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***REQUEST TO STAY CASE PURSUANT TO  
§ 391.6 PENDING ADJUDICATION OF THIS MOTION***

IN THE SUPERIOR COURT OF CALIFORNIA  
OF THE COUNTY OF ORANGE

Law offices of Mark B. Plummer PC,  
Plaintiff

v.

DOES 1 THROUGH 20, inclusive  
Defendants.

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**Case: 30-2018-01002061-CU-FR-CJC**  
Assigned for All Purposes to Presiding Judge  
Hon. Schwarn

**DEFENDANT’S NOTICE OF MOTION  
AND MOTION TO DEEM HIGH  
FREQUENCY PLAINTIFF “LAW  
OFFICES OF MARK B. PLUMMER” AND  
ITS ALTER EGO “MARK B. PLUMMER”  
A VEXATIOUS LITIGANT PURSUANT  
TO CODE OF CIVIL PROCEDURE § 391;  
DECLARATIONS IN SUPPORT THEREOF**

- 1. DECL. JAMES BOHM, ESQ.**
- 2. DECL. MARK EISENBERG, ESQ.**
- 3. DECL. BAYUK, ESQ.**
- 4. DECL. FRANK SATALINO, ESQ.**
- 5. DECL. HEDY PLUMMER (2)**
- 6. DECL. MARK PLUMMER, ESQ.**
- 7. DECL. NILI ALAI, M.D.**

Hearing Date: Jan. 28, 2020  
Hearing Time: 1:30 p.m.  
Dept. C19  
Reservation No. 73075569

[Filed herewith Declarations in Support,  
Request for Judicial Notice, Notice of  
Lodgment of Exhibits]

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<sup>1</sup> Rule 3.37. Nondisclosure of attorney assistance in preparation of court documents (a) Nondisclosure

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**TO THE HONORABLE COURT AND ALL PARTIES:**

PLEASE TAKE NOTICE THAT Defendant (hereinafter "Defendant" or "Moving Party") gives notice and brings the herewith Motion to Deem "Law Offices of Mark B. Plummer" and its alter ego "Mark B. Plummer" a Vexatious Litigant pursuant to Code of Civil Procedure § 391.

Plaintiff is a high frequency, truculent litigant who exceeds the threshold of Code of Civil Procedure § 391, of five (5) cases in seven (7) years with adverse rulings to Plaintiff.

Plaintiff Plummer (appearing in alter ego for Mark B. Plummer) has in *pro persona* litigated cases in the Orange County and Los Angeles courts in the last 7 years, and has at least 5 with adverse rulings to him.

The Court of Appeals has also ruled Plaintiff's party role "Mark Plummer" for "Law Offices of Mark Plummer" has been *pro persona*. Superior Courts have similarly ruled Plaintiff Mark Plummer was representing himself in all actions and appearing *pro per* as "Law Office of Mark Plummer". Listed cases for purpose of this Motion do not account for the *additional pro persona* cases Plaintiff has filed in Federal and other State Courts which for brevity have been omitted here.

In summary, the plaintiff in the current case, "Law Offices of Mark B. Plummer, PC" has had at least four prior adverse determinations against it based on appellate court case number G053836, OCSC case number 30-2014-00759128, OCSC case number 30-2011-00524331, and OCSC Case No. 30-2019-01069271-CL-CO-CJC. Plaintiff has also had its motion for Anti-SLAPP ruled adversely to it in 30-2018-01002061, and has filed an appeal Case. No. G057721.

In summary, "Mark B. Plummer" has had at least five prior adverse determinations against him based on appellate court case numbers B246940 and BC479944, ADR Case No. 11-2638-AA, and OCSC case number 30-2016-00831688 and 30-2011-00525808.

Defendant contends that "Mark B. Plummer" is the alter ego of plaintiff "Law Office of Mark B. Plummer based on Plummer's co-mingling of corporate assets and funds, and essentially using the corporation as a personal "piggy bank". Code of Civil Procedure section 391, subdivision (b), can apply to a corporation that acts as the alter ego of an individual. (See *Say & Say, Inc. v. Ebershoff* (1993) 20 Cal.App.4th 1759, 1766-1770 and *Hupp v. Solera Oak Valley Greens Association* (2017) 12 Cal.App.5th 1300, 1313.)

This Motion is based on this Notice, the briefs and exhibits from the moving party's motion, the Memorandum of Points and Authorities, and the Declaration filed herewith, and on such

1 other and further argument as the Court may permit in the hearing on this Motion.

2 Hence, Defendant's herewith Motion to Deem Plummer and his alter egos a Vexatious  
3 Litigant pursuant to Code of Civil Procedure § 391 is based on good showing and just cause and  
4 should be *granted* in conformity with the laws of this State.

5 DATED: June 26, 2019      Respectfully Submitted,

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<sup>2</sup> Rule 3.37. Nondisclosure of attorney assistance in preparation of court documents (a) Nondisclosure

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4 *Garcia v. Lacey (Garcia)* (2014) 231 Cal.App.4th 402, 406, 407,

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7  
8 **Statues**

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11 Code of Civil Procedure § 391.6

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF RELIEF SOUGHT**

3 Defendant respectfully seeks an order of the Court *granting* this Motion to Deem Plaintiff  
4 Law Office of Mark B. Plummer appearing in *alter ego* for Mark B. Plummer a Vexatious  
5 Litigant as statutorily set by Code of Civil Procedure § 391.

6 **II. PLAINTIFF IS A TRUCULENT AND VEXATIOUS LITIGANT AS DEFINED**  
7 **BY C.C.P. § 391.**

8 Pursuant to Code of Civil Procedure § 391, Plaintiff is a vexatious litigant who has had more  
9 than 5 in *pro persona* in the last seven years and has had judgement adverse to him, or resulted in a  
10 case dismissal in more than 5 of these cases.

11 Plummer is in fact a high frequency, truculent litigant who exceeds the threshold of Section  
12 391, of five (5) cases in seven (7) years with adverse rulings to Plaintiff. Here Plaintiff Plummer has  
13 in *pro persona* litigated countless frivolous cases in just the Orange County and Los Angeles Court  
14 in the last 7 years and has at least 5 with dismissals or adverse rulings to him. These cases do not  
15 account for additional *pro persona* cases Plaintiff has filed in Federal and other State Courts about  
16 which Plaintiff has refused to comply with the discovery act, and obstructed discovery requests.

17 Good cause exists to grant the requested relief of the proceedings in this matter.  
18 Pursuant to California Code of Civil Procedure §391 the Court or any party in litigation in this  
19 State may file a motion for an order of the Court to deem a Plaintiff vexatious.

20 Defendant Nili Alai (hereinafter referred to as "Defendant" or "Moving Party") brings  
21 this motion pursuant to Section 391 as authority for the Court to deem Plaintiff a vexatious  
22 litigant. Defendant also seeks an order of the court staying this action pursuant to Code of  
23 Civil Procedure § 391.6, pending adjudication of this motion.

24 As discussed *infra*, without an order from this Court now granting this motion, parties  
25 and the courts will be further incumbered with Plaintiff's unrestrained filing of further baseless  
26 Plaintiff driven litigation, repeated re-litigation of frivolous cases, and new cases in the State.

27 Thus, based on the foregoing, Defendant respectfully moves the Court to *grant* this Motion  
28 and deem Plaintiff Mark B. Plummer appearing in alter ego as "Law Offices of Mark B. Plummer"  
a vexatious litigant.

**III. STATEMENT OF FACTS**

1 Plaintiff in *pro persona* repeatedly relitigated or attempted to relitigate more than 5 Superior  
2 Court level cases within the last 7 years which ended in judgment or rulings adverse to his position.  
3 Plaintiff, in *propria persona*, litigated and relitigated the validity of the determination against the  
4 same defendant or defendants as to whom the litigation was finally determined to be averse to  
5 Plaintiff.

6 Plaintiff while acting in *propria persona*, also repeatedly has filed unmeritorious motions,  
7 pleadings, or other papers, conducted unnecessary discovery, or engaged in other tactics that were  
8 frivolous or solely intended to cause unnecessary delay. Plaintiff has also with unintelligible  
9 regularity filed in *pro persona* suits against other attorneys, law firms, and his former clients, which  
10 have ended in judgments adverse to him. (Declarations of Bayuk, Esq., Bohm, Esq., and Eisenberg,  
11 Esq. ¶¶ generally )

12 **Plaintiff Pro Per Mark B. Plummer Filed and Maintained More Than Five Superior**  
13 **And Appellate Court Cases Where Final Judgement Was Averse To Plaintiff Or Ended In**  
14 **Dismissal Of Plaintiff's Case, Or Zero Judgment:**

15 **PLAINTIFF "LAW OFFICES OF MARK B. PLUMMER"**

- 16 1. May 10, 2019 30-2019-01069271-CL-CO-CJC Law Offices of Mark B. Plummer vs. Mark  
17 Sugamele. (NOL SS);
- 18 2. Nov 9, 2017 G053836 Law Offices of Mark B Plummer, Pc Vs Bayuk et al.;
- 19 3. May 9, 2016 30-2016-00850952-CL-BC-CJC Law Offices of Mark Plummer vs. Cuk.;
- 20 4. December 02, 2014 30-2014-00759128 Law Offices Mark B Plummer, PC vs. Bayuk et al.;
- 21 5. November 21, 2011 30-2011-00524331 Law Offices of Mark B. Plummer PC v. Cuk.;
- 22 6. November 21, 2011 30-2011-00524331 Law Offices of Mark B Plummer, Pc Vs  
23 Merrit.; Mckeon (First amended Complaint filed on May 29, 2012 and *added* attorney Merrit  
24 Mckeon as an additional defendant. (Decl. Bayuk ¶3);

25  
26 **PLAINTIFF "MARK B. PLUMMER"**

- 27 7. February 2014 Court B246940 Plummer v. T.H.E. Ins. Co. CA2/5.;

- 1 8. February 7, 2013 BC479944 Plummer v. T.H.E. Insurance Company, Inc.;
- 2 9. May 31, 2011 Mark B. Plummer v. Day/Eisenberg LLP ADR Case No. 11-2638-AA.
- 3 (Decl. Mark Eisenberg ¶¶5-6);
- 4 10. Jan. 25, 2016 30-2016-00831688-CU-FR-CJC Mark Plummer Vs. Wells Fargo Bank, N.A.;
- 5 and
- 6 11. November 28, 2011 30-2011-00525808-CU-CL-CJC Mark B. Plummer vs. Bank of America

7  
8 **Plummer In Pro Persona Filed Within The Last 7 Years The Following Representative**

9 **Cases:**

- 10 1. The named appellant in appellate court case number G053836 was “**Law Offices of Mark**
- 11 **B. Plummer PC.**” As to Appellate Court case number G053836, this case number qualifies
- 12 as an adverse determination against “Law Offices of Mark B. Plummer PC” because the
- 13 appellate court affirmed the judgment against “Law Offices of Mark B. Plummer PC” in
- 14 Orange County Superior Court (OCSC) case number 30-2014-00759128. (Court Order
- 15 2/5/2019)
- 16 Court records filed in OCSC case number 30-2014-00759128 (Evid. Code, § 452, subd. (d)).
- 17 OCSC case number 30-2014-00759128 shows the filing of the opinion under Appellate
- 18 Court case number G053836. Under *Garcia*, the definition of litigation in Code of Civil
- 19 Procedure section 391, subdivision (a), includes an appeal.(Court Order 2/5/2019);
- 20 2. As to OCSC case number 30-2014-00759128, the named plaintiff is “**Law Offices of Mark**
- 21 **B. Plummer, PC.**” The court records filed in OCSC case number 30-2014-00759128 (Evid.
- 22 Code, § 452, subd. (d)). OCSC case number 30-2014-00759128 qualifies as an adverse
- 23 determination against “Law Offices of Mark B. Plummer, PC” because it resulted in a
- 24 judgment against “Law Offices of Mark B. Plummer, PC. (Court Order 2/5/2019);
- 25 3. As to OCSC case number 30-2011-00524331, the named plaintiff is “**Law Offices of Mark**
- 26 **B. Plummer, PC.**” The court records filed in OCSC case number 30-2011-00524331 (Evid.
- 27 Code, § 452, subd. (d)). OCSC case number 30-2011-00524331 qualifies as an adverse
- 28 determination against “Law Offices of Mark B. Plummer, PC” because it resulted in a
- dismissal filed on 4-1-14. (Court Order 2/5/2019):



- 1 4. As to OCSC Case No. 30-2019-01069271-CL-CO-CJC was filed May 10, 2019 by **Law**  
2 **Offices of Mark B. Plummer** vs. Mark Sugamele and the case was dismissed by Plaintiff  
3 which qualifies as an adverse determination against “Law Offices of Mark Plummer”.  
4 (NOL SS);
- 5 5. As to OCSC case number 30-2016-00831688, the named plaintiff was “**Mark B.**  
6 **Plummer.**” Under *Garcia*, OCSC case number 30-2016-00831688 qualifies as an adverse  
7 determination against “Mark B. Plummer” because it resulted in a dismissal (Defendant’s  
8 Notice of Lodgment of Exhibits (NOL), Exh. D). (Court Order 2/5/2019);
- 9 6. As to appellate court case number B246940, the named appellant is “**Mark B. Plummer.**”  
10 Appellate Court case number B246940 qualifies as an adverse determination against “Mark  
11 B. Plummer” because it affirmed the judgment against “Mark B. Plummer.” (NOL, Exhibit  
12 HH.) (Court Order 2/5/2019);
- 13 7. As to Los Angeles County Superior Court (LACSC) case number BC479944, the named  
14 Plaintiff is “**Mark B. Plummer.**” LACSC case number BC479944 qualifies as an adverse  
15 determination against “Mark B. Plummer” because the judgment was against “Mark B.  
16 Plummer” as shown by appellate court case number B246940. (NOL, Exhibit HH.) (Court  
17 Order 2/5/2019);
- 18 8. As to OCSC case number 30-2011-00525808, the named plaintiff is “**Mark B. Plummer.**”  
19 OCSC case number 30-2011-00525808 qualifies as an adverse determination against “Mark  
20 B. Plummer” because it resulted in a dismissal filed on 5-15-13 (NOL, Exhibit P). (Court  
21 Order 2/5/2019).
- 22

23 **PLUMMER’S PRO PER CASE DESCRIPTIONS**

- 24 1. **On May 10, 2019** Plaintiff *pro per* Law Offices of Mark B. Plummer filed case 2019-  
25 01069271-CL-CO-CJC Law Offices of Mark B. Plummer vs. Mark Sugamele (NOL SS) for  
26 common counts and shortly thereafter dismissed the action without prejudice.
- 27 2. **On Nov 9, 2017** Plaintiff *pro per* Law Offices of Mark B. Plummer (Mark B. Plummer)  
28 filed appellate case G053836 from Orange County Superior Court (OCSC) Case *Law*

1 *Offices of Mark B Plummer, Pc Vs Bayuk et al (pro per Court caption) for Accounting and*  
2 *Breach of Contract;*

3 3. **On Jan. 25, 2016** Plaintiff pro per Mark B. Plummer filed case Orange County Superior  
4 Court 30-2016-00831688-CU-FR-CJC Plummer Vs. Wells Fargo Bank, N.A. (Plummer pro  
5 per). The FRAUD case was Dismissed, and the action ended adversely for Plummer;

6 4. **On April 29, 2015** Plaintiff pro per Law Offices of Mark B. Plummer (Mark B. Plummer)  
7 filed case *Law Offices of Mark B Plummer, Pc Vs Leonard a Riley- Contract;*

8 5. **On December 02, 2014** Plaintiff pro per Mark B. Plummer filed Orange County Superior  
9 Court case 30-2014-00759128 *Law Offices of Mark B Plummer, Pc vs. Bayuk et al.* Plaintiff  
10 lost case filed for conversion, accounting, and breach of contract. Ultimately, the trial  
11 court dismissed the action and entered judgment in McKeon and Bayuk's favor. It  
12 thereafter granted Defendants' joint motion for attorney fees. (Plummer *pro per*,  
13 Plaintiff and cross-defendant);

14 6. **On December 02, 2014** Plaintiff pro per Mark B. Plummer filed case in Court of Appeals  
15 *Law Offices of Mark B Plummer, Pc Vs Chris W. Bayuk-* Plaintiff lost appellate case;

16 7. **On February 2014** Plaintiff pro per Mark B. Plummer filed case Orange County Superior  
17 Court B246940 (Cal. Ct. App. 2014) (Los Angeles). Plummer v. T.H.E. Ins. Co. CA2/5  
18 (Plaintiff and Appellant-pro per) appeal to SLAPP. Judgement was averse to Plaintiff;

19 8. **On or about February 2013** Plaintiff pro per Mark B. Plummer filed case Orange County  
20 Superior Court 07CC05089 Plummer v. T.H.E. Ins. Co. CA2/5 (pro-per) and he lost the  
21 SLAPP;

22 9. **On or about February 7, 2013** Plaintiff pro per Mark B. Plummer filed case Orange  
23 County Superior Court BC479944 *Plummer v. T.H.E. Insurance Company, Inc. et al. (pro-*  
24 *per)* Conversion, Intentional interference with prospective economical advantage;

25 10. **On November 28, 2011** Plaintiff *pro per* Mark B. Plummer filed case Orange County  
26 Superior Court 30-2011-00525808-CU-CL-CJC entitled *Mark B Plummer vs. Bank of*  
27 *America, N.A.* which ended averse to Plaintiff;

28 11. **On Nov 21, 2011** 30-2011-00524331 *Law Offices of Mark B. Plummer Pc vs. Slobodan*  
*Cuk;* Plaintiff *pro per* case was dismissed with prejudice as to Breach of  
Contract/Warranty<sup>3</sup>.

