

ENDORSED  
FILED  
San Francisco County Superior Court

SEP 19 1978

CARL M. OLSEN, Clerk  
BY THOMAS COOK  
Deputy Clerk

CHARLES R. GARRY  
GARRY, DREYFUS, McTERNAN, BROTSKY,  
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Attorneys for Defendant  
PEOPLES TEMPLE OF THE DISCIPLES  
OF CHRIST, a nonprofit corporation

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

JAMES COBB, JR.,

Plaintiff,

vs.

PEOPLES TEMPLE OF THE DISCIPLES  
OF CHRIST, a nonprofit corpora-  
tion; JAMES WARREN JONES, also  
known as JIM JONES; TERESA BUFORD;  
JEAN F. BROWN; PAMELA G. MOTON;  
and FIRST DOE through FIFTIETH DOE,  
inclusive,

Defendants.

NO. 739 907

DEMURRER TO COMPLAINT AND  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF  
[CCP § 430.10]  
Date: October 2, 1978  
Time: 9:30 A.M.  
Dept: 9 Law and Motion

This demurrer is accompanied by a motion to strike.

Defendant Peoples Temple of the Disciples of Christ demurs  
to the complaint herein as follows:

FIRST CAUSE OF ACTION

1. The first cause of action does not state facts suffi-  
cient to state a cause of action in that the conduct for which  
plaintiff seeks damages is not outrageous.

2. The first cause of action is uncertain in that

BB-11-b-1

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1 plaintiff alleges specific injuries in paragraphs 22-25 which appa-  
2 rently result only from the sending of a letter to him on March 14,  
3 1978, as described in paragraphs 18-20. But in paragraph 12,  
4 lines 25-26, plaintiff alleges that he suffered great and emotional  
5 distress as a result of a telephone call allegedly made in April,  
6 1976. And in paragraph 20 plaintiff alleges that various other  
7 acts which he alleges were done with intent to cause him great  
8 emotional distress and fear, as described in paragraphs 8-16,  
9 induced an unspecified "state of mind of plaintiff." It is unclear  
10 whether plaintiff intends to seek damages for all or some of these  
11 acts alleged in paragraphs 8-16 or merely from the sending of the  
12 letter alleged in paragraphs 18-20.

13 3. The first cause of action is uncertain in that in  
14 paragraph 5 plaintiff alleges that all of the defendants were the  
15 agents and employees of their codefendants and were acting within  
16 the course and scope of such agency and within the permission and  
17 consent of their codefendants in doing the things alleged in the  
18 complaint. But in paragraphs 13 and 14 defendant Moton is specifi-  
19 cally excluded from the conspiracies alleged in those paragraphs.  
20 Furthermore, in paragraph 14 plaintiff alleges that tactics of  
21 terror and fraud were personal to defendant Jones prior to June 23,  
22 1977. Presumably this refers to the acts alleged to have been  
23 ordered by defendant Jones in paragraphs 8-12. In paragraph 20,  
24 plaintiff alleges that all of the defendants, including defendant  
25 Moton, participated in sending the letter described in paragraph  
26 18. In light of the allegations of paragraphs 13, 14 and 20, it.

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1 is impossible to determine what is meant by the agency allegation  
2 of paragraph 5. It is also impossible to determine which defendants  
3 plaintiff alleges are liable for which acts.

4           4. The first cause of action is uncertain because the  
5 reference to "each of the acts complained of herein" in paragraph 8,  
6 line 22 is vague, ambiguous, and at best grossly over-inclusive.  
7 The complaint is 27 pages and 73 paragraphs long. Plaintiff could  
8 not conceivably have intended to allege that defendant Jones indi-  
9 vidually and personally ordered every single act described in the  
10 entire complaint. It is unclear which acts he does intend to  
11 include within that allegation.

12           5. The first cause of action is uncertain in that it is  
13 unclear from the allegations of paragraph 9 what, if anything,  
14 plaintiff alleges that defendant Jones had to do with the telephone  
15 calls described in paragraphs a-c of paragraph 9 and whether or not  
16 plaintiff alleges that defendant Jones personally made any of those  
17 calls.

18           6. The first cause of action is uncertain because plaintiff  
19 has omitted from paragraph 11 all but six words of the alleged  
20 threat described in that paragraph, thus making it impossible to  
21 determine what was allegedly said to plaintiff at that time.

22           7. The first cause of action is uncertain in that it is not  
23 clear whether plaintiff intended the reference to "the tactics of  
24 terror and fraud which had been personal to defendant Jones" in  
25 paragraph 14 to refer to the acts alleged in the paragraphs of the  
26 complaint or to other and undescribed "tactics."

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1 8. The first cause of action is uncertain in that it is  
2 not clear whether plaintiff intended the reference to the "conspir-  
3 acy and agreement above alleged" in paragraph 15 to refer to the  
4 conspiracy alleged in paragraph 13 or that alleged in paragraph 14.

