N. N. Alai,
14 Monarch Bay Plaza Suite 383
Dana Point, CA 92629
On behalf of Amicus Curiae
In Limited Scope representation C.R.C. 3.37

IN THE SUPERIOR COURT OF CALIFORNIA
OF THE COUNTY OF ORANGE
ORANGE DEPARTMENT OF DISSOLUTIONS

Wajia Ghafoori and Law Office of Mark Plummer et al.

Plaintiffs

v.

SEVENto7Physical Therapy *et al.*

Defendants

Case: 30-2018-01014163-CU-CO-NJC
Assigned to Hon. Griffin

REQUEST FOR LEAVE OF COURT TO FILE AMICUS BRIEF AS TO RESPONDENT MARK PLUMMER'S MISREPRESENTATIONS IN DECLARATION TO SUPERIOR COURT

TO THE HONORABLE COURT AND ALL PARTIES:

PLEASE TAKE NOTICE THAT Nili N. Alai (hereinafter referred to as "Amici") respectfully lodges the Request for Leave of Court to File the herewith Amicus Brief in Case No. 30-2018-01 014163-CU- CO -NJC as to Respondent Mark Plummer's Misrepresentations in his Declarations to the Superior Court.

Therefore, *amici* Nili Alai respectfully seeks leave of the Court, allowing the filing of his Amicus Brief to inform the Court of troubling acts of dishonesty,

false and misleading declarations to the Court by Mark B. Plummer, appearing in *alter ego* for Law Offices of Mark B. Plummer, details of which, are outlined in the *Amicus* Brief and exhibits. Whereby, *amici* request leave to provide information germane to the Court's administration of justice in *Mark Plummer et al* vs. Sevento7 Physical Therapy and *Rezaei et al.*

The Court must know of Plaintiff/ Cross-Defenant Mark Plummer's chicanery in order to protect public interest, and litigants in this matter with Mark Plummer derivatively.

Based on the highly contradictory and conflicting Declarations of Mark Plummer submitted under oath to various courts in California, as judicially noticed herein, it appears that Mark Plummer has made misrepresentations and failed to inform the Court of the following facts:

1. Mark Plummer's contradictory testimony under oath as to his hourly billing;
2. Mark Plummer's highly conflicting declarations under oath as to his purported annual income and earnings which ranges widely depending on the court, venue, and *purpose* of the declaration from $54,000 in No. 04D010961 (*Plummer vs. Plummer*) to $1,100,000 in other matters before the courts. (*See* Plummer's 2019 filed Declarations)
3. Mark Plummer's Violation of multiple court orders and misrepresentation of other Orders to the Court;
4. Multiple filed Civil Harassment Restraining Orders and Domestic Violence (herein "CHRO) naming Mark B. Plummer as respondent; and
5. Mark Plummer's ongoing California State Bar investigation as to Plummer's moral turpitude as to multiple law clients.

These uncovered findings are not entirely surprising considering Plummer's documented contemptuous actions before the Superior and

Appellate Courts. Mark Plummer's candor or lack thereof should help the Court decide whether leave should be granted to file this brief.

CONCLUSION

For all of the reasons set forth in the Amicus Brief, Moving party hereby requests that this Court grant leave to file said brief in this action.

DATED: April 24, 2019

Respectfully
Submitted, /S/N. Alai/
N. N. Alai

MEMORANDUM OF POINTS AND AUTHORITIES

Nili N. Alai (hereinafter referred to as "Amici") respectfully lodges the herewith Amicus Brief as to misrepresentations made within this action by Respondent Mark Plummer.

By allowing the filing of this Amicus Brief, Amici intend to inform the Court of false and misleading declarations to the Court by Respondent Mark B. Plummer, appearing in *alter ego* for Law Offices of Mark B. Plummer. Notably, Mark Plummer submitted highly conflicting declarations to family court that his earnings were approximately $28 per hour (annual earnings of $54,000- Attachment 1) whereas is another public forum Mark Plummer declared under oath that he earned $550 per hour (annual earnings of $1.1 million dollars, Attachments 2, 3, 4, and 5).

REQUEST FOR JUDICIAL NOTICE

Matters which can be judicially noticed are properly considered on the referenced motion. Evidence Code § 453 authorizes the Court to take Judicial Notice of a matter identified in Evidence Code§ 452, upon the request of a party. Under subsection (d) the Court is authorized to take judicial notice of "Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States. "

Evidence Code 452 in relevant parts states:

Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States. (e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.(f) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Pursuant to Evidence Code sections 452 and 459, Amici hereby respectfully requests Judicial Notice of the following matters:

MARK PLUMMER SUBMITTED CONFLICTING AND HIGHLY CONTRADICTORY TESTIMONY UNDER OATH AS TO HIS ANNUAL EARNINGS.

1. **In 2012 Mark Plummer Submitted Contradictory Testimony Under Oath In Multiple Public Fora.**

RE: Orange County Court Case No. 04D010961 (*Plummer vs. Plummer*)

Whereas, in this court in 2012 , Mark Plummer has made misleading and conflicting declarations to the Court under oath attesting that he earned a meager $28.25 per hour as a practicing lawyer based on full-time estimate of 2000 hours per annum, Mark Plummer's self-reported annual earnings in 2012 was approximately $54,000, Mark Plummer has made highly contradictory declarations under oath that his

income and law suit winnings from 2012 through 2019 was really from $800,000 to $1.1 million per annum. (Attachment "1")

In 2012, Mark Plummer claimed he earns a total (gross income *before* taxes) of $4500 a month (Decl. Mark Plummer ¶1, 5: May 5, 2012).

Mark Plummer also provided conflicting and false testimony under oath that he only had "$5000 in total in all cash, checking accounts, savings, credit union, money market, and other deposit accounts." (Decl. Plummer ¶11 May 5, 2012). However, shortly thereafter Mark Plummer reported a high net worth and assets of more than $200,000 which then qualified him for a $900,000 home loan from Wells Fargo. (See Plummer vs. Wells Fargo 30-2016-00831688). In 2012 Plummer also misrepresented under oath in this court that his law practice was floundering: "Business is so bad that working out of home." (¶7, FL-150) Plummer declared under oath that his law practice was failing: "*Business is slow costs are high I need to cover overhead and payroll so I can' take a draw.*" (¶9, FL-150) (See Attachment "1")

FL-150

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Mark B. Plummer 120098
Law Offices of Mark B. Plummer, PC
18552 Oriente Drive
Yorba Linda, California 92886
TELEPHONE NO.: (714) 970-3131 (714) 970-3130
E-MAIL ADDRESS (Optional): lombp@earthlink.com
ATTORNEY FOR (Name):

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
LAMOREAUX JUSTICE CENTER
MAY 07 2012
ALAN CARLSON, Clerk of the Court
BY: T. MORRIS DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Ana, California 92701
BRANCH NAME: Central Justice Center
PETITIONER/PLAINTIFF: Hedy (Polyak) Plummer
RESPONDENT/DEFENDANT: Mark B. Plummer
OTHER PARENT/CLAIMANT:

INCOME AND EXPENSE DECLARATION

CASE NUMBER: 04D010961

1. **Employment** *(Give information on your current job or, if you're unemployed, your most recent job.)*

Attach copies of your pay stubs for last two months (black out social security numbers).

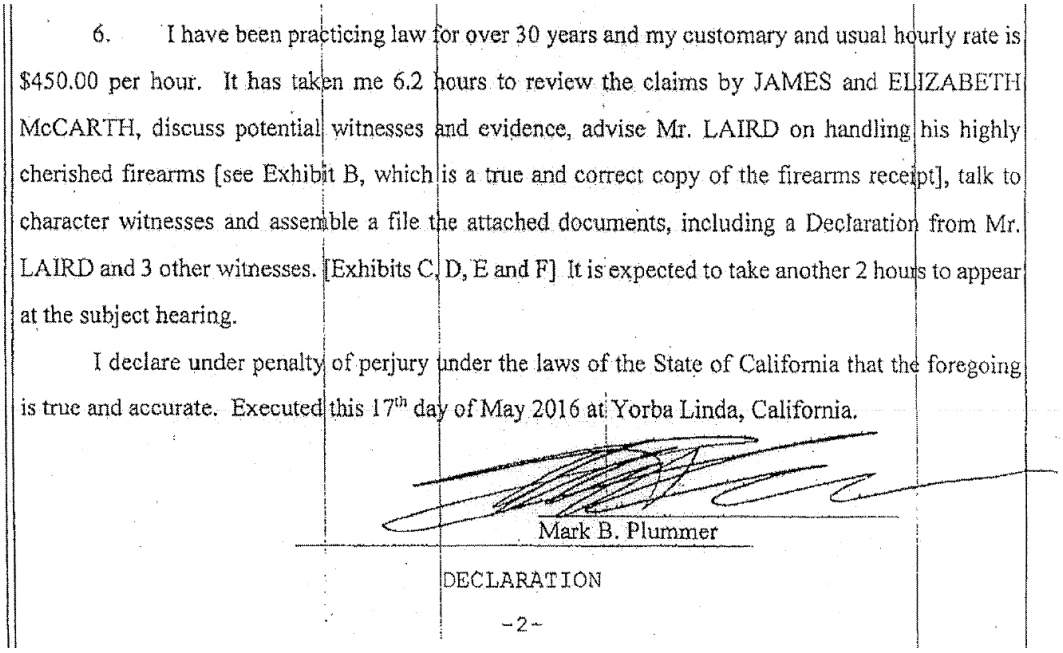
a. Employer: Self
b. Employer's address:
c. Employer's phone number:
d. Occupation:
e. Date job started: March 21, 1995
f. If unemployed, date job ended:
g. I work about 40 hours per week. including advocating for my mentally ill child
h. I get paid $ 4,500 gross (before taxes) ☒ per month ☐ per week ☐ per hour.

(If you have more than one job, attach an 8 1/2-by-11-inch sheet of paper and list the same information as above for your other jobs. Write "Question 1 - Other Jobs" at the top.)

2. **Age and education**
a. My age is *(specify)*: 55
b. I have completed high school or the equivalent: ☒ Yes ☐ No If no, highest grade completed *(specify)*:
c. Number of years of college completed *(specify)*: 5 ☒ Degree(s) obtained *(specify)*: BS - Business
d. Number of years of graduate school completed *(specify)*: 3 ☒ Degree(s) obtained *(specify)*: JD
e. I have: ☒ professional/occupational license(s) *(specify)*: Law License

2. Whereas <u>in 2013 Orange County Superior Court Cases 30-2013-0065458330 and 2016-00853407, Plummer declared he was earning approximately $900,000 per annum.</u>

Plummer was a defendant in a civil harassment restraining action for allegations of unlawful conduct. In that action, Plummer's declaration ¶6 under oath demonstrated that he stated "my customary and usual hourly rate is $450 per hour." (See Attachment "2")



6. I have been practicing law for over 30 years and my customary and usual hourly rate is $450.00 per hour. It has taken me 6.2 hours to review the claims by JAMES and ELIZABETH McCARTH, discuss potential witnesses and evidence, advise Mr. LAIRD on handling his highly cherished firearms [see Exhibit B, which is a true and correct copy of the firearms receipt], talk to character witnesses and assemble a file the attached documents, including a Declaration from Mr. LAIRD and 3 other witnesses. [Exhibits C, D, E and F] It is expected to take another 2 hours to appear at the subject hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and accurate. Executed this 17th day of May 2016 at Yorba Linda, California.