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<sup>3</sup> See 2 other cases where Plummer filed suit, litigated, and relitigated for this same fee dispute from this same action.

1  
2 **A. “LAW OFFICES OF MARK B. PLUMMER” IS AN ALTER EGO OF MARK B.**  
3 **PLUMMER.**

4 Moving party contends that “Mark B. Plummer” is the alter ego of plaintiff “Law Office of  
5 Mark B. Plummer based on facts including Plummer’s co-mingling of corporate assets and funds,  
6 and essentially using the corporation as a personal “piggy bank”. (Decl. 1/10/2019 Hedy Plummer  
7 ¶¶16, 16) Code of Civil Procedure section 391, subdivision (b), can apply to a corporation that acts  
8 as the alter ego of an individual. (See *Say & Say, Inc. v. Ebershoff* (1993) 20 Cal.App.4th 1759,  
9 1766-1770 and *Hupp v. Solera Oak Valley Greens Association* (2017) 12 Cal.App.5th 1300, 1313.)

10 Mark Plummer conducts business in multiple names and alter egos including “Law Office  
11 of Mark B. Plummer, P.C.” and “Mark B. Plummer, A Professional Corporation.” The inset below  
12 is from the California State Secretary website showing the various corporate names for Plummer.

C2696417	01/13/2005	ACTIVE	LAW OFFICES OF MARK B. PLUMMER, A PROFESSIONAL LAW CORPORATION
C1364255	02/02/1986	FTB SUSPENDED	MARK B. PLUMMER, A PROFESSIONAL CORPORATION

15 "The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party  
16 is using the corporate form unjustly and in derogation of the plaintiff's interests. [Citation.] In  
17 certain circumstances the court will disregard the corporate entity and will hold the individual  
18 shareholders liable for the actions of the corporation: 'As a separate personality of the corporation is  
19 a statutory privilege, it must be used for legitimate business purposes and must not be perverted.  
20 When it is abused it will be disregarded and the corporation looked at as a collection or association  
21 of individuals, so that the corporation [20 Cal. App. 4th 1768] will be liable for acts of the  
22 stockholders or the stockholders liable for acts done in the name of the corporation. *Say & Say, Inc.*  
23 *v. Ebershoff* (1993) 20 Cal.App.4th 1759, 1766-1770

24 Moving party contends that Plaintiff’s conduct and filings meets the finding of alter ego  
25 within the meaning of *Say & Say, Inc. v. Ebershoff* (1993) 20 Cal.App.4th 1759, 1766-1770,  
26 *Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811-812, and Code of Civil Procedure section  
27 391.2. (Decl. James Bohm, Esq. re case 30-2011-00531380 captioned “Law Offices of Mark B.  
28 Plummer, P.C”. “Attorney for Mark B. Plummer”.) (Decl. Alai ¶¶ 3-4 re 30-2018-0100261)

1 Normally, a corporation is a legal person or entity which has a separate existence from that of its  
2 shareholders or officers. The California Supreme Court has noted: "It is fundamental, of course, that  
3 a 'corporation is a distinct legal entity separate from its stockholders and from its officers.'  
4 [Citation.] 'A corporation ... in its corporate ... rights and liabilities ... is as distinct from the persons  
5 composing it, as an incorporated city is from an inhabitant of that city.' [Citations.]" (21 Cal.3d at  
6 pp. 729-730.)

7 However, the corporate entity may be disregarded under certain circumstances. Justice Mosk in  
8 *Mesler v. Bragg Management Co.* (1985) 39 Cal. 3d 290, 300 [216 Cal. Rptr. 443, 702 P.2d 601]  
9 stated: "The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing  
10 party is using the corporate form unjustly and in derogation of the plaintiff's interests. [Citation.]

11 In certain circumstances the court will disregard the corporate entity and will hold the individual  
12 shareholders liable for the actions of the corporation: 'As a separate personality of the corporation is  
13 a statutory privilege, it must be used for legitimate business purposes and must not be perverted.  
14 When it is abused it will be disregarded and the corporation looked at as a collection or association  
15 of individuals, so that the corporation [20 Cal. App. 4th 1768] will be liable for acts of the  
16 stockholders or the stockholders liable for acts done in the name of the corporation.' [Citation.] [¶]  
17 There is no litmus test to determine when the corporate veil will be pierced; rather, the result will  
18 depend on the circumstances of each particular case.

19 There are, nevertheless, two general requirements: '(1) that there be such unity of interest and  
20 ownership that the separate personalities of the corporation and the individual no longer exist and  
21 (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow.'  
22 [Citation.]

23 And 'only a difference in wording is used in stating the same concept where the entity sought to  
24 be held liable is another corporation instead of an individual.' [Citation.]" (Id. at p. 300.) Justice  
25 Mosk concluded: "The essence of the alter ego doctrine is that justice be done. 'What the formula  
26 comes down to, once shorn of verbiage about control, instrumentality, agency, and corporate entity,  
27 is that liability is imposed to reach an equitable result.' [Citation.] Thus the corporate form will be  
28 disregarded only in narrowly defined circumstances and only when the ends of justice so require."  
(Id. at p. 301.)

26 **B. PLAINTIFF REPEATEDLY RELITIGATES IN PRO PER NEW LAWSUITS**  
27 **AGAINST THE SAME DEFENDANTS.**

1 Plaintiff is also the type of vexatious litigant who, after a litigation has been finally determined  
2 against him, repeatedly re-litigates in pro per against the same defendant(s). (C.C.P. § 391(b)(2).)

3 In *Plummer vs. Bayuk* and related actions, Plummer continued to litigate and relitigate the same  
4 matter baselessly in more than five actions all stemming from the same fee dispute. The Court of  
5 Appeals issued an opinion that Plummer was doing the same, and affirmed judgment resulting in  
6 Plaintiff paying Defendants and their attorney fees. (See Decl. Bayuk ¶ generally)

7 In fact, Plaintiff Plummer filed the following based on one simple cause of action involving a  
8 family law matter of client Dr. Cuk: (RJN: Bayuk actions)

9 (1) Legal Malpractice suit against Dr. Cuk's attorney

10 (2) Collection case #1 alleging Fraud against Dr. Cuk;

11 (3) Collection case #2 alleging Fraud against Dr. Cuk and his attorneys Mr. Bayuk and  
12 Mckeon;

13 (4) Collection case #3 against Dr. Cuk in violation of a settlement agreement Plummer had  
14 signed where Plummer waived all further fees from Dr. Cuk;

15 (5) Insurance bad faith against the carrier; and finally, a

16 (6) Court of Appeals case against Bayuk *et al*, which ended with another appellate opinion  
17 adverse to Plummer. (Decl. Bayuk ¶ generally)

18 **1. Plaintiff Has Filed all the Referenced Lawsuits as *Pro Per*.**

19 There can be no question that Plaintiff fulfils the criteria of a *pro persona* litigant. Plaintiff Law  
20 Offices of Mark B. Plummer has no additional attorneys or associates. The only attorney is Mark B.  
21 Plummer. The only corporate officers are Mark B. Plummer.

22 The Court of Appeals has ruled and published in its opinion Plaintiff's party role in *pro persona*.  
23 The Superior Court in 30-2018-0100261 has in Minute Orders that Plaintiff Plummer is in *pro*  
24 *persona*. (RJN generally all cases listed) There is no case law which in any way controverts the fact  
25 that Plaintiff Plummer as an attorney litigating in pro per is subject to Code of Civil Procedure §  
26 391.

27 **2. Plaintiff Is A Seasoned Attorney Appearing in Pro Persona Who Can Not Claim A Lay**  
28 **Person's Lack of Sophistication.**

Plaintiff is a seasoned and knowledgeable legal person who cannot hide behind the  
traditional lay person ignorance. It is unlikely if not impossible that Plaintiff is in any manner is

1 unaware of the rules of pleadings, relitigating the same matters repeatedly, and filing vexatious  
2 complaints. Therefore, his vexatious pro persona pleadings are with scienter and filed in bad faith.

3 **C. PLUMMER IS ACTIVELY FILING NEW FRIVOLOUS LAWSUITS WITHIN THE**  
4 **MEANING OF § 391; THEREFORE, HIS VEXATIOUS CONDUCT IS ONGOING.**

5 **1. Plaintiff Pro Persona Has Filed Additional Cases Which Are Expected More Likely Than**  
6 **Not to End Adversely to His Position.**

7 Plaintiff filed the following cases which while are pending final judgment, are believed to  
8 likely end adversely to Plaintiff. Should the court deem Plaintiff a vexatious litigant, opposing  
9 defendants would be given the opportunity to seek security of costs pursuant to Code of Civil  
10 Procedure § 391.1, thereby mitigating the prejudice and harm of likely false prosecuted by  
11 vexatious Plaintiff Plummer. These cases do not account for the additional pro persona cases  
12 Plaintiff has filed in Federal and other State Courts which are not listed here.

- 12 (1) **On May 10, 2019** Plaintiff *pro per* Law Offices of Mark Plummer filed case No. 30-2019-  
13 01069271-CL-CO-CJC Law Offices of Mark B. Plummer vs. Mark Sugamele. (NOL SS)
- 14 (2) **On April 22, 2019** Plaintiff *pro per* Mark B. Plummer filed case Orange County Superior  
15 Court 30-20190106525-CU-CO-CJC, a contract case. (NOL. QQ)
- 16 (3) **On August 20, 2018** Plaintiff *pro per* Mark B. Plummer filed case Orange County Superior  
17 Court 30-2018-01013263-CU-CO-CJC, a contract case.
- 18 (4) **On August 22, 2018** Plaintiff *pro per* Mark B. Plummer filed case Orange County Superior  
19 Court 30-2018-01014163-CU-CO-CJC, a purported “FRAUD” case. (NOL. NN)
- 20 (5) **On June 27, 2018** Plaintiff *pro per* Mark B. Plummer filed case Orange County Superior  
21 Court 30-2018-001002061-CU-CO-CJC, a purported “FRAUD” case.

22 **D. PLAINTIFF FILES FRIVOLOUS MOTIONS AND RELITIGATES THE SAME**  
23 **ISSUES WHICH HAVE BEEN RULED ADVERSELY TO HIM.**

- 24 1. Mark B. Plummer and Law Offices of Mark B. Plummer filed a vexatious and meritless  
25 Anti-SLAPP motion in this action which was summarily denied on 5/7/2019 by this  
26 court. (ROA No. 485) (Decl. Alai ¶¶4-6)
- 27 2. On May 10, 2019 Mark B. Plummer and Law Offices of Mark B. Plummer filed an  
28 appeal in the court of appeals for the denied Anti-SLAPP motion. That case number is

- 1 G05772, as filed by Plaintiff in the Fourth Division Court of Appeals. (ROA No. 489)
- 2 (Decl. Alai ¶¶4-6)
- 3 3. Mark B. Plummer and Law Offices of Mark B. Plummer routinely file frivolous and
- 4 baseless Anti-SLAPP motions in many lawsuits, and as was done here, those motions
- 5 have always ended adversely to Plummer and Law Offices of Mark Plummer. (Decl. Alai
- 6 ¶¶4-6) ( NOL Ex. THE Insurance Company)
- 7 4. **On February 2014** Plaintiff pro per Mark B. Plummer filed case Orange County Superior
- 8 Court B246940 (Cal. Ct. App. 2014) (Los Angeles). Plummer v. T.H.E. Ins. Co. CA2/5
- 9 (Plaintiff and Appellant-pro per) appeal to SLAPP. Judgement was averse to Plaintiff;
- 10 5. **On or about February 2013** Plaintiff pro per Mark B. Plummer filed case Orange County
- 11 Superior Court 07CC05089 Plummer v. T.H.E. Ins. Co. CA2/5 (pro-per) and he lost the
- 12 SLAPP;
- 13 6. **On August 31, 2011** Plaintiff pro per Mark Plummer filed a meritless and harassing
- 14 motion for contempt which was denied with prejudice. (Case. No. 04D010961) (Decl.
- 15 Hedy Plummer ¶¶4-6)
- 16 7. **On Oct. 25, 2011** Plaintiff pro per Mark Plummer relitigated and filed a vexatious
- 17 motion for contempt which was denied. (Case No. 04D010961). (NOL II and JJ) (Decl.
- 18 Hedy Plummer ¶¶4-7)
- 19 8. In Plummer vs. Bohm, Plummer relitigated an Anti-SLAPP that was ruled against him,
- 20 and also had a court of appeals opinion which affirmed judgment of dismissal of his
- 21 frivolous lawsuit. (Decl. Bohm, Esq. ¶¶ 3-4)

**E. PLAINTIFF HABITUALLY ALLEGES “FRAUD” WITH BAD FAITH INTENT TO EXTRACT A SETTLEMENT AND TO HARASS, VEX, AND LABEL LITIGANTS AS “FRAUDS” AND “FRAUDSTERS”.**

**1. Plaintiff Is a Danger to The Public by His Baseless Purported “FRAUD” Case Filings.**

Plummer has a pattern of falsely and vexatiously alleging “FRAUD” without any basis in nearly half of cases he files pro persona. (Decl. ¶ Bayuk ¶3) Plummer freely uses “FRAUDSTER” as name calling in his complaints, pleadings, and declarations. without basis, like his violent conduct which resulted in him being discharged from a Court ordered mental health facility. (See Judicial Notice

1 FL Pleading 2013). CD Plummer has filed cases as the Plaintiff in many cases, freely and baselessly  
2 alleging “FRAUD” where the courts ultimately rule that none exists. (See Req. Judicial Notice-  
3 generally for additional cases)

- 4 • **On Jan. 25, 2016** Plaintiff pro per Mark B. Plummer filed case Orange County Superior  
5 Court 30-2016-00831688-CU-FR-CJC Plummer Vs. Wells Fargo Bank, N.A. The  
6 **FRAUD** case was Dismissed, and the action ended adversely for Plummer.
- 7 • **On May 9, 2016** Plaintiff pro per Mark B. Plummer filed case Orange County Superior  
8 Court case 30-2016-00850952-CL-BC-CJC. Plaintiff plead “**FRAUD**” by Law Offices of  
9 Mark B. Plummer Vs. Slobodan Cuk (Plaintiff’s legal client). Plaintiff failed to serve the  
10 client, thereby obtaining Default judgment for Plummer \$14, 665 on 2/28/18. However, this  
11 was a relitigating of prior claims adjudicated in case Mark B. Plummer Pc vs. Slobodan Cuk  
12 dated Nov 21, 2011 which was dismissed with prejudice as to Breach of  
13 Contract/Warranty, *and* Plummer vs. Bayuk, which ended adversely to Plummer.
- 14 • **On June 27, 2018** Plaintiff pro per Mark B. Plummer filed case Orange County Superior  
15 Court 30-2018-01001261-CU-CO-CJC, a purported “**FRAUD**” case against his clients  
16 claiming that Plummer’s legal representation was based on a misrepresentation of experts  
17 being “retained” whereas Plummer claimed the experts were not by his legal definition  
18 retained for trial.
- 19 • **On August 22, 2018** Plaintiff pro per Mark B. Plummer filed case Orange County Superior  
20 Court 30-2018-01014163-CU-CO-CJC, a purported “**FRAUD**” case against another  
21 healthcare provider claiming that the provider’s medical lien for services was fraudulent,  
22 whereas Plummer failed to remit payment from judgment on the medical lien.

20 2. **Plaintiff Has Been Repeatedly Sanctioned for Bad Acts and Bad Conduct in Multiple**  
21 **Venues.**

22 • **On Nov 19, 2012** Plaintiff Mark B. Plummer filed case Orange County Superior Court  
23 filed case 30-2012-00613521-CU-OE-CJC Newchurch v. ADP Dealer Services, Inc.,  
24 which Plummer lost the employment case and Plummer was sanctioned for bad conduct \$10,000.

- 25 • **On October 11, 2017** Plummer was also professionally admonished repeatedly by the  
26 Court of appeals for misstatements, untruths, and citing phantom case law in Jones vs.  
27 Feldsott CA4/3 G053974 (Super. Ct. No. 30-2014-00758872):

28 The Court of Appeals:



1           *“Finally, we cannot overlook the numerous and egregious violations of the*  
2           *California Rules of Court and the principles of appellate practice committed by Jones’*  
3           *Counsel [Mark B. Plummer], beginning with an opening brief that exceeded the word-count*  
4           *limit of rule 8.204(c)(1) by over 1,500 words. Rule 8.1115 was also ignored. In the reply*  
5           *brief, counsel repeatedly referred to a fictional request for judicial notice, violating the rule*  
6           *that limits assertions of fact to matters in the record. (See Liberty National Enterprises, L.P.*  
7           *v. Chicago Title Ins. Co. (2011) 194 Cal.App.4th 839, 845-846; Dominguez v. Financial*  
8           *Indemnity Co. (2010) 183 Cal.App.4th 388, 392, fn. 2.)*

7           *The reply brief includes other references to factual matters not in the record.*  
8           *Far more serious, however, were the repeated misrepresentations of the*  
9           *cases cited to support appellant’s arguments. For example, counsel frequently asserted*  
10           *that the fee-waiver cases cited in the opening brief approved of “disgorgement” of*  
11           *attorney fees as a remedy for a conflict-of-interest ethical violation.”*

- 11           • **On July 6, 2018** Plaintiff Mark B. Plummer’s Complaint in 30-2018-01002061 was Court  
12           ordered to be placed *under seal* for Plaintiff’s violation of Bus. and Professions Code §  
13           code 6068 (e), attorney client privilege material, the State Bar Act, material in violation of  
14           two prior court orders, as well as unauthorized release of confidential client financial  
15           information unrelated to the litigation.
- 15           • **On September 17, 2018** Plaintiff Mark B. Plummer’s four pleadings in 30-2018-01002061  
16           were Court ordered to be all placed under seal for violation of the Court’s July 6, 2018  
17           Order.
- 17           • **On June 25, 2019** Plaintiff Law Offices of Mark B. Plummer was sanctioned by the court  
18           for \$4000 in 30-2018-01014163for discovery abuse.

