

CASE NO. 22-56003

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

LAURA LYNN HAMMETT

Plaintiff-Appellant,

v.

MARY E. SHERMAN; et al.

Defendants-Appellees.

Appeal From The United States District Court

Southern District of California, Case No. 3:19-cv-00605-LL-AHG

APPELLEE'S SUPPLEMENTAL EXCERPTS OF RECORD

VOLUME 2 OF 7

(SER 000148 - 000370)

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Plaintiff in pro se

Laura Lynn Hammett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Laura Lynn Hammett,

Plaintiff,

v.

Mary E. Sherman, et al.

Defendants

Case No.: 19-CV-0605-TWR-AHG

Plaintiff's Opposition to Various Motions
to Dismiss the Third Amended
Complaint;
Memorandum of Points and Authorities
Within

Hearing Date: March 9, 2022

Time: 1:30 p.m.

Courtroom: 3A

Honorable Todd W. Robinson presiding
Hon. Magistrate Allison H. Goddard

1 To the Court, All Parties and Their Counsel of Record:

2 COMES NOW Plaintiff Laura Lynn Hammett, in pro se, in reply to the various
3 motions to dismiss the Third Amended Complaint (“TAC”).

4 The Court expressed a not-quite-right recitation of alleged facts in the order
5 granting the motions to dismiss the Second Amended Complaint. Most pertinent to these
6 motions, the Court misstated the Silver Strand Plaza, LLC Operating Agreement section
7 8.2 by one word, replacing “or” by “and”. (ECF No. 237, page 11, line 7.)

8 Dissolution of the company “SSP” is required by the sale of Silver Strand Plaza
9 and Silver Strand Plaza was the sole property the SSP was authorized to own, except
10 property incidental to operating the company.

11 The Court adopted the defendants’ absurd claim that the sale of Silver Strand Plaza
12 in February 2017 did not trigger mandatory dissolution of SSP by 2021, though
13 hesitatingly. “Plaintiff seeks the ‘sale of all or substantially all of the assets of [Silver
14 Strand] and distributions made according to the percentage owned by each shareholder.’
15 (SAC ¶ 186.) In other words, by Plaintiff’s own admission, the Company has not sold all
16 or substantially all of Silver Strand’s assets.” (ECF No. 237, pg. 11, ln 11-15)
17 “Alternatively, Plaintiff may believe that Silver Strand has already sold all or
18 substantially all its assets in January 2017 and is now seeking the sale of what remains of
19 Silver Strand. As currently alleged, however, this remains unclear, even when viewing all
20 facts in the light most favorable to Plaintiff.” (id., ln 27-28, fn 3)

21 Plaintiff made it clear that Mary Sherman as manager of SSP made a “loan” to an
22 entity called “MSFP”. (SAC, ECF No. 145, ¶ 85). Also there was a cryptic record of the
23 purchase of property by SSP in the name of the “Sherman Family Partnership”. (id.)

24 Those purchases violate the Operating Agreement, “‘The Company’s primary
25 activities will be limited to owning, leasing and managing the retail shopping center
26 known as Silver Strand Plaza, which is located at [address].’ OA §1.4.” (SAC ¶ 194, also
27 TAC ¶ 371)

1 Hammett alleged that the property that was purchased in violation of the Operating
2 Agreement must be liquidated and her capital returned to her. Without meaningful access
3 to the company books and records, it is impossible for Hammett to know what assets SSP
4 paid for and which assets have been sold.

5 The Court found Hammett's SAC to be "unclear", though the Court expressed an
6 inkling of understanding. Hammett alleged her belief that "Silver Strand has already sold
7 all or substantially all its assets in January 2017 and is now seeking the sale of what
8 remains of Silver Strand." Plaintiff copied and pasted wording from a complaint for
9 dissolution of a law partnership that was successfully filed by former SSP counsel Patrick
10 McGarrigle into the SAC. The defendants should accept that language in the light most
11 favorable to the Plaintiff.

12 Hopefully the Plaintiff was clear in the TAC. She added some words. For example,
13 "Plaintiff was able to have the Operating Agreement reflect that the sole property of
14 Silver Strand Plaza, LLC would be Silver Strand Plaza, and all other property of Silver
15 Strand Plaza, LLC is incidental." (TAC ¶ 6)

16 If it is still not clear, Plaintiff asks leave to file a Fourth Amended Complaint that
17 will use the Court's exact words "Silver Strand has already sold all or substantially all its
18 assets in January 2017 and is now seeking the sale of what remains of Silver Strand."

19 The Court also misstated that "[a]lthough Plaintiff suggested changes to the
20 Operating Agreement, Sherman disagreed, and Plaintiff conceded and signed the
21 Agreement because Sherman had 'vastly more power' than her. ([SAC] ¶¶ 39–40.)"
22 (ECF No. 237, pg. 2, ln 11-13)

23 SAC Paragraph 39 contains the following: "As drafted, the OA gave the Manager
24 the right to buy any property she wanted and demand the Members contribute capital or
25 jeopardize their ownership interest in SSP. Changing a few words *corrected this problem*
26 and *the changes were made* []." (emphasis added) The same paragraph is in the TAC
27
28

1 followed by “Sherman in each of her capacities made the new version with the two
2 corrections [].” (TAC ¶¶ 53, 54)

3 The changed words forbid SSP from purchasing other property. (See Operating
4 Agreement §1.4, last sentence, TAC Exhibit A.)

5 Judge Sammartino was biased against Hammett and her orders should have been
6 disregarded. They were not.

7 The Clerk of the Court started off by doing a favor for opposing counsel, altering a
8 docket entry with no notation that there was a change made. After Hammett complained
9 and said she made a copy of the original docket entry the illegal change reverted back,
10 still with no notation that the change was made.

11 Hammett filed a Bivens action against the Clerk in the Eastern District of
12 Arkansas, 4:21-cv-00633-LPR. The Clerk’s MTD in the Bivens action invoked
13 “immunity” and that there is no private cause of action for the alleged due process
14 violations under the fifth amendment of the United States Constitution under *Bivens*.

15 It is therefore incumbent upon this Court to correct the appearance of bias and
16 unequal protection. Instead, this Court continued to make errors against Hammett that
17 deprive her of equal protection and due process.

18 Frustrated, the pro se litigant attempted to get at least some of her capital out of
19 SSP, and to gather the required information to include the other causes of action pled in
20 the SAC. Hammett narrowed the relief she was asking for down to the items that she
21 believes she is entitled to based on evidence she has in hand.

22 The facts alleged in the SAC remained unchanged in the TAC, except to explain
23 that Hammett’s request to sell all or substantially all the SSP assets was referring to
24 assets that were purchased in contradiction to the Operating Agreement §1.4.

25 Hammett used the wrong vocabulary. She should have named the single cause of
26 action of Breach of Contract. What Hammett called “causes of action” should have been
27 called “remedies”.

1 The Court, as he should, corrected Hammett's misuse of the word "bifurcation"
2 instead of the word "severance" in the denial of Hammett's motion to bifurcate and
3 transfer. Hammett hopes for the same courtesy here. She hopes the Court looks past form
4 to the substance. Alternatively, Hammett asks to make the simple change in form, calling
5 this a breach of contract and asking for specific performance of the right to inspect the
6 books and records and mandate to dissolve SSP as remedies.

7 The defendants claim Hammett did not request the records as per "California
8 Corporations Code §17704.10." In their meet and confer email, the defendants cited
9 California Corp Code 1601, instead.

10 Hammett claimed, "[d]espite Plaintiff's demands for copies of financial statements,
11 bank statements, an accounting of accounts payable and accounts receivable, the manager
12 has failed and refused to provide the same." (TAC ¶189)

13 "Company Counsel Forde wrote to Plaintiff that her right to review company
14 records ended when she filed suit, basing his opinion on a case where the entire record
15 had already been produced in discovery. In this case Plaintiff provided the manager with
16 a comprehensive list of documentation that is missing and the documentation was never
17 provided." (TAC ¶ 191)

18 "Plaintiff has asked for her contractual right to access to company books and
19 records since 2013 and has not received full access as of this writing." (TAC ¶ 3)

20 "Plaintiff has made a diligent effort to substantiate her suspicions of fraud, breach
21 of fiduciary duty, misappropriation of company funds. While Plaintiff believes the
22 evidence she has collected, detailed below, makes her suspicions plausible, the Court
23 disagrees. // Therefore, Plaintiff is asking that the Court order Mary Sherman and Silver
24 Strand Plaza, LLC to comply with the Operating Agreement and provide Plaintiff with
25 access to the entire books and records." (TAC ¶¶ 4,5)

26 A motion to dismiss treats the allegations as true. The defendants are controverting
27 the claim in the TAC and asking the Court to dismiss based upon their version of events.
28

1 Worse, the defendants' version of events is a lie. Plaintiff asked to see the books
2 and records in writing in 2013 and was given incomplete records. Plaintiff asked the
3 other members including Mary Sherman as manager in writing to vote against the
4 manager's malfeasance. Plaintiff's first attorney, Michael Early, asked for the records in
5 writing. Mr. Early filed a suit in Central District of California, 2:18-cv-03757-FMO-JPR,
6 that was intended to compel SSP to allow member Hammett to inspect the books and
7 records. The complaint was dismissed upon the fraudulent inducement of SSP counsel
8 Patrick McGarrigle, that SSP would voluntarily produce the entire records. Said
9 disclosure is incomplete as of this writing. Hammett travelled to California twice since
10 filing this case. She asked in writing by email both times for access to company books
11 and records. She was denied that access, in writing, by SSP counsel.

12 While the TAC itself is a written request for production of documents, it alludes to
13 and refers directly to Plaintiff's other written requests to inspect the books and record that
14 were denied. (TAC ¶¶ 3-5, 9, 13, 14, 43, 104, 114 ("The Manager concealed the
15 overpayment of management fees after the February 2014 meeting by denying Hammett
16 her rightful access to the Company financials pursuant to CA Corp § 17704.10(e) and OA
17 Article IV."), 189-199, 200 ("Despite demand therefore, the Manager and SSP have
18 refused (i) to render a true and correct account for the income, and profits collected by
19 the Company for the years 2012 to present, (ii) to render a true and correct account for
20 the liabilities incurred by the Company for said period of time, (iii) to render a true and
21 correct account of the dividends, distributions, or other manner of disbursements of the
22 net profits of the Company for said period of time[]."), etc.

23 The defendants claim the amount in controversy is less than \$75,000 and therefore
24 the federal court lacks jurisdiction.

25 Without access to the records Plaintiff cannot confirm or deny the "defense" of
26 lack of jurisdiction, but Plaintiff has reason to believe the amount in controversy is over
27 \$75,000.

1 If defendants are correct, Plaintiff asks that the case be transferred to state court,
2 not dismissed.

3 Hammett's 14.157% of shares in SSP were supposedly worth \$70,691 as per the
4 2020 K-1s. This means the value of all remaining capital in SSP is at least \$499,336.
5 Because of the denial to inspect the books and records, Plaintiff cannot prove how much
6 of the \$499,336 should be attributed to Hammett's capital account.

7 Hammett wants to inspect the books and records because she suspects that money
8 was distributed to other members of SSP without equal distributions being made to
9 Hammett. "Bonuses" were given to Mary Sherman without any record in the company
10 1099s and Hammett's share of depreciation tax benefits was not passed through to
11 Hammett.

12 Plaintiff retained an attorney to read through the file and write an appeal, LaToya
13 Redd, but the Court of Appeals deemed the appeal as premature. Hammett paid her
14 attorney \$11,000.

15 Plaintiff spent thousands of dollars in costs, as well, including filing fees over
16 \$1,000 and printing thousands of pages at 10 cents per page.

17 Therefore, if the value of the property in dispute is not the value Mary Sherman is
18 claiming for the entire company, the amount Plaintiff asked for in the TAC for herself is
19 over \$82,000. "On information and belief Plaintiff is entitled to a sum of money
20 exceeding \$100,000.00, which will be shown by a true and full accounting to be
21 Plaintiff's share of the capital and net profits from the Company to the present." (TAC ¶
22 201)

23 But the federal court retains jurisdiction when the original complaint qualified and
24 causes of action are removed that drop the remainder of damages below the \$75,000
25 threshold. (See Brief in Support for caselaw.)
26
27
28

1 Hammett retained the facts from the SAC because she anticipates she will be able
2 to withstand a MTD on some other causes of action after finally being given access to the
3 complete records since 2013. In contradiction to the opinion of this Court, Hammett has
4 diligently pursued information to support her contentions since 2013. Hammett believes
5 she has enough evidence of fraud and breach of fiduciary duty to withstand dismissal on
6 “Iqbal/Twombly”, but the Court disagreed, thereby denying discovery. Hammett is
7 therefore asking the Court to order SSP to allow Plaintiff’s right to inspect the record for
8 Plaintiff to plead fraud and breach of fiduciary duty with more particularity.

9 When the case was transferred to Judge Robinson, Hammett had a glimmer of
10 hope.

11 The order dismissing the SAC conveyed to Hammett that her only hope of
12 receiving her capital back and receiving discovery is to ask for the two remedies that
13 correct absolute violations of the operating agreement that can be proven with the
14 evidence in hand.

15 If the TAC is dismissed with prejudice, Hammett will appeal based upon the entire
16 record and ask the Court of Appeals to remand with instructions to grant discovery that
17 may and probably will allow the other causes of action, other than defamation and false
18 light invasion of privacy, to be reasserted. The defamatory correspondence by Sherman
19 and Dennis show malice and intent and supply evidence rather than a separate cause of
20 action as per Arkansas law. If California, Colorado or New Mexico law was followed, as
21 it should be, the defamation claims would also survive.

22 Plaintiff prays the Court will order the dissolution of Silver Strand Plaza, LLC and
23 for the entire books and records of the company since 2013 be made available, preferably
24 electronically, for inspection by Plaintiff and her chosen accountant.

Brief In Support

As in previous motions to dismiss, the defendants rely heavily on misstatements of the Plaintiff's allegations. These errors in fact rather than law were covered in the previous section, which is incorporated herein as if set forth in full.

The law in this pared down complaint is simple.

The defendants entered into a contract with Plaintiff. The plaintiff performed her obligations. The dissolution clause was triggered by the sale of Silver Strand Plaza in February 2017. As of the hearing on these MTDs, five years have passed and SSP is not dissolved. Plaintiff made numerous reasonable requests to inspect the books and records of SSP since 2013. Access was denied. Plaintiff turned to the Court to compel discovery, including the production of the books and records withheld. The Court failed to find the First and Second Amended Complaints had enough facts stated to allow discovery to begin on any cause of action or claim. (Plaintiff is still not certain when to use "cause of action" opposed to "claim".)

Plaintiff made the allegations required to prove a breach of at least two provisions of the contract. If the wording falls short of conveying the proper allegations, Plaintiff asks for an opportunity to elaborate. Plaintiff can provide dates of her written requests to inspect the record. In fact, after the initial Rule 26 disclosures, Plaintiff will file a Motion for Summary Judgment, that includes exhibits that show plaintiff asked to inspect the record in writing and points to the lack of a transmittal email or letter for all the documents or a time for the inspection produced in the defendants' initial disclosures.

California Corp Code 17704.10 states: "(b) Each member, manager, and transferee has the right, upon reasonable request, for purposes reasonably related to the interest of that person as a member, manager, or transferee, to each of the following:

(1) To inspect and copy during normal business hours any of the records required to be maintained pursuant to Section 17701.13.

(2) To obtain in writing from the limited liability company, promptly after becoming available, a copy of the limited liability company's federal, state, and local income tax returns for each year."

Plaintiff made numerous reasonable requests and was rebuked each time.

Plaintiff also would replace the words meaning "sell all or substantially all the LLC assets" to words meaning "liquidate property SSP was not authorized to purchase and recover any misappropriated assets, before distributing the Plaintiff's true and correct remaining capital to her".

"Under Federal Rule of Civil Procedure 15(a), a district court should 'freely give leave [to amend] when justice so requires.' Fed. R. Civ. P. 15(a). 'This policy is to be applied with extreme liberality.' *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (internal quotation marks and citation omitted). With respect to pro se litigants, this 'extreme liberality' is 'particularly important,' *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000), and courts should dismiss a pro se complaint without leave to amend 'only if it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.' *Schucker v. Rockwood*, 846 F.2d 1202, 1203-04 (9th Cir. 1988)." (Order Dismissing SAC with Leave to Amend, ECF No. 237, pg. 3, ln 10-17)

As to the request for relief falling below the \$75,000 threshold, caselaw supports the precedent of allowing a case to remain in federal district court if the claims are narrowed to those with damages less than \$75,000. "Dismissal of all but one of [plaintiff's] claims against [defendants], a claim for violation of California's Rosenthal Fair Debt Collection Practices Act (RFDCPA), bringing amount in controversy below \$75,000 threshold for diversity jurisdiction, did not dissolve district court's original jurisdiction as would warrant remand to state court following removal; borrower's RFDCPA claim was part of bundle of claims that put more than the jurisdictional amount at issue. 28 U.S.C.A. §§ 1332, 1441(a); *Cal.*

1 *Civ. Code § 1788 et seq.” Barefield v. HSBC Holdings PLC*, 356 F. Supp. 3d 977 (E.D.
2 Cal. 2018)

3 Regardless, Plaintiff believes the amount in dispute still exceeds \$75,000. If the
4 amount in dispute only includes the stated capital in Plaintiff’s capital account and that
5 amount has fallen below \$75,000, the Plaintiff’s costs and attorney fees thus far should be
6 added.

7 Otherwise, a transfer to the state court is appropriate.

8
9 Respectfully Submitted,

10
11 /s/ Laura Lynn Hammett
12 Laura Lynn Hammett, Plaintiff in pro se
13 16 Gold Lake Club Road
14 Conway, Arkansas 72032
15 Bohemian_books@yahoo.com
16 (760) 966-6000

17
18 Certificate of Service

19 I, Laura Lynn Hammett, filed the above Plaintiff’s Opposition to Various Motions
20 to Dismiss the Third Amended Complaint in the Electronic Filing System on November
21 28, 2021, thereby giving electronic notification and service to all counsel of record.

22 /s/ Laura Lynn Hammett
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Attorney for Defendant
 SILVER STRAND PLAZA, LLC

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

LAURA LYNN HAMMETT, on behalf
 of herself,

Plaintiff,

vs.

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; JEFFREY M.
 SHERMAN as CO-TRUSTEE OF THE
 J & M SHERMAN FAMILY 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
 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; LINDA R. KRAMER,
 an individual; LINDA R. KRAMER, as
 CO-TRUSTEE OF THE LYNN AND

Case No. 19-CV-0605-TWR-AHG

**DEFENDANT SILVER STRAND
 PLAZA'S NOTICE OF MOTION
 AND MOTION TO DISMISS
 PLAINTIFF'S THIRD AMENDED
 COMPLAINT [ECF 238]
 PURSUANT TO FRCP 12(B)(6).**

**FILED CONCURRENTLY WITH
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 THE MOTION TO DISMISS**

Judge: Hon. Todd W. Robinson
 Department: 3A
 Hearing Date: March 9, 2022
 Time: 1:30 pm

Complaint Filed: April 2, 2019
 Trial Date: None

ERIK'S TRUST; ERIK VON
 PRESSINTIN HUNSAKER as
 CO-TRUSTEE OF THE LYNN AND
 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

Defendants.

TO PLAINTIFF LAURA LYNN HAMMETT, PRO SE:

PLEASE TAKE NOTICE that on March 9, 2022, at 1:30 P.M. or as soon thereafter as the matter may be heard, before the Honorable Todd W. Robinson, Judge presiding, in Courtroom 3A of the above-entitled court, located at 221 West Broadway, San Diego, California 92101, Defendant Silver Strand Plaza, LLC ("SSP") will move to dismiss the Third Amended Verified Complaint filed on November 3, 2021 (ECF 238 ("TAC")) of Plaintiff Laura Lynn Hammett, and the First and Second Causes of Actions alleged against SSP, pursuant to Fed. R. Civ. P., Rule 12(b)(6), because Plaintiff's TAC, and each of the causes of action listed above, fails to state a claim upon which relief can be granted.

This Motion to Dismiss will be based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, which is incorporated in this Notice by this reference, and the pleadings and papers filed herein, and on such other matters as the Court may consider before ruling on this Motion.

CERTIFICATE OF COMPLIANCE

Pursuant to Section III(A)(1) of Hon. Todd W. Robinson's Standing Orders for Civil Cases, undersigned counsel for SSP, via a joint email sent on November 16, 2021 by Attorney Frank Polek, counsel for co-defendant Mary E. Sherman, conferred

1 with Plaintiff concerning the relief requested herein. Plaintiff opposes the relief
2 requested.

3
4 Dated: November 17, 2021

HOFFMAN & FORDE, ATTORNEYS AT LAW

5 By: /s/ Daniel R. Forde

6 DANIEL R. FORDE, ESQ.

7 Attorney for Defendant,
8 Silver Strand Plaza, LLC
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Attorneys for Defendants
 Linda R. Kramer and Erik Von Pressentin Hunsaker
 as Co-Trustees of the Lynn and Erik's Trust, and
 Linda R. Kramer, as an individual

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LAURA LYNN HAMMETT, an
 individual,

 Plaintiff,

 v.
 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; JEFFREY
 M. SHERMAN as CO-TRUSTEE OF
 THE J & M SHERMAN FAMILY
 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

Case No.: 3:19-cv-0605-JLS-LL

**Defendants Linda R. Kramer and
 Erik Von Pressentin Hunsaker's
 Notice of Motion and Motion to
 Dismiss Plaintiff's Third Amended
 Complaint**

Hearing Date: March 9, 2022
 Time: 1:30 p.m.
 Courtroom: 3A

Hon. Todd W. Robinson
 Hon. Magistrate Allison H. Goddard

Case Filed: April 2, 2019

1 IRREVOCABLE TRUST, a California
2 irrevocable trust; MARY E.
3 SHERMAN as TRUSTEE OF THE
4 BROXTON DENNIS IRREVOCABLE
5 TRUST, a California
6 irrevocable trust; MARY E.
7 SHERMAN as TRUSTEE OF THE
8 CURT DENNIS IRREVOCABLE
9 TRUST, a California irrevocable trust;
10 MARY E. SHERMAN as TRUSTEE
11 OF THE SEAN LYNN
12 IRREVOCABLE TRUST, a California
13 irrevocable trust; MARY E.
14 SHERMAN as TRUSTEE OF THE
15 BRANDEN LYNN IRREVOCABLE
16 TRUST, a California irrevocable trust;
17 LINDA R. KRAMER, an individual;
18 LINDA R. KRAMER as CO-
19 TRUSTEE OF THE LYNN AND
20 ERIK'S TRUST; ERIK VON
21 PRESSINTIN HUNSAKER as CO-
22 TRUSTEE OF THE LYNN AND
23 ERIK'S TRUST; DIANE G. DENNIS,
24 an individual; ELLIS ROY STERN,
25 ESQ., an individual; ALAN N.
26 GOLDBERG, ESQ., an individual;
27 STERN & GOLDBERG, a California
28 Partnership; PATRICK C.
MCGARRIGLE, ESQ., an individual;
MCGARRIGLE, KENNEY &
ZAMPIELLO, A PROFESSIONAL
LAW CORPORATION, a California
corporation; DOES 1-99,

Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 9, 2022, at 1:30 p.m. or as soon thereafter as the matter may be heard, in Courtroom 3A of the above-entitled court, located at 221 West Broadway, San Diego, CA 92101, defendants: (1) Linda R. Kramer, an individual; (2) Linda R. Kramer as co-trustee of The Lynn and Erik's Trust; and (3) Erik Von Pressentin Hunsaker as co-trustee of The Lynn and Erik's Trust will move this Court for an order dismissing all causes of action against them in all their capacities pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, and the pleadings and papers filed herein.

Pursuant to the Court's Standing Order for Civil Cases, defendants met and conferred in good faith with plaintiff prior to bringing this motion, but were unable to resolve the issue.

Respectfully submitted,

DATED: November 17, 2021

FITZGERALD KNAIER LLP

By: s/ Keith M. Cochran

Keith M. Cochran
Attorney for Defendants
Linda R. Kramer and Erik Von
Pressentin Hunsaker as Co-
Trustees of the Lynn and Erik's
Trust and Linda R. Kramer, as an
individual

CERTIFICATE OF SERVICE

I certify that today I am causing to be served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users.

Dated: November 17, 2021

s/ Keith M. Cochran

Keith M. Cochran, Esq.

ALAN J. DROSTE [SBN 105616]
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Newport Beach, CA 92660
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E-mail: ad@mcqueendroste.com
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Attorneys for Defendant
DIANE G. DENNIS

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LAURA LYNN HAMMETT, an
individual,

Plaintiff,

v.

MARY E. SHERMAN, an individual;
et al.,

Defendants.

Case No. 19-CV-0605-JLS-LL

Hon. Todd W. Robinson
Courtroom 3A

Magistrate Judge, Hon. Allison H. Goddard
Courtroom

**NOTICE OF MOTION AND MOTION
TO DISMISS THE THIRD AMENDED
COMPLAINT AND EACH CAUSE OF
ACTION ALLEGED AGAINST
DEFENDANT DENNIS FOR FAILURE
TO STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED
[Fed. R. Civ. P., Rule 12(b)(6)]**

**FILED CONCURRENTLY WITH
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF THE
MOTION TO DISMISS**

Date: March 22, 2022
Time: 9:30
Courtroom: 3A

Complaint filed: April 2, 2019
Trial Date: None

TO PLAINTIFF HAMMETT, PRO SE:

PLEASE TAKE NOTICE that at 9:30 a.m. on March 22, 2022, or as soon
thereafter as the matter may be heard, before the Honorable Todd W. Robinson, Judge
presiding, in Courtroom 3A of the above-entitled court, located at 221 West

Broadway, San Diego, California 92101, Defendant Diane G. Dennis (“Dennis”) will move to dismiss the Third Amended Complaint (“TAC”) of Plaintiff Laura Lynn Hammett, and the Second Cause of Action alleged against Dennis, pursuant to Fed. R. Civ. P., Rule 12(b)(6) and CivLR 7.1, because Plaintiff’s TAC, and the cause of action brought against Dennis therein, fail to state a claim upon which relief can be granted.

On the grounds set forth in the accompanying Memorandum of Points and Authorities, Dennis moves to dismiss the TAC and the Second Cause of Action for Dissolution of Silver Strand Plaza, LLC brought against Dennis.

This Motion to Dismiss will be based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, which is incorporated in this Notice by this reference, and the pleadings and papers filed herein, and on such other matters as the Court may consider before ruling on this Motion.

CERTIFICATE OF COMPLIANCE

Pursuant to Section III(A)(1) of Hon. Todd W. Robinson’s Standing Orders for Civil Cases, undersigned counsel for Dennis, via a joint email sent on November 16, 2021 by Frank Polek, counsel for co-defendant Mary Sherman, conferred with Plaintiff concerning the relief requested herein. Plaintiff opposes the relief requested.

Dated: November 17, 2021

McQUEEN DROSTE LLP

By: /s/ Alan J. Droste
 Alan J. Droste
 ad@mcqueendroste.com
 (949) 939-3484

ROBINSON WATERS & O’DORISIO, P.C.

By: /s/ Nicholas F. Labor
 Nicholas F. Labor
 Admitted Pro Hac Vice August 7, 2019
 nlabor@rwolaw.com
 (303) 297-2600
 Attorneys for Defendant
 DIANE G. DENNIS

Frank J. Polek, SBN 167852
POLEK LAW
3033 Fifth Avenue, Suite 400
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619-550-2455
619-274-8166 (fax)
frank@poleklaw.com

Attorney for Defendants
MARY E. SHERMAN individually and
in her capacities as Manager, Co-Trustee and
Trustee; and JEFFREY M. SHERMAN
in his capacity as Co-Trustee

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LAURA LYNN HAMMETT, an
individual,

Plaintiff,

vs.

MARY E. SHERMAN, an individual;
et al.,

Defendants.

Case No.: 19-CV-0605-TWR-AHG

**NOTICE OF MOTION AND MOTION TO
DISMISS THE THIRD AMENDED
COMPLAINT FOR LACK OF SUBJECT
MATTER JURISDICTION (F.R.C.P.
12(b)(1))**

DATE: March 9, 2022
TIME: 1:30 p.m.
CTRM: 3A

Hon. Todd W. Robinson

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 9, 2022 at 1:30 p.m., in Courtroom 3A of
the above-entitled Court, located at 221 West Broadway, San Diego, CA 92101, the
Honorable Todd W. Robinson presiding, Defendants: (1) MARY E. SHERMAN, an
individual; (2) MARY E. SHERMAN, as Manager of Silver Strand Plaza, LLC; (3)
MARY E. SHERMAN as CO-TRUSTEE of the J & M SHERMAN FAMILY TRUST, a
California revocable trust; (4) JEFFREY M. SHERMAN, as CO-TRUSTEE OF THE J &
M SHERMAN FAMILY TRUST; (5) MARY E. SHERMAN, as TRUSTEE OF THE

1 ALEXA SHERMAN IRREVOCABLE TRUST, a California irrevocable trust; (6)
2 MARY E. SHERMAN, as TRUSTEE OF THE DANA SHERMAN IRREVOCABLE
3 TRUST, a California irrevocable trust; (7) MARY E. SHERMAN, as TRUSTEE OF
4 THE JENNA SHERMAN IRREVOCABLE TRUST, a California irrevocable trust; (8)
5 MARY E. SHERMAN as TRUSTEE OF THE BROXTON DENNIS IRREVOCABLE
6 TRUST, a California irrevocable trust; (9) MARY E. SHERMAN as TRUSTEE OF THE
7 CURT DENNIS IRREVOCABLE TRUST, a California irrevocable trust; (10) MARY E.
8 SHERMAN, as TRUSTEE OF THE SEAN LYNN IRREVOCABLE TRUST, a
9 California irrevocable trust; and (11) MARY E. SHERMAN, as TRUSTEE OF THE
10 BRANDEN LYNN IRREVOCABLE TRUST, a California irrevocable trust
11 (collectively, "Defendants"), will move and hereby move to dismiss the Third Amended
12 Complaint for lack of subject matter jurisdiction (F.R.C.P. 12(b)(1)).

13 This motion will be based upon this Notice of Motion and Motion, the
14 Memorandum of Points and Authorities in Support thereof, any matters upon which this
15 Court may properly take judicial notice, and the complete records and files of this action.

16 Pursuant to this Court's Standing Order for Civil Cases, Defendants have met and
17 conferred in good faith with Plaintiff prior to bringing this motion, but the parties were
18 unable to resolve the issue prior to the filing of this motion.

19 Dated: November 17, 2021

POLEK LAW

21 By: Frank J. Polek
22 Frank J. Polek

23 Attorney for Defendants MARY E. SHERMAN
24 individually and in her capacities as Manager,
25 Co-Trustee and Trustee; and JEFFREY M.
26 SHERMAN in his capacity as Co-Trustee
27
28

Laura Lynn Hammett
Bohemian_books@yahoo.com
500 Amity Road Suite 5B #306
Conway, Arkansas 72032

Plaintiff in Pro Se
Laura Lynn Hammett

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

LAURA LYNN HAMMETT, an)	Case No.: 19-CV-0605-TWR-AHG
individual,)	
)	
Plaintiff,)	THIRD AMENDED VERIFIED
)	COMPLAINT DECLARATORY
vs.)	RELIEF FOR AN ORDER OF
)	SPECIFIC PERFORMANCE AND
)	TO DISSOLVE SILVER STRAND
MARY E. SHERMAN, an individual;)	PLAZA, LLC
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; JEFFREY)	
M. SHERMAN as CO-TRUSTEE OF)	
THE J & M SHERMAN FAMILY)	
TRUST; MARY E. SHERMAN as)	
TRUSTEE OF THE ALEXA)	
SHERMAN IRREVOCABLE TRUST,)	
a California irrevocable trust; MARY E.))	
<u>SHERMAN as TRUSTEE OF THE</u>)	

1 DANA SHERMAN IRREVOCABLE)
 2 TRUST, a California irrevocable trust;)
 3 MARY E. SHERMAN as TRUSTEE)
 4 OF THE JENNA SHERMAN)
 5 IRREVOCABLE TRUST, a California)
 6 irrevocable trust; MARY E.)
 7 SHERMAN as TRUSTEE OF THE)
 8 BROXTON DENNIS IRREVOCABLE)
 9 TRUST, a California irrevocable trust;)
 10 MARY E. SHERMAN as TRUSTEE)
 11 OF THE CURT DENNIS)
 12 IRREVOCABLE TRUST, a California)
 13 irrevocable trust; MARY E.)
 14 SHERMAN as TRUSTEE OF THE)
 15 SEAN LYNN IRREVOCABLE)
 16 TRUST, a California irrevocable trust;)
 17 MARY E. SHERMAN as TRUSTEE)
 18 OF THE BRANDEN LYNN)
 19 IRREVOCABLE TRUST, a California)
 20 irrevocable 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 AND)
 ERIK'S TRUST; DIANE G. DENNIS,)
 an individual; DOES 1-99)
)

Defendants.

Plaintiff Laura Lynn Hammett alleges as follows:

1. This Third Amended Complaint leaves most of the Second Amended
 Complaint Allegations intact, while limiting the causes of action to a request for
 declaratory relief. Paragraphs 1 through 14 are added as a brief synopsis of the

1 amended basis of the complaint. Important facts that Plaintiff believes the Court
2 overlooked or played down in its Order Granting the Motion To Dismiss are in
3 bold.

4 2. The Court found that Plaintiff does not have enough evidence to
5 pursue fraud or the other causes of action.

6 3. Plaintiff has asked for her contractual right to access to company
7 books and records since 2013 and has not received full access as of this writing.

8 4. Plaintiff has made a diligent effort to substantiate her suspicions of
9 fraud, breach of fiduciary duty, misappropriation of company funds. While
10 Plaintiff believes the evidence she has collected, detailed below, makes her
11 suspicions plausible, the Court disagrees.

12 5. Therefore, Plaintiff is asking that the Court order Mary Sherman and
13 Silver Strand Plaza, LLC to comply with the Operating Agreement and provide
14 Plaintiff with access to the entire books and records.

15 6. Plaintiff was able to have the Operating Agreement reflect that the
16 sole property of Silver Strand Plaza, LLC would be Silver Strand Plaza, and all
17 other property of Silver Strand Plaza, LLC is incidental.

18 7. Plaintiff is not given enough information to know what property was
19 bought with money from Plaintiff's capital account and in what name that property
20 is held.

21 8. Plaintiff knows she has not received a distribution since 2017 and her
22 capital account is not growing.

23 9. Denying Plaintiff her contractual right to inspect the records means
24 those who are denying the right are trying to hide something.

25 10. It was acceptable to keep the LLC intact until the buyer had an
26 opportunity to file a complaint against SSP, LLC if needed. The sale was closed in
27 February 2017. There are no disputes with the buyer pending of which Plaintiff is
28 aware.

1 11. There is no legitimate reason to keep the LLC intact and there is no
2 legitimate reason to withhold the remainder of Plaintiff's capital account, over
3 \$70,000 from her.

4 12. The stock market crash in March 2020 wiped out most of Plaintiff's
5 liquid assets and the failure to dissolve SSP, LLC and distribute the remainder of
6 Hammett's capital account to her is burdensome.

7 13. Plaintiff has received no notice of an annual meeting since 2013.

8 14. Mary Sherman has not responded to any of Plaintiff's inquiries as to
9 the K-1s Plaintiff received for the LLC since 2017. Plaintiff's share of depreciation
10 was not reported to Plaintiff. It is not possible for Plaintiff to know how much the
11 depreciation was without access to the company books and records.

12 15. Plaintiff Laura Lynn Hammett ("Plaintiff" or "Hammett") is an
13 individual residing in Faulkner County, Arkansas and was at all times relevant
14 herein a member of Defendant Silver Strand Plaza, LLC. ("SSP" or "the
15 Company")

16 16. The shares held by Plaintiff constitute 14.1571% of the shares of SSP.

17 17. Separate defendant Silver Strand Plaza, LLC is a California limited
18 liability company whose principal asset was a multi-tenant shopping center in
19 Imperial Beach, California that was sold in January 2017. SSP resides in the
20 Central District of California as per 28 U.S.C. §1391(c)(2). Plaintiff said SSP
21 resided in Southern District in the FAC, but jurisdiction can be had in either
22 Southern or Central District pursuant to §1391(b)(2) because a substantial part of
23 the events or omissions giving rise to the claim occurred in Central District, and a
24 substantial part of property that is the subject of the action is situated in Southern
25 District. SSP headquarters is in Central District and the Silver Strand Plaza is no
26 longer owned by SSP.

27 18. Plaintiff is informed and believes, and on that basis alleges, that SSP
28 is a closely held Limited Liability Company.

1 19. Defendant Mary E. Sherman as an individual (“Sherman”) resides in
2 Los Angeles County, California. Mary E. Sherman is sued under nine further
3 separate capacities, each with liability arising from varied rights and duties.

4 20. Separate defendant Mary E. Sherman as manager of Silver Strand
5 Plaza, LLC (“the Manager”) is and was the Manager of Defendant SSP, residing in
6 Los Angeles, California.

7 21. Separate defendants Mary E. Sherman as Trustee of the Jenna
8 Sherman Irrevocable Trust, Alexa Sherman Irrevocable Trust, Dana Sherman
9 Irrevocable Trust, Broxton Dennis Irrevocable Trust, Curt Dennis Irrevocable
10 Trust, Sean Lynn Irrevocable Trust, and Branden Lynn Irrevocable Trust
11 (collectively, “Grandchildren Trusts”) were and are at all relevant times trustees of
12 the member California irrevocable trusts holding a combined 29.2145 interest
13 therein.

14 22. Separate defendant Mary E. Sherman as Co-Trustee of the J&M
15 Sherman Family Trust and separate defendant Jeffrey M. Sherman as Co-Trustee
16 of the J & M Sherman Family Trust are the Co-Trustees of a California revocable
17 trust and were at all times relevant herein a member of Defendant SSP, holding a
18 14.1571% interest therein.

19 23. Separate defendant Linda R. Kramer (“Kramer”) is an individual
20 residing in San Diego, California, and was at all relevant times herein a member of
21 SSP holding a 14.1571% interest therein. Defendant Kramer is commonly called
22 “Lynn”, the same as Plaintiff’s surname before her marriage in April 2019, which
23 may make email evidence in this case confusing.

24 24. Separate defendant Linda R. Kramer as co-trustee of the Lynn and
25 Erik’s Trust and separate defendant Erik Von Pressintin Hunsaker as Co-Trustee of
26 the Lynn and Erik’s Trust are the co-trustees of a California revocable trust.

27 25. Where there is more than one trustee, all trustees must concur in the
28 administration of the trust, but the entire body can direct one of their number to

1 transact business, which it may be inconvenient for the others to perform, and the
2 acts of the one thus authorized are the acts of all, and binding on all. (Howard Fire
3 Ins. Co. v. Chase, 72 U.S. 509, SCOTUS (1866), h.n. 6) “Generally, powers of
4 trustees of private trust are undivided and trustees cannot act separately...”(Bitker
5 v. Hotel Duluth Co., 83 F.2d 72, 8th Cir Ct. App, (1936)).

6 26. Mary E. Sherman acted on behalf of the J&M Sherman Family Trust
7 on all matters regarding SSP after Jeffrey M. Sherman signed the OA in 2009,
8 binding Jeffrey M. Sherman as Co-Trustee to all acts of his Co-Trustee. The two
9 separate defendants collectively are called “the J&M Trust Defendants”.

10 27. Linda R. Kramer as Co-Trustee of the Lynn and Erik’s Trust acted on
11 behalf of the trust on all matters regarding SSP, binding Erik Von Pressintin
12 Hunsaker as Co-Trustee to all acts of his Co-Trustee. The two defendants
13 collectively are referred to as the “L&E Trust Defendants”.

14 28. Kramer made an assignment of her share of SSP to the L&E Trust
15 Defendants that is void *ab initio* due to Article VII of the Operating agreement.

16 29. Separate defendant Diane G. Dennis (“Dennis”) is an individual who
17 was a member of SSP holding a 14.1571% interest therein at all relevant times
18 herein. The Member List of SSP provided by Defendant Sherman through her
19 attorney on April 5, 2019 shows an address for Defendant Dennis that is a P.O.
20 Box in Santa Fe, New Mexico. Dennis was living in Colorado when last seen by
21 Plaintiff and has a Colorado telephone number.

22 30. The aforementioned eleven separate defendants who had voting rights
23 and duties to make major decisions for SSP, called herein as J&M Trust
24 Defendants, Grandchildren Trusts, Kramer and Dennis are collectively referred to
25 as “Defendant Members”. The Operating agreement refers to the Defendant
26 Members, deceased Member Roberta Kramer and Plaintiff as “Members” and that
27 denotation is adopted here (except, of course Roberta Kramer was not included
28 after she passed away).

1 31. The Members are all siblings, except the J&M Trust Defendants.
2 Jeffrey M. Sherman, co-trustee of the J&M Sherman Family Trust, is married to
3 sibling Mary E. Sherman.

4 32. Mary E. Sherman in each and every capacity knows what each and
5 every other Mary E. Sherman capacity is thinking and doing.

6 33. To make the pleading less cumbersome, when it says Mary E.
7 Sherman in one capacity acted toward the Members or Member Defendants, such
8 as sending an email or convincing them of something, it should be understood that
9 she did not act upon Mary E. Sherman in other capacities, like sending a copy to
10 herself or convincing herself.

11 34. The Manager and Mary E. Sherman in each of her capacities used
12 only one email account in all email communications of which Plaintiff is aware.

13 35. Plaintiff does not know the true names, legal capacities or exact nature
14 of the involvement of the Defendants sued herein as DOES 1-99, inclusive, and
15 therefore sues said Defendants by such fictitious names.