Mark B. Plummer

DECLARATION

-2-

3. In 2016 <u>Mark Plummer submits contradictory testimony under oath in multiple public fora.</u>

<u>Whereas in August 2016,</u> Plummer testified to Superior Court <u>under oath</u> that his usual and customary hourly rate is $400. Based on full-time estimate of 2000 hours per annum, Plummer's self-reported annual earnings for 2016 was $800,000.00.

Mark Plummer testified that his "usual and customary" hourly "rate of $400". (Decl. Plummer Aug 17, 2016 ¶ 5) (See Attachment "2")

However, Plummer has not only failed to disclose his true earnings and income in this action, but also in his IRS tax returns which he filed under penalty of perjury as to TAX ID 33- 1110423 and his personal tax returns. He has also failed to disclose his $800,000 earnings on his further child support declarations of income as filed under oath within the family court No. 04D010961 (*Plummer vs. Plummer*).

> **5.** The reasonable expenses and attorney's fees associated with the discovery abuse perpetrated by Plaintiff, CONNIE PARKER, and her Attorneys, Nancy L. Abrolat and Shahane A. Martirosyan, at Defense Counsel's usual and customary rate of $400.00* per hour, is as follows:

Plaintiff (Decl. Plummer Aug, 17, 2016)

> I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 17th day of August, 2016, at Yorba Linda, California.
>
> By _____
> Mark B. Plummer

4. **Whereas in 2016, Mark Plummer pro per filed a lawsuit against Wells Fargo Bank** (Mark Plummer vs. Wells Fargo 30-2016-00831688) whereby (1) Plummer's loan application for a $900,000 loan claims he makes substantially more than $28.25 per hour (2) Plummer qualified for a $900,000 home loan based on his sole earnings, and (3) Plummer states he won a mid-5-figure settlement from Wells Fargo as a result of his suit, which would also have fully as personal income since Plummer was *pro per.*

5. **In 2019, Plummer Submitted Further Contradictory Testimony Under Oath In Multiple Public Fora As To His Earnings From Suing In *Pro Per* Various Individuals And Companies.**

On 1/7/2019 in action 30-2018-001002061 Plummer declared he has won

large monetary judgments in his personal or "pro per" filed actions (Decl. Mark Plummer ¶3-4, 1/29/2019):

1. Plummer vs. Wells Fargo 30-2016-00831688: Plummer states he won a mid-5-figure settlement;
2. Plummer vs. Riley: Plummer states he won $30,000.00;
3. Plummer vs. Morgan: Plummer states he won $14,066;
4. Plummer vs. Hack: Plummer states he won $21,594.00;
5. Plummer vs. Day-Eisenberg: Plummer states he won $88,845.75;
6. Plummer vs. Bank of America: Plummer states he won $30,000;
7. Plummer vs. Bayuk: Plummer states he won $3,785.37 ;
8. Plummer vs. Cuk: Plummer states he won $14,066.00;

However, on information and belief, Plummer has not only failed to disclose his true earnings and income in his IRS tax returns which he filed under penalty of perjury as to TAX ID 33-1110423 and his personal tax returns, but he has also failed to disclose his purported multi "five-figure" earnings and judgments on his child support pleadings as filed under oath within the family court No. 04D010961 (*Plummer vs. Plummer*).

5. In 2018, Mark Plummer Submitted Contradictory Testimony Under Oath In Multiple Public Fora.

Whereas, in June 2018, Plummer verified in his Complaint in Case No. 30-2018-01002061 in OC Superior Court that his "usual and customary rate is $550 per hour", based on full-time of 2000 hours per annum, Plummer's self-reported annual earnings in 2018 are $1,100,000.

However, Plummer has not only failed to disclose his true earnings and income in the instant action, but also his IRS tax returns which he filed under penalty of perjury as to TAX ID 33-1110423 and his personal tax returns. Notably, Mark Plummer has also failed to disclose his exorbitant $1.1million dollar earnings

on his child support pleadings as filed under oath within the family court No. 04D010961 (*Plummer vs. Plummer*).

B. MARK PLUMMER'S INABILITY OR UNWILLINGNESS TO COMPLY WITH RULES AND RULES OF COURT IS PERVASIVE. THE COURT OF APPEALS FILED AN OPINION AS TO PLUMMER'S FALSE PLEADINGS AND VIOLATIONS OF "COUNTLESS RULES OF COURT":

1. Court of Appeals, Fourth Division, Third District Opinion in *Case No. G053974* Case demonstrated Mark B. Plummer's habitual chicanery in pleadings and testimony to the Courts as follows:

- Blatant Failures by Mark Plummer to Comply with California Rules of Court

  The Court: "numerous and egregious violations of the California Rules of Court and the principles of appellate practice committed by [Plaintiff Plummer]";

- Habitual Falsehoods by Mark Plummer referring to "factual matters" not in the record

  The Court: "Violating the rule that limits assertions of fact to matters in the record"; and

- Freely Pled Misrepresentations and Misguided Cases Cited by Mark Plummer

  The Court: "Far more serious, however, were the repeated misrepresentations of the cases cited to support appellant's arguments."; and

- Liberal Attempts by Mark Plummer to Mislead the Courts

  The Court:" In the reply brief, counsel [Plummer] repeatedly referred to a fictional request for judicial notice,"

Attached hereto as Attachment "6" and inset below in relevant part is the appellate Opinion on this Plaintiff's course of conduct and habitual misrepresentations in pleadings.

> Law Offices of Mark B. Plummer and Mark Brennan Plummer for Plaintiff and Appellant JONES Case No. G053974
> DONNA JONES,
> Donna Jones Plaintiff and Appellant, [counsel Mark B. Plummer]
> v.
> STANLEY FELDSOTT et al.,
> Defendants and Respondents.
> (Super. Ct. No. 30-2014-00758872)
> O P I N I O N
>
> "[11] In only one cited case, *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.* (2016) 244 Cal.App.4th 590, has a court suggested that a law firm might have to *return* fees already paid by a client because of a conflict of interest. (*Id.* at p. 620.) The Supreme Court granted review of this case in April 2016, so it has no binding or precedential effect. Jones cited this case to us without complying with California Rule of Court, rule 8.1115(e). We were not amused."
>
> "Finally, we cannot overlook the numerous and egregious violations of the California Rules of Court and the principles of appellate practice committed by Jones' counsel, beginning with an opening brief that exceeded the word-count limit of rule 8.204(c)(1) by over 1,500 words. Rule 8.1115 was also ignored. In the reply brief, counsel repeatedly referred to a fictional request for judicial notice, violating the rule that limits assertions of fact to matters in the record. (See *Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.* (2011) 194 Cal.App.4th 839, 845-846; *Dominguez v. Financial Indemnity Co.* (2010) 183 Cal.App.4th 388, 392, fn. 2.) The reply brief includes other references to factual matters not in the record.
>
> Far more serious, however, were the repeated misrepresentations of the cases cited to support appellant's arguments. For example, counsel frequently asserted that the fee-waiver cases cited in the opening brief approved of "disgorgement" of attorney fees as a remedy for a conflict-of-interest ethical violation. Every one of the cases cited involved an

> action by an attorney against a client for payment of fees. In each case, the remedy was that the client did not have to pay the fees. None of these cases approved of or even considered "disgorgement" as a remedy. As far as this record indicates, disgorgement was never mentioned as a possible remedy for conflict of interest.
>
> As a widely used treatise on appellate practice observes, "Misstatements, misrepresentations and/or material omissions of the relevant facts or law can instantly 'undo' an otherwise effective brief, waiving issues and arguments; it will certainly cast doubt on your credibility, may draw sanctions . . . and may well cause you to *lose the case!* (2 Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2016) ¶ 9:27, p. 9-8.) After laboriously checking the record and the cases for ourselves in this appeal, we can attest to the accuracy of this observation.[16]
>
> **DISPOSITION**
>
> The judgment is affirmed. Respondents' request to take judicial notice of the briefs filed in the interpleader appeal, *Feldsott & Lee v. Jones*, B262710, is denied. Respondents' motion for sanctions is denied. Respondents are to recover their costs on appeal."

C. PLUMMER HABITUALLY APPEARS TO FILE *OTHER* FALSE AND MISLEADING DECLARATIONS IN COURT.

Attached hereto (Attachment 7) are true and correct copies of multiple declarations and proofs of service filed by Mark Plummer whereby he signed under penalty of perjury that he is not a party to an action, despite the fact that he is a party to the referenced actions, and is pursuant to code, not permitted to sign a proof of service.

D. MARK PLUMMER FREELY VIOLATED STATE AND CITY LAWS, AND DID NOT HAVE ANY BUSINESS LICENSE FOR HIS BUSINESS IN YORBA LINDA.

1. Based on publicly available information obtained from the City of Yorba Linda and accessed at https://www.yorbalindaca.gov/372/Apply-for-Renew-a-Business-License, Mark Plummer is *unlawfully* operating a business "Law Offices of Mark B. Plummer" at 18552 Oriente Drive without a permit or city business license. (*See* Exhibits)
2. Specifically, the outlined facts are unequivocally demonstrated by the attached exhibits from the City of Yorba Linda public records:

   (1) Plummer's detached garage at 18552 Oriente Drive[1] underwent extensive construction and use modification which was never permitted by the city;

   (2) Plummer's current business use of the garage at 18552 Oriente Drive for employees and the public is in direct violation of the *city's refusal* to issue electrical and building permits; and

   (3) Plummer failed to be registered for, or have any city business license, making his current law practice at 18552 Oriente unlawful.

E. IT IS BELIEVED THAT MARK PLUMMER SUBMITTED CONFLICTING AND FALSE TESTIMONY AS TO HIS ANNUAL EARNINGS TO CIRCUMVENT CHILD SUPPORT OBLIGATIONS AND INCOME TAX RESPONSIBILITIES.

Mark B. Plummer, appearing in alter ego as "Law Offices of Mark Plummer", has also violated Disclosure Rules, Rules of Court and Professional Rules of Conduct by doing the following:

---

[1] Mark Plummer noticed a formal legal deposition for October 25, 2018 to take place at the "Law Offices of Mark B. Plummer" at 18552 Oriente Drive. On the noticed date, Defendants and two other parties including a court reporter personally attended the deposition at Plummer's *non-permitted garage* located at 18552 Oriente Drive in Yorba Linda, CA 92886. After the deposition, facts about highly unsafe circumstances and structural failures became known.