19   **IV. LEGAL STATUTES**

20   **1. Vexatious Litigant Properly Defines This Plaintiff.**

21           Code of Civil Procedure section 391(b) defines a vexatious litigant as a person who does any  
22           of the following:

- 23           • In the immediately preceding seven-year period has commenced, prosecuted, or  
24           maintained in propria persona at least five litigations other than in a small claims  
25           court that have been (i) finally determined adversely to the person or (ii)  
26           unjustifiably permitted to remain pending at least two years without having been  
27           brought to trial or hearing;
- 27           • After a litigation has been finally determined against the person, repeatedly  
28           relitigates or attempts to relitigate, in propria persona, either (i) the validity of the  
              determination against the same defendant or defendants as to whom the litigation  
              was finally determined or (ii) the cause of action, claim, controversy, or any of the

1 issues of fact or law, determined or concluded by the final determination against the  
2 same defendant or defendants as to whom the litigation was finally determined;

- 3 • In any litigation while acting in propria persona, repeatedly files unmeritorious  
4 motions, pleadings, or other papers, conducts unnecessary discovery, or engages in  
5 other tactics that are frivolous or solely intended to cause unnecessary delay;
- 6 • Has previously been declared to be a vexatious litigant by any state or federal court  
of record in any action or proceeding based upon the same or substantially similar  
facts, transaction, or occurrence.

7 2. **Apposite Case Law Supports Deeming Plaintiff Plummer a Vexatious Litigant.**

8 Pursuant to CCP §391(b), there are three discrete ways in which a self-represented  
9 individual may be declared vexatious:

- 10 a. **Commencing and/or maintaining** at least five prior in pro per suits in the immediately  
11 preceding seven-year period that have been (i) finally determined adversely to the person  
12 or (ii) unjustifiably permitted to remain pending at least two years without having been  
13 brought to trial or hearing. “Finally determined” means that all avenues for direct  
14 review (appeal) have been exhausted or the time for appeal has expired. *Fink v. Shemtov*  
15 (2010) 180 Cal.App.4th 1160, 1173; *Childs v. PaineWebber Inc.* (1994) 29 Cal.App.4th  
16 982, 994. Voluntarily dismissing the action counts as an adverse decision. *Tokerud v.*  
*Capitol Bank Sacramento* (1995) 38 Cal.App.4th 775, 779.
- 17 b. **Relitigating as an in pro per** on more than two occasions either (i) the validity of an  
18 earlier final determination against the same defendant or (ii) any of the claims or issues  
19 reasonably subsumed within the earlier actions. *Holcomb v. United States Bank Nat'l*  
*Ass'n* (2005) 129 Cal.App.4th 1494, 1504. There is a split of authority whether the  
20 relitigation must be in the same proceeding. Compare *Camerado Ins. Agency, Inc. v.*  
*Superior Court* (1993) 12 Cal.App.4th 838 [same action], with *Homcolb, supra* [not  
21 necessarily].
- 22 c. **Repeatedly filing as an in pro per** unmeritorious motions and papers, or otherwise  
23 engaging in tactics that are frivolous or solely intended to cause unnecessary delay. It  
24 falls within the trial court’s discretion to determine what qualifies as “repeated” and  
25 “unmeritorious” motions/tacits. See *Morton v. Wagner* (2007) 156 Cal.App.4th 963,  
26 971-972 [dozens of motions in a single action]. Multiple requests for the same relief or  
27 for reconsideration of prior rulings might qualify. See *Golin v. Allenby* (2010) 190  
28 Cal.App.4th 616, 632.

1           **d. The Term “Litigation” is Broadly Defined.**

2           *Garcia v. Lacey (Garcia)* (2014) 231 Cal.App.4th 402, 406, 407, states, “A court may declare a  
3 person to be a vexatious litigant who, in ‘the immediately preceding seven-year period has  
4 commenced, prosecuted, or maintained in propria persona at least five litigations other than in a  
5 small claims court that have been . . . finally determined adversely to the person. . . .’ [Citation.]  
6 The term ‘ “[l]itigation” ’ is defined broadly as ‘any civil action or proceeding, commenced,  
7 maintained or pending in any state or federal court.’ [Citation.]

8           A litigation includes an appeal or civil writ proceeding filed in an appellate court.[Citations.] A  
9 litigation is finally determined adversely to a plaintiff if he does not win the action or proceeding he  
10 began, including cases that are voluntarily dismissed by a plaintiff. [Citations.] (Footnotes 4 and 5  
11 omitted.) “An action is counted as being within the ‘ “immediately preceding seven-year period” ’  
12 so long as it was filed or maintained during that period. [Citation.] The seven-year period is  
13 measured as of the time the motion is filed. [Citation.] (Id., at p. 406, footnote 4.)

12           **V. LEGAL ARGUMENT**

13           **1. Just Cause Exists to Deem Plaintiff A Vexatious Litigant, Which the Court Is**  
14           **Authorized to Do.**

15           “The purpose of the vexatious litigant statutes ‘is to address the problem created by the  
16 persistent and obsessive litigant who constantly has pending a number of groundless actions and  
17 whose conduct causes serious financial results to the unfortunate objects of his or her attacks and  
18 places an unreasonable burden on the courts.’” (*In re Kinney* (2011) 201 Cal.App.4th 951, 957-  
19 958.) “The constant suer for himself becomes a serious problem to others than the defendant he  
20 dogs. By clogging court calendars, he causes real detriment to those who have legitimate  
21 controversies to be determined and to the taxpayers who must provide the courts.” (*Taliaferro v.*  
*Hoogs* (1965) 237 Cal.App.2d 73, 74.)

22           **2. In The Interest Of Justice Plaintiff Should Be Deemed Vexatious.**

23           Plaintiff has seemingly endless resources in filing meritless and vexatious complaints and  
24 pleadings. Plaintiff’s alter ego Law office of Mark Plummer make it possible for Plaintiff to file a  
25 multitude of vexatious complaint For example, a motion or pleading is “frivolous” if it is “so  
26 devoid of merit and be so frivolous that they can be described as a ““flagrant abuse of the system,””  
27 have ‘no reasonable probability of success,’ lack ‘reasonable or probable cause or excuse’ and are  
28 clearly meant to ““abuse the processes of the courts and to harass the adverse party than other  
litigants.”” [Citation.]” (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 972.) Continually

1 pleading the same rejected causes of action – indeed, continuing to file new cases at all — was an  
2 entirely frivolous tactic by Plaintiff. As shown supra in the case of *Plummer vs. Bayuk*, Plummer  
3 litigated and relitigated the same frivolous causes of action repeatedly in the trial court, court of  
4 appeals, and then again in the trial court through two separate and additional actions- all of which  
5 ended adversely to Plaintiff’s position.

6 **3. The Court Is Authorized to Deem This Plaintiff A Vexatious Litigant.**

7 Plaintiff’s litigation conduct should be in conformity with the laws of the State, as well  
8 as in good faith. However, this Plaintiff has acted in bad faith and done so repeatedly. Thus, in  
9 the interests of justice, Plaintiff should be deemed vexatious.

10 **VI. CODE OF CIVIL PROCEDURE § 391.6 STAYS THIS ENTIRE ACTION PENDING**  
**ADJUDICATION OF THIS MOTION.**

11 In relevant parts, Code of Civil Procedure § 391.6 states: “when a motion pursuant to Section  
12 391.1 is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10  
13 days after the motion shall have been denied, or if granted, until 10 days after the required security  
14 has been furnished and the moving defendant given written notice thereof. When a motion  
15 pursuant to Section 391.1 is made at any time thereafter, the litigation shall be stayed for such  
16 period after the denial of the motion or the furnishing of the required security as the court shall  
17 determine.”

18 **VII. CONCLUSION**

19 Plaintiff Law Offices of Mark B. Plummer, PC and its *alter ego* Mark B. Plummer meet by  
20 all criteria Code of Civil Procedure §391 for a vexatious litigant. Pursuant to Code of Civil  
21 Procedure § 391.6 this case is stayed pending judicial determination of this motion.

22 Plaintiff Mark Plummer appearing in alter ego Law Office of Mark Plummer is a high  
23 frequency, truculent litigant who exceeds the threshold of Code of Civil Procedure § 391, of five (5)  
24 cases in seven (7) years with adverse rulings to Plaintiff.

25 Therefore, in the interests of justice, and in conformity with the laws of this State Plaintiff  
26 Law Offices of Mark B. Plummer and Mark B. Plummer should be deemed vexatious litigant(s),  
27 and the appropriate security ordered to be posted by Plaintiff in this action.

28 DATED: June 26, 2019



1 **DECLARATION OF JAMES BOHM**

2 I make the following declaration based on my personal knowledge.

- 3 1. I am a licensed attorney admitted to appear before all the courts of the State of  
4 California, the United States District Courts, and the U.S. Court of Appeals, Ninth  
5 Circuit.
- 6 2. I am a founding partner at Bohm Wildish & Matsen, LLP. I make the following  
7 statements and would be able to competently testify to the same.
- 8 3. Mark B. Plummer is licensed attorney who in *pro persona* brought a frivolous and  
9 statutorily unsupported action against me personally, which was ruled adverse to him  
10 by Superior Court (No. BC479944 Los Angeles County Super. Ct.)
- 11 4. Mark B. Plummer also in *pro persona* brought a further frivolous and unsupported  
12 action against me in the Court of Appeals in the Second Appellate District which was  
13 also ruled adverse to him by the appellate court (No. B246940 Los Angeles County  
14 Super. Ct.)
- 15 5. To the best of my recollection, Plaintiff Mark B. Plummer was court ordered to remit  
16 to me or my firm in excess of \$20,000 in attorney fees for his filing of a frivolous  
17 complaint and SLAPP.
- 18 6. In my opinion and through observations, Mark B. Plummer acted vexatiously and  
19 irrationally.

20 I swear under penalty of perjury that the foregoing is true and correct and that this  
21 declaration was signed on January 9, 2019 in Costa Mesa, California.

22  
23   
24 JAMES G. BOHM

# DDS

ATTORNEY • COPY • MESSENGER  
S E R V I C E S



LA: 213-482-5555  
OC: 714-662-5555  
SD: 619-263-5555  
Statewide: 888-512-9990  
www.ddslegal.com

CLIENT #: 6296  
CLIENT: Bohm, Matsen, LLP  
CALLER: Lindsay Rivara (714) 384-6500  
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FROM: Los Angeles Superior - (MAIN) Central  
111 N HILL ST  
LOS ANGELES, CA 90012

TO: Bohm, Matsen, LLP  
695 TOWN CENTER DR STE 700  
COSTA MESA, CA 92626

**TRACKING NUMBER:**  
2852928

"Research" On Demand Delivery

COMPLETE BY: 6/15/15 16:44

CASE NUMBER:  
BC479944

REFERENCE(S):

Plummer v. insurance co

Mark B. Plummer v. The Insurance Company  
EMAIL:

Irivara@bohmwildish.com

**DOCUMENTS / INSTRUCTIONS:**

please pick up the documents listed above. \*\* Research (Obtain Non-Certified, Plain Copies) \*  
BC479944\*  
Plummer v. insurance co  
Mark B. Plummer v. The Insurance Company Inc  
8/20/2012 Request for Judicial Notice (BY DEFENDANTS BOHM AND BOHM, MATSEN, KEGEL &  
AGUILERA IN SUPPORT OF DEFENDANTS' MOTION UNDER CODE OF CIVIL PROCEDURE SECTION  
425.16 )  
Filed by Attorney for Defl/Respnt



92626-7187



X-0006-D2852928

WAIT/ RESEARCH TIME: \_\_\_\_\_ ADVANCED FEE: \_\_\_\_\_ CHECK #: \_\_\_\_\_

DDS STATUS: \_\_\_\_\_

COMPLETION DATE: \_\_\_\_\_ RECEIVED BY: \_\_\_\_\_

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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES  
**AUG 16 2012**  
JOHNA CLARKE, CLERK  
BY [Signature] Deputy

1 **LEWIS BRISBOIS DISGAARD & SMITH LLP**  
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3 **E-Mail: lape@lbbbslaw.com**  
4 **650 Town Center Drive, Suite 1400**  
5 **Costa Mesa, California 92626**  
6 **Telephone: 714.545.9200**  
7 **Facsimile: 714.850.1030**

8 Attorneys for Defendants, James G. Bohm and  
9 Bohm, Matsen, Kegel & Aguilera

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 **MARK B. PLUMMER,**

14 **Plaintiff,**

15 vs.

16 **T.H.E. INSURANCE COMPANY, INC.,**  
17 **GUY R. GRUPPIE, MURCHISON &**  
18 **CUMMING, LLP, JAMES G. BOHM,**  
19 **BOHM, MATSON, KEGEL & AGUILERA**  
20 **and DOES 1 through 100, inclusive,**

21 **Defendants.**

22 **CASE NO. BC 479944 BY FAX**

23 **NOTICE OF MOTION AND SPECIAL**  
24 **MOTION TO STRIKE PLAINTIFF'S**  
25 **FIRST AMENDED COMPLAINT**  
26 **AGAINST DEFENDANTS JAMES BOHM**  
27 **AND BOHM, MATSEN, KEGEL &**  
28 **AGUILERA; NOTICE OF REQUEST FOR**  
**REASONABLE ATTORNEY'S FEES IN**  
**THE SUM OF \$6,400 [CCP §425.16] PLUS**  
**COSTS; DECLARATIONS OF GARY M.**  
**LAPE AND JAMES G. BOHM [Filed with**  
**Proposed Order]**

29 **Date: October 19, 2012**

30 **Time: 8:30 a.m.**

31 **Dept.: 48**

32 [Assigned for All Purposes to:  
33 The Hon. Elizabeth Allen White, Dept. 48]

34 **Action Filed: May 11, 2012**

35 **Trial Date: None Set**

36 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

37 **PLEASE TAKE NOTICE that on October 19, 2012 at 8:30 a.m., or as soon thereafter,**

38 **the matter may be heard in Department 48 of the above-entitled court, defendants James G. Bohm**  
**and Bohm, Matsen, Kegel & Aguilera, LLP (erroneously named in the caption as "Bohm, Maston**

4831-6755-0224.1

**NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT**  
**AGAINST DEFENDANTS JAMES BOHM AND BOHM, MATSEN, KEGEL & AGUILERA; NOTICE OF**  
**REQUEST FOR REASONABLE ATTORNEY'S FEES IN THE SUM OF \$6,400 [CCP §425.16] PLUS COSTS**  
**DECLARATIONS OF GARY M. LAPE AND JAMES G. BOHM**

CIT/CASE: BC479944 LEA/KEF#:  
RECEIVED: 08/16/12 14:25:02 PM  
DATE PAID: 08/16/12 14:25:02 PM  
PAYMENT: 570.00  
RECEIVED: 08/16/12 14:25:02 PM  
879.4

**LEWIS**  
**BRISBOIS**  
**DISGAARD**  
**& SMITH LLP**




1 (sic), Kegel & Aguilera") shall, and hereby do, specially move to strike plaintiff's complaint, and  
2 each purported cause of action against them, pursuant to the provisions of Code of Civil Procedure  
3 section 425.16, on the grounds that each cause of action purportedly pleaded by plaintiff Plummer  
4 against these defendants arise out of the acts of these defendants in furtherance of their right of  
5 petition or free speech under the United States Constitution or the California Constitution in  
6 connection with a public issue, and plaintiff does not and cannot establish that there is a  
7 probability that he will prevail on either claim.

8 PLEASE TAKE FURTHER NOPTICE that defendants attempted to set this motion for  
9 hearing within 30 days of its filing, nut were advised by the Clerk of Department 48 that the  
10 docket condition of the court would not permit a hearing prior to October 19, 2012.

11 PLEASE TAKE FURTHER NOTICE that, pursuant to Code of Civil Procedure section  
12 425.16, subd.(c)(1), moving defendants also request attorney's fees in the sum of \$6,400, and  
13 costs in the sum of \$930.

14 This motion will be made and based upon this notice of motion and motion, Code of Civil  
15 Procedure section 425.16, the accompanying memorandum of points and authorities, the  
16 declarations of Gary M. Lape and James G. Bohm, and upon such other and further material as  
17 this court may consider in conformance with the California Rules of Court and this Court's local  
18 rules.