16 36. Plaintiff is informed and believes, and thereon alleges, that each
17 Defendant, whether specifically named or designated herein as a DOE, was the
18 agent, representative, servant, employee, principal, assignee, co-conspirator,
19 management company and/or representative of each of the remaining Defendants,
20 and in doing the acts hereinafter alleged, was acting within the course and scope of
21 said agency, employment, assignment, conspiracy, agreement, management
22 company agreement and/or service with the approval, knowledge, authority,
23 permission and/or consent of the remaining Defendants, and each of them.

24 37. Plaintiff anticipates the need to file a motion per Civil Code 1714.10
25 for leave to add previous or present counsel to SSP as Doe Defendants on any
26 cause of action that might involve a civil conspiracy but cannot do so until after
27 discovery.

1 38. Counsel to SSP from December 18, 2013 to May 2018 was Ellis Roy
2 Stern (“Stern”) of the law partnership Stern and Goldberg.

3 39. Counsel to SSP from May 2018 to about June 2019 was Patrick C.
4 McGarrigle (“McGarrigle”) of McGarrigle, Kenney and Zampiello, A Professional
5 Corporation.

6 40. Counsel to SSP from June 2019 to this writing was Daniel Forde
7 (“Forde”) of Hoffman and Forde, Attorneys at Law.

8 41. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332,
9 because this is a civil action in which Plaintiff is a citizen of and residing in
10 Arkansas; Defendants Sherman and Kramer are California citizens and residents;
11 Dennis is a citizen and residing in Colorado or New Mexico; The J&M Sherman
12 Family Trust is a revocable trust formed in California; The Lynn and Erik’s Trust
13 is a revocable trust formed in California; The Grandchildren Trusts are irrevocable
14 trusts formed in California and SSP is a California limited liability company
15 headquartered in California and the amount in controversy exceeds \$75,000
16 exclusive of interest and costs.

17 42. Venue is proper in the Southern District of California pursuant to
18 U.S.C. § 1391(b)(2).

19 43. Plaintiff filed against Sherman, the Manager and SSP in Central
20 District in May 2018 and then dismissed that suit without prejudice on the
21 fraudulent inducement of McGarrigle on behalf of the Manager, who promised full
22 disclosure of SSP financial records, said disclosure still incomplete to this writing.

23 44. Defendant Kramer resides in the Southern District; The L&E Trust
24 Defendants reside in the Southern District; a substantial part of the events or
25 omissions giving rise to the claim occurred, and a substantial part of property that
26 is the subject of the action is situated in the Southern District.

1 45. All Defendants can be subject to personal jurisdiction in the Southern
2 District as each has argued to have the case remain in the Southern District of
3 California.

4 46. Plaintiff spent her first 32 years domiciled in the Central District and
5 about 23 years domiciled in the Southern District of California and has significant
6 contacts in both districts.

7 47. The Central District would serve the interests of justice better than the
8 Southern District because it is more pro se friendly than the Southern District,
9 offering pro-bono services and allowing for limited scope representation without
10 prior approval, thereby giving the plaintiff who cannot afford full representation
11 more equal access to the court, equal justice. Plaintiff was represented on
12 contingency, but the defendants made it clear they would increase the costs of
13 litigation making it not economically feasible for the plaintiff's attorney to
14 continue on contingency.

15 48. The Amended and Restated Operating Agreement of Silver Strand
16 Plaza, LLC entered into as of January 1, 2009 ("OA") is incorporated into this
17 complaint as Exhibit 1.

18 49. The OA is a contract between the Plaintiff and each of the Member
19 Defendants. The Plaintiff is uncertain if Mary E. Sherman signed an employment
20 agreement, but she was the person who helped draft the OA, signed the OA in her
21 capacity as trustee for various trust Members and acted as if she adopted the OA as
22 her employment agreement.

23 50. Plaintiff has performed all terms and provisions of the OA sued upon
24 herein and has otherwise acted in accordance with the law.

25 51. Prior to the restatement of the OA in 2009, SSP was co-managed by
26 the Members' parents, Norman and "Sandi" Kramer, Jeffrey M. Sherman and
27 Mary E. Sherman.

1 52. The OA contract is poorly written and was not amended to comply
2 with the requirement of California Revised Uniform Limited Liability Company
3 Act Section 17704.07(a) and 17702.01(5), leaving an ambiguity as to if the LLC is
4 member-managed, which is the the default, or manager-managed.

5 53. Before accepting the contract, Hammett made two suggestions. As
6 drafted, the OA gave the Manager the right to buy any property she wanted and
7 demand the Members contribute capital or jeopardize their ownership interest in
8 SSP. Changing a few words corrected this problem and the changes were made,
9 after some haughty conveyance of her disgust from Sherman.

10 54. Sherman in each of her capacities made the new version with the two
11 corrections a take-it-or-leave-it offer. Sherman insinuated that leaving it meant not
12 receiving about a half million dollars' worth of capital from Norman and Sandi
13 Kramer's trust.

14 55. Hammett signed the contract as it was because Sherman had vastly
15 more power than Hammett over Norman and Sandi Kramer, making it a contract of
16 adhesion.

17 56. Ambiguities in the contract should be resolved against the
18 "draftsmen", the Manager, Jeffrey M. Sherman as Co-Trustee of the J&M Sherman
19 Family Trust and Mary E. Sherman in all her capacities.

20 57. SSP is controlled by the Manager except what are called "Major
21 Decisions" which are controlled by the Members. (OA Article V, especially at §
22 5.5)

23 58. Regardless of member-managed or manager-managed, the Members
24 and the Manager have a fiduciary duty to one another to discharge the duties to a
25 limited liability company and the other members under the California Revised
26 Uniform Limited Liability Company Act and under the operating agreement and
27 exercise any rights consistent with the obligation of good faith and fair dealing.
28 Each Member Defendant and the Manager failed in this regard.

1 59. Section 5.5 is convoluted. The Manager assured Hammett and the
2 other Members by email on March 23, 2009 that section 5.5 would require that
3 51% of the voting Members consent to make major decisions that might harm each
4 member separately, like ordering each member to contribute capital to buy another
5 property.

6 60. Section 5.5 establishes that Major Decisions must be made by
7 “consent of Members holding at least 51% of the percentage interests.” Included,
8 but not exclusive:

9 61. Approving an Assignment. (OA § 5.5(b));

10 62. Admitting any person as a Member. (OA §5.5(e));

11 63. Doing any act in contravention of the Articles of Organization filed by
12 the Company. (OA § 5.5(f)); or

13 64. Possessing Company assets, or assigning the Company’s rights in
14 specific Company assets, for other than a Company purpose. (OA § 5.5(i)).

15 65. Unfortunately, section 5.5 is a paper tiger, even before Roberta
16 Kramer’s death. Even if Hammett could convince Dennis and Kramer to vote
17 against a misappropriation, there is no mechanism, other than a lawsuit, to make
18 the Manager comply with the duties specified in the OA. The Manager could not
19 be removed by a vote. (OA § 5.1(b)) She can only be removed by operation of law,
20 or by an order or decree of any court of competent jurisdiction, filing a bankruptcy
21 petition, or submitting a voluntary resignation.

22 66. Since Mary E. Sherman violates the contract which was accepted by
23 100% of the members, and of which the Manager controlled the drafting, it is
24 reasonable to believe she will not comply with the vote of the non-Mary Sherman
25 Members if she disagrees.

26 67. Sherman told Hammett she controlled more than 50% of the vote
27 anyhow.
28

1 68. Because the contract was poorly written, the actual percentages are
2 questionable. Section 5.5 does not specify if the voting rights of the deceased
3 Member are split between the remaining Members or if the percentages are
4 recalculated between the remaining Members. In the former, the J&M Trust
5 Defendants are voting over 51% of the shares, in the later, 50.52%.

6 69. The Defendant Members and Member Roberta Kramer were in
7 complete alignment with the Manager since February 2014 in respect to all votes
8 for the major decisions of SSP, and they are each adversarial toward the Plaintiff.

9 70. No Member or assignee has joined Plaintiff in her complaint or filed a
10 separate complaint regarding SSP, its Members, its counsel, its employees or its
11 Manager since Plaintiff first asked them to in 2014. Kramer has given an
12 affirmative “no” to any lawsuit against SSP, the Manager or any Member but
13 Hammett.

14 71. Plaintiff begged and pleaded, told the Defendant Members she had a
15 Hastings and Stanford educated attorney who would help correct the Manager’s
16 misappropriations and breaches of fiduciary duty on contingency, and filed an
17 action through said counsel against just Mary Sherman as an individual and
18 manager of SSP, and SSP to which none of the Defendant Members or assignees
19 joined.

20 72. The Plaintiff therefore chooses to prosecute her claims as direct injury
21 because she is the sole minority Member who does not have dirty hands, who did
22 not breach her fiduciary duty to the other Members, who acted in good faith at all
23 times and who did not receive company assets in cash or in kind for other than
24 company purposes and who had distributions that should have been made withheld
25 unjustly and without her consent.

26 73. Meaningful regulation of the Manager’s fiduciary duties and the
27 Member Defendant’s duty of loyalty to the Plaintiff Member is possible only by
28 Court intervention and the Defendant Members refuse to join in an action.

1 74. The OA § 5.8 limits the liability of Members drastically, but not for
2 any act or failure to act that constitutes fraud or negligence.

3 75. Furthermore, the OA shall not eliminate or limit a member or
4 manager's liability to Members for money damages for (1) Breach of the duty of
5 loyalty;

6 76. (2) A financial benefit received by the member or manager to which
7 the member or manager is not entitled; or

8 77. (3) Intentional infliction of harm on a member. (CA Corp §
9 17701.10(g))

10 78. The Defendant Member's refusal to dissolve the Company and
11 receive their equal shares of the capital remaining speaks to their intent to keep
12 Plaintiff's share for themselves and their co-conspirators if they can avoid liability
13 for their transgressions successfully.

14 79. Despite Hammett asking numerous times for votes pursuant to OA 5.5
15 (f) and (i), none after February 2014 was held.

16 80. Dennis and Kramer refused to use a reasonable standard of care in
17 their duty to make Major Decisions.

18 81. The Members were not a "Board of Directors" of the company, and
19 therefore not subject to the "business judgment rule" codified in California
20 Corporations Code §309.

21 82. According to Black's Law Dictionary, the Board of Directors is "The
22 governing body of a corporation, partnership, association, or other organization,
23 elected by the shareholders or members to establish policy, elect or appoint officers
24 and committees, and make other governing decisions. — Often shortened
25 (informally) to board. — Also termed board of governors; board of managers;
26 board of trustees (esp. in charitable and educational organizations); executive
27 board."

28 83. The Members were not elected.

1 84. The Members did not establish policy.

2 85. The Members did not elect or appoint officers and committees. The
3 manager appointed officers. (OA §5.4)

4 86. The Members had a distinct and limited management function
5 specified in OA section 5.5. The most pertinent management function was
6 oversight. If the Manager abused her position, each Member must approve or
7 oppose the contravention.

8 87. Federal and state courts have generally applied the law of corporations
9 to LLCs for “business judgment rule”. *Montgomery v. eTrepid Technologies,*
10 *LLC, 548 F.Supp.2d 1175, 1179.*

11 88. SSP being analogous to a corporation, the Members were shareholders
12 with a limited but important management function. They were not directors or even
13 officers. Plaintiff could find no case law concerning the application of the business
14 judgment rule to shareholders, but there is case law that supports the denial of
15 application of the business judgment rule to corporate officers.

16 89. Even if offered the protection of the presumptions of the Business
17 Judgement Rule, the Defendant Members failed. The Manager and Member
18 Defendants took action without reasonable inquiry and with improper motives.
19 When asked to make “Major Decisions” the Member Defendants did not conduct a
20 good faith and reasonable investigation and usually refused to vote either way.

21 90. Generally, acting in bad faith, the Member Defendants and Roberta
22 Kramer engaged in self-dealing and in conflicted and self-interested relationships
23 with McGarrigle, Stern and their firms; allowed the misappropriation and waste of
24 assets of SSP by engaging in bad-faith voting schemes which were not intended to
25 benefit SSP and were aimed at harming the Plaintiff; failed to abide by the terms of
26 the Operating Agreement; and engaged in other wrongful acts and conduct which
27 were intended to harm both SSP and Hammett, knowing that Hammett was the
28 only member who would not be reimbursed for SSP losses by Sandi Kramer from

1 the Members' father's by-pass trust or directly from the SSP money
2 misappropriated by the Manager.

3 91. The rationale for stripping Hammett of her fair share of SSP was that
4 Hammett was given her shares "for breathing"; Hammett was the sole Member
5 who refused to sign a rescission deed on other property Sandi Kramer gifted the
6 members from Norman Kramer's bypass trust (called "Woodman and Magnolia");
7 Hammett was an "ungrateful creature"; and Dennis and Mary E. Sherman in all her
8 capacities wrote falsely that Hammett is a "criminal" who evaded taxes, got fired
9 and had an illegal pornography business; and who had a judgment against her for
10 child support which purportedly made her a criminal.

11 92. But a gift is not revocable, and Hammett was under no legal
12 obligation to rescind the deed to Woodman and Magnolia.

13 93. Fiduciary duties of loyalty and the covenant of good faith and fair
14 dealing must be extended to even "ungrateful creatures" and someone who
15 commits an unrelated crime.

16 94. Hammett is not a criminal and has never been charged with any crime.
17 Writing that Hammett was a criminal was malicious and defamatory and shows
18 that Dennis and Mary E. Sherman in all her capacities were not acting in good
19 faith.

20 95. A child support judgment against a person does not make the person a
21 criminal.

22 96. Regardless of their rationalizations, Hammett's siblings were just
23 greedy and mean.

24 97. This Third Amended Complaint is written about two and a half years
25 after the Original Complaint and Plaintiff has discovered that the breaches of
26 fiduciary duty were even more egregious in 2012 and 2013 than Plaintiff thought
27 when she filed the FAC.

28

1 98. The exorbitant management fees of 11.45% began in 2012 instead of
2 2014.

3 99. Also, the meaning of “MSFP” in the MSFP “loan” that neither the
4 Manager nor SSP Counsel explained to Hammett was disclosed briefly on a K-1
5 for 2013 produced after the meeting of February 10, 2014 as discussed below. It
6 represents a passthrough entity called “Sherman Family Partnership”. Plaintiff
7 found no record of “Sherman Family Partnership” on the Secretary of State
8 website business search. The Manager offered no explanation upon Plaintiff’s
9 inquiry sent to all the Member Defendants on July 22, 2020.

10 100. The Member Defendants should have received the same K-1
11 information that Plaintiff received for 2013, but no inquiry or investigation was
12 made by them that Plaintiff is aware of. (Of course the J&M Trust Defendants and
13 the Grandchildren’s Trusts knew what the MSFP loan and Sherman Family
14 Partnership were all along.)

15 101. The Defendants act as if (and make statements through counsel) that
16 the OA is null and void because Plaintiff filed a suit based on their violations of the
17 OA and the duties that arose from it.

18 102. The OA is not null and void. The Manager and Members are still
19 bound by the same rights and duties. The Defendant Members continue to violate
20 them.

21 103. Again, applying the laws of corporations, it would be absurd if
22 Walmart said, “we had a lawsuit filed against us, so we are suspending all annual
23 reports to shareholders.”

24 104. The Member Defendants have absolutely known about the Manager’s
25 overpayment of management fees and other misappropriations since no later than
26 October, 2019 when they received the exhibits Plaintiff filed in this case and still
27 refuse to join in an action to remove the Manager by court action.

28

1 105. The Manager said in a prospectus to potential buyers that reasonable
2 management fees would be about 4%.

3 106. The Defendant Members continue to breach their fiduciary duties and
4 the implied covenant of good faith and fair dealing.

5 107. The Manager has an obligation to Hammett as a Member of SSP to
6 provide access to accurate books and records of the company and to make
7 distributions from SSP with a 14.1571 percent of each total distribution made to
8 Hammett. This percentage will be called “Hammett’s Fair Share”.

9 108. The J&M Trust Defendants and Grandchildren’s Trusts have an
10 obligation of acting in good faith and fair dealing. They shall not conceal acts of
11 willful misconduct by the Manager that they know about. When discussing the
12 Company finances, for example when discussing fair market value for a buyout in
13 lieu of dissolution, they shall not misrepresent what they know the accurate figures
14 to be.

15 109. The Defendants made numerous misrepresentations and concealments
16 of the truth to Hammett. A sampling of three specific, discrete misrepresentations
17 are listed herein.

18 110. The Defendants knew the falsity of what they misrepresented and had
19 scienter of the concealments.

20 111. The Defendants intended to defraud Hammett.

21 112. Hammett justifiably relied on the misinformation from the Defendants
22 and was damaged by that reliance.

23 113. First, the Manager told Plaintiff that she was paying reasonable
24 management fees during the meeting of February 10, 2014.

25 114. The Manager concealed the overpayment of management fees after
26 the February 2014 meeting by denying Hammett her rightful access to the
27 Company financials pursuant to CA Corp § 17704.10(e) and OA Article IV.
28

1 115. The Manager paid Sherman and a professional manager combined
2 about 11.45% management fees from 2012 through 2016 inclusive.

3 116. Mary E. Sherman as Co-Trustee of the J&M Sherman Family Trust
4 and the Grandchildren's Trusts knew the Manager was paying almost three times
5 **what they knew to be a reasonable management fee** in contravention to OA §
6 6.1 which says the Manager may receive "reasonable compensation".

7 117. The J&M Trust Defendants and the Grandchildren's Trusts concealed
8 the overpayment of management fees from Hammett. In the February 10, 2014
9 meeting, the J&M Trust Defendants and the Grandchildren's Trusts contended that
10 the management fees being paid were reasonable.

11 118. Second, the Manager told Hammett the rents collected on which NOI
12 and thus distributions were based were at market rate except where long term
13 tenants operated on old leases.

14 119. The Manager sent an email on December 3, 2013 that said in part:

15
16 "In 2014, we will have at least 4 suites unleased, and 6 other leases
17 expiring.//

18 Therefore, we are unable to make further distributions until we know our
19 true income v. expenses."

20
21 120. Plaintiff responded that evening, in part:

22
23 "This may be a wonderful opportunity. Without seeing the spreadsheets, I
24 cannot say for sure, but it seems from my experience that the rents were
25 below market rate. (We had good distributions, but I attribute that to the fact
26 that Dad and Mom paid the property off and we had no mortgage expense.)"

1 121. In the meeting of February, 2014, the Manager maintained her
2 position that all rents in the area were as low as she reported to Hammett that SSP
3 was collecting.

4 122. On the Offering Memorandum page 34 written in 2016 there were 27
5 tenants listed. Eleven of those leases were commenced after February 2014.

6 123. One tenant of particular note was Partners Health and Wellness. Its
7 lease was commenced on April 1, 2014. It had 8,154 square feet. (The average
8 space was, not considering the three roof cell site tenants, 1,860 square feet.) The
9 gym paid seventy cents per square foot (\$.70/sq. ft.) The average rent in Silver
10 Strand Plaza was \$1.22/sq. ft. The gym was owned by Norman and Sandi Kramer
11 for many years prior to 2014. Plaintiff does not know who owned the gym in April
12 2014. The Secretary of State Business Entity Listing shows the earliest LLC
13 Registration for Partners Health and Wellness to be April 27, 2020.

14 124. A second tenant of note is IB Beautiful who had 929 square feet
15 commencing on February 1, 2016 for twelve cents per square foot (\$.12/sq.ft.)
16 There is no SOS registration for an LLC or partnership called "IB Beautiful".

17 125. On Offering Memorandum page 18, San Diego retail market rental
18 rates are quoted as being \$2.02 per square foot per month.

19 126. Clearly the Manager was reporting collecting rents that were
20 significantly lower than market rents. (And then paying almost triple the
21 reasonable percentage of that to "management", with \$65,000 in "bonuses" to
22 Sherman after the sale of the property.)

23 127. The J&M Trust Defendants and Grandchildren's Trusts knew the
24 Manager was not bringing in market rates of rent on the books and did not disclose
25 this information to Hammett. When Hammett specifically asked about the rents,
26 the Defendants told her the Manager was not underperforming.

27 128. Third, In June 2015 Hammett offered to sell her shares of SSP to the
28 other Members. Mary E. Sherman in each capacity understood that to mean

1 Hammett wanted a dissolution and used that language in an email to the other
2 Members. (Hammett specifically wrote that she wanted a “dissolution” in 2013 and
3 2014.)

4 129. Stern negotiated on behalf of the other Members, disregarding the
5 intent of a fair dissolution as per CA Corp 17707.03(c)(1): “In any suit for judicial
6 dissolution, the other members may avoid the dissolution of the limited liability
7 company by purchasing for cash the membership interests owned by the members
8 so initiating the proceeding, the ‘moving parties,’ at their fair market value.”

9 130. Stern used different numbers than those given to arms-length buyers
10 in 2016 when giving his opinion of the value of Hammett’s shares of SSP. **Stern’s**
11 **stated opinion of value was approximately one sixth (1/6th) their actual value.**
12 Stern was authorized to give this opinion by the Manager and stated that the
13 Manager concurred.

14 131. The offer to purchase for \$218,000 was made on behalf of all the
15 Members but Hammett, including the J&M Trust Defendants and the
16 Grandchildren’s Trust. Hammett was not included in any discussion or vote of
17 what SSP should offer for Hammett’s shares as would be required for a purchase
18 by SSP.

19 **132. In 2016 the Manager caused an Offering Memorandum to be**
20 **printed which said a reasonable rate for management fees was 4%.**

21 133. The Defendants knew the management fees paid were not reasonable.

22 134. In 2016 the Manager advertised the property as having income
23 growth potential and the buyer specializes in distressed properties as per their
24 website.

25 135. The Defendants knew the Manager was not bringing in market rates
26 of rent on the books and did not disclose this information to Hammett.

27 136. Even though a year and a half passed between the lowball purchase
28 offer and going into escrow, the real estate market at that time did not rise six-fold.

1 It did not double. The Fraud Defendants knew the information given to Hammett
2 to justify a price of \$218,000 was false.

3 137. The intention was to induce Hammett to accept 1/6th the value of her
4 shares in SSP.

5 138. The intention of understating the NOI and the management fee
6 percentage was to pay Hammett less than her fair share of the distributions,
7 without having Hammett file a lawsuit similar to this one.

8 139. Hammett did not agree to the \$218,000, but she was led to believe the
9 value was less than \$500,000. No reasonable person would offer 1/6th the value of
10 property, especially not a licensed attorney who is supposed to represent the
11 Company and comply with the statute on dissolutions.

12 140. Because the other Members agreed with Mary E. Sherman about the
13 income and the management fees, and they were intelligent women with an
14 implied covenant of good faith and fair dealing, Plaintiff was gaslighted into a
15 reasonable belief that Mary E. Sherman was being truthful.

16 141. All the Members knew in February 2014 that Plaintiff was under
17 extreme stressors for several years, mostly involving litigation, and had recently
18 been hospitalized for anxiety and suicidal ideation. Plaintiff could be reasonably
19 expected to stop pursuing an accounting and litigation based upon the
20 misrepresentations of Mary E. Sherman in all her capacities with the voting
21 concurrence of Dennis, Kramer and Roberta Kramer.

22 142. The Manager, J&M Trust Defendants and Grandchildren's Trusts
23 intended to defraud Hammett. Plaintiff had a justifiable reliance on the fraudulent
24 statements and concealments to believe there was no reason for an accounting or
25 legal action to remove Sherman from her position as manager in February 2014.

26 143. The Defendants successfully delayed court intervention and justice
27 delayed is justice denied.
28

1 144. Hammett was fraudulently induced to agree to a bottom sales price of
2 \$7.9 million for the property in 2016 based on the numbers she was given by the
3 Manager and Stern.

4 145. Perhaps because Hammett referred buyers to the property, the
5 property sold for closer to its true value, about \$10.2 million. This was at the low
6 end of the broker's price opinion obtained by the manager but not shared with
7 Hammett until after the sale. The Manager said there were three buyers bidding at
8 the same time. Still, the ultimate buyer specializes in purchasing distressed
9 properties "with upside potential" and the property was advertised as having below
10 market rents.

11 146. The Manager knew that Stern, paid for by SSP, was giving false
12 information to Hammett and the Manager encouraged the fraud to induce Hammett
13 to refrain from filing a lawsuit for a receiver and dissolution sooner.

14 147. Because Stern was presented to Hammett as representing SSP and not
15 the other Members, Hammett could and did justifiably rely on the information
16 presented by Stern.

17 148. Emails between the Manager and the Member Defendants that were
18 not copied to Hammett show that Stern was in fact working for the interests of the
19 Member Defendants, not the Company.

20 149. Distributions made by the Manager from 2012 to 2016 inclusive
21 reflected the lower NOI. This caused Hammett's income to be lower than it should
22 have been at a time when Hammett was told by her therapist to "take a sabbatical".

23 150. The K-1 given to Hammett for 2016 reports Hammett's 14.1571% of
24 "Net income from rental real estate activities" as \$70,696, which equates to
25 \$499,368 for the entire company. **Plaintiff does not know how this capital is**
26 **held. It may be in a bank account or it may be lent to a Sherman Family**
27 **Partnership or any other use Mary Sherman decided on. Contractually, SSP,**
28 **LLC was not allowed to buy other real estate or cars for the Sherman family.**

1 **After SSP was sold and a reasonable time passed for the buyer to raise a**
2 **dispute, the rest of the capital should have been distributed and the company**
3 **dissolved.**

4 151. The Offering Memorandum the Manager caused to be prepared in
5 2016 has a Net Operating Income of \$649,213 on page 32. The Manager was
6 underperforming by about \$150,000 per year, about 30%. Distributions made to
7 Hammett based on NOI were about \$20,000 per year lower than they should have
8 been.

9 152. About thirty years ago, Jeffrey M. Sherman told Hammett that he and
10 his brothers set up shell companies with the intent of looting them and then filing
11 bankruptcy. (This is when Hammett decided she wanted nothing to do with Jeffrey
12 M. Sherman.)

13 153. Recovering any assets found through an accounting to rightly belong
14 to Hammett will probably be much more difficult now than if the Defendants did
15 not fraudulently conceal the actual NOI that was or should have been earned from
16 February 2012 to February 2017.

17 154. Finding the true owner of Partners Health and Wellness back in 2014
18 may be impossible now that it was taken over by a new LLC in 2020.

19 155. Any of Hammett's Fair Share of the profits earned by the Sherman
20 Family Partnership will be difficult to recover.

21 156. The motivation for defrauding Hammett was greed, oppression and
22 callous entitlement. Mary E. Sherman and Jeffrey M. Sherman in all their
23 capacities wanted to keep more money for themselves and those they deemed
24 worthy. They wanted vengeance for Hammett's refusal to rescind other property to
25 the Norman and Sandi Kramer trust. Sherman had a history of writing vile and gut
26 wrenching commentary about Hammett and Hammett's children. The Fraud
27 Defendants were driven by this animus.

1 157. Rather than coming clean in 2014, when Hammett first suspected the
2 Manager was not making reasonable distributions to Hammett, the Manager
3 intended to defraud Hammett so Hammett would not pursue a threatened lawsuit.
4 The Manager capitalized on Hammett's poor emotional health for which Sherman
5 was in large part responsible. The Manager was successful until after the sale of
6 Silver Strand Plaza when an attorney took up the case for Hammett.

7 158. The OA Article VII § 7.2(a) states: "Except in case of permitted
8 assignment (as defined in Section 7.2(b)), no Member shall make an Assignment
9 of all or part of its interest in the Company."

10 159. OA Article VII, Section 7.2(b) defines a "Permitted Assignment" as
11 an assignment only after the death of any Member.

12 160. Linda R. Kramer was not deceased at the time the original complaint
13 in these proceedings was filed, and to the best of Hammett's knowledge and belief
14 Linda R. Kramer is not deceased as of this writing.

15 161. "An Assignee may become a Member only in the manner provided in
16 [the OA]." Id. § 7.1(b)

17 162. The L&E Trust Defendants are listed as a Member on the list
18 generated by the Manager and sent by email by McGarrigle to Hammett on April
19 5, 2019.

20 163. The Assignment of Kramer's interest to the L&E Trust Defendants is
21 void ab initio. (id. §7.3)

22 164. The Manager made distributions to the L&E Trust Defendants in
23 violation of the operating agreement with the full knowledge and consent of
24 Kramer, the L&E Trust Defendants, the J&M Trust Defendants, and the
25 Grandchildren's Trusts.

26 165. The Manager listed the L&E Trust Defendants with the other
27 Members, while listing Roberta Kramer's assignee in a separate section for
28 "permitted assignees".

1 166. OA §7.6 restricts admission of Members to Permitted Assignees who
2 have been approved by vote as per OA §5.5. Plaintiff was not informed of any vote
3 by the Major Decision makers regarding the assignment to the L&E Trust
4 Defendants.

5 167. The void assignment was made after Plaintiff had threatened a lawsuit
6 against Defendant Kramer in 2014 and appears to be an attempt to transfer assets
7 to a trust in order to shield Kramer from Plaintiff's claim in violation of the state's
8 fraudulent conveyance act, CA CIVIL § 3439.04 (b)(4).

9 168. The effect of the conveyance is that it will shield recapture of
10 damages from Kramer by Hammett upon prevailing on this litigation which was
11 threatened as early as January 2014 and the need for Hammett to file litigation in
12 order to nullify the void assignment.

13 169. The assignment was made with actual intent to hinder, delay, or
14 defraud Hammett upon prevailing on this action:

15 170. Without receiving a reasonably equivalent value in exchange for the
16 transfer or obligation; and

17 171. Linda R. Kramer, an individual reasonably should have believed that
18 she would incur a debt beyond her ability to pay as it is awarded in this case. (This
19 is a violation of California Civil Code Section 3439.04(a)(2)(B) whereas the
20 scheme Jeffrey Sherman told Plaintiff he used as described in paragraph 37 is a
21 violation of California Civil Code Section 3439.04(a)(2)(A).)

22 172. The Manager allowed for the assignment in violation of the OA and
23 made distributions to the L&E Trust Defendants of close to \$1,500,000 to the best
24 of Plaintiff's knowledge and belief.

25 173. The Company records Hammett was given by Stern in late 2013 did
26 not show the L&E Trust Defendants as a Member of SSP.

27 174. L&E Trust Defendants had no contractual obligation or fiduciary duty
28 to Hammett as per the OA because the assignment was void, so barring a

1 successful suit for fraudulent transfer or adoption of the trust as an alter ego,
2 Hammett will not be able to recover money given to the L&E Trust Defendants.

3 175. Kramer did not respond to the Complaint timely. Her intent was to
4 induce Hammett to write Kramer out of the lawsuit by adopting the language of
5 attorney Keith Cochran, i.e. “two defendants” and leaving out “Linda R. Kramer,
6 as an individual”.

7 176. The clerk made no docket entry for Linda R. Kramer as an individual
8 until Hammett called him and made a request for correction on August 1, 2019.

9 177. On request made by a private phone call of the L&E Trust
10 Defendant’s counsel, the clerk altered the docket to show three defendants
11 including Kramer had filed a motion to dismiss on July 30, 2019. After Hammett
12 told L&E Trust Defendant’s Counsel that she had printed the docket with the
13 original entry, it was changed back.

14 178. The Court admonished Plaintiff in the Order Granting Defendant’s
15 Motions to Dismiss dated March 23, 2020, ECF No. 111 at f.n. 13:

16
17 “The Court cautions Plaintiff against impugning the Clerk or other staff of
18 this Court or District based on gratuitous speculation regarding relationships
19 of favoritism toward litigants or their counsel. See, e.g., ECF No. 85 at 2, 4.
20 Such accusations should not be made lightly and, absent evidence supporting
21 such claims, the Court will not countenance them.”

22
23 179. This statement tends to chill the Plaintiff’s Constitutional right found
24 in the First Amendment to petition for the redress of grievances.

25 180. This is a verified complaint and Plaintiff’s testimony is evidence.
26 Besides, there is also documentary evidence supporting the claim.

27 181. Plaintiff did not fall for the trick, so Kramer pretended that L&E Trust
28 Defendant’s counsel meant “Linda R. Kramer, as an individual and Linda R.

1 Kramer and Erik Von Pressentin Hunsaker as Co-Trustees of the Lynn and Erik’s
2 Trust” when he wrote “Linda R. Kramer and Erik Von Pressentin Hunsaker as Co-
3 Trustees of the Lynn and Erik’s Trust” on the face of the Motion to Dismiss filed
4 July 30, 2019, ECF No. 19.

5 182. If Hammett prevails against Linda R. Kramer an individual, Linda R.
6 Kramer an individual will undoubtedly insist she is a separate and distinct person
7 than Linda R. Kramer as co-trustee of the Lynn & Erik’s Trust. Therefore, the
8 Court should bind the L&E Trust Defendants to disgorge themselves of assets
9 intended for Linda R. Kramer as an individual.

10 183. The assignment was made with fraud, malice and oppression.

11 184. Daniel Forde, Counsel retained to represent SSP since about May
12 2019 shares an office and works on cases with counsel retained to represent Mary
13 E. Sherman in each of her capacities and Jeffrey M. Sherman as co-trustee of the
14 J&M Sherman Family Trust. This reeks of collusion. Especially considering Forde
15 was sued for legal malpractice in 2017.

16 185. In that case, the plaintiff claimed “Forde Defendants had conflicts of
17 interest in connection with their representation and advice to the Lukes Plaintiffs as
18 well as to John and Samantha Vorzimer, in connection with their handling of the
19 bankruptcy filed by Barbara Lynn Behm [citation omitted].” *Lukes v. Gallo, 2017*
20 *WL 9472131 (Cal. Super.) ¶15 (S).*

21 186. Hammett informed the Member Defendants of this potential conflict
22 and none objected pursuant to their duty found in OA 5.5(f) to this act in
23 contravention of OA 5.3, that the Manager “discharge her duties in good faith, with
24 the care that an ordinarily prudent person in a like position would exercise under
25 similar circumstances, and in a manner that the Manager reasonably believes to be
26 in the best interests of the Company.”

27 187. There is a danger that the Manager will continue to remove or
28 improperly distribute the assets of SSP. The Manager has previously unilaterally

1 removed funds from the accounts of SSP for her own use or the use of the other
2 defendants and has the ability to repeat such improper distributions.

3 188. The Manager is in possession of the Company's books, assets and
4 accounts.

5 189. Despite Plaintiff's demands for copies of financial statements, bank
6 statements, an accounting of accounts payable and accounts receivable, the
7 manager has failed and refused to provide the same. The amount of Company
8 assets and liabilities is unknown to Plaintiff and cannot be assessed without access
9 to the full and complete record of company finances.

10 190. Plaintiff is entitled to inspect these records.

11 191. Company Counsel Forde wrote to Plaintiff that her right to review
12 company records ended when she filed suit, basing his opinion on a case where the
13 entire record had already been produced in discovery. In this case Plaintiff
14 provided the manager with a comprehensive list of documentation that is missing
15 and the documentation was never provided.

16 192. In particular, but not limited to, there was property known as a
17 "commercial rental" and "Sherman Family Partnership" involving a "MSFP loan",
18 which Plaintiff was required to pay income tax on, but which the Manager and SSP
19 Counsel provided no other information regarding;

20 193. There were no bank statements for one account, "CBB", that was just
21 presented by ledger, and even those ledgers were not complete.

22 194. Information from 1099s was given only by ledger, not copies of the
23 actual statement, and no 1096 or other reporting was offered;

24 195. The \$65,000 paid to Sherman in 2017 as "bonuses" were not
25 accounted for in the 1099 tax documents;

26 196. There were no cancelled checks or other source documents;

27 197. The Defendant Members refuse to vote against the secreting of
28 company financial records which is in contravention of the OA 5.5(f);

1 198. Plaintiff is entitled to a true and correct accounting from the Manager
2 and SSP of the liabilities incurred in connection with the Company pursuant to OA
3 Article IV;

4 199. Plaintiff is entitled to a true and correct accounting from the Manager
5 and SSP of the dividends, distributions, or other manner of disbursements of the
6 net profits of the Company;

7 200. Despite demand therefore, the Manager and SSP have refused (i) to
8 render a true and correct account for the income, and profits collected by the
9 Company for the years 2012 to present, (ii) to render a true and correct account for
10 the liabilities incurred by the Company for said period of time, (iii) to render a true
11 and correct account of the dividends, distributions, or other manner of
12 disbursements of the net profits of the Company for said period of time, (iv) to pay
13 over to Plaintiff her capital retained after the sale of Silver Strand Plaza in an
14 amount not less than \$70,000.00, and (vi) to pay over to Plaintiff her share of the
15 net profits of the Company.

16 201. On information and belief Plaintiff is entitled to a sum of money
17 exceeding \$100,000.00, which will be shown by a true and full accounting to be
18 Plaintiff's share of the capital and net profits from the Company to the present.

19 202. Plaintiff has no plain, adequate, or speedy remedy at law.

20 203. The close of the sale of Silver Strand Plaza should have triggered the
21 dissolution of SSP. The Company "shall" be dissolved upon sale of substantially
22 all of the Company's assets. (OA §8.2)

23 204. Upon dissolution, "and within a reasonable time thereafter", the
24 Manager should have made a distribution to Hammett of her Fair Share of the
25 account balances. (OA §8.4)

26 205. The Manager did in fact agree to distribute the proceeds of the sale
27 upon close of escrow.
28

1 206. The Manager controlled the distribution of the proceeds thereof to
2 SSP's members, including Plaintiff.

3 207. On December 20, 2016, the Manager informed Plaintiff and the other
4 members of SSP that the sale of the shopping center was set to close on January
5 10, 2017 and asked how each Member wanted to receive their distribution.

6 208. On January 1, 2017, Plaintiff e-mailed wire instructions to the
7 Manager so that she could receive her funds from the sale by wire transfer.

8 209. The Manager confirmed receipt of Plaintiff's e-mail that same day.

9 210. Escrow closed on January 26, 2017.

10 211. The Manager falsely stated in an e-mail to Plaintiff late in the evening
11 of January 31, 2017, that she did not have wire instructions from Plaintiff.

12 212. In an email sent February 2, 2017, the Manager used the excuse of the
13 time spent communicating on a tax withholding issue as the reason she could not
14 wire Plaintiff's distribution to her, even though the Manager's e-mail claiming that
15 she "will not have time today to go to the bank" was sent at 10:45 a.m.

16 213. When Plaintiff responded only an hour later that the Manager had a
17 fiduciary obligation to wire the amount of her distribution less whatever amount
18 the Manager believed had to be withheld for California taxes, the Manager
19 responded through Mr. Stern and asserted for the first time that, in addition to
20 California taxes, the Manager was required to withhold the amount of a Child
21 Support Division lien against other property unrelated to SSP, Woodman and
22 Magnolia, and that determining the amount of the lien would further delay
23 payment to Plaintiff of her distribution.

24 214. The Manager and attorney Stern had been aware of the Child Support
25 Division lien against Woodman and Magnolia for over a year and had never
26 previously indicated that money would have to be withheld to pay that lien.

1 215. With this excuse, the Manager delayed wiring any of Plaintiff's
2 distribution, even the \$1,099,563.59 that was undisputedly owed above any
3 possible tax obligations or liens until February 6, 2017.

4 216. The Manager then improperly withheld and converted \$50,000 from
5 Plaintiff's distribution wired on February 6, 2017.

6 217. The stated reason: the funds were held as a litigation fund that the
7 Manager could use if Plaintiff litigated against the Manager or SSP to obtain the
8 funds!

9 218. Through Stern, the Manager not only defended this unlawful
10 conversion and breach of fiduciary duty, but informed Plaintiff that the funds
11 would not be released until Plaintiff released any of her claims against the Manager
12 for breach of fiduciary duty: "Perhaps we can discuss a method to protect the
13 Manager in connection with release of the reserved funds. Otherwise, they will be
14 withheld to cover the litigation expense or for the period of time until the statute of
15 limitations has run its course."

16 219. Through Stern, the Manager reiterated this effort to extort a release
17 from Plaintiff in a second e-mail on February 9, 2017, in which Stern wrote: "The
18 \$50,000.00 will be released promptly upon your furnishing to me a signed General
19 Release by your client, releasing Mary Sherman from all claims in her capacity as
20 Manager of the LLC."

21 220. Plaintiff did not respond to this blatant effort to extort a release from
22 her. Realizing that she was only compounding her breach of fiduciary duty, the
23 Manager released the \$50,000 by wiring the funds to Plaintiff on February 10,
24 2017.

25 221. The first part of Hammett's distribution was made on February 6,
26 2017, ten days after the proceeds of sale were available to SSP.

27 222. The Manager withheld \$50,000 of Plaintiffs distribution to use as
28 Sherman and the Manager's defense fund in the event Plaintiff sued Mary E.

1 Sherman in any capacity to obtain that \$50,000, and demanding a general release
2 as a condition to release of those funds. She finally released those funds to
3 Hammett fourteen days after they were available.

4 223. The Manager prevented the plaintiff from having access to her
5 property for a significant period of time.

6 224. Hammett was damaged by the conversion economically as follows:

7 225. Interest on the withheld funds = \$1,049,563 at 10% per year interest,
8 highest rate allowed by law from date of conversion to return, over 10 days would
9 yield two thousand, eight hundred and seventy five dollars and fifty-two cents
10 (\$2,875.51.52);

11 226. Plus, \$50,000 at 10% per year for 14 days yields one hundred, ninety
12 one dollars and seventy-eight cents (\$191.78).

13 227. The plaintiff was excruciatingly nervous while waiting for the
14 distribution. Hammett knew the manager and her husband to be conniving,
15 entitled, and crooked.

16 228. Hammett travelled from Arkansas to California to be available if any
17 signatures were needed, the wire wouldn't go through so a check would need to be
18 issued or any other issue the Manager could dream up.

19 229. While waiting the two weeks to recover her money, Hammett visited
20 an urgent care in Pacific Beach and was prescribed 15 tablets of .25 mg Xanax.
21 This was the first anxiety medication Hammett had taken since moving to
22 Arkansas over two years before. Plaintiff used 12 of the tablets and had 3 left a
23 year later. The urgent care and medication cost Hammett about \$125 out of pocket.

24 230. The Manager misappropriated the funds from Hammett in conscious
25 disregard for, and with malice and oppression towards, the rights of Plaintiff, in a
26 bid to extort release of the Manager from her several torts and breaches of
27 fiduciary duty.

231. Given the relationship between Plaintiff and the Manager, and the trust and confidence Plaintiff reposed in the Manager, the Manager, and each and every doe defendant, owed and still owes a fiduciary duty to Plaintiff. The Manager, and each and every doe defendant, had a duty to act with the utmost good faith in the best interests of Plaintiff. The Manager and Doe defendants, and each of them, had an affirmative duty to notify Plaintiff, a Member of SSP, of the true and correct financial records of the Company and had, and continue to have, an affirmative duty not to conceal material facts from Plaintiff. The Manager, and each and every doe defendant, had a duty to notify Plaintiff, the lienholder, that the rents being reported were significantly lower than market rent, the management fees being paid were almost three times reasonable rates and the nature of the Company's involvement with the Sherman Family Partnership.

232. The Manager, and each and every doe defendant, breached their fiduciary duty to Plaintiff by doing actions, including but not limited to, (a) causing SSP to make loans interest-free or at below market interest to Sherman and/or to entities in which she or her spouse have an interest; (b) fraudulent misrepresentation of the net operating income of SSP; (c) concealing material facts from Plaintiff; and, (d) converting over a million dollars from Plaintiff which was only returned after Plaintiff retained the services of an attorney to advocate for her.

233. As a direct and proximate cause, result and consequence of that breach, Plaintiff suffered damages, and continues to suffer damages, in amounts according to proof at the time of trial. The Manager's and Doe defendants' conduct was a substantial factor in causing Plaintiff's harm.

234. The Manager owed Plaintiff a fiduciary duty as a result of her position as Manager of SSP under an Operating Agreement that gave her "sole authority to manage [SSP]" other than "Major Decisions" listed in OA § 5.5 and "to make any contracts [or] enter into any transactions ... to conduct or further [SSP's] business."

1 235. The Manager also owed a fiduciary duty to Plaintiff pursuant to Cal.
2 Corp. Code § 17704.09.

3 236. SSP is liable for the actions of its manager by the theory of respondeat
4 superior.

5 237. The Manager breached that duty to Plaintiff by creating ever-changing
6 reasons to delay disbursement to Plaintiff of the proceeds of the sale of the SSP
7 shopping center; refusing to disburse any funds to her even though over
8 \$1,000,000 was undisputedly owed to her above any tax obligations or liens;
9 withholding and converting \$50,000 of Plaintiffs distribution to use as a defense
10 fund in the event Plaintiff sued to obtain that \$50,000 (while at the same time
11 withholding about \$500,000 from all members in a separate defense fund), and
12 demanding a general release as a condition to release of those funds.

13 238. On a Quickbooks type program generated ledger offered to Hammett
14 by the Manager just prior to the February 2014 meeting, called the MMA register,
15 there was an entry for “MSFP” loan with payee of “ThE SHERMAN FA...”. The
16 Manager refused to explain the meaning of this entry. She said only that SSP, LLC
17 made \$40 off the investment “our” advisor suggested.

18 239. On the K-1 for 2013 the Manager caused to be sent to Hammett after
19 the February 2014 meeting, there was a commercial rental documented that
20 generated a reported income for Hammett’s share of the entity of \$246 in 2013.
21 The entity owned by SSP was called “Sherman Family Partnership”.

22 240. The Manager continues to refuse to explain this entity to Hammett.
23 Hammett’s most recent inquiry was made by email on July 22, 2020, with no
24 response.

25 241. Plaintiff is informed and believes and thereon alleges that the
26 Manager has breached her fiduciary duty to Plaintiff by hiring attorneys to
27 represent SSP that were simultaneously representing Sherman and each of the
28 defendants, even though the interests of these defendants conflicted with the

1 interests of SSP. This unfair business practice was compounded by the Manager
2 causing SSP to pay the entire bill for representation of counsel to all defendants
3 with SSP assets, but not making an equal distribution to Hammett prorated by her
4 percentage of ownership.

5 242. This circumstance inherently raises an inference of conflict of interest
6 that contradicts the “business judgment rule” and the obligation of good faith and
7 fair dealing.

8 243. **Plaintiff is informed and believes and thereon alleges that the**
9 **Manager has breached her fiduciary duty to Plaintiff by hiring management**
10 **personnel, including herself, at an expense that was almost triple what SSP,**
11 **LLC’s own experts hired by Mary Sherman contend is reasonable;** paying
12 herself about \$1,500 per month in salary after close of escrow on the shopping
13 center; paying Sherman \$65,000 after the Silver Strand Plaza was sold; did not
14 report the \$65,000 to Sherman on 1099s, increasing Plaintiff’s tax burden; sharing
15 Plaintiff’s (erroneous) private tax information with Members to whom she had no
16 right to make these disclosures.

17 244. Mary E. Sherman wrote an email to Kramer, Dennis and Roberta
18 Kramer on February 2, 2017 in which she stated:

19
20 “Frankly, [Hammett] has used up every ounce of goodwill, and then some.”
21

22 245. The Manager did not act in good faith toward Hammett. The
23 manager, in doing the bad acts complained of above, acted intentionally,
24 oppressively, and maliciously toward Plaintiff in conscious disregard of Plaintiffs
25 rights and of the Manager's fiduciary obligations under contract, thereby entitling
26 Plaintiff to an award of punitive damages.

27 246. Given the relationship between Plaintiff and the Member Defendants,
28 and Does 1-99 and the trust and confidence Plaintiff reposed in the Member

1 Defendants, the Member Defendants and each and every Doe defendant owed and
2 still owes a fiduciary duty to Plaintiff. The Member Defendants had a duty to act
3 with the utmost good faith in the best interests of Plaintiff. Defendants, and each
4 of them, had an affirmative duty to discharge their duty to vote on Major Decisions
5 using reasonable business judgement and continue to have an affirmative duty not
6 to conceal material facts from Plaintiff.

7 247. The Member Defendants breached their fiduciary duty to Plaintiff by
8 doing actions, including but not limited to, (a) refusing to vote against acts of the
9 Manager that were in contravention to the OA; (b) refusing to dissolve the
10 Company timely; (c) Using the Company attorneys, Stern and McGarrigle to
11 represent them as individuals, even letting SSP pay for the representation without
12 following OA requirements; and, (d) agreeing to consider buying Plaintiff's shares
13 in lieu of a voluntary dissolution that would be a reasonable action under the
14 circumstances, but then using Stern to represent a fair price as about 1/6th the actual
15 fair value.

16 248. As a direct and proximate cause, result and consequence of that
17 breach, Plaintiff suffered damages, and continues to suffer damages. Member
18 Defendants' and Doe defendants' conduct was a substantial factor in causing
19 Plaintiff's harm.

20 249. The Member Defendants had a fiduciary duty to Plaintiff pursuant to
21 Cal. Corp. Code § 17704.09 to discharge their duties to SSP and the other members
22 under the Cal. Corp. Code or under the operating agreement and to exercise any
23 rights consistent with the obligation of good faith and fair dealing. They did not.

24 250. Liabilities of the Member Defendants to the Plaintiff arose from acts
25 of fraud or negligence and from acts or omissions which were not within the scope
26 of authority conferred on such Member by the OA. OA §5.8.

27 251. The Members were not Directors of the Company, and therefore not
28 subject to the shield of the "Business Judgment Rule".

1 252. Still, if the Business Judgment Rule was applied, it would fail to
2 protect the Member Defendants from their actions that were not in good faith;

3 253. Not in best interests of the Company;

4 254. The cause of a direct conflict of interest pursuant to Rules of
5 Professional Conduct 3-310;

6 255. Abdication of corporate responsibility;

7 256. And, in all but the Grandchildren Trusts and Mary Sherman as Co-
8 Trustee of the J&M Sherman Family Trust, indicate a lack of sufficient diligence
9 to inform herself or himself of how the Manager was handling SSP assets.

10 257. To the extent that the Member Defendants knew of the contraventions
11 of the OA by the Manager and refused to vote against the misconduct or join in an
12 action for judicial intervention, they became liable to the Plaintiff for damages due
13 to their omission of voting against the contravention or joining in an action for
14 judicial intervention, contrary to their duty of good faith and fair dealing.

15 258. It was obviously not in the best interest of the Company to pay three
16 times the reasonable rate for management, especially when the rents collected were
17 below market rents.

18 259. It was not in the best interest of the Company to pay bonuses of
19 \$65,000 to the Manager after the sale of the sole property sanctioned for ownership
20 by the LLC. The Company was supposed to dissolve. There is no reason for the
21 Company to retain the good will of the Manager or anyone. Sherman's good will
22 that came with the tacit approval of the bonus equal to two years salary was
23 directed toward the Member Defendants, not toward the Company.

24 260. Not reporting the \$65,000 bonuses to the IRS on a 1099 was not in the
25 best interest of the Company. The Company was participating in tax evasion for
26 Sherman. The result was individual Members, including Hammett, paid the tax
27 bill, which would be a conversion of Plaintiff's share.

1 261. None of the other defendants, each independently wealthy and
2 standing to be found liable for millions of dollars in this litigation, hired an
3 attorney other than Stern and McGarrigle to represent them prior to June 17, 2019.
4 The Grandchildren Trusts, J&M Trust Defendants, and L&E Trust Defendants
5 could not be represented by their trustees who were not authorized to practice law.

6 262. McGarrigle wrote a declaration in this case that all his
7 communications regarding Silver Strand Plaza were in anticipation of litigation.
8 The Member Defendants knew they were receiving legal advice as individuals and
9 having SSP pay for it. This was a financial benefit received by the Member to
10 which the Member is not entitled.

11 263. The communications from the other defendants to Plaintiff were
12 negligible, with the exception of the bizarre and defamatory communications from
13 Dennis, and a jury would find the Member Defendants more probably than not
14 were represented by Stern and McGarrigle. This was a prima facie conflict of
15 interest.

16 264. The Defendants knew Plaintiff had a healthy distrust in the integrity
17 of the courts due to the appearance of bias and embroilment exhibited in her family
18 law case by former Commissioner Alan H. Friedenthal. They forced her to look to
19 the court for intervention anyhow. Dennis even said they met with Mr. Friedenthal
20 after the first suit was filed against Sherman and SSP in May 2018. Being forced to
21 litigate what should have been a simple issue, which as McGarrigle entered as
22 evidence, Plaintiff was willing to settle for less than she had in capital, was the
23 proximate cause of severe emotional distress for Hammett.

24 265. As a proximate result of the Member Defendants' and Doe
25 Defendants' wrongful conduct as alleged herein, Plaintiff has sustained damages in
26 an amount in excess of \$75,000, exclusive of attorney's fees and costs, as her Fair
27 Share of SSP assets wasted and misappropriated with the tacit approval, inaction or
28 negligent discharge of their duties.

1 266. As stated above, Mary E. Sherman wrote an email that describes her
2 lack of good will toward Hammett: “ Frankly, she has used up every ounce of
3 goodwill, and then some.”

4 267. The breach of fiduciary duty by the Member Defendants and Doe
5 Defendants was the proximate cause of considerable anxiety, distress, aggravation
6 and sleepless nights for the Plaintiff. The Plaintiff partook in therapy at least once
7 per week, had an appointment with a psychiatrist monthly or bi-monthly and ha a
8 prescription for anti-anxiety medications to handle the stress.

9 268. The Member Defendants and Doe Defendants, in doing the acts
10 described in Paragraphs above, acted intentionally, oppressively, and maliciously
11 toward Plaintiff in conscious disregard of Plaintiffs rights and of the Member
12 Defendants’ and Doe Defendants’ fiduciary obligations under contract.

13 269. There was a contract between each of the Members.

14 270. Plaintiff performed all of her duties according to that contract.

15 271. There is an implied covenant of good faith and fair dealing in every
16 contract that neither party will do anything which will injure the right of the other
17 to receive the benefits of the agreement (“the Covenant”).

18 272. Plaintiff brought evidence to the Member Defendants in January and
19 February 2014 that would make a reasonable person demand an accounting of SSP
20 finances pursuant to the OA §5.5(f) and (i). The Member Defendants voted against
21 an accounting. That was a breach of the Covenant.

22 273. Plaintiff brought the discrepancy between NOI reported on Hammett’s
23 K-1 and NOI given on the Offering Memorandum to the Member Defendants in
24 late 2017. Plaintiff pled with the Member Defendants throughout 2018 until April
25 2, 2019 to demand an accounting of SSP finances. To no avail. That was a breach
26 of the Covenant.

27 274. On September 19, 2019, Plaintiff filed exhibits in this case, ECF Nos.
28 73-3 and 74, augmented by exhibits that SSP and the Manager had tried to keep

1 confidential, ECF Nos. 104-1 to 6 lodged on November 4, 2019. No reasonable
2 person could read these exhibits and not know the Manager agreed 4% was a
3 reasonable percentage of gross rents to pay management, but she paid management
4 of Silver Strand Plaza about 11.45%, thereby violating OA § 5.3, a contravention
5 of the OA.

6 275. The failure of the Member Defendants to exercise their decision
7 making duty found in OA § 5.5 enabled the Manager to continue with her
8 misconduct. This diminished the distributions that were paid to Plaintiff over three
9 years.

10 276. The Manager chose the same attorney to represent herself as she
11 chose to represent SSP. That was a conflict of interest. It was in contravention to
12 OA § 5.3. The Member Defendants not only shirked their responsibility as per OA
13 § 5.5, they relied on the SSP attorney to represent their interests as well and had
14 SSP pay their bills.

15 277. The Member Defendants did not provide a written undertaking
16 pursuant to OA § 9.1(b).

17 278. Any indemnification payment was therefore a distribution in kind of
18 legal services owned by the Company paid to the Member Defendants. Plaintiff,
19 who did not receive the services, should have received an appropriate Capital
20 Account adjustment prior to the payment of the legal services fee, pursuant to OA
21 § 3.3(b).

22 279. The Member Defendants refused to vote pursuant to OA § 5.5(h) for
23 dissolution of the Company as required by OA § 8.2(a).

24 280. Because the Company is not dissolved and Plaintiff's capital
25 distributed to her, Plaintiff was frustrated from completing two construction
26 projects and is anxious about her finances during the Coronavirus epidemic and
27 civil unrest.

28

1 281. By these breaches of contract, Plaintiff was damaged and was caused
2 anxiety.

3 282. Furthermore, in doing the acts described in Paragraphs above, the
4 Member Defendants' acted intentionally, oppressively, and maliciously toward
5 Plaintiff in conscious disregard of Plaintiffs rights and of the Member Defendants'
6 fiduciary obligations under contract.

7 283. The Member Defendants conspired together with the Manager and
8 Doe Defendants to assist and encourage the Manager to misappropriate funds from
9 SSP, LLC.

10 284. Mary E. Sherman in each capacity knew everything the Manager
11 knew.

12 285. Dennis and Kramer, at least as of October 2019 but probably before,
13 knew all the details of the Manager's Breach of Fiduciary Duty to that point,
14 because they were provided with the evidence by Plaintiff.

15 286. Mary E. Sherman in each of her capacities committed fraud. (See the
16 First Cause of Action)

17 287. Mary E. Sherman as the Manager committed Breach of Fiduciary
18 Duty. (See the Eighth Cause of Action.)

19 288. The J&M Trust Defendants, Grandchildren's Trusts, Kramer and
20 Dennis were able and had a duty to vote against the commission of acts in
21 contravention to the OA and refused to do so. They assisted the Manager to enable
22 her to over-pay management fees, hire attorneys for SSP who also represented
23 several other individuals and entities that had a direct conflict of interest with SSP
24 and to interfere with the contractual relations between Hammett and Kramer and
25 Dennis.

26 289. The aim of this conspiracy was to minimize the Manager's exposure
27 for financial irregularities by painting Plaintiff as biased and unbelievable and her
28 expressed concerns as unfounded.

1 290. Mary E. Sherman as Co-Trustee of the J&M Sherman Family Trust
2 and Grandchildren's Trusts knew all the details of the Manager's breach of
3 fiduciary duty because they are literally "of one mind".

4 291. The J&M Trust Defendants and Grandchildren's Trusts had
5 substantial participation in the breach, by refusing to vote against the acts in
6 contravention to the OA, especially the overpayment of management fees which
7 caused unjust enrichment for Mary E, Sherman and by refusing to vote for
8 dissolution of the Company which would protect Plaintiff's capital from further
9 waste.

10 292. The J&M Trust Defendants, Grandchildren's Trusts and Doe
11 defendants gave significant encouragement to the Manager to breach her fiduciary
12 duty.

13 293. The J&M Trust Defendants, Grandchildren's Trusts and Doe
14 defendants concealed information about the wrongful acts of the Manager from the
15 Plaintiff.

16 294. A person may be liable for aiding and abetting a breach of fiduciary
17 duty under two theories: first, if the aider and abettor owes a fiduciary duty to the
18 victim provides substantial assistance to the person breaching his or her fiduciary
19 duty, courts impose liability for concerted action that violates the aider and
20 abettor's fiduciary duty. (American Master Lease LLC v. Idanta Partners, Ltd., 225
21 Cal.App.4th 1451, (2014) h.n. 12 on fraud) The J&M Trust Defendants,
22 Grandchildren's Trusts and Doe defendants had a fiduciary duty to Hammett
23 pursuant to CA Corp §17704.09(d), the obligation of good faith and fair dealing
24 and to the extent SSP was member-managed, §17704.09 (a)(b)(c) and (e).

25 295. Second, if the aider and abettor commits an independent tort by
26 making a conscious decision to participate in tortious activity for the purpose of
27 assisting another in performing a wrongful act. (American Master Lease, h.n. 12 on
28 fraud). The J&M Trust Defendants, Grandchildren's Trusts and Doe defendants

1 committed fraud. Their fraud gave the Manager significant aid in her breach of
2 fiduciary duty.

3 296. The J&M Trust Defendants, Grandchildren's Trusts and Doe
4 defendants' conduct was a substantial factor in causing harm to plaintiff. They had
5 a combined 50.52% or more of the voting power on Major Decisions and could
6 have easily put the Manager in check but chose not to do so.

7 297. In March 2019 Plaintiff read a libelous email published by Sherman,
8 the Manager, the J&M Trust defendants and the Grandchildren's Trusts under the
9 pretext of being SSP business on February 2 by a private email to Roberta Kramer,
10 Dennis and Kramer. While there is no year on the email, it is consistent with 2017.
11 She wrote in part:

12
13 "SSP LLC refuses to be bullied any longer by this ungrateful creature who
14 has sent hundreds of accusatory emails over the past 12 years with no basis, since
15 our business flourished and grew and we each reaped financial reward. [Plaintiff]
16 chooses to break the law over and over and over (as evidenced by being fired from
17 the County, having a \$250K judgment imposed against her by CSSD, and not
18 paying CA taxes since 2011)." ("The Ungrateful Creature email")

19
20 298. Diane Dennis, Linda Kramer and Roberta Kramer reasonably
21 understood that this statement was about the Plaintiff.

22 299. Those who read the statement reasonably understood the statements to
23 mean Plaintiff had willfully committed crimes such as tax evasion.

24 300. The statement was false.

25 301. Plaintiff has no criminal record and has no criminal charges ever filed
26 against her.

27 302. Plaintiff was not fired from her job with "the County".
28

1 303. Plaintiff has not evaded taxes and easily qualified for the withholding
2 waiver in the State of California.

3 304. Having a judgment is not a crime.

4 305. Not paying child support in some circumstances is treated as contempt
5 of court, a quasi-criminal adjudication.

6 306. An Order to Show Cause as to why Plaintiff should not be found in
7 contempt for failure to pay a child support order was issued against Plaintiff, but it
8 was easily opposed.

9 307. Defendant Sherman in each capacity failed to use reasonable care to
10 determine the truth or falsity of the statement.

11 308. Those who read the statement reasonably understood the statement to
12 mean Plaintiff was a repeat criminal who was fired for some crime, willfully
13 disobeyed a valid court order and committed tax evasion.

14 309. Defendant Sherman in each of her capacities acted with malice, in that
15 she did not ask Plaintiff if she owed taxes or wanted to file a waiver for the
16 withholding;

17 310. Plaintiff was extremely vocal about her child custody and support
18 case and never said she was found guilty of contempt;

19 311. Plaintiff never said she was fired from the County. In fact Plaintiff
20 was clear that she “quit” her job in an email to Mary Sherman. Hammett receives a
21 pension from the county job, which would not be due if she had been fired;

22 312. Sherman knew Plaintiff had a real estate broker’s license and had her
23 own brokerage between resigning from the County and when the ridiculous child
24 support order was enacted in 2010, which was based on the proposition that Silver
25 Strand Plaza would generate \$34,000 per month for Hammett;

26 313. It is rare that someone convicted of a crime would be qualified to hold
27 a real estate license.

1 314. Sherman in all her capacities made no reasonable inquiry to determine
2 the truth.

3 315. Though actual damage to reputation is not required to be proven in
4 California, there was actual damage to Plaintiff's reputation.

5 316. Dennis wrote that Sherman was "very persuasive and manipulative".
6 One paragraph written by Dennis:

7
8 "The verbiage used by mary (sic) to describe you, i.e. "creature", were very
9 persuasive and manipulative. I'm so sorry I didn't see it, or maybe didn't
10 want to see it."

11
12 317. Clearly, Mary E. Sherman's words damaged Hammett's reputation,
13 however slight.

14 318. Plaintiff believes Sherman continues to make defamatory statements
15 about her.

16 319. Sherman's wrongful conduct was a substantial factor in causing harm
17 to Plaintiff's business relationship with the other Members of SSP, making
18 Plaintiff ineffectual in garnering support for a dissolution or legal action to remove
19 Sherman as the Manager and harm to Plaintiff's reputation.

20 320. Defendant Dennis made the following discrete presentation of
21 information by email to Mary Sherman and Linda Kramer on January 20, 2019:

22
23 "Gosh Laura, I figured you were so busy looking at your illegally obtained
24 porn, that you would not have time for this nonsense. BTW, anything I
25 supposedly said to you, needs to be looked at in the context it was given.
26 You are a criminal, by any sense of the word. Lay off the lawsuit thing. You
27 will likely have more 'lawsuit' then you can handle, in the near future."

1 321. Defendant Dennis wrote the following discrete presentations of
2 information by email to Mary Sherman, Linda Kramer and Mr. McGarrigle:

3 322. “How is your alleged illegal porn business going?” on March 12,
4 2019;

5 323. “Child pornography is illegal. Criminals eventually get caught.” On
6 March 12, 2019;

7 324. “Are you and Michael enjoying watching your illegal porn on your
8 vacation?” on March 12, 2019;

9 325. “At least he has morals and not running an illegal porn ring. Patrick
10 makes an honest living. How's the vacation?” on March 13, 2019.

11 326. Those who read the statements reasonably understood that the
12 statement was about Plaintiff.

13 327. That because of the facts and circumstances known to the reader of
14 the statement, they tended to injure Plaintiff in her business with the readers and to
15 expose her to hatred, contempt, ridicule, or shame and to discourage others from
16 associating or dealing with her.

17 328. Defendant Dennis failed to use reasonable care to determine the truth
18 or falsity of the statement. The statement was false. There is no evidence that
19 Plaintiff is aware of that she is or did engage in any illegal pornographic business,
20 obtain any illegal pornographic material for personal viewing or engage in criminal
21 activity of any kind. The statement was a malicious lie.

22 329. Those who read the statement reasonably understood the statement to
23 mean Plaintiff watches illegal pornography and is a criminal.

24 330. Dennis’s wrongful conduct was a substantial factor in causing harm to
25 Plaintiff’s business relationship with the other Members of SSP and McGarrigle as
26 it caused the meanspirited receivers to ridicule Hammett and encouraged them to
27 continuing breaching their fiduciary duties to Hammett and conspiring to harm
28 Plaintiff financially.

1 331. Even if Plaintiff has not proved any actual damages for harm to
2 reputation or shame, mortification or hurt feelings, the law assumes that she has
3 suffered this harm.

4 332. Defendant Dennis acted with malice, oppression and fraud.

5 333. It is humiliating to think someone even heard these things. When
6 Dennis made similar statements to people in Arkansas, they asked Hammett why
7 anyone would make those statements about her and Hammett had to defend
8 herself. There is always at least a bit of curiosity if such a statement might be true.

9 334. Dennis wrote that when she read or heard defamatory statements
10 made by Sherman about Hammett, that Dennis believed them “or wanted to
11 believe them” because of her animosity toward Hammett. It is possible that Kramer
12 and Sherman would want to believe Dennis.

13 335. Also, Hammett shared personal information with Dennis during a time
14 when the sisters were getting along well. Plaintiff told Dennis she suspects one or
15 more of their mother’s friends molested the Plaintiff when she was a child. The
16 friends had access to “date rape” drugs because they were doctors.

17 336. It was especially cruel for Dennis to alter information that was given
18 in confidentiality when Hammett was trying to ascertain if Dennis was also
19 sexually abused.

20 337. Plaintiff had many years of therapy to deal with her childhood sexual
21 and emotional abuse but was perfectly content and at peace about this issue for at
22 least two years before Dennis started bringing up past trauma. Now Hammett is
23 working with a therapist again to try to regain her serenity in regards to the earlier
24 abuse.

25 338. This makes Hammett feel angry, upset, embarrassed and helpless.

26
27 339. Within the last two years, at Los Angeles, California, Defendants, and
28 each of them, were unjustly enriched at the expense of Plaintiff.

1 340. Neither the whole nor any part of said sum has been paid, although
2 demand therefor has been made, and there is now due, owing and unpaid an
3 amount subject to proof at trial.

4 **First Cause of Action**

5 **Specific Performance of Plaintiff's Right to Inspect Company Records**

6 341. Plaintiff alleges as its First Cause of Action against the SSP and
7 the Manager for Specific Performance of Operating Agreement Section IV:

8 342. Plaintiff refers to the allegations contained in all other sections
9 of this Complaint and incorporates them as though set forth at length herein.

10 343. Pursuant to the Operating Agreement, Exhibit A at page 7,
11 Plaintiff is entitled to inspect the books and records of Silver Strand Plaza,
12 LLC.

13 344. Manager Mary Sherman and counsel hired by her supposedly
14 on behalf of SSP, LLC have refused to provide access to the complete
15 record since 2013.

16 345. Plaintiff asks this Court to order Mary Sherman to send a complete
17 record of company finances since 2013 to Plaintiff via an electronic format such as
18 a jump drive or Dropbox.

19 346. The Operating Agreement allows for the inspection to be made at the
20 company office. In this case, Plaintiff has made two trips to California in which
21 she asked for access to the records and was denied. That was before the Pandemic.
22 Plaintiff rarely sleeps anywhere but home since the Pandemic.

23 347. An inspection of the entire books and records is needed to verify the
24 Plaintiff's suspicions of Fraud and other malfeasance.

25 **Second Cause of Action**

26 **Dissolution of SSP**

27 348. Plaintiff alleges as its Cause of Action against the Member
28 Defendants, SSP and the Manager for dissolution of the Company:

1 349. Plaintiff refers to the allegations contained in all other sections
2 of this Complaint and incorporates them as though set forth at length herein.

3 350. Pursuant to California law, Plaintiff is entitled to the dissolution
4 of SSP for the following reasons:

5 351. Those in control of SSP have been guilty of or have knowingly
6 countenanced mismanagement, abuse of authority and persistent unfairness
7 toward Plaintiff;

8 352. SSP's property is being misapplied or wasted by those in
9 control of SSP;

10 353. Disagreements and disputes have arisen between Plaintiff and
11 the Defendant Members regarding matters of mismanagement of SSP by
12 the Manager which is countenanced by the Defendant Members and the
13 Defendant Members are making irrational decisions for the Major
14 Decisions they must make pursuant to the OA;

15 354. The Manager decided, without including Plaintiff in discussions
16 or a vote, to hire counsel for the specific purpose of representing SSP
17 against Plaintiff in particular;

18 355. Counsel for SSP simultaneously represented the interests of the
19 other defendants, paid for by SSP, and adverse to the interests of SSP and
20 Plaintiff as an individual;

21 356. The Manager has on several occasions misappropriated SSP's
22 funds for her own use, without Plaintiff's knowledge, approval, or consent;

23 357. The manager bought computers with SSP funds for over \$2,800
24 after the Company's primary property was sold and is believed to have
25 given the asset to someone other than SSP for personal use;

26 358. The Manager has on several occasions converted Plaintiff's
27 assets and threatened to convert Plaintiff's assets alone, not taking equally
28 from the general fund; and

1 359. SSP's primary asset was sold in January 2017.

2 360. Though SSP's counsel and the Manager refuse to provide
3 Plaintiff with business records or an accounting, the amount of capital
4 Plaintiff supposedly has in capital as shown on K-1s from 2017 is 78,489.
5 This amount is being diminished, though the sole authorized business of the
6 Company has ceased.

7 361. Each member contributed capital at the formation of SSP in
8 direct proportion to the amount of stock owned – in other words, receiving
9 one unit for one dollar invested. Therefore, there is a direct correlation
10 between Plaintiff's capital investment and Plaintiff's membership interest.

11 362. No Member other than Plaintiff has asked a Court to intervene
12 against the Manager and the Member Defendants are in complete
13 alignment.

14 363. Plaintiff desires the sale of all or substantially all of the assets
15 of SSP and distributions made according to the percentage owned by each
16 shareholder;

17 364. SSP has 35 or fewer shareholders and its liquidation is
18 reasonably necessary for the protection of the rights and interests of
19 Plaintiff in that Plaintiff desires but is unable to sell her interest in SSP to
20 third parties because it is not allowed by the OA and the remaining
21 members are unwilling to buy out Plaintiff's shares.

22 365. The Member's conduct has prejudicially affected the carrying
23 on of SSP's business, and it has become impossible to carry on the business
24 to Plaintiff and the Members mutual advantage.

25 366. Because the primary asset of SSP was sold, there are only two
26 reasons to continue the business.

27 367. One reason is to insulate the Defendants from being forced to
28 disgorge themselves of misappropriated assets.

1 368. The second reason is to keep control of Plaintiff's capital so she
2 cannot spend the capital on her own needs.

3 369. Pursuant to the OA, Plaintiff is entitled to the dissolution of
4 SSP for the following reason:

5 370. "The Company shall be dissolved upon the first to occur of the
6 following events: The sale of all or substantially all of the Company assets;
7 [provision for a sale on an installment basis]" OA Article VIII § 8.2(a)

8 **371. "The Company's primary activities *will be limited to***
9 **owning, leasing and managing the retail shopping center known as**
10 **Silver Strand Plaza, which is located at [address]."** OA §1.4

11 372. Silver Strand Plaza was sold in January 2017.

12 373. The sale of Silver Strand Plaza should have triggered the
13 dissolution of SSP and remaining capital should have been distributed to
14 Hammett based on her percentage of shares.

15 374. The Manager failed to effect the dissolution, no other
16 Defendant Member voted against the contravention of the OA and no
17 Defendant Member accepted Hammett's offer to sell her share to a Member
18 for the value of her capital. The OA strictly limits the persons to whom
19 shares may be sold.

20
21
22 **Wherefore, Plaintiff prays for Remedies as is hereinafter set forth.**

23
24 **On the First Cause of Action Against Silver Strand Plaza, LLC and**
25 **Manager Mary E. Sherman for an Order to Produce All Silver Strand Plaza,**
26 **LLC books and Records From 2013 to Present by an Electronic Means**
27 **Within 30 Calendar Days.**
28

- 1 1. Additionally to the declaratory relief, for costs of litigation, including
2 reasonable attorney's fees.

3 **On the Second Cause of Action for Dissolution against the Member**
4 **Defendants, SSP and the Manager**

- 5 1. That the Court decree a winding up and dissolution of defendant
6 Silver Strand Plaza, LLC;
7 2. That the Court entertain those proceedings as may be necessary or
8 proper for the involuntary winding up or dissolution of defendant
9 SSP, and make those orders for winding up and dissolution of
10 defendant SSP as justice and equity require;
11 3. For costs and reasonable attorneys' fees;

12
13
14 DATED: November 3, 2021

15
16 //s Laura Lynn Hammett
17 Laura Lynn Hammett
18 Plaintiff in Pro Se
19
20

21 VERIFICATION

22
23 I, Plaintiff Laura Lynn, state that the contents of the pleading above are true to my
24 knowledge, except as to those matters stated on information and belief, and as to
25 those matters, I believe them to be true.
26

27 //s Laura Lynn Hammett
28 Laura Lynn Hammett

Plaintiff in Pro Se

CERTIFICATE OF SERVICE

I certify that the foregoing Third Amended and Verified Complaint was filed on the Court's Electronic Filing System which notifies all counsel of record and is agreed upon as service.

November 3, 2021

/s/ Laura Lynn Hammett
Laura Lynn Hammett

Laura Lynn Hammett
Bohemian_books@yahoo.com
500 Amity Road Suite 5B #306
Conway, Arkansas 72032

Plaintiff in pro se

Laura Lynn Hammett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Laura Lynn Hammett,

Plaintiff,

v.

Mary E. Sherman, et al.

Defendants

Case No.: 19-CV-0605-TWR-AHG

Plaintiff's Motion to Bifurcate and
Transfer the Captioned Case to a More
Convenient Forum Pursuant to 28 U.S.C.
1404(a)

Memorandum of Points and Authorities
Within

No Oral Argument Requested

Hearing Date: April 28, 2021
Time: 1:30 p.m.
Courtroom: 3A

Honorable Todd W. Robinson presiding
Hon. Magistrate Allison H. Goddard

To the Court, All Parties and Their Counsel of Record:

Plaintiff's Motion to Bifurcate and Transfer the Captioned Case to a More Convenient Forum Pursuant to 28 U.S.C. 1404(a)

19-CV-0605-TWR-AHG

COMES NOW Plaintiff Laura Lynn Hammett, in pro se, to move the Court to Bifurcate and transfer the Captioned Case to a More Convenient Forum Pursuant to 28 U.S.C. 1404(a). Because the United States District Court Southern District of California has taken an adversarial position toward Plaintiff and forced her to file a claim to receive adequate relief, the Southern District of California is not a convenient forum for lack of fairness. Finding a more convenient forum, Plaintiff prefers to hear the causes against Defendant Diane Dennis of libel transmitted to Arkansas residents, false light invasion of privacy and IIED, which Plaintiff intends to add as per ECF No. 194, 45:6-46:5, in Arkansas Eastern District. All other causes, which are generally business disputes in regard to Silver Strand Plaza, LLC ("SSP") and libel transmitted to California and from California residents who are all involved with SSP should be transferred to Central District of California.

Plaintiff sent emails to each defendant counsel requesting a meet and confer on January 14, 2021, requesting a time to speak and attaching a draft copy of this motion. There was no response.

There are several changes that happened after Plaintiff chose to file her complaint in the Southern District of California on April 2, 2019 that make that forum inconvenient.

The tipping point is that the Clerk of the Court, through a deputy who was not properly supervised, altered the record in favor of the Defendants, then, when the clerk found that there was evidence of the alteration, tried to cover-up the change. Instead of taking meaningful administrative action against the Clerk who was working under her direct supervision, the judge presiding, the Honorable Janis L. Sammartino threatened and did in fact retaliate against Plaintiff for filing a grievance against the clerk. Even after Plaintiff brought the issue to the attention of the Administrative Office of Courts, Clerk of the Court John Morrill and Chief Judge Larry Alan Burns, no relief was given to Plaintiff. She is therefore forced to file a legal action against the United States District Court for the Southern District of California, the Clerk of the Court, the deputy clerk,

Plaintiff's Motion to Bifurcate and Transfer the Captioned Case to a More Convenient Forum Pursuant to 28 U.S.C. 1404(a)

1 Judge Sammartino (for administrative acts and actions taken with a complete lack of
2 jurisdiction) and the attorney Keith Cochran who conspired with the state actors to
3 deprive Plaintiff of her Constitutional right to due process and inflicted intentional
4 emotional distress.

5 The instant case was transferred to Judge Robinson on September 25, 2020, but the
6 question of whether Judge Sammartino's orders are with no effect is still ambiguous, with
7 the defendants all maintaining Judge Sammartino's orders became "law of the case" and
8 the Stern & Goldberg defendants filing more motions to try to collect attorney fees on
9 void proceedings. Judge Robinson failed to put a timely end to the multiplication of
10 proceedings and stress associated with the prospect of being held to a biased judge's
11 rulings. The motion to disqualify would have been granted or denied by September 2,
12 2020 if following California procedure.

13 Judge Robinson also allowed the Attorney Defendants to file a response late, even
14 though their failure to file was based on their lack of knowledge of procedure that was
15 posted on the day they claim to have looked for it, and of which the pro se litigant was
16 aware.

17 Judge Robinson also offered to allow plaintiff to dismiss the case, instead of
18 transferring it like she notified the court she intended to do. (ECF No. 219 and transcript
19 of hearing of January 13, 2021) Many pro se litigants might have thought Judge
20 Robinson's alternative sounded expedient. But Plaintiff knew it was a trap because she
21 had listened to a lecture on transferring earlier in the day and the professor warned about
22 the problems, such as statute of limitations problems, if she used that alternative. Also,
23 Judge Sammartino accepted plaintiff's dismissal of the Attorney Defendants as stated in
24 her notice (ECF Nos. 38 and 39), then made a purposeful error and said the reason
25 plaintiff dismissed was because the Attorney Defendants prevailed presumptively.

26 The statute of limitations for suit against CASD *et al* is two years. Because the tort
27 action is a preferable way to settle the dispute, Plaintiff filed the Federal Tort Claims Act
28

Plaintiff's Motion to Bifurcate and Transfer the Captioned Case to a More Convenient Forum Pursuant to 28 U.S.C. 1404(a)

1 (“FTCA”) claim six months prior to the running of the statute of limitations on the
2 Bivens Action. The tort claim requires this step to obtain waiver of sovereign immunity
3 from the United States Government. If the CASD does not admit to tort liability and
4 compensate Hammett appropriately, the Bivens claim, which does not require exhaustion
5 of administrative remedies, will be filed timely.

6 There is an inherent bias when the entity that is supposed to be protecting a citizen
7 takes an adversarial role. This is a severe bar to Plaintiff receiving equal protection under
8 the law.

9 The basis underlying the Bivens Action and FTCA claim is itself enough of a reason
10 to conclude that the Southern District of California is not giving Plaintiff due process.
11 (See ECF No. 219-1, the Basis of the FTCA claim and ECF No. 153, Motion for
12 Disqualification of Judge Janis L. Sammartino)

13 Another major change in circumstances was caused by the COVID-19 Pandemic. The
14 benefit to filing the case in the Southern District of California was the ease for Plaintiff to
15 interview past tenants and other witnesses in person while in San Diego for Court
16 hearings. It will be difficult to find any tenant who closed due to the pandemic now. Even
17 those who can be tracked down will be interviewed remotely.

18 Likewise, it was easier on the defendants’ attorneys to appear in court in California
19 before the pandemic. Now, all counsel appear by telephone. (See Minute Order of
20 January 13, 2021.) In fact, Defendant Dennis is represented by a Colorado attorney pro
21 hoc, even though she resides in New Mexico, so for her at least, the distance is not a
22 limiting issue.

23 Plaintiff combined the causes of action that are business related to Silver Strand Plaza,
24 LLC and the libel actions against two members of SSP that included statements to other
25 members and counsel to SSP, but also statements to community members in Arkansas.
26 This was done, in part, to keep costs down for the defendants. Plaintiff also preferred
27
28

Plaintiff’s Motion to Bifurcate and Transfer the Captioned Case to a More Convenient Forum Pursuant to 28 U.S.C. 1404(a)

1 California law in regard to defamation, even though she can prevail under Arkansas law
2 as well.

3 Defendants have abused process and have already spent on attorney fees several times
4 the amount of money for which Plaintiff agreed to settle the case in 2018. (See
5 Declaration of Patrick C. McGarrigle, ECF No. 20-2) The offer was even less than
6 Plaintiff had in her capital account at the time. They are not conserving resources, so
7 Plaintiff does not consent to bear the burden of the required travel for the Arkansas libel,
8 FLIP and IIED causes any longer.

9 Also, Plaintiff added the cause of False Light Invasion of Privacy (“FLIP”) to the
10 Second Amended Complaint and will add the IIED claim to the Third Amended
11 Complaint. The IIED can be brought as a separate but related case in Arkansas. The
12 damages in FLIP were exclusively in Arkansas or to people who have significant contacts
13 like second homes and kinfolk in Arkansas, since Defendant Dennis published to random
14 people on an Arkansas community group’s Facebook page.

15 For these reasons, the interests of justice would be served better by bifurcating the
16 causes of action and hearing them where the damage occurred.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 The Judicial Code Section 1404(a) provides, "For the convenience of the parties and
4 witnesses, in the interest of justice, a district court may transfer any civil action to any
5 other district or division where it might have been brought."

6 First the Court must decide whether a transfer is appropriate, and then where to
7 transfer the claims.

8 A transfer is appropriate as Plaintiff has not received equal protection in this district,
9 and even after the transfer to Judge Robinson over three months ago, none of the damage
10 and illegal behavior has been corrected.

11 "The purpose of the equal protection clause of the Fourteenth Amendment is to secure
12 every person within a state's jurisdiction against intentional and arbitrary discrimination,
13 whether occasioned by express terms of a statute or by its improper execution through
14 duly constituted agents. *U.S.C.A. Const. Amend. 14.*" *Vill. of Willowbrook v. Olech*, 528
15 *U.S. 562, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000)*

16 In *Village of Willowbrook*, the plaintiff brought a claim against a municipality for
17 violation of their right to equal protection. This gave rise to the theory known as "class of
18 one", where deprivation of Constitutional rights is made for a capricious and arbitrary
19 reason against a single person or small group. In *Willowbrook*, the reason was that the
20 Plaintiff had sued the municipality in the past.

21 In the instant case, Plaintiff is forced to sue the CASD for administrative acts. If the
22 CASD continues to deprive Plaintiff of equal protection, but through judicial acts,
23 Plaintiff will have no civil recourse for the transgressions, due to absolute judicial
24 immunity. Therefore, to protect the public perception of the integrity of the court, it is
25 prudent to transfer the case.

26 There will be little prejudice as Plaintiff plans to move for *all* orders made by Judge
27 Sammartino to be vacated. (The Plaintiff only asked for the orders for attorney fees and
28

1 anything to do with the derivative action to be vacated as void in the Circuit Court and in
2 the district court as ECF No. 177. The Circuit Court erred in saying the plaintiff moved
3 for “all orders” to be vacated, ECF No. 210.)

4 “When venue is challenged, the court must determine whether the case falls within
5 one of the three categories of courts in which a civil action may be brought, as set out in
6 the statute governing venue generally; if it does, venue is proper, but if it does not, venue
7 is improper, and the case must be dismissed or transferred. 28 U.S.C.A. §§ 1391,
8 1406(a).” *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 571 U.S. 49,
9 134 S. Ct. 568, 187 L. Ed. 2d 487 (2013)

10 In this case, the United States District Court has subject matter jurisdiction solely
11 based on diversity.

12 The causes of action did not all arise in the same district. “Where there are multiple
13 claims involved, unless the doctrine of ‘pendent venue’ applies, venue must be proper as
14 to each claim. 28 U.S.C.A. § 1391.” *Doshier v. Twitter, Inc.*, 417 F. Supp. 3d 1171 (E.D.
15 Ark. 2019) In transfer, defendants will have another opportunity to challenge venue and
16 jurisdiction, so plaintiff cannot presume a second consent by defendant Dennis.

17 The Central District of California can have either specific or general personal
18 jurisdiction over each and every defendant, because each resides in the district or has
19 significant contacts in the district, including the specific contact of business with Silver
20 Strand Plaza, LLC headquartered in Central District. Diane Dennis has contacts that
21 subject her to specific jurisdiction in Arkansas, where Dennis chose to contact numerous
22 persons by internet and telephone, on a campaign to defame and harass a citizen of
23 Arkansas.

24 “Arkansas's long arm statute is consistent with federal constitutional law and permits
25 personal jurisdiction to the maximum extent allowed by the Due Process Clause of the
26 Fourteenth Amendment. *U.S. Const. Amend. 14; Ark. Code Ann. § 16-4-101(B).*” *Twitter*,
27 417 F. Supp. 3d 1171 (E.D. Ark. 2019)

28 Plaintiff’s Motion to Bifurcate and Transfer the Captioned Case to a More Convenient Forum Pursuant to 28 U.S.C. 1404(a)

1 “Due process requires that the defendant have certain minimum contacts with the
2 forum state such that the maintenance of the suit does not offend traditional notions of
3 fair play and substantial justice. *U.S. Const. Amend. 14.*” *Id.*

4 “When deciding a personal jurisdiction issue, court considers five factors to determine
5 the sufficiency of a defendant's contacts, with the first three factors being of primary
6 importance: (1) the nature and quality of the contacts with the forum state; (2) the
7 quantity of the contacts with the forum; (3) the relation of the cause of action to these
8 contacts; (4) the interest of the forum state in providing a forum for its residents; and (5)
9 the convenience of the parties.” *Id.* Here, Defendant Dennis’ contacts were directly
10 related to the cause of actions. Judge Sammartino underscored Arkansas’ interest in
11 providing a forum for its resident, Hammett, even overreaching to include the defamatory
12 actions taken in other states to citizens of other states. (Plaintiff prefers to litigate the
13 defamation occurring in California in California, as it is evidence of the malice with
14 which the members of SSP treated her.)

15 The causes of action arising from the business of Silver Strand Plaza, LLC might have
16 been brought in the Central District of California because a substantial part of the events
17 or omissions giving rise to the claim occurred in the Central District. The Company itself
18 is headquartered in the Central District. The Company accountants and attorneys were all
19 in the Central District until the hiring of Mr. Forde. 28 U.S.C. 1391(a)(2).

20 The cause of action of false light invasion of privacy took place and the damage was
21 in Arkansas Eastern District, and so the claim could have been filed there. 28 U.S.C.
22 1391(a)(2).

23 The defamation by Diane Dennis to community members in Arkansas was in
24 Arkansas, and so the claim could have been filed there. 28 U.S.C. 1391(a)(2).

25 The defamation transmitted to members of and counsel representing SSP was in
26 California and Colorado. Diane Dennis was living in Colorado, now lives in New
27

1 Mexico, but was always a vagabond. She consistently maintained significant contact with
2 California, where she had one of her most valuable assets, SSP.

3 Section 1404(a) also requires “convenience of parties and witnesses in the interest of
4 justice' favor transfer.” *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th Cir. 1985)

5 “Section 1404(a) is intended to place discretion in the district court to adjudicate
6 motions for transfer according to an ‘individualized, case-by-case consideration of
7 convenience and fairness.’ *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964). A motion to
8 transfer under § 1404(a) thus calls on the district court to weigh in the balance a number
9 of case-specific factors.” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)

10 But the convenience of witnesses is also important. “In weighing the convenience of
11 the witnesses, the Court considers not only the number of witnesses involved, but also the
12 materiality of the expected testimony.” *E. J. Gallo Winery v. F. P. S.p.A.*, 899 F. Supp.
13 465, 466 (E.D. Cal. 1994) The five known witnesses to the broadcast to a community
14 group in Arkansas would certainly be inconvenienced to travel to California. Most have
15 livestock that they tend to and rarely, if ever travel.

16 Plaintiff’s husband, therapist and doctors are all witnesses to the effect the
17 communications had on Hammett, and each would be inconvenienced travelling to
18 California.

19 “In addition to the factors mentioned in the statute, a court should consider the factors
20 embodied in the forum non *conveniens* doctrine, such as

21
22 the relevant ease of access to sources of proof; availability of compulsory process
23 for attendance of unwilling, and the cost of obtaining attendance of willing,
24 witnesses, possibility of view of premises, if view would be appropriate to the
25 action; and all other practical problems that make trial of a case easy, expeditious
26 and inexpensive ... relative advantages and obstacles to fair trial.

Gulf Oil Corporation v. Gilbert, 330 U.S. 501, 508–09, 67 S.Ct. 839, 843, 91 L.Ed. 1055 (1947). A court should also consider plaintiff's choice of forum. *Los Angeles Memorial Coliseum Commission v. National Football League*, 89 F.R.D. 497, 499 (C.D.Cal.1981), *aff'd*, 726 F.2d 1381 (9th Cir.1984).” *Byron v. Rajneesh Found. Int'l*, 634 F. Supp. 489, 494 (D. Or. 1985)

Finally, the Central District is more pro se friendly. The Central District would have allowed Plaintiff limited scope representation for the derivative issues. In fact, they might have provided it pro bono. The Court in Central District would presumably not allow a person unauthorized to practice law to advocate on behalf of a limited liability company.

“In determining whether to bifurcate, courts consider a number of factors, including whether bifurcation would promote ‘efficient judicial administration,’ promote convenience, simplify discovery or conserve resources, reduce the risk of juror confusion, and separability of the issues.” *Lam Research Corp. v. Schunk Semiconductor*, 65 F. Supp. 3d 863, 865 (N.D. Cal. 2014) (citing *Medtronic Minimed, Inc. v. Animas Corp.*, CV 12–04471 RSWL RZX, 2013 WL 3233341, at *1 (C.D. Cal. June 25, 2013); *McDermott v. Potter*, No. 08–03432 SI, 2010 WL 956808, at *1 (N.D. Cal. Mar. 12, 2010)). Hearing the Arkansas defamation, IIED and FLIP claims with the Silver Strand Plaza Claims does not make sense, will confuse jurors and can be resolved quickly, without all the discovery concerning Silver Strand Plaza, LLC.

Each of these factors points to the Arkansas defamation, false light and IIED claims being heard in Arkansas. Central District of California is the most obvious choice for the business disputes and defamatory comments received by business associates who mostly reside in the Central District.

Respectfully Submitted,

Date: January 15, 2021

Laura Lynn Hammett, in pro se

Laura Lynn Hammett, Plaintiff in pro se

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Plaintiff's Motion to Bifurcate and Transfer the Captioned Case to a More Convenient Forum Pursuant to 28 U.S.C. 1404(a)
19-CV-0605-TWR-AHG

Laura Lynn Hammett
Bohemian_books@yahoo.com
500 Amity Road Suite 5B #306
Conway, Arkansas 72032

Plaintiff in pro se

Laura Lynn Hammett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Laura Lynn Hammett,

Plaintiff,

v.

Mary E. Sherman, et al.

Defendants

Case No.: 19-CV-0605-TWR-AHG

Reply to Combined Opposition to
Plaintiff's Motion to Vacate Void Orders
Granting Attorneys' Fees (ECF No. 111);
In Alternative Motion for
Reconsideration

Hearing Date: December 2, 2020

Time: 1:30 pm

Courtroom: 3A

Honorable Todd W. Robinson presiding
Hon. Magistrate Allison H. Goddard

Reply to Combined Opposition to Plaintiff's Motion to Vacate Void Orders Granting Attorneys' Fees (ECF No. 111); In
Alternative Motion for Reconsideration

19-CV-0605-TWR-AHG

COMES NOW, “Plaintiff” Laura Lynn Hammett, in pro se, to reply to the opposition of “the Attorney Defendants” to the motion to vacate void orders or in the alternative, reconsideration (ECF No. 195, “Opp.”).

Plaintiff apologizes for two inadvertent errors on the notice of motion, ECF No. 177-1. The Judge Presiding is the Honorable Todd W. Robinson and the courtroom is 3A.

Plaintiff reasserts her objection to the Attorney Defendant’s untimely opposition and asks this Court to reconsider the issue. There is new evidence presented in the Court’s order granting leave (ECF No. 191) that Attorney Daniel S. Agle committed perjury, and therefore made his motion for an extension of time in bad faith. Mr. Agle claimed there were no chamber rules nor standing orders for Judge Robinson on October 1, 2020. (Declaration of Daniel S. Agle, ECF No. 188-2, ¶3) The Court said the first version of the standing order was posted to the Court’s website on September 30, 2020. (ECF No. 191, 2:19-20) Plaintiff did not have this evidence and was not certain whether she saw the order on October 13th or 14th. On October 15, 2020, Plaintiff served a different motion on the Attorney Defendants, ECF No. 184, as cited at Opp. 4:13. If Counsel calendars hearings when served, as both declarations in support suggest, they had a second reason to read the operative standing order. Plaintiff’s recollection is reading “28-day” on October 13, 2020.

The Court prefers to decide issues on the merits. But the Court must be equitable. In this case, the Judge who wrote the order Plaintiff seeks to vacate denied an extension of time or other accommodation to answer hundreds of pages supporting the fee motions, motions to dismiss, compel an undertaking, and sanctions, all filled with violations of FRCP Rule 11, all scheduled for the same day. (ECF Nos. 53, 61, 63, 65, 66, and 75)

Plaintiff’s pleas for relief were made before her papers were due, whereas here, the Attorney Defendants waited until after their deadline.

Judge Janis L. Sammartino (“Judge JLS”) discussed the issue in the order granting attorney fees, ECF No. 111 at f.n. 11. Dismissive of Plaintiff’s objection, Judge JLS said

Reply to Combined Opposition to Plaintiff’s Motion to Vacate Void Orders Granting Attorneys’ Fees (ECF No. 111); In

Alternative Motion for Reconsideration

19-CV-0605-TWR-AHG

1 “[] Plaintiff had twenty-one days to file an opposition, which exceeds the default briefing
2 schedule set by Civil Local Rule 7.1(e)(2) by a full week.” That was an extra week given
3 when scheduled due to the Court’s schedule being backed up. Here the licensed attorneys
4 were given two weeks extra to answer one motion, and there was a similar motion filed in
5 the 9th Circuit two months earlier, August 28, 2020, appeal #20-55442, dkt entry 12.

6 The Plaintiff’s arguments to vacate the void orders were not “the same” as those
7 presented in ECF No. 78-1 nor as stated by the Attorney Defendants. (Opp. 1:8-13) At
8 the time the Plaintiff wrote ECF No. 78-1, September 2019, she had not found case law
9 about the entire proceeding being void. Plaintiff learned that on May 22, 2020.

10 Opposition claimed “no support” for the proposition that Mr. McGarrigle (and all
11 the attorneys involved) “allowed” Plaintiff to represent SSP. (Opp. Fn 7) Plaintiff is
12 dumbfounded. There is no evidence anywhere that any attorney said that a person not
13 authorized to practice law may not represent SSP, LLC. Opposition is asking Plaintiff to
14 prove a negative. Mr. McGarrigle’s insistence that Plaintiff lacked “standing” to sue is far
15 different than lacking authority to practice law on behalf of an LLC. Neither does lack of
16 standing “support” contentions Hammett’s claims were without merit. SSP had standing.

17 There is no logic in the Attorney Defendants’ contradiction: They claim they did
18 not allow the unauthorized practice of law, but when plaintiff ceased the unauthorized
19 practice on her own, the Attorney Defendants seized upon that righteous act to punish her.

20 Plaintiff did not have innate knowledge that derivative cases were “on behalf” of
21 another party but felt in over her head. She asked the Court for leave to hire an attorney
22 to explain a derivative case to her. (ECF No. 11-3, especially at 3:10-11) Shockingly, the
23 Court denied her plea. Had this been a felony instead of a misdemeanor, Judge JLS might
24 be found guilty of misprision of a felony. She was acting unethically, in violation of the
25 Code of Conduct for United States Judges Canon 2A: “A judge should respect and
26 comply with the law.” Judge JLS knowingly allowed Hammett to break a law and
27 prohibited her from hiring an authorized attorney for that segregated cause.

28 Reply to Combined Opposition to Plaintiff’s Motion to Vacate Void Orders Granting Attorneys’ Fees (ECF No. 111); In

Alternative Motion for Reconsideration

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1 Judge JLS knew of the prohibition. Here are her words from an earlier case:

2 “[] LLCs, which combine the features of a corporation and partnership, likewise
3 require a licensed attorney to appear in court. [citations omitted]. // On the basis of the
4 authorities cited herein, the Court GRANTS plaintiffs' motion to strike the answers of the
5 entity defendants [who appeared without licensed counsel].” (*Lawrence v. Johnson, No.*
6 *05CV1259 JLS (WMC), 2007 WL 9776572, at *2 (S.D. Cal. Nov. 20, 2007)*)

7 Opposition claimed that “Plaintiff seeks to avoid the consequences of prosecuting
8 baseless claims” (Opp. 7:13). Plaintiff sought to amend her derivative claims to direct
9 injury exclusively.

10 Attorney Defendants inserted arguments buried in lengthy footnotes on Opp. page
11 3, 5, 8-12 and 14. While footnote arguments are not allowed by many courts, including
12 the Ninth Circuit, Plaintiff will respond in case this Court will consider them.

13 In Footnote 8, the opposition shirks their culpability in “allowing”, nay, *requiring*
14 Hammett to continue pursuing a derivative action without an attorney. The award should
15 certainly exclude any fees incurred after Hammett filed her motion for leave to retain
16 representation on limited scope, ECF No. 11, on July 22, 2019. For McGarrigle and MKZ
17 that excludes \$12,012. The Stern and Goldberg attorneys did not give detailed bills.

18 Silver Strand Plaza, LLC is the party harmed by “Law of the Case” if the Court
19 accepts the argument that the defendants prevailed on the anti-SLAPP motion. A receiver
20 will be deterred from filing a malpractice claim through counsel, faced with the prospect
21 of paying the Attorney Defendants’ attorney fees for the second round on this issue.

22 As an independent alternative, the Court is asked to reconsider the fee order,
23 because the judge who made it was disqualified for the appearance of extra-judicial bias,
24 which caused a manifest injustice and clear error. (Memo 2:7-13, ECF Nos. 153 to 161)
25 The opposition misstates the alternative as “and” at Opp. 4:19.

26 Attorney Defendants claim the motion for reconsideration is untimely. (Opp. 4:27-
27 28) The opposition makes another misstatement at 5:5. “Plaintiff acknowledges that her
28 Reply to Combined Opposition to Plaintiff’s Motion to Vacate Void Orders Granting Attorneys’ Fees (ECF No. 111); In

1 motion is untimely pursuant to Civil Local Rule 7.1.i.2 []." Plaintiff merely stated that a
2 motion must "normally" be filed within 28-days after entry of the ruling. (Memo 5:13-15)

3 In the opposition's "Summary of Relevant Filings", they omit ECF No. 124 signed
4 and refiled as 126, "Motion to Stay proceedings except for filing motion for permission
5 to file appeal of interlocutory order or judgment", filed April 15, 2020; ECF No. 132,
6 "Order granting Plaintiff's ex parte motion (ECF Nos. 124, 126)", filed April 20, 2020,
7 the day the motion for reconsideration was due; and ECF No. 133, "Motion for Leave to
8 Appeal an interlocutory order entered March 23, 2020", filed April 21, 2020.

9 Plaintiff then decided it prudent to file the Notice of Appeal. (The Attorney
10 Defendants' characterization of Plaintiff's response to the OSC why her appeal should
11 not be dismissed (Opp. 4:1-6), omits Plaintiff's contention that the closing procedure was
12 irregular and confusing.) ECF No. 133, filed the day after permission was granted, was
13 never withdrawn, opposed nor ruled upon. The Attorney Defendants were put on notice
14 that reconsideration or oversight was intended. The proceedings were stayed due to the
15 extreme emotional distress Plaintiff (and the rest of the world) was suffering in early
16 2020, and the appeal. Plaintiff miraculously managed to answer the OSC to the Ninth
17 Circuit. After the appeal was dismissed, and omitted from the Summary of Relevant
18 Filings (Opp. 1:23 to 4:15) is mention of the motion Stern and Goldberg filed in the
19 Ninth Circuit Court of Appeals, requesting further attorney fees and Plaintiff's opposition
20 moving the Ninth Circuit to vacate the void orders. The Ninth Circuit has not given any
21 response. They did not issue an OSC similar to the one made to Plaintiff denying
22 jurisdiction. Plaintiff does not understand jurisdiction fully but hopes that by bringing the
23 motion to vacate at the District Court, that will save the Higher Court's resources.

24 Plaintiff did not file this motion for reconsideration until the apparently biased
25 judge was removed from the case. The day Judge JLS was removed, this motion for
26 reconsideration was filed. It should be deemed timely.

27
28 Reply to Combined Opposition to Plaintiff's Motion to Vacate Void Orders Granting Attorneys' Fees (ECF No. 111); In

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Under FRCP Rule 54(b), as discussed in Opp. 5:22 to 7:5, reconsideration is rare, but can be made where, as here, there “is clear error or the initial decision is manifestly unjust.” (quoted at Opp. 6:11-12). The opposition failed to include the next line of the quote: “There may also be other, highly unusual, circumstances warranting reconsideration.” *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Hopefully, a judge who appears biased is unusual. To find a judge worthy of discipline under the Canons of Judicial Conduct is unusual, but that is what we have here. Plaintiff even made a plausible complaint of criminal conduct by Judge JLS to the FBI; Hammett was not charged with filing a false report. Judge JLS’ complete lack of integrity warrants reconsideration of her orders.

Attorney Defendants then quote L.R. 7.1.i.1, inadvertently calling it “7.1.i.2”. Plaintiff complied with this rule where she described Judge JLS’ questionable behavior post filing of Plaintiff’s opposition. (Affidavit, ECF No. 177-3, from ¶ 14) Hammett did not know the orders were void. With diligence, she could have known the law. But as discussed earlier, the one exception to knowing the law is when the law makes an order void. Hammett could not guess Judge JLS would ignore the reason Hammett gave for dismissing the causes clearly stated in ECF No. 38. Or that Judge JLS would skip discussion of the threshold question on CCP 425.16 when she gave her opinion.

If not reconsidered now, it will be challenged after judgement by a motion under FRCP Rule 60(b), which is a huge waste of resources in violation of Rule 1.

If the Court agrees to reconsideration, then it should look at the same arguments made in the opposition to attorney fees, ECF. No. 78, 78-1 and 78-2, which were misstated and argued erroneously throughout the Opp. starting at 1:13-16.

Plaintiff does not and need not claim new evidence regarding the motion for attorney fees. All the evidence required was presented in ECF Nos. 73-1 to 4, 74, 77, 87 and 104. The problem was the evidence was addressed by a partial jurist.

Reply to Combined Opposition to Plaintiff’s Motion to Vacate Void Orders Granting Attorneys’ Fees (ECF No. 111); In

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1 The claim that arguments were “properly ruled on by this Court” is erroneous.
 2 (Opp. 1:17-19, Memo 9:8 to 11:8)

3 Plaintiff can relitigate issues that were decided by a disqualified judge, contrary to
 4 Attorney Defendants’ conclusion. Plaintiff did not claim it was “simply because this
 5 matter has been transferred to a different judge.” (Opp. 1:19-21, Memo 6:23 to 7:4) That
 6 this “Court denied the motion as moot, since this matter was transferred” (Opp. 4:13-16)
 7 is not the whole truth. The order denying the motion to disqualify as moot was this
 8 Court’s agreement that Judge JLS’ orders have no effect.

9 “Moot” means “Having no practical significance; hypothetical or academic”
 10 *MOOT*, *Black's Law Dictionary (11th ed. 2019)* When a motion for disqualification of a
 11 judge is moot, it is because the judge’s orders have no significance. Looking to similar
 12 cases for instruction: “Plaintiff has moved to disqualify Magistrate Judge Lloyd as the
 13 referral judge in this case. However, no matters in this case have yet been referred to
 14 Judge Lloyd, and as this case is now being dismissed in its entirety, no matters will be
 15 referred. Accordingly, Plaintiff’s motion to disqualify Judge Lloyd is DENIED as moot.”
 16 *Ou-Young v. Vasquez*, No. 12-CV-02789-LHK, 2012 WL 5471164, at *6 (N.D. Cal. Nov.
 17 9, 2012); or the similar district court order cited by Judge Todd W. Robinson in ECF No.
 18 186, 1:21-25. In *Shahin*, the plaintiff requested recusal of Chief Judge Gregory M. Sleet
 19 in the final paragraph of an opposition to an MTD, DI 29 at page 41. Chief Judge Sleet
 20 had made only one order in the case, DI 21, extending time to answer the summons and
 21 complaint. The case was transferred to Judge Sue L. Robinson on March 27, 2009,
 22 between DI 60 and 61, with no DI given to the transfer order (DKT). She wrote “the
 23 request for recusal will be denied as moot” as part of the orders on the MTDs. *Shahin v.*
 24 *Darling* No. 08-CV-295-SLR, 606 F. Supp. 2d 525, 545 (D. Del.), *aff’d*, 350 F. App’x 605
 25 (3d Cir. 2009). No significant order was made by the allegedly disqualified judge.

26 This case is distinguished from *Ou-Young* and *Shadin* by the numerous substantive
 27 and dispositive decisions made by Judge JLS, a separate motion for recusal, and an
 28 Reply to Combined Opposition to Plaintiff’s Motion to Vacate Void Orders Granting Attorneys’ Fees (ECF No. 111); In

1 affidavit presenting specific facts that would cause any reasonable person to doubt the
2 impartiality of Judge JLS. (ECF No. 153-1)

3 Judge Todd W. Robinson reiterated that the motion was denied as moot, not on the
4 merits, in response to Plaintiff's motion for reconsideration. (ECF Nos. 184 and 186)

5 "Voluntary cessation of challenged conduct does not moot a case or controversy
6 unless subsequent events make it absolutely clear that the allegedly wrongful behavior
7 could not reasonably be expected to recur." *Parents Involved in Cmty. Sch. v. Seattle Sch.*
8 *Dist. No. 1*, 551 U.S. 701, 127 S. Ct. 2738, 168 L. Ed. 2d 508 (2007). If the conduct
9 Plaintiff challenged (that Judge JLS would throw the case for the defendants) can recur, if
10 there is deference given to Judge JLS's decisions, then Judge Robinson would not rightly
11 call the motion to disqualify "moot". So, we should not give the orders deference. To do
12 otherwise would be to say the issue of disqualification is not moot.

13 Contrary to Opp. 1:27 to 2:5, the causes of action against the Attorney Defendants
14 were based, in part, on their concurrent representation of Silver Strand Plaza, LLC and all
15 the other defendants as individuals and counseling SSP to deny Plaintiff's rights in
16 violation of the OA, which caused the need for this litigation. The Attorney Defendants
17 inadvertently cited ECF No. 4 instead of ECF No. 3 at Opp. 2:1. They also misstated that
18 they were Plaintiff's "litigation adversary's counsel" for the derivative claim. The
19 Attorney Defendants did not represent SSP as real party plaintiff, just as nominal
20 defendant. Calling themselves this is also contrary to their own claims that they were not
21 litigation counsel. (Opp. Fn 7)

22 Contrary to Opp. 2:1-3, Plaintiff's claims were not barred by litigation privilege.
23 The anti-SLAPP motions failed at the first prong of the test. (Memo 9:11-20)

24 Omitted from Opp. Fn 1, the conversion claim was dismissed to "conserve
25 resources of time and money for the Court and all parties" (ECF No. 38, 2:21-22) and for
26 the Attorney Defendants' "economy". (ECF No. 177-3, fn 2)

27 Reconsideration is not based on Plaintiff's initial error, as purported at Opp. 7:17.
28 Reply to Combined Opposition to Plaintiff's Motion to Vacate Void Orders Granting Attorneys' Fees (ECF No. 111); In

1 Had Plaintiff been authorized to practice law, she should have prevailed. Caselaw
2 has upheld verdicts in favor of entities that were represented by non-attorneys, because
3 the law is to protect the entity. If Hammett was the type to knowingly commit a
4 misdemeanor, she could have not dismissed and, barring Court bias, prevailed.

5 *Latshaw* and *Engelson* (Opp. 7:20-8:1) discuss “legal advice of counsel”, not a
6 non-attorney. *King* (Opp. 8:4-6) does not address a “pro se” acting on behalf of an entity.

7 *Russell*, *City of Downey* and *Davis* (Opp. 8:7-14) are clear that all proceedings
8 litigated by a non-attorney on behalf of a third party are void. This includes legal fee
9 motions, and the entirety of a \$1M judgement in *Russell*. (Memo 3:13)

10 Plaintiff did not “act[] in pro per on her own behalf”. (Opp. 8:20)

11 “Plaintiff’s ignorance of the law” (Opp. 8:21) is not the basis Plaintiff used to void
12 the orders. The orders are void because of the law of which Plaintiff was ignorant.

13 Analogous to Plaintiff’s ability to file a default against the defendant in *City of*
14 *Downey* (Opp. f.n. 4 over two pages) the Attorney Defendants could have said when the
15 draft complaint was emailed to them before filing, “a licensed attorney must write the
16 complaint on behalf of the Company.” They could have asked to strike the derivative
17 cause of action for that reason. But with unclean hands, they preferred to allow an
18 unauthorized practitioner to proceed because it gave them an unfair advantage.

19 The argument about Davis Test Only Smog Testing (Opp. continuation of f.n. 4) is
20 a “so what?” “Procedural due process in the administrative setting does not always
21 require application of the judicial model. U.S. Const. Amend. 14.” (Davis, h.n. 3) “In a
22 court of law, an unlicensed person cannot appear for another person, and the resulting
23 judgment is a nullity.” (id. hn 2, Memo 2:22 to 3:2)

24 Attorney Defendants argument that they are allowed to collect the full award even
25 if they could not collect on the derivative claim is not supported by any caselaw,
26 therefore it is conclusionary. (Opp. 9:1-6) This Court should disregard it. Plaintiff has
27

28 Reply to Combined Opposition to Plaintiff’s Motion to Vacate Void Orders Granting Attorneys’ Fees (ECF No. 111); In

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1 come across caselaw that contradicts the defendants, but cannot find it at this time, so
2 will cite it on appeal in case the court allows unsupported argument.

3 Caselaw relied upon by Judge JLS (Opp. 9:11-16) specifically offers Plaintiff
4 rebuttal of the presumption defendants prevailed by the dismissal, by explaining her
5 reasons for the dismissal that were not merits based. “[Courts] generally followed the
6 *Coltrain* approach, which states that a plaintiff's voluntary dismissal raises a presumption
7 that the defendant is the prevailing party that the plaintiff can rebut by explaining its
8 reason for dismissal. *Coltrain*, 66 Cal.App.4th at 107, 77 Cal.Rptr.2d 600 (noting that the
9 ‘critical issue is which party realized its objectives in the litigation’).” (as cited in the
10 order written by Judge JLS in *Gottesman*) In this case, the defendants did not reach their
11 objective, which is for the Plaintiff to leave with its tail between its legs. Plaintiff made it
12 clear she would reframe the claims as non-derivative and pursue them zealously.

13 Plaintiff is not “judge shopping”. (Opp. 9:20-22) Claims of bias were based
14 primarily on extra-judicial bias, unethical and perhaps illegal activity by Judge JLS, with
15 the propensity toward making erroneous rulings against plaintiff as only a supporting
16 element. The denial as moot was not solely because the case was transferred. (Opp. 10:1,
17 fn 5). As discussed above “moot” implied “of no effect”.

18 Plaintiff made clear that the issue with being denied an extension of time due to
19 failure of notifying counsel as per local rules (Opp. 11:10- 12:1, f.n. 9) was that the Court
20 did not hold opposing counsel to the same standard, allowing them to ignore rules.

21 Plaintiff has more remedies than waiting for appeal. (in contrast to Opp. 12:20-21)

22 Attorney Defendants’ opposition regurgitates the merits of their fee motion, rather
23 than the issue on hand, whether reconsideration is appropriate. (Opp. 12:22 to 13:15)

24 Plaintiff agrees “Defendants addressed the merits of both prongs of the anti-
25 SLAPP statute in their anti-SLAPP motions.” (Opp. 13:19-20) Plaintiff said the Court
26 failed to address the merits of the first prong. (Memo 9:17-20)

27
28 Reply to Combined Opposition to Plaintiff’s Motion to Vacate Void Orders Granting Attorneys’ Fees (ECF No. 111); In

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Here, the defendants assert that the Court need not address the “first prong”. (Opp. 13:20-22)

Then Gottesman is revisited, for the argument that “voluntary dismissal raised a presumption that Defendants were the prevailing parties”. (Opp. 13:20 to 15:28)

Even if the Attorney Defendants were presumably the prevailing party, the Court should never have reached that part of the two-part test. “A court considering a motion to strike under the anti-SLAPP statute must engage in a two-part inquiry. ‘First, a defendant “must make an initial prima facie showing that the plaintiff’s suit arises from an act in furtherance of the defendant’s rights of petition or free speech.” ‘ *Vess*, 317 F.3d at 1110 (quoting *Globetrotter Software, Inc. v. Elan Comput. Grp., Inc.*, 63 F.Supp.2d 1127, 1129 (N.D. Cal. 1999)).” *Gottesman v. Santana*, 263 F. Supp. 3d 1034, 1039 (S.D. Cal. 2017)

Vess truncated an important clause in the legislated statute that was in the original Globetrotter quote: “in connection with a public issue”. As Plaintiff argued in the opposition to awarding attorney fees, malpractice by attorneys to a tightly held LLC and conversion are not public issues. (ECF No. 78-1, 2:14 to 3:8) Neither do the matters rise from free speech or right to petition. (ECF No. 78-1, 3:23 to 5:2)

“Second, once the defendant has made a prima facie showing, “the burden shifts to the plaintiff to demonstrate a probability of prevailing on the challenged claims.” ‘ *Id*’ *id*. These are Judge JLS’ own words. She never made the requisite analysis.

In Gottesman, the attorney defendants were named because they signed the trademark applications underlying the case. (16-CV-2902, ECF No. 38, ¶140) It concerned a well-known band, Santana. This was protected activity. The dismissal in Gottesman gave no elaboration as to why the attorney defendants were dismissed, and it was, by the way, without prejudice. (ECF Nos. 130 and 132.)

Respectfully submitted,

Dated 11/9/2020

s/ Laura Lynn Hammett

Laura Lynn Hammett, in pro se

Reply to Combined Opposition to Plaintiff’s Motion to Vacate Void Orders Granting Attorneys’ Fees (ECF No. 111); In

Alternative Motion for Reconsideration

19-CV-0605-TWR-AHG

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13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA
15

16 LAURA LYNN HAMMETT, an
17 individual,

18 Plaintiff,

19 vs.

20 MARY E. SHERMAN, an individual;
MARY E. SHERMAN, as manager of
21 Silver Strand Plaza, LLC; SILVER
STRAND PLAZA, LLC, a California
22 limited liability company; MARY E.
SHERMAN as CO-TRUSTEE OF THE
23 J & M SHERMAN FAMILY TRUST, a
California revocable trust; JEFFREY
24 M. SHERMAN as CO-TRUSTEE OF
THE J & M SHERMAN FAMILY
25 TRUST; MARY E. SHERMAN as
TRUSTEE OF THE ALEXA
26 SHERMAN IRREVOCABLE TRUST,
a California irrevocable trust; MARY E.
27 SHERMAN as TRUSTEE OF THE
DANA SHERMAN IRREVOCABLE
28 TRUST, a California irrevocable trust;

Case No. 19-CV-0605-TWR-AHG

**DEFENDANTS ELLIS STERN,
ALAN N. GOLDBERG, STERN &
GOLDBERG, PATRICK C.
MCGARRIGLE, AND
MCGARRIGLE, KENNEY &
ZAMPIELLO, APLC'S JOINT
OPPOSITION TO PLAINTIFF'S
MOTION TO VACATE VOID
ORDERS GRANTING
ATTORNEYS' FEES (ECF NO.
111); OR IN THE ALTERNATIVE,
MOTION FOR
RECONSIDERATION**

Date: December 2, 2020
Time: 1:30 p.m.
Crtrm.: 4D

Judge: Hon. Todd W. Robinson

Trial Date: None Set

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; 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 AND
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

Defendants.

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Defendants ELLIS ROY STERN, ALAN N. GOLDBERG, and STERN & GOLDBERG (“S&G Defendants”), PATRICK C. MCGARRIGLE, and MCGARRIGLE, KENNEY & ZAMPIELLO, APLC (MKZ Defendants) (collectively referred to as the “Attorney Defendants”) by and through their respective counsel, hereby jointly oppose Plaintiff’s Motion to Vacate Void Orders Granting Attorneys’ Fees, or in the alternative, Motion for Reconsideration.

I. INTRODUCTION

Plaintiff seeks to overturn orders made by Judge Sammartino, making the same arguments presented in opposition to the Attorney Defendants’ motions for attorneys’ fees filed in September 2019 (ECF Nos. 47 and 54; 78-1.) Plaintiff’s reason for vacating the orders is that Plaintiff brought her claim for malpractice against the Attorney Defendants as a derivative action without being authorized to practice law. Plaintiff alternatively argues that the Court’s decision was erroneous since Plaintiff voluntarily dismissed her claims against the Attorney Defendants prior to the hearing on their respective special motions to strike brought pursuant to California Code of Civil Procedure section 425.16 (anti-SLAPP motions). However, these arguments were made in opposition to the Attorney Defendants’ motions for attorneys’ fees, which have already been rejected and properly ruled on by this Court based on valid and controlling legal authority. (ECF Nos. 111.) Plaintiff cannot re-litigate this issue, or any other prior rulings made, simply because this matter has been transferred to a different judge.

Defendants therefore respectfully request this Court deny her motion.

II. SUMMARY OF RELEVANT FILINGS

Plaintiff Laura J. Lynn, an individual, initially filed this action on April 2, 2019, against Mary E. Sherman, Silver Strand Plaza, LLC, and other defendants. (ECF No. 1.) Plaintiff Laura Lynn Hammett, an individual, thereafter filed a First Amended Complaint filed on May 29, 2019, adding the Attorney Defendants as parties to this action based on their prior representation of Ms. Sherman and Silver

1 Strand Plaza, LLC. (ECF No. 4.) Since Plaintiff's claims were clearly barred by
 2 California's anti-SLAPP statute—as claims made against her litigation adversary's
 3 counsel, the S&G Defendants and MKZ Defendants each promptly filed a Special
 4 Motion to Strike (“anti-SLAPP” motion) pursuant to California Code of Civil
 5 Procedure section 425.16 on July 30, 2019. (ECF Nos. 20-21.) However, in response
 6 to the anti-SLAPP motions, on August 20, 2019, while the Attorney Defendants’
 7 motions to strike were pending, Plaintiff voluntarily dismissed the Attorney
 8 Defendants, but expressed an intent to refile these and other new claims against
 9 them.¹ (ECF No. 38.) Subsequently, given the dismissal, this Court entered an order
 10 denying as moot the anti-SLAPP motions and took the motions off calendar. (ECF
 11 No. 39.)

12 On September 3, 2019, and September 5, 2019, the Attorney Defendants filed
 13 their respective motions for attorneys’ fees pursuant to Code of Civil Procedure
 14 section 425.16(c). (ECF Nos. 49, 54.)² Plaintiff filed ex parte motions to strike the
 15 Attorney Defendants’ motions for attorneys’ fees on September 14 and 15, 2019.
 16 (ECF Nos. 65-66.) This Court filed its order denying Plaintiff’s ex parte motions
 17 without prejudice on September 23, 2019. (ECF No. 75.) On September 25, 2019,

18 _____
 19 ¹ Plaintiff voluntarily dismissed the fifth and sixth causes of action for conversion
 20 and legal malpractice against Ellis Roy Stern, Alan Goldberg, Stern & Goldberg,
 21 Patrick McGarrigle, McGarrigle, Kenney & Zampietro, APC, without prejudice on
 22 August 20, 2019. Plaintiff stated in the dismissal that “This dismissal is necessitated
 23 because the Pro Se Plaintiff errantly titled the Sixth Cause of Action, omitting ‘on
 24 behalf of Silver Strand Plaza, LLC as plaintiff and nominal defendant.’ Plaintiff is
 25 not a licensed attorney and is therefore ineffective counsel and cannot represent a
 26 limited liability company.” Plaintiff further states that she withdraws her claim of
 27 conversion because the anti-SLAPP motions require early discovery and will revive
 28 it after she files a motion to include a claim of Aiding and Abetting a Breach of
 Fiduciary Duty claim against the Attorney Defendants. (ECF No. 38.)

² S&G Defendants filed an amendment on September 6, 2019. (ECF No. 58.) MKZ
 Defendants filed a Notice of Errata on September 24, 2019, which plaintiff objected
 to on September 25, 2019. (ECF Nos. 76, 77.)

1 Plaintiff filed a combined opposition to Defendants' motions for attorneys' fees, and
 2 on October 9 and 10, 2019, filed objections to the declarations of Patrick
 3 McGarrigle, Ellis Stern, and Alan Goldberg. (ECF No. 78, 86, 87.) On October 10,
 4 2019, the MKZ Defendants filed an objection and request to strike objections to
 5 evidence filed by Plaintiff. (ECF No. 91.) The Attorney Defendants filed their
 6 respective replies to the motions for attorneys' fees on October 10, 2019. (ECF Nos.
 7 92, 96.) The MKZ Defendants filed a response to Plaintiff's reply as to Exhibits 18
 8 through 23 on November 4, 2019. (ECF No. 105.)

9 On March 23, 2020, this Court enter its order granting the Attorney
 10 Defendants' motions for attorneys' fees, and awarded the MKZ Defendants
 11 \$15,792.00, and the S&G Defendants \$23,010.50 in attorneys' fees. This Court
 12 found that under controlling law, Plaintiff's dismissal did not excuse her obligation
 13 to pay the Attorney Defendants' legal fees incurred to defeat the claims through the
 14 anti-SLAPP motion process, and that the Attorney Defendants were the prevailing
 15 parties on their anti-SLAPP motions and entitled to their attorneys' fees pursuant to
 16 Code of Civil Procedure section 425.16(c). (ECF No. 111, pp. 45-52.)

17 On March 26, 2020, the Attorney Defendants submitted separate requests for
 18 judgment to the Court to separately enter judgment on their behalf pursuant to
 19 Federal Rule of Civil Procedure 54(b), which were opposed by Plaintiff on the basis
 20 that the order was not a final appealable order. (ECF No. 112, 113, 114, 117) The
 21 Attorney Defendants therefore withdrew their requests for Judgment and asked the
 22 Court to confirm Plaintiff is obligated to pay the award of attorneys' fees absent a
 23 separate judgment. (ECF No. 120.) On April 15, 2020, the Court thus denied the
 24 requests for judgment as moot and confirmed that Plaintiff was still obligated to pay
 25 the attorneys' fees ordered. (ECF No. 127)

26 Contrary to Plaintiff's position taken in opposition to the Attorney
 27 Defendants' request to enter a separate judgment in their favor, on April 22, 2020,
 28 Plaintiff nevertheless filed a Notice of Appeal of the Court's order granting the

1 motions for attorneys' fees. (ECF No. 135.) After reviewing the order appealed
 2 from, on May 1, 2020, the Ninth Circuit ordered Plaintiff to either move for
 3 voluntary dismissal of the appeal or show cause why the appeal should not be
 4 dismissed for lack of jurisdiction. However, Plaintiff did not move to voluntarily
 5 dismiss her appeal, but instead, on May 20, 2020, filed her response to the order to
 6 show cause taking the position that the March 23, 2020 order was appealable. After
 7 review of the parties' responses to the order to show cause, the Ninth Circuit issued
 8 its order dismissing Plaintiff's appeal on the ground that the order appealed from
 9 was a non-appealable order and the Ninth Circuit lacked jurisdiction. (ECF No.
 10 150).

11 Plaintiff thereafter filed a motion for disqualification of Judge Sammartino,
 12 which was opposed by multiple Defendants, including the S&G Defendants.
 13 (ECF Nos. 153, 155, 157-161, 184.) However, this Court denied the motion as
 14 moot, since this matter had been transferred to the Honorable Todd W. Robinson
 15 on September 25, 2019. (ECF Nos. 156, 173, 174.)

16 **III. PLAINTIFF'S MOTION TO VACATE ATTORNEY FEE ORDERS OR**
 17 **ALTERNATIVE MOTION FOR RECONSIDERATION SHOULD BE**
 18 **DENIED**

19 Plaintiff's motion to vacate and/or reconsideration seeks the same relief, to
 20 reconsider Judge Sammartino's prior order granting the Attorney Defendants'
 21 motions for attorneys' fees. Plaintiffs seek reconsideration under Civil Local Rule
 22 7.1.i and Federal Rules of Civil Procedure Rules 60(b) and 54(b). However, as
 23 discussed below, Plaintiff's motion fails under each ground.

24 First, Plaintiff relies on Civil Local Rule 7.1.i.1, which applies to any
 25 "subsequent motion or application or petition made for the same relief in whole or in
 26 part upon the same or any alleged different state of facts." Civ. L.R. 7.1.i.1.
 27 However, such a motion for reconsideration "must be filed within twenty-eight (28)
 28 days after the entry of the ruling, order or judgment sought to be reconsidered."

1 Civ. L.R. 7.1.i.2. Since the order Plaintiff seeks to reconsider was entered on March
 2 23, 2020, Plaintiff's motion for reconsideration was due by April 20, 2020, i.e. 28
 3 days after this Court's order granting the Attorney Defendants' motions for
 4 attorneys' fees was entered on March 23, 2020. (ECF No. 111.)

5 Plaintiff acknowledges that her motion is untimely pursuant to Civil Local
 6 Rule 7.1.i.2, but argues she has up to one year to bring this motion under Federal
 7 Rule of Civil Procedure 60(b), which provides, in relevant part, that "the court may
 8 relieve a party . . . from a final judgment, order, or proceedings for the following
 9 reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
 10 discovered evidence that, with reasonable diligence, could not have been discovered
 11 in time ... (4) the judgment is void; or (6) other reasons justifying relief. Fed. R.
 12 Civ. P. 60(b)(1), (2), (4), (6). However, Rule 60 is inapplicable. Not only do none
 13 of the grounds set forth in Rule 60 apply, Rule 60 is inapplicable to Plaintiff's
 14 motion since the order is an interlocutory decision that does not terminate the action
 15 on the merits.³ Federal Rule of Civil Procedure 60(b) permits relief "from a *final*
 16 judgment, order, or proceeding" (emphasis added)." Fed. R. Civ. P. 60; *See United*
 17 *States v. Martin*, 226 F.3d 1042, 1048 n.8 (9th Cir. 2000) ("Rule 60(b) . . . applies
 18 only to motions attacking final, appealable orders"); *Golden v. O'Melveny & Meyers*
 19 *LLP*, 2016 U.S. Dist. LEXIS 103621, at *14 (C.D. Cal. Aug. 3, 2016) ("Rule 60(b)
 20 applies only to final orders, and not to interlocutory, non-appealable orders such as
 21 the Arbitration Order.")).

22 Lastly, Plaintiff also moves for reconsideration under the Court's inherent
 23 power to reconsider its interlocutory orders pursuant to Federal Rule of Civil
 24 Procedure 54(b). Rule 54(b) states in pertinent part that "any order . . . which
 25 _____

26 ³ The Ninth Circuit dismissed Plaintiff's appeal from the order granting the Attorney
 27 Defendants' motions for attorneys' fees on the basis it was an interlocutory order
 28 since judgment has not been entered as to all parties or certified as a final judgment
 pursuant to Fed. Rule Civ. Proc. rule 54(b).

1 adjudicates . . . the rights and liabilities of fewer than all the parties . . . is subject to
 2 revision at any time before the entry of judgment adjudicating all the claims and the
 3 rights and liabilities of all the parties.” Fed. R. Civ. Proc. 54(b). However,
 4 reconsideration is an “extraordinary remedy, to be used sparingly in the interests of
 5 finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of*
 6 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); also see, *Carroll v. Nakatani*, 342 F.3d
 7 934, 945 (9th Cir. 2003). “Motions for reconsideration are disfavored and rarely
 8 granted.” *Brown v. United States*, No. CV 09-8168 ABC; CR 03-847 ABC, 2011
 9 U.S. Dist. LEXIS 9215, at *5 (C.D. Cal. Jan. 31, 2011). Reconsideration is only
 10 appropriate in limited circumstances, including where “the district court (1) is
 11 presented with newly discovered evidence, (2) committed clear error or the initial
 12 decision was manifestly unjust, or (3) if there is an intervening change in controlling
 13 law.” *Sch. Dist. No. 1J, Multnomah Cty. v. AC&S, Inc.*, 5 F.3d 1255, 1263 (9th Cir.
 14 1993); also see, S.D. Cal. Civ. L.R. 7.1.i.2 (requiring any party moving for
 15 reconsideration “to present to the judge . . . an affidavit . . . setting forth . . . what
 16 new or different facts and circumstances are claimed to exist [that] did not exist, or
 17 where not shown, upon such prior application”).

18 “A motion for reconsideration must set forth (1) some valid reason why the
 19 court should revisit its prior order; and (2) facts or law of a ‘strongly convincing
 20 nature’ in support of reversing the prior decision.” *Galvan v. Nationstar Mortgage*,
 21 2014 U.S. Dist. LEXIS 120959 at *3 (D. Nev. 2014) (quoting *Frasure v. United*
 22 *States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003)).

23 “In the absence of new evidence or a change in the law, a party may not use a
 24 motion for reconsideration to raise arguments or present new evidence for the first
 25 time when it could reasonably have been raised earlier in the litigation.” *Cachil*
 26 *Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California*, 649 F. Supp.
 27 2d 1063, 1069-1070, 2009 U.S. Dist. Lexis 75932, *15-16, citing *Carroll, supra*, 342
 28 F.3d at 945. “Motions to reconsider are also ‘not vehicles permitting the

1 unsuccessful party to “rehash” arguments previously presented.’ [citations]
 2 Ultimately, a party seeking reconsideration must show ‘more than a disagreement
 3 with the Court’s decision, and recapitulation of the cases and arguments considered
 4 by the court before rendering its original decision fails to carry the moving party’s
 5 burden.’” *Cachil Dehe Band of Wintun Indians, supra*, 649 F. Supp. 2d at 1070.

6 As discussed below, Plaintiff fails to demonstrate any basis for reconsidering
 7 or vacating this Court’s prior order granting the Attorney Defendants’ motions for
 8 attorneys’ fees pursuant to Code of Civil Procedure section 425.16(c).

9 A. Plaintiff’s Purported “Initial Error” in Filing the Complaint Against the
 10 Attorney Defendants in Pro Per Does Not Render This Court’s Order
 11 Awarding Defendants’ Attorneys’ Fees Void, Nor Does It Constitute A
 12 Basis for Reconsideration

13 Plaintiff seeks to avoid the consequences of prosecuting baseless claims
 14 against the Attorney Defendants by claiming that she dismissed the claims once she
 15 realized she could not pursue a “derivative suit” on behalf of an entity in pro per,
 16 which she argues renders the order “void.” (ECF No. 177-2 at p. 2.) Plaintiff argues
 17 that the order granting attorneys’ fees should be vacated or reconsidered since she
 18 made an “initial error but corrected her error immediately upon discovery.” (ECF
 19 No. 177-2 at p. 3.)

20 However, “neither ignorance nor carelessness on the part of the litigant or his
 21 attorney provide grounds for relief under Rule 60(b)(1).” *Allmerica Fin. Life Ins. &*
 22 *Annuity Co. v. Llewellyn*, 139 F.3d 664, 666 (9th Cir. 1997). As recognized by the
 23 Ninth Circuit, “Rule 60(b)(1) is not intended to remedy the effects of a litigation
 24 decision that a party later comes to regret through subsequently-gained knowledge
 25 that corrects the erroneous legal advice of counsel.” *Latshaw v. Trainer Wortham &*
 26 *Co.*, 452 F.3d 1097, 1101 (9th Cir. 2006). Reconsideration pursuant to Rule 60(b) is
 27 an extraordinary remedy designed to address mistakes attributable to special
 28 circumstances, not merely to correct erroneous applications of law. *Engleson v.*

Burlington N.R.R. Co., 972 F.2d 1038, 1044 (9th Cir. 1994) (counsel’s ignorance of applicable statutes at issue in the matter does not constitute excusable neglect to justify relief under rule 60(b)). This same rationale applies to a claim for relief under Rule 54(b). Plaintiff in pro per is held to the same standard as counsel. “Pro se litigants must follow the same rules of procedure that govern other litigants.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (overruled on other grounds.)

Plaintiff’s reliance on *Russell v. Dopp*, 36 Cal. App. 4th 765 (1995), *City of Downey v. Johnson*, 263 Cal. App. 2d 775 (1968), and *Davis Test Only Smog Testing v. Department of Consumer Affairs*, 15 Cal.App.5th 1009 (2017) in support of her argument that the order awarding attorneys’ fees is void since she erroneously pursued a “derivative action” in pro per when a licensed attorney was required is misplaced. None of the cases cited involve invalidating an order or judgment for costs or fees against a plaintiff who erroneously prosecuted an action in pro per, and are instead distinguishable from the issue here. For example, in *Russell v. Dopp*, the court granted defendant a new trial after a jury found in favor of plaintiff, on the basis that defendant’s counsel was unlicensed, and that such misconduct was grounds for new trial under California Code of Civil Procedure section 657(1) as long as defendant did not knowingly participate in the fraud. Unlike in *Russell v. Dopp*, plaintiff here did not unknowingly hire an unlicensed attorney to represent her interests in this action. Instead, plaintiff acted in pro per on her own behalf in filing and prosecuting these claims. Plaintiff’s ignorance of the law is not a basis to void this Court’s order awarding the Attorney Defendants’ attorneys’ fees in having to defend themselves.⁴

⁴ *City of Downey v. Johnson* and *Davis Test Only Smog Testing v. Department of Consumer Affairs* are also distinguishable. In *City of Downey*, the court reversed a judgment against defendant executor who was unable to represent the interests of the estate in pro per, and struck his papers filed in the action. The court commented that plaintiff could have moved to strike his filings or filed a default against

(footnote continued)

Here, Plaintiff, as “an individual,” pursued two claims, one she labeled as “Derivative claim of legal malpractice,” and the other for “conversion” against the Attorney Defendants. (ECF No. 3.) Plaintiff fails to acknowledge that Defendants’ motions to strike (anti-SLAPP motions) were brought to strike both claims, only one of which was purportedly brought as a “derivative” claim. The fact that Plaintiff was unauthorized to practice law has no bearing on her claim for conversion. Regardless, even if Plaintiff’s labeling the malpractice claim as “derivative” rendered *her claim* invalid, she still pursued this claim against the Attorney Defendants causing them to incur substantial fees to defend themselves. California Code of Civil Procedure section 425.16(c) provides a mandatory award of attorneys’ fees to defendants who prevail on anti-SLAPP motions. Plaintiff was unable to avoid the consequences of her actions simply by dismissing her claims while the anti-SLAPP motions were pending. Instead, pursuant to case law relied upon by this Court, Plaintiff’s voluntary dismissal provided a basis for this Court’s finding that the Attorney Defendants were prevailing parties on their respective anti-SLAPP motions, entitling them to reasonable attorneys’ fees.

B. Plaintiff Fails to Cite any New or Different Facts or Circumstances to Justify Reconsideration of This Court’s March 23, 2020 Order

Plaintiff admits in her moving papers that she is “trying to unwind the erroneous decisions made by Judge Sammartino.” (ECF 177-2, pg. 6.) Plaintiff is clearly “judge shopping” in an attempt to obtain an improper “second bite at the apple” of rulings against her. Plaintiff first attempted to have Judge Sammartino removed as the judge of this action by filing a motion to disqualify Judge

defendant. *City of Downey, supra*, 263 Cal.App.2d 775. *Davis Test Only Smog Testing* involved an administrative hearing where the judgment against the defendants were affirmed despite arguments that an unlicensed person was acting on their behalf in the hearing. *Davis Test Only Smog Testing, supra*, 15 Cal.App.5th at 1015-1016.

(footnote continued)

1 Sammartino claiming bias since many rulings were against Plaintiff.⁵ This motion to
 2 vacate or reconsider the order granting attorneys' fees is another blatant and
 3 meritless attack on this Court's rulings. "A motion for reconsideration cannot be
 4 granted merely because Plaintiff is unhappy with the judgment, frustrated by the
 5 Court's application of the facts to binding precedent, or because he disagrees with
 6 the ultimate decision." *See* 11 Charles Alan Wright & Arthur R. Miller Federal
 7 Practice & Procedure § 2810.1 (3d ed.) ('[R]econsideration of a judgment after its
 8 entry is an extraordinary remedy which should be used sparingly.'). *Holgersen v.*
 9 *Paramo*, Case No.: 3:19-CV-2286 JLS (RBB), 2020 U.S. Dist. LEXIS 97161, *6
 10 (S.D. Cal. June 2, 2020).

11 Here, Plaintiff provides no new facts or law which were either not raised, nor,
 12 with diligence could not have been raised, in opposing the motions for attorneys'
 13 fees.⁶ Plaintiff fails to identify or submit any newly discovery evidence which could
 14 form the basis for her motion and fails to meet the requirement imposed by this
 15 Court under Civil Local Rule 7.1 of identifying by affidavit "what new or different
 16 facts and circumstances are claimed to exist which did not exist, or were not shown,
 17 upon such prior application." Instead, Plaintiff's affidavit filed in support of this
 18 motion simply reargues the issues previously presented to this Court for the most
 19 part, namely that she dismissed her claims since she could not legally pursue claims
 20

21 ⁵ Defendants, including the S&G Defendants, opposed Plaintiff's spurious motion.
 22 However, Plaintiff's motion was deemed moot due to the transfer order, which
 23 transferred this and other actions to the Honorable Todd W. Robinson. (ECF Nos.
 173, 174.)

24 ⁶ "A motion for reconsideration may not be used to raise arguments or present
 25 evidence for the first time when they could reasonably have been raised earlier in
 26 the litigation. [citations.] It does not give parties a 'second bite at the apple.'" [citations.]
 27 *Kaseberg v. Conaco, LLC*, No. 15-cv-01637, 2017 U.S. Dist. Lexis 38198, *11-12 (S.D. Cal., March 16, 2017.) It is well-established that when a party
 28 fails to raise arguments in opposition and later seeks to raise those same arguments
 for the first time in a motion for reconsideration that a court may treat the arguments
 as being waived. *Watercraft Adventure Rentals, LLC v. Stickel*, 2009 U.S. Dist.
 LEXIS 94722 at *5 (D. Nev. 2009).

1 on behalf of Silver Strand Plaza, LLC, and claims that Judge Sammartino allegedly
 2 misapplied the law in ruling on the motion. Other arguments raised in Plaintiff's
 3 affidavit are irrelevant.⁷ Plaintiffs' arguments raised in this motion clearly do not
 4 constitute "newly discovered evidence."

5 The only matters Plaintiff identifies which were either not raised, or could not
 6 have been raised previously, all involve filings or entries on the docket which
 7 occurred *after* the Court's order granting the motions for attorneys' fees. For
 8 example, Plaintiff complains that because she was confused by the docket reflecting
 9 that this case was "closed" or "terminated" following the March 23, 2020 order, she
 10 filed an appeal which was denied since it was interlocutory.⁸ Plaintiff further
 11 complains that Judge Sammartino was biased since she did not grant Plaintiff's
 12 request for an extension of time to file her amended complaint due to the Pandemic
 13

14 ⁷ Plaintiff further argues in her affidavit that she was represented by an attorney until
 15 January 22, 2019 (3 months prior to filing this action), and was willing to settle her
 16 claims for tens of thousands of dollars. (ECF 177-3, p. 2.) Plaintiff also states the
 17 Court denied her application to obtain "limited-scope representation." (*Id.*; ECF
 18 No. 22, which was prior to the attorney fee motions.) Lastly, Plaintiff also somehow
 19 attempts to blame the MKZ Defendants for her invalid claims brought against them,
 20 by arguing that she first heard the word "derivative" from Silver Strand Plaza LLC
 21 counsel, Patrick McGarrigle, who contended she did not have standing to bring such
 22 claims (ECF No. 177-3, p. 2), and that the MKZ Defendants "allowed Hammett to
 23 advocate on behalf of real plaintiff and his client, nominal defendant, Silver Strand
 24 Plaza, LLC before subbing out to Daniel Forde." (ECF No. 177-2.) However, none
 25 of these "facts" constitute newly discovered evidence, and are instead irrelevant to
 26 this motion. First, there is no support for Plaintiff's argument that Mr. McGarrigle
 27 "allowed" her to advocate on behalf of Silver Strand Plaza, LLC. Indeed, Plaintiff's
 28 allegation that Mr. McGarrigle contended that she lacked standing to bring
 derivative claims supports Defendants' contention that her claims were without
 merit. Second, the docket clearly reflects that Plaintiff has prosecuted this action in
 pro per from its inception, and that MKZ Defendants were never counsel of record
 in this action nor made any appearance for Silver Strand Plaza or anyone else in this
 action. MKZ Defendants clearly cannot be blamed for Plaintiff pursuing erroneous
 claims against them.

⁸ This Court's order entered March 23, 2020, combined orders granting other
 defendants' motions to dismiss, as well as granting the Attorney Defendants'
 motions for attorneys' fees pursuant to Code of Civil Procedure section 425.16(c).
 (ECF No. 111.) The Ninth Circuit dismissed Plaintiff's appeal finding it did not
 have jurisdiction over this interlocutory order. (ECF Nos. 144, 150.)

(footnote continued)

1 on the basis that Plaintiff “neglected to” provide notice to opposing counsel first.⁹
 2 However, none of these facts have any bearing on this Court’s order granting the
 3 motions for attorneys’ fees, and were instead filings by the parties after the motion
 4 was decided.

5 Plaintiff’s arguments are also not based on “an intervening change in
 6 controlling law” that would allow reconsideration of this Court’s order granting the
 7 Attorney Defendants’ motions for attorneys’ fees. Indeed, all case law cited by
 8 Plaintiff in her motion was decided prior to the filing of the Attorney Defendants’
 9 motions for attorneys’ fees.

10 C. Reconsideration is Not Justified Based on Any Claimed Error in Law
 11 or “Manifest Injustice”

12 Plaintiff argues that Judge Sammartino erroneously granted the Attorney
 13 Defendants’ motions for attorneys’ fees, claiming that the Court did not address
 14 Plaintiff’s arguments made in opposition to the motions. (ECF 177-2, pg. 9-11.)
 15 However, Plaintiff’s disagreement with the Court is not a valid basis to re-litigate its
 16 prior orders. To the contrary, this Court’s order was not “clear error” or “manifestly
 17 unjust,” but was based on valid and well-accepted case law. Pursuant to controlling
 18 authority, the Attorney Defendants were entitled to claim attorneys’ fees as a result
 19 of having to file their anti-SLAPP motions and oppose this action filed by Plaintiff.
 20 To the extent Plaintiff disagrees with the ruling, her remedy is on appeal, not to
 21 request this Court vacate prior orders.

22 This Court properly determined that the Attorney Defendants were entitled to
 23 recover attorneys’ fees they incurred in connection with the anti-SLAPP motions.
 24 California Code of Civil Procedure section 425.16(c) states in pertinent part: “In
 25

26 ⁹ This Court properly denied Plaintiff’s ex parte application for failure to follow the
 27 Local Rules requiring Plaintiff provide notice to opposing counsel. ECF Nos. 118,
 28 119. However, once Plaintiff provided the proper notice and refiled her application,
 the Court thereafter granted Plaintiff a significant continuance to August 7, 2020, to
 file her amended complaint. (ECF No. 132.)

1 any action subject to subdivision (b), a prevailing defendant on a special motion to
 2 strike shall be entitled to recover his or her attorneys' fees and costs." The
 3 California Supreme Court has expressly held that "under Code of Civil Procedure
 4 §425.16, subdivision (c), any SLAPP defendant who brings a successful motion to
 5 strike is entitled to mandatory attorney fees." *Ketchum v. Moses*, 24 Cal. 4th 1122,
 6 1131 (2001).

7 Motions to strike a state law claim under California's anti-SLAPP statute may
 8 be brought in federal court. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1109
 9 (9th Cir. 2003). In *Vess*, the court awarded defendants their attorneys' fees required
 10 under Code of Civil Procedure section 425.16(c) despite plaintiff dismissing the
 11 claims prior to the hearing on defendants' anti-SLAPP motion. "A trial court has
 12 jurisdiction to award attorneys' fees to a prevailing defendant whose SLAPP motion
 13 was not heard solely because the matter was dismissed before defendants obtained a
 14 ruling on the SLAPP motion." *Vess*, 317 F.3d at 1110-1111, citing *Pfeiffer Venice*
 15 *Props. v. Bernard*, 101 Cal. App. 4th 211, 123 (2002).

16 Plaintiff claims that despite her arguments in opposition to the motions, the
 17 Court did not analyze whether Defendants met the threshold issue that Plaintiff's
 18 action fell under the anti-SLAPP statute pursuant to Code of Civil Procedure section
 19 425.16. Defendants addressed the merits of both prongs of the anti-SLAPP statute in
 20 their anti-SLAPP motions. (ECF Nos. 20-1, 21-1.) Regardless, contrary to Plaintiff's
 21 argument, it was not necessary for the Court to analyze the merits of the anti-SLAPP
 22 motions in ruling on the attorneys' fee motions. Pursuant to controlling and valid
 23 case authority upon which this Court properly relied, Plaintiff's voluntary dismissal
 24 raised a presumption that Defendants were the prevailing parties on their respective
 25 anti-SLAPP motions. To rebut this presumption, the plaintiff must establish that the
 26 dismissal was the result of realizing her objectives in the litigation. See *Gottesman*
 27 *v. Santana*, 263 F. Supp.3d 1034, 1040-41 (S.D. Cal. 2017), citing *Coltrain v.*
 28 *Shewalter*, 66 Cal. App. 4th 94 (1998). As further discussed below, this Court's

1 order granting the Attorney Defendants' motions for attorneys' fees relied on this
 2 authority in finding that the Attorney Defendants were the prevailing parties on their
 3 anti-SLAPP motions.¹⁰

4 This Court properly analyzed the relevant case authority and noted that
 5 "California courts differ in approach when determining whether a defendant is a
 6 prevailing defendant under the anti-SLAPP statute when that defendant has been
 7 voluntarily dismissed from the action," citing *Gottesman*, *supra*, 263 F. Supp. 3d at
 8 1040-41. (ECF No. 111, p. 46.) The Court explained that pursuant to *Coltrain*, 66
 9 Cal. App. 4th 94 (1998), followed by this district, "a plaintiff's voluntary dismissal
 10 raises a presumption that the defendant is the prevailing party that the plaintiff can
 11 rebut by explaining its reason for dismissal." *Gottesman*, 263 F. Supp. 3d at 1043.
 12 This Court further noted that "[m]ost federal courts, including this Court, have
 13 followed *Coltrain v. Shewalter*, 66 Cal. App. 4th 94 (1998). See *Gottesman*, 263 F.
 14 Supp. 3d at 1043 (citing *Coltrain*, 66 Cal. App. 4th at 107.)" (ECF No. 111, p. 46.)
 15 In ruling on the motions, this Court found that Plaintiff failed to rebut the
 16 presumption that the Attorney Defendants were the prevailing parties on their
 17 respective anti-SLAPP motions. (ECF No. 111, p. 48.)

18
 19
 20 ¹⁰ Plaintiff's reliance on another district court's opinion in *Kaplan v. Dep't Stores*
 21 *Nat'l Bank*, No. 15-cv-03792-BLF, 2016 U.S. Dist. Lexis 107915 (N.D. Cal. Aug.
 22 15, 2016) is misplaced. Unlike here, the court in *Kaplan* gave plaintiff leave to
 23 amend the complaint in response to the anti-SLAPP motion filed by defendants.
 24 However, instead of amending the complaint, plaintiff moved for dismissal pursuant
 25 to Federal Rules of Civil Procedure 41(a)(2) on the condition that attorneys fees not
 26 be awarded, claiming that she "no longer wishes to pursue this action and believes
 27 that [dismissing this action] will further settlement discussions." *Id.* at *6. The
 28 court granted plaintiff's motion to dismiss *with prejudice*, and denied defendants'
 motions to strike as moot, finding the dismissal with prejudice achieved the purpose
 of the anti-SLAPP motion and allowing amendments under Fed. R. Civ. Proc. 15.
 Here, on the other hand, not only is *Kaplan* not binding on this Court, it is at odds
 with Ninth Circuit case law followed in this Southern District, and it is also
 distinguishable. Not only had Plaintiff already filed an amended complaint as
 allowed pursuant to Federal Rule of Civil Procedure 15(a), unlike in *Kaplan*,
 Plaintiff here filed a voluntary dismissal *without prejudice* prior to this Court ruling
 on the anti-SLAPP motion, which specifically stated that she planned to re-file her
 claims against the Attorney Defendants.

1 Plaintiff claims this Court, in finding that Plaintiff failed to rebut the
 2 presumption that Defendants were the prevailing parties as a result of the voluntary
 3 dismissal, failed to comment on Plaintiff's stated reasons for filing the dismissal by
 4 arguing "if the Court did not agree with the reasons given for the voluntary
 5 dismissal, the Court should have spoken up." (ECF 177-2, p. 10.) Plaintiff similarly
 6 argues that the Attorney Defendants failed to object or dispute her reasons "that she
 7 could not advocate on behalf of an LLC and that the conversion claim would be
 8 realleged after obtaining approval" to file other conspiracy claims against the
 9 Attorney Defendants. (ECF 177-2, pp. 11-12.)

10 However, contrary to Plaintiff's further argument, this Court did consider and
 11 analyze the nature of Plaintiff's voluntary dismissal and agreed with the Attorney
 12 Defendants' arguments that "Ms. Hammett's assertion that she may refile the
 13 defective claims actually supports the conclusion that her dismissal did not come as
 14 a result of her achieving her litigation goals." (ECF No. 111, p. 47.) "The Court
 15 agrees with the MKZ Defendants. Given Plaintiff's apparent intention to refile her
 16 claims against them, it cannot be said that Plaintiff's voluntary dismissal was the
 17 result of her realizing her objectives in the litigation." (ECF No. 111, p. 48.) *See,*
 18 *e.g., Primacy Eng'g, Inc. v. ITE, Inc.*, No. 318CV01781GPCMDD, 2019 WL
 19 2059668, at *7-8 (S.D. Cal. May 9, 2019) ("An intent to refile the litigation in other
 20 jurisdictions belies a claim that [the voluntarily dismissing plaintiff] was able to
 21 substantially achieve its litigation objectives in this suit...") The Court further noted
 22 the S&G Defendant's argument that Plaintiff dismissed claims she knew were
 23 legally untenable, while threatening further frivolous litigation, and found "as with
 24 the MKZ Defendants,...the Court concludes that Plaintiff has failed to rebut the
 25 presumption..." (ECF No. 111, p. 48.) The Court concluded that both the MKZ
 26 Defendants and the S&G Defendants are the prevailing parties on their anti-SLAPP
 27 motions and are entitled to their attorneys' fees, which are mandatory under the anti-
 28 SLAPP statute. (ECF No. 111, p. 48; Code of Civ. Proc. § 425.16(c).)

Based on the controlling legal authority followed by this Court, it cannot be said that the order was a result of clear error or manifest injustice. Plaintiff's unrelenting actions, first in filing meritless claims, then in pursuing continued attacks on Judge Sammartino and this Court's order granting the attorneys' fee motions, have continued to cause the Attorney Defendants to incur substantial attorneys' fees.

IV. CONCLUSION

For the foregoing reasons, Defendants ELLIS STERN, ALAN N. GOLDBERG, STERN & GOLDBERG, PATRICK C. MCGARRIGLE, and MCGARRIGLE, KENNEY & ZAMPIELLO, APLC respectfully request that the Court deny plaintiff's Motion to Vacate Void Orders Granting Attorneys' Fees, or in the alternative, Motion for Reconsideration.

DATED: November 4, 2020 LEWIS BRISBOIS BISGAARD & SMITH LLP

By: s/ Corinne C. Bertsche
CORINNE C. BERTSCHE
Attorneys for Defendants ELLIS STERN,
ALAN N. GOLDBERG, and STERN &
GOLDBERG

DATED: November 4, 2020 KLINEDINST PC

By: s/ Daniel S. Agle
DANIEL S. AGLE
Attorneys for Defendants PATRICK C.
McGARRIGLE and McGARRIGLE,
KENNEY & ZAMPIELLO, APC

FEDERAL COURT PROOF OF SERVICE*Laura Lynn Hammett v. Mary E. Sherman, et al.*

United States District Court – Southern District Case No. 19-CV-0605-TWR-AHG
 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 550 West “C” Street, Suite 1700, San Diego, CA 92101. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On November 4, 2020, I served the following document(s):

DEFENDANTS ELLIS STERN, ALAN N. GOLDBERG, STERN & GOLDBERG, PATRICK C. MCGARRIGLE, AND MCGARRIGLE, KENNEY & ZAMPIELLO, APLC’S JOINT OPPOSITION TO PLAINTIFF’S MOTION TO VACATE VOID ORDERS GRANTING ATTORNEYS’ FEES (ECF NO. 111); OR IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Laura Lynn Hammett 500 Amity Road, Suite 5B, #306 Conway, Arkansas 72032 Email: Bohemian_books@yahoo.com <i>Plaintiff in Pro Se</i>	Nicholas F. Labor, Esq. Robinson Waters & O’Dorisio, P.C. 1099 18 th Street, Suite 2600 Denver, CO 80202 Tel: 303.297.2600 Email: nlabor@rwolaw.com <i>Attorney for Defendant, Diane G. Dennis</i>
Alan J. Droste, Esq. McQueen Droste, LLP 450 Newport Center Drive, Suite 500 Newport Beach, CA 92660 Tel: 949.939.3484 Fax: 949.644.3993 Email: ad@mcquennndroste.com <i>Attorney for Defendant, Diane G. Dennis</i>	Daniel R. Forde, Esq. Hoffman & Forde, Attorneys At Law 3033 Fifth Avenue, Suite 400 San Diego, CA 92103 Tel: 619-546.7880 Fax: 619.546.7881 Email: dforde@hoffmanforde.com <i>Attorney for Defendant, Silver Strand Plaza, LLC</i>
Daniel S. Agle, Esq. Klinedinst PC 501 West Broadway, Suite 600 San Diego, CA 92101 Tel: 619.239.8131 Fax: 619.238.8707 Email: dagle@klinedinstlaw.com <i>Attorneys for Defendants, Patrick C. McGarrigle; McGarrigle Kenney & Zampiello</i>	Frank J. Polek, Esq. Polek Law 3033 Fifth Avenue, Suite 400 San Diego, CA 92103 Tel: 619.550.2455 Fax: 619.274.8166 Email: frank@poleklaw.com <i>Attorneys for Defendants, Mary E. Sherman, individually and in her capacity as Manager, Co-Trustee and</i>

4841-0328-8272.1

1

Case No. 19-CV-0605-TWR-AHG

S&G AND MKZ DEFENDANTS’ JOINT OPPOSITION TO PLAINTIFF’S MOTION TO VACATE VOID
 ORDERS GRANTING ATTORNEYS’ FEES (ECF NO. 111); OR IN THE ALTERNATIVE, MOTION FOR
 RECONSIDERATION

SER - 000269


1		<i>Trustee; Jeffrey Sherman in his capacity as Co-Trustee</i>
2		
3	Keith M. Cochran, Esq. Fitzgerald Knaier, LLP 402 West Broadway, Suite 1400 San Diego, CA 92101 Tel: 619.241.4810 Fax: 619.955.5318 Email: kcochran@fitzgeraldknaier.com	
4		
5		
6		
7	<i>Attorney for Defendants Linda R. Kramer as Co-Trustee of the Lynn and Erik's Trust and Erik Von Pressintin Hunsaker as Co-Trustee of the Lynn and Erik's Trust</i>	
8		
9		

10 The documents were served by the following means:

11 ☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically
12 filed the documents with the Clerk of the Court using the CM/ECF system,
which sent notification of that filing to the persons listed above.

13 I declare under penalty of perjury under the laws of the United States of
14 America and the State of California that the foregoing is true and correct.

15 Executed on November 4, 2020, at San Diego, California.

16 

17 _____
Sondra J. Bradley

LEWIS BRISBOIS BISGAARD & SMITH LLP

CORINNE C. BERTSCHE, SB# 174939

E-Mail: Corinne.Bertsche@lewisbrisbois.com

701 B Street, Suite 1900

San Diego, California 92101

Telephone: 619.233.1006

Facsimile: 619.233.8627

Attorneys for Defendants ELLIS STERN,
ALAN N. GOLDBERG, and STERN &
GOLDBERG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LAURA LYNN HAMMETT, an
individual,

Plaintiff,

vs.

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; JEFFREY
M. SHERMAN as CO-TRUSTEE OF
THE J & M SHERMAN FAMILY
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.

Case No. 19-CV-0605-TWR-AHG

**DECLARATION OF CORINNE C.
BERTSCHE IN SUPPORT OF
ATTORNEY DEFENDANTS'
JOINT EX PARTE MOTION TO
FILE OPPOSITIONS AND
CONTINUE HEARING ON
PLAINTIFF'S MOTION TO
VACATE VOID ORDERS
GRANTING ATTORNEY'S FEES;
OR IN THE ALTERNATIVE, FOR
A MODIFIED BRIEFING
SCHEDULE**

Date:

Time:

Crtrm.: 4D

Judge: Hon. Todd W. Robinson

Trial Date: None Set

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; 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 AND 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

Defendants.

DECLARATION OF CORINNE C. BERTSCHE

I, Corinne C. Bertsche, declare as follows:

1. I am an attorney duly admitted to practice in all of the courts of the State of California and I am a partner with Lewis Brisbois Bisgaard & Smith LLP, attorneys of record for Defendants ELLIS STERN, ALAN N. GOLDBERG, and STERN & GOLDBERG herein. The facts set forth herein are of my own personal knowledge, and if sworn I could and would competently testify thereto.

2. Within a week after this case was transferred to the Hon. Todd W. Robinson by order on September 25, 2020 (ECF No. 173), I reviewed the page for the Judges on the court's website to determine whether there were any rules to review for Judge Robinson, but did not see any Standing Order for civil matters listed.

///

3. Upon our receipt of Plaintiff's Motion to Vacate Void Order Granting Attorney's Fee, filed September 28, 2020 (ECF No. 175, which was re-filed on October 1, 2020, ECF No. 177) our office thus calendared the due date for our opposition to November 4, 2020 pursuant to Southern District Local Rule 7.1(e)(2).

4. I did not become aware that Judge Robinson had issued a Standing Order modifying the local rule briefing schedule for civil motions until receipt of Plaintiff's Notice of Non-opposition (ECF No. 187) filed on October 22, 2020.

5. Upon reviewing Judge Robinson's Standing Order and plaintiff's notice, I immediately communicated with attorney Daniel Agle, counsel for McGarrigle, Kenney & Zampello, in order to discuss an ex parte motion to address this issue, and discuss coordination and consolidation of the briefing in opposition to the Motion to Vacate Void Orders (ECF No. 177).

6. Because the Standing Order does not appear to have been posted until sometime after Plaintiff's motion was first filed, it is not clear whether the Standing Order is intended to apply to noticed motions that were filed before the Standing Order was posted. However, if that was the intent of the court, I respectfully request this Court grant leave for the Attorney Defendants to file their oppositions on November 4, 2020, coordinated, consistent with the Standing Order, and continue the hearing to December 2, 2020, due to my lack of notice of the existence of the Standing Order and my diligence in checking the court website when this matter was transferred to Judge Robinson shortly before the motion was filed, and given my inadvertence in not timely filing the opposition according to the timeframe in the Standing Order.

7. I contacted plaintiff via email at 7:20 am on October 22, 2020, in an attempt to seek an agreement to allow the Attorney Defendants to file their opposition briefs on November 4, 2020, and continue the hearing on the motion to December 2, 2020. I also notified her that the Attorney Defendants would be filing

1 a joint Ex Parte Motion later that day. Plaintiff responded that she would not agree,
2 and that she opposes the request by the Attorney Defendants. (Attached as Exhibits
3 1 and 2 hereto are true and correct copies of my email to Ms. Hammett and counsel,
4 and Ms. Hammett's response.)

5 I declare under penalty of perjury under the laws of the United States of
6 America that the foregoing is true and correct and that this declaration was executed
7 on this 22nd day of October, 2020, at San Diego, California.

8
9 *s/ Corinne C. Bertsche*

10

Corinne C. Bertsche

Exhibit 1

Exhibit 1

Bertsche, Corinne

From: Bertsche, Corinne
Sent: Thursday, October 22, 2020 7:20 AM
To: Laura Lynn; Keith Cochran; Daniel Forde; Frank Polek; Nicholas Labor; Alan Droste; Daniel S. Agle
Subject: Hammett v Sherman et al 19-CV-TWR-AHG - Ex Parte

Ms. Hammett,

Dan Agle and I are in receipt of your Notice of Non-Opposition to Motion to Vacate the attorney fee orders and would like to meet and confer with you. We were unaware of the court's recent Standing Order and will be seeking relief by Ex Parte Motion to file our coordinated oppositions, and plan to file our Ex Parte Motion today. We propose that our oppositions be due on November 4, 2020 and that the court continue the hearing date 28 days from that date to December 2, 2020; or in the alternative, the court allow our oppositions to be filed on November 4, 2020, and set a modified briefing schedule.

Please let us know today by Noon (PST) whether you agree, or your position.

Thank you,

Corinne Bertsche



Corinne C. Bertsche
Partner
Corinne.Bertsche@lewisbrisbois.com
T: 619.699.4905 F: 619.233.8627

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Exhibit 2

Exhibit 2

Bertsche, Corinne

From: Laura Lynn <bohemian_books@yahoo.com>
Sent: Thursday, October 22, 2020 9:17 AM
To: Keith Cochran; Daniel Forde; Frank Polek; Nicholas Labor; Alan Droste; Daniel S. Agle; Bertsche, Corinne
Subject: [EXTERNAL] Re: Hammett v Sherman et al 19-CV-TWR-AHG - Ex Parte

External Email

Ms. Bertsche and other copied Counsel,

I object to any continuance or permission for you to file an untimely opposition.

"This court has held that '[i]gnorance of court rules does not constitute excusable neglect, even if the litigant appears pro se.' *Swimmer v. IRS*, 811 F.2d 1343, 1345 (9th

Cir.1987); *cf. King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.1987) ("Pro se litigants must follow the same rules of procedure that govern other litigants."). Recent United States

Supreme Court authority requires that we reexamine *Swimmer*." *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997)

Again, there is irony, seven law firms and three attorney clients from two firms who were sued for legal malpractice all failed to read the Judge's standing order.

The Member Defendants are causing me extreme emotional distress about my finances after the COVID-19 Crash and economic crisis caused by the pandemic. I cannot

have the void order hanging over my head contributing to my stress.

By the way, the error I made by forgetting that your time to file MTDs was extended would not have happened if you followed the Court's order to write "SPECIAL BRIEFING SCHEDULE ORDERED" on the caption.

Sincerely,

Laura Hammett

On Thursday, October 22, 2020, 09:20:54 AM CDT, Bertsche, Corinne <corinne.bertsche@lewisbrisbois.com> wrote:

Ms. Hammett,

Dan Agle and I are in receipt of your Notice of Non-Opposition to Motion to Vacate the attorney fee orders and would like to meet and confer with you. We were unaware of the court's recent Standing Order and will be seeking relief by Ex Parte Motion to file our coordinated oppositions, and plan to file our Ex Parte Motion today. We propose that our oppositions be due on November 4, 2020 and that the court continue the hearing date 28 days from that date to December 2, 2020; or in the alternative, the court allow our oppositions to be filed on November 4, 2020, and set a modified briefing schedule.

Please let us know today by Noon (PST) whether you agree, or your position.

Thank you,

Corinne Bertsche



Corinne C. Bertsche
Partner
Corinne.Bertsche@lewisbrisbois.com
T: 619.699.4905 F: 619.233.8627

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FEDERAL COURT PROOF OF SERVICE

Laura Lynn Hammett v. Mary E. Sherman, et al. - 19-cv-0605-TWR-AHG

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 701 B Street, Suite 1900, San Diego, CA 92101. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On October 22, 2020, I served the following document(s):

1. ATTORNEY DEFENDANTS' JOINT EX PARTE MOTION FOR LEAVE TO FILE OPPOSITIONS AND CONTINUE HEARING ON PLAINTIFF'S MOTION TO VACATE VOID ORDERS GRANTING ATTORNEY'S FEES (ECF NO. 177); OR IN THE ALTERNATIVE, FOR A MODIFIED BRIEFING SCHEDULE;
2. DECLARATION OF CORINNE C. BERTSCHE IN SUPPORT OF ATTORNEY DEFENDANTS' JOINT EX PARTE MOTION TO FILE OPPOSITIONS AND CONTINUE HEARING ON PLAINTIFF'S MOTION TO VACATE VOID ORDERS GRANTING ATTORNEY'S FEES; OR IN THE ALTERNATIVE, FOR A MODIFIED BRIEFING SCHEDULE;
3. DECLARATION OF DANIEL S. AGLE IN SUPPORT OF ATTORNEY DEFENDANTS' JOINT EX PARTE MOTION TO FILE OPPOSITIONS AND CONTINUE HEARING ON PLAINTIFF'S MOTION TO VACATE VOID ORDERS GRANTING ATTORNEY'S FEES; OR IN THE ALTERNATIVE, FOR A MODIFIED BRIEFING SCHEDULE;
4. [PROPOSED] ORDER GRANTING DEFENDANTS' EX PARTE MOTION FOR LEAVE TO FILE OPPOSITIONS AND CONTINUE HEARING ON PLAINTIFF'S MOTION TO VACATE VOID ORDERS GRANTING ATTORNEY'S FEES (ECF NO. 177); OR IN THE ALTERNATIVE, FOR A MODIFIED BRIEFING SCHEDULE.

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable): **SEE ATTACHED SERVICE LIST**

The documents were served by the following means:

- ☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on **October 22, 2020**, at San Diego, California.



Sondra J. Bradley

SERVICE LIST*Laura Lynn Hammett v. Mary E. Sherman, et al.**United States District Court of CA – Southern District 19-cv-0605-TWR-AHG*

Laura Lynn Hammett
 500 Amity Road, Suite 5B, #306
 Conway, Arkansas 72032
 Email: Bohemian_books@yahoo.com

Plaintiff in Pro Se

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 Fax: 949.644.3993
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Attorney for Defendant, Diane G. Dennis

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Attorneys for Defendants, Patrick C. McGarrigle; McGarrigle Kenney & Zampiello

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 Tel: 619.550.2455
 Fax: 619.274.8166
 Email: frank@poleklaw.com

Attorneys for Defendants, Mary E. Sherman, individually and in her capacity as Manager, Co-Trustee and Trustee; Jeffrey Sherman in his capacity as Co-Trustee

Keith M. Cochran, Esq.
 Fitzgerald Knaier, LLP
 402 West Broadway, Suite 1400
 San Diego, CA 92101
 Tel: 619.241.4810
 Fax: 619.955.5318
 Email: kcochran@fitzgeraldknaier.com

Attorney for Defendants Linda R. Kramer as Co-Trustee of the Lynn and Erik's Trust and Erik Von Pressintin Hunsaker as Co-Trustee of the Lynn and Erik's Trust

Laura Lynn Hammett
Bohemian_books@yahoo.com
500 Amity Road Suite 5B #306
Conway, Arkansas 72032

Plaintiff in pro se

Laura Lynn Hammett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Laura Lynn Hammett,

Plaintiff,

v.

Mary E. Sherman, et al.

Defendants

Case No.:

19-CV-0605-TWR-AHG

Affidavit in Support of Plaintiff's Ex
Parte Motion for Relief from Bad Faith
Frivolous and Factually False Motions to
Dismiss and Joinder

Date of Hearing:

Time:

Place: Courtroom 3A

Hon. Todd W. Robinson presiding

Hon. Magistrate Allison H. Goddard

Affidavit in Support of Plaintiff's Ex Parte Motion for Relief from Bad Faith Frivolous and Factually
False Motions to Dismiss and Joinder

19-CV-0605-TWR-AHG

- 1 I, Laura Lynn Hammett, Plaintiff in pro se and Affiant, state the following, which
2 is known to me to be true and correct, or where I do not have direct knowledge, to the
3 best of my knowledge and belief.
- 4
- 5 2. On September 11, 2020, Four Motions to Dismiss the Second Amended Complaint
6 and one joinder were filed by the named defendants in this case. I will use the same
7 identification for parties as introduced in the SAC ¶¶1-19.
- 8
- 9 3. The Defendants introduced extraneous disputed facts, mis-stated the SAC or Order
10 of March 23, 2020 (“the Order”), and mis-quoted caselaw in the MTDs as specified in
11 the following paragraphs.
- 12
- 13 4. I made several efforts by email to meet and confer with opposing counsel to settle
14 the conflict discussed below, copied to attorneys Keith Cochran, Frank Polek, Alan
15 Droste, Daniel Forde, Nicholas Labor and because I plan to file motions under 18
16 U.S.C. 1927 against them, Corrinne Bertsch and Daniel Agle.
- 17
- 18 5. My emails were sent September 23 (two), October 1 (two), October 3, October 4
19 (two), October 7 (two), and October 9 (seven).
- 20
- 21 6. Mr. Polek responded September 23, October 1, October 4 and October 9 (two). His
22 emails did not confirm or deny the misstatements, misquotations and extraneous
23 disputed facts, except in one conclusionary sentence.
- 24
- 25 7. Mr. Droste filed the two errata, ECF Nos. 171 and 179 with no other
26 communication. He did not address about 20 offensive statements.
- 27
- 28

1 8. No opposing counsel nor attorney defendant McGarrigle has spoken with me, *ever*.
2 (Attorney defendant Stern spoke to me once in person in 2013 when we exchanged
3 pleasantries when I went to Mr. Stern's office to make copies of company books and
4 records and he may have been on conference calls two or three times with members of
5 SSP, LLC.) The last email received from opposing counsel was from Mr. Polek on
6 Friday, October 9, 2020 at 3:42 p.m. PST. He said, in part, "I will not continue to
7 engage with you regarding these frivolous and harassing arguments."

8
9
10 9. I made only one argument that opposing council specified as being wrong. When
11 preparing to write my Rule 11 Motion, I read Rule 15 and thought the motions were
12 untimely because they were filed 28 days after remitter from the Ninth Circuit Court
13 of Appeals. Mr. Polek wrote "NOT APPLICABLE BECAUSE THE MOTIONS TO
14 DISMISS ARE NOT UNTIMELY." (capitalization his, Aff. ¶6) I inquired which
15 statute allowed for 28 days, thinking the defendants had maybe relied on California
16 Code of Civil Procedure instead of Federal. There was no response from Counsel as of
17 this date. While checking the docket, I was reminded that Judge Sammartino had
18 given the defendants an extension of time to respond and corrected myself
19 immediately.

20
21
22 10. I was addressing the disputed facts by affidavit, because they are facts at issue, not
23 law; what was said or the verbiage of law and not if the law is interpreted correctly.

24 Mr. Polek states that the affidavit must count toward the pages allowed for the
25 memorandum of points and authorities. He said writing the affidavit is an attempt to
26 Affidavit in Support of Plaintiff's Ex Parte Motion for Relief from Bad Faith Frivolous and Factually
27 False Motions to Dismiss and Joinder
28

circumvent the page limitations. He is willing to stipulate to only 40 pages. No other counsel responded to the request for more pages.

Extraneous Disputed Facts

11. Extraneous disputed facts added by defendants include:

12. Change by “errata” underscored. **“SSP’s members consist of Norman and Sandra’s children and grandchildren represented through irrevocable trusts.”** (Dennis Memo, ECF No. 162-1, 1:4,5) This is false. There are several authorized trustee members. Jeffrey M. Sherman as co-trustee of the J&M Sherman Family Trust is a member. Jeffrey M. Sherman is not a child of Norman and Sandra Kramer. (SAC ¶17) I did not say the added line either. The J&M Sherman Trust and the L&E Trust are revocable trusts. I believe the trustees of revocable trusts are the “owners”.

13. **“The other Defendants filed their respective Motions to Dismiss shortly thereafter.”** (id. 1:17, 18) This is false. Linda R. Kramer, an individual did not file a Motion to Dismiss in 2019. She may or may not have intended to join the co-trustees of the Lynn and Erik’s Trust, but the separate defendant was not listed on the face of the motion and she did not file a motion to set aside default.

14. Change by “errata” underscored. **“On August 13~~7~~, 2020, Plaintiff filed her Second Amended Complaint [].”**(Dennis Memo 1:21) ~~This is false.~~ I filed my SAC on August 7, 2020.

15. **“Plaintiff’s new claims – asserted for the first time again [sic] Dennis nearly sixteen months after the original complaint was filed [].”** (Dennis Memo 2:2, 3)

This is false. The facts alleged in the FAC and SAC are substantially the same as in the original, especially regarding Dennis. The amendments were made to clarify who was acting and to label the behavior with proper legal terms.

16. **“Plaintiff was equally hostile with Defendant Kramer [omitted quote of partial sentence SAC ¶154]).”**(Dennis Memo 7:26) This is a comparison between my relationships with Kramer and Sherman and an opinion with which I disagree. Even now, I would not want a relationship with Kramer because she is greedy and conniving, as per the alteration of the docket on her behalf. But, I don’t believe Kramer had anything to do with convincing former commissioner Friedenthal to terminate my parental rights and place my sons with their father who was tried in the City of Los Angeles for punching one of the children in the face (acquitted after criminal trial) and then in a house shared by a convicted child abductor. I believe Sherman did that, motivated by receiving more money from our parents, even though her trust and Jeffrey Sherman already have several million dollars. I did not and would not say I was “hostile” toward anyone. But I did not and would not say my relationship with Kramer was “equally” strained as my relationship with Sherman.

17. Dennis attempts to introduce a fact that the undertaking required “pursuant to OA § 9.1(b)”, as I alleged in SAC ¶336, was discretionary. **“[Dennis’s decision to not vote her 14% interest in favor of an undertaking [] are day-to-day decisions [] wholly**

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1 **permissible under the Operating Agreement.”** (Dennis Memo 16:21-23) I never
 2 alleged that and disagree adamantly.

3
 4 18. Likewise, in the same sentence, Dennis claims dissolving SSP is discretionary. I
 5 alleged the dissolution is mandatory at SAC ¶¶193-197. The first citation to the OA is
 6 “‘The Company *shall* be dissolved upon the first to occur of the following events: The
 7 sale of all or substantially all of the Company assets; [provision for a sale on an
 8 installment basis]’ OA Article VIII § 8.2(a)” (emphasis added)

9
 10 19. **“To the extent prevention of alleged misconduct is guaranteed, which it is not**
 11 **[.]”** (Dennis Memo 17:16-17) I alleged the opposite of this several times including at
 12 SAC ¶49, Members must approve “Doing any act in contravention of the Articles of
 13 Organization filed by the Company. (OA § 5.5(f))” and SAC ¶50, Members must
 14 approve “Possessing Company assets, or assigning the Company’s rights in specific
 15 Company assets, for other than a Company purpose. (OA § 5.5(i)).” See also SAC
 16 ¶¶221, 237, 331, 334, 335.

17
 18
 19
 20 20. **“Even if Dennis had knowledge of the alleged breach of fiduciary duty when it**
 21 **occurred – which she did not [.]”** (Dennis Memo 18:17-18) Dennis is contradicting
 22 my allegation that she and all Defendant Members knew of the alleged breaches found
 23 at SAC ¶¶90, 315, 316, 319, 321, 331-336, 338, 341, 346, and 349. One symptom of
 24 my anxiety is that I get distracted easily, often mid-sentence. This happened when I
 25 took a phone call while writing paragraph 344, and never went back to it. I need to
 26 finish that sentence and add Kramer and Dennis to paragraphs 352-354 and 357.

21. **“As Lynn Kramer controls the Lynn & Erik’s trust, it is not beyond the reach of her creditors.”** (L&E Trust Memo, ECF 164-1, 4:1-2) This is not a fact that I presented and I do not know it to be true. I have no idea who the beneficiaries are, what transfers the trust made, or will make, and if both co-trustees are required to sign documents to remove property from the trust.
22. I put my shares of SSP in a revocable trust briefly when I had to bring down my anxiety levels. The Manager required me to send a copy of the trust for attorney Stern to approve before she would allow me to assign my shares.
23. I requested a copy of the L&E Trust on September 23, 2020 by email to attorney Keith Cochran. To date they did not respond.
24. **“Here, SSP is a manager-managed limited liability company.” And, “[b]ecause SSP is managed by a Manager (as opposed to its members), the members do not owe each other the duties of loyalty and care.”** (L&E Trust Memo, 5:1-5) This is contradictory to the claim I made in SAC ¶¶38, 42 and 43, that whether SSP was member-managed or manager-managed is ambiguous in the contract and should be interpreted against the drafters, including several Member Defendants, and that section 5.5 gives important and specific management duties to the Member Defendants.
25. **“Further, the members of SSP waived claims of breach of fiduciary duty against one another for the actions or inactions of the other members.”** (L&E

Trust Memo, 5:12-13). This is followed by a quote from the OA that specifies exclusions to this sentence.

26. **“The actions or inactions of SSP’s fully-informed members were done in good faith [I]”.** (L&E Trust Memo, 6:22-23) I did not say this, and in fact conveyed the exact opposite. (SAC in general, specifically at ¶44, 58, 75, 76, 80, 90, 297, 306, 314, ninth cause of action for breach of covenant of good faith and fair dealing.)
27. **“But Lynn Kramer is entitled to take these actions as a non-managing member of SSP.”** (L&E Trust Memo, 7:21-22) This is a disputed fact that I did not present. I said the Members, including Kramer, had a duty to make major decisions enumerated in OA section 5.5, which made the status of SSP as a member-managed or manager-managed LLC ambiguous. Regardless, I said the Members did not use reasonable care when performing their duties as per section 5.5. (SAC ¶¶326-341)

Misstatements of the SAC or Order

28. Misstatements of the SAC or the Order include:
29. **“Other members include her sisters and their spouses, primarily in their capacities as Trustees of various trusts that are also members of SSP.”** (Sherman Memo 5:11-13) False. I allege the members are my sisters and one brother-in-law as a trustee of a revocable trust. My other brother-in-law was improperly assigned membership, but the assignment was void. (SAC ¶14 and the second cause of action)

30. That my allegations of breach of fiduciary duty were in connection with “**in particular the sale of SSP’s primary asset**”. (Sherman memo 5:16-17) The sale of SSP was not particularly bothersome to me and I received a major percentage of my capital back. The breaches were particularly in the time leading up to the sale when assets were being misappropriated, distributions were being made to all members but me, and there was self dealing in regard to a Sherman Family Partnership that was concealed from me. Also, the members refuse to dissolve the company and give me my \$70,000 plus capital.

31. Sherman memo page 9 lines 6-12 give a rendition of my allegations of fraud found in SAC paragraphs 114-125 that only mention that I offered to sell my shares to the other members in lieu of dissolution and the sale did not occur. The Sherman defendants omit the part where the SSP attorney and Mary Sherman try to convince me based on fraudulent numbers that my share was worth \$216,000. When it was really worth about \$1.4 million.

32. Change by “errata” underscored. “[**Plaintiff does not allege new defamatory statements. Rather, apart from omitting the Arkansas statements, Plaintiff relies on the same statements asserted in her FAC. (Compare SAC ¶¶418-423 with FAC ¶¶244-245.) The sender, recipients, context, and subject matter are the same.**” (Dennis Memo, ECF No. 162-1, 4:10-12) This is false. I purposefully left out the defamatory statements Dennis made to recipients in Arkansas, found in FAC ¶¶151 to 155 and 243. Notice that Dennis mentioned 244-245, but omitted 243. She

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1 also omitted 151-155 in her comparison. I will be adding those back into the false
 2 light invasion of privacy cause of action without being referred to and incorporated
 3 into the defamation cause of action.

5 33. Change by “errata” underscored. **“Moreover, Plaintiff alleges no fraud or**
 6 **negligence cause of action against Dennis.”** (Dennis Memo 12:4-5) ~~This is false.~~
 7 The change adds nothing, as there is no need for a cause of action of negligence. I am
 8 not required to plead every cause of action available and felt that would be redundant,
 9 but I will add it to the amendment in lieu of the remedies I called causes of action. I
 10 specify “negligence” at SAC ¶¶307 and 322. I alleged negligent acts by Dennis and all
 11 Member Defendants at the following paragraphs:

- 14 a) 66. “Dennis and Kramer refused to use a reasonable standard of care in their duty to
 15 make Major Decisions.”
 16
 17 b) 75. “The Manager and Member Defendants took action without reasonable inquiry
 18 and with improper motives. When asked to make “Major Decisions” the Member
 19 Defendants did not conduct a good faith and reasonable investigation and usually
 20 refused to vote either way.”
 21
 22 c) 76, which lists several acts that go beyond negligence, to be grossly negligent and
 23 reckless and for which the Member Defendants could expect harm to me and to SSP.
 24
 25 d) 86. “The Member Defendants should have received the same K-1 information that
 26 Plaintiff received for 2013, but no inquiry or investigation was made by them that
 27 Plaintiff is aware of.”
 28

- e) 90. “The Member Defendants have absolutely known about the Manager’s overpayment of management fees and other misappropriations since no later than October, 2019 when they received the exhibits Plaintiff filed in this case and still refuse to join in an action to remove the Manager by court action.”
- f) 174. “Those in control of SSP [including the major decision making Member Defendants] have been guilty of or have knowingly countenanced mismanagement, abuse of authority and persistent unfairness toward Plaintiff;”
- g) 176. “Disagreements and disputes have arisen between Plaintiff and the Defendant Members regarding matters of mismanagement of SSP by the Manager which is countenanced by the Defendant Members and the Defendant Members are making irrational decisions for the Major Decisions they must make pursuant to the OA;”
- h) 177 and 178 discuss the negligent act of allowing attorneys who represent the Member Defendants and the Manager to also represent SSP, a clear conflict of interest.
- i) 185. “No Member other than Plaintiff has asked a Court to intervene against the Manager [].” The allegations throughout the SAC are that the Manager is clearly out of control, misappropriating assets and the k-1s compared to the buyers’ prospectus show that there is a significant discrepancy between SSP’s income and reasonable income.
- j) 312 is an allegation of “Abdication of corporate responsibility”.
- k) 313 is an allegation that the Member Defendants “indicate a lack of sufficient diligence to inform herself or himself of how the Manager was handling SSP assets”.

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l) In 315 I allege, “[i]t was obviously not in the best interest of the Company to pay three times the reasonable rate for management, especially when the rents collected were below market rents.”

m) In 316 I allege, “[i]t was not in the best interest of the Company to pay bonuses of \$65,000 to the Manager after the sale of the sole property”.

n) And in 317 I allege, “[n]ot reporting the \$65,000 bonuses to the IRS on a 1099 was not in the best interest of the Company”.

34. This is not an exhaustive list of the negligence alleged against Dennis and the other Member Defendants in the SAC.

35. “[P]laintiff makes no allegation in the SAC sufficient to overcome the business judgement rule.” (Dennis Memo ECF No. 162-1, 12:7-8). I am not arguing the sufficiency here, as that is a matter of law. I am contradicting the statement that no allegation was made.

36. SAC paragraphs 75 and 76 are a direct allegation of acts that are not protected by the business judgement rule.

37. In 297 I discuss the Member Defendants paying their attorneys with SSP assets and knowing that the Manager did not distribute an equal asset to me. “This circumstance inherently raises an inference of conflict of interest that contradicts the “business judgment rule” and the obligation of good faith and fair dealing.”

38. In 304 I list allegedly unprotected acts: “(a) refusing to vote against acts of the Manager that were in contravention to the OA; (b) refusing to dissolve the Company

1 timely; (c) Using the Company attorneys, Stern and McGarrigle to represent them as
2 individuals, even letting SSP pay for the representation without following OA
3 requirements.”

4
5 39. From 309 through 316, I list acts that I allege are not protected by the business
6 judgement rule.

7
8 40. **“By her SAC, Plaintiff also fails to address the Court’s prior order stating**
9 **that, had the litigation been warranted, it would have been in Dennis’s and the**
10 **other member defendants’ interest to vote in favor of litigation. (Order at 33-**
11 **34.)”** (Dennis Memo, ECF No. 162-1, 12:15-17.)

12
13 41. If I did not want to clean up the language and plead the elements of additional
14 causes of action and remedies, I would have appealed the order on that issue,
15 believing the Court erred. I explained in both the FAC and SAC, that the Member
16 Defendants might have been compensated along with Sherman, sharing in the ill
17 gotten gains, but I cannot ascertain that while denied access to the records, and I am
18 certain Sandra Kramer is paying them well to carry out her vendetta against me (for
19 being born). (SAC ¶ 76)

20
21
22 42. I alleged that the Member Defendants “engaged in other wrongful acts and conduct
23 which were intended to harm both SSP and Hammett, knowing that Hammett was the
24 only member who would not be reimbursed for SSP losses by Sandi Kramer from the
25 Members’ father’s by-pass trust or directly from the SSP money misappropriated by
26 the Manager.”

43. **“The Court ultimately dismissed the derivative claims** [quoting the Order].”
(Dennis Memo 13:25.)

44. The Court did not dismiss the sole derivative claim through the Order of March 23, 2020. It was dismissed on August 21, 2019, ECF No. 39 in response to my voluntary withdrawal the day before, ECF No. 38.

45. Dennis Memo 14:13 has what may be a typo, where the word “times” was replaced by “items”.

46. I did not “seek[] to supplant the Operating Agreement to add a duty requiring that Dennis pursue [my] agenda”, as purported in Dennis Memo 15:15-16. I asked only that the Member Defendants comply with the Operating Agreement, the applicable statutes and make decisions in good faith. I allege that their decisions were not made in good faith and give examples of those acts of bad faith, many of them listed by Dennis at Memo 14:1-19.

47. **“However, the actions supporting Defendant Sherman’s alleged breach of fiduciary duty occurred in 2017.”** (id. 18:12-13) The SAC addresses breaches of fiduciary duty that continued or occurred after 2017, right up to the filing of the SAC.

48. “The Member Defendants have absolutely known about the Manager’s overpayment of management fees and other misappropriations since no later than October, 2019 when they received the exhibits Plaintiff filed in this case and still refuse to join in an action to remove the Manager by court action.” (SAC ¶90) “They

continue to breach their fiduciary duties and the implied covenant of good faith and fair dealing.”

49. “Company Counsel Forde wrote to Plaintiff that her right to review company records ended when she filed suit, basing his opinion on a case where the entire record had already been produced in discovery.” (SAC ¶231) “The Defendant Members refuse to vote against the secreting of company financial records which is in contravention of the OA 5.5(f).” (SAC ¶237)

50. The damages for the breaches of fiduciary duty and aiding and abetting said breaches keep accruing. “The Manager offered no explanation upon Plaintiff’s inquiry sent to all the Member Defendants on July 22, 2020.” (SAC ¶85) “The Member Defendants have absolutely known about the Manager’s overpayment of management fees and other misappropriations since no later than October, 2019 when they received the exhibits Plaintiff filed in this case and still refuse to join in an action to remove the Manager by court action.” (SAC ¶90)

51. **“Even if Dennis had knowledge of the alleged breach of fiduciary duty when it occurred [] which Plaintiff does not [] allege [].”** (Dennis Memo 18:17-19) This is not true. I allege that the breaches of fiduciary duty continue to date and all Member Defendants know about them, because they have received my court documents.

52. **“The SAC fails to articulate how Dennis substantially assisted Defendant Sherman’s alleged breach of fiduciary duty.”** (Dennis Memo 18:23-25) This is false. I began to articulate the assistance in SAC ¶¶349-350.

53. I, unlike any other of the Kramer issue, can say the words “I made a mistake.” One of my complaints to my psychiatrist and therapists is that I get distracted mid-sentence. This happened to me while I was working on the aiding and abetting cause, as can be seen in paragraph 344. If the short and concise articulation given does not suffice, I can elaborate on amendment.

54. **“Plaintiff admits, however, that this fact [that the primary asset was sold in January 2017] does not leave SSP devoid of substantially all of its assets.”** (Dennis Memo 21:2-3) This is not the whole truth.

55. I stated, “the sole authorized business of the Company has ceased” at SAC ¶183. I added the language about selling all or substantially all of the Company assets because, as also stated in ¶183 and elsewhere, “SSP’s counsel and the Manager refuse to provide Plaintiff with business records or an accounting”. I cannot determine from the financial records I have been given whether the real estate owned by the entity Sherman Family Partnership has been sold yet.

56. I am asking the Court to help determine how my capital is being held and to order the defendants to return misappropriated assets, liquidate any that are not cash and distribute the cash.

57. The L&E Trust Defendants give a confusing statement in their “Introduction” at 1:1-4. They begin **“Plaintiff Laura Lynn Hammett, a pro se litigant, has sued five family members, three attorneys, two law firms, and a family-owned company Silver Strand Plaza, LLC (“SSP”).** This sentence uses “has”, the present tense 3rd

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1 person singular form of the verb. But, the SAC, the present operative complaint does
 2 not name the three attorneys nor two law firms. SSP is owned by some family
 3 members and other trusts, where the trustees and beneficiaries are family members.
 4

5 58. In SAC ¶17 I tried to distinguish the Members that are trusts, but inadvertently left
 6 out the Grandchildren's Trusts and will include those in the TAC.
 7

8 59. **“Lynn Kramer and her husband Erik Von Pressintin Hunsaker**
 9 **(“Hunsaker”) are the co-trustees of the Lynn and Erik's Trust, which has a 14%**
 10 **ownership in SSP.”** (L&E Trust's Memo, ECF No. 164-1, 1:5-7) This is not what I
 11 claimed in the SAC. (SAC ¶14) “Kramer made an assignment of her share of SSP to
 12 the L&E Trust Defendants that is void *ab initio* due to Article VII of the Operating
 13 agreement as discussed thoroughly in the Second Cause of Action.”
 14

15 60. I went into detail about the void assignment in the second cause of action for
 16 fraudulent conveyance. (SAC ¶¶143-170)
 17

18 61. I did not claim the L&E Trust Defendants or its co-trustees have a 14% ownership
 19 in SSP. I claimed any assignment was void.
 20

21 62. I differentiated between Linda R. Kramer, as an individual and the L&E Trust
 22 Defendants, which are separate legal entities. Linda R. Kramer is not Erik Von
 23 Pressintin Hunsaker.
 24

25 63. I wrote: “Separate defendant Linda R. Kramer (“Kramer”) is an individual residing
 26 in San Diego, California, and was at all relevant times herein a member of SSP
 27 holding a 14.1571% interest therein.” (SAC ¶9)
 28

64. In the L&E Trust Defendants' MTD, "Lynn Kramer" is used interchangeably for the separate defendants, the individual and the female co-trustee. They were disambiguated in the SAC.

65. **"Lynn Kramer and Mr. Hunsaker were improperly named as parties to this lawsuit because they did not vote in favor of suing SSP's Manager."** (L&E Trust Defendants' MTD 1:7-9) This is not as stated in the SAC. In the SAC, I acknowledge that the L&E co-trustees have no valid membership interest, and therefore need not and could not vote either way. They are each named only in the second cause of action for fraudulent conveyance.

66. Even though I believe the appellate court will agree that Kramer is not allowed to argue until the clerk's default that should have been entered on August 1, 2019 is set aside by motion, I will address her contentions in case I am wrong and presume "Lynn Kramer" meant the individual as well as the female co-trustee in the L&E Trust Defendants' MTD. I will differentiate between the two Linda Kramer defendants as "Kramer" for the individual, and "Female Co-trustee" for the co-trustee.

67. **"The SAC largely relies on group pleading to assert claims against them."** (L&E Trust Defendants' Memo 1:24-25) I did not use any "group pleading" within the meaning of the "group pleading doctrine". Where I claimed Kramer or the Member Defendants (of which Kramer is one) did some act or made a statement, the parties I named did the act or made the statement in particular. I gave the reason why I

1 attributed acts and statements made by the Female Co-Trustee to her husband Co-
 2 Trustee Hunsaker in SAC ¶11.

3
 4 68. **“The SAC alleges just two particularized facts about Mr. Hunsaker [].”** (L&E
 5 Trust Defendants’ Memo, 1:25-26). This is false. Particularized facts can be found in
 6 SAC ¶¶10, 11 and 13 which show Hunsaker is bound by acts of the Female Co-trustee
 7 and the two cannot act separately, 14, 30, 143, 149 – 154, 159-162, 164, 168-170, in
 8 the “sixth cause of action” for constructive trust and in the remedies for the second
 9 cause of action. The L&E Trust Defendants seem to understand that “L&E Trust
 10 Defendants” includes Mr. Hunsaker specifically in their citation of SAC paragraph 30,
 11 but in none of the other paragraphs.

12
 13
 14 69. The L&E Defendants list 13 particularized facts that are purportedly the only
 15 particularized facts I gave about “Lynn Kramer”. This is false.

16
 17 70. First, they lump the statements made about Kramer with the statements made about
 18 the female co-trustee. For example, “She file a motion to dismiss on July 30, 2019”. I
 19 only wrote that the Female Co-Trustee filed the MTD that day and that Kramer did
 20 not file on that day. (SAC ¶¶162-164, 168)

21
 22 71. All the particularized facts made about both Kramer and the Female Co-Trustee are
 23 too many to enumerate here. They include each mention of Linda R. Kramer as an
 24 individual, Linda R. Kramer as co-trustee of the L&E Trust, the L&E Tust
 25 Defendants, the Member Defendants and Defendant Members (I’ll try to be consistent
 26 in the TAC), the Defendants and the Family Defendants.

72. **“Based on these allegations, Plaintiff asserts claims against Lynn Kramer and Mr. Hunsaker for [list of causes of action].”** (L&E Trust Memo, 2:16-20) My claims were based on the full spectrum of facts alleged, not just the short list invented by Kramer and the L&E Trust Defendants.

73. **“[] Lynn Kramer does not owe Plaintiff any money.”** (L&E Trust Memo, 3:17). The SAC states the opposite of this. If Kramer and the Female Co-Trustee of the L&E Trust did not owe me any money, I would not file a lawsuit to collect money they owed to me.

74. **“Here, Lynn Kramer controls the membership interest in SSP as co-trustee of the Lynn & Erik’s Trust. SAC ¶10.”** (L&E Trust Memo, fn2 at 14) Again, I stated: “Separate defendant Linda R. Kramer (“Kramer”) is an individual residing in San Diego, California, and was at all relevant times herein a member of SSP holding a 14.1571% interest therein.” (SAC ¶9) I clearly stated: “Kramer made an assignment of her share of SSP to the L&E Trust Defendants that is void *ab initio* due to Article VII of the Operating agreement as discussed thoroughly in the Second Cause of Action.” (SAC ¶14) Kramer’s control of the shares in SSP are as an individual, not as co-trustee. And the individual Kramer did not join in the MTD filed July 30, 2019.

75. L&E Trust Memo has a list of phrases extracted from the cause of action for breach of the covenant of good faith and fair dealing presented in SAC ¶¶326-341. (L&E Trust Memo, 7:17-21) The list is presented as exhaustive of the facts presented

in support of my complaint. It is not an exhaustive list and the phrases are out of context.

76. For example, “**relied on the SSP attorney to represent their interests**’ (SAC ¶335)” omits “The Member Defendants not only shirked their responsibility as per OA § 5.5,” and “as well and had SSP pay their bills”.

77. “**there are no fraud or negligence allegations against [the Defendant Member]**” (L&E Trust Memo, 8:4) I made numerous allegations of gross negligence, willful and wanton misconduct, conscious, and voluntary acts or omissions in reckless disregard of their legal duty and of the consequences to me by the Member Defendants. Here are a few:

78. “Dennis and Kramer refused to use a reasonable standard of care in their duty to make Major Decisions.” (SAC ¶66)

79. The Manager and Member Defendants took action without reasonable inquiry and with improper motives. When asked to make “Major Decisions” the Member Defendants did not conduct a good faith and reasonable investigation and usually refused to vote either way.” (SAC ¶75)

80. “Generally, acting in bad faith, the Member Defendants and Roberta Kramer engaged in self-dealing and in conflicted and self-interested relationships with McGarrigle, Stern and their firms; allowed the misappropriation and waste of assets of SSP by engaging in bad-faith voting schemes which were not intended to benefit SSP and were aimed at harming the Plaintiff.” (SAC ¶76)

81. “The Member Defendants should have received the same K-1 information that Plaintiff received for 2013 [that showed self-dealing by the Manager], but no inquiry or investigation was made by them that Plaintiff is aware of.” (SAC ¶86)

82. “The Defendants act as if (and make statements through counsel) that the OA is null and void because Plaintiff filed a suit based on their violations of the OA and the duties that arose from it.” (SAC ¶87)

83. More statements of gross negligent acts of Defendant Members including Kramer are found in SAC ¶¶90, 185, 197, 204, 205, 213, 221, 237, 304, 307, 309-317, 331-338, and 349.

84. **“Accordingly, by Plaintiff’s own allegations, Lynn Kramer did not learn of the fiduciary breaches until long after the occurrence.”** (L&E Trust Memo, 8:27 – 9:1) This is false. I alleged that the breaches of fiduciary duty are ongoing and the Member Defendants including Kramer know about the breaches and continue to aid and abet. (SAC ¶¶87-90)

Misquoted Law or Contract

85. The misquoted law or contract following is not given to discuss or interpret the law. It is direct misquotes that are a violation of FRCP Rule 11:

86. This statement was purportedly corrected in Dennis errata one by moving a quotation mark: **“If ‘the defamatory meaning would appear only to readers who might be able to recognize it through some knowledge of specific facts...not discernable from the face of the publication,’ then the libel is per quod.² *Palm***

1 *Springs Tennis Club v. Rangel*, 73 Cal. App. 4th 1, 5, 86 Cal. Rptr. 2d 73 (1999).”

2 (Dennis Memo, 5:18-22) But Dennis ignored the following statement. This is
 3 misquoted. Language omitted or added by Dennis without noting the omission is
 4 underscored in the actual quote cut and pasted without alteration from Westlaw. “If,
 5 however, the defamatory meaning would appear only to readers who might be able to
 6 recognize it through some knowledge of specific facts and/or circumstances, not
 7 discernible from the face of the publication, *and which are not matters of common*
 8 *knowledge rationally attributable to all reasonable persons*, then the libel *cannot be*
 9 *libel per se but will be libel per quod*.” (Copy emailed had underscore instead of
 10 italics)
 11
 12
 13

14 87. “**Accordingly, the court finds that plaintiff has failed to plead special**
 15 **damages.**”(Cited at “*Darnaa, LLC v. Google, Inc.*, No. 15-cv-03221-RMW, 2015
 16 U.S. Dist. LEXIS 161791. At *31-32 (N.D. Cal. Dec. 2, 2015”)(Dennis Memo 6:20-
 17 21) This is misquoted, as a comma and important phrase following was omitted.
 18 “Accordingly, the court finds that plaintiff has failed to plead special damages, but
 19 grants leave to amend.”
 20
 21

22 88. Dennis highlights only part of a quote at 11:10-13. I am underscoring the part
 23 Dennis did not highlight. “**A member shall discharge the duties to a limited liability**
 24 **company and the other members under this title or under the operating agreement and**
 25 **exercise any rights consistent with the obligation of good faith and fair dealing.**”
 26
 27
 28

89. Dennis concludes immediately after this: **“Thus, as an LLC member, Dennis owes no fiduciary duty to Plaintiff. Rather, Dennis has only the obligation to exercise her ‘rights consistent with the obligation of good faith and fair dealing.’ No other fiduciary duties are imposed on non-manger (sic) members.”**

90. L&E Trust MTD leaves out an important clause in a sentence to argue “[t]hus, Plaintiff is prohibited by the clear terms of the Operating Agreement from seeking a dissolution.” (L&E Trust Memo, 4:8-12) The omitted clause is italicized here: *“The Company may be dissolved, liquidated and terminated only pursuant to the provisions of this Article VIII, and each Member hereby waives any and all other rights that it may have to cause the dissolution of the Company or a sale or partition of any or all of the Company assets.”*

91. **“Further, the Amended Operating Agreement states that dissolution *may* occur upon [triggers].”** (italics added. L&E Trust Defendants’ Memo, 4:13-15) The actual language of the agreement says, “The Company *shall* be dissolved upon the first to occur of the following events:” (italics added. SAC, Ex 1 at §8.2; quoted at SAC ¶193)

Arguments that Must be Made in the Memorandum

92. The following are arguments that I intend to address in the memorandum to my opposition. I will mark any that I find frivolous as such. I am giving only one citation for each argument, though many of the arguments were repeated by other defendants.

1 They did not consolidate. The Sherman Defendants joined each other motion and filed
2 their own.

3
4 93. “As it related to defendant SSP, Hammett’s SAC did not correct the deficiencies of
5 her FAC.”(SSP 1:3-5)

6 94. “Hammett still brings an impermissible direct suit[]” (SSP 1:7)

7
8 95. “[]she has not suffered any individualized harm outside of her role as a
9 member.”(SSP 1:9-10)

10 96. “Hammett again appears to assert derivative claims on behalf of SSP [causes 1-8
11 and 15].” (SSP 1:12-14) Then SSP goes on arguing derivative causes intermittently
12 for more than 10 pages. If my claims are derivative, then SSP is only a nominal
13 defendant and SSP counsel is not allowed to argue any of the defenses. (and counsel
14 should disgorge himself of fees already collected to “defend” a nominal defendant.)
15

16
17 97. Also, I am not allowed to advocate on behalf of the real party defendant and all the
18 proceedings thus far, about these issues are void.

19
20 98. **Frivolous.** “Hammett once again fails to allege []why demand was wrongfully
21 **denied.**” (SSP 1:15-16) I do not choose to add a derivative claim, so discussion of the
22 requirements of process are moot.

23
24 99. **Frivolous.** “Hammett’s claim for dissolution is prohibited by the clear terms
25 **of SSP’s operating agreement.**”(SSP 1:19-20) The defendants make the argument
26 that because Plaintiff asked for all or substantially all of the remaining assets to be
27 sold and distributed, there are still remaining assets and so OA §8.2 is not satisfied,
28

Affidavit in Support of Plaintiff’s Ex Parte Motion for Relief from Bad Faith Frivolous and Factually
False Motions to Dismiss and Joinder

1 that the company shall be dissolved upon sale of all or substantially all of the
 2 company assets. (SSP 8:5-19) In addition to the fact that the defendants misquote the
 3 OA, because the clause is mandatory, not permissive, the defendants are acting as if
 4 they don't understand the plain language used in the Operating Agreement.

5
 6 Technically the OA should have said "upon the sale of Silver Strand Plaza, because 1)
 7 'The Company's primary activities will be limited to owning, leasing and managing
 8 the retail shopping center known as Silver Strand Plaza [address].' (OA §1.4 as quoted
 9 in SAC ¶194); and 2) all other assets are incidental or were purchased in
 10 contravention to the OA." It is beyond frivolous, it is insulting that the defendants
 11 claim substantially all the company assets were not sold because they made potentially
 12 unauthorized purchases and are not letting Plaintiff know anything about those assets.

13
 14 100. "Hammett's claims for appointment of receiver, constructive trust and unjust
 15 enrichment fail as these are not recognized causes of action in California but rather
 16 remedies."(SSP 1:19-23) I agree in form but would amend to name these remedies
 17 attached to the causes of action they remedy. (Interestingly, I copied the form from a
 18 similar McGarrigle complaint.)

19
 20 101. "Hammett is not entitled to an accounting under California law." (SSP 1:23)

21
 22 102. "Hammett's claim for breach of fiduciary duty is not an appropriate cause of
 23 action as to SSP." (SSP 1:24-25) This will discuss Respondeat superior.

24
 25 103. I will need about five pages to discuss direct injury vs. derivative.

26
 27 104. I will need another couple pages to list direct injury.

105. **Frivolous. “Hammett is not a minority shareholder[]”** (SSP 5:8-9) I hold 14%. The other members are acting in concert.

106. **Frivolous. “Hammett asserts that all members were equally deprived of distributions they were entitled to receive as SSP members.”**(SSP 5:19) This is repeated in various permutations throughout and is patently false. The other members received distributions in kind of legal services, Sherman received \$65,000 she called “a bonus” but that was not reported to the IRS on a 1099, and I alleged Sandra Kramer is making up for any money overpaid to Mary Sherman by gifts to the other members as part of her vendetta against me. (In the FAC I said I was not going to file suit against my mother for any kind of interference with economic relations or defamation, but reserve the right.)

107. **“SSP Members’ vote to decline litigation is protected by the business judgment rule.”** (SSP 5:24-25)

108. The covenant of good faith and fair dealing

109. What is good faith and fair dealing?

110. What is reasonable?

111. Negligence

112. Constructive trust.

113. Revocable vs. irrevocable trusts.

114. Ownership of shares by a trustee v. the trust or beneficiaries

115. The operating agreement

Affidavit in Support of Plaintiff’s Ex Parte Motion for Relief from Bad Faith Frivolous and Factually False Motions to Dismiss and Joinder

19-CV-0605-TWR-AHG

116. Adhesion contracts

117. Fraud

118. Whether statute of limitations is met for several causes of action.

119. Choice of law for defamation

120. Publicity for False Light Invasion of Privacy

121. Emotional distress as an element of False Light Invasion of Privacy

122. Fraudulent transfer or conveyance

123. Aiding and abetting breach of fiduciary duty

124. The difference between fact pleading and notice pleading and where I was required to fact plead and did not.

125. Tolling the statute of limitations

126. Delayed discovery

127. The difference between the Sherman Defendants misrepresenting the reasonable rate of management fees and rent (which is an opinion) and misrepresenting what their opinion of the reasonable rate was (a fact). To say “I think the reasonable rate of management fees is 11%” to me and “I think the reasonable rate of management fees is 4%” to potential buyers is committing fraud to me or to the buyers. Since the buyer, a sophisticated investor has not complained of fraudulent inducement and the statute of limitations is running out, it is likely I was the one who was told the lies.

128. I swear the foregoing is true to the best of my knowledge and belief, signed under penalty of perjury according to the laws of the United States of America.

Affidavit in Support of Plaintiff’s Ex Parte Motion for Relief from Bad Faith Frivolous and Factually False Motions to Dismiss and Joinder

19-CV-0605-TWR-AHG

Dated October 12, 2020

s/Laura Lynn Hammett

Laura Lynn Hammett, Plaintiff in Pro Se

Laura Lynn Hammett
Bohemian_books@yahoo.com
500 Amity Road Suite 5B #306
Conway, Arkansas 72032

Plaintiff in pro se

Laura Lynn Hammett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Laura Lynn Hammett,

Plaintiff,

v.

Mary E. Sherman, et al.

Defendants

Case No.: 19-CV-0605-TWR-AHG

Plaintiff's Motion to Vacate Void Orders
Granting Attorneys' Fees (ECF No. 111);
In the Alternative, Motion for
Reconsideration

Hearing Date: November 18, 2020
Time: 1:30 p.m.
Courtroom: 3A

Honorable Todd W. Robinson presiding
Hon. Magistrate Allison H. Goddard

To the Court, All Parties and Their Counsel of Record:

As the plaintiff in the above captioned matter, I Laura Lynn Hammett, respectfully
ask the Court to vacate the orders for attorneys' fees on the "anti-SLAPP" motions to

PLAINTIFF'S MOTION TO VACATE VOID ORDERS GRANTING ATTORNEYS' FEES (ECF No. 111)

ALTERNATIVELY MOTION FOR RECONSIDERATION

19-CV-0605-TWR-AHG

1 strike in favor of defendants Alan N. Goldberg, Esq., Ellis Roy Stern, Esq., Stern &
2 Goldberg, Patrick C. McGarrigle, Esq., McGarrigle, Kenney, & Zampello, A
3 Professional Law Corporation (collectively “the Attorney Defendants”), entered March
4 23, 2020. (ECF No. 111, 49:25-27 and 52:12-15)

5 The reason for vacating the orders is that the complaint that was filed against the
6 Attorney Defendants for Mal-Practice was brought as a derivative action advocated by a
7 person not authorized to practice law and was therefore void, a complete nullity.

8 In the alternative, a motion for reconsideration should be granted because of the
9 need to correct clear error and prevent manifest injustice. The Attorney Defendants’
10 motion to strike was denied as moot, which is a denial; They were erroneously deemed
11 assumptive prevailing party when Plaintiff dismissed the void cause of action against
12 them; the Court, Judge Janis L. Sammartino presiding at the time, failed to examine the
13 “first prong” of the test for classification as a SLAPP suit; and any discretionary decision
14 made by Judge Sammartino was tainted by what appears to be bias against the Plaintiff.

15 This motion is based on the Notice of Motion, Declaration of Laura Lynn Hammett
16 in Support of the Motion, Memorandum of Points and Authorities attached, and the
17 record of this action filed therein.

18
19 Date 9/28/2019 Signature s/Laura Lynn Hammett

20 Plaintiff in Pro Se Laura Lynn Hammett
21
22
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28 PLAINTIFF’S MOTION TO VACATE VOID ORDERS GRANTING ATTORNEYS’ FEES (ECF No. 111)

ALTERNATIVELY MOTION FOR RECONSIDERATION

19-CV-0605-TWR-AHG

Laura Lynn Hammett
Bohemian_books@yahoo.com
500 Amity Road Suite 5B #306
Conway, Arkansas 72032

Plaintiff in pro se

Laura Lynn Hammett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Laura Lynn Hammett,

Plaintiff,

v.

Mary E. Sherman, et al.

Defendant.

Case No.: 19-CV-0605-TWR-AHG

Notice of Motion for Plaintiff's Motion
to Vacate Void Orders Granting
Attorney's Fees (ECF No. 111); In the
Alternative, Motion for Reconsideration

Hearing Date: November 18, 2020

Time: 1:30 pm

Courtroom: 4D

Honorable Janis L. Sammartino presiding
Hon. Magistrate Allison H. Goddard

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 18, 2020 at 1:30 PM, or as soon
thereafter as the matter can be heard in Courtroom 3A of the Edward J Schwartz
Courthouse, located at 221 West Broadway, San Diego, California 92101, there will be a

1 hearing regarding the motion of Laura Lynn Hammett, Movant, for an order vacating the
2 orders for attorneys' fees in favor of defendants Alan N. Goldberg, Esq., Ellis Roy Stern,
3 Esq., Stern & Goldberg, a California Partnership, Patrick C. McGarrigle, Esq.,
4 McGarrigle, Kenney, & Zampiello, A Professional Law Corporation .

5 Any opposition or response to this motion must be filed with the Clerk of the
6 United States District Court for Southern California at 333 West Broadway, San Diego,
7 California 92101 or electronically and served upon the undersigned no less than 14 days
8 prior to the hearing.

9
10 Date 9/28/2020 Signature s/Laura Lynn Hammett

11 Plaintiff in Pro Se Laura Lynn Hammett
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Laura Lynn Hammett
Bohemian_books@yahoo.com
500 Amity Road Suite 5B #306
Conway, Arkansas 72032

Plaintiff in pro se

Laura Lynn Hammett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Laura Lynn Hammett,

Plaintiff,

v.

Mary E. Sherman, et al.

Defendant.

Case No.: 19-CV-0605-TWR-AHG

Affidavit in Support of Plaintiff's Motion
to Vacate Void Order for Attorneys' Fees
(ECF No. 111); Alternatively,
Reconsideration

Date of Hearing: November 18, 2020

Time: 1:30 p.m.

Place: Courtroom 3A

Hon. Todd W. Robinson presiding

Hon. Magistrate Allison H. Goddard

1. I, Laura Lynn Hammett, Plaintiff in pro se and Affiant, state the following, which is known to me to be true and correct, or where I do not have direct knowledge, to the best of my knowledge and belief.
2. I did not use the words “on behalf of Silver Strand Plaza, LLC” when I wrote the FAC in this case. This is because I did not go to law-school except one semester online, had no experience with a derivative case and did not realize a derivative cause is “on behalf of” the entity, called herein “SSP”, in which I am a shareholder.
3. I first heard the word “derivative” cause of action from SSP Counsel Patrick C. McGarrigle, who contended strongly that all my claims were “derivative”, and that I could not bring the derivative claims because I “do not have standing”.
4. I was represented on contingency until January 22, 2019 in this matter by an attorney who charges over \$475 per hour to non-contingency clients. I was willing to settle my claims against the defendants for about \$54,000, less than my capital in SSP, about \$78,000, and would split that with my counsel, but the defendants refused. My attorney did not want to take the economic risk of continuing to represent me on contingency.
5. I could not afford an attorney for all causes, but there are particular areas where either I could be reimbursed by the defendants, if I prevailed, or that were beyond my ability to understand without advanced, time-consuming study. One need was for explanation of particularly complex issues like Derivative causes of action.
6. I therefore moved Judge Sammartino for leave to obtain “limited-scope representation”, similar to that allowed by other Federal District Courts, including the sister court to the north, Central District of Southern California.
7. Judge Sammartino denied my motion. (ECF No. 22)
8. On August 20, 2019, while reading case law to answer the Attorney Defendant’s anti-SLAPP motion, one case cited by the Attorney Defendnats being

McDermott, I learned that a derivative action is “on behalf of” the entity I was a shareholder to, and any award of damages would go to SSP as a whole, so the share to me would be diluted to 14.1571%, my share. This made no sense, as all the other living Members were also defendants who participated in the misconduct.¹

9. More importantly, as I was already aware, I could not represent an entity other than myself. Instead of waiting to correct my error after receiving leave to amend, and moving the court for leave to file an individual injury cause of action based on conspiracy between the Attorney Defendants and other defendants in the case, I immediately dismissed the Attorney Defendants without prejudice, stating my reason as above. (See ECF No. 38)
10. Judge Sammartino never admonished me that a derivative suit is on behalf of an entity that must be represented by a person authorized to practice law. She did not, and still has not mentioned that derivative suits presented by persons who are unauthorized to practice law are null and void.
11. Judge Sammartino did not acknowledge or comment on the reason why I made the voluntary dismissal in her “Order Denying as Moot Motions to Strike or, Alternatively, to Dismiss Filed by [the Attorney Defendants]” which she made “[i]n light of Plaintiff’s voluntary dismissal of her fifth and sixth causes of action against the Moving Defendants”.² (ECF No. 39, 2:3-4)
12. Judge Sammartino did make several *sua sponte* arguments against me when denying motions I filed, such as denying my motion for an extension of time to

¹ One Member would be a defendant but was deceased in 2017 and I think it is too late to name her estate.

² I could have proceeded on the fifth cause of action for conversion, but wrote that I would reinstate that cause after adding conspiracy causes of action against the Attorney Defendants for their economy.

1 amend my complaint due to the Coronavirus Pandemic because I neglected to
2 provide notice to opposing council first. (ECF Nos. 118 and 119)

3 13. I believe she wanted me to proceed on behalf of the LLC because she wanted
4 the defendants to prevail and knew it would be easier to railroad me than an
5 attorney.

6 14. Judge Sammartino misapplied Gottesman and Coltrain by neglecting to notice
7 that Plaintiff stated her reason to dismiss the malpractice cause without prejudice
8 was because she was not a licensed attorney and therefore not considered
9 competent to proceed "on behalf" of a Limited Liability Company. (ECF No. 111,
10 46:13-24; ECF No. 38)

11 15. Here is the second paragraph of an order in Gottesman which Judge
12 Sammartino presided over at *1043, with my commentary after added bolding:

13
14 "As just discussed, under *Coltrain*, Plaintiff's voluntary dismissal of Attorney
15 Defendants creates a presumption that Attorney Defendants are the prevailing
16 party. 66 Cal.App.4th at 107, 77 Cal.Rptr.2d 600. As Attorney Defendants note,
17 **Plaintiff did not file an opposition to the anti-SLAPP motion.** [I did.] (MTS
18 Opp'n 13.) **Nor does Plaintiff, in his own motion to strike, explain why he**
19 **dismissed Attorney Defendants while their anti-SLAPP motion was still**
20 **pending.** [I did.] (See generally MTS; MTS Reply.) [omitted irrelevant text] But
21 the California anti-SLAPP statute, as interpreted and applied by Coltrain and its
22 progeny, allows the Court to inquire into Plaintiff's reasons for dismissing these
23 Defendants. **And he has given none.**[I did.] [omitted repetitive text] See, e.g.,
24 *Fleming v. Coverstone*, No. 08CV355 WQH (NLS), 2009 WL 764940, at *6 S.D.
25 (Cal. Mar. 18, 2009) (finding that a defendant was a prevailing party within the
26 meaning of California's anti-SLAPP statute **where the plaintiff "d[id] not assert**
27 **that he dismissed the defamation claim** because Plaintiff has substantially
28

1 achieved his goals through settlement, because Defendant was insolvent, **or for**
2 **other reasons unrelated to the probability of success on the merits**”).[I did.]
3 (Exhibit ECF No. 111, 46:18-22; Gottesman, 263 F. Supp. 3d at 1043; Coltrain, 66
4 Cal. App. 4th at 107, 77 Cal.Rptr.2d 600; ECF No. 38, 2:10-22).

5
6 16. In the order granting attorney fees (ECF No. 111, Fee Motions Section at page
7 45) Judge Sammartino did not mention the first prong of the two-step test for anti-
8 SLAPP motions.

9 17. I discussed the first prong thoroughly in my opposition. (ECF No. 78-1, 2-6)

10 18. I concluded: “Just in case the Court decides the Attorney Defendants motion
11 survives the first prong of the anti-SLAPP test, Plaintiff will present compelling
12 evidence by declaration that she will prevail on her claims when she revives them.”

13 19. I know that Judge Sammartino analyzes anti-SLAPP motions using the first
14 prong of the test. She has written:

15
16 “Deciding an anti-SLAPP motion requires a two-step analysis. First, the court
17 decides if the defendant “has made a threshold showing that the challenged cause
18 of action is one arising from protected activity.” Equilon Enters. v. Consumer
19 Cause, Inc., 29 Cal.4th 53, 67, 124 Cal.Rptr.2d 507, 52 P.3d 685 (Cal.2002). If the
20 defendant meets this burden, then, second, the Court “determines whether the
21 plaintiff has demonstrated a probability of prevailing on the claim.” Moser v.
22 Triarc Companies, Inc., No. 05CV1742 JLS (WMC), 2008 WL 2705159, at *4
23 (S.D. Cal. July 8, 2008)

24
25 20. In fact, the case Judge Sammartino cited in her order, Gottesman, has this
26 headnote:

“On motion to strike under California's anti-strategic lawsuit against public participation (SLAPP) statute, a defendant must make an initial prima facie showing that the plaintiff's suit arises from an act in furtherance of the defendant's rights of petition or free speech. Cal. Civ. Proc. Code §§ 425.16(b), 425.16(c)(1).” (Gottesman v. Santana, 263 F. Supp. 3d 1034 (S.D. Cal. 2017))

21. In each and every order found on Westlaw by Judge Sammartino dealing with a motion to strike pursuant to CCP §425.16 except this case, Judge Sammartino addressed the first prong. The Attorney Defendants motion should fail on the first prong, and therefore, the error looks intentional.

22. Judge Sammartino created confusion and misunderstanding when she wrote the Order of March 23, 2020, inter alia:

“Plaintiff MAY FILE an amended complaint within forty-five (45) days of the electronic docketing of this order. Should Plaintiff fail timely to file an amended complaint, this action shall remain closed without further Order of the Court.” (A1: ECF 111, 54:7-10 (Attachments are designated “A#”; EFC refers to the district court docket electronic case filing number))

23. For three weeks, I understood this to mean the order was not final, because I could amend my complaint. Finality would come 45 days later. That is how it is done the vast majority of the time.

24. But on April 14th, I noticed that the Clerk of the Court wrote “closed” and “terminated” on the header of the docket.

25. I made a written inquiry of the clerk.

26. Joseph Diaz, CM/ECF Coordinator responded. “Yes. The case was terminated on 03/23/2020 per the following order: [followed by the order]”.

27. “Closed” means “(Of a class or organization) confined to a limited number”. (Black’s Law Dictionary (11th ed. 2019)) “Terminate” means “1. To put an end to; to bring to an end. 2. To end; to conclude.” (id.)
28. My appellate attorney had never seen a case closed this way in 18 years of practice, but she had me sign a retainer agreement and read through the case file in anticipation of the Ninth Circuit deciding “terminated” meant the case was final, or if I got too sick to write an amended complaint and just appealed the parts of the order of March 23, 2020.
29. I found some orders granting leave to amend by Judge Sammartino. Here is a typical sample: “Plaintiffs MAY FILE an amended complaint on or before thirty (30) days of the electronic docketing of this Order. Should Plaintiffs choose not to file an amended complaint by this time, this case shall be dismissed and the file closed.” (Barvie v. Bank of America, N.A., 2018 WL 4537723)
30. In Barvie, if the order was issued on March 23rd, the amended complaint would need to be filed on April 22nd. If no amended complaint was filed, the case would then be dismissed on April 23rd. The clerk would mark it “closed” and “terminated” on the docket. The notice of appeal would be due on May 23rd or the next Monday if it fell on a weekend.
31. In Hammett, the order was issued on March 23rd. If I decided against the amendment, the notice of appeal would be due April 22nd. March 23rd is the day the case was “closed” and “terminated”. It never opened back up. There would be an argument if the plaintiff tried to file a notice of appeal 30 days after the day the amendment was due, April 22, 2020.
32. Because of the appearance of bias of Judge Sammartino, I anticipated that if I did not file my notice of appeal the Court would allow the Attorney Defendants to reapply for a judgment and grant it on April 23rd.

- 1 33. I filed my Notice of Appeal, but the appeal was dismissed on August 14, 2020,
2 because the order was not actually final; it was interlocutory. (20-55442-9)
- 3 34. Stern and Goldberg filed an “application” for further attorney fees or to transfer
4 their motion to the trial court in the Ninth Circuit on August 20, 2020. (id. -10)
- 5 35. I filed a response similar to my motion herein, but in a bit more detail, on
6 August 28, 2020. (id.- 12)
- 7 36. I have heard nothing further about that application or motion and there is no
8 further entry on the electronic filing system.
- 9 37. I did not file this motion to vacate in the District Court while my motion to
10 disqualify was pending, as I did not agree to the jurisdiction of the Court with a
11 Judge that appeared to have a bias against me.
- 12 38. Instead of answering the motion for disqualification, the case was transferred to
13 Honorable Todd W. Robinson. I am grateful to have a fresh judge and pray justice
14 will be done.
- 15 39. I swear the foregoing is true to the best of my knowledge and belief, signed
16 under penalty of perjury according to the laws of the United States of America.
- 17

18 Dated September 28, 2020

s/Laura Lynn Hammett

19 Laura Lynn Hammett, Plaintiff in Pro Se

20
21 CERTIFICATION

22
23 I, Laura Lynn Hammett, Plaintiff in pro se, hereby certify under penalty of perjury that
24 the foregoing affidavit is made in good faith.

25
26 Dated September 28, 2020

s/Laura Lynn Hammett

27 Laura Lynn Hammett, Plaintiff in Pro Se

Frank J. Polek, SBN 167852
POLEK LAW
3033 Fifth Avenue, Suite 400
San Diego, California 92103
619-550-2455
619-274-8166 (fax)
frank@poleklaw.com

Attorney for Defendants
MARY E. SHERMAN individually and
in her capacities as Manager, Co-Trustee and
Trustee; and JEFFREY M. SHERMAN
in his capacity as Co-Trustee

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LAURA LYNN HAMMETT, an
individual,

Plaintiff,

vs.

MARY E. SHERMAN, an individual;
et al.,

Defendants.

Case No.: 19-CV-0605-JLS-LL

**NOTICE OF MOTION AND MOTION TO
DISMISS THE SECOND AMENDED
COMPLAINT FOR FAILURE TO STATE
A CLAIM (F.R.C.P. 12(b)(6))**

DATE: October 29, 2020

TIME: 1:30 p.m.

CTRM: 4D

Hon. Janis L. Sammartino

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 29, 2020 at 1:30 p.m., in Courtroom 4D
of the above-entitled Court, located at 221 West Broadway, San Diego, CA 92101, the
Honorable Janis L. Sammartino presiding, Defendants: (1) MARY E. SHERMAN, an
individual; (2) MARY E. SHERMAN, as Manager of Silver Strand Plaza, LLC; (3)
MARY E. SHERMAN as CO-TRUSTEE of the J & M SHERMAN FAMILY TRUST, a
California revocable trust; (4) JEFFREY M. SHERMAN, as CO-TRUSTEE OF THE J &
M SHERMAN FAMILY TRUST; (5) MARY E. SHERMAN, as TRUSTEE OF THE

ALEXA SHERMAN IRREVOCABLE TRUST, a California irrevocable trust; (6) MARY E. SHERMAN, as TRUSTEE OF THE DANA SHERMAN IRREVOCABLE TRUST, a California irrevocable trust; (7) MARY E. SHERMAN, as TRUSTEE OF THE JENNA SHERMAN IRREVOCABLE TRUST, a California irrevocable trust; (8) MARY E. SHERMAN as TRUSTEE OF THE BROXTON DENNIS IRREVOCABLE TRUST, a California irrevocable trust; (9) MARY E. SHERMAN as TRUSTEE OF THE CURT DENNIS IRREVOCABLE TRUST, a California irrevocable trust; (10) MARY E. SHERMAN, as TRUSTEE OF THE SEAN LYNN IRREVOCABLE TRUST, a California irrevocable trust; and (11) MARY E. SHERMAN, as TRUSTEE OF THE BRANDEN LYNN IRREVOCABLE TRUST, a California irrevocable trust (collectively, “Defendants”), will move and hereby move to dismiss the Second Amended Complaint and each cause of action alleged therein against the moving defendants for failure to state a claim (F.R.C.P. 12(b)(6)).

Specifically, the moving Defendants move to dismiss:

1. The First Cause of Action for Fraud;
2. The Second Cause of Action for Fraudulent Conveyance;
3. The Third Cause of Action for Dissolution of SSP;
4. The Fourth Cause of Action for Appointment of Receiver;
5. The Fifth Cause of Action for an Accounting;
6. The Sixth Cause of Action for Constructive Trust;
7. The Seventh Cause of Action for Conversion;
8. The Eighth Cause of Action for Breach of Fiduciary Duty;
9. The Ninth Cause of Action for Breach of Fiduciary Duty (Count Two);
10. The Alternative Ninth Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing;
11. The Tenth Cause of Action for Aiding and Abetting Breach of Fiduciary Duty;

12. The Eleventh Cause of Action for Defamation Per Se, Alternatively Per Quod;

13. The Twelfth Cause of Action for “False Light Invasion of Privacy Count One”; and

14. The Fifteenth Cause of Action for Unjust Enrichment.

This motion will be based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support thereof, any matters upon which this Court may properly take judicial notice, and the complete records and files of this action.

Dated: September 11, 2020

POLEK LAW

By: Frank J. Polek
Frank J. Polek
Attorney for Defendants MARY E. SHERMAN
individually and in her capacities as Manager,
Co-Trustee and Trustee; and JEFFREY M.
SHERMAN in his capacity as Co-Trustee

HOFFMAN & FORDE, ATTORNEYS AT LAW
 DANIEL R. FORDE (Bar No. 248461)
 3033 Fifth Avenue, Suite 225
 San Diego, CA 92103
 Telephone: (619) 546-7880
 Facsimile: (619) 546-7881
 dforde@hoffmanforde.com

Attorney for Defendant
 SILVER STRAND PLAZA, LLC

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

LAURA LYNN HAMMETT, on behalf
 of herself,

Plaintiff,

vs.

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; JEFFREY M.
 SHERMAN as CO-TRUSTEE OF THE
 J & M SHERMAN FAMILY 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
 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; LINDA R. KRAMER,

Case No. 19-CV-0605-JLS-AHG

**DEFENDANT SILVER STRAND
 PLAZA'S NOTICE OF MOTION
 AND MOTION TO DISMISS
 SECOND AMENDED COMPLAINT
 [ECF 145] PURSUANT TO FRCP
 12(B)(6).**

Judge: Hon. Janis Lynn Sammartino
 Department: 4D
 Hearing Date: October 29, 2020
 Time: 1:30 p.m.

Complaint Filed: April 2, 2019
 Trial Date: None

1 an individual; LIINDA R. KRAMER, as
 2 CO-TRUSTEE OF THE LYNN AND
 3 ERIK'S TRUST; ERIK VON
 4 PRESSINTIN HUNSAKER as
 5 CO-TRUSTEE OF THE LYNN AND
 6 ERIK'S TRUST; DIANE G. DENNIS,
 7 An individual; ELLIS ROY STERN,
 8 ESQ., an individual; ALAN N.
 9 GOLDBERG, ESQ., an individual;
 10 STERN & GOLDBERG, a California
 11 Partnership; PATRICK C.
 12 MCGARRIGLE, ESQ., an individual;
 13 MCGARRIGLE, KENNEY &
 14 ZAMPIELLO, A PROFESSIONAL
 15 LAW CORPORATION, a California
 16 Corporation; DOES 1-99

17 Defendants.

18 PLEASE TAKE NOTICE that at 1:30 p.m. on October 29, 2020, or as soon
 19 thereafter as the matter may be heard, before the Honorable Janis L. Sammartino,
 20 Judge presiding, in Courtroom 4D of the above-entitled court, located at 221 West
 21 Broadway, San Diego, California 92101, Silver Strand Plaza, LLC ("SSP") will move
 22 to dismiss the Second Amended Verified Complaint filed on August 7, 2020 (ECF
 23 145 ("SAC")) of Plaintiff Laura Lynn Hammett, and the First, Second, Third, Fourth,
 24 Fifth, Sixth, Seventh, Eighth, Ninth, "Alternative Ninth," Tenth and Fifteenth Causes
 25 of Actions alleged against SSP, pursuant to Fed. R. Civ. P., Rule 12(b)(6), because
 26 Plaintiff's SAC, and each of the causes of action listed above, fails to state a claim
 27 upon which relief can be granted.

28 This Motion to Dismiss will be based upon this Notice of Motion and Motion,
 the accompanying Memorandum of Points and Authorities, which is incorporated in
 this Notice by this reference, and the pleadings and papers filed herein, and on such
 other matters as the Court may consider before ruling on this Motion.

Dated: September 11, 2020

HOFFMAN & FORDE, ATTORNEYS AT LAW

By: /s/ Daniel R. Forde

DANIEL R. FORDE, ESQ.

Attorney for Defendant,
Silver Strand Plaza, LLC

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FITZGERALD KNAIER LLP

Keith M. Cochran, Esq. (SBN: 254346)

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San Diego, California 92101

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Fax: (619) 955-5318

Attorneys for Defendants

Linda R. Kramer and Erik Von Pressentin Hunsaker

as Co-Trustees of the Lynn and Erik's Trust, and

Linda R. Kramer, as an individual

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LAURA LYNN HAMMETT, an
individual,

Plaintiff,

v.

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; JEFFREY M.
SHERMAN as CO-TRUSTEE OF THE
J & M SHERMAN FAMILY 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;

Case No.: 3:19-cv-0605-JLS-LL

**Defendants Linda R. Kramer and Erik
Von Pressentin Hunsaker's Notice of
Motion and Motion to Dismiss
Plaintiff's Second Amended
Complaint**

Hearing Date: October 29, 2020

Time: 1:30 p.m.

Courtroom: 4D

Hon. Janis L. Sammartino

Hon. Magistrate Linda Lopez

Case Filed: April 2, 2019

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; 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 AND
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,

Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 29, 2020, at 1:30 p.m. or as soon thereafter as the matter may be heard, in Courtroom 4D of the above-entitled court, located at 221 West Broadway, San Diego, CA 92101, defendants Linda “Lynn” R. Kramer and Erik Von Pressentin Hunsaker will move this Court for an order dismissing all causes of action against them in all their capacities pursuant to Fed. R. Civ. P. 12(b) for failure to state a claim.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, and the pleadings and papers filed herein.

Respectfully submitted,

DATED: September 11, 2020

FITZGERALD KNAIER LLP

By: *s/ Keith M. Cochran*

Keith M. Cochran
Attorney for Defendants
Linda R. Kramer and Erik Von
Pressentin Hunsaker as Co-Trustees
of the Lynn and Erik’s Trust and
Linda R. Kramer, as an individual

CERTIFICATE OF SERVICE

I certify that today I am causing to be served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users.

Dated: September 11, 2020

s/ Keith M. Cochran

Keith M. Cochran, Esq.

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DIANE G. DENNIS

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LAURA LYNN HAMMETT, an
individual,

Plaintiff,

v.

MARY E. SHERMAN, an individual;
et al.,

Defendants.

Case No. 19-CV-0605-JLS-LL

Hon. Janis L. Sammartino
Courtroom 4D

Magistrate Judge, Hon. Linda Lopez
Courtroom 2B

**NOTICE OF MOTION AND MOTION
OF DEFENDANT DIANE G. DENNIS
TO DISMISS SECOND AMENDED
COMPLAINT [ECF 145] AND EACH
CAUSE OF ACTION ALLEGED
AGAINST HER FOR FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED
[Fed. R. Civ. P., Rule 12(b)(6)]**

**[Filed Concurrently with
MEMORANDUM OF POINTS AND
AUTHORITIES]**

Date: October 29, 2020
Time: 1:30 p.m.
Courtroom: 4D

Complaint filed: April 2, 2019
Trial Date: None

1 TO PLAINTIFF LAURA LYNN HAMMETT, PRO SE:

2 PLEASE TAKE NOTICE that on October 29, 2020, at 1:30 p.m., or as soon
3 thereafter as the matter may be heard, before the Honorable Janis L. Sammartino,
4 Judge presiding, in Courtroom 4D of the above-entitled court, located at 221 West
5 Broadway, San Diego, California 92101, Defendant Diane G. Dennis (“Dennis”)
6 will move to dismiss the Second Amended Complaint (“SAC”) of Plaintiff Laura
7 Lynn Hammett, and the Third, Fourth, Fifth, Sixth, Ninth, “Alternative Ninth,”
8 Tenth, Thirteenth, Fourteenth and Fifteenth Causes of Action alleged against
9 Dennis, pursuant to Fed. R. Civ. P., Rule 12(b)(6) and CivLR 7.1, because
10 Plaintiff’s SAC, and each cause of action brought against Dennis therein, fails to
11 state a claim upon which relief can be granted.

12 On the grounds set forth in the accompanying Memorandum of Points and
13 Authorities, Dennis moves to dismiss the SAC and each of the following counts
14 brought against Dennis:

- 15 (1) the Third Cause of Action for Dissolution of Silver Strand Plaza, LLC;
- 16 (2) the Fourth Cause of Action for Receiver;
- 17 (3) the Fifth Cause of Action for Accounting;
- 18 (4) the Sixth Cause of Action for Constructive Trust;
- 19 (5) the Ninth Cause of Action for Breach of Fiduciary Duty;
- 20 (6) the “Alternative Ninth” Cause of Action for Breach of the Covenant of
21 Good Faith and Fair Dealing;
- 22 (7) the Tenth Cause of Action for Aiding and Abetting a Breach of
23 Fiduciary Duty;
- 24 (8) the Thirteenth Cause of Action for “Defamation Per Se Alternatively
25 Per Quod;”
- 26 (9) the Fourteenth Cause of Action for False Light Invasion of Privacy;
27 and
- 28 (10) the Fifteenth Cause of Action for Unjust Enrichment.

1 This Motion to Dismiss will be based upon this Notice of Motion and Motion,
2 the accompanying Memorandum of Points and Authorities, which is incorporated in
3 this Notice by this reference, and the pleadings and papers filed herein, and on such
4 other matters as the Court may consider before ruling on this Motion.

5 Dated: September 11, 2020

McQUEEN DROSTE LLP

6
7 By: /S/ Alan J. Droste
8 Alan J. Droste
ad@mcqueendroste.com
(949) 939-3484

9 ROBINSON WATERS & O'DORISIO, P.C.

10 By: /S/ Nicholas F. Labor
11 Nicholas F. Labor
Admitted Pro Hac Vice August 7, 2019
12 nlabor@rwolaw.com
(303) 297-2600

13 Attorneys for Defendant
14 DIANE G. DENNIS
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Laura Lynn Hammett
Bohemian_books@yahoo.com
500 Amity Road Suite 5B #306
Conway, Arkansas 72032

Plaintiff in pro se

Laura Lynn Hammett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Laura Lynn Hammett,
Plaintiff,
v.
MARY E. SHERMAN, et.al.
Defendants

Case No.: 19-CV-0605-JLS-AHG

PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR
DISQUALIFICATION OF THE
HONORABLE JANIS L.
SAMMARTINO

MEMORANDUM OF POINTS AND
AUTHORITIES WITHIN

AFFIDAVIT IN SUPPORT FILED
CONCURRENTLY

Date of Hearing: October 1, 2020
Time: 1:30 p.m.
Place: Courtroom D

Hon. Janis L. Sammartino presiding
Hon. Magistrate Allison H. Goddard

NOTICE OF MOTION

TO EACH DEFENDANT AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on October 1, 2020, at 1:30 p.m. or as soon thereafter as the matter may be heard, in Courtroom D of the above entitled court, located at 221 West Broadway, San Diego, CA 92101, Plaintiff Laura Lynn Hammett will, and hereby does, move for the disqualification of the Honorable Janis L. Sammartino, pursuant to 28 U.S.C. §§ 144 and 455, on the grounds that there is evidence of bias in favor of the defendants and prejudice against the plaintiff. This motion will be based upon the memorandum of points and authorities within, the affidavit of Laura Lynn Hammett, the exhibit attached, the Certificate of the Plaintiff in pro se, and all pleadings and records on file in this action.

Plaintiff requests determination by a judge other than Judge Samartino pursuant to 28 U.S.C. §144.

MOTION

Plaintiff Laura Lynn Hammett (“Plaintiff” or “Hammett”) hereby moves to disqualify the Honorable Janis L. Sammartino as the sitting judge in the present case on the grounds of 28 USC Sections 144 and 455. As set forth in more detail in the memo, this motion is based on evidence contained in the supporting Affidavit of Hammett. This includes Judge Sammartino’s refusal to allow the Plaintiff representation on a limited scope by special appearance for a derivative cause of action that Plaintiff could not legally argue pro se, which makes access to justice impossible for the modest means litigant; failure to require the derivative action to be advocated for by a person authorized to practice law, rendering it and the judgments based on it null and void, increasing the time and expense of litigation needlessly for all parties and the court; admonishment to the Plaintiff that chilled her First Amendment right to petition for presenting a grievance about a court staff member, after the Plaintiff presented written testimony and documentary evidence

1 of backdating of a docket entry by the clerk; and decisions on this case that are contrary
2 to reasons given for decisions she has made on other cases.

3 The backdating clerk also told Plaintiff that Judge Sammartino told him what her
4 decision on a motion was going to be before an opposition was filed, as discussed in the
5 affidavit and memo.

6 The combination of clerk backdating at the request of opposing counsel and the
7 Court's admonishment not to make accusations, on what the court called "gratuitous
8 speculation", is a violation of Plaintiff's civil rights under color of law for which Plaintiff
9 intends to file a separate suit.¹

10 Finally, the Court made a convoluted order, unlike any she ever made before, that
11 "closed" and "terminated" the case before leave to amend had expired. Plaintiff was
12 forced to file a notice of appeal to protect against a claim that the orders became final
13 when "closed" and "terminated", and the 30-day time to file a notice of appeal had
14 passed, rendering the orders unappealable. This caused the plaintiff to pay filing costs for
15 the appeal and hire an appellate attorney to write the brief if the appellate court found the
16 odd closing procedure rendered the case "final". The appellate court did not find the case
17 to be final, and so defendants have filed motions for attorney fees for the appeal. In other
18 words, Judge Sammartino's bizarre closing with leave to amend caused Plaintiff more
19 time, more stress and more money in violation of FRCP Rule 1. (Aff. ¶¶49-60)

20 The only reasonable appearance left by the foregoing is that the Honorable Janis L.
21 Sammartino has a bias that makes her unsuitable to preside on this case and an informed,
22 rational, objective observer would doubt her impartiality.

23
24
25 ¹ The Plaintiff will not name Judge Sammartino as a defendant in the suit due to absolute judicial
26 immunity, but Judge Sammartino will be called as a witness. The fair administration of justice is a
27 competing policy with absolute judicial immunity even in the case where misconduct on the bench is
28 clear, and can only be preserved by disqualification of the judge, disciplinary action or criminal
prosecution under 18 U.S.C. 1001.

MEMORANDUM OF POINTS AND AUTHORITIES

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AFFIDAVIT ANNOTATED

The Honorable Janis L. Sammartino was assigned to this matter when the complaint was filed on April 2, 2019. (Docket)

Plaintiff did not serve summons on the defendants until after filing a First Amended Complaint (“FAC”) on May 29, 2019. (Docket)

Herein the abbreviations will be used for each defendant named in the caption of the FAC, ECF No. 3:

Mary E. Sherman, an individual, “Sherman”;

Mary E. Sherman, as manager of Silver Strand Plaza LLC, “the Manager”;

Mary E. Sherman as trustee of the various irrevocable trusts, collectively “the Grandchildren’s Trusts”;

Mary E. Sherman and Jeffrey M. Sherman as co-trustees of the J&M Sherman Family Trust, collectively “the J&M Trust”;

Diane Dennis, an individual, “Dennis”;

Linda R. Kramer, an individual, “Kramer”;

Linda R. Kramer and Erik Von Presintin Hunsaker as co-trustees of the Lynn and Erik’s Trust, “the L&E Trust”;

Silver Strand Plaza, LLC, “SSP”;

Ellis Roy Stern, Esq., “Stern”, Alan N. Goldberg, Esq., “Goldberg”, Stern & Goldberg, Patrick C. McGarrigle, Esq., “McGarrigle” and McGarrigle, Kenney & Zampiendo, APC, collectively “Attorney Defendants”.

The Grandchildren’s Trusts, J&M Trust, Dennis and Kramer are collectively “the Member Defendants”.

The clerk who customarily makes docket entries for cases presided over by Judge Sammartino is known to Plaintiff as “JPP” or “Jude”.

1 In the FAC, Plaintiff included a “derivative” cause of action of legal malpractice
2 against the Attorney Defendants who represented SSP and simultaneously, all the other
3 defendants. (Affidavit (“Aff.”) ¶¶ 2)

4 Plaintiff filed a Motion for Leave to Retain Representation on Limited Scope on July
5 22, 2019. In it she stated she could not afford an attorney for all causes. One need was
6 “for explanation of particularly complex issues like Derivative causes of action.” (Aff. ¶¶
7 5, 6)

8 Judge Sammartino denied the motion. (ECF No. 22)

9 Plaintiff who is not authorized to practice law learned that a derivative action is “on
10 behalf of an LLC. (Aff. ¶¶ 8, 9) “A derivative action, in contrast, does not transfer the
11 cause of action from the corporation to the shareholders. Rather, the cause of action in a
12 shareholder derivative suit belongs to, and remains with, the corporation.” (McDermott,
13 Will & Emery v. Superior Court, 83 Cal. App. 4th 378, 379, 99 Cal. Rptr. 2d 622 (2000);
14 also, *Phillips v. Tobin*, 548 F.2d 408, 415 (2nd Cir. 1975))

15 Judge Sammartino never admonished Plaintiff that a derivative suit is on behalf of an
16 entity that must be represented by a person authorized to practice law. She did not, and
17 still has not mentioned that derivative suits presented by persons who are unauthorized to
18 practice law are null and void. (Aff. ¶10; *City of Downey v. Johnson*, 263 Cal.App.2d
19 775, h.n. 3; *Davis Test Only Smog Testing v. Department of Consumer Affairs*, 15
20 Cal.App.5th 1009, (2017) h.n.2)

21 Judge Sammartino did not acknowledge or comment on the reason why Plaintiff made
22 the voluntary dismissal in the “Order Denying as Moot Motions to Strike or,
23 Alternatively, to Dismiss Filed by [the Attorney Defendants]” which she made “[i]n light
24 of Plaintiff’s voluntary dismissal of her fifth and sixth causes of action against the
25 Moving Defendants”. (Aff. ¶11, ECF No. 39, 2:3-4)

26 Judge Sammartino erred by ignoring that dismissal required Court approval. (See ECF
27 No. 39 in general; “Dismissal of a shareholder derivative claim requires court approval.”
28

(*Kennedy v. Kennedy*, 235 Cal. App. 4th 1474, 186 Cal. Rptr. 3d 198 (2015), as modified (Apr. 22, 2015)h.n.2))

Judge Sammartino did make several other *sua sponte* arguments against Plaintiff when denying motions Plaintiff filed, such as denying a motion for an extension of time to amend the complaint due to the Coronavirus Pandemic, because Plaintiff neglected to provide notice to opposing council first. (Aff. ¶12, ECF Nos. 118 and 119) All *sua sponte* arguments were adverse to the Plaintiff, or where they should have supported the Plaintiff's position, were misapplied.

Judge Sammartino knew or should have known the derivative cause was "on behalf of SSP" and Plaintiff was not authorized to proceed to advocate for the interests of SSP. "What [party unauthorized to practice law] purported to do for [other party] in place of an attorney was a nullity, and that fact should have been known to the court and to opposing counsel." (*People By & Through Dep't of Pub. Works v. Malone*, 232 Cal. App. 2d 531, 537, 42 Cal. Rptr. 888, 892 (Ct. App. 1965))

By allowing Plaintiff to advocate for a limited liability company and denying the right to delegate that duty to a person authorized to practice law, Judge Sammartino was causing prejudice to the interests of SSP that Plaintiff wanted to protect, and was ordering the continued violation of law. She was increasing the costs of the administion of justice in violation of FRCP Rule 11, as the orders based on the derivative cause of action, such as attorney fees for the anti-SLAPP, are nullities. They were wasteful exercise.

Jude made an error in entering the FAC defendants into the docket.

He entered Linda R. Kramer without the tag, an individual or as co-trustee of the Lynn and Erik's Trust". He did reference Mary E. Sherman in all her capacities correctly, the number of times she was named. (Aff. ¶14)

On July 30, 2019, attorney Keith Cochran filed a Motion to Dismiss (" L&E Trust MTD"). On the face above the caption it said "Attorneys for Defendants Linda R. Kramer and Erik Von Pressentin (sic) Hunsaker as Co-Trustees of the Lynn and Erik's Trust". No

1 mention of “Linda R. Kramer, an individual”, was made on the face of the L&E Trust
2 MTD, except in the caption. (ECF No. 19)

3 Plaintiff filed a request for entry of clerk’s default on August 1, 2019. (Aff. ¶20, ECF
4 Nos. 23 and 25)

5 Instead of entering clerk’s default, Mr. Cochran and Jude conspired together to alter
6 the docket to reflect that Kramer had joined with the L&E Trust Defendants to file the
7 L&E Trust MTD on July 29, 2019. They were going to deny Plaintiff equal protection
8 under the law by altering the docket. (Aff. ¶¶21-28)

9 When Mr. Cochran and Jude learned that there was a copy of the unaltered docket, the
10 alterations were changed back, but clerk’s default was still not entered.

11 This was a serious violation of Plaintiff’s First Amendment right to due process.

12 Shockingly, Judge Sammartino did not compel the Clerk to enter default.

13 Instead she wrote an admonishment that chills the Plaintiff’s right to petition for
14 redress of grievances. (Aff. ¶¶30-34; ECF No. 111, f.n. 13)

15 Further, Jude expressed belief that he knew that the Judge was going to deny the
16 motion to compel before the motion was fully briefed. (Aff. ¶¶35-38)

17 39. I noticed that all Judge Sammartino’s orders appear like she is representing the
18 defendants, which is not usually a reason for disqualification. But as the defendants’
19 attorney, Judge Sammartino is making arguments that violate Rule 11.

20 Judge Sammartino made *sua sponte* arguments against Plaintiff’s interests, which is
21 allowed, but the arguments and application of law, if made by an attorney, would violate
22 FRCP Rule 11. There is a huge difference between an honest difference of opinion and
23 purposefully throwing a lawsuit. (Aff. ¶¶39-48)

24 Judge Sammartino created confusion and misunderstanding when she wrote the Order
25 of March 23, 2020. She used a rarely used procedure that seems to be exclusively used on
26 pro se litigants who are usually incarcerated, often asking for appointed counsel, and
27 often incoherent. The procedure screams “Go away! You lose!” (Aff. ¶¶49-60)

1 Plaintiff does not know the reason for Judge Sammartino's bias and prejudice. It may
 2 be that Plaintiff reported unflattering information about a colleague. It might be a bias
 3 against all pro se litigants. But the bias and prejudice is distinct and absolutely apparent.
 4 (Aff. ¶¶61-67)

5 6 ARGUMENT

7 I. THE AFFIDAVIT OF LAURA LYNN HAMMETT IS TIMELY FILED UNDER 28 8 U.S.C. § 144

9 Since the United States District Court for the Southern District of California does not
 10 sit in specific sessions or terms, but is deemed to be in continuous session, there is no
 11 specific "timely" period for filing an Affidavit pursuant to 28 U.S.C. § 144. By extension
 12 from the fact that there is no "term," there is no ten-day period. Accordingly, even where
 13 there can be no good cause shown for delay, an affidavit will be considered timely filed,
 14 and timeliness will be dealt with as a matter of weight rather than admissibility. (Tenants
 15 & Owners in Opposition to Redevelopment (TOOR) v. HUD, 338 F.Supp.29, 32 (N.D.
 16 Cal. 1972))

17 "[A] litigant's duty to investigate the facts of his case does not include a mandate for
 18 investigations into a judge's impartiality." (American Textile Mfrs. Institute, Inc. v. The
 19 Limited, Inc., 190 F.3d 729, 742 (6th Cir. 1999)). In this case, Plaintiff did undertake a
 20 preliminary investigation of Judge Sammartino's impartiality. However, in Plaintiff's past
 21 experience, she has had four judicial officers voluntarily recuse themselves from cases
 22 involving the Plaintiff and two of those were unknown to Plaintiff before their recusal.
 23 (Aff. ¶¶61-64) Even with her hypervigilance due to past experience, Plaintiff did not find
 24 any reason to justify filing an affidavit under 28 U.S.C. § 144. It was not until the Court
 25 made its absurd order of March 23, 2020 with the admonishment not to report alleged
 26 violations of 18 U.S.C. 1001 and Plaintiff came upon the caselaw that shows it is the duty
 27 of the trial judge to advise the representative on behalf of an LLC that she may not
 28

1 advocate on behalf of the Company that the Plaintiff knew there is an actual bias.
 2 (Morris v. U.S., 26 F.2d 444, 449 (8th Cir. 1928) (affidavit was timely filed immediately
 3 before trial where “on several occasions defendant requested his attorneys to prepare and
 4 file application to disqualify the trial judge,” but attorneys disagreed with him until he
 5 obtained new information which was imparted to his attorneys)).

6 Only in light of these more recent discoveries did a motion to disqualify appear fully
 7 justified and appropriate. “A lawyer who reasonably believes that the judge before whom
 8 he is appearing should not sit must raise the issue so it may be confronted and put to rest.
 9 Any other course would risk undermining public confidence in our judicial system.”
 10 (Bernard v. Coyne (In re Bernard), 31 F.3d 842, 847 (9th Cir. 1994)).

11 This must be weighed against the burden on the movant to show objective prejudice.
 12 “Judge is presumed to be impartial, and parties seeking recusal bears substantial burden
 13 of proving otherwise.” (In re Larson, 43 F.3d 410, h.n. 6 (8th Cir. 1994)) The Plaintiff
 14 waited until the evidence against the Judge was overwhelming to file this motion.

15 The timing of the order granting all dismissals with leave to amend was also suspect.
 16 The Court waited five (5) months after the motions were fully briefed to issue her order
 17 on March 23, 2020. Then, in the beginning of the Coronavirus Pandemic lockdowns,
 18 Judge Sammartino issued her strange order. Plaintiff was overwhelmed with the rest of
 19 the country with physical illness and acute anxiety and asked for a stay of proceedings
 20 which was granted until August 7, 2020. (ECF Nos. 126 and 132)

21 While seventeen (17) months have passed since Plaintiff filed this case, twelve (12)
 22 of those were in a holding pattern. A hypersensitive person might suspect Judge
 23 Sammartino’s bias from the first denial of counsel to explain the derivative action. The
 24 Plaintiff did not know though that the denial was encouraging an illegal act. She thought
 25 the Court’s attitude did not promote adjudication on the merits or economics of resources,
 26 but she did not realize it was outright wrong.

1 This motion and affidavit are filed two weeks after Plaintiff filed her SAC, which is
 2 the first amended complaint that was served on the defendants. This while Plaintiff is in
 3 treatment for acute situational anxiety.

4 In view of the foregoing, this affidavit and motion are timely.

6 II. HAMMETT SET FORTH FACTS IN HER AFFADAVIT REQUIRING RECUSAL.

7 A legally sufficient declaration under 28 U.S.C. § 144 must meet the following
 8 requirements: (1) the facts are material and stated with particularity; (2) the facts are such
 9 that, if true they would convince a reasonable person that a bias exists; and (3) the facts
 10 show that the bias is personal, as opposed to judicial, in nature. (*Reiffen v. Microsoft*
 11 *Corp.*, 158 F.Supp.2d 1016, 1022 (N.D. Cal. 2001))

12 Section 144 requires a district judge to accept the moving party's affidavit as true. (In
 13 re Martinez-Catala, 129 F.3d 213, 218 (1st Cir. 1997)) While a trial judge may not pass
 14 upon the truth of the matters asserted in the moving party's affidavit, a trial judge is not
 15 required to recuse himself immediately, because the “judge must pass upon the legal
 16 sufficiency of the affidavit.” (United States v. Kelley, 712 F.2d 884, 889 (1st Cir. 1983))
 17 Furthermore, “[s]ince sections 144 and 455 of 28 U.S.C. use similar language, and are
 18 intended to govern the same area of conduct, they have been construed in pari materia,
 19 and the test of the legal sufficiency of a motion for disqualification is the same under both
 20 statutes.” Id.

21 If an affidavit of bias or prejudice complies with the statutory standards set forth in
 22 this section concerning timeliness and legal sufficiency, then the judge against whom it is
 23 directed is obligated to recuse herself. A judge is required to recuse herself even if the
 24 judge believes (or knows with certainty) that the allegations of bias and prejudice made
 25 against her are false. (United States v. Partin, 312 F.Supp. 1355, 1359 (D. La. 1970))

26 “Recusal is required whenever impartiality might reasonably be questioned. (28
 27 U.S.C.A. § 455(a).” Citing *Liteky v. U.S.*, 510 U.S. 540, h.n. 3 (SCOTUS 1994))

1 “Favorable or unfavorable predisposition can serve to be characterized as “bias” or
2 “prejudice” requiring recusal because, even though it springs from the facts adduced or
3 the events occurring at trial, it is so extreme as to display clear inability to render fair
4 judgment; that is the “pervasive bias exception” to the extrajudicial source doctrine. (28
5 U.S.C.A. §§ 144, 455.”id. h.n. 9)

6 “Fact that opinion held by judge derives from source outside judicial proceedings is
7 not necessary condition for bias or prejudice recusal, as predisposition developed during
8 the course of a trial will sometimes suffice; fact that opinion held by judge derives from a
9 source outside judicial proceedings is also not a sufficient condition for bias or prejudice
10 recusal, as some opinions acquired outside the context of judicial proceedings will not
11 suffice; it is thus more proper to speak of an extrajudicial source factor than of an
12 extrajudicial source doctrine in recusal jurisprudence. 28 U.S.C.A. § 455(a).” (id. h.n. 14)

13 “Judicial remarks during course of trial that are critical or disapproving of, or even
14 hostile to, counsel, the parties, or their cases ordinarily do not support a bias or partiality
15 challenge; they may do so if they reveal an opinion that derives from an extrajudicial
16 source and they will do so if they reveal such a high degree of favoritism or antagonism
17 as to make fair judgment impossible.” (Id. h.n.17)

18 The Judge’s actions complained of evidence such deep-seated favoritism or
19 antagonism as would make fair judgment impossible. (Id. at 541)

20 The facts stated in Hammett’s affidavit are material and are stated with particularity.
21 As to their sufficiency to show bias for or against a party, Judge Sammartino’s refusal to
22 allow Plaintiff to turn the derivative cause of action over to a licensed attorney, denial of
23 counsel for the specific purpose of explaining a derivative action, from which the
24 unlawful practice of law arose, and comments meant to keep an alleged violation of 18
25 U.S.C. 1001 by her clerk covered up are extraordinary measures that may be criminal,
26 may be unethical, and are definitely signs of bias.

III. DISQUALIFICATION IS ALSO REQUIRED UNDER 28 U.S.C. § 455(a) IN ORDER TO AVOID AN APPEARANCE OF BIAS OR PARTIALITY.

In 1974, Congress rewrote 28 U.S.C. § 455 to correct perceived problems in the disqualification statutes. Prior to 1974, both the technical and legal sufficiency requirements of section 144 had been construed strictly in favor of judges. Courts also operated under the so-called “duty to sit” doctrine which required a judge to hear a case unless a clear demonstration of extra-judicial bias or prejudice was made. Consequently, disqualification of a judge was difficult under section 144. In passing the amended 28 U.S.C. § 455, Congress broadened the grounds and loosened the procedure for disqualification in the federal courts.

Section 455 “is directed to the judge, rather than the parties, and is self-enforcing on the part of the judge.” (U.S. v. Sibla, 624 F.2d 864, 867-68 (9th Cir. 1980)) It “modifies section 144 in requiring the judge to go beyond the section 144 affidavit and consider the merits of the motion pursuant to section 455(a) & (b)(1).” (Id. at 868)

In *Liljeberg v. Health Services Acquisition Corp.* 486 U.S. 847, 860-61 (1988), the Supreme Court, quoting the lower court's decision, stated:

The goal of section 455(a) is to avoid even the appearance of partiality. If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation then an appearance of partiality is created even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible. Under section 455(a), therefore, recusal is required even when a judge lacks actual knowledge of the facts indicating his interest or bias in the case if a reasonable person, knowing all the circumstances, would expect that the judge would have actual knowledge.

1 In sum, under section 455, “it is the appearance of bias or partiality that matters here,
 2 not actual bias.” (United States v. Tucker, 78 F.3d 1313, 1324 (8th Cir. 1996)) In Tucker,
 3 prosecutors, relying “primarily on news articles,” sought the recusal of District Court
 4 Judge Woods from the trial of Governor Tucker, because of Woods's close association
 5 with Hillary Clinton, wife of then-President Bill Clinton. Governor Tucker was indicted
 6 for financial crimes related to an investigation of President and Mrs. Clinton. (Id. at 1315,
 7 1316) The news articles indicated that not only did the Clintons have a close relationship
 8 with Judge Woods, but also they had expressed their support of Governor Tucker,
 9 including after he was indicted.

10 The Tucker court held:

11 The Independent Counsel argues that, because of the “unmistakable
 12 appearance” of bias or partiality here, “reassignment is necessary to preserve
 13 the appearance and reality of justice.” [] We agree. Based on the information
 14 before us in this case, we conclude that the risk of a perception of judicial
 15 bias or partiality is sufficiently great so that our proper course is to order
 16 reassignment on remand. As we have discussed, Judge Woods’s link with
 17 the Clintons and the Clintons’ connection to Tucker have been widely
 18 reported in the press. Moreover, as the Independent Counsel has noted, “this
 19 case will, as a matter of law, involve matters related to the investigation of
 20 the President and Hillary Rodham Clinton.” [] Given the high profile of the
 21 Independent Counsel’s work and of this case in particular, and the reported
 22 connections among Judge Woods, the Clintons, and Tucker, assignment to a
 23 different judge on remand is required to insure the perception of impartiality.

24 (Id. at 1324-1325 (citations omitted))

25 In the instant case, Judge Sammartino has a longstanding and close working
 26 relationship with clerk Jude who Plaintiff alleges violated a criminal code 18 U.S.C. 1001
 27 and who, in the least, should be disciplined and removed from this case for backdating a
 28

1 docket entry. Hammett further argues that the clerk conspired with counsel who
2 represented the L&E Trust Defendants at the time, and subsequently, Kramer. A
3 reasonable person would well question the ability of Judge Sammartino to be impartial in
4 deciding the case in general, especially since a gravamen of the case is whom exactly the
5 Attorney Defendants were representing.

6 Moreover, a separate Bivens action may arise from the clerk's conduct and Judge
7 Sammartino's threatening admonishment in this case. Judge Sammartino may be called
8 as a hostile witness in that case. Again, a reasonable person would easily question
9 whether Judge Sammartino is able to impartially assess the evidence that Hammett
10 asserts against Kramer that she did not file a timely response to the FAC and is therefore
11 subject to default.

12 Moreover, judicial remarks during the course of litigation may also support a bias or
13 partiality challenge "if they reveal an opinion that derives from an extrajudicial source."
14 (*Liteky v. U.S.*, 510 U.S. 540, 555 (1994))

15 Footnote 13 of the March 23, 2020 order, has an implication that Hammett gave no
16 evidence supporting her claims in the documents filed pertaining to the backdating of the
17 docket, Judge Sammartino revealed her prejudice against Hammett and a belief that she
18 files baseless claims.

19 Courts have also noted, in the context of recusal motions, that "the whole is
20 sometimes greater than the sum of the parts. The cumulative effect of a judge's individual
21 actions, comments and past associations could raise some question about impartiality,
22 even though none (taken alone) would require recusal. (*In re Martinez-Catala*, *supra*, 129
23 F.3d at 221)

24 "[A] judge may not sit in cases in which his impartiality might reasonably be
25 questioned." (*U.S. v. Holland*, 519 F.3d 909, 911 (9th Cir. 2008) (original emphasis)
26 (internal quotation marks omitted)) "If it is a close case, the balance tips in favor of
27 recusal." *Id.* For that reason, the court in *Melendres* decided that recusal was appropriate:

1 “No Court should tolerate even the slightest chance that its continued participation in a
2 high profile lawsuit could taint the public's perception of the fairness of the outcome.
3 Certainly, this Court is unwilling to take such a risk.” (Melendres, 2009 WL 2132693, at
4 *15, 2009 U.S. Dist. LEXIS 65069, at *52-53)

5 While the underlying case is not high profile and of little concern to the public, the
6 Bivens action arising from the case may become high profile. The Plaintiff has been on
7 Fox News and contributed to a series regarding corruption in the family law courts and is
8 likely to bring this case to media attention in order to advocate for the rights of low and
9 moderate income citizens to have access to civil courts. Clerk JPP and Judge Sammartino
10 have elevated a mundane business and libel matter to a matter of deep public
11 concern...the integrity of our courts.
12

13 IV. CONCLUSION.

14 The instant case involves an issue that is relevant in today’s political and societal
15 climate. The common man, or woman, feels a lack of empowerment in our legal system.
16 Unless misconduct committed by a police, lawyer or judicial officer is caught on video, it
17 will too often go unpunished. In civil court, as Judge Sammartino pointed out, litigants
18 don’t even have the Constitutional right to counsel. So, those without obscene wealth
19 cannot afford justice. They are outlawyered. Unfortunately, as in this case, the court staff,
20 including judges, may do favors for friends, such as backdating a docket entry. And no
21 judge really cares to be called out on the bad behavior.

22 Against that backdrop, there is considerably more than the “slightest chance” that
23 Judge Sammartino’s variance from her usual course of conduct “could taint the public's
24 perception of the fairness of the outcome.”

25 The Judge’s Bias and Prejudice is personal and Extrajudicial.

26 Because the acts that demonstrate bias came early, when the Court failed in its duty to
27 protect the LLC derivative interests by informing Plaintiff that the derivative action was
28

1 on behalf of the LLC, there was really no reason within the four walls of the courtroom
2 that Judge Sammartino could develop her bias.

3 In fact, to date, Judge Sammartino has not spoken to the Plaintiff. The Court has no
4 more experience with the Plaintiff's demeanor than any other person reading the
5 Plaintiff's papers.

6 The Plaintiff's words are polite and respectful. Even when describing behavior that is
7 reprehensible, like a clerk of the court backdating a docket entry, Plaintiff does not cuss.
8 She does not throw bricks through storefront windows or spray-paint expletives on the
9 courthouse. She merely speaks what she thinks is the truth.

10 Plaintiff is not certain why Judge Sammartino was prejudiced.

11 If Judge Sammartino dislikes that Plaintiff reports injustice, then she should disqualify
12 herself, rather than shooting the messenger. The Plaintiff has standing to ask her to do so,
13 but the more important beneficiary is the People of the United States of America who
14 long for justice for all.

15 Respectfully submitted,

16
17 Date 8/22/2020 Signature s/Laura Lynn Hammett

18 Plaintiff in Pro Se Laura Lynn Hammett
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Plaintiff in pro se

Laura Lynn Hammett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Laura Lynn Hammett,

Plaintiff,

v.

Mary E. Sherman, et al.

Defendant.

Case No.: 19-CV-0605-JLS-AHG

AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
DISQUALIFICATION OF JUDGE
JANIS L. SAMMARTINO

Date of Hearing: October 1, 2020

Time: 1:30 p.m.

Place: Courtroom D

Hon. Janis L. Sammartino presiding

Hon. Magistrate Allison H. Goddard

1. I, Laura Lynn Hammett, Plaintiff in pro se and Affiant, state the following,
which is known to me to be true and correct, or where I do not have direct
knowledge, to the best of my knowledge and belief.

2. I did not use the words “on behalf of Silver Strand Plaza, LLC” when I wrote the FAC in this case. This is because I did not go to law-school except one semester online, had no experience with a derivative case and did not realize a derivative cause is “on behalf of” the entity, called herein “SSP”, in which I am a shareholder.
3. I first heard the word “derivative” cause of action from SSP Counsel Patrick C. McGarrigle, who contended strongly that all my claims were “derivative”, and that I could not bring the derivative claims because I “do not have standing”.
4. I was represented on contingency until January 22, 2019 in this matter by an attorney who charges over \$475 per hour to non-contingency clients. I was willing to settle my claims against the defendants for about \$54,000, less than my capital in SSP, about \$78,000, and would split that with my counsel, but the defendants refused. My attorney did not want to take the economic risk of continuing to represent me on contingency.
5. I could not afford an attorney for all causes, but there are particular areas where either I could be reimbursed by the defendants, if I prevailed, or that were beyond my ability to understand without advanced, time-consuming study. One need was for explanation of particularly complex issues like Derivative causes of action.
6. I therefore moved Judge Sammartino for leave to obtain “limited-scope representation”, similar to that allowed by other Federal District Courts, including the sister court to the north, Central District of Southern California.
7. Judge Sammartino denied my motion. (ECF No. 22)
8. On August 20, 2019, while reading case law to answer the Attorney Defendant’s anti-SLAPP motion, one case cited by the Attorney Defendnats being McDermott, I learned that a derivative action is “on behalf of” the entity I was a shareholder to, and any award of damages would go to SSP as a whole, so the share to me would be diluted to 14.1571%, my share. This made no sense, as all

1 the other living Members were also defendants who participated in the
2 misconduct.¹

3 9. More importantly, as I was already aware, I could not represent an entity other
4 than myself. Instead of waiting to correct my error after receiving leave to amend,
5 and moving the court for leave to file an individual injury cause of action based on
6 conspiracy between the Attorney Defendants and other defendants in the case, I
7 immediately dismissed the Attorney Defendants without prejudice, stating my
8 reason as above. (See ECF No. 38)

9 10. Judge Sammartino never admonished me that a derivative suit is on behalf of an
10 entity that must be represented by a person authorized to practice law. She did not,
11 and still has not mentioned that derivative suits presented by persons who are
12 unauthorized to practice law are null and void.

13 11. Judge Sammartino did not acknowledge or comment on the reason why I made
14 the voluntary dismissal in her “Order Denying as Moot Motions to Strike or,
15 Alternatively, to Dismiss Filed by [the Attorney Defendants]” which she made
16 “[i]n light of Plaintiff’s voluntary dismissal of her fifth and sixth causes of action
17 against the Moving Defendants”.² (ECF No. 39, 2:3-4)

18 12. Judge Sammartino did make several *sua sponte* arguments against me when
19 denying motions I filed, such as denying my motion for an extension of time to
20 amend my complaint due to the Coronavirus Pandemic because I neglected to
21 provide notice to opposing council first. (ECF Nos. 118 and 119)

22 13. I believe she wanted me to proceed on behalf of the LLC because she wanted
23 the defendants to prevail and knew it would be easier to railroad me than an
24 attorney.

26 ¹ One Member would be a defendant but was deceased in 2017 and I think it is too late to name her
27 estate.

28 ² I could have proceeded on the fifth cause of action for conversion, but wrote that I would reinstate that
cause after adding conspiracy causes of action against the Attorney Defendants for their economy.

- 1 14. Clerk JPP input the defendants on the docket incorrectly on May 29, 2019. The
2 caption and summons list were correct. But on the docket, Linda R. Kramer had no
3 tag, an individual or as co-trustee of the Lynn & Erik's Trust, and she was only
4 listed once. Mary E. Sherman who was named in several capacities was listed an
5 appropriate number of times with different tags.
- 6 15. When Attorney Keith Cochran or someone on his behalf filed a Motion to
7 Dismiss on July 30, 2019, the face of the motion said "Attorneys for Defendants
8 Linda R. Kramer and Erik Von Pressentin (sic) Hunsaker as Co-Trustees of the
9 Lynn and Erik's Trust".
- 10 16. According to a declaration by Mr. Cochran's paralegal, Robert M. Wilson, there
11 was only one party with the name Linda R. Kramer on the electronic filing system
12 under "select a filer". Instead of reporting this to the clerk, Mr. Wilson swore he
13 checked only two boxes, one for Linda R. Kramer and one for Erik Von Pressintin
14 Hunsaker. (ECF No. 80-3, ¶4)
- 15 17. Mr. Wilson said "I believed by selecting the single option for Linda R. Kramer
16 on the system, it encompassed both Linda R. Kramer as an individual and as co-
17 trustee of the Lynn and Erik's Trust." (id.)
- 18 18. In the same paragraph, Mr. Wilson swears he has been a paralegal for over five
19 years and has "never encountered a party not being listed on the ECF system". The
20 various Mary E. Sherman defendants were each listed separately on the same field
21 on the docket. But Mr. Wilson did not ask for a correction to be made by clerk JPP.
- 22 19. Mr. Wilson never explained why he made the same error as the clerk by writing
23 on the face of the L&E Trust MTD that Mr. Cochran represented only the co-
24 trustees, not the individual Kramer.
- 25 20. When I noticed the lack of Kramer as an individual as being represented on the
26 L&E Trust MTD and tried to file a request for entry of clerk's default on August 1,
27 2019, I brought the error to the clerk JPP's attention. He added a second Linda R.
28 Kramer filer.

21. I filed a request, errantly titled “Request for Entry of Clerk’s Judgment”. Jude called me, and informed me that I should correct the request, and gave me the case number of a request that was filed by an attorney to use as a template.
22. When I filed the corrected request, I noticed the docket entry for July 30, 2019 was changed for the L&E Trust MTD to say it was filed for three separate defendants, including Linda R. Kramer an individual.
23. I accused Mr. Cochran of making the change and told him that I had a copy of the docket with only the two co-trustees listed as filing the L&E Trust MTD on July 30, 2019.
24. Mr. Cochran wrote that “we” didn’t alter the docket. “We called the clerk to report the issue, and the clerk made the correction.” (ECF No. 56, Exhibit 2)
25. By the time I called two clerks frantically to report the alteration of the record, it was changed back.
26. Instead of filing the entry of clerk’s default against Kramer and letting Mr. Cochran file a motion to set aside, the clerk and then Judge Sammartino maintain that no entry of default is required because it was Mr. Cochran’s intention to file for three defendants and his paralegal did not know what to do when there was only one Linda R. Kramer listed. Instead of doing what I did, asking that the error be corrected, he just clicked off two boxes. No explanation is given why he took the individual Kramer off the list of whom was represented if she ever was listed. (ECF No. 19, cover)
27. On ECF No. 80, the opposition to entry of Clerk’s default filed by Mr. Cochran, the list of representation on the cover includes Linda R. Kramer in two capacities.
28. My trust in the integrity of the Judge Sammartino’s clerk was destroyed on August 1, 2019.
29. But I did not file a motion for disqualification, because when trying to make a complaint to the Clerk of the Court, I was told Judge Sammartino was the clerk JPP’s direct supervisor and I wanted to give her an opportunity to correct his error.

30. Shockingly, Judge Sammartino did not compel the Clerk to enter default.

31. Instead she wrote this footnote on the Order of March 23, 2020:

“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.” (ECF No. 111, f.n. 13)

32. This admonishment makes me believe that my testimony is not considered evidence. It will be given no weight by Judge Sammartino. I also gave more than six exhibits and referred to the docket, but apparently Judge Sammartino did not consider that evidence. Apparently Judge Sammartino did not consider an admission by Mr. Cochran to calling the clerk to have JPP make “the correction” [the alteration and backdating of a docket entry without a notation of new date of entry] was not evidence.

33. Because the Court will not tolerate me testifying as evidence and does not acknowledge documentation I submitted as exhibits as evidence, I not only think I will lose my case, but I was punished by Judge Sammartino making a ridiculous error of ordering \$39,000 in attorney fees to the Attorney Defendants as discussed below, and now need to have that order vacated or reversed on appeal.

34. I am extremely anxious about what Judge Sammartino is going to order when I file complaints about her and Jude with Clerk of the Court John Morrill, the Chief Judge, the Commission on Judicial Ethics or the FBI. She is chilling my First Amendment right to petition for redress of grievances until she is recused from the case. I want to see wrongdoers fired, fined or incarcerated, but I do not want to lose my retirement to do so. The only way I can save my retirement appears to be a recusal of Judge Sammartino.

35. I filed a reply to the opposition to my motions for the court to compel entry of default and sanctions under Rule 11 on October 4 and 5, 2019. (ECF Nos. 84 and

85) On October 1, 2019, before the matters were fully briefed, I had a discussion by telephone with Jude.

36. Jude told me Judge Sammartino told him she was going to rule against me on the motion to compel. I am not repeating this for the truth of Jude's statement, but for the fact that he said it, which had the appearance to me that Jude believes Judge Sammartino prejudged the motion.

37. Even though my affidavit is supposed to be taken as true for the purposes of disqualification, in an attempt to appease Judge Sammartino in her admonishment to present evidence, other than my testimony, I am attaching exhibit 'A'. It is an email I sent to myself on December 1, 2019, before the Order on motion to compel was issued, with a forward of an email from Dennis to me sent the night before.

38. Dennis wrote another outrageous and delusional email that sounds like she was stalking me. Since she had calmed down for several months, I mused as to what triggered her outburst. I wrote "I wonder if her attorneys already heard what the decision forthcoming will be. Clerk JJP or Jude told me what the decision regarding the default would be on October 1, 2019."³

39. I noticed that all Judge Sammartino's orders appear like she is representing the defendants, which is not usually a reason for disqualification. But as the defendants' attorney, Judge Sammartino is making arguments that violate Rule 11.

40. For example, Judge Sammartino misapplied Gottesman and Coltrain by neglecting to notice that Plaintiff stated her reason to dismiss the malpractice cause without prejudice was because she was not a licensed attorney and therefore not considered competent to proceed "on behalf" of a Limited Liability Company. (ECF No. 111, 46:13-24; ECF No. 38)

³ The email Dennis sent is not being complained of in this suit. It is just evidence that Jude made a comment to me on October 1, 2019 and that I wonder if he made a similar comment to the defendants.

41. Here is the second paragraph of an order in Gottesman which Judge Sammartino presided over at *1043, with my commentary after added bolding:

"As just discussed, under *Coltrain*, Plaintiff's voluntary dismissal of Attorney Defendants creates a presumption that Attorney Defendants are the prevailing party. 66 Cal.App.4th at 107, 77 Cal.Rptr.2d 600. As Attorney Defendants note, **Plaintiff did not file an opposition to the anti-SLAPP motion.** [I did.] (MTS Opp'n 13.) **Nor does Plaintiff, in his own motion to strike, explain why he dismissed Attorney Defendants while their anti-SLAPP motion was still pending.** [I did.] (See generally MTS; MTS Reply.) [omitted irrelevant text] But the California anti-SLAPP statute, as interpreted and applied by *Coltrain* and its progeny, allows the Court to inquire into Plaintiff's reasons for dismissing these Defendants. **And he has given none.**[I did.] [omitted repetitive text] See, e.g., *Fleming v. Coverstone*, No. 08CV355 WQH (NLS), 2009 WL 764940, at *6 S.D. (Cal. Mar. 18, 2009) (finding that a defendant was a prevailing party within the meaning of California's anti-SLAPP statute **where the plaintiff "d[id] not assert that he dismissed the defamation claim** because Plaintiff has substantially achieved his goals through settlement, because Defendant was insolvent, **or for other reasons unrelated to the probability of success on the merits"**).[I did.] (Exhibit ECF No. 111, 46:18-22; Gottesman, 263 F. Supp. 3d at 1043; *Coltrain*, 66 Cal. App. 4th at 107, 77 Cal.Rptr.2d 600; ECF No. 38, 2:10-22).

42. Another example is Judge Sammartino's inconsistency in insisting defendants who do not answer timely need to file a motion to set aside entry of default instead of just jumping in as Kramer did in this case.

"The Court denies the motion [to dismiss] because **the Court cannot consider any of Ms. Cohen's arguments on the merits unless and until the entry of**

1 **default against her is set aside.** Pursuant to *FRCP 55(a)*, the Clerk entered default
2 against Ms. Cohen on January 12, 2006, when the first amended complaint
3 (“FAC”) was the operative pleading in the litigation. (Doc. No. 40.) Plaintiff filed
4 the SAC on March 5, 2007. (Doc No. 62.) **Without previously moving to set**
5 **aside the default, Ms. Cohen answered the SAC** on June 5, 2007. (Doc. No. 83.)
6 The Hon. Jeffrey T. Miller granted plaintiff’s unopposed *FRCP 12(f)* motion to
7 strike on August 14, 2007. (Doc. No. 96.) In that Order, Judge Miller explained the
8 effect of the default entered against Ms. Cohen prior to the filing of the SAC:
9 ‘**Since default has already been entered against the [defendants], they are no**
10 **longer permitted to answer.** This is true even though they were defaulted in
11 connection with the now-inoperative FAC, which in all material terms is identical
12 to the SAC as far as the Cohens are concerned.’ (*Id. at 2.*)
13 “**Unless and until Ms. Cohen files a noticed motion to have the entry of default**
14 **set aside (pursuant to *FRCP 55(c)*) and then prevails on that motion, she**
15 **cannot litigate the merits.** ‘ “[O]nce a default is entered, a defendant on
16 **default has no further standing to contest the factual allegations of plaintiff’s**
17 **claim for relief.” ‘ *Taylor v. City of Ballwin, Mo.*, 859 F.2d 1330, 1333 n.7 (8th**
18 ***Cir.* 1988) (quoting *Caribbean Produce Exch. v. Caribe Hydro-Trailer, Inc.*, 65**
19 ***F.R.D.* 46, 48 (D.P.R. 1974)); accord *New York Life Ins. Co. v. Brown*, 84 F.3d**
20 ***137, 143 (5th Cir.* 1996); *Twist & Shout Music v. Longneck Xpress, N.P.*, 441 F.**
21 ***Supp. 2d* 782, 783 (E.D. Tex. 2006); *In re Uranium Antitrust Litig.*, 473 F. Supp.**
22 ***382, 386 (N.D. Ill.* 1979); *Great Am. Ins. Co. v. M.J. Menefee Constr., Inc.*, 2006**
23 ***WL 2522408, at *2 (E.D. Cal.* Aug. 29, 2006); see also *TCI Group Life Ins. Plan v.***
24 ***Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001) ([f]or had there been no default, the**
25 **plaintiff would of course have had to litigate the merits of the case’).”(Kremen v.**
26 ***Cohen*, 2008 WL 11508541 at 1 and 2)**

- 1 43. In the order granting attorney fees (ECF No. 11, Fee Motions Section at page
2 45) Judge Sammartino did not mention the first prong of the two-step test for anti-
3 SLAPP motions.
- 4 44. I discussed the first prong thoroughly in my opposition. (ECF No. 78-1, 2-6)
- 5 45. I concluded: “Just in case the Court decides the Attorney Defendants motion
6 survives the first prong of the anti-SLAPP test, Plaintiff will present compelling
7 evidence by declaration that she will prevail on her claims when she revives them.”
- 8 46. I know that Judge Sammartino analyzes anti-SLAPP motions using the first
9 prong of the test. She has written:

10

11 “Deciding an anti-SLAPP motion requires a two-step analysis. First, the court
12 decides if the defendant “has made a threshold showing that the challenged cause
13 of action is one arising from protected activity.” *Equilon Enters. v. Consumer*
14 *Cause, Inc.*, 29 Cal.4th 53, 67, 124 Cal.Rptr.2d 507, 52 P.3d 685 (Cal.2002). If the
15 defendant meets this burden, then, second, the Court “determines whether the
16 plaintiff has demonstrated a probability of prevailing on the claim.” *Moser v.*
17 *Triarc Companies, Inc.*, No. 05CV1742 JLS (WMC), 2008 WL 2705159, at *4
18 (S.D. Cal. July 8, 2008)

- 19
- 20 47. In fact, the case Judge Sammartino cited in her order, *Gottesman*, has this
21 headnote:

22

23 “On motion to strike under California's anti-strategic lawsuit against public
24 participation (SLAPP) statute, a defendant must make an initial prima facie
25 showing that the plaintiff's suit arises from an act in furtherance of the defendant's
26 rights of petition or free speech. Cal. Civ. Proc. Code §§ 425.16(b), 425.16(c)(1).”
27 (*Gottesman v. Santana*, 263 F. Supp. 3d 1034 (S.D. Cal. 2017))

28

1 48. In each and every order found on Westlaw by Judge Sammartino dealing with a
2 motion to strike pursuant to CCP §425.16 except this case, Judge Sammartino
3 addressed the first prong. The Attorney Defendants motion should fail on the first
4 prong, and therefore, the error looks intentional.

5 49. Judge Sammartino created confusion and misunderstanding when she wrote the
6 Order of March 23, 2020, inter alia:

7
8 “Plaintiff MAY FILE an amended complaint within forty-five (45) days of the
9 electronic docketing of this order. Should Plaintiff fail timely to file an amended
10 complaint, this action shall remain closed without further Order of the Court.” (A1:
11 ECF 111, 54:7-10 (Attachments are designated “A#”; EFC refers to the district
12 court docket electronic case filing number))

13
14 50. For three weeks, I understood this to mean the order was not final, because I
15 could amend my complaint. Finality would come 45 days later. That is how it is
16 done the vast majority of the time.

17 51. But on April 14th, I noticed that the Clerk of the Court wrote “closed” and
18 “terminated” on the header of the docket.

19 52. I made a written inquiry of the clerk.

20 53. Joseph Diaz, CM/ECF Coordinator responded. “Yes. The case was terminated
21 on 03/23/2020 per the following order: [followed by the order]”.

22 54. “Closed” means “(Of a class or organization) confined to a limited number”.
23 (Black’s Law Dictionary (11th ed. 2019)) “Terminate” means “1. To put an end to;
24 to bring to an end. 2. To end; to conclude.” (id.)

25 55. My appellate attorney had never seen a case closed this way in 18 years of
26 practice, but she had me sign a retainer agreement and read through the case file in
27 anticipation of the Ninth Circuit deciding “terminated” meant the case was final, or
28

1 if I got too sick to write an amended complaint and just appealed the parts of the
2 order of March 23, 2020.

3 56. I found some orders granting leave to amend by Judge Sammartino. Here is a
4 typical sample: “Plaintiffs MAY FILE an amended complaint on or before thirty
5 (30) days of the electronic docketing of this Order. Should Plaintiffs choose not to
6 file an amended complaint by this time, this case shall be dismissed and the file
7 closed.” (Barvie v. Bank of America, N.A., 2018 WL 4537723)

8 57. In Barvie, if the order was issued on March 23rd, the amended complaint would
9 need to be filed on April 22nd. If no amended complaint was filed, the case would
10 then be dismissed on April 23rd. The clerk would mark it “closed” and
11 “terminated” on the docket. The notice of appeal would be due on May 23rd or the
12 next Monday if it fell on a weekend.

13 58. In Hammett, the order was issued on March 23rd. If I decided against the
14 amendment, the notice of appeal would be due April 22nd. March 23rd is the day
15 the case was “closed” and “terminated”. It never opened back up. There would be
16 an argument if the plaintiff tried to file a notice of appeal 30 days after the day the
17 amendment was due.

18 59. Because of the appearance of bias of Judge Sammartino, I anticipated that if I
19 did not file my notice of appeal the Court would allow the Attorney Defendants to
20 reapply for a judgment and grant it on April 23rd.

21 60. It cost me \$505 and now I need to oppose the Stern and Goldberg motion for
22 attorney fees on appeal.

23 61. I never heard of Judge Sammartino before this case was assigned to her.

24 62. I do have a history of Judges and appointed collaterals voluntarily recusing for
25 cause from cases I was involved in including but not limited to Former
26 Commissioner Alan H. Friedenthal, Commissioner Steff Padilla, Judge Hank
27 Goldberg, Minor’s Counsel John Carlson and Minor’s Counsel Kenneth Sherman.
28

63. I have been featured on and consulted with Fox News to produce a series on ills in the family law and dependency courts. The Metropolitan News-Enterprise errantly attributed a recall campaign of Judge Elizabeth Feffer to me. The AP picked up a story I broke about court evaluator Dr. Joseph Keenan, after the Los Angeles Times repeated the information.

64. It is plausible Judge Sammartino had heard of me and should have recused herself and didn't.

65. It is also plausible that Judge Sammartino has a prejudice against pro se litigants. I've surveyed at least a hundred of her orders involving pro se litigants and it appears I have more chance of dying from COVID-19 than making it to a jury trial or reasonable settlement if Judge Sammartino is presiding.

66. Therefore, because of the appearance of bias for the defendants and prejudice against me, I pray the Court will disqualify Judge Janis L. Sammartino from this case.

67. I swear the foregoing is true to the best of my knowledge and belief, signed under penalty of perjury according to the laws of the United States of America.

Dated August 22, 2020

s/Laura Lynn Hammett

Laura Lynn Hammett, Plaintiff in Pro Se

CERTIFICATION

I, Laura Lynn Hammett, Plaintiff in pro se, hereby certify under penalty of perjury that the foregoing affidavit is made in good faith.

Dated August 22, 2020

s/Laura Lynn Hammett

Laura Lynn Hammett, Plaintiff in Pro Se

EXHIBIT A

Diane Dennis bizarre email in front of Court's decision

From: Laura Lynn (bohemian_books@yahoo.com)
To: bohemian_books@yahoo.com
Date: Sunday, December 1, 2019, 01:52 PM CST

Diane has reacted to the Court's decisions in the past; I wonder if her attorneys already heard what the decision forthcoming will be. Clerk JJP or Jude told me what the decision regarding the default judgment would be on October 1, 2019.

----- Forwarded Message -----

From: Diane Dennis <diane_dennis@hotmail.com>
To: Laura Lynn <bohemian_books@yahoo.com>
Sent: Saturday, November 30, 2019, 07:23:19 PM CST
Subject:

Gosh, Seems your new hubby can't get it off from you. Oh, well. Not that I'm surprised. You've always been gross. It is what it is. Hi to Cathy Beard Tabor and Catherine Malone. Criminals do eventually get caught. Will try to visit you in prison.

Laura Lynn Hammett
Bohemian_books@yahoo.com
500 Amity Road Suite 5B #306
Conway, Arkansas 72032

Plaintiff in pro se

Laura Lynn Hammett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Laura Lynn Hammett,

Plaintiff,

v.

Mary E. Sherman, et al.

Defendants.

Case No.: 19-CV-0605-JLS-AHG

DECLARATION OF LAURA LYNN
HAMMETT IN SUPPORT OF
PLAINTIFF'S MOTION FOR LEAVE
TO RETAIN REPRESENTATION FOR
SPECIAL APPEARANCE FOR THE
PURPOSE OF COLLECTION OF FEES
AND COSTS FOR PROCESS OF
SERVICE AND ATTORNEY FEES
AND COSTS FOR THE COLLECTION
OF SAID FEES AND COSTS
PURSUANT TO L.R. 83.3(f)(4)

Honorable Janis L. Sammartino presiding
Hon. Magistrate Allison H. Goddard

TO THE COURT AND ALL PARTIES OF RECORD:

1

DECLARATION OF LAURA LYNN HAMMETT IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO RETAIN
REPRESENTATION FOR SPECIAL APPEARANCE FOR THE PURPOSE OF COLLECTION OF FEES AND COSTS
FOR PROCESS OF SERVICE AND ATTORNEY FEES AND COSTS FOR THE COLLECTION OF SAID FEES AND
COSTS PURSUANT TO L.R. 83.3(f)(4)

- 1 1. I, Laura Lynn Hammett make the following declaration under penalty of
2 perjury. As to facts I have no direct knowledge of, the facts are true to the best
3 of my information and belief.
- 4
- 5 2. I want to hire representation who is familiar with the Rules of Federal
6 Procedure and practical application of the law. But, I cannot afford full
7 representation coupled with expert witness costs.
- 8
- 9 3. I am a pro se litigant who must spend days of my time learning each specific
10 procedure and substantive law for each subject that is involved in the present
11 litigation.
- 12
- 13 4. I have never needed to enforce the right to have costs and fees of service of
14 summons paid for by defendants who refuse to waive service.
- 15
- 16 5. Mary E. Sherman and Jeffrey M. Sherman in all their capacities as parties to
17 this suit refused to waive service of summons and refused to pay costs, even
18 after I provided documentation their lawyers requested.

19 I swear that the foregoing is true to the best of my knowledge and belief, under
20 penalty of perjury, according to the laws of the United States of America and the State of
21 California.

22
23 Date 8/11/2020 Signature s/Laura Lynn Hammett

24 Plaintiff in Pro Se Laura Lynn Hammett