1. Failing to disclose and declare cash income paid by clients;
2. Failing to declare and disclose income from multiple *pro per* lawsuit judgments (¶¶ 3-4 Decl. Plummer to vexatious litigant motion 30-2018-01002061);
3. Failing to separate and combining deductions in alter ego for his home and office which are both located at 18552 Oriente Drive in Yorba Linda;
4. Upgrading his personal home and buying new personal furnishings while writing off these improper expenses as business expenses for his corporation;
5. Failing to declare and disclose monetary sanctions paid to him by opposing clients;
6. Unlawfully and surreptitiously operating a business in the City of Yorba Linda without the required city business license;
7. Failing to report his 2016-2017 true income from clients in 30-20015-00768937 (*See* invoices and ledgers, Exh. N to ¶Decl. Plummer Dec 17, 2018);
    - $57,531.90 earnings in 2016
    - $23,128.10 earnings in 2017

Respectfully Submitted,

DATED: April 16, 2019

/S N. Alai

N. N. Alai

DECLARATION OF N. ALAI

I, Nili Alai, declare and state as follows:

1. I am a physician licensed to practice medicine in the State of California and not a party to this action.
2. I have personal firsthand knowledge of the facts set forth herein and if called as a witness I could and would testify competently to the truth of the facts set forth in this declaration.
3. I file this brief and declaration for good faith and not for any improper purpose.
4. I have known Mark B. Plummer in a professional capacity for 3 years. I retained him as counsel where he was paid more than $80,000 from Jan. 2016 to June 2017 for legal representation.
5. Through my professional interaction as a client with him, I have found him to be frequently disingenuous, and to display highly concerning personal conduct as to matters before the court.
6. Through investigating Mark Plummers' background in Case No. 30-2018-01022061, I uncovered Mark Plummer's conflicting declarations under oath to the courts in different matters.
7. A true and correct copy of Mr. Plummer's 2012 Declaration is attached hereto as Attachment "1".
8. A true and correct copy of Mr. Plummer's Declaration is attached hereto as Attachment "2".
9. A true and correct copy of Mr. Plummer's Declaration is attached hereto as Attachment "3".
10. A true and correct copy of Mr. Plummer's Declaration is attached hereto as Attachment "4".
11. A true and correct copy of Mr. Plummer's Complaint and filed lawsuit against Wells Fargo, is attached hereto as Attachment "5",

12. A true and correct copy of the Court of appeals Opinion admonishing Mr. Plummer's falsehoods in pleadings and "egregious" and "serious" violations of Rules of Court is attached hereto as Attachment "6".

13. A true and correct copy of Mr. Plummer's Declarations and false proofs of service are attached hereto as Attachment "7".

14. True and correct Declarations of third party attorneys Eisenberg, Bayuk, and Bohm as to Mark Plummer's disingenuous court conduct and improper litigation artifice i other courts are attached hereto as Attachment "8."

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

This declaration is executed on April 16, 2019 Orange County, California

S/N. Alai

N. N. Alai

ATTACHMENT "1"

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Mark B. Plummer 120098
Law Offices of Mark B. Plummer, PC
18552 Oriente Drive
Yorba Linda, California 92886
TELEPHONE NO.: (714) 970-3131 (714) 970-3130
E-MAIL ADDRESS (Optional): lombp@earthlink.com
ATTORNEY FOR (Name):

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
LAMOREAUX JUSTICE CENTER
MAY 07 2012
ALAN CARLSON, Clerk of the Court
BY: T. MORRIS DEPUTY

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

PETITIONER/PLAINTIFF: Hedy (Polyak) Plummer
RESPONDENT/DEFENDANT: Mark B. Plummer
OTHER PARENT/CLAIMANT:

INCOME AND EXPENSE DECLARATION

CASE NUMBER: 04D010961

1. **Employment** *(Give information on your current job or, if you're unemployed, your most recent job.)*

Attach copies of your pay stubs for last two months (black out social security numbers).

a. Employer: Self
b. Employer's address:
c. Employer's phone number:
d. Occupation:
e. Date job started: March 21, 1995
f. If unemployed, date job ended:
g. I work about 40 hours per week. including advocating for my mentally ill child
h. I get paid $ 4,500 gross (before taxes) ☒ per month ☐ per week ☐ per hour.

(If you have more than one job, attach an 8 1/2-by-11-inch sheet of paper and list the same information as above for your other jobs. Write "Question 1 - Other Jobs" at the top.)

2. **Age and education**
   a. My age is *(specify):* 55
   b. I have completed high school or the equivalent: ☒ Yes ☐ No If no, highest grade completed *(specify):*
   c. Number of years of college completed *(specify):* 5 ☒ Degree(s) obtained *(specify):* BS - Business
   d. Number of years of graduate school completed *(specify):* 3 ☒ Degree(s) obtained *(specify):* JD
   e. I have: ☒ professional/occupational license(s) *(specify):* Law License
      ☐ vocational training *(specify):*
3. **Tax information**
   a. ☒ I last filed taxes for tax year *(specify year):* 2010
   b. My tax filing status is ☐ single ☐ head of household ☐ married, filing separately
      ☒ married, filing jointly with *(specify name):* Jocelyn Plummer
   c. I file state tax returns in ☒ California ☐ other *(specify state):*
   d. I claim the following number of exemptions (including myself) on my taxes *(specify):* 5
4. **Other party's income.** I estimate the gross monthly income (before taxes) of the other party in this case at *(specify):* $ 70,000
   This estimate is based on *(explain):* This was Ms. POLYAK's sworn testimony to this Court on 11/03/10. She still has the same job.

(If you need more space to answer any questions on this form, attach an 8 1/2-by-11-inch sheet of paper and write the question number before your answer.) Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information contained on all pages of this form and any attachments is true and correct.

Date: May 5, 2012

Mark B. Plummer
(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

Form Adopted for Mandatory Use
Judicial Council of California
FL-150 [Rev. January 1, 2007]
Martin Dean's ESSENTIAL FORMS™

Family Code, §§ 2030-2032, 2100-2113, 3552, 3620-3634, 4050-4076, 4300-4339
www.courtinfo.ca.gov

MBP

PETITIONER/PLAINTIFF: Hedy (Polyak) Plummer RESPONDENT/DEFENDANT: Mark B. Plummer OTHER PARENT/CLAIMANT:	CASE NUMBER: 04D010961

Attach copies of your pay stubs for the last two months and proof of any other income. Take a copy of your latest federal tax return to the court hearing. ***(Black out your social security number on the pay stub and tax return.)***

5. **Income** *(For average monthly, add up all the income you received in each category in the last 12 months and divide the total by 12.)*

	Last month	Average monthly
a. Salary or wages (gross, before taxes)	$ 4,500	5,500
b. Overtime (gross, before taxes)	$	
c. Commissions or bonuses	$	
d. Public assistance (for example: TANF, SSI, GA/GR) ☐ currently receiving	$	
e. Spousal support ☐ from this marriage ☐ from a different marriage	$	
f. Partner support ☐ from this domestic partnership ☐ from a different domestic partnership	$	
g. Pension/retirement fund payments	$	
h. Social security retirement (not SSI)	$	
i. Disability: ☐ Social security (not SSI) ☐ State disability (SDI) ☐ Private insurance.	$	
j. Unemployment compensation	$	
k. Workers' compensation	$	
l. Other (military BAQ, royalty payments, etc.) *(specify)*:	$	

6. **Investment income** *(Attach a schedule showing gross receipts less cash expenses for each piece of property.)*

a. Dividends/interest	$	
b. Rental property income	$ 1,000	
c. Trust income	$	
d. Other *(specify)*:	$	

7. **Income from self-employment, after business expenses for all businesses** $ 0 | 0
I am the ☒ owner/sole proprietor ☐ business partner ☐ other *(specify)*:
Number of years in this business *(specify)*: 17
Name of business *(specify)*: Law Offices of Mark B. Plummer, PC
Type of business *(specify)*: Law Practice (Business is so bad that working out of home.)
Attach a profit and loss statement for the last two years or a Schedule C from your last federal tax return. Black out your social security number. If you have more than one business, provide the information above for each of your businesses.

8. ☐ **Additional income.** I received one-time money (lottery winnings, inheritance, etc.) in the last 12 months *(specify source and amount)*: 0

9. ☒ **Change in income.** My financial situation has changed significantly over the last 12 months because *(specify)*:
Business is slow; costs are high; I need to cover overhead and payroll; so I can't take a draw.

10. **Deductions**

	Last month
a. Required union dues	$
b. Required retirement payments (not social security, FICA, 401(k), or IRA)	$
c. Medical, hospital, dental, and other health insurance premiums *(total monthly amount)*	$
d. Child support that I pay for children from other relationships	$
e. Spousal support that I pay by court order from a different marriage	$
f. Partner support that I pay by court order from a different domestic partnership	$
g. Necessary job-related expenses not reimbursed by my employer *(attach explanation labeled "Question 10g")*	$

11. **Assets**

	Total
a. Cash and checking accounts, savings, credit union, money market, and other deposit accounts	$ 5,000
b. Stocks, bonds, and other assets I could easily sell	$ 5,000
c. All other property, ☐ real and ☒ personal *(estimate fair market value minus the debts you owe)*	$ 15,000

PETITIONER/PLAINTIFF: Hedy (Polyak) Plummer
RESPONDENT/DEFENDANT: Mark B. Plummer
OTHER PARENT/CLAIMANT:
CASE NUMBER: 04D010961

12. **The following people live with me:**

Name	Age	How the person is related to me? *(ex: son)*	That person's gross monthly income	Pays some of the household expenses?
a. Jocelyn Plummer	43	Wife	2,000	☐ Yes ☒ No
b. Andrew Plummer	12	Son	0	☐ Yes ☒ No
c. Grant Plummer	9	Son	0	☐ Yes ☒ No
d. Kendall Plummer	8	Daughter	0	☐ Yes ☒ No
e.				☐ Yes ☐ No

13. **Average monthly expenses** ☒ Estimated expenses ☐ Actual expenses ☐ Proposed needs

a. Home:
(1) ☐ Rent or ☒ mortgage ..... $ 4,096
If mortgage:
(a) average principal: $ 865
(b) average interest: $ 3,230
(2) Real property taxes ..... $ 1,000
(3) Homeowner's or renter's insurance (if not included above) ..... $ 326
(4) Maintenance and repair ..... $ 1,200
b. Health-care costs not paid by insurance ..... $ 350
c. Child care ..... $ 650
d. Groceries and household supplies ..... $ 2,000
e. Eating out ..... $ 250
f. Utilities (gas, electric, water, trash) ..... $ 900
g. Telephone, cell phone, and e-mail ..... $ 70
h. Laundry and cleaning ..... $ 300
i. Clothes ..... $ 400
j. Education ..... $ 200
k. Entertainment, gifts, and vacation ..... $ 250
l. Auto expenses and transportation (insurance, gas, repairs, bus, etc.) ..... $ 400
m. Insurance (life, accident, etc.; do not include auto, home, or health insurance) $ 350
n. Savings and investments ..... $
o. Charitable contributions ..... $
p. Monthly payments listed in item 14 *(itemize below in 14 and insert total here)* $ 0
q. Other *(specify)* : Credit Cards ..... $ 800
r. **TOTAL EXPENSES** (a-q) *(do not add in the amounts in a(1)(a) and (b))* $ 13,542
s. **Amount of expenses paid by others** $ 800

14. **Installment payments and debts not listed above**

Paid to	For	Amount	Balance	Date of last payment
		$	$	
		$	$	
		$	$	
		$	$	
		$	$	
		$	$	

15. **Attorney fees** *(This is required if either party is requesting attorney fees.)*:
a. To date, I have paid my attorney this amount for fees and costs *(specify)* : $
b. The source of this money was *(specify)* :
c. I still owe the following fees and costs to my attorney *(specify total owed)* : $
d. My attorney's hourly rate is *(specify)* : $

I confirm this fee arrangement.

Date: May 5, 2012

Mark B. Plummer
(TYPE OR PRINT NAME OF ATTORNEY)

(SIGNATURE OF ATTORNEY)

PETITIONER/PLAINTIFF: Hedy (Polyak) Plummer RESPONDENT/DEFENDANT: Mark B. Plummer OTHER PARENT/CLAIMANT:	CASE NUMBER: 04D010961

CHILD SUPPORT INFORMATION

(NOTE: Fill out this page only if your case involves child support.)

16. **Number of children**
    a. I have *(specify number)*: 3 children under the age of 18 with the other parent in this case.
    b. The children spend 100 percent of their time with me and 0 percent of their time with the other parent.
    (If you're not sure about percentage or it has not been agreed on, please describe your parenting schedule here.)