19 DATED: August 16, 2012 LEWIS BRISBOIS BISGAARD & SMITH LLP

20  
21 By:   
22 Gary M. Lape  
23 Attorneys for Defendants, James Bohm and Bohm,  
24 Matsen, Kegel & Aguilera  
25  
26  
27

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

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4831-6755-0224.1

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14	<i>Lafayette Morehouse, Inc. v. Chronicle Publ. Co.</i> (1995) 37 Cal.App.4th 855.....	3
15	<i>Matson v. Dvorak</i> (1995) 40 Cal.App.4th 539.....	3
16	<i>Navellier v. Sletten</i> (2002) 29 Cal.4th 82 .....	4, 5
17	<i>Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss &amp; Karma, Inc.,</i>	
18	(1986) 42 Cal.3d 1157.....	7, 8
19	<i>Pacific Loan Management Corp. v. Sup. Ct.</i> (1987) 196 Cal.App.3d 1485.....	7, 11
20	<i>Roberts v. Los Angeles City Bar Assn.</i> (2003) 105 Cal.App.4th 604 .....	4
21	<i>Rohde v. Wolf</i> (2007) 154 Cal.App.4th 28 .....	3
22	<i>Rothman v. Jackson</i> (1996) 49 Cal.App.4th 1134.....	11
23	<i>Rubin v. Green</i> (1993) 4 Cal.4th 1187 .....	8
24	<i>Rusheen v. Cohen</i> (2006) 37 Cal.4th 1048.....	3, 6
25	<i>Shopoff &amp; Cavallo LLP v. Hyon</i> (2008) 167 Cal.App.4th 1489 .....	9, 10
26	<i>Silberg v. Anderson</i> (1990) 50 Cal.3d 205 .....	8, 11
27	<i>Simonian v. Patterson</i> (1994) 27 Cal.App.4th 773 .....	9

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1	<i>Sipple v. Foundation for National Progress</i> (1999) 71 Cal.App.4th 226 .....	3
2	<i>Spellens v. Spellens</i> (1957) 49 Cal.2d 210 .....	7
3	<i>Youst v. Longo</i> (1987) 43 Cal.3d 64.....	10
4	Federal Cases	
5	<i>Visto Corp. v. Sprogit Technologies, Inc.</i> (N.D. Cal. 2005) 360 F.Supp.2d 1064.....	10
6	<u>Statutes</u>	
7	Civil Code § 47 .....	8, 12
8	Civil Code § 47(b).....	8
9	Code Civ. Proc. § 425.16 .....	1, 3, 4, 5
10	Code Civ. Proc. § 425.16(a).....	3
11	Code Civ. Proc. § 425.16(b)(1).....	3, 4
12	Code of Civil Procedure § 425.16(c) .....	1
13	Code of Civil Procedure § 425.16(e) .....	4
14	Code of Civ. Proc. §425.16(e)(1).....	5

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NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT AGAINST DEFENDANT'S JAMES BOHM AND BOHM, MATSEN, KEGEL & AGUILERA; NOTICE OF REQUEST FOR REASONABLE ATTORNEY'S FEES IN THE SUM OF \$6,400 [CCP §425.16] PLUS COSTS; DECLARATIONS OF GARY M. LAPE AND JAMES G. BOHM

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Defendants, James G. Bohm ("Bohm") and Bohm, Matsen, Kegel & Aguilera ("BMKA")  
4 (collectively "Defendants"), bring this Special Motion to Strike the First Amended Complaint of  
5 Plaintiff, Mark B. Plummer ("Plaintiff"). Plaintiff's First and Second Causes of Action, for  
6 conversion and interference with an economic advantage, respectively, against the Defendants,  
7 should be stricken because they target the Defendants' constitutionally protected petitioning and  
8 speech activity and are both legally defective and unsupported by the evidence.

9 The gravamen of the First and Second Causes of Action against Defendants revolves  
10 around constitutionally protected petitioning and speech activity—specifically, Defendants' filing  
11 of an interpleader action to determine the rightful owner of received funds. Plaintiff bases his  
12 claims upon allegations that defendants "abuse[d] the process of the Court for the purpose of  
13 further depriving Plaintiff of the money which belonged to him" and "proceeded to file a meritless  
14 interpleader action while keeping the money 'unattachable' in their Attorney-Client Trust Account  
15 for the purpose of denying Plaintiff access to funds which belonged to him." [FAC, pp. 4-5, ¶¶ 19-  
16 20.] In essence, Plaintiff is claiming that Defendants' use of the Court system amounts to a  
17 "conversion" of the at-issue funds and constitutes an intentional interference with his prospective  
18 economic advantage. *Nonsense*. All of this conduct is constitutionally protected and cannot form  
19 the basis of a complaint absent a showing of a probability of success on the merits, which Plaintiff  
20 cannot make.

21 The anti-SLAPP statute, which is expressly designed to protect petitioning activity and  
22 participation in free speech, provides the Defendants with an expedited means to challenge claims  
23 that chill or punish their exercise of constitutional rights. *See* Code of Civ. Proc. § 425.16. Since  
24 Plaintiff's claims are clearly based on constitutionally protected petitioning and speech activity,  
25 the claims must be stricken. Moreover, under Code of Civil Procedure § 425.16(c), the Defendants  
26 should be awarded their attorney's fees and costs for being forced to bring this anti-SLAPP  
27 motion. Accordingly, the Defendants request that this Court enter its order requiring Plummer to

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NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT  
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1 pay the sum of \$6,400 to the Defendants as reasonable attorney's fees, plus \$930 in costs.

2 **II. STATEMENT OF PERTINENT FACTS**

3 **A. The Allegations Of The First Amended Complaint**

4 According to Plaintiff's First Amended Complaint, Plaintiff allegedly obtained a lien for  
5 fees and costs, prior to March 7, 2003, for "any recovery by the Acosta Family" in an underlying  
6 lawsuit. [FAC, ¶10.] Following a settlement of the Acosta case, defendant T.H.E. Insurance  
7 Company allegedly issued two settlement checks. [FAC, ¶12.] Significantly, Plaintiff contends  
8 that he demanded that T.H.E. Insurance Company and two other defendants pay him "or  
9 alternatively, deliver a check made payable to all claimants ... so that it could be placed in a joint,  
10 interest bearing trust account ... pending the recording of a judgment." [FAC, ¶16.] Thereafter,  
11 Defendants T.H.E. Insurance Company, Murchison & Cumming, LLP, and Guy R. Gruppie  
12 purportedly "refused to turn over the \$29,025 to Plaintiff, either individually or jointly with the  
13 other claimants", but instead made "a replacement check which Plaintiff as payee and only named  
14 counsel for the losing party as a payee." [FAC, ¶¶17-19.]

15 The central theme of Plaintiff's claims against the Defendants is that they embarked on a  
16 campaign to "abuse the process of the Court for the purpose of further depriving Plaintiff of the  
17 money which belonged to him"—namely, by filing an interpleader action. [FAC, ¶¶19-20.] In fact,  
18 *all* of Plaintiff's allegations against the Defendants are squarely aimed at protected petitioning  
19 activities and speech. Indeed, the interpleader action—to which the First Amended Complaint  
20 devotes several paragraphs—is decried as a "meritless interpleader action", an "intentional[  
21 interfere] with Plaintiff's right to the immediate possession or control of the undistributed  
22 \$29,025.00", and amounts to "abusing the process of the court." [See FAC, ¶¶20, 25, and 33.]

23 The Complaint also presumably attributes vicarious liability for all of these actions to the  
24 individual defendant, Bohm. Without any specifics, Plaintiff claims that Bohm "at all times  
25 relevant, possessed and controlled funds belonging to Plaintiff" and conspired to deprive him of  
26 the funds by filing the "meritless" interpleader action. [See FAC ¶¶5, 19 and 20.] Based on these  
27 allegations, Plaintiff purports to state claims for (1) conversion and (2) an intentional interference

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1 with an economic advantage. Since the First Amended Complaint expressly bases these causes of  
2 action on Defendants' interpleader action, these claims are clearly subject to California's anti-  
3 SLAPP statute because they systematically and exclusively target the Defendants' right of petition  
4 and free speech. [See Compl., ¶¶19-25, 28-30, 32-33.] As discussed below, since Plaintiff cannot  
5 meet his heavy burden of proving a likelihood of success on the merits of his claims, these causes  
6 of action should be stricken from his First Amended Complaint.

### 7 III. LEGAL STANDARD

8 Due to an increase in nonmeritorious actions that chill or punish a defendant's exercise of  
9 constitutional rights, California created a procedural remedy by which to summarily dispose of  
10 these actions. Code Civ. Proc. § 425.16; *Lafayette Morehouse, Inc. v. Chronicle Publ. Co.* (1995)  
11 37 Cal.App.4th 855, 858; *Averill v. Sup. Ct.* (1996) 42 Cal.App.4th 1170, 1175. "A SLAPP suit—  
12 a strategic lawsuit against public participation—seeks to chill or punish a party's exercise of  
13 constitutional rights to free speech and to petition the government for redress of grievances.  
14 [Citation.] The Legislature enacted Code of Civil Procedure section 425.16—known as the anti-  
15 SLAPP statute—to provide a procedural remedy to dispose of lawsuits that are brought to chill the  
16 valid exercise of constitutional rights. [Citation.]" (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048,  
17 1055-1056.)" *Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 34.

18 Under Code of Civil Procedure § 425.16, a court must dismiss an action arising from an  
19 act "in furtherance of [a defendants'] right of petition or free speech under the United States  
20 Constitution or the California Constitution in connection with a public issue" if the plaintiff cannot  
21 establish a "probability that [he] will prevail on the claim." Code Civ. Proc. § 425.16(b)(1). In  
22 order to protect a party's exercise of his Constitutionally protected rights and to mitigate the harm  
23 that would result from allowing the nonmeritorious action to proceed, California courts have  
24 interpreted the anti-SLAPP statute broadly. Code Civ. Proc. § 425.16(a) (anti-SLAPP statute  
25 "shall be construed broadly"). *Sipple v. Foundation for National Progress* (1999) 71 Cal.App.4th  
26 226, 236-240; see also *Matson v. Dvorak* (1995) 40 Cal.App.4th 539.

27 The first step in the anti-SLAPP analysis is to determine whether the challenged cause of

1 action arises from a protected activity, i.e., from acts made in furtherance of the defendant's "right  
2 of petition or free speech ... in connection with a public issue." Code Civ. Proc. § 425.16(b)(1).  
3 A defendant meet this burden "by demonstrating that the act underlying the plaintiff's cause fits  
4 one of the categories spelled out in section 425.16, subdivision (e) ... [Citation]." *Bleavins v.*  
5 *Demarest* (2011) 196 Cal.App.4th 1533, 1539-1540. Code of Civil Procedure § 425.16(c)  
6 illustrates the type of acts that trigger application of the anti-SLAPP statute, such as "any written  
7 or oral statement or writing made before a ... judicial proceeding ..." Code Civ. Proc. §  
8 425.16(c)(1).

9 Where the defendant establishes that the claim arises from protected activity, the burden  
10 shifts to the plaintiff to establish a "probability of prevailing" on his claim. Code Civ. Proc. §  
11 425.16(b)(1); *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89. In fact, the plaintiff must demonstrate  
12 that the claim "is both legally sufficient and supported by a sufficient prima facie showing of facts  
13 to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." *Roberts v.*  
14 *Los Angeles City Bar Assn.* (2003) 105 Cal.App.4th 604, 616. If the plaintiff is unable to carry his  
15 burden of proving a probability of prevailing, the court *must* strike the claim. *Jackson v. Yarbray*  
16 (2009) 179 Cal.App.4th 75.

#### 17 IV. LEGAL ARGUMENT

##### 18 A. Plaintiff's Causes Of Actions Against These Defendants Arise From Activity 19 Protected By Code Of Civil Procedure Section 425.16

20 It is beyond dispute that filing an interpleader action is an exercise of the "right of  
21 petition". California courts have long held that "[f]iling a lawsuit is an act in furtherance of the  
22 constitutional right of petition, regardless of whether it has merit." *JSJ Limited Partnership v.*  
23 *Mehrban* (2012) 205 Cal.App.4th 1512, 1521; *Navellier v. Sletten* (2002) 29 Cal.4th 82, 90. In  
24 fact, the "subjective intent of a party in filing a complaint is irrelevant in determining whether it  
25 falls within the ambit of section 425.16." *JSJ Limited Partnership, supra*, 205 Cal.App.4th at  
26 1521.

27 As evidenced above, Plaintiff's allegations against the moving Defendants exclusively  
28 target their constitutionally protected right of petition and free speech. Indeed, the core of  
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NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT  
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1 Plaintiff's Complaint is a meritless attack on Defendants' petitioning activities and free speech—  
2 i.e., the filing of the underlying interpleader action. Although Plaintiff decries it as a "meritless  
3 interpleader action", an "intentional[] interfere[ence] with Plaintiff's right to the immediate  
4 possession or control of the undistributed \$29,025.00", and an "[abuse of] the process of the  
5 court," the interpleader action is, fundamentally, an exercise of Defendants' petitioning rights and  
6 free speech. [See FAC, ¶¶20, 25, and 33.]. By claiming that Defendants' use of the court system  
7 amounts to a "conversion" of the at-issue funds and constitutes an intentional interference with his  
8 prospective economic advantage, his claims clearly arose from protected activity. See Code of  
9 Civ. Proc. §425.16(e)(1); see also *Contemporary Services Corp. v. Staff Pro. Inc.* (2007) 152  
10 Cal.App.4th 1043, 1055 ("Defendants' act of filing the complaint [even, supposedly, in order to  
11 aid an abuse of process] in the underlying action squarely falls within section 425.16, subdivision  
12 (e)(1)."). Accordingly, Plaintiff's First and Second Causes of Action against the Defendants are  
13 subject to the anti-SLAPP statute.

14 **B. Plaintiff's Causes Of Action Have No Likelihood Of Success On The Merits**

15 Since Defendants have established that Plaintiff's First and Second Causes of Action for  
16 conversion and interference with economic advantage fall within the purview of Code of Civ.  
17 Proc. § 425.16, the burden now shifts to the Plaintiff to establish that there is a probability that he  
18 will prevail on the challenged claims. As shown below, he cannot meet this burden.

19 **1. Plummer Cannot Demonstrate A Probability Of Success On A Claim**  
20 **For Either "Abuse of Process" Or "Conversion"**

21 In Plaintiff's First Cause of Action, he variously refers to the at-issue interpleader action as  
22 an "abuse of process" and as "conversion" of the \$29,025, which was supposedly owed to him,  
23 despite acknowledging there were other "claimants" to the money [See FAC, ¶17]; despite  
24 admitting that he received the money in question [See FAC, ¶21]; despite the fact that the  
25 interpleader action was dismissed without prejudice after Plaintiff entered into a settlement with  
26 Andrew Bisom; despite agreeing to the deposit of the \$29,025 through a January 17, 2012  
27 Declaration Plummer signed and filed with the Orange County Superior Court. [See Decl. of  
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1 Bohm, Exh. "A"]; and *despite* the Court finding that Plaintiff was not a "successful party" in the  
2 interpleader action such that recovery of fees and costs were disallowed. [See Req. for Judicial  
3 Ntc., Court Transcript, June 7, 2012.] Plaintiff is no more entitled now to recover purported  
4 monetary damages than he was in the interpleader action.

5 (a) *Plaintiff cannot base his claims for conversion and abuse of*  
6 *process on Defendants' filing of the interpleader action*

7 Defendants' resort to the court system constitutes neither an "abuse of process" or  
8 "conversion" of money. Nor does the First Amended Complaint set out any facts to show  
9 actionable misconduct on the part of the Defendants other than the simple act of tendering funds  
10 into court in interpleader. Contrary to Plaintiff's apparent belief, the mere filing of an interpleader  
11 action does not give rise to actionable claims.

12 California courts have long recognized that "[t]he common law tort of abuse of process  
13 arises when one uses the court's process for a purpose other than that for which the process was  
14 designed." *Rusheen v. Cohen, supra*, 37 Cal.4th at p. 1056. "To succeed in an action for abuse of  
15 process, a litigant must establish that the defendant (1) contemplated an ulterior motive in using  
16 the process, and (2) committed a willful act in the use of the process not proper in the regular  
17 conduct of the proceedings." *Id.*, at 1057. The mere "filing or maintaining [of] a lawsuit is not a  
18 proper basis for an abuse of process claim." *Cantu v. Resolution Trust Corp.* (1992) 4  
19 Cal.App.4th 857, 886. Likewise, there "is no liability where the defendant has done nothing more  
20 than carry out the process to its authorized conclusion, even though with bad intentions." *Spellens*  
21 *v. Spellens* (1957) 49 Cal.2d 210, 232. "Because the lack-of-probable-cause requirement in the  
22 malicious prosecution tort plays a crucial role in protecting the right to seek judicial relief", courts  
23 have consistently held that "this element may not be circumvented through expansion of the abuse  
24 of process tort to encompass the alleged improper filing of a lawsuit." *Id.* at 886 (citing *Oren*  
25 *Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc., supra*, 42 Cal.3d at 1170). As  
26 a consequence, the filing of an interpleader action "does not satisfy the willful act requirement" for  
27 a legally sufficient abuse of process claim. *Ibid.*

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1 Nonetheless, Plaintiff claims that the interpleader action was "meritless" and an  
2 "intentional[] interfere[nce] with Plaintiff's right to the immediate possession or control of the  
3 undistributed \$29,025.00." [FAC, ¶¶20 and 25.] Indeed, the Plaintiff goes so far as to contend  
4 that the Defendants "abuse[d] the process of the Court." [FAC, ¶19.] Nonsense. Case law could  
5 not be clearer in specifying that no tort for an abuse of process can exist under the present  
6 circumstances. In determining the suitability for interpleader, the Court of Appeal in *Pacific Loan*  
7 *Management Corp. v. Sup. Ct.* (1987) 196 Cal.App.3d 1485, asserted that the "true test of  
8 suitability for interpleader is the stakeholder's disavowal of interest in the property sought to be  
9 interpleaded, coupled with the perceived ability of the court to resolve the entire controversy as to  
10 the entitlement to that property without need for the stakeholder to be a party to the suit." *Id.* at  
11 1490. Here, the interpleader action was indisputably proper because Defendants disavowed  
12 interest in the property sought to be interpleaded and Plaintiff unqualifiedly concedes that there were  
13 "claimants" to the money. [See Decl. of Bohm, ¶¶2-5; See FAC, ¶17.] Accordingly, Defendants  
14 had a right to file a complaint in interpleader—and as a result, Plaintiff's claim is fatally defective.  
15 *Cantu, supra*, 4 Cal.App.4th at 886 ("[plaintiff's] claim is defective because 'there is no abuse of  
16 process if [the interpleader statute] is used for its proper purpose even though the person uses it for  
17 wrongful and malicious motives.' [Citations removed].").

