRB's work product and subcontractors. Complaint ¶30. In connection with the Third Cause of Action, HRB's prayer for relief contained a request for "punitive damages according to proof."

3. On April 25, 2008, the Church filed a motion to strike HRB's prayer for punitive damages on the ground that HRB had failed to bring a motion under CCF §425.14, which requires a Plaintiff to seek leave of Court to file an amended pleading in order to

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1 seek damages from a religious corporation. In its opposition to the Church's motion, HRB
 2 conceded its inadvertent failure to file a motion under CCP §425.14. Accordingly, at the
 3 hearing on July 15, 2008, the Court struck HRB's claim for punitive damages **without**
 4 **prejudice** to HRB's right to bring a motion under CCP §425.14 prior to trial.

5
 6 4. HRB now wishes to bring a motion under CCP §425.14 to allow it to file an
 7 amended complaint reinstating its claim for punitive damages against the Church. The lone
 8 amendment sought by HRB is to add an allegation and prayer for punitive damages.
 9 Unfortunately, due to the impending trial date of August 18, 2008, there is insufficient time
 10 for HRB to file a regularly noticed motion. Accordingly, HRB requests that the Court set the
 11 hearing date on its motion no later than July 29, 2008.

12
 13 5. On July 18, 2008, I wrote to Defendant's counsel, Kendrick L. Moxon, and
 14 advised him that this application for an order shortening time for the hearing on HRB's
 15 Motion for Leave to File a First Amendment to the Complaint would be presented to this
 16 Court ex parte on July 22, 2008, at 8:30 a.m. in Department 4 of the Riverside Superior
 17 Court. A copy of my July 18, 2008 letter is attached hereto as Exhibit "1".

18
 19 I declare under penalty of perjury under the laws of the State of California that the
 20 foregoing is true and correct.

21
 22 Executed this 21st day of July, 2004 at Beverly Hills, California

23
 24 
 25 _____
 26 KEVIN S. DICKER

27 4115-021Plix Part: App.P01

EXHIBIT "1"

LAW OFFICES

LEONARD, DICKER & SCHREIBER

LIMITED LIABILITY PARTNERSHIP

JAMES P. SCHREIBER*
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Of Counsel
GUNTHER H. SCHLES*
D. STEVE CAMERON
RANDALL E. GREER

July 21, 2008

By Fax & Mail

Kendrick L. Moxon, Esq.
Moxon & Kobrin
3055 Wilshire Boulevard
Suite 900
Los Angeles, CA 90010

Re: *Hospitality Construction and Development, Inc., et al. v. Golden Era Productions, et al. - Riverside Superior Court Case No. RIC 392 393*

Dear Rick:

This letter will serve as notice that I will appear tomorrow, Tuesday, July 22, 2008, at 8:30 a.m. in Department 4 of the Riverside Superior Court seeking an order shortening time for the hearing date on plaintiff's motion to amend the Complaint to add a prayer for punitive damages under CCP §425.14.

On a related note, I am in receipt of your letter of July 17, 2008. However, I am unable to find the "applicable local rule" you refer to. In fact, my office contacted the Court Clerk, who informs us that trial documents need not be filed until the day of trial. If you are aware of any specific rule that requires us to prepare and file trial documents at this juncture, please provide it to me at your convenience.

Very truly yours,

LEONARD, DICKER & SCHREIBER
Limited Liability Partnership



Kevin S. Dicker

KSD/ph
4115-02MOXON.L06

07/21/2008 11:09 FAX 310 277 8050

LD&S LAW OFFICE

008/010

07/21/2008 08:58 FAX 310 277 8050

LD&S LAW OFFICE

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July 21, 2008

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Of Counsel
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D. STEVE CAMERON
RANDALL S. GREEN

TO: Kendrick L. Moxon, Esq. FAX NO.: 213 487 5385
FROM: Kevin S. Dicker, Esq. PHONE NO.: 213 487 4468
RE: Hospitality Const. & Devel. v. Golden Era Prod. CLIENT NO.: 4115-02

2 PAGE(S), INCLUDING COVER SHEET. IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL (310) 551-1987 AS SOON AS POSSIBLE.

REMARKS:

Please refer to the attached letter of today's date.