17. **Children's health-care expenses**
    a. ☐ I do ☒ I do not have health insurance available to me for the children through my job.
    b. Name of insurance company: Blue Shield
    c. Address of insurance company:
    My wife is maintaining a distant and inconvenient job just to get insurance for the children since Kendall is otherwise uninsurable, as a result of heart, eye and ear surgery as well as her mental illness and special needs.
    d. The monthly cost for the **children's** health insurance is or would be *(specify)*: $ not insurable
    (Do not include the amount your employer pays.)

18. **Additional expenses for the children in this case**

	Amount per month
a. Child care so I can work or get job training	$ 400
b. Children's health care not covered by insurance	$ 600
c. Travel expenses for visitation	$ 0
d. Children's educational or other special needs *(specify below)*:	$ 600

Kendall, with special needs, requires tutoring @ $100/wk; physical training @ $100/mth.; Hearing Aids and Glasses

19. **Special hardships.** I ask the court to consider the following special financial circumstances *(attach documentation of any item listed here, including court orders)*:

	Amount per month	For how many months?
a. Extraordinary health expenses not included in 18b	$ 0	
b. Major losses not covered by insurance (examples: fire, theft, other insured loss)	$ 0	
c. (1) Expenses for my minor children who are from other relationships and are living with me	$ 0	

(2) Names and ages of those children *(specify)*:

(3) Child support I receive for those children $ 0

The expenses listed in a, b and c create an extreme financial hardship because *(explain)*:
The Uncovered Medical Trust is gone. Hearing aids cost $3,000.00 and glasses cost $500.00; without insurance Kendall's medication could cost $800.00/mth. One boy's braces which will 6,000.00 after insurance. (We are concerned that benefits will be dropped by Jocelyn's employer.)

20. **Other information I want the court to know concerning support in my case** *(specify)*:
Kendall (8) required multiple prescription medications twice a day, plus after school physical and academic assistance almost daily. She also sees a psychiatrist, nuerologist, therapist and her pediatrician frequently, in addition to her hearing and eye doctors, which takes a lot of time.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within entitled action; my business address is:

LAW OFFICES OF MARK B. PLUMMER, PC
18552 Oriente Drive
Yorba Linda, California 92886

On **May 6, 2012**, I personally served the foregoing document(s) described as follows:

INCOME AND EXPENSE DECLARATION

On all interested parties as follows:

Hedy Polyak Plummer
1205 N. Piedmont Drive
Anaheim, California 92807

_____ (BY MAIL) By mailing the above identified document via Express, Overnight Mail, fully prepaid at the United States Post Office at Yorba Linda, California.

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

_____ (BY FACSIMILE) By telecopying a true copy thereof to the party at the above facsimile number.

__X___ (STATE) I Declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **May 6, 2012**, at Yorba Linda, California

Jocelyn Plummer

Every single factor identified in Family Code §3011 as a factors to be considered in determining the best interests of the children shows that it is in the best interest of the children to keep custody and visitation the way it is.

IV
CONCLUSION

The burden of proof is on Petitioner to show that due to: **1)** a "significant change in circumstances"; **2)** the strong preference for maintaining the status quo should be dispensed with; **3)** because the best interests of the children require a change in the custody/visitation order. Buchard v. Garay (1986) 42 Cal.3d 531 There are no changed circumstances, the status quo is best for the children and the best interests of the children are achieved by leaving custody and visitation the way that they are. Additionally, Petitioner's claims are simply not true and her behavior contradicts her claims. (I she really cared about the children, she would have an ARIES account and be participating in Reunification Therapy, not just demanding that children whom she has ignored for almost 8 years simply be delivered to her. According, the subject motion should be denied.

Dated: September 4, 2013

Mark B. Plummer, Respondent

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 Respondent herein. 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. I have had sole physical and legal custody of all 3 children since November 2005 after Petitioner, Hedy Polyak, failed to pick up the children from school on her week and was subsequently discovered at her home by the police so drunk that she didn't remember that she had children.

3. Thereafter, Dr. Adams, the EC §730 evaluator, temporarily awarded sole me physical and legal custody of all the children. Over the next 2 years Petitioner failed 100% of here attempts to objectively demonstrate sobriety and never completed a single monitored visitation because she was never able to pass the pre-visit alcohol test, despite knowing that she would be tested. On May 10, 2007, the Orange County Superior Court entered a Final Judgment awarding me sole physical and legal custody of all the children.

4. During the time between when I was temporarily awarded sole physical and legal custody of all the children, and when I was awarded permanent sole physical and legal custody of all the children, I took care of the medical needs of the children which Petitioner had been blocking by refusing to give her permission to the serious detriment of the children, including Kendall receiving badly needed heart surgery (she had an enlarged heart and needed a PDA surgery), Kendall receiving bi-lateral eye surgery (to move the muscles so that she would not be cross-eyed) and Kendall receiving bi-lateral tubes in her ears (which stopped the chronic sinus infections). I also had Kendall examined by a neurologist who diagnosed developmental delays which allowed me to enroll Kendall in the Search & Serve Special Education Program with the School District, all against Petitioner's wishes who still maintains that none of the children require anything .

5. All 3 children had were enrolled in sports and extra-curricular activities, but these had to all be discontinued because Petitioner used the opportunity to cause thousands of dollars in damage by keying my car, assaulted me by pouring hot coffee on me at a soccer game and embarrassed the children by running out on the field during the game. Since the police wouldn't do anything because "it was a family law matter" and the Family Law Court refused to do anything, all the sports and extra-curricular activities were discontinued.

6. After the Final Order was entered on May 10, 2007, Petitioner continued to refused to participate in any monitored visitation, alienated the children by constantly lying to them, alienated the children by being drunk most of the time she called, called me hundreds of times a day until she finally stopped after the Placentia Police, Detective Loomis, threatened to prosecute her for violating Penal Code §635m and was arrested for domestic violence for assaulting yet another male housemate while drunk.

7. Kendall was hospitalized twice as an inpatient at UCLA'S Children's Psychiatric Hospital where Kendall was diagnosed with "Fetal Alcohol Disorder". The two boys are very resentful of Petitioner for causing the problems which require Kendall to utilize a disproportionate amount of parental attention, and once it got around their school that "their sister was in the funny farm", they were themselves stigmatized.

8. The children's stepmother, Jocelyn, has had an outstandingly positive impact on the children, has been able to provide healthcare benefits since it is impossible for me to insure Kendall under a private policy, and the family has weathered the difficult times and all the children have prospered.

9. At no time has Petitioner ever attended an IEP and at no time since November 2005 has Petitioner ever attended a parent-teach conference (which is no longer an option now that Kendall is past elementary school) or set up an ARIES Account to monitor the children's progress in school Exhibit A, attached hereto is a true and accurate copy of the ARIES screen for Andrew. (School just started yesterday, so the information is minimal.)

10. On 12/17/10, Petitioner proposed that since she could not pass an alcohol test, sobriety should be removed as a condition of visitation. The court accepted Petitioner's proposal over the my objection, and on 11/30/11, ordered that Grant and Andrew have monitored visitation with Petitioner at F.A.C.E.S. where no drug or alcohol testing was to be performed and sobriety on the part of Petitioner was not required. (Due to Kendall's fragile emotional state, she was spared contact with Petitioner.) When I heard that Andrew and Grant were abused by Petitioner and the F.A.C.E.S. staff, I checked with the California Board of Behavioral Sciences and found that F.A.C.E.S. was fraudulently representing that unlicensed trainees were licensed therapists. Additionally, the "therapists" that Grant and Andrew were exposed to turned out to be personal friends of Petitioner who knew each other from their AA meetings. I sent a Consumer Legal Remedies Act notice and Civil RICO claim to F.A.C.E.S. on behalf of the class of all "clients" who had paid F.A.C.E.S. for "therapist services" and F.A.C.E.S. declined any further involvement.

11. A Court Ordered investigation concluded on 04/11/11 that I should maintain sole physical and legal custody. It was subsequently agreed that Petitioner could engage in "reunification

therapy" with Andrew and Grant, in a therapeutic environment with a licensed therapist. Petitioner has refused to participate.

12. Petitioner has always has had the same access to the children's school information as I have and has always been free to communicate with their teachers by email. Petitioner has always been free to attend any of the school events, such as football games and open houses.

13. Petitioner has never completed the "12-Step Program" and has never presented any objective evidence indicating that she has stopped drinking, even temporarily.

14. Attached as Exhibit B is a true and correct copy of Grant's school schedule. He has the maximum number of honors classes available at his grade level.

15. Attached as Exhibit C is a true and correct copy of the booking sheet fore Petitioner latest arrest, and Attached as Exhibit D is a true and correct copy of her roommate's rap sheet.

16. I have never abused Petitioner or the children, although I have been required to intervened to protect the children from physical violence by Petitioner.

17. As soon as I found out that Petitioner had tried to contact Grant through his school, I confirmed the Petitioner had access to all the children's information, and emphasized the Petitioner was not to contact the children or those who cared for them. Attached as Exhibit E is the letter I sent the principal. Petitioner is blatantly lying to claim that I sent it in June 2013. All parent/teacher communications at the middle school level and above are through email and there is simply no legitimate reason for Petitioner to insist on personal meeting.

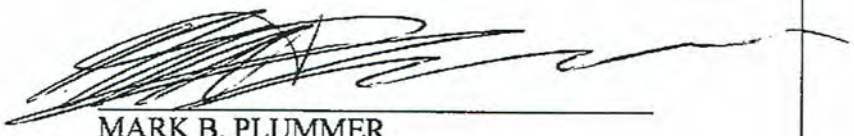
18. Attached as Exhibit F are true and correct copies of the children's test scores. They are thriving in their current environment.

19. I have never withheld any information about doctors from Petitioner. When Jocelyn switched jobs, we had to switch doctors, and this was only after the per diem and the probationary periods expired. (We had to pay cash for Kendall's expensive medications in the meantime.) It also

took quite a while to interview and settle upon an acceptable Psychiatrist (Dr. Doshie) and Psychologist (Ms. Martin), both of whom Kendall has only seen a few times. Petitioner's ridiculous demands that doctors be provided at her whim, when there were no doctors, emphasizes her impulse control problem and her unreasonableness. The boys haven't been ill and still haven't been treated by anyone.

20. Petitioner's family have always had access to the children. Attached hereto as Exhibit G is a true and correct copy of a picture of the Petitioner's mother with the children a few months ago.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of September 2013, at Yorba Linda, California.



MARK B. PLUMMER

Hedy Plummer
1205 N. Piedmont Dr.
Anaheim, Ca. 92807
Tel.: 714.970.0944

Attorney for Petitioner:
Pro per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – LAMOREAUX JUSTICE CENTER

HEDY PLUMMER, Petitioner, vs. MARK PLUMMER Respondent	Case No.: 04 D 010 961 RESPONSIVE DECLARATION TO POINTS AND AUTHORITIES AND DECLARATION Assigned to: Judge Mark S. Millard Date: ~~August~~ SEPT 17, 2013 Time: 8:30 AM Dept.: L-66

FACTS

Petitioner and Respondent were married on February 16, 1997 and have three children: Andrew, Grant and Kendall.

