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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.

- 1 2. I did not use the words “on behalf of Silver Strand Plaza, LLC” when I wrote
2 the FAC in this case. This is because I did not go to law-school except one
3 semester online, had no experience with a derivative case and did not realize a
4 derivative cause is “on behalf of” the entity, called herein “SSP”, in which I am a
5 shareholder.
- 6 3. I first heard the word “derivative” cause of action from SSP Counsel Patrick C.
7 McGarrigle, who contended strongly that all my claims were “derivative”, and that
8 I could not bring the derivative claims because I “do not have standing”.
- 9 4. I was represented on contingency until January 22, 2019 in this matter by an
10 attorney who charges over \$475 per hour to non-contingency clients. I was willing
11 to settle my claims against the defendants for about \$54,000, less than my capital
12 in SSP, about \$78,000, and would split that with my counsel, but the defendants
13 refused. My attorney did not want to take the economic risk of continuing to
14 represent me on contingency.
- 15 5. I could not afford an attorney for all causes, but there are particular areas where
16 either I could be reimbursed by the defendants, if I prevailed, or that were beyond
17 my ability to understand without advanced, time-consuming study. One need was
18 for explanation of particularly complex issues like Derivative causes of action.
- 19 6. I therefore moved Judge Sammartino for leave to obtain “limited-scope
20 representation”, similar to that allowed by other Federal District Courts, including
21 the sister court to the north, Central District of Southern California.
- 22 7. Judge Sammartino denied my motion. (ECF No. 22)
- 23 8. On August 20, 2019, while reading case law to answer the Attorney
24 Defendant’s anti-SLAPP motion, one case cited by the Attorney Defendnats being
25 McDermott, I learned that a derivative action is “on behalf of” the entity I was a
26 shareholder to, and any award of damages would go to SSP as a whole, so the
27 share to me would be diluted to 14.1571%, my share. This made no sense, as all
28

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.

1 21. I filed a request, errantly titled “Request for Entry of Clerk’s Judgment”. Jude
2 called me, and informed me that I should correct the request, and gave me the case
3 number of a request that was filed by an attorney to use as a template.

4 22. When I filed the corrected request, I noticed the docket entry for July 30, 2019
5 was changed for the L&E Trust MTD to say it was filed for three separate
6 defendants, including Linda R. Kramer an individual.

7 23. I accused Mr. Cochran of making the change and told him that I had a copy of
8 the docket with only the two co-trustees listed as filing the L&E Trust MTD on
9 July 30, 2019.

10 24. Mr. Cochran wrote that “we” didn’t alter the docket. “We called the clerk to
11 report the issue, and the clerk made the correction.” (ECF No. 56, Exhibit 2)

12 25. By the time I called two clerks frantically to report the alteration of the record, it
13 was changed back.

14 26. Instead of filing the entry of clerk’s default against Kramer and letting Mr.
15 Cochran file a motion to set aside, the clerk and then Judge Sammartino maintain
16 that no entry of default is required because it was Mr. Cochran’s intention to file
17 for three defendants and his paralegal did not know what to do when there was
18 only one Linda R. Kramer listed. Instead of doing what I did, asking that the error
19 be corrected, he just clicked off two boxes. No explanation is given why he took
20 the individual Kramer off the list of whom was represented if she ever was listed.
21 (ECF No. 19, cover)

22 27. On ECF No. 80, the opposition to entry of Clerk’s default filed by Mr. Cochran,
23 the list of representation on the cover includes Linda R. Kramer in two capacities.

24 28. My trust in the integrity of the Judge Sammartino’s clerk was destroyed on
25 August 1, 2019.

26 29. But I did not file a motion for disqualification, because when trying to make a
27 complaint to the Clerk of the Court, I was told Judge Sammartino was the clerk
28 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