18 (b) Plaintiff's claims are barred by the litigation privilege because  
19 Defendants' filing of the interpleader action is a communicative  
20 act

21 Significantly, Plaintiff's claim for abuse of process is also barred by the litigation privilege  
22 set forth in Civil Code § 47 ("A privileged publication ... is one made: (b) In any ... (2) judicial  
23 proceeding"). The privilege is absolute in nature and "is now held applicable to any  
24 communication, whether or not it amounts to a publication, and all torts except malicious  
25 prosecution." *Silberg v. Anderson* (1990) 50 Cal.3d 205, 215. In order to further effectuate the  
26 privilege's purpose, California courts have repeatedly held that pleadings and proceedings are  
27 privileged under Civil Code § 47(b). *See Rubin v. Green* (1993) 4 Cal.4th 1187, 1194 ("we can

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28 NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT  
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1 imagine few communicative acts more clearly within the scope of the privilege than ... filing the  
2 complaint and subsequent pleadings in the litigation.”); *See also Silberg, supra*, at 212 (the  
3 rationale for the broad sweep of the privilege is that it affords “litigants and witnesses the utmost  
4 freedom of access to the courts without fear of being harassed subsequently by derivative tort  
5 actions.”).

6 Thus, “[t]he privilege in section 47 is relevant to the second step in the anti-SLAPP  
7 analysis in that it may present a substantive defense plaintiff must overcome to demonstrate a  
8 probability of prevailing.” *JSJ Ltd. Partnership, supra*, 205 Cal.App.4th at 1522. (Internal quotes  
9 omitted). As the California Supreme Court stated, in no uncertain language, “the mere filing or  
10 maintenance of a lawsuit—even for an improper purpose—is not a proper basis for an abuse of  
11 process action.” *Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.* (1986)  
12 42 Cal.3d 1157, 1169. By the same token, requesting a court to make a proper determination as to  
13 the true ownership of a sum of money similarly amounts to a privileged communication under  
14 Civil Code § 47. It is irrelevant whether other persons did not make a claim to the money or, if  
15 they made a claim, that a party “nearly” had his right to the money adjudicated on the merits. Just  
16 as a party commencing an interpleader action cannot incur tort liability under an abuse of process  
17 theory, he similarly cannot be held liable for the conversion of funds, given the absolute privilege  
18 granted under Civil Code § 47.

19 Accordingly, Plaintiff’s abuse of process or conversion claims fail as a matter of law since,  
20 as shown above, it is based on the allegation that the Defendants misused the litigation process by  
21 filing a “meritless” interpleader action. Therefore, Plaintiff has not and cannot carry his burden of  
22 establishing a probability of success with regard to his claims.

23 (c) *The initiation and maintenance of an interpleader action by*  
24 *Defendants did not constitute conversion of money, as a matter of*  
25 *law*

26 Not only is the Plaintiff barred from basing his abuse of process and conversion claims on  
27 the interpleader action, but his conversion claim similarly fails because he cannot state an

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1 actionable cause of action. The essential elements of a conversion action are (1) the plaintiff's  
2 ownership right to possession of the property at the time of the conversion; (2) the defendant's  
3 conversion by wrongful act or disposition of property rights; and (3) damages. *Farmers Ins.*  
4 *Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 451. It is axiomatic that the plaintiff must  
5 demonstrate an assumption of control or ownership over the property, or that the alleged convertor  
6 has applied the property to his own use. *Ibid.* Plaintiff has not and cannot make such a showing.

7 Here, there can be no question that a party who files an interpleader action is not  
8 converting money or property to his own use. First, the very reason for an interpleader action is to  
9 avoid "the risk of liability to the person wrongfully entitled to the . . . proceeds if it turned out that  
10 the person to whom the distribution was made was not rightfully entitled to the funds." *Shopoff &*  
11 *Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1508. Second, a party who interpleads money  
12 or proceeds when faced with conflicting claims does not exercise dominion over funds sufficient  
13 to convert them to his own use in denial of the plaintiff's rights. *Ibid.*; *See Simonian v. Patterson*  
14 (1994) 27 Cal.App.4th 773, 781-782. As such, "[a] party who interpleads funds cannot be held  
15 accountable in tort because it declined to resolve [a] problem and instead tendered the funds into  
16 court for resolution of competing claims to funds of held." *Ibid* (internal quotes and citations  
17 omitted). As "mere custodian[s], intermediar[ies] or conduit[s], who interpled the . . . proceeds  
18 when faced with conflicting claims," the Defendants "did not exercise dominion over the funds  
19 sufficient to convert them" to their own use in denial of Plaintiff's rights, if any. *Shopoff, supra*, at  
20 1508. As a matter of law, Plaintiff cannot state a cause of action for conversion against  
21 Defendants. *Id.* at 1508.

22 Accordingly, by his very allegations, Plaintiff has shown that he does not have an  
23 actionable claim for conversion because Defendants assumed no control or ownership over the  
24 property; nor applied the property to their own use.

25 :       **2. Plaintiff Cannot Establish A Claim For Intentional Interference With**  
26 :       **Prospective Economic Advantage**

27 California law has long held that the essential elements for intentional interference with

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1 prospective economic advantage or relations are: "(1) [a]n economic relationship between the  
2 plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2)  
3 the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant  
4 designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic  
5 harm to the plaintiff proximately caused by the acts of the defendant." *Youst v. Longo* (1987) 43  
6 Cal.3d 64, 71, fn. 6. Moreover, a plaintiff "has the burden of pleading and proving that the  
7 defendant's interference was wrongful 'by some other measure beyond the fact of the interference  
8 itself.' [Citation.]" *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 392-  
9 393.

10 Like with Plaintiff's previous claims, this claim is similarly defective. As discussed more  
11 fully above, Plaintiff cannot legitimately argue that Defendants' filing of the interpleader action is  
12 wrongful. Addressing what constitutes "wrongful" conduct, California courts have defined the  
13 phrase as "(1) conduct that is independently tortious or a restraint of trade; (2) conduct violating a  
14 statute, regulation, a recognized rule of common law, or an established standard of a trade or  
15 profession, or (3) conduct that is illegal, unfair, or immoral according to common understandings  
16 of society." *Visto Corp. v. Sprogit Technologies, Inc.* (N.D. Cal. 2005) 360 F.Supp.2d 1064, 1066.  
17 Since Defendants disavowed an interest in the at-issue funds—and because there were admittedly  
18 other "claimants" [FAC, ¶17]—instituting the interpleader action was clearly proper. *See Pacific*  
19 *Loan, supra*, 196 Cal.App.3d at 1490. As such, it cannot constitute wrongful conduct. *Korea*  
20 *Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1159 ("We conclude, therefore, that  
21 an act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional,  
22 statutory, regulatory, common law, or other determinable legal standard."). In summary, because  
23 the threadbare allegations against the Defendants are patently insufficient and the sole allegation  
24 against the Defendants is that they instituted an interpleader action, Plaintiff has no basis for his  
25 claim.

26 Finally, Plaintiff's claim should also be dismissed because Defendants' actions are  
27 similarly protected by the litigation privilege. As discussed above, the principal purpose of the

4831-6755-0224.1

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28 NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT  
AGAINST DEFENDANTS JAMES BOHM AND BOHM, MATSEN, KEGEL & AGUILERA; NOTICE OF  
REQUEST FOR REASONABLE ATTORNEY'S FEES IN THE SUM OF \$6,400 [CCP §425.16] PLUS COSTS;  
DECLARATIONS OF GARY M. LAPE AND JAMES G. BOHM

8/7/2008

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

1 privilege "is to afford litigants ... the utmost freedom of access to the courts without fear of being  
2 harassed subsequently by derivative tort actions." *Silberg, supra*, 50 Cal.3d at 213. In order to  
3 effectuate this purpose, it is a defense to a wide range of torts, including intentional interference  
4 and defamation. *See Rothman v. Jackson* (1996) 49 Cal.App.4th 1134, 1140 (asserting that only  
5 malicious prosecution actions are exempt from the litigation privilege). Since the alleged tortuous  
6 interference consisted solely of the interpleader action, the litigation privilege applies in the instant  
7 case. [See FAC, ¶33] ["... for the purpose of [Defendants] abusing the process of the court for the  
8 purpose of denying Plaintiff money ..."].

9 **V. BOHM IS ENTITLED TO REASONABLE ATTORNEY'S FEES FOR BEING**  
10 **REQUIRED TO MAKE THIS MOTION**

11 The amount of an attorney fee award under the anti-SLAPP statute is computed by the trial  
12 court in accordance with the familiar "lodestar" method. *Ketchum v. Moses* (2001) 24 Cal.4th  
13 1122, 1135-1136. Under this method, the court "tabulates the attorney fee touchstone, or lodestar,  
14 by multiplying the number of hours reasonably expended by the reasonable hourly rate prevailing  
15 in the community for similar work. [Citations.]" *Cabral v. Martins* (2009) 177 Cal.App.4th 471,  
16 491. The trial court which assesses attorney's fees begins its analysis with a lodestar figure, based  
17 on the "careful compilation of the time spent reasonable hourly compensation of each attorney . .  
18 . involved in the presentation of the case." *Ketchum, supra*, 24 Cal.4th at pp. 1131-1132. (internal  
19 quotes omitted. A "trial court is not required to include a fee enhancement to the basic lodestar  
20 figure for contingent risk, exceptional skill, or other factors, although it retains discretion to do so  
21 in the appropriate case," and "the parties seeking a fee enhancement bears the burden of proof."

22 In the instant lawsuit, neither the Bohm defendants nor their attorneys seek an  
23 enhancement for the reasonable hourly rate referenced by attorney Gary M. Lape in his declaration  
24 in support of the fees in this case. Attorney Lape, who has been admitted to the California Bar  
25 since 1978, has litigated numerous anti-SLAPP motions both in the trial court and on appeal, and  
26 also has prosecuted and defended numerous commercial actions. Lape has expended more than 12  
27 hours in analyzing plaintiff's complaint and in researching and drafting this motion. Lape further

28 4831-6755-0224.1

11

NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT  
AGAINST DEFENDANTS JAMES BOHM AND BOHM, MATSEN, KEGEL & AGUILERA; NOTICE OF  
REQUEST FOR REASONABLE ATTORNEY'S FEES IN THE SUM OF \$6,400 [CCP §425.16] PLUS COSTS;  
DECLARATIONS OF GARY M. LAPE AND JAMES G. BOHM

2025/12/12

**LEWIS**  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

1 anticipates an additional four hours will be expended in reviewing plaintiff's opposition papers,  
 2 drafting reply papers, and in appearing at the hearing on this matter. At a reasonable hourly rate,  
 3 defendants thus request fees in the sum of \$6,400, plus \$870 for an appearance fee on behalf of the  
 4 two Bohm defendants, as well as \$60 for the filing of the anti-SLAPP motion itself.

5 **VI. CONCLUSION**

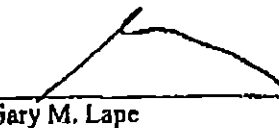
6 Plaintiff asserts that the Defendants improperly interpleaded a sum of \$29,025 into court,  
 7 and that this action by the Defendants constituted either an "abuse of process" or "conversion" or  
 8 "interference with prospective advantage" on the part of the Defendants. As shown above, the  
 9 action by the Defendants amounted to a proper resort to the court system in an attempt to ascertain  
 10 the rightful claimant to the sum of money. The exercise of this right was of constitutional scope  
 11 under the California and the United States Constitutions and, most notably, represented the use of  
 12 the right to petition or right of free speech ordained by both of those constitutions. Plaintiff's  
 13 allegations readily confirm that Defendants' conduct did not constitute any tortious action toward  
 14 the Plaintiff. Moreover, the rights exercised by the Defendants were clearly privileged within the  
 15 meaning of Civil Code section 47.

16 Nonetheless, Defendants have been forced to respond to this meritless litigation. In so  
 17 doing, and in using the rights provided by the anti-SLAPP statute, Defendants have also incurred  
 18 reasonable fees in the amount of at least \$6,400. Fees in favor of the Defendants should be  
 19 awarded by this Court concomitantly with this Court's order granting the anti-SLAPP motion  
 20 itself as well as costs in the sum of \$930.

21 DATED: August 16, 2012

LEWIS BRISBOIS BISGAARD & SMITH LLP

22  
 23 By:

  
 Gary M. Lape  
 Attorneys for Defendants, James Bohm and Bohm,  
 Matsen, Kegel & Aguilera



DECLARATION OF GARY M. LAPE

I, Gary M. Lape, declare,

1. I am attorney licensed to practice before the courts of the State of California and a member of the law firm of Lewis Brisbois Bisgaard & Smith LLP. I have been admitted to practice law in California since 1978. If called as a witness herein, I could and would competently testify to the matters set forth in this declaration, of my own personal knowledge.

2. Since 1978, my practice has been almost entirely focused on civil litigation, including complex business litigation, the defense of class action suits (including the nationwide supervision of other law firms), public entity defense, and the representation of various professionals.

3. In the course of my practice, I have prepared and responded to numerous anti-SLAPP motions under Code of Civil Procedure section 425.16, including that published decision known as *Ruiz v. Harbor View Community Association* (2005) 134 Cal.App.4th 1456.

4. I have prepared the present anti-SLAPP motion.

5. Although for some matters I bill at either a higher or lower rate, I typically charge \$400 per hour for work like the instant anti-SLAPP motion.

6. It has taken 12 hours of my time to review plaintiff's complaint in this action, to analyze the matter in light of the underlying litigation referenced in the complaint, and to draft the instant motion. I further anticipate that it will take an additional four hours of my time to analyze the opposition papers, draft reply papers, and to appear at the hearing on this motion.

Accordingly, on behalf of the Bohm defendants, i.e., James G. Bohm and the law firm of Bohm, Mutsen, Kegel & Aguilera, I request that an award of fees in their favor of \$6,400 be entered against plaintiff Mark B. Plummer and in favor of defendants James G. Bohm and Bohm, Matsen,

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4831-6755-0224.1

NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT AGAINST DEFENDANTS JAMES BOHM AND BOHM, MATSEN, KEGEL & AGUILERA; NOTICE OF REQUEST FOR REASONABLE ATTORNEY'S FEES IN THE SUM OF \$ \_\_\_ [CCP §425.16]; DECLARATIONS OF GARY M. LAPE AND JAMES G. BOHM

1 Kegel & Aguilera, in addition to \$870 to be paid to those defendants for their having to make an  
 2 appearance fee in this action and \$60 for the filing fee of the motion itself.

3 I declare under penalty of perjury under the laws of the State of California that the  
 4 foregoing is true and correct and that this declaration is executed this 16<sup>th</sup> day of August, 2012.

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 8 Gary M. Lape

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DECLARATION OF JAMES G. BOHM

I, JAMES G. BOHM, declare:

1. I am one of the defendants being sued in my individual capacity in the above captioned matter. I am also an attorney licensed to practice in the State of California and I am a managing partner of Bohm Matsen, LLP, formerly doing business as Bohm, Matsen, Kegel & Aguilera, LLP ("BMKA"), another defendant in this matter. I make this declaration in support of the Special Motion to Strike Plaintiff Mark Plummer's ("Plaintiff") First Amended Complaint, filed by Defendant BMKA and myself (collectively "Defendants"). I have personal knowledge of the following facts and would testify thereto if called and sworn as a witness.

2. In or about November 2011, Defendant BMKA and I came into possession of \$29,025.00 ("the at-issue funds"), and placed the funds in BMKA's attorney trust account. The at-issue funds were, at the time, being disputed by Andrew Bisom ("Bisom") and the Plaintiff.

3. Bisom and the Plaintiff made conflicting demands upon the at-issue funds as follows: Bisom and Plummer jointly represented the Acosta family in another legal matter. Displeased with Plaintiff's services, the client subsequently fired the Plaintiff and Bisom ultimately settled the legal matter with the assistance of co-counsel. Plaintiff then made a claim against Bisom and the co-counsel alleging unpaid funds relating to the resolution of the legal matter.

4. I was unable to resolve the conflicting demands by Bisom and Plaintiff, and I was unable to determine to whom the at-issue funds should be rightfully delivered.

5. Since I claimed no interest in the proceeds of the account, I was ready and willing to deliver the at-issue funds to the person who was legally entitled to receive them and so I brought an interpleader action, filed on or about December 20, 2011, in order to have the matter determined by the court. (Orange Case No. 30-2011-00531380.) Thereafter, I attempted, by filing several *ex parte* applications, to deposit the at-issue funds with the court and requested that the court discharge me of all liability with respect to the funds. Further, I requested that Bisom and Plaintiff litigate their respective claims to the at-issue funds without my participation in the matter. Nonetheless, Plaintiff opposed my attempt to deposit the at-issue funds with the court.

4813.3502-5424.1

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DECLARATION OF JAMES G. BOHM IN SUPPORT OF SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16

27/11/11

LEWIS  
BRISBOIS

1 6. On or about January 17, 2012, Plaintiff and I reached an agreement wherein I  
2 would deposit the at-issue funds with the court and be discharged of all liability thereto. We  
3 furthermore agreed that the court should not return the at-issue funds to me. Inasmuch as I claimed  
4 absolutely no interest in the funds. A true and correct copy of a Declaration filed by Plaintiff Mark  
5 B. Plummer is attached hereto as Exhibit "A". Therein, he memorialized our agreement in  
6 writing. Notably, he agreed that—"in an effort to resolve the matter as expeditiously as possible  
7 and to get Mr. BOHM out of the middle of this mess"—I would "deposit the funds with the Court"  
8 and would "be relieved of liability." (See Decl. of Plummer, p.2, ¶5) (emphasis added).

9 7. However, when the *ex parte* application seeking to enforce the terms of the  
10 agreement was brought before the court, the court dismissed the *ex parte* application without  
11 prejudice, explaining that the court could not be bound by the terms of the agreement, namely that  
12 the court should under no circumstances return the at-issue funds to me. [See Decl. of Plummer,  
13 p.2, ¶5.]

14 8. Shortly thereafter, the dispute between Bisom and Plaintiff was resolved in a  
15 related matter (Orange County Case No. 07CC05089). Accordingly, the interpleader was  
16 dismissed and the funds were distributed. A true and correct copy of the Acknowledgment of  
17 Satisfaction of Judgment in that other legal matter is attached hereto as Exhibit "B".

18 I declare under penalty of perjury under the laws of the State of California that the above is  
19 true and correct. Executed this 15th day of August, 2012 in Costa Mesa, California.  
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23 JAMES G. BOHM, Declarant

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LEWIS  
BRISBOIS  
BRISGAARD &  
SMITH

**EXHIBIT "A"**

88/17/12

1 Mark B. Plummer, SBN 120098  
 2 LAW OFFICES OF MARK B. PLUMMER, PC  
 3 18552 Oriente Drive  
 4 Yorba Linda, California 92886  
 5 Telephone (714) 970-3131  
 6 Facsimile (714) 970-3130

7 Attorney for Defendant:  
 8 MARK B. PLUMMER

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

11 JAMES G. BOHM,  
 12 Plaintiff,  
 13 v.  
 14 ANDREW BISOM, MARK B. PLUMMER,  
 15 and DOES 1 through 100, inclusive,  
 16 Defendants.

CASE NO. 30-2011 00531380  
 DECLARATION RE: TO EX PARTE  
 REQUEST TO DEPOSIT FUNDS WITH  
 COURT  
 Assigned for all purposes to:  
 JUDGE James J. Di Cesare  
 Dept. C-18  
 Date: January 20, 2012  
 Time: 1:30 p.m.  
 Dept.: C-18

17 DECLARATION OF MARK B. PLUMMER

18 I, MARK B. PLUMMER, declare as follows:

- 19
- 20 1. I am an attorney duly licensed to practice before all the courts of the State of
  - 21 California, and am a defendant in this action and the judgment creditor regarding the attached fees.
  - 22 2. There is \$29,025.00 which is the last of the legal fees from the Accosta case which
  - 23 was settled several years ago. After a judgment was entered determining that I was entitled to an
  - 24 additional \$88,845.75 in fees, this money has been transferred to Mr. BOHM from Murchison &
  - 25 Cumming, attorneys for the insurance company.
  - 26 3. On November 22, 2011, this Court entered as a judgment, against ANDREW BISOM
  - 27 for \$88,845.75, in Orange County Superior Court Case No. 07CC05089, which was the confirmation
  - 28

21417/082

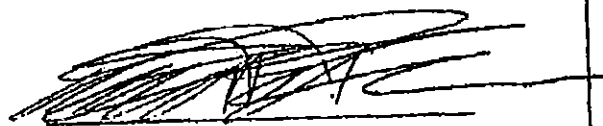
1 of an arbitration award wherein the ownership of the very funds which are the subject of this action  
2 was determined by Armand Arabian, Justice of the Supreme Court of California (Retired).

3 4. Code of Civil Procedure §99 provides that the judgment entered 11/22/11 is  
4 conclusive as to any dispute between PLUMMER and BISOM regarding who owns the remaining  
5 \$29,025.00 of the settlement funds. Accordingly, there is no actual dispute as to whether the  
6 \$29,025.00 belongs to BISOM or PLUMMER and the subject interpleader action is improper.

7 5. Nonetheless, in an effort to resolve the matter as expeditiously as possible and to get  
8 Mr. BOHM out of the middle of this mess, Mr. BOHM and I agree that:

- 9 a. Mr. BOHM will deposit the funds with the Court;
- 10 b. Mr. BOHM will be relieved of liability;
- 11 c. Regardless of the merits of the subject interpleader action, if any, the court will not
- 12 return the money to Mr. BOHM;
- 13 d. The Court will promptly give the money to its proper owner if it finds that there is
- 14 no actual dispute as to who the \$29,025.00 belongs to.

15  
16 I declare under penalty of perjury under the laws of the State of California that the foregoing  
17 is true and correct. Executed this 17<sup>th</sup> day of January 2012, at Yorba Linda, California.



MARK B. PLUMMER

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88/17/12

# EXHIBIT "B"

88/17/18



Andrew S. Bisom  
LAW OFFICE OF ANDREW S. BISOM 137071  
695 Town Center Drive, Ste. 700  
Costa Mesa, CA. 92626

TELEPHONE NO.: 714-384-6440  
FAX NO. (Optional): 714-384-6441  
E-MAIL ADDRESS (Optional): abisom@bisomlaw.com  
ATTORNEY FOR (Name): Andrew S. Bisom

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange  
STREET ADDRESS: 700 Civic Center Drive West  
MAILING ADDRESS:  
CITY AND ZIP CODE: Santa Ana, 92701  
BRANCH NAME: Central Justice Center

COPY

FOR RECORDER'S OR SECRETARY OF STATE'S USE ONLY

PLAINTIFF: MARK B. PLUMMER  
DEFENDANT: ISAAC COHEN, ANDREW BISOM, ET AL

CASE NUMBER  
07CC05089

ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT

FULL  PARTIAL  MATURED INSTALLMENT

1. Satisfaction of the judgment is acknowledged as follows:

- a.  Full satisfaction  
(1)  Judgment is satisfied in full.  
(2)  The judgment creditor has accepted payment or performance other than that specified in the judgment in full satisfaction of the judgment.  
b.  Partial satisfaction  
The amount received in partial satisfaction of the judgment is \$  
c.  Maturated installment  
All maturated installments under the installment judgment have been satisfied as of (date):

2. Full name and address of judgment creditor:

Mark B. Plummer  
18552 Oriente Drive  
Yorba Linda, CA. 92886

3. Full name and address of assignee of record, if any:

4. Full name and address of judgment debtor being fully or partially released:

Andrew S. Bisom  
32001 Lomita Dr.  
Trabuco Canyon, CA, 92679

5. a. Judgment entered on (date): 11/22/2011

b.  Renewal entered on (date):

6.  An  abstract of judgment  certified copy of the judgment has been recorded as follows (complete all information for each county where recorded):

COUNTY DATE OF RECORDING INSTRUMENT NUMBER

7.  A notice of judgment lien has been filed in the office of the Secretary of State as file number (specify):

NOTICE TO JUDGMENT DEBTOR: If this is an acknowledgment of full satisfaction of judgment, it will have to be recorded in each county shown in item 6 above, if any, in order to release the judgment lien, and will have to be filed in the office of the Secretary of State to terminate any judgment lien on personal property.

Date: 2/8/2012

(SIGNATURE OF JUDGMENT CREDITOR OR ASSIGNEE OF CREDITOR OR ATTORNEY)

The names of the judgment creditor and judgment debtor must be stated as shown in any Abstract of Judgment which was recorded and is being released by this satisfaction. \*\* A separate notary acknowledgment must be attached for each signature.

Form Approved for Optional Use  
Judicial Council of California  
EJ-100 (Rev. January 1, 2005)

ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT

Page 1 of 1  
Code of Civil Procedure, §§ 724.060,  
724.120, 724.250

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**CALIFORNIA STATE COURT PROOF OF SERVICE**

Plummer v. T.H.E. Insurance Company, Inc. - File No. 30975.50

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to the action. My business address is 650 Town Center Drive, Suite 1400, Costa Mesa, CA 92626.

On August 16, 2012, I served the following document(s): **NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT AGAINST DEFENDANTS JAMES BOHM AND BOHM, MATSEN, KEGEL & AGUILERA; NOTICE OF REQUEST FOR REASONABLE ATTORNEY'S FEES IN THE SUM OF \$6,400 [CCP §425.16] PLUS COSTS; DECLARATIONS OF GARY M. LAPE AND JAMES G. BOHM [FILED WITH PROPOSED ORDER]**

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:

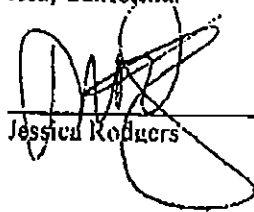
(BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and (specify one):

Deposited the sealed envelope or package with the U.S. Postal Service, with the postage fully prepaid.

Placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

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

Executed on August 16, 2012, at Costa Mesa, California.

  
\_\_\_\_\_  
Jessica Rodgers

4031-6755-0224.1

**NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT AGAINST DEFENDANTS JAMES BOHM AND BOHM, MATSEN, KEGEL & AGUILERA; NOTICE OF REQUEST FOR REASONABLE ATTORNEY'S FEES IN THE SUM OF \$6,400 [CCP §425.16] PLUS COSTS; DECLARATIONS OF GARY M. LAPE AND JAMES G. BOHM**

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**SERVICE LIST**  
**Plummer v. The Insurance Company, Inc.**  
**BC 479944**

Mark B. Plummer, Esq. **Attorneys for Plaintiff, Mark B. Plummer**  
LAW OFFICES OF MARK B. PLUMMER  
18552 Oriente Drive  
Yorba Linda, CA 92886  
F: 714.970.3130

Daniel M. Crowley, Esq. **Attorneys for T.H.E. Insurance Company,**  
BOOTH, MITCHEL & STRANGE, LLP **Inc.**  
707 Wilshire Blvd., Ste. 4450  
Los Angeles, CA 90017  
F: 909.890.4610

4831-6755-0224.1  
NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT  
AGAINST DEFENDANTS JAMES BOHM AND BOHM, MATSEN, KEGEL & AGUILERA; NOTICE OF  
REQUEST FOR REASONABLE ATTORNEY'S FEES IN THE SUM OF \$6,400 [CCP §425.16] PLUS COSTS;  
DECLARATIONS OF GARY M. LAPE AND JAMES G. BOHM

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

AUG 20 2012

John A. Clarke, Executive Officer/Clerk  
BY Cristina Grialva Deputy  
Cristina Grialva

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
2 GARY M. LAPE, SB# 84426  
3 E-Mail: lape@lbbbslaw.com  
4 650 Town Center Drive, Suite 1400  
5 Costa Mesa, California 92626  
6 Telephone: 714.545.9200  
7 Facsimile: 714.850.1030

8 Attorneys for Defendants, James Bohm and  
9 Bohm, Matsen, Kegel & Aguilera

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11 MARK B. PLUMMER,

12 Plaintiff,

13 vs.

14 T.H.E. INSURANCE COMPANY, INC.,  
15 GUY R. GRUPPIE, MURCHISON &  
16 CUMMING, LLP, JAMES G. BOHM,  
17 BOHM, MATSON, KEGEL & AGUILERA  
18 and DOES 1 through 100, inclusive,

19 Defendants.

CASE NO. BC 479944

**REQUEST FOR JUDICIAL NOTICE BY  
DEFENDANTS BOHM AND BOHM,  
MATSEN, KEGEL & AGUILERA IN  
SUPPORT OF DEFENDANTS' MOTION  
UNDER CODE OF CIVIL PROCEDURE  
SECTION 425.16**

Date: October 19, 2012  
Time: 8:30 a.m.  
Dept.: 48

[Assigned for All Purposes to:  
The Hon. Elizabeth Allen White, Dept. 48]

Action Filed: May 11, 2012  
Trial Date: None Set

21 TO THIS HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS  
22 OF RECORD:

23 PLEASE TAKE NOTICE that pursuant to Evidence Code sections 452 and 453, defendant  
24 James G. Bohm and Bohm, Matsen, Kegel & Aguilera request the court to take judicial notice of  
25 the June 7, 2012 minute order of the Orange County Superior Court, the Honorable James J. Di  
26 Cesare, Judge, presiding, in Case No.: 30-2011-00531380, a true a correct copy of which is

27 ///

28 ///

4841-3302-3120.1

**REQUEST FOR JUDICIAL NOTICE BY DEFENDANTS BOHM AND BOHM, MATSEN, KEGEL & AGUILERA  
IN SUPPORT OF DEFENDANTS' MOTION UNDER CODE OF CIVIL PROCEDURE SECTION 425.16**

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

1 attached hereto as Exhibit "1".

2 DATED: August 20, 2012

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LEWIS BRISBOIS BISGAARD & SMITH LLP

By:

  
Gary M. Lape

Attorneys for Defendants, James Bohm and Bohm,  
Matsen, Kegel & Aguilera

2012/08/20/085

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP

4841-3342-3120.1

**Exhibit "1"**

2012/08/20

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 06/07/2012 TIME: 01:30:00 PM DEPT: C18  
JUDICIAL OFFICER PRESIDING: James J. Di Cesare  
CLERK: Mary Lou Correa  
REPORTER/ERM: Randi Taylor-6208 CSR# 6208  
BAILIFF/COURT ATTENDANT: Loretta Schwary

CASE NO: 30-2011-00531380-CU-MC-CJC CASE INIT.DATE: 12/20/2011  
CASE TITLE: Bohm vs. Blsom  
CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT ID/DOCUMENT ID: 71461362,89244418  
EVENT TYPE: Motion to Strike or Tax Costs  
MOVING PARTY: James G Bohm  
CAUSAL DOCUMENT/DATE FILED: Motion to Strike or Tax Costs, 03/07/2012

**APPEARANCES**

Robert Coleman, from Bohm, Matsen, Kegel & Aguilera, LLP, present for Plaintiff(s).  
Mark B. Plummer, from Law Offices of Mark B. Plummer, present for Defendant(s).

Tentative Ruling posted on the Internet .

Court heard argument from counsel.

The Court confirms the tentative ruling as follows:

**1. PLAINTIFF'S MOTION TO STRIKE OR TAX COSTS**

The motion to strike Defendant Plummer's costs is GRANTED. Even though this action was dismissed by Plaintiff, it cannot be said that Defendant Plummer was the prevailing party for costs purposes because this was a non-adversarial proceeding. Cantu involved a malicious prosecution claim but the Court's statements regarding the non-adversarial nature of interpleader action applies.

Defendant Plummer argues that Plaintiff Bohm was never a true stakeholder but was representing Defendant Blsom, who held monies from an insurance company paid for Plummer's attorneys fees in the underlying arbitration proceeding between Plummer and Blsom. The problem with Plaintiff Plummer's argument is that he does not provide any evidence to support his argument. Defendant Plummer's opposition only contains argument but no evidence to support his factual assertions.

Court orders moving party to give notice.

21/02/12

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**CALIFORNIA STATE COURT PROOF OF SERVICE**

Plummer v. T.H.E. Insurance Company, Inc. - File No. 30975.50

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to the action. My business address is 650 Town Center Drive, Suite 1400, Costa Mesa, CA 92626.

On August 20, 2012, I served the following document(s): **REQUEST FOR JUDICIAL NOTICE BY DEFENDANTS BOHM AND BOHM, MATSEN, KEGEL & AGUILERA IN SUPPORT OF DEFENDANTS' MOTION UNDER CODE OF CIVIL PROCEDURE SECTION 425.16**

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 U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and (specify one):

Deposited the sealed envelope or package with the U.S. Postal Service, with the postage fully prepaid.

Placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

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

Executed on August 20, 2012, at Costa Mesa, California

  
\_\_\_\_\_  
Jessica Rodeers

4841-3342-3120.1

**REQUEST FOR JUDICIAL NOTICE BY DEFENDANTS BOHM AND BOHM, MATSEN, KEGEL & AGUILERA IN SUPPORT OF DEFENDANTS' MOTION UNDER CODE OF CIVIL PROCEDURE SECTION 425.16**



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**SERVICE LIST**  
**Plummer v. The Insurance Company, Inc.**  
**BC 479944**

Mark B. Plummer, Esq.  
LAW OFFICES OF MARK B. PLUMMER  
18552 Oriente Drive  
Yorba Linda, CA 92886  
F: 714.970.3130

**Attorneys for Plaintiff, Mark B. Plummer**

Daniel M. Crowley, Esq.  
BOOTH, MITCHEL & STRANGE, LLP  
707 Wilshire Blvd., Ste. 4450  
Los Angeles, CA 90017  
F: 909.890.4610

**Attorneys for T.H.E. Insurance Company, Inc.**

89/12/07/12

**LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP**

4841-3342-3120.1

**REQUEST FOR JUDICIAL NOTICE BY DEFENDANTS BOHM AND BOHM, MATSEN, KUGEL & AGUILERA  
IN SUPPORT OF DEFENDANTS' MOTION UNDER CODE OF CIVIL PROCEDURE SECTION 425.16**

**DECLARATION OF MARK EISENBERG, ESQ.**

I, MARK EISENBERG, declare and state as follows:

1. I am an attorney duly licensed to practice before all the courts in the State of California.
2. The following facts are personally known to me and, if called upon as a witness, would competently testify thereto.
3. Plaintiff, Mark Plummer (“Plummer”), is an attorney who, at one time, performed contract work for the firm of Bisom & Cohen (“B&C”). As a pro per litigant, Plummer brought a frivolous and statutorily unsupported action against my firm, Day | Eisenberg claiming we failed to honor a purported attorney lien he held on settlement proceeds belonging to former B&C clients, the Acosta family, from an action styled, *Acosta v. K & M Productions, et al.* Neither my then partner, Brian Day, nor I, had ever worked with/for Plummer, dealt with Plummer, had had contact with Plummer, or knew Plummer.
4. Despite the absence of any relationship between Day | Eisenberg and Plummer, Plummer saw fit to sue Day | Eisenberg for conversion and allegedly interfering with his purported lien rights.
5. Day | Eisenberg was forced to defend Plummer’s frivolous and meritless suit at significant cost both in terms of time and money. After years of litigation, Day | Eisenberg prevailed as it was determined there was no bases in fact or law to support Plummer’s claim against Day | Eisenberg.
6. A true and correct copy of Supreme Court Justice Armand Arabian (Ret.) is attached hereto as Exhibit “A.”

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

Executed this 14<sup>th</sup> day of January, 2019, at Palm Beach Gardens, Florida.

\_\_\_\_\_  
Mark Eisenberg, Esq., Declarant

**Exhibit “A”**

1 **ARMAND ARABIAN**  
2 JUSTICE OF THE CALIFORNIA SUPREME COURT (RETIRED)  
3 6259 Van Nuys Boulevard  
4 Van Nuys, California 91401  
5 Telephone: (818) 997-8900

6 Arbitrator

7  
8 **IN RE BINDING ARBITRATION**

9 **MARK B. PLUMMER,**

10 Plaintiff/Claimant,  
11 vs.

)  
)  
) **ADR Case No 11-2638-AA**

)  
) **AWARD**

11 **ANDREW S. BISOM and**  
12 **DAY/EISENBERG LLP.**

13 Defendants/Respondents/  
14 )  
15 )  
16 )  
17 )  
18 )

19 The parties entered into a binding arbitration which was heard on May 6, 2011.  
20 I, THE UNDERSIGNED ARBITRATOR, having duly heard the proofs and  
21 allegations of the Parties, do hereby, AWARD as follows:  
22

23 **STATEMENT OF THE CASE**

24 Plaintiff Mark Plummer is an attorney who claims entitlement to a portion of the  
25 settlement proceeds of a case that he worked on with Defendant Andrew Bisom's law  
26 firm. Defendant Day/Eisenberg is a law firm who subsequently worked on the case.

27 Plummer was a payee on the settlement check, but he did not receive any of his  
28 share of the settlement funds.

Bisom and Day/Eisenberg claim that Plummer is not entitled to the amount of the  
settlement funds he claims because he either did not have a valid lien or he is limited to an  
amount consistent with the value of his service because the clients terminated him.

Bisom deposited the settlement check with Bank of America that Plummer did not  
endorse.

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4 **DISCUSSION**

The joint list of stipulated facts and controverted issues along with all exhibits, documents, testimony and arguments has been considered.

5 **CONCLUSION AS TO DAY/EISENBERG**

6 Plummer's tort claims against Day/Eisenberg are both legally and factually  
7 untenable. Day/Eisenberg never interacted, yet alone contracted, with Plummer who was  
8 (twenty (20) months removed from the Acosta action when Day/Eisenberg was brought in  
9 to see the case through to fruition. Plummer's second cause of action for conversion lacks  
10 merit because he did not have an ownership interest in the Acosta settlement proceeds.  
11 Whatever monies are allegedly owed to him is owed by Bisom, not by the Acosta family  
and certainly not by Day/Eisenberg.

12 Plummer's conversion cause of action fails on the ground that Day/Eisenberg did  
13 not possess or control the Acosta settlement proceeds, and as above, owed no fiduciary  
14 duty to Plummer to insure satisfaction of his claimed attorney lien. Day/Eisenberg simply  
15 received compensation for the services it performed and costs it advanced on Bisom's  
behalf.

16 Plummer's intentional interference with prospective economic advantage claim  
17 fails because Bisom, not Plummer, represented the Acosta family. Day/Eisenberg was not  
18 involved in the circumstances that resulted in his dismissal, did not control or supervise  
19 the distribution of the settlement proceeds, and had no duty to Plummer in this regard.

20 **CONCLUSION AS TO ANDREW BISOM**

21 This is a case for quantum meruit relating to services rendered by an attorney on a  
22 lawsuit prior to being terminated by the clients. There is no question Plaintiff, Mark  
23 Plummer provided services to the Acosta family and is entitled to compensation for his  
24 work. The real issue is determining the reasonable value of his services.

25 Before the Acosta settlement was finalized, Bisom wrote to Plummer on at least  
26 three different occasions, requesting that he provide an accounting of the reasonable value  
27 of his time. Plummer refused and demanded payment of \$200,000. Plummer's reasons  
28 for refusing to account for his time or contributions to the case were obvious. He

1 contributed little time on the matter and the work he did contribute resulted in very little  
2 being accomplished. Plummer knew the reasonable value of his time was far less than his  
3 demand. His involvement did not result in any settlement offers, he did not take any  
4 depositions, he sat on only one deposition and completed very little discovery. Plummer  
5 failed to even properly assert charging claims on behalf of all of the family members.  
6 Although the burden of proof lies with Plummer on his quantum meruit claim, he has not  
7 put forth any evidence of his hours spent on the case. Even the client admitted, that based  
8 on his personal knowledge, Plummer had about ten (10) hours of time on the matter.  
9 Plummer has asserted unmeritorious tort claims to try to escape well-settled law that a  
10 client can terminate a lawyer at any time, and when a client does so, the terminated lawyer  
11 is entitled to the reasonable value of his or her services. *Fracasse v. Brent* (1972) 6 Cal.3d  
12 784, 792.

13 Plummer testified that he is owed \$100,000 less the \$25,000 previously received  
14 under a quantum meruit theory. He also claims \$13,845.75 for costs advanced.

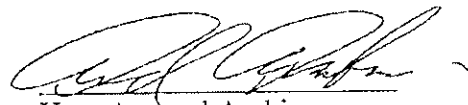
#### 15 AWARD

16 Accordingly, Plummer is awarded an additional \$75,000 plus \$13,845.75 as  
17 discussed from Defendant Bisom.

18 This award is in full settlement of all claims submitted in this Arbitration. All  
19 claims and costs not expressly granted herein are hereby denied.

20 DATED: 5/31/2011

21 Respectfully submitted,

22 

23 Hon. Armand Arabian  
24 Arbitrator

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 6259 Van Nuys Boulevard, Van Nuys, California 91401.

On May 31, 2011, I served the foregoing document described as: AWARD on the interested parties on this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Andrew S. Bisom  
Law Offices of Andrew S. Bisom  
695 Town Center Drive, Suite 700  
Costa Mesa, CA 92626

James G. Bohm  
Bohm, Matsen, Kegal & Aguilera  
695 Town Center Drive, Suite 700  
Costa Mesa, CA 92626

Mark W. Eisenberg  
Eisenberg Law Firm  
901 Dove Street, Suite 120  
Newport Beach, CA 92660

Jerry N. Gans  
Gans & Rosenfield  
17671 Irvine Blvd, Suite 220  
Tustin, CA 92780

Brian Day  
Day Law Group  
695 Town Center Drive, Suite 700  
Costa Mesa, CA 92626

A. Bennett Combs  
Law Offices of A. Bennett Combs, A PC  
23120 Alicia Pkwy, No 200  
Mission Viejo, CA 92692

Mark B. Plummer, PC  
Law Offices of Mark B. Plummer  
18552 Oriente Dr.  
Yorba Linda, CA 92886

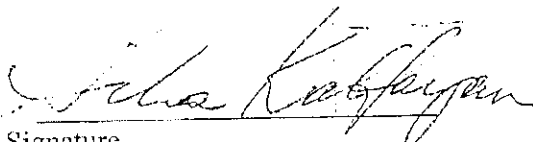
X   (BY MAIL) I deposited such envelope in the mail at Van Nuys, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Van Nuys, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing affidavit.

Executed on May 31, 2011, at Van Nuys, California.

  X   (State)      I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

SILVA KALFAYAN  
Type or Print Name

  
Signature





1 **DECLARATION OF CHRISTOPHER BAYUK**

- 2 1. I am an attorney duly licensed in the State of California, and admitted to appear before the  
3 courts. I am not party to this action and make the following testimony under oath based on  
4 my personal knowledge and facts.
- 5 2. I am familiar with the Law Offices of Mark B. Plummer and Mark B. Plummer, Esq., having  
6 defended a number of lawsuits brought by the Law Offices of Mark B. Plummer and  
7 subsequently Mark B. Plummer, including a suit brought against me personally by Mr.  
8 Plummer, *infra*.
- 9 3. The summary of the various law suits filed are summarized below:
- 10 • **ACTION 1: FAMILY LAW ACTION:** *Cuk v. Cuk* Case: 04 D 008550. The initial  
11 Petition was filed on or about September 23, 2004. Based upon a variety of filings  
12 the action was bifurcated into two (2) trials. The first related solely to the claim that  
13 the marriage was a nullity.<sup>1</sup> The net effect of the nullity trial was that the Petitioner,  
14 Slobodan Cuk incurred approximately \$800,000.00 in attorney’s fees and costs, plus  
15 \$425,000.00 in sanctions and attorney’s fees that were awarded to Respondent and  
16 her attorneys for pursuing frivolous and B/s/ad Faith claims. Judgment on the  
17 sanctions and fees was entered in favor of Respondent’s attorneys.
  - 18 • **ACTION 2: LEGAL MALPRACTICE ACTION:** *Cuk v. Burch et al.* Case: 30-2009-  
19 00300602. The complaint was filed on behalf of Mr. Cuk by the Law Offices of  
20 Mark B. Plummer, PC on September 8, 2008. Although the Law Offices of Mark B.  
21 Plummer, PC agreed to advance costs, it refused to pay an expert, resulting in the  
22 firm’s termination from Dr. Cuk’s representation in late September/October 2011.  
23 Merritt McKeon stepped in and assumed the representation of Dr. Cuk in the legal  
24 malpractice action. Within two (2) months of being terminated by Dr. Cuk, the Law  
25 Offices of Mark B. Plummer filed Action 3 against Dr. Cuk alleging that he was  
26 entitled to his entire contingency fee on any recovery either in the legal malpractice  
27 action or any future Bad Faith claim that might be filed on behalf of Dr. Cuk.  
28 Through the efforts of both Ms. McKeon, and Bayuk & Associates, Inc., the legal  
malpractice resulted in a settlement with stipulated entry for judgment on November  
28, 2012. At the conclusion of the case in 2012, there was approximately

1 \$155,000.00 sitting in a trust account, for which the Law Offices of Mark B.  
2 Plummer, P.C. claimed it was entitled to 100%.

- 3 • **ACTION 3: COLLECTION ACTION:** *Law Offices of Mark B. Plummer, P.C. v.*  
4 *Slobodan Cuk et al.* Case: 30-2011-00524331. The complaint was filed on  
5 November 21, 2011. Subsequently, on May 29, 2012, Plaintiff filed a First  
6 Amended Complaint, naming defendant Merritt McKeon as an additional defendant.  
7 Because of her being named as a defendant, while the underlying legal malpractice  
8 action was still pending. Defendant McKeon filed a cross-complaint against the Law  
9 Offices of Mark B. Plummer, P.C., and Mark Plummer, individually, for past  
10 services rendered on Mr. Plummer's divorce, enforcement of an agreement to pay  
11 referral fee, and for quantum meruit work performed by McKeon pertaining to the  
12 legal malpractice action – Action 2. Bayuk & Associates, Inc., was retained to  
13 represent both Dr. Cuk and Ms. McKeon in the action brought by the Law Offices of  
14 Mark B. Plummer, P.C. I also assisted Ms. McKeon in bringing the Legal  
15 Malpractice action to a close more than a year after the Law Offices of Mark B.  
16 Plummer, P.C., was terminated for cause. Action 3 settled before trial, amore  
17 detailed summary of the resolution of the case is discussed *infra*.

- 18 • **ACTION 4: DECLARATORY RELIEF ACTION:** *ProCentury Insurance Company v.*  
19 *Slobodan Cuk.* United States District Court, Central District of California Case:  
20 8:13-CV-311-JST. The complaint was filed on February 21, 2013, and Trial was set  
21 for June 2, 2013. Based upon the stipulated judgment reached in the legal  
22 malpractice action, a cross-claim was filed on behalf of Slobodan Cuk on or about  
23 April 26, 2013. Ms. McKeon performed no work on either the Declaratory Relief  
24 Action or on behalf of Dr. Cuk on his Counter-Claim for Bad Faith, and she claimed  
25 no fee on the matter.

26 Bayuk & Associates, Inc., prepared and performed all work relating to both  
27 defending and the DRA action and pursuing the Bad Faith Claim. During the course  
28 of the litigation, Conway & Tomich, which held a judgment lien based upon the  
Orange County Superior Court Family Law Action, filed a Notice of Judgment Lien  
with the United States District Court. Ms. McKeon further served her own Notice of

1 Attorney's Lien in the amount of \$155,600.00, for fees and costs owed to her by  
2 Slobodan Cuk in the family law matter.

3 The bad faith action settled, ProCentury essentially purchased the liens held by both  
4 Conway/Tomich and Ms. McKeon. Dr. Cuk received no recovery in settlement.  
5 The only monies received by Bayuk & Associates, Inc., was the total sum of  
6 \$50,000.00. A check for \$3,785.37, which represented 10% of the attorney's fees  
7 received by Bayuk & Associates, Inc., was forwarded to plaintiff.

8 **ACTION 5: COLLECTION ACTION 2:** *Law Offices of Mark B. Plummer, P.C. v.*  
9 *Christopher W. Bayuk et al.* Orange County Case: 30-2014-00759128. The  
10 complaint was filed on December 2, 2014. The basis of the verified complaint was a  
11 handwritten document, which was attached to the verified complaint, The Law  
12 Offices of Mark B. Plummer, PC, failed to provide the Court as part of his  
13 complaint, the operative settlement agreement, which was subsequently determined  
14 to be the final writing setting for the parties settlement.

15 **4. THE SETTLEMENT OF COLLECTION ACTION 1:**

16 The first collection action filed by the Law Offices of Mark B. Plummer, P.C., was set to  
17 commence trial on March 3, 2014. The party's and their counsel appeared on that date, and were  
18 advised that the Honorable Luis Rodriquez had retired, and was no longer hearing trials. The  
19 parties were excused to await word on an open courtroom and/or Judge to hear the case. The parties  
20 were thereafter ordered to return for Trial on March 4, 2014, before the Honorable Robert D.  
21 Monarch at 9:00 a.m. Unfortunately, His Honor recused himself, due to him knowing one of the  
22 witnesses to the trial. Fortunately, Judge Monarch agreed to hear the matter on settlement, which  
23 started on March 4, 2015, and continued the afternoon of March 5, 2014. The case ultimately  
24 settled on March 5, 2014, with Judge Monarch's assistance.

25 The parties executed a formal written settlement agreement, which by its terms was deemed  
26 effective March 5, 2015. The essential settlement terms were as follows:

27 **II. SETTLEMENT TERMS & CONDITIONS**

28 1. Consistent with the negotiations between the parties, the sum presently on

1 deposit with the Union Bank, Santa Ana, California, is to be divided, with  
2 Merritt McKeon receiving the total sum of Fifty Thousand Dollars  
3 (\$50,000.00), on or before ten (10) days after the Honorable Robert  
4 Monarch, Judge of the Superior Court. Executes an Order on the  
5 Distribution and Release of the Funds.

6 2. It is further understood and agreed that the Law Offices of Mark B.  
7 **Plummer, PC, will receive as additional compensation ten percent**  
8 **(10%) of the gross attorney's fees generated upon the Cross-complaint**  
9 **of Slobodan Cuk, only, from litigation pending in the United States**  
10 **District Court, Central District of California, Case#: SACV13-311 JLS**  
11 **(JPRx) in an action styled: *ProCentury Insurance Company v. Slobodan***  
12 ***Cuk v. ProCentury Insurance Company.* (Hereinafter referred to as the**  
13 **Bad Faith Action).** Plummer agrees and confirms that he is to have no  
14 involvement, participation or say in the Bad Faith action, and that no duty is  
15 owed to Plummer other than as set forth in this agreement. **It is understood**  
16 **by all parties to this agreement, that the Bad Faith Action is a**  
17 **contingent claim, with no guarantee of recovery, and that in the event**  
18 **there is no recovery by or on behalf of Slobodan Cuk or its attorneys,**  
19 **Bayuk & Associates, Inc., in the Bad Faith action, then the Law Offices**  
20 **of Mark B. Plummer shall recover no attorney's fees, under this**  
21 **paragraph. (Bolding added.)**

22 5. The releases set forth above shall be effective as of the date of  
23 March 5, 2014, and shall extend to all present and/or potential claims,  
24 actions, causes of action, suits, damages, liabilities, demands, costs,  
25 expenses (including attorneys' fees), known or unknown, that the  
26 parties have against each other, which may exist against the Parties  
27 hereto, or any of them, or any of the related persons, up to and  
28 including the date of the execution of this Agreement, regardless of  
whether such claims, actions, causes of action, suits, damages, liabilities,  
demands, costs, expenses (including attorneys' fees), are stated, alleged  
or even suspected by the Parties hereto, or any of them, prior to such  
date of execution. (Bolding added.)

5 (sic). The Parties hereto and each of them, acknowledge that they may  
hereafter discover facts different from, or in addition to, those which  
they now know or believe to be true with respect to any or all of the  
claims, causes of action, costs or demands herein released. However, the  
Parties hereto, and each of them, agree that this general release shall be  
and remain effective in all respects, notwithstanding the discovery of  
such different or additional facts. (Bolding added).<sup>2</sup>

## VII. ADDITIONAL PROVISIONS

6. This Agreement and any attachments contain the entire Agreement

---

<sup>2</sup> Section IV of the Agreement included a comprehensive waiver of California Civil Code §1542.

1           **between the Parties hereto with respect to the matters referred to**  
2           **herein. This Agreement shall bind, and inure to the benefit of, the**  
3           **respective successors, parents, agents, assigns, legatees, heirs, executors,**  
4           **administrators, and estates of each of the Parties hereto. (Bolding**  
5           **added.)**

6           8. This Agreement may be executed in counter-parts and copies of  
7           signatures shall have the same force and effect as originals. **This document**  
8           **constitutes the complete and intended agreement of the parties. It is**  
9           **fully integrated, and there are no provisions of any nature whatsoever**  
10           **relating to the subject matter of this agreement, which are not**  
11           **contained herein. No representations or statements of any kind, other**  
12           **than as contained herein, have been made by the parties hereto or any**  
13           **of their agents or representatives.** This writing may be modified, altered or  
14           amended only by another document in writing signed by all parties.  
15           (Bolding added.) [See Exhibit 4]

16           The Agreement executed between the parties, made it clear that plaintiff's recovery was  
17           limited to 10% of the fees received by Bayuk & Associates, Inc., any prior agreement it held/had  
18           with Slobodan Cuk, and/or Ms. McKeon's retainer with Slobodan Cuk were waived pursuant to the  
19           Agreement.

## 20           **5. THE SETTLEMENT OF COLLECTION ACTION 2:**

21           On or about December 2, 2014, the Law Offices of Mark B. Plummer, PC, filed its second  
22           action arising from its representation of Dr. Cuk in the legal malpractice action, myself and  
23           Merritt L. McKeon as the sole defendants. It's claims for relief included (1) Accounting, (2)  
24           Breach of Contract, and (3) Conversion. The Law Offices of Mark B. Plummer, PC did not  
25           take any depositions on the case and performed limited discovery.

26           6. On or about November 23, 2015, the matter proceeded to Trial. After Mr. Plummer rested  
27           the Plaintiff's case, the Court entered Judgment for the Defendants and subsequently  
28           awarded attorneys fees and costs to Ms. McKeon and myself in a separate judgment.

          7. The Law Offices of Mark B. Plummer, PC, subsequently appealed the award of attorney's  
          fees and costs, and the Appellate Court found the arguments raised lacked merit, and  
          confirmed the award.

          8. During the pendency of the action against Ms. McKeon and myself, it is my understanding  
          that the Law Offices of Mark B. Plummer, PC, filed a third collection action against  
          Slobodan Cuk, claiming it was entitled to fees and costs, based upon the benefits received by

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Dr. Cuk from ProCentury Insurance Company purchasing the outstanding Judgment and attorney fee liens held against Dr. Cuk. This suit was filed despite, the Law Offices of Mark B. Plummer, PC and Mark B. Plummer agreeing that there was no entitlement to any further fees from Dr. Cuk.

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

DATE: January 15, 2019

/S/CBayuk  
Christopher Bayuk





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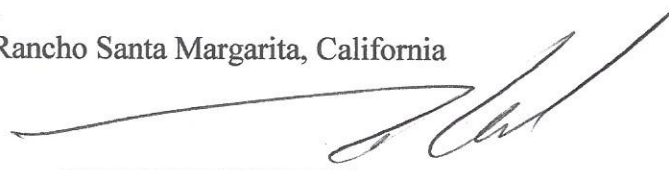
DECLARATION OF FRANK SATALINO

I, Frank Satalino, declare and state as follows:

1. I am an attorney at law duly licensed before all the courts of the State of California, and the Managing Attorney of the Law Offices of Frank Satalino, attorneys of record for Defendant SIAMAK NABILI as to the above captioned matter. I make this declaration in reference to Cross-Complainants opposition to Cross-Defendants Anti Slapp motion. I have personal knowledge of the following, and if called to testify could and would competently testify as follows:
2. On more than one occasion, while I was handling this matter for Defendant SIAMAK NABILI, Mr. Mark Plummer, attorney for Plaintiff/Cross Defendants, has hung up on me mid conversation when I was having a discussion with him on points concerning either the case itself, discovery, or depositions, or related topics concerning the action.
3. Likewise, the deposition of my client was taken on or around October 25, 2018, and there after Plaintiff/Cross Defendant apparently filed an Anti-Slapp motion on or around, December 18, 2018, and after that time continued to further demand further deposition of my client, despite the fact that in my understanding there was a stay of discovery in the entire action after that date as a result of the Slapp Motion; this included his activity in continuing, and continuing to maintain, his motion to compel further attendance at deposition, after the date the Slapp motion had been filed.
4. Finally, Mr. Plummer has also filed a motion to compel further responses to written discovery against me and my client which I believe is not well taken, based on his failure and refusal to adequately meet and confer as to the inadequacy of the initial responses before filing the motion .

1 I declare under penalty of perjury under the laws of the state of California that the foregoing  
2 is true and correct.  
3

4 Executed on this day April 24, 2019 at Rancho Santa Margarita, California



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6 Frank Satalino

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**DECLARATION OF MARK B. PLUMMER**

I, MARK B. PLUMMER, declare as follows:

1. I am an attorney duly licensed to practice before all the courts of the State of California, and am the attorney for Plaintiff LAW OFFICES OF MARK B. PLUMMER, PC. If called upon to testify as a witness, I could and would competently testify to all the facts herein stated from my own personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of an excerpt from the new rules of Professional Conduct.

3. The following personal case has been filed over the last 10-12 years:

a. Plummer v. Wells Fargo; 30-2016-00831688-CU-FR-CJC This case was based on misrepresentations that Wells Fargo made relating to a potential refinance and was settled by Wells Fargo paying a mid-5-digit settlement.

3. The following bill collection cases have been filed over the last 10-12 years:

a. Law Offices of Mark B. Plummer, PC v. Riley; 30-2015-00785129-CU-CO-CJC Settled for the assignment of a \$30,000.00 settlement.

b. Law Offices of Mark B. Plummer, PC v. Morgan; Plaintiff obtained a \$14,066.00 Judgment. Attached hereto as Exhibit B is a true and correct copy of the judgment.

c. Law Offices of Mark B. Plummer, PC v. Hack; Plaintiff obtained a 21,594.00 Judgment after trial. Attached hereto as Exhibit C is a true and correct copy of the judgment.

d. Law Offices of Mark B. Plummer, PC v. Alai, et al.; 30-2018-01002061-CU-FR-CJC - Pending

3. The following Lien Recovery cases resulted from the Acosta case:

a. PLUMMER v. Day/Eisenberg, LLP; 07CC05089 This case was filed when it was determined that Day/Eisenberg had forged Mr. PLUMMER's name on the settlement check and Bisom & Cohen had converted it. (Since the forgery of Plummer's name was personal, rather than corporate, the case was pursued by Plummer rather than the corporation, as is normally would have been.) This case was first appealed after a Summary Judgment voiding the lien was erroneously

1 granted, and once the Appellate Court upheld the lien in Plummer v. Day/Eisenberg, LLP (2010) 184  
2 Cal.App.4<sup>th</sup> 38, it was settled in parts as follows:

- 3           ➤ PLUMMER settled with Mr. Cohen individually for a mid-5-digit amount.
- 4           ➤ PLUMMER, Mr. Bisom and Day/Eisenberg, LLC stipulated to binding Arbitration  
5           before retired California Supreme Court Justice Armand Arabian and LAW  
6           OFFICES OF MARK B. PLUMMER, PC received an award of \$88,845.75.  
7           Attached hereto as Exhibit D is a true and correct copy of the judgment. [
- 8           ➤ In a second appeal, (Case No. G046567) Day/Eisenberg, LLC appealed the fact that  
9           Justice Arabian had rendered an award against Mr. Bisom for the stolen fees he had  
10           taken, but refused to award them costs as a prevailing party even though there was  
11           no monetary award against them, since they had aided and abetted Mr. Bisom in  
12           stealing the money. PLUMMER won that appeal.

13           b.     PLUMMER v. Bank of America; 30-2011-00525808-CU-CL-CJC Bank of  
14           America was part of the Day/Eisenberg, LLC case, but chose not to participate in the Binding  
15           Arbitration. It was dismissed in exchange for a waiver the statute of limitations, and after a forgery  
16           for which Bank of America was liable was established, a new case was filed and Bank of America  
17           settled for \$30,000.00. Attached hereto as Exhibit F is a true and correct copy of a draft release.

18           c.     PLUMMER v. T.H.E Insurance Co., et al.; This case and the appeal dealt with  
19           all the other people and entities liable for interfering with a valid lien pursuant to Levin v. Gulf  
20           Insurance Group (1999) 69 Cal.App.4<sup>th</sup> 1282. It was complicated by the Trial Court having held that  
21           the lien was invalid before the Appellate Court reversed the ruling and held that it was. Some  
22           Defendants got out on a Special Motion to Strike, and recovered fees, while others settled, so it was a  
23           wash.

24           4.     The original Legal Malpractice case for Slobodan Cuk was referred by Mr. Cuk's  
25           family law attorney, Merritt McKean. The malpractice was taking a "Void Marriage" claim to trial  
26           without any proper grounds, which Mr. Cuk lost not only lost but the Court assessed him \$100,000.00  
27           in sanctions and even more than that in Attorney fees and costs. Opposing counsel in the Family Law  
28           Case, which was continuing on other grounds, intervened in the Legal Malpractice case, due to the  
29           fees that were owed them. After years of litigation, Ms. McKean substituted LAW OFFICES OF

1 MARK B. PLUMMER, PC 2 weeks before a mediation that it had arranged and accepted the amount  
2 that LAW OFFICES OF MARK B. PLUMMER, PC had recommended Dr. Cuk accept to settle the  
3 first phase. A few months later there was a second settlement with another Defendant, and the final  
4 portion of the settlement consisted of an assignment of an Insurance Bad Faith case against one of the  
5 Defendant's E&O Carriers. LAW OFFICES OF MARK B. PLUMMER, PC had a lien against all  
6 these recoveries.

7 a. Law Offices of Mark B. Plummer, PC v. CUK; 30-2011 00524331 This case  
8 to recover the fees and costs pursuant to a charging lien was really against the subsequent attorneys  
9 MERRITT McKEON and CHRISTOPHER BAYUK, who were trying to take the fees earned by LAW  
10 OFFICES OF MARK B. PLUMMER, PC. (In these cases, the client who signed the retainer and  
11 granted the lien, but the subsequent attorneys are the real parties in interest because the litigation is  
12 over the proportioning of the fees between former and subsequent attorneys. On the day of trial,  
13 MERRITT McKEON and CHRISTOPHER BAYUK settled by paying LAW OFFICES OF MARK  
14 B. PLUMMER, PC a 6-digit amount which equated to over 2/3rds of the total fees, plus an assignment  
15 of 10% of the fees on the still pending assignment of the Insurance Bad Faith case against one of the  
16 E&O Carriers on the underlying case.

17 b. Law Offices of Mark B. Plummer, PC v. Bayuk; 30-2014-00759128 CU-BC-  
18 CJC On June 30, 2014, Mr. Bayuk sent Plaintiff a check for \$3,785.37, on behalf of Ms. McKeon and  
19 himself, which they represented was the 10% of the fees earned in the Insurance Bad Faith case which  
20 they had assigned to Plaintiff, which was based on a \$94,634.25 settlement. After they refused to  
21 supply any documentation that showed that there was a \$94,634.25 settlement, LAW OFFICES OF  
22 MARK B. PLUMMER, PC sued them for an accounting and the presumably converted fees. Plaintiff  
23 prevailed on the accounting claim when it was ascertained that the actual settlement was for  
24 \$225,000.00 and that Mr. BAYUK and Ms. McKEON had misrepresented the amount of the settlement  
25 in order to cheat him out of the fees that they had promised. However, they claimed that Dr. CUK was  
26 the one who had the unpaid fees, not them, and the judge ruled that they were the prevailing party.  
27 (This was the opposite of the ruling that Justice Armand Arabian had made when Day/Eisenberg was  
28 shown to have assisted Mr. Bosom in ripping Plaintiff off.) On appeal (Case No. G053836) the

1 Appellate Court held that despite prevailing on the accounting and the fraudulent misrepresentation,  
2 the Trial Judge had discretion as to determining who the prevailing party was.

3 c. Law Offices of Mark B. Plummer, PC v. Cuk; 30-2016-00850952-CL-BC-CJC

4 In this case Plaintiff obtained a judgment of \$14,066.00 against Dr. Cuk for the fees that had not been  
5 paid pursuant to the prior settlement. [EXHIBIT E] Accordingly, Plaintiff was the prevailing party  
6 pursuant to Code of Civil Procedure §1032(4).

7 5. Attached hereto as Exhibit G are true and correct excerpts from the 10/25/18 deposition  
8 of Siamak Nabili.

9 6. The LAW OFFICES OF MARK B. PLUMMER, PC has never filed any cases in "Pro  
10 Per", because it is a corporation and has always been appeared through counsel.

11 7. The LAW OFFICES OF MARK B. PLUMMER, PC has never relitigated or attempted  
12 to relitigate anything after it was finally decided.

13 8. The LAW OFFICES OF MARK B. PLUMMER, PC never "files unmeritorious  
14 motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that  
15 are frivolous or solely intended to cause unnecessary delay".

16 9. The LAW OFFICES OF MARK B. PLUMMER, PC has never previously been  
17 declared to be a vexatious litigant by any state or federal court, nor has such a claim ever been  
18 suggested.

19 10. MARK B. PLUMMER has never relitigated or attempted to relitigate anything after it  
20 was finally decided.

21 11. MARK B. PLUMMER never "files unmeritorious motions, pleadings, or other papers,  
22 conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to  
23 cause unnecessary delay".

24 12. MARK B. PLUMMER has never previously been declared to be a vexatious litigant by  
25 any state or federal court, nor has such a claim ever been suggested.

26 13. MARK PLUMMER and the LAW OFFICES OF MARK B. PLUMMER, PC are  
27 separate and distinct and that MARK B. PLUMMER is not a Plaintiff in the subject case. There has  
28 been no trial or other evidentiary hearing were MARK B. PLUMMER was ruled the Alter Ego of the  
LAW OFFICES OF MARK B. PLUMMER, PC.

1 14. No Appellate Court has ever found that the LAW OFFICES OF MARK B. PLUMMER,  
2 PC was improperly relitigating the same issues, nor has any such claim ever been made.

3 15. Neither MARK PLUMMER or the LAW OFFICES OF MARK B. PLUMMER, PC  
4 have ever been admitted to any mental health facility, ever.

5 16. The LAW OFFICES OF MARK B. PLUMMER, PC has regularly prevailed in cases  
6 alleging fraud.

7 17. The LAW OFFICES OF MARK B. PLUMMER, PC has never been sanctioned for bad  
8 conduct. In Newchurch, the sanctions were reversed on appeal and the other party was required to pay  
9 the costs.

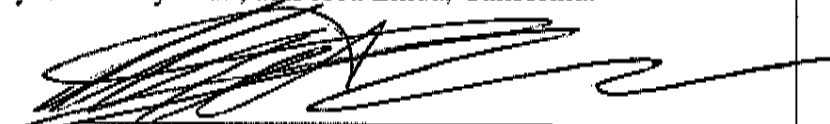
10 18. Mark Plummer did not write the brief on the Jones appeal, rather Attorney Jones did.  
11 She had agreed to substitute in before the brief was due, but didn't. It seemed better to file her lousy  
12 brief than to let the appeal be dismissed. I have several published opinions and an excellent record on  
13 appeal.

14 19. There has been no finding in this case that the LAW OFFICES OF MARK B.  
15 PLUMMER, PC has violated "confidentiality" in any manner.

16 20. The costs of opposing the subject motion, which required looking for old cases in  
17 storage, at my usual rate of \$550.00 per hour, was as follows:

18	Draft Opposition to Motion, including finding old files (20.6 hours at \$550.00/hour)	\$11,330.00
19	Draft Reply to Opposition to Motion for Terminating Sanctions (estimated) (8.0 hours at \$550.00/hour)	4,400.00
20	Prepare for and appear at hearing on Motion for Terminating Sanctions (estimated) (4.0 hours at \$550.00/hour)	2,200.00
21	<hr/>	
22	TOTAL	\$ 17,930.00

23  
24 I declare under penalty of perjury under the laws of the State of California that the foregoing  
25 is true and correct. Executed this 7<sup>th</sup> day of January 2019, at Yorba Linda, California.

26  
27   
28 MARK B. PLUMMER