Petitioner was awarded temporary custody of three minor children in April 2002, after Respondent caused physical injury to Petitioner and the police and Courts intervened and granted a "restraining order" to Petitioner and ordered Respondent out of the family place of residence. In order to try and keep the family together and save the marriage, Petitioner agreed to allow the Respondent to move back to the family residence in early May, if Respondent agreed to attend a Catholic related marriage program "Retrovaille" and went back to Court to lift the" Restraining order" which was still in effect.

The Respondent continued to commit physical and mental abuse against the Petitioner,

Justin (Petitioner's son from prior marriage) and against Andrew. (At the time, around 8 years old). In fact, both Andrew and Grant directly witnessed some of the abuse imposed by the Respondent towards the Petitioner. (One such incident, Respondent picked the Petitioner up off the ground and slammed her body down, followed by a strong kick in her side. This was also documented in Dr Adams/Bussi's report.) Finally in 2005, the Petitioner could no longer take the abuse by Respondent and went to the Yorba Linda Police Dept, and a second restraining order was granted. From here, Petitioner filed for a divorce.

After going through an extensive 730 evaluation, Dr Stephen Adams made an initial recommendation for joint physical and legal custody in 2005. In November 2005, Petitioner did not pick up the children from the daycare, Respondent called the police and sent them over to Petitioner's home and as a result, Dr Adam's made a temporary recommendation for the Petitioner to go through an outpatient rehabilitation program to address alcohol-related issues. In this recommendation, Dr Adams made it very clear that he also recommended that the Petitioner have regular weekly phone calls with the children and also, monitored visitation in order to maintain regular contact with their biological Mother. (Since then, Petitioner has participated in four Monitored visitations with Andrew and Grant. at "FACES" and intended to continue these Monitored visits, until Respondent threatened Mary O'Connor (Licensed Therapist MFT) at FACES and now, FACES will no longer work with our family.)

Since that time, Petitioner has successfully completed an out-patient program at the Joshua House in 2008, completed the 12-step program, attends regular AA meetings, continues to help other women in the program, has been re-evaluated by Dr Soltani (Late 2010) with liver enzyme testing and random alcohol/drug testing with results showing no indication of any substance/alcohol abuse whatsoever and has been sober since Sept 3, 2008. Even so, Respondent continues to provide false information to this Court, making accusations to the

contrary, in an attempt to mis-lead this Court by mis-representation of the true facts.

Specifically, the Respondent in his "Declaration" dated September 4, 2013, that he had signed under penalty of perjury, has deliberately, willingly and intentionally submitted to this Court information that he knows is "false", not true and is malicious, in an attempt to mislead this Court and persuade this Court to make a ruling against the Petitioner. As an officer of the Court the Respondent has been professionally trained and has a moral and ethical obligation to follow the laws and not to break the law by committing "perjury". In addition, as an officer of the Court, the Respondent knows the definition of perjury and is well aware of the potential impact this false information can have on this case. Perjury is considered a serious offense, as it can result in a miscarriage of justice, and can potentially affect the outcome of a legal proceeding and create "bias".

The review of the Respondents documents, named "Points and Authorities in Opposition to Motion to Modify Child Custody and Visitation; Declaration of Mark B. Plummer in Support Thereof" contains a number of "false" statements, inaccuracies, false accusations and mis-statements, that are not backed up by any evidence and have a potential for bias and can cause serious harm by effecting the outcome of this hearing. Specifically, the following statements are seriously mis-leading or are blatantly "false" and are vehemently denied by the Petitioner:

a) P. 2 (Line 8): Petitioner has never "blocked" any medical care for any of the children. In fact, the Respondent continuously with-held information about needed medical treatment for Kendall and tried to deny the Petitioner the right to attend the outpatient heart surgery. (Petitioner found out about this surgery through the Pediatrician's office when Petitioner called the office to get an update on Kendall's diagnosis because Respondent refused to give any information to the Petitioner.) Respondent still refuses to disclose medical information about the children and the only way that Petitioner can get any information at all about the children is if there are updated

medical release forms signed, or a Court Order stating that Petitioner has the right to have this information or Joint Legal Custody.

b) P.2 (Line 16): Petitioner has never "keyed" the Petitioner's vehicle, nor caused damage to any property, nor poured hot coffee on the Respondent at any time.

c) P.2 (Line 23): Petitioner has never refused "monitored" visitation and tried on numerous attempts, to contact Respondent after May 2007 and Respondent refused to answer the phone and refused to give Petitioner any information about the children and effectively, alienated the children from the Petitioner by continuously lying to them.

d) P.2 (Line 28): Kendall was not diagnosed with Fetal Alcohol Syndrome, she was diagnosed with bi-polar issues. Petitioner was able to obtain the medical history/background forms that were filled out by the Respondent. Even on these important documents, in an attempt to get the diagnosis of FAS, the Respondent lied to these Doctors by stating that the Petitioner was drinking alcohol during the pregnancy, which is completely false. Petitioner did not drink any alcohol at all during any pregnancy and in fact, was in the hospital for several weeks during this pregnancy, because of the many complications due to the maternal age, heavy bleeding and and thus, the high risk for a miscarriage.

On a separate occasion, Respondent tried to get a diagnosis of FAS from the children's former Pediatrician (Dr Jonathon Kramer in Yorba Linda) and because Dr Kramer refused to "bend" his opinion to lean towards FAS, Respondent threatened to file a lawsuit against Dr Kramer for Medical Malpractice. (Due to Respondents threatening behavior, Dr Kramer chose to no longer see any of the children and dropped them as patients, even though he had been their Doctor for many years (1997-2005), prior to this.

e) P. 3 (Line 8): Petitioner has attempted to, on numerous occasions get some basic school information from the Respondent about the schools they attend and also information about

school activities and the Respondent has refused to disclose any information, stating that Petitioner already knew this information and had access to the ARIES program which is completely inaccurate and false. When Petitioner attempted to sign up for the ARIES program, James Hardin (Principal at YL Middle School) stated that I had "no legal rights" as a parent, to access this information and furthermore, I would have to, either get a written document from the Respondent stating that I can have access to information, or a Court order stating that I have Joint Legal Custody. (To this day, the only information that the schools will give me, is access to the ARIES program, as Respondent finally wrote a letter stating that Petioner can have access to this information only and nothing more. (Respondents Exhibit March 22) Also, contained in this letter is that the Petitioner has absolutely no rights as a parent and implies that the Petitioner is a danger to the children, which is 100% false, in-accurate and again a complete mis-representation of the true facts. (It is yet again, demonstrating the Respondents threatening behavior and "bullying" antics as a Officer of the Court.)

f) P 3 (Line 7): Petitioner has never proposed that sobriety should be removed as a condition of visitation and has been sober for over 5 years (since Sept 3, 2013). In fact, Petitioner went through Dr Soltani for additional testing, which included liver enzyme testing and random alcohol/drug testing and all of the results indicated that Petitioner was sober and has been sober. In addition to Dr Soltani's report and test results, a witness also testified on Petitioner's behalf (Nancy K.) and Petitioner had a declaration from her Sponsor.

g) P 3 (Line 19 and 25) Respondent states that FACES Therapists told the children that their feelings did not count and could not speak and that everything the Petitioner said was true, which is completely "false". In addition, Respondent states that Therapists at FACES were friends of Petitioner's from AA meetings which is completely in accurate and false. Due to Respondent's behavior and threatening letters to "FACES", (a Court approved therapy program) specifically to Mary O'Connor MFT who is in fact, a well-known and respected "Licensed Family Therapist,

FACES has respectfully refused to work with our family any longer.

h) P.4 (Line 7): Respondent states that Petitioner has only seen her children a few times in their lives, which again is completely inaccurate and mis-representing the true facts. Petitioner was a stay-home Mom for nearly 3 years, and had 100% of the responsibility for taking care of the children's needs: taking them to and from school, making their breakfast, lunches and dinners, breast-feeding and feeding them meals, taking them to Doctors appointments, etc...Respondent did not like the fact that Petitioner was a stay-home Mom and tried to push Petitioner into going to work by constantly yelling at Petitioner, and eventually did go back to work.

i) P. 4 (line 11) Respondent states that Petitioner has no interest in seeing the children in a therapeutic environment with a licensed therapist, which is completely false, in-accurate and a mis-representation to this Court. The last Court hearing in 2011, there was to take place reunification counseling and Andrea Ruben (MFT) was agreed upon to do so, by both Respondent and Petitioner. Unfortunately, Respondent tried to give instructions to Andrea Ruben on how she will run the therapy sessions and what would be allowed to be said during those therapy sessions and eventually, Andrea Ruben respectfully said that she did not want to take this case on, as there seemed to be a great deal of contention and that she would more than likely not be able to help with our family. Since then, Petitioner has spoken to several Therapists but none of them specialize inreunification therapy and their fees are $150-$175/hr. In Petitioner's current financial situation, these rates are not affordable , so for this reason, Petitioner is respectfully asking this Court to order that Respondent pay for any costs associated with this therapy. In addition, if the Respondent continues to threaten professional people and bully them there is no possibility that any Therapistwill take on our case. [Currently Petitioner is paying $1414.00/month in child support, based upon the Respondent's purported income of $90,000/yr after his expenses, despite the fact that he lives on a 1 acre Ranch property in Yorba Linda, has two rental

properties, owns several horses, and drives a new "Jaguar" and a Range Rover.]

j) P.5 (Line 11-16): Respondent reports that Petitioner was arrested for Domestic Violence and that she had severely injured her room-mate and was drunk. This statement is false and a complete mis-representation of the true facts, which the Respondent intentionally and willingly submits as true facts and evidence to this Court, but has knowledge, that this is not the truth, and is not accurate, nor does it portray an accurate representation of the facts and as an Officer of the Court, is completely dis-regarding his moral and ethical obligation and is in violation of the law by willingly committing **perjury** in order to persuade this Court to make a favorable ruling in Respondent's favor, during this proceeding. This can potentially and severely impact the Court ruling of this hearing.

Specifically, it was concluded that this was NOT DOMESTIC VIOLENCE, and was completely dismissed and Petitioner did not cause severe injury to anybody and has never caused injury to anyone in her life, nor was the Petitioner drunk, as Respondent states. (Exhibit A)

In addition, the Respondent states that William Boeck resides with the Petitioner, which is a completely inaccurate and despite knowing this is not true, as Respondent has evidence in his possession (Proof of Service) that states the contrary, Respondent willingly makes this false statement/allegation on order to bolster his case. In fact, Respondent on P5 (line 16) even states that William Boeck signed the "Proof of Service", but withholds information from this Court, specifically about the address listed on this document for William Boeck (720 Oakstone Way, Anaheim), which is not the Petitioner's address, which is contained on all the Court documents. (1205 N. Piedmont Dr Anaheim) [Exhibit B]

P.6 (Line 11) Respondent states that Petitioner had chosen to have virtually nothing to do with the children for the past 8 years which is completely false, in-accurate and malicious. The Petitioner, as a once loving Mother, has begged the Respondent over and over again, for the past

several years, through e-mails and phone calls for his cooperation and he has effectively destroyed a loving Mother's relationship with her children through continuously lying to everyone, (including his own children), bullying, and completely dis-regarding what is right for our children. The Petitioner acknowledges that she has made a mistake by drinking excessively during the past and makes no excuses for doing so. It was a very stressful and at times, frightening part of her life, where she was continuously bullied and abused by the Respondent, both mentally and physically throughout their marriage (7.5 yaers) and during the divorce. Meantime, the Respondent took advantage of her situation and managed to "brainwash" the children against their own Mother by repeatedly lying to them and saying derogatory comments about the Petitioner.

k) P. 6 (Line 13): Respondent states that Petitioner has not bothered to sign up for the ARIES program and still cannot be bothered to utilize the reunification therapy, is a mis-statement of the true circumstances and the facts. Petitioner has in fact, sent numerous e-mails to the Respondent requesting information about the children's schools and Respondent has REFUSED to even disclose to the Petitioner which schools they are attending. (Petitioner went to all of the local schools, Mable Paine Elemenatry School; YL Middle School, Bernardo Middle School) in an attempt to get some basic information about the children. None of these schools even acknowledged that the children were in attendance there and furthermore stated, that they could not give any information about any of the children. Petitioner even spoke to James Hardin in Feb 2013 and inquired about Grant. Although he finally did disclose that Grant attended at the school, he stated that since I was not on the approved list to receive information about Grant, he could not release any information at all, including access to the AERIES program, unless the Respondent wrote a letter stating that I was entitled to information, or that I presented him with a Court order/proof of joint legal custody. Apparently Respondent finally did

agree to write a letter to James Hardin, but Petitioner was NEVER notified about this. Petitioner NEVER refused Reunifiaction Therapy and in fact met with Allison at FACES in order to schedule Reunification Therapy. Respondent deliberately proceeded to threaten FACES (Mary O'Connor MFT) with a law suit and accused the therapists of being friends of the Petitioner, which is a complete mis-representation of the facts. Then Andrea Ruben (Licensed MFT) also respectfully refused to work with our family, as Respondent threatened her practice as well, when she would not follow his protocol for therapy. As a practical matter, Petitioner would like to engage in Reunification Therapy but from a financial standpoint, Petitioner cannot pay to have these services, nor can the Petitioner pay for even half of the fees. (Currently, Petitioner is paying $1414.00/month for child support which is based upon Respondents purported income of $90,000 after his office expenses. Despite his reported income of $90,000 Respondent lives in a 1 acre ranch property in Yorba Linda, owns two rental properties horses and drives a brand new Jaguar and a Range Rover.)

l) P.6 (Line 28): Petitioner has never refused to attend any school events and only now learned where the children attend school, in particular Kendall. Up until this point, Petitioner had no idea where Kendall attends school, as Respondent REFUSED to give any information about the children's schools, which is in direct contradiction to [CA FAM Code Section 3025].

m) P.7 (Line 14): Respondent states that he never abused Petitioner which is not true. Respondent caused numerous injuries to Petitioner throughout the entire marriage, some of which was directly in front of the children and has been documented by Dr Bussi/Dr Adams office (when the children were interviewed during the 730 evaluation.). These injuries included: cracked ribs where Petitioner sought medical help (Dr Tim Schmidt), a giant/inflamed contusion on left hip, where Petitioner sought medical help (Dr Tim Schmidt), numerous sprained wrists, where Petitioner sought medical help (Dr Tim Schmidt) and also,

filed for state disability during one such incident, as Petitioner could not work due to the severity of the sprain. Finally, in April 2002, Petitioner sought the help of the Courts and was granted a temporary restraining order and the Respondent was ordered to leave the place of residence. The Respondent convinced the Petitioner that he would change and would attend Retrovaille at the Catholic Church and the Petitioner then agreed to not pursue any further action in the Courts and asked the Courts to retract the restraining order and not order a permanent restraining order, in order to save the marriage. In addition to abusing the Petitioner, Respondent also abused Justin (Petitioner's oldest son from a previous marriage) where Justin ended up calling the police against the Respondent. Finally, Respondent also abused Andrew and on one abusive incidence, Andrew was refusing to eat his dinner and Respondent grabbed Andrew by his throat and lifted him off the kitchen barstool and it was only after Petitioner intervened did Respondent calm down.

ANDREW AND GRANT TESTIFYING

Although the children have the right to testify, it is the obligation of the Court to make a determination of how much weight and relevancy to give this testimony, in deciding the outcome of this hearing. Due to the obvious un-controlled and stressful environment and outside an ideal setting to interview children and also, the lack of knowledge about how this testimony from the children has been influenced and impacted by the current situation and also, at this point, the relevancy of such testimony , the Petitioner respectfully objects to this testimony based upon the following reasons:

1. Children have not had any regular contact with the Petitioner and in fact, have only seen her at FACES approximately 3-4 times in total, for a 1-2 hour period each time in 2010.
2. Respondent has effectively "brainwashed" the children against the Petitioner by continuously lying to them and making derogatory comments. (An example was during a phone call in 2010 when Andrew accused the Petitioner of stealing money from the

Respondent which was not true and in fact, it was when this Court had awarded Petitioner attorney's fees, in order to get fair representation during a past hearing in C-65.)

3. Children were all interviewed extensively, by Dr Adams and Dr Bussi, both trained Psychologists, during the 730 evaluation. At this time both Petitioner and Respondent shared 50/50 joint legal and physical custody of the children and thus, limiting any "bias", as there were special procedures in place, to ensure that each parent brought the children in for interviews an equal number of times. (After these initial interviews, Dr Adam's made an initial recommendation for "Joint Legal and Physical Custody".)

4. During the 730 evaluation, the interviews took place immediately and were not delayed in order to make sure the children had the most clear and accurate memory of events. In this case, it is now 8 years later and these memories have not been made more clear, but rather, have faded.

5. Lastly, there is absolutely no way to determine what exactly the children have been told about the Petitioner by the Respondent and the Respondents wife. (One such incidence occurred during a phone call from the Petitioner to the children and Respondent's wife answered the phone. When Petitioner asked to talk to the children, Respondents wife stated to the children, "The Bit__ is on the phone, do you want to talk to her?" [There is a recording of this phone call made by the Petitioner,where the Repondent's wife's voice and words are clear.) Therefore, there is absolutely no way to know what impact these derogatory comments about the Petitioner, have made upon the children.

CONCLUSION

The Respondent has willingly and intentionally submitted information to this Court, that he knows is not true and has evidence in his possession that is to the contrary, and did so, in order to mislead this Court. As an Officer of the Court, he has an moral and ethical obligation

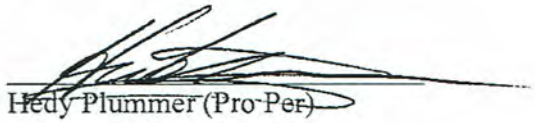
to represent the facts accurately and to do so, by following the highest standards of the law but instead, the Respondent chose to commit perjury, in order to receive a result that is favorable to him. The Respondent has absolutely no idea what is going on with the Petitioner and chooses to make false allegations such as statements that Petitioner committed abuse (domestic violence) against a room-mate which is in direct contradiction of the evidence that the Respondent has in his possession (Proof of Service and the Court Disposition Report.). Furthermore, Respondent had continued to with-hold information about the children that are required by the law to be available for both biological parents, even if one of the parents does not have custody. [CA FAM Code Section: 3025] In addition, in Respondent's own exhibit (Exhibit E), Respondent puts restrictions on the school information that will be available to the Petitioner, which is clearly not an option under CA FAM Code Section 3025. In addition, there has been drastic change of circumstances in the Petitioner's life, starting with the **only reason** why Petitioner lost custody in the first place of the children, which was due to excessive alcohol use, which the Petitioner acknowledges was wrong, but has now been sober for over 5 years. (Sept 3, 2008). [In the initial Court proceedings there was NEVER any accusation against the Petitioner about being abusive towards anybody. This false accusation was first brought up by the Respondent, only several years later and in an attempt to distract this Court from the TRUE issue at hand. In fact, it was the Petitioner who has always maintained that there was physical and mental abuse against her and the children by the Respondent.] On the other hand, the Respondent continues to make up false allegations, in an attempt to portray the Petitioner as some sort of violent criminal which clearly she is not. In fact, the Petitioner is desperately trying to establish a relationship with her children and had been trying to establish a relationship with her children for the past several years, and there is absolutely no evidence that was presented by the Respondent, why the Petitioner should not have a relationship with

her children and should not share joint legal custody with visitation, although the children do have the right to refuse visitation if they choose to do so. Nonetheless, the children should have the option to seek visitation with the Petitioner if they choose to do so. For the reasons stated in this document, Petitioner is respectfully asking this Court to make an order of:

a) JOINT LEGAL CUSTODY WITH REGULAR VISITATION. (This way, the children will have the right for visitation if they choose to do so and refuse, if they choose to do so, but the option will be there.)

b) If the Court finds that this visitation should begin with Reunification Therapy, then the Court order that the Respondent pay for 100% of any costs associated in doing so. (In the current Court order, both the Petitioner and the Respondent are to share costs 50/50, but the Respondent will not agree on a Therapist that accepts a sliding scale, claiming that they are not qualified and insists upon a Therapist that has the highest fees/costs. This makes it impossible for the Petitioner to pay for any of the costs, due to the current child support order of $1414.00 based upon Respondent's perported salary of $90,000 as a lawyer with over 30 years experience. Furthermore, it was Respondent who threatened Mary O'Connor (MFT) from a Court approved facility "FACES" (that offered a sliding scale) and due to Respondent threatening behavior, FACES will no longer work with our family. Lastly, Dr Andrea Ruben (MFT) stated that with the current family dynamics and Respondent's attitude toward such therapy, it is highly unlikely at this point, that Reunifiaction Therapy will be successful at all.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this day of Septernber 12, 2013.



Hedy Plummer (Pro Per)

ATTACHMENT "2"

(1.2 hours at $400.00 per hour)

Prepare for and Appear at Motion to Compel Further Responses (2.0 hours at $450.00 per hour)	800.00
Filing Fee for Motion to Compel Further Responses	60.00
TOTAL	$ 3,540.00

*This case is being handled at a discounted rate of only $250.00 per hour, rather than the usual and reasonable rate of $400.00 per hour, making the out-of-pocket cost for the above noted fees $2,175.00 for a total of $2,235.00.

6. Ms. PARKER, is a law school graduate and a licensed paralegal, who regularly worked as an "independent contractor paralegal" for multiple law firms simultaneously under the name "Lawyers Support Services, LLC", which she also did so while working for Dr. ALAI. At all times Ms. PARKER provided paralegal services that required specialized knowledge and expertise that Dr. ALAI did not have.

7. Ms. PARKER was at all times presumptively an independent contractor under Labor Code 2750.5, something that Ms. PARKER does not dispute. [Parker Depo.: pg. 58, lns. 7 – 19; pg. 148, lns. 19 – 25] Ms. PARKER dispute that she invoiced Dr. ALAI for all services and that she was fully paid. [Parker Depo.: pg. 208, lns. 12 – 21]

8. Ms. PARKER agrees that she was originally hired as an "independent contractor paralegal", in May 2014, to assist on an ongoing Medical Malpractice case, where Dr. ALAI was the Plaintiff, while Dr. ALAI was seeking new counsel. After new counsel was retained in early July 2014, Ms. PARKER and Dr. ALAI discussed the possibility of Ms. PARKER performing Independent Paralegal work on other matters for her in addition to assisting with the Medical Malpractice case.

9. Ms. PARKER did later enter a new contract wherein she received a $10.00 per hour raise (to $35.00 per hour from $25.00 per hour) as an independent contractor, she submitted invoices for 100% of her services and she was fully paid under the new contract. [Parker Depo.: pg. 98, lns. 1 – 14; pg. 99, lns. 10 – 20; pg. 208, lns. 12 – 21]

9. After Dr. ALAI expressed dissatisfaction over the fact that Ms. PARKER was working on other matters at Dr. ALAI'S office and had lost a Small Claims case because Ms.

