UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Laura Lynn Hammett, an individual — 9th Cir. Case No. 22-56003

Appellant,

District Court Case No.

vs. — 3:19-cv-00605-LL-AHG

Mary E. Sherman, an individual; Mary E. Sherman, as manager of Silver Strand Plaza, LLC; Silver Strand Plaza, LLC, a California limited liability company; Mary E. Sherman, as co-trustee of the J & M Sherman Family Trust, a California revocable trust; Mary E. Sherman, as trustee of the Alexa Sherman Irrevocable Trust, a California irrevocable trust; Mary E. Sherman, as trustee of the Dana Sherman Irrevocable Trust, a California irrevocable trust; Mary E. Sherman, as trustee of the Jenna Sherman Irrevocable Trust, a California irrevocable trust; Mary E. Sherman, as trustee of the Broxton Dennis Irrevocable Trust, a California irrevocable trust; Mary E. Sherman, as trustee of the Curt Dennis Irrevocable Trust, a California irrevocable trust; Mary E. Sherman, as trustee of the Sean Lynn Irrevocable Trust, a California irrevocable trust; Mary E. Sherman, as trustee of the Branden Lynn Irrevocable Trust, a California irrevocable trust; Jeffrey M. Sherman, as Co-trustee of the J & M Sherman Family Trust; Linda R. Kramer, an individual; Linda R. Kramer, as Co-trustee of the Lynn and Erik's Trust; Erik Von

Pressintin Hunsaker, as Co trustee of the Lynn & Erik's Trust; Diane G. Dennis, an individual; Ellis Roy Stern, Esq., an individual; Alan N. Goldberg, Esq., an individual; Stern & Goldberg, A California Partnership; Patrick C. McGarrigle, Esq., an individual; McGarrigle, Kenney & Zampiello, a professional law corporation, a California corporation, Does 1-99,

Appellees.

APPELLANT'S INFORMAL OPENING BRIEF

(Attach additional sheets as necessary, up to a total of 50 pages including this form.)

[For continuity, I used the form as a template, with responses in full following the questions. Form text is in bold. "Sherman" refers to Mary Sherman, "Shermans" means both Mary and Jeffrey Sherman.]

JURISDICTION. This information helps the court determine if it can review your case.

1. Timeliness of Appeal:

a. What is the date of the judgment or order that you want this court to review? Final order September 30, 2022; Interlocutory orders: July 31, 2019; March 23, 2020; April 10, 2020; August 13, 2020; September 28, 2020; October

13, 2020; October 16, 2020; October 22, 2020; October 7, 2021; September 30, 2022.

b. Did you file any motion, other than for fees and costs, after the judgment was entered? Answer yes or no: No, I think, but I am a bit confused. I filed motions in regards to defendants' motions for fees and costs. These should not effect the timeliness of the appeal.

• If you did, on what date did you file the motion? November 14 and 15, 2022

• What date did the district court decide the motion that you filed after judgment? November 14 and 17, 2022 respectively.

c. What date did you file your notice of appeal? October 25, 2022

FACTS. Include all facts that the court needs to know to decide your case.

2. What are the facts of your case?

This case is about my dysfunctional family that had business together. At age 50, after my beloved father died, I decided being in the resulting relationship with my mother and sisters was toxic to me. I tried to part ways on civil terms. My mother and sisters had other plans.

Silver Strand Plaza, LLC was formed in 2005. In 2009, there was an amendment that resulted in my ownership of 14.1571% of the shares. There was an email debate between the members before I signed the amended operating

agreement. I convinced the members to change language in the proposed agreement to limit the purpose of SSP to owning and operating Silver Strand Plaza. I did not want to have any other business with my sister, member-manager Mary Sherman, once Silver Strand Plaza was sold. (I was still on good terms with the other sisters at that time.)

The key sentence resulting: "The Company's primary activities *will be limited* to owning, leasing and managing the retail shopping center known as Silver Strand Plaza, [the address] (the "Property")." (emphasis added)

Four siblings each held equal shares of SSP as individuals. The fifth sibling, Sherman, held her shares in a trust, with her husband as co-trustee. The Grandchildren received shares in trust, as well. The Sherman and Dennis children each received 5.33% while my children received 1.28% each.

The initial capital all originated from my parents through a trust. My mother told me that the favoritism toward the Sherman and Dennis grandchildren was due to my parents' intent to keep their money away from my former spouse. This is not said for the truth of the statement, but that it was said to me.

There was a court commissioner who showed favoritism toward my former spouse and was later found by the California Supreme Court to appear biased and embroiled in my case. The commissioner was recused and received disciplinary action. But the damage he caused was not corrected by the appellate court. (I

petitioned for help all the way to the United Nations and finally this past year, the Commission on Human Rights addressed the issue raised with a call for input.)

After my father passed away, I learned that the unethical commissioner was lifelong friends with Jeffrey Sherman's brother. The Shermans were quite upset that I verbalized and wrote about my suspicions that they influenced the bias, and that the motivation for causing the unethical judicial conduct was in part economic. My contention was that the Shermans wanted their children to increase their already substantial inheritance potential, even at the expense of eliminating my children from our family. My postings were true or clearly defined as speculation.

About the time of my disturbing discovery, my mother gave me another gift of part ownership in two commercial properties in Los Angeles known as "Woodman and Magnolia". She made equal gifts to my four sisters. Within a few months, she demanded that we each sign a rescission deed to the property. I refused. My mother was hateful toward me since the day I was born and without my father's protection, I was certain that the Shermans had convinced our mother to exclude me from any future inheritance. My mother's attorney, Gerald Wilson (deceased) tried to convince me in writing to rescind the title to the real estate. I explained to him in writing why he was legally wrong. He ceased contacting me, but my mother refused to distribute any of the income to me. (Linda Kramer ("Kramer") also sent an email to try to convince me to sign a rescission deed.)

After Mr. Wilson passed away, Ellis Stern and his firm, Stern & Goldberg ("Stern") represented my mother's, SSP's and the other individual members' interests in SSP. The retainer agreement with SSP specified that Stern would oppose me, singling me out by name.

Stern convinced my mother to give me income distributions from Woodman and Magnolia retroactive from when she gifted the property. Instead of leaving the issue alone, he told me in writing that he considered my emails and refusal to give back the gift "elder abuse". Diane Dennis ("Dennis") later forwarded an email my mother wrote that said she reported me to protective services for elder abuse. The government did not follow through on her complaint by contacting me in any way. There was nothing abusive about refusing to return a gift and nothing abusive in the tone or words I used to explain my rights to my mother and her attorneys. Stern conceded that I had a right to keep the gift. Stern knew that I did not coerce my mother in any way to give me that gift or any other.

Soon after, Sherman quit including me in annual meetings of SSP. She quit making transmissions of the monthly financials to me. She even quit making distributions to me, until I threatened a lawsuit. Then distributions resumed.

The amount of the distributions was approximately $3,500 per month. The value of my capital shares in 2009 was approximately $515,000. That yielded an adequate 8% CAP rate. But 2009 was the bottom of the real estate market. Using

present value in 2012, the Property was not performing great and by 2015, it was performing poorly.