5 9. The first cause of action is uncertain in that it is  
6 unclear what, if anything, is the significance of paragraphs 16 and  
7 17. Plaintiff does not allege that the acts described in those  
8 paragraphs caused him any emotional distress or contributed to the  
9 "state of mind" referred to in paragraph 20, line 19.

10 10. The first cause of action is uncertain in that para-  
11 graph 18 does not specify which defendants allegedly sent the  
12 letter described therein.

13 11. The first cause of action is uncertain because the  
14 reference in paragraph 20, line 19 to the plaintiff's state of  
15 mind is unclear in that it does not indicate what that state of  
16 mind was.

17 12. The first cause of action is uncertain in that para-  
18 graph 21 does not specify to which defendants it refers. This is  
19 ambiguous since paragraph 20 refers to defendant Moton as having  
20 sent the letter, but paragraph 21 alleges that the acts described  
21 in paragraph 20 were done in furtherance of the conspiracies and  
22 agreements alleged in paragraphs 13-15, and defendant Moton was  
23 specifically excluded from the conspiracy and agreement allega-  
24 tions of those paragraphs.

25 13. The first cause of action is uncertain in that  
26 paragraph 23 does not specify which defendants are included in

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1 the allegations of willfulness, wantonness, malice and oppression.

2 SECOND CAUSE OF ACTION

3 14. The second cause of action does not state facts suffi-  
4 cient to constitute a cause of action in that the facts alleged do  
5 not constitute outrageous conduct by defendants or any of them.

6 15. The second cause of action is uncertain in that para-  
7 graph 26 incorporates all of the allegations of the first cause of  
8 action and is thus liable to all of the defects of uncertainty  
9 described in paragraphs 2-13 of this demurrer.

10 16. The second cause of action is uncertain in that in  
11 paragraph 5, incorporated into the second cause of action by  
12 paragraph 26, plaintiff alleges that all of the defendants were the  
13 agents and employees of their codefendants and were acting within  
14 the course and scope of such agency and with the permission and  
15 consent of their codefendants in doing the things alleged in the  
16 complaint. But in paragraph 29, lines 8-9, plaintiff specifically  
17 excludes defendant Moton from the conspiracies and agreements  
18 alleged in that paragraph. Paragraphs 27, line 13; 28, line 7;  
19 32, line 18; 33, line 15; 35, line 22; 36, line 25; and 37, lines  
20 5-6; all refer generally to "defendants." In light of these  
21 allegations it is impossible to determine what is meant by the  
22 agency allegations of paragraph 5. It is also impossible to  
23 determine which defendants plaintiff alleges are liable for the  
24 acts alleged in the second cause of action.

25 17. The second cause of action is uncertain in that  
26 paragraph 27 does not specify which defendants allegedly published  
the open letter described in that paragraph.

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1 18. The second cause of action is uncertain in that  
2 paragraph 28 does not specify which defendants allegedly published  
3 the press release described in that paragraph.

4 19. The second cause of action is uncertain in that  
5 paragraph 32 does not specify which defendants published the letter  
6 and press release and had the intent described in that paragraph.

7 20. The second cause of action is uncertain in that para-  
8 graph 33 does not specify which defendants were acting in further-  
9 ance of any conspiracy or agreement, though defendant Moton had  
10 been specifically excluded from all the conspiracies and agreements  
11 alleged. Furthermore, paragraph 33 does not specify which acts and  
12 things alleged in this second cause of action were done pursuant  
13 to which previously alleged conspiracies and agreements.

14 21. The second cause of action is uncertain because the  
15 phrase "the aforementioned acts" in paragraphs 34, line 18; 35,  
16 line 22; 36, line 25; and 37, line 5 is ambiguous. It is impos-  
17 sible to determine from that phrase for which acts plaintiff in-  
18 tends to hold defendants liable in the second cause of action.

19 22. The second cause of action is uncertain in that para-  
20 graph 35 does not specify which defendants allegedly acted will-  
21 fully, wantonly, oppressively and with malice.

22 THIRD CAUSE OF ACTION

23 23. The third cause of action is uncertain in that para-  
24 graph 38 incorporates all of the allegations of the first and  
25 second causes of action and is thus liable to all of the defects  
26 of uncertainty described in paragraphs 2-13 and 16-22 of this

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1 demurrer.

2           24. The third cause of action is uncertain in that in  
3 paragraph 5, incorporated into the third cause of action by  
4 paragraph 38, plaintiff alleges that all of the defendants were the  
5 agents and employees of their codefendants and were acting within  
6 the course and scope of such agency and with the permission and  
7 consent of their codefendants in doing the things alleged in the  
8 complaint. But in paragraph 39, lines 16-17, plaintiff specifi-  
9 cally excludes defendant Moton from the conspiracies and agreements  
10 alleged in that paragraph. Paragraphs 41, line 10; 43, line 9;  
11 and 50 lines 6-7; all refer generally to "defendants." In light  
12 of these allegations it is impossible to determine what is meant  
13 by the agency allegations of paragraph 5. It is also impossible  
14 to determine which defendants plaintiff alleges are liable for the  
15 acts alleged in the third cause of action.

16           25. The third cause of action is uncertain in that para-  
17 graph 41, line 10, does not specify which defendants allegedly  
18 published the open letter described in that paragraph.

19           26. The third cause of action is uncertain in that para-  
20 graph 43 does not specify which defendants were acting in further-  
21 ance of any conspiracy or agreement, though defendant Moton had  
22 been specifically excluded from all the conspiracies and agreements  
23 alleged. Furthermore, paragraph 43 does not specify which acts and  
24 things alleged in this third cause of action were done pursuant  
25 to which previously alleged conspiracies and agreements.

26           27. The third cause of action is uncertain in that

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1 paragraph 50 does not indicate which defendants allegedly had  
2 feelings of hatred and ill will and acted with a desire to oppress  
3 plaintiff.

4 FOURTH CAUSE OF ACTION

5 28. The fourth cause of action is uncertain in that para-  
6 graph 51 incorporates all of the allegations of the first, second,  
7 and third causes of action and is thus liable to all of the defects  
8 of uncertainty described in paragraphs 2-13, 16-22, and 24-27 of  
9 this demurrer.

10 29. The fourth cause of action is uncertain in that in  
11 paragraph 5, incorporated into the fourth cause of action by  
12 paragraph 51, plaintiff alleges that all of the defendants were the  
13 agents and employees of their codefendants and were acting within  
14 the course and scope of such agency and with the permission and  
15 consent of their codefendants in doing the things alleged in the  
16 complaint. In paragraph 53 plaintiff alleges that defendant Jones'  
17 voice was heard by "all other named defendants and by FIRST DOE  
18 through TENTH DOE," and that these defendants acted upon his order  
19 pursuant to the conspiracies and agreements alleged above. But  
20 paragraphs 13, 14, 29 and 39 specifically excluded defendant Moton  
21 from those conspiracies. In paragraphs 52, line 17; and 54, line 13  
22 plaintiff refers to "defendants" generally. In light of all of  
23 these allegations it is impossible to determine what is meant by  
24 the agency allegations of paragraph 5. It is also impossible to  
25 determin which defendants plaintiff alleges are liable for the  
26 acts alleged in the fourth cause of action.



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FIFTH CAUSE OF ACTION

30. The fifth cause of action is uncertain in that paragraph 62 incorporates the allegations of the first, second, third and fourth causes of action and is thus liable to all of the defects of uncertainty described in paragraphs 2-13; 16-22; 24-27 and 29 of this demurrer.

31. The fifth cause of action is uncertain in that in paragraph 5, incorporated into the fifth cause of action by paragraph 62, plaintiff alleges that all of the defendants were the agents and employees of their codefendants and were acting within the course and scope of such agency and with the permission and consent of their codefendants in doing the things alleged in the complaint. In paragraph 65 plaintiff alleges that "defendants did the acts and things herein alleged pursuant to, and in furtherance of, the conspiracies and agreements above alleged, including that alleged in paragraph 39 herein." But paragraphs 13, 14, 29 and 39 specifically excluded defendant Moton from those conspiracies. In paragraphs 63, line 18; 65, line 25; and 73, lines 7-8 plaintiff refers generally to "defendants." In light of all of these allegations it is impossible to determine what is meant by the agency allegations of paragraph 5. It is also impossible to determine which defendants plaintiff alleges are liable for the acts alleged in the fifth cause of action.

WHEREFORE, defendant Peoples Temple of the Disciples of

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BB-11-1-8

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1 Christ prays that this demurrer be sustained and for all other  
2 proper relief.

3 Dated: September 18, 1978

4 GARRY, DREYFUS, McTERNAN, BROTSKY,  
5 HERNDON & PESONEN, INC.

6  
7 By Charles R. Garry  
8 CHARLES R. GARRY  
9 Attorneys for Defendants  
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BB-11-1-9

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

I am a citizen of the United States; my business address is 1256 Market Street at Civic Center, San Francisco 94102. I am employed in the City and County of San Francisco, where this mailing occurs; I am over the age of eighteen years and not a party to the within cause. I served the within

Demurrer to Complaint and Points and Authorities  
in Support Thereof [CCP § 430.10]

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at San Francisco, California, addressed as follows:

Timothy Oliver Stoen  
120 Montgomery Street, Suite 1700  
San Francisco, CA. 94104

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I certify or declare under penalty of perjury that the foregoing is true and correct. Executed on September 18, 1978  
at San Francisco, California.

\_\_\_\_\_  
Signature

BB-11-b-10