PARKER showed up late and missed the hearing, Ms. PARKER quit because she did not feel adequately appreciated.

10. Ms. PARKER'S primary claim is that she and Dr. ALAI orally agreed to negotiate a future "written contract", containing unknown terms, other than that Ms. PARKER would purportedly be paid $85,000.00 per year as a full-time employee, and is unhappy because she negotiated a $10.00 per hour raise as an independent contractor instead. There are no witnesses to this purported agreement and no documentation referring to it. [Parker Depo.: pg. 139, lns. 12 – 17]

11. Ms. PARKER owns a business named "Legal Support Servuices, LLC" which she uses to contract out paralegal "services".

12. A paralegal in California is required to be supervised by an Attorney. Ms. PARKER testified that all of the services that she provided to Dr. ALAI were supervised by Attorney TON.

13. The reason that this motion is necessary is because Ms. PARKER and her attorneys refused to either admit or deny the request in approximately half the instances, and in the other half, inserted a bunch of ridiculous objections before admitting or denying the request in order to thwart the responses being used against Plaintiff either at trial or at a post-trial motion. [Exhibit B] Therefore, Court intervention is required.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 17th day of August, 2016, at Yorba Linda, California.

By _____
Mark B. Plummer

ATTACHMENT "3"

30-2016
00853407

4. I have requested that Mr. LAIRD and others observe JAMES and ELIZABETH McCARTHY secreting off the corporate assets, from public places in a non-confrontational manner, something that Mr. LAIRD is well suited for as a retired police detective. Based upon my personal knowledge and experience with Mr. LAIRD, he is highly professional and would never partake in the classless actions that he is accused of. Mr. LAIRD is also well aware that such conduct would be counterproductive, and would not engage in it for that reason.

5. On the other hand, both JAMES and ELIZABETH McCARTHY are known frauds and it has already been established in Orange County Superior Court Case No. 30-2013-00654583-CU-CO-CJC that JAMES and ELIZABETH McCARTHY are willing to and have made false and inflammatory allegations in said lawsuit, filed in this court, to attack Mr. LAIRD among others, who they have defrauded, when they have absolutely no factual or legal basis for such claims. In fact, they did not even attempt to oppose the Motion for Sanctions, made pursuant to Code of Civil Procedure §128.7, on the basis that they ever even thought that there was any factual or legal basis for bringing even one of their causes of action. I have no doubt at all that JAMES and ELIZABETH McCARTHY would and have resorted to the very same tactics of making false and inflammatory claims in order to prevent Mr. LAIRD and others from observing where they are hiding the assets of PACIFIC BULLETPROOF CO.

6. I have been practicing law for over 30 years and my customary and usual hourly rate is $450.00 per hour. It has taken me 6.2 hours to review the claims by JAMES and ELIZABETH McCARTH, discuss potential witnesses and evidence, advise Mr. LAIRD on handling his highly cherished firearms [see Exhibit B, which is a true and correct copy of the firearms receipt], talk to character witnesses and assemble a file the attached documents, including a Declaration from Mr. LAIRD and 3 other witnesses. [Exhibits C, D, E and F] It is expected to take another 2 hours to appear at the subject hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and accurate. Executed this 17th day of May 2016 at Yorba Linda, California.

Mark B. Plummer

DECLARATION

-2-

ATTACHMENT "4"

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

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

- PLUMMER settled with Mr. Cohen individually for a mid-5-digit amount.
- PLUMMER, Mr. Bisom and Day/Eisenberg, LLC stipulated to binding Arbitration before retired California Supreme Court Justice Armand Arabian and LAW OFFICES OF MARK B. PLUMMER, PC received an award of $88.845.75. Attached hereto as Exhibit D is a true and correct copy of the judgment. [
- In a second appeal, (Case No. G046567) Day/Eisenberg, LLC appealed the fact that Justice Arabian had rendered an award against Mr. Bisom for the stolen fees he had taken, but refused to award them costs as a prevailing party even though there was no monetary award against them, since they had aided and abetted Mr. Bisom in stealing the money. PLUMMER won that appeal.

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

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

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

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

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

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

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

c. Law Offices of Mark B. Plummer, PC v.Cuk; 30-2016-00850952-CL-BC-CJC In this case Plaintiff obtained a judgment of $14,066.00 against Dr. Cuk for the fees that had not been paid pursuant to the prior settlement. [EXHIBIT E] Accordingly, Plaintiff was the prevailing party pursuant to Code of Civil Procedure §1032(4).

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

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

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

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

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

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

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

12. MARK B. PLUMMER has uever previously been declared to be a vexatious litigant by any state or federal court, nor has such a claim ever been suggested.

13. MARK PLUMMER and the LAW OFFICES OF MARK B. PLUMMER, PC are separate and distinct and that MARK B. PLUMMER is not a Plaintiff in the subject case. There has 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.

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

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

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

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

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

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

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

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

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

MARK B. PLUMMER

Mark B. Plummer, Esq. #120098
LAW OFFICES OF MARK B. PLUMMER, PC
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Attorneys for Plaintiff, LAW OFFICES OF MARK B. PLUMMER, PC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

LAW OFFCES OF MARK B. PLUMMER, PC,

Plaintiff,

v.

NILI N. ALAI, M.D., SIAMAK NABILI, M.D. and DOES 1 through 20, inclusive,

Defendants.

And related Cross-Action.

CASE NO. 30-2018-01002061-CU-FR-CJC

POINTS AND AUTHOTITIES IN OPPOSITION TO MOTION TO DEEM PLAINTIFF A VEXATIOUS LITIGANT AND REQUEST FOR MONETARY SANCTIONS: DECLARATION OF MARK B. PLUUMER IN SUPPORT THEREOF

Assigned to: Honorable Walter P. Schwarm
Dept. C-19

Date: January 22, 2019
Time: 1:30 p.m.
Dept.: C-33

breaks a single case into several, there has never been a "pro per" case that the LAW OFFICES OF MARK B. PLUMMER, PC has filed: Following are a list of cases going back 10 years for context:

1. 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. (Settlement amounts are given in general terms in order to avoid violating any confidentiality provisions in old releases.) Accordingly, Plaintiff was the prevailing party pursuant to Code of Civil Procedure §1032(4).

This is the only "Pro Per" case which MARK PLUMMER, who is not the Plaintiff here and to which this motion does not apply, has ever filed. However, there are a few "business debt collection cases", brought by the LAW OFFICES OF MARK B. PLUMMER, PC, as well as a few business cases brought by MARK PLUMMER as follows:

"Business debt collection" cases fall into two categories, the first of which is basic bill collection, with about 1 every year or 2, including:

1. 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. Accordingly, Plaintiff was the prevailing party pursuant to Code of Civil Procedure §1032(4).
2. LAW OFFICES OF MARK B. PLUMMER, PC v. Morgan; Plaintiff obtained a $14,066.00 Judgment. [EXHIBIT B] Accordingly, Plaintiff was the prevailing party pursuant to Code of Civil Procedure §1032(4).
3. LAW OFFICES OF MARK B. PLUMMER, PC v. Hack; Plaintiff obtained a $21,594.00 Judgment after trial. [EXHIBIT C] Accordingly, Plaintiff was the prevailing party pursuant to Code of Civil Procedure §1032(4).
4. LAW OFFICES OF MARK B. PLUMMER, PC v. Alai, et al.: 30-2018-01002061-CU-FR-CJC - Pending

The other category of claims based on the "interference with liens" perpetrated by subsequent counsel, clients and/or other interested parties. It should also be noted that the LAW OFFICES OF MARK B. PLUMMER, PC is a strong advocate for strengthening the enforceability of "attorney liens" and has litigated cases with the intent of obtaining an "extension, modification, reversal of existing

law or the establishment of new law", which is a proper purpose. Code of Civil Procedure §128.7(b)(2) The success of this endeavor has resulted in the published appellate case of Plummer v. Day/Eisenberg, LLP (2010) 184 Cal.App.4th 38, which was cited as authority in the "Comment" explaining the new Rule of Professional Responsibility 1.8.1, which took effect November 1, 2018. [EXHIBIT A]_There were two groups of claims, The Acosta case and the Cuk case:

A. Lien claims resulting from the Acosta case, best summarized in Plummer v. Day/Eisenberg, LLP (2010) 184 Cal.App.4th 38, were:

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

   - PLUMMER settled with Mr. Cohen individually for a mid-5-digit amount. Accordingly, Plaintiff was the prevailing party pursuant to Code of Civil Procedure §1032(4).
   - PLUMMER, Mr. Bisom and Day/Eisenberg, LLC stipulated to binding Arbitration before retired California Supreme Court Justice Armand Arabian and LAW OFFICES OF MARK B. PLUMMER, PC received an award of $88,845.75. [Exhibit D] Accordingly, Plaintiff was the prevailing party pursuant to Code of Civil Procedure §1032(4).
   - In a second appeal, (Case No. G046567) Day/Eisenberg, LLC appealed the fact that Justice Arabian had rendered an award against Mr. Bisom for the stolen fees he had taken, but refused to award them costs as a prevailing party even though there was no monetary award against them, since they had aided and abetted Mr. Bisom in stealing the money. PLUMMER won that appeal.

2. PLUMMER v. Bank of America; 30-2011-00525808-CU-CL-CJC Bank of America was part of the Day/Eisenberg, LLC case, but chose not to participate in the Binding Arbitration. It was dismissed in exchange for a waiver the statute of limitations, and after a forgery for which Bank of America was liahle was established, a new case was filed and Bank of America settled for $30,000.00. [EXHIBIT F] Accordingly, Plaintiff was the prevailing party pursuant to Code of Civil Procedure §1032(4).
3. PLUMMER v. T.H.E Insurance Co., et al.; This case and the appeal dealt with all the other people and entities liable for interfering with a valid lien pursuant to Levin v. Gulf Insurance Group (1999) 69 Cal.App.4th 1282. It was complicated by the Trial Court having held that the lien was invalid before the Appellate Court reversed the ruling and held that it was. Some Defendants got out on a Special Motion to Strike, and recovered fees, while others settled, so it was a wash.

B. The original Legal Malpractice case for Slobodan Cuk was referred by Mr. Cuk's family law attorney, Merritt McKean. The malpractice was taking a "Void Marriage" claim to trial without any proper grounds, which Mr. Cuk lost not only lost but the Court assessed him $100,000.00 in sanctions and even more than that in Attorney fees and costs. Opposing counsel in the Family Law Case, which was continuing on other grounds, intervened in the Legal Malpractice case, due to the fees that were owed them. After years of litigation, Ms. McKean substituted LAW OFFICES OF MARK B. PLUMMER, PC 2 weeks before a mediation that it had arranged and accepted the amount that LAW OFFICES OF MARK B. PLUMMER, PC had recommended Dr. Cuk accept to settle the first phase. A few months later there was a second settlement with another Defendant, and the final portion of the settlement consisted of an assignment of an Insurance Bad Faith case against one of the Defendant's E&O Carriers. LAW OFFICES OF MARK B. PLUMMER, PC had a lien against all these recoveries. **The cases resulting from the Lien Claims on the Cuk case, were:**

1. LAW OFFICES OF MARK B. PLUMMER, PC v. CUK; 30-2011 00524331 This case to recover the fees and costs pursuant to a charging lien was really against the subsequent attorneys MERRITT McKEON and CHRISTOPHER BAYUK, who

were trying to take the fees earned by LAW OFFICES OF MARK B. PLUMMER, PC. (In these cases, the client who signed the retainer and granted the lien, but the subsequent attorneys are the real parties in interest because the litigation is over the proportioning of the fees between former and subsequent attorneys. On the day of trial, MERRITT McKEON and CHRISTOPHER BAYUK settled by paying LAW OFFICES OF MARK B. PLUMMER, PC a 6-digit amount which equated to over 2/3rds of the total fees, plus an assignment of 10% of the fees on the still pending assignment of the Insurance Bad Faith case against one of the E&O Carriers on the underlying case.

2. LAW OFFICES OF MARK B. PLUMMER, PC v. Bayuk; 30-2014-00759128 CU-BC-CJC On June 30, 2014, Mr. Bayuk sent Plaintiff a check for $3,785.37, on behalf of Ms. McKeon and himself, which they represented was the 10% of the fees earned in the Insurance Bad Faith case which they had assigned to Plaintiff, which was based on a $94,634.25 settlement. After they refused to supply any documentation that showed that there was a $94,634.25 settlement, LAW OFFICES OF MARK B. PLUMMER, PC sued them for an accounting and the presumably converted fees. Plaintiff prevailed on the accounting claim when it was ascertained that the actual settlement was for $225,000.00 and that Mr. BAYUK and Ms. McKEON had misrepresented the amount of the settlement in order to cheat him out of the fees that they had promised. However, they claimed that Dr. CUK was the one who had the unpaid fees, not them, and the judge ruled that they were the prevailing party. (This was the opposite of the ruling that Justice Armand Arahian had made when Day/Eisenberg was shown to have assisted Mr. Bosom in ripping Plaintiff off.) On appeal (Case No. G053836) the Appellate Court held that despite prevailing on the accounting and the fraudulent misrepresentation, the Trial Judge had discretion as to determining who the prevailing party was.

3. LAW OFFICES OF MARK B. PLUMMER, PC v.Cuk; 30-2016-00850952-CL-BC-CJC In this case Plaintiff obtained a judgment of $14,066.00 against Dr. Cuk for the fees that had not been paid pursuant to the prior settlement. [EXHIBIT E]

Accordingly, Plaintiff was the prevailing party pursuant to Code of Civil Procedure §1032(4).

Code of Civil Procedure §391 states in pertinent part:

> As used in this title, the following terms have the following meanings:
> **(a)** "Litigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal court.
> **(b)** "Vexatious litigant" means a person who does any of the following:
> **(1)** In the ***immediately preceding seven-year period*** has commenced, prosecuted, or maintained ***in propria persona*** at least five litigations other than in a small claims court that **have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.**
> **(2)** After a litigation has been finally determined against the person, repeatedly 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 issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.
> **(3)** In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.
> **(4)** 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.

As is obvious, the LAW OFFICES OF MARK B. PLUMMER, PC clearly does not qualify as "Vexatious Litigant" pursuant to Code of Civil Procedure §391 because it does not meet any of the 4 definitions. Specifically:

Code of Civil Procedure §391(b)(1) does not apply because the LAW OFFICES OF MARK B. PLUMMER, PC has never filed any cases in "Pro Per", because it is a corporation and has always been appeared through counsel. (Ms. ALAI does not get to simply claim that Mr. PLUMMER is an Alter Ego of the LAW OFFICES OF MARK B. PLUMMER, PC, since that would require an evidentiary hearing, which in most cases would be a full trial. There has been no such determination in this case or any other case.)

Additionally, the LAW OFFICES OF MARK B. PLUMMER, PC has only filed 6 cases (not counting this one) in the immediately preceding seven-year period (cases older than 7 years were

identified for context.), which is less than the required minimum of 7 anyway, and has unequivocally won at least 5 of them. (On the only case where the LAW OFFICES OF MARK B. PLUMMER, PC was not determined to be the prevailing party, it did win on the accounting cause of action, which then resulted in a favorable judgment on a subsequent case.) Accordingly, the LAW OFFICES OF MARK B. PLUMMER, PC obviously has not had the required 5 cases decided adversely and no cases have lasted over 2 years except when remanded after a successful appeal.

Therefore, the LAW OFFICES OF MARK B. PLUMMER, PC is clearly not a "Vexatious Litigant" pursuant to Code of Civil Procedure §391(b)(1) because it did not file the minimum required number of cases, did not lose the minimum required number of cases and none of those case were filed in Pro Per. In fact, it is not even a close call and the subject motion is blatantly frivolous.

Code of Civil Procedure §391(b)(2) does not apply because the LAW OFFICES OF MARK B. PLUMMER, PC has never relitigated or attempted to relitigate anything after it was finally decided. (Clearly, a case has not been "finally decided" until the right to appeal has been exhausted.)

Code of Civil Procedure §391(b)(3) does not apply because the LAW OFFICES OF MARK B. PLUMMER, PC never "files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay".

Code of Civil Procedure §391(b)(4) does not apply because the LAW OFFICES OF MARK B. PLUMMER, PC has never previously been declared to be a vexatious litigant by any state or federal court, nor has such a ridiculous claim ever been suggested.

Therefore, the LAW OFFICES OF MARK B. PLUMMER, PC is clearly not a "Vexatious Litigant" pursuant to Code of Civil Procedure §391(b), it is not even a close call and the subject motion is blatantly frivolous.

Although, MARK B. PLUMMER is not a Plaintiff in this case, so this motion cannot possibly apply to him, he clearly does not qualify as "Vexatious Litigant" pursuant to Code of Civil Procedure §391 because none of the 4 definitions apply to him either. Specifically:

Code of Civil Procedure §391(b)(1) does not apply because MARK B. PLUMMER has only filed 2 cases in "Pro Per" in the immediately preceding seven-year period, which is far less thau the required minimum of 7, and did not lose any of them. Therefore, the LAW OFFICES OF MARK B.

PLUMMER, PC is clearly not a "Vexatious Litigant" pursuant to Code of Civil Procedure §391(b)(1) because he did not file the minimum required number of cases and did not lose the minimum required number of cases and none of those case were filed in Pro Per. In fact, it is not even a close call and the subject motion is blatantly frivolous.

Code of Civil Procedure §391(b)(2) does not apply because MARK B. PLUMMER has never relitigated or attempted to relitigate anything after it was finally decided. (Clearly, a case has not been "finally decided" until the right to appeal has been exhausted.)

Code of Civil Procedure §391(b)(3) does not apply because MARK B. PLUMMER never "files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay".

Code of Civil Procedure §391(b)(4) does not apply because MARK B. PLUMMER has never previously been declared to be a vexatious litigant by any state or federal court, nor has such a ridiculous claim ever been suggested.

Therefore, MARK B. PLUMMER is clearly not a "Vexatious Litigant" pursuant to Code of Civil Procedure §391(b), it is not even a close call and the subject motion is blatantly frivolous.

In fact, even if you combined the LAW OFFICES OF MARK B. PLUMMER, PC and MARK B. PLUMMER, which would not be proper without a ruling holding that MARK B. PLUMMER is the Alter Ego of the LAW OFFICES OF MARK B. PLUMMER, PC after a trial or other evidentiary hearing, there are still not even close to enough adversely decided cases to even come close to qualifying as a Vexatious Litigant" pursuant to Code of Civil Procedure §391(b). In fact, it is not even a close call and the subject motion is blatantly frivolous.

IV
SANCTIONS ARE REQUIRED

Code of Civil Procedure §128.5 states in pertinent part:

> **(a)** A trial court may order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.
> **(b)** For purposes of this section:
> **(1)** "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint, cross-complaint, answer, or other

responsive pleading. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.

(2) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers or, on the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the action or tactic or circumstances justifying the order.

. . .

(f) Sanctions ordered pursuant to this section shall be ordered pursuant to the following conditions and procedures:

(1) If, after notice and a reasonable opportunity to respond, the court issues an order pursuant to subdivision (a), the court may, subject to the conditions stated below, impose an appropriate sanction upon the party, the party's attorneys, or both, for an action or tactic described in subdivision (a). In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

(A) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific alleged action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay.

(B) If the alleged action or tactic is the making or opposing of a written motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected, a notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court, unless 21 days after service of the motion or any other period as the court may prescribe, the challenged action or tactic is not withdrawn or appropriately corrected.

(C) If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(D) If the alleged action or tactic is the making or opposing of a written motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected, the court on its own motion may enter an order describing the specific action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay, and direct an attorney, law firm, or party to show cause why it has made an action or tactic as defined in subdivision (b), unless, within 21 days of service of the order to show cause, the challenged action or tactic is withdrawn or appropriately corrected.

(2) An order for sanctions pursuant to this section shall be limited to what is sufficient to deter repetition of the action or tactic or comparable action or tactic by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the

> reasonable attorney's fees and other expenses incurred as a direct result of the action or tactic described in subdivision (a).

Dr. ALAI claims to be a medical doctor, so she certainly has no excuse for not being able to count to 7 or even 5. Accordingly, the subject motion is clearly frivolous and has obviously filed with the intent to harass and to consume a ridiculous amount of time. In fact, it did take a considerable amount of time to find old files in storage and figure out what happened on some very old cases. This is clear and unequivocal abuse pursuant to Code of Civil Procedure §128.5 and should be heavily sanctioned.

Additionally, the Dr. ALAI'S motion consists of one misrepresentation to the Court after another, which is exactly the type of behavior that sanctions under Code of Civil Procedure §128.5 were intended to stop. Specific misrepresentations include:

1. Dr. ALAI misrepresents the fact that MARK PLUMMER and the LAW OFFICES OF MARK B. PLUMMER, PC are separate and distinct and that MARK B. PLUMMER is not a Plaintiff in the subject case. (There has 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.)
2. Dr. ALAI misrepresents the fact that MARK PLUMMER and the LAW OFFICES OF MARK B. PLUMMER, PC were both Plaintiffs in every case, when they were not, depending on the right in dispute. (There are obviously not 7 cases by any stretch of the imagination without this misrepresentation.)
3. Dr. ALAI misrepresents that appeals are a separate case when they are not. (There are obviously not 7 cases by any stretch of the imagination without this misrepresentation.)
4. Dr. ALAI misrepresents that cases resolved more than 7 years ago were filed with the last 7 years. For example, Plummer v. Bank of America; 30-2011-00525808-CU-CL-CJC, (There are obviously not 7 cases by any stretch of the imagination without this misrepresentation.)
5. Dr. ALAI blatantly misrepresents that the LAW OFFICES OF MARK B. PLUMMER, PC has filed "more than 18 cases in Pro Per in the last 7 years", which is just a blatant lie. [Motion; page 3, lines 8 – 9]

6. Dr. ALAI blatantly misrepresents that the threshold is "5 cases with an adverse ruling" [Motion; page 3, line 10] when the real standard is "finally determined adversely to the person", which means the whole case after appeal. Apparently, Dr. ALAI is making the ridiculous claim that the erroneous adverse ruling on the Motion for Summary Judgment, which was reversed on appeal in Plummer v. Day/Eisenberg, LLP (2010) 184 Cal.App.4th 38, counts as an "adverse ruling".
7. Dr. ALAI misrepresents that cases which were clearly won were lost. For example, Plummer v. Wells Fargo; 30-2016-00831688-CU-FR-CJC; Law Offices of Mark B. Plummer, PC v. Riley; 30-2015-00785129-CU-CO; Plummer v. Bank of America; 30-2011-00525808-CU-CL-CJC; Law Offices of Mark B. