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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 JESSE LEE PETERSON, *et al.*,
11 Plaintiffs,
12
13 v.
14 JESSE JACKSON, *et al.*
15 Defendants.

) Case No. BC 266505
) Date Action Filed: 01/16/02
) Trial Date: None
) Assigned to: Hon. George Wu

) PLAINTIFFS' SUPPLEMENTAL
) MEMORANDUM IN OPPOSITION
) TO DEFENDANTS' MOTION FOR
) SUMMARY ADJUDICATION

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Crtrm: 33 (Hon. George Wu)

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1 **INTRODUCTION**

2 Plaintiffs Rev. Jesse Lee Peterson and Brotherhood Organization of a New Destiny
3 (“B.O.N.D.”), by counsel and pursuant to the Court’s order at the August 19, 2005 hearing,
4 respectfully submit this supplemental memorandum to supplement and augment the factual
5 contentions and legal arguments set forth in Plaintiffs’ Memorandum of Points and Authorities in
6 Opposition to Defendants’ Motion for Summary Judgment or, in the Alternative, Summary
7 Adjudication and Plaintiffs’ Response to Defendants’ Separate Statement of Undisputed Material
8 Facts in Support of Motion for Summary Judgment, or, in the Alternative, Summary
9 Adjudication, filed on or about August 5, 2005.

10 **FACTUAL BACKGROUND**

11 On December 10, 2001, Rev. Peterson, Ermias Alemayehu, and Patrick Rooney attended
12 a meeting at the Los Angeles Chamber of Commerce. Alemayehu Dep. (Ex. F) at 24:9-16;
13 Rooney Dep. (Ex. L) at 26:8-23.¹ The event “was a joint meeting between Rainbow/PUSH and
14 Toyota to invite people who are interested in doing business with Toyota” and to “present the
15 21st Century Diversity Strategy, Toyota’s plan to members of the community in an effort of
16 trying to -- trying to get the message out on what Toyota was trying to do with the ethnic
17 community, minority community.” Jackson Dep. (Ex. G) at 40:9-12; Miller Dep. (Ex. H) at
18 65:16-21. The meeting had been advertised on the radio and in the newspaper, and Jackson
19 described it as “a pretty open meeting.” Jackson Dep. (Ex. G) at 40:19-23.

20 After opening remarks by Jackson and a presentation by Toyota Group Vice President for
21 Corporate Communications Irving A. Miller (“Miller”), the meeting was opened up to questions
22 from the audience. Alemayehu Dep. (Ex. F) at 25:7-9; 49:15-21; Rooney Dep. (Ex. L) at 26:17-
23 23. Rev. Peterson stood up and asked Miller whether groups such as B.O.N.D. had to go through
24 Rainbow/PUSH in order to participate in the 21st Century Diversity Strategy:

25 _____
26 ¹ With the exception of Defendants’ Ex. 26, which was submitted to the Court with
27 Defendants’ moving papers, all factual citations are to Plaintiff’s Appendix of Ex. in Opposition
28 to Defendants’ Motion for Summary Judgment, or, in the Alternative, Summary Adjudication,
filed on or about August 5, 2005.

1 My question to you is that we're very conservative. We're a Republican
2 organization -- not organization, but most of the people are. And I absolutely
3 disagree with what Jesse Jackson is about -- and Rainbow/PUSH. We're known
4 for our National Day of Repudiation of Jesse Jackson on Dr. King's birthday
5 every year . . . My question to you, people like us -- conservatives -- will be left
6 out of being part of working with Toyota and organizations like yours. Is there
7 another way that we can get involved without having to go through
8 Rainbow/PUSH? Because Republicans -- Black Republicans are not going to be
9 able to help the young kids coming up . . .

10 When an audience member stated that she could not hear Rev. Peterson, he repeated his question:

11 Oh, I was telling him that we are a conservative organization, and in the black
12 community, when you're conservative you're pretty much left out from helping
13 the other young people coming up . . . Is there a way to connect with your
14 organization without having to go through them?

15 Defendants' Ex. 26 at :09-1:32. Miller testified about Rev. Peterson, "He seemed sincere in his -
16 - in asking the question. I didn't think he was belligerent or aggressive. I just thought he was
17 asking a question. I took it that way." Miller Dep. (Ex. H) at 80:22-25. Miller agreed that Rev.
18 Peterson's questions were polite. *Id.* at 85:10-12. "I mean they appeared to be -- you know,
19 authentic. I mean I didn't think he was too over the top." *Id.* at 85:12-14. Miller also testified
20 that he did not feel threatened by Rev. Peterson's question. *Id.* at 86:3-4; 86:10-16.

21 Nonetheless, after a response from Miller, Jackson told the crowd, "And the issue, for the
22 record, the issue is not conservative or liberal. The issue is certain parasites trying to pick up
23 fruit from trees they didn't shake." Defendants' Ex. 26 at 1:35-2:24 (Miller response); 2:28-2:40
24 (Jackson comment). Alemayehu testified that the audience "degenerated into a mob after Jesse
25 Jackson made the parasite comment. I mean they were yelling, but it didn't get really bad until
26 Jesse Jackson -- you know, it got worse after he said that." Alemayehu Dep. (Ex. F) at 54:20-24;
27 *see also Id.* at 54:17-22 (Jackson "incit[ed] the audience by -- with the parasite comment"). Rev.
28 Peterson testified that Mathis "was yelling, 'Sit down. Sit down. I can't believe you. You've
been watching too much Bill O'Reilly,'" to which he responded "Well, at least I'm not watching
your boring show." Peterson Dep. (Ex. I) at 54:20-25; Defendants' Ex. 26 at 3:04-3:08 ("You've
been watching too much TV" "I don't watch your show."). Rev. Peterson also testified that "at
that point, the crowd became more hostile toward me . . . called me 'nigger,' telling me to sit
down, yelling and screaming at me, and just all up -- I mean some of the words I can't even

1 mention here.” Peterson Depo (Ex. I) 55:1-6. Shortly thereafter, Jackson ominously told the
2 audience “. . . remain focused on that agenda. I urge you, all of you, to be strong enough not to
3 react to what you see about to happen.” Defendants’ Ex. 26 at 4:44-4:57.

4 After Rev. Peterson asked his question and sat down, Jonathan and two other person
5 positioned themselves near Rev. Peterson and glared at him for the remainder of the meeting.
6 Alemayehu Dep. (Ex. F) at 54:5-11; 55:12-14; 56:13-19 (Alemayehu recalled Jonathan and only
7 one other person positioned themselves near Rev. Peterson); Peterson Dep. (Ex. I) at 73:7-24.
8 Rev. Peterson testified:

9 [By Rev. Peterson] I know for a fact that Jackson -- Jonathan Jackson and a guy
10 with him came and sat in front of me and just stared with intent to intimidate me.
11 And then the guy that was sitting across the table, I can’t exactly tell you
specifically at this time when he arrived there, but I know he came and stared at
me with intent to intimidate as well.

12 [By Defendants’ Counsel] How did you know the intent was to intimidate you?

13 [By Rev. Peterson] Because he stared at me for the remainder of the meeting.
14 First confrontation with Jonathan.

15 Peterson Dep. (Ex. I) at 74:4-15. Alemayehu recalls Jonathan grabbed his crotch and mouthed
16 the words “Suck my dick” to Rev. Peterson. Alemayehu Dep. (Ex. F) at 55:16-23; 56:13-19.
17 Alemayehu was able to observe Jackson during this entire time as “he was right -- he was right
18 there at the head of the podium” *Id.* at 53:2-5.

19 As the meeting was ending and Rev. Peterson got up to leave, Jonathan and the other two
20 persons “stood in his face” and tried to block Rev. Peterson’s path. Alemayehu Dep. (Ex. F) at
21 57:15-20 (Alemayehu recalled only one other person with Jonathan); Peterson Dep. (Ex. I) at
22 74:25; 75:1-8; 77:1-21. Rev. Peterson asked Jonathan to move, and Jonathan, in response,
23 cursed at him. Peterson Dep. (Ex. I) at 76:9; 77:1-8; *see also* Alemayehu Dep. (Ex. F) at 57:15-
24 24. “He was in his face. I remember that,” Alemayehu testified about Jonathan and Rev.
25 Peterson. Alemayehu Dep. (Ex. F) at 57:23-24. Rev. Peterson described his reaction to the
26 incident as follows:

27 I remember thinking that these are some big guys, you know, and because I felt,
28 you know, that they were going to hurt me or at least make an attempt to hurt me

1 and I was smaller than they were. Because I felt like I wouldn't be able to protect
2 myself from them, I remember thinking that all three were very big guys.

3 Peterson Dep. (Ex. I) at 78:6-12; *see also Id.* at 78:23-25; 79:1-7 After Jonathan cursed at him,
4 Rev. Peterson was able to pass by. *Id.* at 77:5-8; .

5 After this first confrontation with Jonathan, Rev. Peterson and Alemayehu left the
6 meeting room and went into the lobby. Peterson Dep. (Ex. I) at 79:10-18. However, Alemayehu
7 wanted to go back into the meeting room to give some information to Miller. *Id.* at 79:19-25;
8 80:1; 84:11-16. Rev. Peterson and Alemayehu returned to the room. *Id.* Alemayehu went over
9 to where Miller was standing, and Rev. Peterson went to a refreshment table. Alemayehu Dep.
10 (Ex. F) at 59:3-5; Peterson Dep. (Ex. I) at 79:23-25; 80:1; 88:2-24.

11 As Rev. Peterson stood at the refreshment table, Jonathan and another person approached
12 him and struck him in the left shoulder area. Peterson Dep. (Ex. I) at 85:2-18. Rev. Peterson did
13 not recall Alemayehu being present when he was struck by Jonathan, but Alemayehu testified
14 that he was present and witnessed the assault. Alemayehu Dep. (Ex. F) at 59:8-21; 62:18-25;
15 126:23-25; 127:1-8; 127:25; 128:1-21; Peterson Dep. (Ex. I) at 87:3-5; 87:25; 88:1-7.

16 Rev. Peterson and Jonathan then exchanged words. According to Rev. Peterson, he told
17 Jonathan, "You're not -- it's against the law to hit me. Why are you hitting me?" Peterson Dep.
18 (Ex. I) at 86:17-20 *see also Id.* at 90:13-16. "At that point, [Jonathan] started saying things like,
19 'Fuck you.' 'Suck my dick,' you know, just violent things." *Id.* at 86:20-22; 90:4-9. According
20 to Alemayehu, Rev. Peterson told Jonathan, "Don't ever put your hands on me. Don't ever touch
21 me again." Alemayehu Dep. (Ex. F) at 67:3-5; 68:1-2. Jonathan responded, "Fuck you." *Id.* at
22 67:8-9; 68:3-7. Jonathan also pointed at his genitals and mouthed the words "Suck my dick,"
23 Alemayehu testified. *Id.* at 67:9-13; 68:3-7. During this exchange, Jonathan and Rev. Peterson
24 were face to face, just inches apart, and Jonathan was yelling at Rev. Peterson. *Id.* at 67:16-25;
25 68:17. Peterson testified that "while we were talking, that's when, you know, everything else
26 started to happen from that point." Peterson Dep. (Ex. I) at 86:23-24. A crowd gathered around
27 them. Alemayehu Dep. (Ex. F) at 67:5-7; 67:14-15; Peterson Dep. (Ex. I) at 90:9-10.
28

1 According to Alemayehu, Jackson was only “a few feet away” when Jonathan struck Rev.
2 Peterson.² Alemayehu Dep. (Ex. F) at 63:17-21. Alemayehu testified that Jackson was close
3 enough to see and hear everything that transpired between Jonathan and Rev. Peterson:

4 [Alemayehu] He was -- he was near us. He was not in another part of the room.
5 He was close to us.

6 [By Defendants’ counsel] How close?

7 [Alemayehu] I don’t recall. I would say maybe ten feet away.

8 [By Defendants’ counsel] Okay. And -- but in ten feet -- not ten feet towards the
coffee table?

9 [Alemayehu] No. Ten feet -- you know, the coffee table, I would say he was -- if
10 you were facing the coffee table, he would have been to the left of the table. I
don’t know if that helps you. But, you know, he was closer to the panel, the
11 direction of the panel, but you know, close enough to where we were that he could
see. He heard everything that went on.

12 *Id.* at 85:20-25; 86:1-8.

13 While Rev. Peterson and Jonathan were face to face and Jonathan was yelling at Rev.
14 Peterson, Jackson came over. Alemayehu Dep. (Ex. F) at 68:14-21; Peterson Dep. (Ex. I) at
15 91:2-3. Rev. Peterson testified:

16 [By Rev. Peterson] Jesse Jackson came over, and he started cursing me out, you
17 know, saying vile things to me.

18 [By Defendants’ Counsel] Tell me exactly what he said to you.

19 ² Former Rainbow/PUSH representative Tracy Rice described how she, Jackson, Jonathan,
20 and Mathis left the room: “I think Reverend was probably behind me with Jonathan by his side.
21 And Greg Mathis was either on his other side or behind him.” Rice Dep. (Ex. K) at 39:2-4. Rice
testified that, as they were leaving, they came across Rev. Peterson at the refreshment table. *Id.*
22 at 39:15-25. Rice walked past Rev. Peterson at the refreshment table. *Id.* at 40:17-24. When
asked if she observed any interaction between Jonathan and Rev. Peterson, Rice testified:

23
24 Not -- you know, there was some kind of -- I had walked forward. Then when I
realized I didn’t have Reverend, which was my job, get him out of the room so we
25 could get to our next meeting, I turned back. And I saw that there was some
words that Jesse Peterson was saying to Jonathan, but I couldn’t hear what they
26 were.”

27 *Id.* at 41:19-25; *see also Id.* at 42:1-25; 43:1-18. Rice and Jackson then went into the foyer,
28 where Jackson gave an interview to “the person who was with Rev. Peterson.” *Id.* at 45:12-24.

1 [By Rev. Peterson] Sorry I have to use this language in front of you guys, but, you
2 know, "Who the fuck is this? Get this asshole out of here," just vile words like
that.

3 Peterson Dep. (Ex. I) at 91:2-7; *see also Id.* at 105:2-9 ("He just went on with his foul language.
4 I mean he was going on and on."). Rev. Peterson also testified that Jackson was standing right
5 next to his son when he made these threatening remarks:

6 [By Defendants' Counsel] Where was Jesse Jackson standing in relationship to
7 you when he made these statements you claim he made?

8 [By Rev. Peterson] Next to Jonathan.

9 [By Defendants' Counsel] Right next to Jonathan?

10 [By Rev. Peterson] Yes.

11 *Id.* at 92:21-25; *see also Id.* at 107:7-10. He described Jackson as being "pretty close" and
12 estimated that the distance between them was about the same as the width of the conference table
13 in the deposition room:

14 [By Defendants' Counsel] How far was he from you?

15 [By Rev. Peterson] Pretty close. About the way you and I are now.

16 [By Defendants' Counsel] So this is probably 40 inches?

17 [By Rev. Peterson] If this is 40 inches, pretty close like this. Close enough for
Jonathan to hit me and step back a minute, a little.

18 [By Defendants' Counsel] Well, I'm not asking you about Jonathan. I'm asking
19 you how close was Reverend Jackson?

20 [By Rev. Peterson] The way you and I are now.

21 [By Defendants' Counsel] When you say, "the way you and I are now," for the
record we are sitting across the conference room table in my office; correct?

22 [By Rev. Peterson] Yes, yes.

23 *Id.* at 105:24-25; 106:1-11.³

24 Alemayehu testified, "I definitely remember Jesse Jackson." Alemayehu Dep. (Ex. F) at
25 68:24. According to Alemayehu, Jackson "told the crowd to 'get his ass out of here.'" *Id.* at
26

27 ³ Counsel for both sides agreed that the table was approximately four feet wide. Peterson
28 Dep. (Ex. I) at 106:20-25.

1 68:17-19; *see also Id.* at 1:24-25; 72:1-2. "People were yelling, 'get' -- you know, 'kick his ass.
2 Get his ass out of here.' But I definitely remember Jesse Jackson." *Id.* at 68:22-24.

3 Mathis also came over to where Rev. Peterson, Jonathan, and Jackson were standing.
4 Alemayehu Dep. (Ex. F) at 69:24-25; 70:1-12; Peterson Dep. (Ex. I) at 93:2-5. Jackson and
5 Mathis were the first to arrive after Rev. Peterson had been assaulted by Jonathan: "Because
6 prior to the mass of the crowd getting there, Jackson and Mathis were there earlier than the rest
7 of the people. But as people gathered around me, the situation got worse and intense." Peterson
8 Dep. (Ex. I) at 101:20-24. Peterson also testified:

9 Judge Greg Mathis came over, and he was yelling at me, "Where's Bill O'Reilly?
10 where is Bill O'Reilly now? You're always on Bill O'Reilly's show. Where is he
when you need him. He was going on --

11 * * *

12 He was saying other things, but I can't remember because he went on for a little
13 while. But I do remember that at this point.

14 *Id.* at 93:2-11. Peterson testified that Mathis' comments about O'Reilly stood out: "He was
15 saying other things, but that's what stood out because he was so loud about that." *Id.* at 101:15-
16 18.

17 Alemayehu testified, with respect to Mathis:

18 He was there in the vicinity. I could hear him. I could hear his voice. . . I don't
19 recall, but he was in that area. There was so much commotion and chaos at that
time, but I remember him. I remember that suit that he had, the bright-colored
suit he was wearing.

20 Alemayehu Dep. (Ex. F) at 70:1-9. Alemayehu estimated that Mathis was "between five and ten
21 feet" away. *Id.* at 70:10-12. Alemayehu testified that "I know I heard his voice, and I know he
22 was there." *Id.* at 72:5-6. Alemayehu also testified that Mathis incited the crowd:

23 [By Defendants' Counsel] What is it that you observed Judge Mathis do that you
24 interpreted to be inciting and participating in an alleged mob?

25 [By Alemayehu] His words. I heard him say -- at one point I did hear him say
26 that, "You have been watching too much O'Reilly, you know. You're an O'Reilly
fan, you know." And anyone who was in that room knows that was not a room
full of Bill O'Reilly supporters so --

27 [By Defendants' Counsel] Is there anything else that you heard Judge Mathis say?
28

1 [By Alemayehu] Just that was the main thing, you know.

2 [By Defendants' Counsel] Did anybody respond when Judge Mathis said that?

3 [By Alemayehu] Yeah. *That was when I could feel literally the hostility of the*
4 *people. It would be like someone yelling that, you know, "He's married to a*
black woman," at a Klan meeting.

5 *Id.* at 88:21-25; 89:1-12 (emphasis added).

6 Alemayehu estimated the size of the crowd that had gathered around them as being "at
7 least 30, maybe more." Alemayehu Dep. (Ex. F) at 70:13-15; 80:15-23. Rev. Peterson gave a
8 lower estimate, but testified that he was not sure: "I would estimate -- and I'm not sure about the
9 figure -- 10, 15 people had gathered around. It may have been more or less." Peterson Dep. (Ex.
10 I) at 90:21-23. Alemayehu testified that the size of the crowd grew larger over time: "I guess the
11 level of the argument and the dialogue -- you know, Jonathan was yelling and other people were
12 yelling, so I think it drew, you know." Alemayehu Depo (Ex. F) at 80:20-23. "I'd say 30 would
13 be the minimum," Alemayehu testified. *Id.* at 81:7-8.

14 Incited by Jackson and Mathis, the crowd encircling Rev. Peterson and Alemayehu
15 shouted threats at Rev. Peterson. Alemayehu Dep. (Ex. F) at 68:22-24; Peterson Dep. (Ex. I) at
16 94:4-7; 101:15-18. Rev. Peterson testified that "other people were yelling that they were going to
17 kick my ass, and 'Get him out of here before we kill him.'" Peterson Dep. (Ex. I) at 95:11-12
18 (emphasis added).

19 Alemayehu testified that he and Rev. Peterson were shoved by the crowd:

20 They could -- during the incident between [Rev. Peterson] and Jonathan Jackson
21 there was shoving. People were shoving, you know. They were pulling Jonathan
22 back, and we were being shoved. So I don't remember. It was a lot of people
around us. I don't know who was shoving and who wasn't, but there was
definitely some shoving going on.

23 Alemayehu Dep. (Ex. F) at 74:17-25; 90:16-18.

24 Rev. Peterson testified that he feared for his life: "... I was being attacked at that point,
25 and I feared for my life." Peterson Dep. (Ex. I) at 94:19-20; *see also Id.* at 96:8-14. Alemayehu
26 testified that, while surrounded by the crowd, he also feared for his life and the life of Rev.
27 Peterson:
28

1 I feared for my life. I feared for his life. We were surrounded by a group of mad -
2 - you know, a group of black guys that basically wanted to tear us apart.

3 * * *

4 To be honest with you, at that point my focus was for our safety, to get Reverend
5 Peterson out of there and myself out of there because we feared for our lives. *I*
6 *felt that they were literally going to kill us in that room, so I had to get him out of*
7 *there.* And that's what I focused on.

8 * * *

9 . . . they wouldn't let -- they had us encircled. That was the time when Jonathan
10 and Reverend Peterson were standing fact to face. There was no way. I was
11 trying to find a way to get Reverend Peterson out of there. There was no way we
12 could get out. They had us totally trapped, you know. People were yelling and
13 screaming, you know, calling him "Nigger," and "Get your ass out of here. We're
14 going to kick your ass."

15 Alemayehu Dep. (Ex. F) 69:2-5; 80:23-25; 81:1-4; 88:3-12 (emphasis added); *see also* Peterson
16 Dep. (Ex. I) at 101:5-7 ("I mean, we were both overwhelmed by it and were surprised and
17 shocked, never expected something like that to happen.").

18 Eventually, the crowd pulled Jonathan away from Rev. Peterson:

19 [By Defendants' Counsel] And who -- and you don't know who pulled Jonathan
20 back?

21 [By Alemayehu] It was a group -- they had a few people pull him back. I don't
22 recall who, but it was at least a half dozen had to pull him back.

23 [By Defendants' Counsel] Can you describe any of the people?

24 [By Alemayehu] Big, large, black guys. That's all I can say. Jonathan is a big
25 guy, and it took a lot of people to get him off Reverend Peterson.

26 Alemayehu Dep. (Ex. F) at 75:1-9. As the crowd pulled Jonathan away, the "circle" around Rev.
27 Peterson and Alemayehu was broken and they were able to escape. *Id.* at 68:25; 69:1-18; 78:3-
28 22; 79:6-9; 90:9-14; Peterson Dep. (Ex. I) at 95:15-16. Alemayehu testified:

When they pulled him off, five, six feet, you know. Gradually as -- the distance
increased as they were pulling him back. But it started out a few feet, and they
gradually pulled him back. And I would say that, when they concluded the actual
threat -- the threat from Jonathan Jackson, he was probably ten feet away at that
point. They had pulled him back away from Reverend Peterson.

Alemayehu Dep. (Ex. F) at 76:21-25; 77:1-3. Even as Jonathan was being pulled away, Jackson
remained at the center of the mob:

[By Defendants' Counsel] And where was Jackson?

1 [By Alemayehu] He was in the mix. He was standing that whole -- where that
2 whole thing happened, that whole assault, confrontation. *And where the people*
3 *had surrounded us, Jesse Jackson was in the center of that . . . just a couple of*
4 *feet away from Jonathan Jackson the whole time.*

5 [By Defendants' Counsel] Uh-hun. And when you say "a couple of feet," can
6 you give me an estimate?

7 [By Alemayehu] I would say -- I said "a couple." I should say a few feet;
8 probably three or four feet away.

9 *Id.* at 83:6-18 (emphasis added).

10 Even as Rev. Peterson and Alemayehu departed, the crowd followed, yelling at them:

11 And I had to come from behind Reverend Peterson and grab him, and we made
12 our exit towards the door. And people were following us, saying, you know,
13 "you'd better get him out of here before he gets his ass kicked."

14 * * *

15 I had to push through. I grabbed Reverend Peterson from behind and kind of with
16 my arm grabbed his shoulders and pushed some of the people out of the way, and
17 we made our exit towards the door. And people were following us saying,
18 "You'd better get out of here before you get your ass kicked."

19 Alemayehu Dep. (Ex. F) at 69:5-18; *see also Id.* at 73:7-11; 78:7-11.

20 The second "incident with Jonathan" lasted from three to five minutes. Alemayehu Dep.
21 (Ex. F) at 83:22-25; 84:1-5. Rev. Peterson testified, "Well, while standing in there, it seemed
22 like a long time." Peterson Depo (Ex. I) at 94:24-25. "It seemed forever." *Id.* at 96:18. Rev.
23 Peterson testified that "[t]his was the most frightening experience of my life and left me shaken
24 and stunned for days." Declaration of Jesse Lee Peterson (Ex. D) at ¶ 19, pg. 6, ln. 25.

25 Alemayehu testified that Jackson's "parasite" remark incited the crowd against Rev.
26 Peterson:

27 [By Defendants' Counsel] Did you believe that the incident with Jonathan
28 Jackson you've just described with the group of people surrounding you was
related . . . to the parasite remark earlier?

[By Alemayehu] I believe that that had excited the crowd, you know, to be more
hostile towards Reverend Peterson because not all of them had witnessed
Jonathan's assault on Reverend Peterson. But it was my belief that they were
incited to hate Reverend Peterson and to be hostile towards him as a result of
those comments.

Alemayehu Dep. (Ex. F) at 84:12-22.

1 **ARGUMENT**

2 **I. Rev. Peterson's Assault Claim.**

3 Jackson's and Mathis's motion for summary adjudication of Rev. Peterson's assault claim
4 must be denied because Rev. Peterson has adduced sufficient evidence to prove his assault claim,
5 and there are disputes of material fact that must be resolved by a jury.

6 Under California law, a defendant is liable for the tort of assault where he intentionally
7 acts to place the plaintiff in apprehension of harmful or offensive contact. *Lowry v. Standard Oil*
8 *Co.*, 63 Cal.App.2d 1, 6-8, 146 P.2d 57, 59-60 (1944); *Restatement (Second) of Torts*, § 21.
9 Words alone do not make a defendant liable for assault “unless together with other acts or
10 circumstances [the defendant] put the other in reasonable apprehension of an imminent harmful
11 or offensive contact with his person.” *Restatement (Second) of Torts*, § 31 (emphasis added).

12 Applying this governing California law to Jackson's and Mathis's words and actions,
13 taken together with the surrounding circumstances of Jonathan's physical assault on Rev.
14 Peterson and the hostility of the crowd surrounding Rev. Peterson and Jonathan at that time, it is
15 clear that Rev. Peterson has adduced facts sufficient to show Jackson and Mathis committed an
16 assault on Rev. Peterson. Defendants' denial of these facts creates disputes of material fact that
17 must be resolved by a jury.

18 **A. Rev. Peterson's Evidence Establishes His Claim of Assault**
19 **Against Jackson.**

20 Jackson's words and actions are more than sufficient to show he intentionally acted to
21 place Rev. Peterson in apprehension of harmful or offensive contact with his person. During the
22 business portion of the meeting, after Rev. Peterson had asked if it was possible to obtain the
23 benefits of the Toyota program without going through Jackson and Rainbow/PUSH, Jackson
24 sowed the seeds of hostility toward Rev. Peterson among the attendees when he branded Rev.
25 Peterson a “parasite” who came to the meeting “to pick up apples [Toyota grant money] from
26 trees [Toyota] [he] did not shake.” Defs. Ex. 26. Jackson's parasite comment incited the
27 attendees to become hostile toward Rev. Peterson. Alemayehu Dep. (Ex. F) at 84:12-22. Fueled
28 by Jackson's parasite comment, the crowd, according to Rev. Peterson, “called me ‘nigger,’

1 telling me to sit down, yelling and screaming at me” Peterson Dep. (Ex. I) 55:4-6. This set
2 the stage for Jonathan’s physical attack on Rev. Peterson and Jackson’s assault of Rev. Peterson.

3 After the business portion of the meeting had concluded and while Rev. Peterson was
4 standing at the refreshments table, Jonathan and another person approached him and struck him
5 in the left shoulder area. Peterson Dep. (Ex. I) at 85:2-18. Rev. Peterson and Jonathan then
6 exchanged words. According to Rev. Peterson, he told Jonathan, “You’re not -- it’s against the
7 law to hit me. Why are you hitting me?” *Id.* at 86:17-20 *see also Id.* at 90:13-16. “At that point,
8 [Jonathan] started saying things like, ‘Fuck you.’ ‘Suck my dick,’ you know, just violent things.”
9 Peterson Dep. (Ex. I) at 86:20-22; 90:4-9; *see also* Alemayehu Dep. (Ex. F) at 67:3-5, 8-13; 68:1-
10 7. During this exchange, Jonathan and Rev. Peterson were face to face, just inches apart, and
11 Jonathan was yelling at Rev. Peterson. Alemayehu Dep. (Ex. F) at 67:16-25; 68:17. Peterson
12 testified that “while we were talking, that’s when, you know, everything else started to happen
13 from that point.” Peterson Dep. (Ex. I) at 86:23-24. A crowd gathered around them. Alemayehu
14 Dep. (Ex. F) at 67:5-7; 67:14-15; Peterson Dep. (Ex. I) at 90:9-10.

15 Jackson was only ten feet from Jonathan when Jonathan struck Rev. Peterson, close
16 enough to see and hear everything that transpired between Jonathan and Rev. Peterson.
17 Alemayehu Dep. (Ex. F) at 63:17-21; 85:20-25; 86:1-8. While Rev. Peterson and Jonathan were
18 standing face to face and Jonathan was cursing Rev. Peterson, Jackson came over and stood next
19 to Jonathan. Alemayehu Dep. (Ex. F) at 68:14-21; Peterson Dep. (Ex. I) at 91:2-3; 91:21-25; *see*
20 *also* Peterson Dep. (Ex. I) at 107:7-10. Jackson, who was approximately 4 feet from Rev.
21 Peterson, then began to curse Rev. Peterson, using vile language such as “Who the fuck is this?
22 Get this asshole out of here.” Peterson Dep. (Ex. I) at 91:2-7; *see also Id.* at 105:2-9 (“He just
23 went on with his foul language. I mean he was going on and on.”); 105:24-25; 106:1-11.⁴

24 Jackson’s words and actions incited and exhorted the crowd surrounding Rev. Peterson to
25 physically harm Rev. Peterson. Alemayehu testified, “I definitely remember Jesse Jackson.”
26

27 ⁴ Counsel for both sides agreed that the table was approximately four feet wide. Peterson
28 Dep. (Ex. I) at 106:20-25.

1 Alemayehu Dep. (Ex. F) at 68:24. According to Alemayehu, Jackson “told the crowd to ‘get his
2 ass out of here.’” *Id.* at 68:17-19; *see also Id.* at 71:24-25; 72:1-2. The crowd responded.
3 “People were yelling, ‘get’ -- you know, ‘kick his ass. Get his ass out of here.’ But I definitely
4 remember Jesse Jackson.” *Id.* at 68:22-24. Having been incited by Jackson, the crowd not only
5 threatened Rev. Peterson but also physically shoved him and Alemayehu in an offensive way. *Id.*
6 at 74:17-25; 90:16-18.

7 Rev. Peterson testified that he feared for his life: “. . . I was being attacked at that point,
8 and I feared for my life.” Peterson Dep. (Ex. I) at 94:19-20; *see also Id.* at 96:8-14. Alemayehu
9 testified that, while surrounded by the crowd, he also feared for his life and for Rev. Peterson’s
10 life:

11 I feared for my life. I feared for his life. We were surrounded by a group of mad -
12 - you know, a group of black guys that basically wanted to tear us apart.

13 * * *

14 To be honest with you, at that point my focus was for our safety, to get Reverend
15 Peterson out of there and myself out of there because we feared for our lives. *I*
16 *felt that they were literally going to kill us in that room, so I had to get him out of*
there. And that’s what I focused on.

* * *

17 . . . they wouldn’t let -- they had us encircled. That was the time when Jonathan
18 and Reverend Peterson were standing fact to face. There was no way. I was
19 trying to find a way to get Reverend Peterson out of there. There was no way we
20 could get out. They had us totally trapped, you know. People were yelling and
21 screaming, you know, calling him “Nigger,” and “Get your ass out of here. We’re
22 going to kick your ass.”

23 Alemayehu Dep. (Ex. F) 69:2-5; 80:23-25; 81:1-4; 88:3-12 (emphasis added); *see also* Peterson
24 Dep. (Ex. I) at 101:5-7 (“I mean, we were both overwhelmed by it and were surprised and
25 shocked, never expected something like that to happen.”).

26 Eventually, as persons in the crowd pulled Jonathan away from Rev. Peterson, the circle
27 around Rev. Peterson and Alemayehu was broken and they were able to escape. Even as he
28 departed, however, the hostile crowd incited by Jackson followed and continued to yell at Rev.
Peterson “you’d better get him out of here before he gets his ass kicked ” and “you’d better get
out of here before you get your ass kicked.” Alemayehu Dep. (Ex. F) at 69:5-18. All the while,

1 Jackson remained at the center of the hostility directed at Rev. Peterson: "He was in the mix. He
2 was standing that whole -- where that whole thing happened, that whole assault, confrontation.
3 And where the people had surrounded us, Jesse Jackson was in the center of that . . . just a couple
4 of feet away from Jonathan Jackson the whole time." *Id.* at 83:6-18.

5 This testimony establishes evidence from which a reasonable jury could -- and would --
6 conclude that Jackson intentionally acted to place Rev. Peterson in reasonable apprehension of
7 offensive or harmful contact with his person. Jackson's words and actions in supporting
8 Jonathan's physical attack on Rev. Peterson incited the crowd surrounding Rev. Peterson,
9 Jonathan and him, and the crowd responded by threatening to "kick [Rev. Peterson's] ass."
10 Jackson's actions and his control over and manipulation of the crowd reasonably caused Rev.
11 Peterson to fear for his life, as he had just been physically attacked by Jonathan. This testimony
12 establishes all the elements of Rev. Peterson's assault claim against Jackson. Thus, Jackson's
13 motion for summary adjudication of Rev. Peterson's assault claim must be denied.

14 **B. Rev. Peterson's Evidence Establishes the Claim of Assault**
15 **Against Mathis.**

16 The evidence also demonstrates that Mathis taunted Rev. Peterson, placing Rev. Peterson
17 in reasonable apprehension of offensive or harmful contact with this person. Mathis's taunting
18 of Rev. Peterson occurred immediately after Rev. Peterson had been physically attacked by
19 Jonathan and while Rev. Peterson was encircled by the threatening crowd that had been incited
20 by Jackson. As Jackson incited and exhorted the crowd surrounding Rev. Peterson, Mathis came
21 over to where Rev. Peterson, Jonathan, and Jackson were standing.⁵ Alemayehu Dep. (Ex. F) at
22 69:24-25; 70:1-12; Peterson Dep. (Ex. I) at 93:2-5. Mathis stood approximately five to ten feet
23 from Rev. Peterson and taunted Rev. Peterson, yelling: "Where's Bill O'Reilly? Where is Bill
24 O'Reilly now? You're always on Bill O'Reilly's show. Where is he when you need him?"

25 ⁵ Jackson and Mathis were the first to arrive after Rev. Peterson had been attacked by
26 Jonathan: "Because prior to the mass of the crowd getting there, Jackson and Mathis were there
27 earlier than the rest of the people. But as people gathered around me, the situation got worse and
28 intense." Peterson Dep. (Ex. I) at 101:20-24.

1 Alemayehu Dep. (Ex. F) at 70:10-12; 88:24-25; 89: 1-12. Peterson Dep. (Ex. I) at 93:2-11.

2 Peterson testified that Mathis's taunting about O'Reilly stood out: "He was saying other things,
3 but that's what stood out because he was so loud about that." Peterson Dep. (Ex. I) at 101:15-18.

4 In determining whether a genuine issue of material fact exists, this Court must construe
5 all facts in the light most favorable to Plaintiffs, as the non-moving parties, and must draw all
6 reasonable inferences in favor of them. *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 252
7 (1986); *Aquilar v. Atlantic Richfield Co.*, 25 Cal.4th 826, 850, 107 Cal.Rptr.2d 841, 861-62
8 (2001). Mathis's taunting of Rev. Peterson, considered in the context of the surrounding
9 circumstances, suggests that Mathis intended to incite the hostile crowd by alienating Rev.
10 Peterson from the crowd. Alemayehu described the effect of Mathis's taunting with a chilling
11 analogy: "That was when I could feel literally the hostility of the people. *It was like someone*
12 *yelling that, you know, 'He's married to a black woman,' at a klan meeting.*" Alemayehu Dep.
13 (Ex. F) at 88:9-12 (emphasis added). "Anyone who was in that room knows that was not a room
14 full of Bill O'Reilly supporters" *Id.* at 89:2-3. Thus, identifying Rev. Peterson as a friend
15 of Bill O'Reilly was clearly intended to alienate, and had the effect of alienating, Rev. Peterson
16 from the hostile crowd in this incendiary situation. The crowd responded with threats to "kick
17 [Rev. Peterson's] ass" and by physically shoving him.⁶ Rev. Peterson feared for his life as a
18 result of both Jackson's incitement of the crowd surrounding him and Mathis's taunting that also
19 incited the hostile crowd. Peterson Dep. (Ex. I) at 94:19-20; *see also Id.* at 96:8-14.

20 Another reasonable inference is that Mathis's taunting was meant to convey to Rev.
21 Peterson that he needed Bill O'Reilly or some other third person to protect him from the hostile
22 crowd and, thereby, place Rev. Peterson in apprehension of harm from the crowd. Mathis's
23 taunting had this effect because Rev. Peterson actually feared for his life in this situation.
24 Peterson Dep. (Ex. I) at 94:19-20.

25
26
27 ⁶ The crowd even yelled, "Get him out of here before we kill him." Peterson Dep. (Ex. I)
28 at 95:11-12.

1 This testimony shows that Mathis's taunting of Rev. Peterson incited hostility in the
2 crowd that caused Rev. Peterson to fear for his life. Mathis's words and actions placed Rev.
3 Peterson in reasonable apprehension of offensive or harmful contact with his person, and this
4 evidence is sufficient for a reasonable jury to find Mathis liable for assault. As a result, Mathis's
5 motion for summary adjudication on Rev. Peterson's assault claim must be denied.

6 **II. Rev. Peterson's False Imprisonment Claim.**

7 Jackson's and Mathis's motion for summary adjudication of Rev. Peterson's false
8 imprisonment claim must be denied because Rev. Peterson also has adduced sufficient evidence
9 to prove this claim. In addition, disputes of material fact exist that must be resolved by a jury.

10 False imprisonment is the "unlawful violation of the liberty of another." *Fermino v.*
11 *FEDCO*, 7 Cal. 4th 701, 715, 30 Cal. Rptr. 2d 18, 26 (1994). To establish this tort, Rev.
12 Peterson must show the non-consensual intentional confinement of his person, without lawful
13 privilege, for an appreciable length of time, however short. *City of Newport Beach v. Sasse*, 9
14 Cal. App. 3d 803, 810, 88 Cal. Rptr. 476, 480 (1970). False imprisonment may be committed by
15 acts or words, or both. *Baines v. Brady*, 122 Cal. App.2d Supp. 957, 960, 265 P.2d 194, 196
16 (1953). Actual physical constraint is unnecessary if a defendant's words or conduct cause a
17 plaintiff to reasonably apprehend that he will not be allowed to depart. *Wilson v. Houston*
18 *Funeral Home*, 42 Cal. App. 4th 1124, 1135, 50 Cal. Rptr. 2d 169, 175 (1996). Psychologically
19 intimidating behavior, even without a threat of violence, may constitute false imprisonment.
20 *Schanafelt v. Seaboard Fin. Co.*, 108 Cal. App. 2d 420, 423, 239 P.2d 42, 43 (1951). All person
21 who take part in, or assist in, committing the tort of false imprisonment are jointly and severally
22 liable. *Oppenheimer v. City of Los Angeles*, 104 Cal.App.2d 551, 553, 232 P.2d 30, 31 (1951).
23 Applying this governing California law to Jackson's and Mathis's words and actions, it is clear
24 that Jackson and Mathis participated in the false imprisonment of Rev. Peterson immediately
25 after Rev. Peterson was physically attacked by Jonathan.

1 **A. Rev. Peterson’s Evidence Establishes the Claim of False**
2 **Imprisonment Against Jackson.**

3 When Jonathan physically attacked Rev. Peterson, a crowd gathered around them.
4 Alemayehu Dep. (Ex. F) at 67:5-7, 14-15; Peterson Dep. (Ex. I) at 90:9-10. When Jackson
5 immediately came over and stood next to Jonathan, Jackson was in the middle of the crowd.
6 Alemayehu Dep. (Ex. F) at 83:9-11. As previously discussed, Jackson cursed Rev. Peterson and
7 incited and exhorted the crowd, saying: “Who the fuck is this? Get his [Rev. Peterson’s] ass out
8 of here.” Alemayehu Dep. (Ex. F) at 68:17-19; Peterson Dep. (Ex. I) 91: 4-7.

9 In response to Jackson’s incitement of the crowd, the crowd “encircled” Rev. Peterson
10 and Alemayehu and had them “totally trapped.” Alemayehu Dep. (Ex. F) at 88:1-13. “There was
11 no way we could get out. They had us totally trapped, you know.” *Id.* As the crowd encircled
12 and trapped Rev. Peterson and Alemayehu, Jackson was at the center, inciting and manipulating
13 the crowd. *Id.* at 83:6-18. Alemayehu estimated the size of the crowd that had gathered around
14 them as being “at least 30, maybe more.” *Id.* at 70:13-15; 80:15-23; 81:7-8. Alemayehu testified
15 that the size of the crowd grew larger over time: “I guess the level of the argument and the
16 dialogue -- you know, Jonathan was yelling and other people were yelling, so I think it drew, you
17 know.” *Id.* at 80:20-23.

18 Rev. Peterson was encircled and trapped by the hostile crowd, including Jackson, for
19 approximately three to five minutes, during which time Rev. Peterson was unable to escape.
20 Alemayehu Dep. (Ex. F) at 83:6-18, 22-25; 84:1-5. To Rev. Peterson, it seemed to last forever.
21 Peterson Dep. (Ex. I) at 96:15-18.

22 This testimony establishes facts sufficient for a reasonable jury to conclude that Jackson,
23 by his incitement of the crowd, participated in restraining Rev. Peterson’s freedom of movement
24 while Rev. Peterson was encircled and trapped by the crowd. Thus, Jackson’s motion for
25 summary adjudication on Rev. Peterson’s false imprisonment claim must be denied.

1 **B. Rev. Peterson's Evidence Establishes the Claim of False**
2 **Imprisonment Against Mathis.**

3 When Rev. Peterson was physically attacked by Jonathan, Jackson and Mathis were the
4 first to come over to Jonathan. Alemayehu Dep. (Ex. F) at 69:24-25; 70:1-12; Peterson Dep.
5 (Ex. I) at 93:2-5; 101:20-24. Like Jackson, Mathis incited the crowd by taunting Rev. Peterson.
6 *See* Section I(B), above. The crowd responded to Mathis's taunts by escalating the level of
7 hostility toward Rev. Peterson, as they encircled and trapped him. *See* Section I(B), above;
8 Alemayehu Dep. (Ex. F) at 88:1-13; 89:1-12. Mathis was between five feet and ten feet from
9 Rev. Peterson and, therefore, in a position to see that the crowd, including him, were encircling
10 and trapping Rev. Peterson. *Id.* at 70:10-12.

11 This testimony establishes facts sufficient for a reasonable jury to conclude that Mathis
12 participated and encouraged the crowd to restrain Rev. Peterson's freedom of movement. As a
13 member of the crowd that trapped Rev. Peterson and one who materially escalated the crowd's
14 hostility toward Rev. Peterson, the evidence is sufficient for a reasonable jury to find that Mathis,
15 like the others in the crowd, is equally liable for false imprisonment. Thus, Mathis's motion for
16 summary adjudication of Rev. Peterson's false imprisonment claim must be denied.

17 **III. Rev. Peterson's Intentional Infliction of Emotional Distress Claim.**

18 Jackson's and Mathis's motion for summary adjudication of Rev. Peterson's claim
19 intentional infliction of emotional distress must be denied because Rev. Peterson has adduced
20 sufficient evidence to prove this claim, and there are disputes of material fact that must be
21 resolved by a jury.

22 The elements of a *prima facie* case of intentional infliction of emotional distress are: (1)
23 outrageous conduct by Defendants; (2) intended to cause, or with or reckless disregard for the
24 probability of causing, emotional distress; (3) severe emotional suffering by the plaintiff; and (4)
25 actual and proximate causation of the emotional distress. *Davidson v. City of Westminster*, 32
26 Cal. App. 3d 197, 209, 185 Cal. Rptr. 252, 259 (1982); *Restatement (Second) of Torts*, § 46.

27 First, Jackson's and Mathis's tortious conduct is patently outrageous in a civil society
28 governed by the rule of law because it is antithetical to the most fundamental norms of acceptable

1 behavior and is contrary to the rule of law, as it threatened the well-being, security, and integrity
2 of Rev. Peterson. *State Rubbish Collectors Ass'n v. Siliznoff*, 38 Cal. 2d 330, 337-38, 240 P.2d
3 282, 285-86 (1952). As discussed in Sections I and II, above, Jackson and Mathis intentionally
4 incited the hostile crowd surrounding Rev. Peterson until the crowd called him "Nigger" and
5 yelled at Rev. Peterson that they were going to "Kick [his] ass" and "Get him out of here before
6 we kill him." Alemayehu Dep. (Ex. F) at 69:5-18; 88:3-12; *see also* Alemayehu Dep. (Ex. F) at
7 73:7-11; 78:7-11; Peterson Dep. (Ex. I) at 95:11-12 (emphasis added). Jackson's and Mathis's
8 incitement of the crowd to physically harm Rev. Peterson is as equally outrageous as the actual
9 battery of Rev. Peterson committed by Jonathan. Jackson's standing beside Jonathan and
10 inciting the crowd that had encircled Rev. Peterson by yelling "Who the fuck is this?" and "Get
11 his asshole out of here" was a specific instruction to carry out a violent act against Rev. Peterson.
12 Mathis' verbal taunting of Rev. Peterson was outrageous under the circumstances because the
13 facts demonstrate the taunting was meant both to incite hostility in the crowd and to exacerbate
14 Rev. Peterson's fear of personal harm. In short, such conduct constitutes the torts of assault and
15 false imprisonment of Rev. Peterson and, thus, is outrageous *per se*.

16 Second, Jackson's and Mathis's tortious conduct obviously was intended to cause Rev.
17 Peterson to suffer severe emotional distress by placing him in apprehension and fear of violence
18 to his person, and to taunt and offend him publicly. *Davidson*, 32 Cal. App. 3d at 210, 185 Cal.
19 Rptr. at 259. "In the case of many torts, such as assault, battery, false imprisonment, and
20 defamation, mental suffering will frequently constitute the principal element of damages."
21 *Merenda v. Superior Court*, 3 Cal. App. 4th 1, 8, 4 Cal. Rptr. 2d 87, 80 (1992) (emphasis
22 added.). Indeed, the emotional distress suffered by Rev. Peterson was a natural and foreseeable
23 consequence of Jackson's and Mathis's incitement of the hostile crowd to harm Rev. Peterson.

24 Third, the emotional distress that Rev. Peterson suffered as a result of Defendants'
25 conduct was severe. Under California law, severe emotional distress may consist of "any highly
26 unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger,
27 chagrin, disappointment or worry." *Newby v. Alto Riviera Apartments*, 60 Cal. App. 3d 288,
28

1 298, 131 Cal. Rptr. 547, 554 (1976). Rev. Peterson testified that he suffered emotional distress
2 as a result of Defendants' harmful and offensive conduct. For example, Rev. Peterson testified
3 that he "feared for [his] life." Peterson Dep. (Ex. I) at 94:19-20; *see also* Peterson Dep. (Ex. I) at
4 96:8-14; Peterson Declaration (Ex. D) at ¶ 19. Rev. Peterson also testified that "[t]his was the
5 most frightening experience of my life and left me shaken and stunned for days." *Id.* Such
6 palpable fear and fright clearly constitutes severe emotional distress.

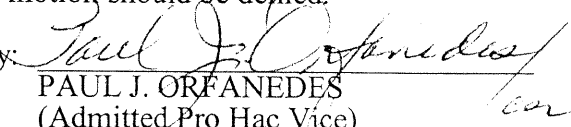
7 Fourth, the foregoing evidence demonstrates that Jackson's and Mathis's tortious conduct
8 was both the actual and proximate cause of the severe emotional distress suffered by Rev.
9 Peterson. Rev. Peterson experienced the aforementioned severe emotional distress immediately
10 upon being subjected to Jackson's and Mathis's tortious conduct. Furthermore, the fact that
11 Jackson and Mathis intended their conduct to cause Rev. Peterson emotional distress is *prima*
12 *facie* evidence that such conduct actually and proximately cause of the emotional distress.

13 As a result, Rev. Peterson has adduced evidence sufficient for a reasonable jury to
14 conclude that Jackson and Mathis intended to cause Rev. Peterson to suffer severe emotional
15 distress. Thus, Defendants' motion for summary adjudication on this claim must be denied.

16 **CONCLUSION**

17 For all the foregoing reasons, Defendants' motion should be denied.

18 Dated: August 31, 2005

By: 
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Attorneys for Plaintiffs

1 **PROOF OF SERVICE BY MAIL**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 and not a party to the within action. My business address is 2540 Huntington Drive, Suite 201,
4 San Marino, California 91108.

5 On August 31, 2005, I served the foregoing document described as:

6 **PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO**
7 **DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION**

8 by placing a true and correct copy thereof in a sealed envelope addressed as follows:

9 Carol A. Sobel, Esq.
10 LAW OFFICES OF CAROL A. SOBEL
11 429 Santa Monica Blvd., Ste. 550
12 Santa Monica, CA 90401
13 FAX: (310) 393-3605

14 I caused such envelope to be deposited in the U.S. mail, with postage thereon fully
15 prepaid, at San Marino, California. I am "readily familiar" with the firm's practice of collecting
16 and processing correspondence for mailing. Under that practice, it would be deposited with the
17 U.S. Postal Service on that same day, with postage thereon fully prepaid, at San Marino,
18 California in the ordinary course of business. I am aware that on motion of the party served,
19 service is presumed invalid if postal cancellation date or postage meter date is more than one day
20 after date of deposit for mailing affidavit.

21 In addition, I cause the foregoing document to be faxed to the fax number above.

22 I declare that I am employed in the office of a member of the bar of this Court at whose
23 direction the service was made.

24 I declare under penalty of perjury of the laws of the State of California that the foregoing
25 is true and correct. and that this declaration was executed on August 31, 2005 at San Marino,
26 California.

27 
28 CONSTANCE S. RUFFLEY