

1 Laura Lynn Hammett
2 Bohemian_books@yahoo.com
3 16 Gold Lake Club Road
4 Conway, Arkansas 72032
5

6 *Plaintiff in pro se*

7 Laura Lynn Hammett
8

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 Laura Lynn Hammett,
13 Plaintiff,
14 v.
15 Mary E. Sherman, et al.
16 Defendant.
17

Case No.: 19-CV-0605-LL-AHG
Plaintiff's Special Appearance
Challenging Jurisdiction for the District
Court to Rule on a Motion for Attorney
Fees; and Opposition to Defendants Ellis
Roy Stern, Alan N. Goldberg and Stern
& Goldberg's Renewed Motion for
Attorneys' Fees (ECF No. 291)

18 Hearing Date: October 6, 2023
19 Time: none scheduled
20 Courtroom: 5D
21 Judge: Hon. Linda Lopez
22 Action Filed: April 2, 2019
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1 TO: THE COURT AND ALL PARTIES OF RECORD:

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3 I, Laura Lynn Hammett (“I” or “Plaintiff”), make this special appearance to challenge
4 the jurisdiction of the District Court to hear this attorney fee motion. In case the Ninth
5 Circuit does not agree with my contention about jurisdiction, I am asking for a stay on the
6 District Court proceedings and I am opposing the motion to preserve my arguments on
7 the merits for appeal.

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9 I. The District Court Lacks Jurisdiction

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11 The Court issued an “Order” (ECF No. 290) denying S & G’s motion for additional
12 attorney fees (ECF No. 270, “*S & G II*”) but allowing S & G to “renew” *S & G II* in the
13 District Court. By “renew” the Court meant “amend” or “move for reconsideration based
14 on an additional argument that could have been made in *S & G II* but was not.

15 *S & G II* addressed substantially the same issues and arguments as the first S & G
16 attorney fee motion (ECF No. 49, “*S & G I*”). The fees were granted in *S & G I*. (ECF
17 No. 111) *S & G II* asked to include the hours allegedly worked on motions to vacate and
18 appeal the order on *S & G I*.

19 The Order on *S & G II* was issued after the Notice of Appeal of the Order on *S & G I*
20 (ECF No. 273) was filed on October 25, 2022, and after the Appeal of *S & G I* was fully
21 briefed.

22 The District Court typically can have concurrent jurisdiction with the Court of
23 Appeals, where the District Court is deciding a motion for attorney fees.

24 This is not a typical case. *S & G I*, addresses the same issues as *S & G II* and *S & G*
25 *III*.

26 Allowing the District Court to decide on *S & G II* and *III* can give rise to
27 contradictory opinions from two courts on virtually identical subject matter.

1 The District Court and the Attorney Defendants, by acting as if the District Court still
2 has jurisdiction, caused Plaintiff the need to file a notice of appeal and pay the filing fees.

3 The Defendants and the Court misunderstand the applicable precedent. Plaintiff's
4 appeal divests this court of jurisdiction over issues related to the *S & G I* judgment on
5 attorney fees. (*Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) ("The
6 filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction
7 on the court of appeals and divests the district court of its control over those aspects of
8 the case involved in the appeal."); *Gilda Indus., Inc. v. United States*, 511 F.3d 1348,
9 1350 (*Fed. Cir.* 2008) ("Ordinarily, the act of filing a notice of appeal confers jurisdiction
10 on an appellate court and divests the trial court of jurisdiction over matters related to the
11 appeal."))

12 It is true that the court retains jurisdiction to conduct proceedings on defendants'
13 attorney fee motions, as long as there is not already a related attorney fee motion in the
14 same case that is already ripe for appeal.

15 "A district court . . . may award attorneys' fees while the court of appeals addresses
16 the merits . . . because there is no concurrent exercise of power on the same subject and
17 little overlap of issues. True, a decision reversing the judgment on the merits would affect
18 or nullify the award of fees, but the subjects are distinct." *Apostol v. Gallion*, 870 F.2d
19 1335, 1338 (7th Cir. 1989). In this case, the subject of the appeal of *S & G I* is not distinct
20 from the subject of *S & G II* and *III*. All three motions address the reasonableness of
21 attorney fees.

22 S & G made the decision to file the *S & G I* motion for attorney fees before a final
23 judgment in the case. The Court cannot give S & G a second bite at the apple by issuing
24 an order on the same subject that is already on appeal.

25 The District Court must wait to decide the reasonableness of the attorney fees until the
26 Ninth Circuit is divested of jurisdiction. Considering this a "stay" would make a notice of
27 appeal unnecessary and therefore save resources.

II. *S & G III*, like *S & G I* and *II*, is Based on Four False Premises

S & G III is based on the premise that any proceedings on the derivative claims filed by a non-attorney on behalf of a limited liability company are not void. *S & G III* is based on the fallacy that *S & G* was the prevailing party. *S & G III* is based on the outrageous notion that the attorney fees were reasonable. And *S & G* is based on an unconstitutional interpretation of the fee shifting statute.

A. The proceedings on void claims are void.

B. It is a manifest injustice for the Court to determine *S & G* was the prevailing party on either claim.

This Court's prior orders determined that the *S&G Defendants* and *S & G Defendants* were prevailing parties, based on the Court's analysis under *Coltrain v. Shewalter*, 66 Cal. App. 4th 94 (1998), and awarded fees to the Attorney Defendants for expenses incurred up to the Court's initial order granting fees. See ECF Nos. 111 at 48; 266 at 9-10. The Court ignored the language in *Coltrain* that excludes dismissals by the plaintiff based on reasons other than the merits from the presumption that the defendant prevailed.

The "voluntary dismissal" of the malpractice cause was mandated because the derivative cause of action was not filed by an attorney. The conversion cause was dismissed as a courtesy, so *S & G* would not need to retain an attorney until after the Member Defendants' motions to dismiss were decided and, if needed, went through appeal. There can therefore be no presumption that *S & G* was the prevailing party.

Neither cause of action against *S & G* was Strategic Litigation Against Public Participation ("SLAPP"), therefore failing the first prong of the anti-SLAPP test. The

1 Court repeatedly blew over this argument, basing its decision solely on the erroneous
2 analysis of the second prong.

3
4 C. It was not reasonable to do all that work and not reasonable to pay anyone \$250
5 per hour when that person was multiplying the proceedings unnecessarily.

6
7 Mr. Agle is asking that the Plaintiff be forced to pay \$260 per hour, which he says is
8 less than half his worth. Yet, the attorney had his client file an declaration that was signed
9 under penalty of perjury for the opening sentence only.

10 Ms. Bertsche is asking for \$450 per hour. She did not read the Court's Chamber
11 Orders and was late in filing her client's opposition to the motion to vacate the order on *S*
12 & *G I*.

13 Attorney Keith Cochran saw that the Clerk omitted Linda R. Kramer as an individual
14 from the list of parties on the electronic filing system. So, instead of bringing the mistake
15 to the clerk's attention, he removed his client in one capacity from the face of the motion
16 to dismiss. [ECF No. 19] Or, he made the same error as the clerk, coincidentally, and the
17 paralegal he supervises.

18 In general, there are people like Mr. Tom Girardi living like kings while the
19 commoners he is supposed to represent lose children to cancer and don't see a penny of
20 the \$31 million dollar settlement their attorney negotiated with the responsible party.

21 Mr. Stern claimed the value of 14 % of the limited liability company he represented
22 was \$218,000. It sold for over \$1.4 million 18 months later. Mr. Stern took part of
23 Plaintiff's capital account to pay for giving an opinion that favored the other members of
24 SSP rather than SSP.

25 All the attorneys involved in this case and three judges, who also studied and work in
26 law, spent hundreds of hours to vigorously oppose a woman who is not an attorney, on a
27 cause that was stated as derivative and other causes that were ruled to be derivative. The
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1 Plaintiff worked alone against many, had documented anxiety disorders and Hashimoto's
2 disease that causes fatigue and brain fog, and still an appeal of the resulting orders is not
3 frivolous.

4 Plaintiff was not compensated for her work. She had her \$70,000 capital retained by
5 SSP the entire time. Precedence shows that even though Plaintiff shows the anti-SLAPP
6 motion was filed maliciously, with the full knowledge that it must not survive the first
7 prong of the test and that it was void on its face, Plaintiff will not be awarded reasonable
8 attorney fees because the fees were "not incurred".

9 The Judges who purposefully make errors to rationalize transferring wealth to other
10 attorneys are well insulated from any meaningful negative repercussions for their
11 dishonest services.

12 The attorneys involved in this case are not worth three times as much as licensed
13 therapists nor 10 times what a skilled carpenter charges. The attorneys time is not worth
14 hundreds of dollars per hour, while the Plaintiff's time is worthless. It is not reasonable to
15 force the Plaintiff, who could not afford to hire an attorney to represent her, to pay the
16 fees incurred by the Attorney Defendants, whether the harm they did was to the Plaintiff
17 or to a company in which the plaintiff is a shareholder.

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19 D. It is not Constitutional to Shift Fees in this Case to the High-Income Defendants,
20 Especially Because Precedence Gives the Unrepresented Plaintiff No Hope of
21 Compensation for the Time She Worked on the Case.

22
23 Equal protection and due process are fundamental rights guaranteed by the United
24 States Constitution.

25 The Court appeared to have a bias and retaliated against a litigant for complaining
26 about clerk "JPP" altering the docket, then altering it back without indication on the
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1 docket after he was informed of the existence of a copy of the unaltered version. As long
2 as the biased judge's opinions were "law of the case", the proceedings were tainted.

3 The denial of leave to hire an attorney on limited scope made equal protection for me
4 impossible because I am not a net-worth-elite person. The Southern District of California
5 is split from other districts in the Circuit and throughout the country. The result of having
6 no mechanism to retain limited scope representation is to render the "anti-SLAPP"
7 statute, Cal. Code Civ. Proc. Sec. 425.16(C)(1) unconstitutional as applied in the
8 Southern District of California.

9 An intervening-change-in-law was issued October 20, 2022, *Wakefield v. ViSalus,*
10 *Inc.*, 2022 WL 11530386 United States Court of Appeals, Ninth Circuit, that questions
11 the constitutionality of awarding an oppressive award, even if mandated by statute. Even
12 though the award in *Wakefield* was for liability and the award challenged here is for
13 attorney fees, the same principle of fairness applies.

14 The aggregate attorney fee awards against Plaintiff are unreasonable, oppressive and
15 violate the Constitution, and therefore, if not reversed should be reduced drastically.

16 This opposition is based on this Opposition to Defendants Patrick C. McGarrigle,
17 Esq. and McGarrigle, Kenney & Zampiello's Renewed Motion for Attorney' Fees, the
18 accompanying Brief Memorandum of Points and Authorities, the Declaration of Laura
19 Lynn Hammett, as well as the pleadings and papers filed herein, and any oral argument
20 presented at the time of hearing, should the Court desire oral argument.

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22 Respectfully submitted,

23
24 9/8/2023

/s/ Laura Lynn Hammett
Laura Lynn Hammett, Plaintiff in Pro Se
16 Gold Lake Club Road
Conway, Arkansas 72032
(760) 966-6000
Bohemian_books@yahoo.com

Certificate of Service

A copy of this Plaintiff's Opposition to Defendants Patrick C. McGarrigle, Esq. and McGarrigle, Kenney & Zampiello's Renewed Motion for Attorney's Fees (Doc. 270) was served upon all counsel of record by filing on the electronic filing system, which automatically notifies all attorneys of record. The service list attached to S & G's Certificate of Service is incorporated here as if fully set forth, with the addition of Daniel S. Agle, KLINEDINST PC, dagle@klinedinstlaw.com.

9/8/2023

/s/ Laura Lynn Hammett
Laura Lynn Hammett, Plaintiff in Pro Se
16 Gold Lake Club Road
Conway, Arkansas 72032
(760) 966-6000
Bohemian_books@yahoo.com