At the end of 2013, I demanded to see the company books and records. Stern allowed me to go to his office and make copies of what he claimed were the entire books and records. There were indications that pertinent documents were excluded.

I found discrepancies that concerned me and brought these to the attention of the other members in a special meeting by telephonic conference. The other members, who had the right and obligation to make "major" decisions in good faith and fair dealing, did not agree to have a professional accounting. Stern made an inaccurate written record of the meeting. I corrected him in writing.

On June 9, 2015, I wrote this in an email to my sisters, mother and Stern:

"It is about 18 months since I was included in any meeting of partners of SSP, LLC. I had a few concerns come up in the last couple days. My conclusion is that we would all be better off if the other partners bought me out of SSP, LLC." I used the "tax basis" of my shares as the offer price, $516,839.

Stern authored a counter-offer couched as his opinion presented on June 15, 2015, of $218,000 from SSP for my share of SSP. My offer was clearly a transaction between me on the one side and my sisters on the other side. The counter-offer looked like it was from SSP. There was no company meeting of the members that I was informed about to decide how to handle the offer. There was

no explanation about if I would be required to provide 14.1571% of the $218,000 capital to purchase the property from myself, as would be the literal meaning of the operating agreement, dropping my net to $187,138. I used $218,000 in my pleadings to the lower court, because my offer was to my sisters, not SSP. The statutory buyout provisions of the Cal. Corp. Code provide defendants in an involuntary dissolution action with a mechanism for avoiding dissolution by purchasing the plaintiff's shares or other interests. It is not the corporation buying out the shares.

I rejected the counter-offer.

In May 2016, Sherman recommended selling the shopping center, and the members accepted that recommendation. (This came at about the time our sister Roberta Kramer (deceased) discovered she had cancer.) In October 2016, only 16 months after Stern wrote an offer of $218,000 for my interest in SSP, the shopping center went into escrow at a purchase price that valued my interest at nearly $1.5 million.

Soon after the Property was listed for sale, in August 2016, I informed Sherman by e-mail that the numbers for SSP's net operating income (hereafter, "NOI") did not look right in the prospectus for the SSP shopping center. Sherman forwarded an email from the broker that said he corrected the numbers. But the resulting

prospectus, I learned years later, showed a NOI for 2016 that was significantly higher than the NOI reported to me on my 2016 K-1.

Sherman clearly breached her fiduciary duties to me, as exemplified in the distributions after the sale. On December 20, 2016, Sherman informed me that the sale of the shopping center was set to close on January 10, 2017.

On January 1, 2017, I e-mailed wire instructions to Sherman so that I could receive my funds from the sale by wire transfer. Sherman confirmed receipt of my e-mail that same day. In an e-mail on January 31, 2017, Sherman denied having received wire instructions from me.

The closing on the shopping center finally occurred on January 26, 2017. While promising to disburse funds "as quickly as possible," Sherman took actions which were intended to, and which did delay disbursement of funds to me alone.

First, Sherman falsely stated in an e-mail to me late in the evening of January 31, 2017, that she did not have wire instructions from me.

Second, Sherman delayed informing me until January 31, 2017 that the state of California had denied me a waiver from the requirement that, according to Sherman, SSP "withhold 7% of all distributions to non-California residents."

Third, Sherman ultimately withheld 7% of my entire distribution, rather than 7% of the amount in excess of my tax basis. I had to wait over a year for the FTB to agree to return the entire overage withheld.

Fourth, in an e-mail on February 2, 2017, Sherman falsely asserted that I had "move[d] out of state without notifying SSP LLC until much later" and thereby "put our LLC at risk," when in fact my 2015 K-1 (prepared by SSP's accountants) clearly indicated that I was an out of state resident.

Fifth, in that same February 2, 2017 e-mail, Sherman used the excuse of the time spent communicating on the withhold issue as the reason she could not wire my distribution to me, even though other members were being paid, and even though Sherman's e-mail claiming that she "will not have time today to go to the bank" was sent at 10:45 a.m. When I responded only an hour later that Sherman had a fiduciary obligation to wire the amount of my distribution less whatever amount Sherman believed had to be withheld for California taxes, Sherman responded through Stern and asserted for the first time that, in addition to California taxes, Sherman was required to withhold the amount of a Child Support Division lien against other property unrelated to SSP, and that determining the amount of the lien would further delay payment to me of my distribution. Sherman and Stern had been aware of the Child Support Division lien against other property for over a year and had never previously indicated that money would have to be withheld to pay that lien. With this excuse, Sherman delayed wiring any of my distribution (even the amount that was undisputed) until February 6, 2017.

Again, instead of Stern advising Sherman to make a full payment and leave the issue alone, he advised her to improperly withhold and convert $50,000 from my distribution wired on February 6, 2017. The stated reason: the funds were held as a litigation fund that Mary Sherman could use if I litigated to obtain the funds! Through Stern, Sherman not only defended this unlawful conversion and breach of fiduciary duty, Stern informed me that the funds would not be released until I released any of my claims against Mary Sherman for breach of fiduciary duty: "Perhaps we can discuss a method to protect the Manager [Mary Sherman] in connection with release of the reserved funds. Otherwise, they will be withheld to cover the litigation expense or for the period of time until the statute of limitations has run its course."

Stern reiterated this effort to extort a release from me in a second e-mail to my attorney on February 9, 2017, in which he wrote: "The $50,000.00 will be released promptly upon your furnishing to me a signed General Release by your client [me], releasing Mary Sherman from all claims in her capacity as Manager of the LLC." I did not respond to this blatant effort to extort a release from me. Realizing that she was only compounding her breach of fiduciary duty, Sherman released the $50,000 by wiring the funds to me on February 10, 2017.

Attorney Michael Early, Stanford and Hastings trained and with over two decades of experience, agreed that the books and records presented to me were

inconsistent with the arm's length valuation of the property. He represented me on contingency in an attempt to obtain a full disclosure of the financials and recover the capital in my account that was owed to me. We saw that the "corrected" prospectus stated expected income that was significantly higher than the income reported to me.

When I pressed for an explanation for the difference in NOI after the sale, Sherman responded through Stern, in pertinent part, as follows: "The numbers of the package were developed by the broker as part of his sales effort to maximize the sales price of the property, since the sales price is proportional to the net operating income. Our broker added back certain expenses to obtain a higher net operating income, and he reviewed these add backs with the buyer."

When I then asked for 1) evidence that would verify the statement and 2) a brief description of the "certain expenses" that were added back "to obtain a higher net operating income," Stern forwarded an e-mail from Sherman in which she stated that the buyer of the SSP property received the same financials that were used to prepare SSP tax documents and that: "the Buyer bought the building based on these numbers (with certain add backs, such as all management fees, earthquake insurance, and other costs that they deemed irrelevant since they would not be paying those costs once they owned the building)." No further explanation was provided.

When I inquired further of Sherman, Stern further muddied the waters by responding that: "There apparently were certain non-recurring expenses that formed the basis for the financial statements presented to the buyer, which, as [Mary Sherman] indicates, were fully identified and explained to the buyer." In this "explanation," items such as management fees and earthquake insurance are apparently described as "non-recurring expenses."

Michael Early filed a lawsuit in the Central district of California on my behalf against SSP, and Mary Sherman as an individual and as manager of SSP about April 27, 2018.

In early May 2018, I was informed through Michael Early that SSP retained Patrick McGarrigle and his firm ("McGarrigle") to represent it in the litigation.

McGarrigle said I would receive the full disclosure of SSP records if I dismissed the first lawsuit. I fell for his fraudulent statement and withdrew the suit.

I still have not received a full disclosure.

During the six years following the post-sale distribution, Sherman has not distributed any funds to me, even though the K-1s provided on behalf of SSP show over $70,000 in my capital account which fell by $54 this year.

There were a few random line items on the K-1s and bank records that were disclosed to me that indicate there is a loan and a property bought in part with my capital account that are self-dealing by the Shermans: "THE SHERMAN FA" as

payee; "MSFP Loan"; "MSFP II LP"; and a "Sherman Family Limited Partnership" as real estate owned by SSP listed on a K-1. Sherman, Stern, McGarrigle and the current SSP attorney all refused to tell me what these line items indicate and there is a second bank account, "CBB", for which they did not produce statements.

It is apparent to me that the Defendants intend to withhold my capital account indefinitely, so I agreed that Michael Early cannot afford to work on contingency for the protracted litigation that was threatened. I agreed to release him and handle the matter on my own with substitute counsel on limited scope. The attorney I consulted, LaToya Redd ("Redd"), informed me that the Southern District of California "frowns on" attorneys helping pro se litigants for distinct pieces of the case. She said I must obtain leave to hire her piecemeal before I could retain her.

Throughout 2019, McGarrigle advocated on behalf of the individual defendants. Dennis is the only member who communicated significantly with me directly in 2019. She wrote over 50 emails, most copied to the other members and McGarrigle. While Dennis showed some interest in getting an accounting, over 30 of her emails were disturbing, as detailed below.

McGarrigle authored over 40 emails, advocating for the position of the individual members and manager. It was obvious he was speaking on behalf of each member, Kramer as an individual, as well as for SSP. He claimed my emails

used “pejorative”, “inflammatory language”, and “wild accusations”. Yet he said not a single word to rein in Diane Dennis.

Dennis sent several emails that are considered “defamation per se” in all but three states. I live in one of the states that breaks from the availability of “per se” protection against these kinds of comments. The recipients of the malicious emails and my business interest in SSP are in states that recognize “per se”.

One of the outright lies Dennis told repeatedly was that I have an “illegal porn business”. She referred to “child pornography”.

Besides telling these lies to the other defendants, Dennis sent similar messages through Facebook to a community group in the small town where I had a home. I purposefully excluded these communications from the defamation cause of action in the FAC to foreclose on an argument that libel per se would not apply.

Between March and August 18, 2017, Diane Dennis acted as if we were best friends. She expressed amazement that I forgave her for the way she had treated me. She had me as a houseguest in her Colorado homes for at least two separate week-long vacations. She incessantly called Mary Sherman and our mother “narcissists”. She asked me how I thought we could get some of the assets left in our father’s irrevocable trust after our mother passes, instead of letting Sherman take most or all. (Linda Kramer will probably receive her share.)

Dennis forwarded many emails from Sherman and my mother to me. Included were Sherman's false claims that I am a criminal, committed tax evasion and was fired from a government job.

Then, suddenly, Dennis started sending emails to me that said things including "Hi butt fuck." On a more sinister note, she wrote, "The 'deep dark web' you told me of is interesting." I was perplexed. I did not respond. Two minutes later she sent another email to me. "Weird... Someone can hire a hit for a hundred bucks. Some seem to pay up to $25,000. Weird. Can you imagine?"

There were also numerous disturbing texts.

Dennis also called me while she sounded drunk. At times she left recorded messages. At times I permissibly recorded the conversations.

There is one recorded conversation in which Dennis does not sound drunk. Within that conversation she told me she thinks Sherman took more than the $60,000 distribution not reported as income that Sherman admitted to taking after confronted by me, but called a "bonus".

McGarrigle admonished me for discussing SSP business, yet refrained from admonishing Dennis for completely inappropriate and disturbing emails.

Sherman allowed Kramer to transfer her shares in SSP to a living trust that benefitted and had her husband as co-trustee. This was disallowed by the SSP OA and I received no notification of a vote as required by the OA.

Sherman stalled transmitting the updated member list to me until after I filed my complaint in which I named Kramer as an individual, but not her trust. I did not know Kramer transferred her shares to a trust until I received the updated member list. I had to make an immediate amendment to the complaint.

I had to receive leave to file electronically, so the Clerk of the Court filed my documents for me until Docket entry 9 on July 16, 2019. I did not notice Linda R. Kramer missing from the docket. After I filed the FAC to add the trustees of the Lynn and Erik's Trust (which I think might be a misnomer for the Erik and Lynn's Trust), the Clerk added the new defendants, but Linda R. Kramer as an individual was either removed or had never been included. Kramer seized upon the opportunity to try to extract herself from the litigation as an individual by excluding herself as an individual from her response to the complaint. I informed the deputy clerk of the error and asked him specifically if he could grant a default. He said yes. After I filed a less than stellar motion for default, he informed me of a case that had a successful motion for default filed to use as a template.

While I was correcting my motion, the deputy clerk did a favor for Kramer by adding her to the docket entry 19, her trustee's response, without notating the correction. (The District Court Clerk in the Eastern District of Arkansas always notes every change made to the docket entries.) After the clerk learned that I had taken a copy of the original docket entries, the clerk changed the altered entry

back, again without notation of the change. This appeared to me that I would receive unequal treatment on this case. It reminded me of activity on my custody case. It showed an intent to falsify the record for my litigation adversaries, which is malicious.

My allegation against the district court clerk is plausible, supported by evidence and it is true.

Kramer knew about my horrible experience in family court. She told me I "took on the mafia and won." She knew that I checked into a hospital with anxiety and depression caused in major part by my experience in court. It was especially cruel for her to abuse the process by enlisting the Clerk to alter the docket, like was done to me in my family law case. In that paper file case, the alterations started small and culminated in the entire 14 volumes going missing for years at a time.

I immediately reported the falsification of the record to the Court through filed documents. The Court gave me no relief, and in fact threatened me for making the report, as I will discuss further in another section.

I filed a 42 USC 1983 case in Arkansas district court concerning the clerk's misconduct. It was dismissed before reaching the merits on issues concerning immunities. I disagreed with the MTD but did not respond. I was low on energy.

Throughout these proceedings and the 42 USC 1983 suit the Clerk did not provide the electronic history of changes to the docket. The system software was changed subsequently, and I am afraid that evidence has now been destroyed.

The harm, because the clerk changed the alteration back, was the innate harm implicit in the violation of my Constitutional Rights. I made the reasonable inference that the court would not provide me a fair adjudication of my grievances. And I was right.

McGarrigle, and Stern before him, represented both the competing interests of individuals connected to SSP and SSP as a separate entity. The money used to pay for representing the individuals was a distribution of capital to each member, without a distribution to me. The protocol for indemnification in the OA was not followed. The money loaned to the Sherman Family interests and the "bonuses" to Mary Sherman that had no corresponding 1099. They were distributions I did not receive. (If Dennis and Kramer did not receive distributions equal to Sherman's, they may be able to file suits of their own for suffering the same harm.)

The defendant members of SSP showed malice toward me and made decisions about SSP that were self-dealing, non-sensical and were meant to cause me economic harm. They were not reasonable.

There is no reason to oppose dissolution of Silver Strand Plaza, LLC, whose limited purpose, owning and operating Silver Strand Plaza, no longer exists.

There is no reason, contrary to the written opinion of current SSP counsel, that I should be denied access to the company books and records.

I followed the protocol required by Cal. Corp. Code §800 to engage the members in litigation against Mary Sherman. All opted out.

Early in the proceedings I moved the court for leave to retain an attorney on limited scope, which I described as for the purpose of representing me if I was ill, to explain derivative actions and other issues that were too complex for me, to stand in if I could not afford to travel from Arkansas to California for a hearing, or handle issues that have a fee shifting provision, such as for collecting costs of serving summons to the Sherman Defendants and if I could prove the anti-SLAPP motion was filed maliciously, as it was. I filed two motions and was denied twice.

The defendants' multiplied the proceedings by filing documents they knew to be in violation of Rule 11. They started with MTDs that were repetitive, even using cut and pasted paragraphs that contained the exact typos. They misstated my FAC so often that it took 58 pages in a stand-alone document to list each lie. The court claims it did not consider that document because the court said I introduced facts that were outside the four corners of the FAC. The defendants introduced those disputed facts in their MTDs and attributed them to me. I could not address each one in the limited page count for my response, even with 40 pages allowed. The declaration I wrote with an incomplete list of lies was 58 pages.

Since filing this suit, I have suffered a litany of legal, economic and health issues, both mental and physical, that are intertwined. These problems left me ineffective to litigate without limited scope representation.

I was ill the entire time after filing suit. Each of these ailments was diagnosed by a healthcare professional and received treatment: Bad lower back, caused in Summer 2019 for which I still have lingering pain treated weekly; COVID-19 twice, once in late January to February 2020, for which I went to the hospital emergency room, and October 2022, for which I would have checked into a hospital, if my own home was not so comfortable and husband so loving; I had severe anxiety starting in March 2020. I have PTSD that was under control. Then, I lost most of my working capital in the COVID-crash and the Member Defendant's refused my offer to settle this case for the amount in my capital account; Debt Buyer Portfolio Recovery Associates, LLC made hundreds of annoying and harassing phone calls to me concerning a debt I did not owe. They forced me to file an FDCPA suit against them to have them zero out the account; I was also sued by a former romantic and business partner. The judge on that case orchestrated the falsification of transcripts of several hearings. That court dismissed me with prejudice after a harrowing year of litigation, then seized my rights to over $200,000 worth of property, with no opportunity to defend against the seizure. I filed my appellate brief on November 23, 2022. There was no responsive brief

filed but the appeal is still pending; I had knee surgery scheduled for February 2020, which was postponed because I was sick, and performed about March 2020. The left knee surgery that was scheduled was cancelled due to general COVID concerns; I got frozen shoulder syndrome about November 2020. My arm was basically paralyzed and excruciatingly painful. After six months of less invasive treatment, I had surgery; I had insomnia and sleep apnea that was compounded by the stress and pain I suffered; I had chronic fatigue, but could not sleep; At one point, my white blood cell counts were alarmingly "wack-a-doodle" according to my OD; In August 2022 I learned that my thyroglobulin antibodies are off-the-chart, literally. I also have a tiny growth on my thyroid that is under observation. My thyroid problem is called Hashimoto's thyroiditis. It is accompanied by fatigue and "brain fog". Brain fog is not a loss of memory or reasoning. It is a loss of focus and loss of ability to concentrate; I have stools consistent with Celiac Disease; These stressors and physical ailments made it extraordinarily difficult to work.

PROCEEDINGS BEFORE THE DISTRICT COURT. In this section, we ask you about what happened before you filed your notice of appeal with this court.

3. What did you ask the district court—for example, did you ask the court to award money damages, issue an injunction, or provide some

other type of relief?

I started by asking for 1) an accounting; 2) indemnification by SSP; 3) disqualification of Patrick C. McGarrigle and his firm from representing SSP; 4) receivership of SSP through dissolution; 5) compensatory money damages; 6) punitive money damages; 6) costs and interest.

In response to the alteration of the docket and the improper collusion between attorney Keith Cochran and the deputy clerk to deny me a clerk's default against Linda R. Kramer as an individual, I asked for sanctions under Rule 11 and for the court to order the clerk to enter default.

I asked Judge Sammartino to recuse, Doc. 153.

After my FAC and SAC were dismissed with leave to amend, I pled the same facts, but asked for only declaratory relief. I asked for the court to mandate the dissolution of SSP and to order SSP and Sherman to provide me with access to all the books and records of the company. This should uncover further evidence to surmount Iqbal/Twombly for the issues the court erroneously claimed I did not support with enough plausible facts, as well as evidence of the Attorney Defendants' part in the civil conspiracy enough to satisfy CCP 1714.10.

4. What legal claim or claims did you raise in the district court?

A. SSP and the individual non-attorney defendants impermissibly enlisted the Attorney Defendants as dual representatives of persons who had competing interests.

B. The Member Defendants paid the dual representative Attorney Defendants for the advocacy of the Member Defendants' individual interests out of our combined capital accounts. This was effectively distributions made to each individual member except me.

C. Sherman breached her fiduciary duty, the operating agreement and her duty of good faith and fair dealing to me alone as detailed in the fact section.

D. The other members breached the operating agreement, their duty of good faith and fair dealing to me and aided and abetted Mary Sherman's breach of fiduciary duty by making major decisions obligated by the operating agreement, but voting in an unreasonable manner that should not be sustained by the business judgment rule, and by creating a conflict of interest by using the same attorney that represented SSP to try to convince me to sell my shares for 1/6th the actual value.

D. Kramer breached our contract by transferring her shares to a trust with Erik Hunsaker as a co-trustee and co-beneficiary.

E. Dennis libeled me per se and made a false light invasion of privacy by making false and derogatory writings about me and disseminating them to other

members of SSP and the attorneys who represented SSP. If forced to use Arkansas law, I also included the messages Dennis sent to a community group in Arkansas.

F. Dennis' misconduct was knowing and malicious.

G. Kramer's misconduct was knowing and malicious. She told me to rescind the title to Woodman and Magnolia. She wrote: "You would restore peace if you signed the paper. Nothing bad will come of it." A reasonable inference is that there will be no peace because I refused to sign the rescission. She was the sole member who agreed in concept that the other members should buy me out in 2013. Yet, in 2015, Kramer used Stern to make an absurdly low offer to buy out my shares.

H. Sherman, maybe with the help of Doe Defendants, committed fraud. They gave me Annual K-1s that were intentionally inaccurate. Sherman knew the tax reporting was inaccurate and refused to let me inspect the company books and records to hide the fact. Based on the inaccuracies, I did not file a lawsuit from 2014 to 2018. (I pray the court will refer this case to the proper prosecutorial agency, as Sherman was stealing from the company and the other board members are blocking a civil investigation or discovery.)

I. The defendants' MTDs were filed in violation of Rule 11. They consisted of hundreds of misstatements of the facts alleged in the complaint. This is an ethics violation.

J. Linda R. Kramer as an individual was in default by excluding herself from the MTD filed timely on behalf of the co-trustees of the Lynn and Erik's Trust.

5. Exhaustion of Administrative Remedies. For prisoners…Not Applicable.

PROCEEDINGS BEFORE THE COURT OF APPEALS. In this section, we ask you about issues related to this case before the court of appeals and any previous cases you have had in this court.

6. What issues are you asking the court to review in this case? What do you think the district court did wrong?

I. Whether the Southern District of California exhibits a bias against pro se litigants, including me, denying the benefit of co-counsel, not allowing for an alternate advocate if the pro se litigant is ill, and misconstruing caselaw to mean that non-attorneys must communicate as artfully as their adversaries' hired attorneys. Denying Co-Counsel and putting form above substance is inconsistent with some other districts in circuit and nationwide and with this appellate court.

For example, before the Defendants filed any response, I moved for leave to hire an attorney to help me with specific acts, including explaining derivative actions to me, giving me practice tips, working on issues that have a fee shifting provision, and standing in for me when I was too ill or the cost of travel was

prohibitive. Doc. 11. I filed a second motion to hire an attorney for the distinct task of writing a motion for reimbursement of costs of service of summons on the Shermans Doc. 146, and the court denied it, Doc. 148.

Examples of the harm: It would cost me more in time and aggravation to write the motion myself than the costs of service; A motion for Rule 11 sanctions against several attorneys for filling MTDs with misstatements of what I wrote in the complaint would cost me even more in time and aggravation, so I did not avail myself of that powerful tool to sanction the misconduct; I was not able to hire a paralegal because they are not allowed to work unless directed by a licensed attorney, so I struggled for countless hours with work that attorneys delegate to paralegals; I had to work while sick, in pain and medicated.

Denying me the right to hire counsel for the derivative causes was un-Constitutional on its face and as applied. Effectively, only the moneyed elite, those who can afford the legal fees, are allowed to bring mixed individual and derivative claims in CASD.

I was not alerted to the fact that courts treat derivative causes of action as void ab initio when written by a non-attorney, as discussed more in questions 6 and 8, section V below. The court should have, in the least, granted leave to hire an attorney for only the derivative causes of action, because I was not allowed to advocate on them.

When an attorney is ill, he can have another attorney step in for him or at least write a motion for a stay or appropriate extensions of time. In response to seeing some court related emails come through, but not being able to concentrate enough to understand much of it, I sent the following email to judge Linda Lopez and three attorneys on the case on October 1, 2022: "Subject: Hammett incapacitated //Dear Court,// I have COVID and an autoimmune disease. I thought I would be able to write a proposed order for stay of proceedings, but took a turn for the worse quickly today.// I am turning off electronics.// Please extend my time to respond to anything until I am able to function.// Thank you, // Laura Hammett" I was highly medicated, hadn't eaten for days, could not lift my head, and wrote laying prone.

Three days later the court sent an email: "Good Afternoon,// The email you recently sent to efile_Lopez@casd.uscourts.gov **will not** be considered by the Court because the communications contained therein were not authorized by the Court and, therefore, are improper. Any motions, applications, requests, or notices must be filed in accordance with the Federal Rules of Civil Procedure and Civil Local Rules for the Southern District of California.// Chambers of Judge Linda Lopez". (Bold theirs)

This illustrates how the rule that pro se litigants must work alone denies a level playing field and caused me individualized harm. I was physically unable to file a motion and was not allowed to have an attorney do it for me.

The court cited caselaw that permits the court to hold a pro se litigant to the same legal standard as a represented litigant. The court, probably purposefully, ignored the bountiful caselaw and Judges' Bench Books on Pro Se Litigants that differentiates between following the law and presenting a case eloquently.

When the court, as the district court did here, misapplies the technical nuances of the law and legal procedure as a weapon against laymen, i.e. you can't advocate a derivative action because you are unauthorized to practice law, but you can only bring this cause as a derivative action, and you can't hire an attorney for that distinct purpose, …the common person will become highly discouraged from seeking redresses in a court of law.

I suffered personal harm caused by the defendants conduct. With limited scope representation, motion practice would be easier and should have produced the desired result of proceeding to discovery. But maybe it would not, because…

II. Whether the Southern District of California exhibited a personal bias against me. Redd wrote by email to me that the rulings on my case "absolutely" gave the court the appearance of bias.

I filed a motion for recusal of Judge Sammartino, Doc. 153. The case was transferred before a decision on the merits and ordered "denied as moot", Doc. 173, 174. The court erred when it failed to decide the issue on the merits then adopted the decisions of the apparently biased Judge as "law of the case".

All decisions subsequent are tainted.

III. Whether the court erred by dismissing all causes of action without giving leave to amend. That there was wrong done to me is obvious from the facts of the case. The court erred by opining that any further amendment was futile. Assuming this court does not order the district court to proceed on the SAC or TAC, with the guidance of an unbiased court's orders on MTDs or limited scope representation, I should be able to write a proper complaint. My first amendment was due to Kramer and Sherman hiding the unauthorized transfer of Kramer's shares until after I filed without naming the Co-Trustees of Kramer's trust. The second amendment cleaned up technical errors. The TAC preserved my right to appeal the dismissal of all claims in the SAC, but asked for limited relief that would allow me to supplement the complaint to reach a level of factual pleading that far exceeds the intent of Iqbal/Twombly and the fraud statutes. The length of time that has passed is due to the pandemic, my ill health, and the court's long pauses before issuing rulings.

IV. Whether the misappropriations that can support a derivative action can equally support an individual action because the money taken from the company can be viewed as a distribution that was made to some but not all members.

The court erred in finding that in these exact circumstances the claims must be brought as a derivative action, by comparing to the *Nelson* case instead of *Jara*. Even so, there is nonfrivolous argument that the Nelson court got it wrong.

V. Whether the court and licensed attorneys were allowed to proceed on the FAC or more specifically the derivative causes of action included in the FAC, even though the complaint was written and filed by someone unauthorized to practice law. It was clear legal error to allow the void proceedings.

VI. Whether the Attorney Defendants were "prevailing party" on their anti-SLAPP motion, even though the causes of action did not comply with the first prong of the settled test, whether legal malpractice and conversion are protected conduct. The district court erred by ignoring the first prong of the test. The caselaw I presented supported denial of the anti-SLAPP motion without proceeding to the second prong evaluation of the merits of my complaint.

VII. Whether the Attorney Defendants were "prevailing party" on their anti-SLAPP motion due to voluntary dismissal, despite my stated reason for dismissing was my independent realization that the derivative action was "on behalf" of an entity and therefore my advocacy is void ab initio.

I included only part of my complaint against the Attorney Defendants in the FAC. I specified that I would add causes of action for their litigation-based activity against me as an individual only after receiving leave under CCP 1714.10.

Had the district court allowed me to hire an attorney to advocate on the distinct issue of the derivative suit, I would not have filed a voluntary dismissal. As I said in Doc. 38, I was withdrawing the individual conversion claim only to save resources for all including the court and intended to add it back in after receiving leave to proceed under CCP 1714.10.

VIII. Whether the attorney fee award is unconstitutionally oppressive. The court erred by taxing me for the Attorney Defendants' attorneys. I said I could not afford an attorney for all purposes for myself, and that I probably could not proceed if I could not reduce attorney fees by hiring on limited scope. The court denied leave to retain limited scope representation. Then I lost about half a million dollars when the stock market crashed in response to the pandemic. And I lost a beneficial interest to $200,000 in the Pietrczak case. The attorney fee judgement will force me into bankruptcy. So, I will be forced to pay the Attorney Defendant's alleged fees for hiring expensive attorneys, even if they were reimbursed by insurance, because I could not afford to hire an attorney to fight the derivative cause and all the individual causes as well.

There is new caselaw in the 9th circuit that offered relief to a huge telemarketing company because a mandatory award would be too much of a hardship, *Wakefield v. ViSalus*.

IX. Whether the court erred by granting all the motions to dismiss despite the defendants' introducing hundreds of extraneous facts by misstating my factual contentions in the complaint and then attributing the facts to me. It is well settled that a defendant must confine itself to facts presented in the complaint when moving the court for a dismissal based on 12(b)(6). The defendants made so many misstatements of fact that I could not enumerate each in the space allotted, even with an insufficiently expanded page count. It was an abuse of discretion for the court to deny me enough pages to address the hundreds of misstated facts slipped into the separate motions to dismiss. Especially because the law in each defendant's MTD was redundant with each other defendants' MTD. Some judges, such as the Honorable Linda Lopez, have standing orders that require defendants to attempt to consolidate their motions. Even when allowable, it is wasteful to be redundant. The unethical attorneys made it impossible to list each lie within the page limit constraints for the response to the numerous documents filed for the same day's hearing.

I painstakingly made a list of the factual misstatements and entered it as a declaration, Doc. 73-2. The court chose to ignore the entire list, quoting the rule against adding extraneous material at the motion to dismiss stage. This was absurd. The court accepted the extraneous facts presented by the defendants in their MTDs

as true because the defendants attributed the facts to me; and did not consider my document that listed the falsehoods.

The court should have stricken the MTDs based on this egregious list of misrepresentations and extraneous inflammatory facts presented to the court. The attorneys should be referred to the committee on professional conduct for telling so many lies to the court. Instead, the court rewarded them by granting the MTDs.

X. Whether omitting one of two capacities in which Linda Kramer was named from the list of represented defendants joined on the cover of an MTD means that separate defendant was in default. If so, whether the clerk must grant default, which can only be set aside after a successful motion to set it aside that explains that the party was omitted by error and why she should be allowed to late file.

The clerk erred and the court upheld the error by allowing the clerk to look to a footnote on page 6 of the MTD, Doc. 19-1, and make an improper inference that the attorney who wrote the MTD represented Ms. Kramer in all her capacities.

The court erred by writing an intimidating footnote in her Order of March 23, 2020, Doc. 111. “The Court cautions Plaintiff against impugning the Clerk or other staff of this Court or District based on gratuitous speculation regarding relationships of favoritism toward litigants or their counsel. See, e.g., ECF No. 85 at 2, 4. Such accusations should not be made lightly and, absent evidence supporting such claims, the Court will not countenance them.”

My testimony given through declaration and documents certified under Rule 11 was evidence, exhibits attached were evidence, and the revision history of the docket software was available to the court.

The court erred by failing to follow simple procedure, FRCP Rule 55(a) and (c).

The court erred by failing to sanction attorney Keith Cochran and his firm for convincing the clerk to include Linda Kramer as an individual on the electronic record days after her deadline and violating Rule 11 in defending his misconduct.

XI. Whether the court erred by using the defamation law in Arkansas, where I live, instead of the laws in the states where the recipients lived. The treatment in Arkansas is inconsistent with the treatment in the vast majority of other states, and therefore ripe for review of its Constitutionality by the U.S. Supreme Court? The court erred by dismissing the outrage and false light invasion of privacy claims as stated in the SAC. I used the same facts, with the addition of the communications to Arkansas recipients. Also, if Arkansas law applies to this issue, it must apply to the issue of documents written by non-attorneys on behalf of fictious persons being void ab initio, which is well settled in Arkansas.

XII. Whether the facts pled in the complaint and amended complaints support a finding that the Member Defendants did not use reasonable care, fair dealing and good faith when making business decisions for SSP, contrary to the court's ruling.

It is plausible that the other shareholders' K-1s showed a higher income than mine or they were receiving distributions higher than I received from 2013 to 2017. Otherwise, it is not reasonable for them to vote against an accounting to discover why the buyer of Silver Strand Plaza based his purchase price on significantly higher NOI than was reported on their K-1s or distributed to them.

No reasonable shareholder would allow $70,000 to sit unused for six years, not even earning interest in a savings account. There is no legitimate reason to vote against dissolution. It is preposterous to include assets that Mary Sherman refuses to identify to me that are used for the exclusive benefit of less than all members in the analysis of the application of OA section 8.2.

The court should appoint a receiver to get to the bottom of the discrepancy between the books shown to the buyer of Silver Strand Plaza and me.

The Court erred by adopting the members' cockamamie argument "that [my] allegations that SSP continues to hold various assets contradicts the assertion that sale of Silver Strand Plaza constitutes the sale of 'all or substantially all' of SSP's assets as required for section 8.2 [OA] to apply." Doc. 268. The court is ignoring the plain language meaning of my words. The other members have given no legitimate purpose to stall dissolution of the company. The only purpose they gave was that I said I have reason to believe SSP money was used to purchase a property for the Shermans and dissolution only needs to take place when

substantially all the company assets are sold. By their illogic, if the Shermans used SSP funds to purchase cars for their adult children, then SSP does not need to dissolve until those cars are sold and the money returned.

The members' refusal to comply with the OA to dissolve the company is malicious. They continued to show malice throughout the proceedings. For example, the Shermans as trustee and co-trustee of several trusts objected to my motion for a stay of proceedings at the height of the pandemic. Docs. 126 and 128. (That was one of the rare instances I which the court granted my motion.)

XIII. Whether the facts pled in the complaint and amended complaints support a finding for breach of contract. The court erred by refusing to compel SSP and Mary Sherman to give me access to the complete books and records of the company and by adopting the defendants' twisted reasoning why Silver Strand Plaza, LLC is not required to dissolve after the sale of Silver Strand Plaza.

In the Order, Doc. 268, the court made an unreasonable inference. "The phrasing of 'primary' as used in the Operating Agreement, and 'principal' as referenced in Plaintiff's TAC do not imply exclusivity, []." OA 1.4 is quoted in full in the order. Inter alia: "Notwithstanding the foregoing, the purpose of the Company **shall be limited to** those activities that are permitted by the Articles of Organization (as amended from time to time). **The Company's primary activities**

will be limited to owning, leasing and managing the retail shopping center known as Silver Strand Plaza." (Bold added)

The clear meaning of the operating agreement and my complaint is that the purpose for Silver Strand Plaza, LLC no longer exists. Regardless, at the MTD stage, all plausible inferences are to be taken in favor of an adjudication on the merits.

The clear meaning of the operating agreement and the corporations code is that I must be given access to the books and records of the company. If that record shows that the other members made a major decision, to buy real property or lend enough money to a separate entity to buy real property, then of course I will have more evidence of misconduct and will ask to supplement the operative complaint.

7. Did you present all issues listed in Question 6 to the district court?

Answer yes or no: ____no_____

If not, why not? An issue came up as supplemental authority after the district court made its decision. The Ninth Circuit issued an order on *Wakefield v. ViSalus* for the lower court to reconsider an award that would bankrupt the defendant company on the grounds that the oppressive award is not Constitutional.

The *Schrage v Schrage* opinion overturning the plaintiff prevailing on an individual suit for breach of fiduciary duty issued about a month before my TAC was due. I am not an attorney and had already decided to just file the same facts,

but narrow my request for relief to obtain what amounts to limited discovery and dissolution of the company. Therefore, I did not update my research on the causes I was setting aside until I was allowed to inspect the books and records.

8. What law supports these issues on appeal? (You may refer to cases and statutes, but you are not required to do so.) Following the outline in question 6:

The Court erroneously applied Arkansas as the choice of law for defamation per se, but not for other causes. I am therefore giving some Arkansas law and some California law.

I. Right to Limited Scope Representation - The fundamental right to equal protection provided for in the United States Constitution. All classes must be able to present grievances effectively, not only the class that has the most money.

The various courts throughout the country should endeavor to be consistent. Especially within the same circuit, district courts should be consistent.

The Southern District of California is inconsistent with its sister court to the north about the right to limited scope representation. Worse, CASD is inconsistent with the Ninth Circuit.

Ninth Circuit rules allow pro se litigants to write an informal brief without excerpts, citation to the record, and discussion of the standard of review. The district court claims discretion to ease the technical requirements, but in this case, did not. For example, the court denied my motion to exclude the redline copy with

my amendments. But the district court in the Eastern District of Arkansas gives a blanket exemption to that requirement to pro se litigants.

The Ninth Circuit allows pro se litigants to hire an attorney for a distinct task. I retained and paid attorney LaToya Redd to represent me in my proposed interlocutory appeal on the limited issue of the attorney fee award. I was going to argue the failure to enter default against Linda Kramer on my own. But Ms. Redd refused to represent me on any partial representation in district court until I obtained leave of the court, because she had been reprimanded by the district court in Southern California for giving another pro se litigant partial representation.

Of course, had Mr. Early continued to represent me, or if Ms. Redd was allowed to give me limited scope representation, there would probably have been a different outcome. The case of *Schrage v. Schrage* in the California Central district had a similar fact set to this one. The difference was that the Schrage brothers were fighting over significantly more money than the SSP sisters. The lone plaintiff brother was able to afford to retain a top-notch law firm. The plaintiff prevailed on the issue of dissolution and was reimbursed his attorney fees. He prevailed on breach of fiduciary duty at the lower court but was overturned at the Cal. Sup. Ct. because he did not bring the cause as a derivative action.

The court here found much of the harm to be not individualized, and therefore would require derivative pleading. The court also forbid me from hiring an

attorney for the limited issue of derivative causes. This is a violation of my right to file a grievance based on my economic class.

In fact, the caselaw interpreting that an attorney represent a sole minority shareholder in a tightly held corporation when the other shareholders give themselves distributions that are not made to the sole member enables the other members to plunder the company coffers for their own personal use, unless the sole member has enough money to hire an attorney.

The fee shifting provisions have been rendered meaningless for self-represented, because courts routinely disallow payment of attorney fees to pro se litigants, even when the legislature did not write the word "incurred" in the fee shifting statute. This is another huge bias against pro se litigants.

II. Some but not all the court's legal errors are addressed in other sections. The appellate court can look through the entire record to assess if there is an appearance of bias. The totality of the record shows the court absolutely appeared to be biased.

Ruling with an appearance of bias violates the most fundamental Constitutional right to present grievances, have them adjudicated fairly with equal protection and due process. It makes every "opinion" that allows for discretion questionable. This includes the big picture of whether to dismiss the complaint. It includes all the

building blocks that came to that conclusion, such as whether the defendants were reasonable to deny an accounting and dissolution.

III. It is well settled that a court must give leave to amend unless amendment is futile. I thought my SAC would hold up because I mimicked the high powered attorneys who advocated for the plaintiff in *Schrage*. If I knew the district court would be overturned, I would have amended the SAC to be more in line with *Jara*.

IV. *Schrage* v. *Schrage* had a similar fact set. In that case the plaintiff prevailed on his claims for an involuntary dissolution and breach of fiduciary duty at the district court. On March 3, 2023, I saw the Cal. Ct. Appeals opinion from September 2, 2021 for the first time. That court upheld the involuntary dissolution but based on Nelson, overturned the breach of fiduciary duty.

The California Court of Appeals conceded, that in certain circumstances [such as my own], Jara can apply. "The court in Jara characterized the plaintiff's claim as 'tantamount to a discriminatory payment of dividends' and cited cases allowing individual causes of action to recover the value of disproportionate payments to majority shareholders. (*Jara*, supra , 121 Cal.App.4th at pp. 1256-1257, 18 Cal.Rptr.3d 187, citing *Smith v. Tele-Communication, Inc*. (1982) 134 Cal.App.3d 338, 341-342, 184 Cal.Rptr. 571 [majority shareholders retained disproportionate value of tax savings]; *Crain v. Electronic Memories & Magnetics Corp.* , supra , 50 Cal.App.3d at p. 521, 123 Cal.Rptr. 419 [majority shareholder 'deprived

plaintiffs of their ownership interests in an ongoing and potentially profitable business without any compensation whatsoever']; *Low v. Wheeler* (1962) 207 Cal.App.2d 477, 479, 24 Cal.Rptr. 538 [majority shareholders 'refused to declare dividends' to minority shareholder]; *De Martini v. Scavenger's Protective Assn*. (1935) 3 Cal.App.2d 691, 698, 40 P.2d 317 [majority shareholders deprived the minority shareholders of their '"share of the profits of the business"'].) *Schrage v. Schrage*, 69 Cal.App.5th 126, 155 (Cal. Ct. App. 2021)

I argued that the payment of attorney fees to benefit the other members as individuals was in essence an extra distribution to those other members; Defendants used all the tax savings from writing off depreciation of Silver Strand Plaza and the undisclosed real estate owned, and giving me zero depreciation; and the Defendants have deprived me of any share of the profit from a business capitalized with at least $493,824 remaining in SSP, but probably more.

The cases are also differentiated because unlike Plaintiff Schrage, I did present my claims to the Voting Members and asked to file suit against Mary Sherman, even though I knew it was futile, because Mary Sherman controlled over half the vote. Therefore, I can amend to plead a derivative case if I am able to hire an attorney for that discrete task.

Finally, I pled breach of fiduciary duty alternatively as breach of contract. The harm in a breach of contract is definitely an individual harm.

V. The Ninth Circuit employs a de novo standard of review for issues addressing the unauthorized practice of law.

It is clear on the face of the FAC that I chose to file the cause of action for legal malpractice as a derivative action only. It is therefore a nullity.

If this court upholds the opinion of the lower court that certain rights that I claimed were violated were not my rights, but belonged to SSP, and must be brought as a derivative action, then amendment is not futile, as long as I can hire an attorney on limited scope for the derivative causes.

Judge Lopez's spin on my motion to vacate the void orders that were the fruit of the void pleading is found in Doc. 266. Her conclusion: "Because no judgment was rendered on Plaintiff's now-dismissed claims against the Attorney Defendants, none of the cases cited by Plaintiff support a finding of clear error by this Court." It is well settled that a presiding judge must strike any document written by one not licensed to practice in that jurisdiction on behalf of anyone but herself. In Pietrczak v. [Hammett] and the Rural Revival Living Trust, Searcy County case 65CV-21-20, I was named as a common defense doctrine defendant. I prevailed as an individual. But the court granted default judgment against the trust after a hearing in which the court forbid me from defending the trust in any way or giving testimony as the trustee of the trust. (That case is on appeal. One reason, I was sole beneficiary, settlor and trustee of the trust, and therefore would only be

representing myself.) In two related cases against Goodman Manufacturing Company Inc., et al in which I am plaintiff, an answer written by a Texas attorney was found void, and a Home Depot attorney's signature on a settlement agreement was struck out with a written admonishment that he was not licensed to practice law in Arkansas. California usually treats this situation the same as Arkansas, but if the district court is allowed to veer from the California law on my case alone, and if choice of law is Arkansas law for defamation per se, then it must be choice of law for this issue also.

When the Attorney Defendants and their counsel first read the cover page of the FAC, they knew or should have known I was not allowed to proceed on a derivative cause of action. There is caselaw stating this. The court failed to deem the impermissible pleading void ab initio and then ordered me to pay attorney fees to the licensed attorneys who purposefully multiplied the proceedings by continuing to file hundreds of pages of argument and alleged evidence in support of the unnecessary anti-SLAPP motion.

Judge Lopez titled section "A" of her order "Plaintiff's Voluntary Dismissal is Not Void". I argued that all the proceedings on the derivative cause were void. The court should have dismissed the derivative cause or the entire pleading on her own or by motion of the Attorney Defendants on those grounds alone.

Judge Lopez wrote: "There is no merit to Plaintiff's contention that the Attorney Defendants or the Court failed to adequately aid in the prosecution of her claim." I never demanded "aid in the prosecution" of my claim. I notified the court of something the court knew or should have known, that the pleading on the derivative action and everything based on that pleading was a nullity.

An Arkansas court, if honorable, would disregard the California judgment as it is void ab initio. But this does not protect me, because most of my assets and anticipated assets are in California, (one indication the choice of law for all issues including defamation should have been California law).

Judge Lopez quoted me as writing, "[w]ith diligence, [P]laintiff could have known the law." She left out the following sentence. "But as discussed earlier, the one exception to knowing the law is when the law makes an order void." The derivative action did not become less void because I could have known it was void.

VI. Resolution of an anti-SLAPP motion is a two-step process. *Jarrow Formulas, Inc. v. LaMarche, 31 Cal. 4th 728, 733 (2003)*. "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." Id. (quoting *Equilon Enterprises v. Consumer Cause, Inc., 29 Cal. 4th 53, 67 (2002)*).

The Attorney Defendants failed to establish that legal malpractice or conversion are a cause of action arising from protected speech. I provided ample caselaw that neither fits the criteria. The court skipped right over the first prong of the test.

VII. The second prong is an evaluation of the evidence.

The court errantly decided that the defendants prevailed presumptively because I moved to dismiss them. The court sited a case she presided over. In that very case, the court acknowledged that the presumption is defeated if there is an alternative reason for dismissing. I stated in my motion to dismiss the Attorney Defendants that my reason for dismissing was because I was not allowed to advocate on behalf of the LLC and wanted to save costs for all involved.

The Attorney Defendants did not oppose the Rule 41(a) motion. They therefore waived any argument that the reasons I gave were not correct.

VIII. This court addressed the unconstitutionality of an oppressive damages award in October 2022. *Wakefield v. ViSalus*, 21-35201. In this court's opinion, Doc. 67-1, the court extends the Williams due process test. "Under this test, a damages award violates due process if it is so severe and oppressive as to be wholly disproportionate to the offense and obviously unreasonable in relation to the goals of the statute and the conduct the statute prohibits. The panel held that constitutional limits on aggregate statutory damages awards are reserved for circumstances in which a largely punitive per-violation amount results in an

aggregate that is gravely disproportionate to and unreasonably related to the legal violation committed." Yes, the two cases have fact sets that are distinct in many ways, but the Constitutional protections applied to a well-capitalized business entity must apply to a share holder in a tightly held LLC who will be forced into bankruptcy by the award. The Attorney Defendants attorney fees in this case should not be shifted, but if they are, it is absurd to charge a plaintiff who could not afford representation for all purposes, and was denied limited scope representation for this issue, with the other parties' attorney fees as high as $450 per hour.

IX. Motions to dismiss cannot introduce extraneous facts. (Well settled)

By misquoting me over a hundred times in their motions to dismiss, the defendants' attorneys violated F.R.C.P. Rule 11, making statements to the court that they knew to be false.

X. In determining whether to grant default, a clerk may look no further than the cover of a document. If a separate defendant is left off the list of represented defendants, in other words not joined, whether purposefully or inadvertently, they must file a motion to have default set aside pursuant to F.R.C.P. Rule 55.

Obviously, Linda R. Kramer as an individual was not joined to the co-trustees' timely response. That separate defendant was not on the docket until two days after the MTD was filed as Doc. 19.

XI. When determining which choice of law to use, the court can consider several factors. The court must use discretion, which is hard to do for a court that appears to have a bias. SCOTUS handled a similar circumstance differently than the district court. "Tort of libel is generally held to occur wherever offending material is circulated, and since reputation of libel victim may suffer harm even in state in which he has hitherto been anonymous, state may extend its concern to injury that in-state libel causes within the state to nonresident." *Keeton v. Hustler Magazine, inc., 465 U.S. 770 (1984)*. My reputation was presumably harmed in every state in which the defamatory statement was read, including California.

XII. The business judgment rule is not a free for all for miscreant board members. The court abused its discretion to determine that no reasonable juror could find the members decisions were malicious and lacked reasonable business judgment. Especially if given the opportunity to supplement the complaint to include subsequent and continuing conduct.

XIII. There is a covenant of good faith and fail dealing implicit in every contract. "In a manager-managed limited liability company a member shall [] discharge the duties to a limited liability company and the other members under this title or under the operating agreement and exercise any rights consistent with the obligation of good faith and fair dealing." *Cal. Corp. Code* § 17704.09(f and d).

The Operating Agreement is "law" of the company. The members violated the rules as enumerated in other sections of this brief. The court misinterpreted the rules that were clearly violated, such as the mandate to dissolve the company once Silver Strand Plaza was sold.

9. Other Pending Cases. Do you have any other cases pending in the court of appeals? If so, give the name and docket number of each case. None.

10. Previous Cases. Have you filed any previous cases that the court of appeals has decided? If so, give the name and docket number of each case. Appellate case No. 20-55442. Dismissed for lack of showing of good cause to review interlocutory orders.

Laura Lynn Hammett /s/Laura Lynn Hammett

Name Signature

16 Gold Lake Club Road

Conway, Arkansas

72032 March 6, 2023

Address Date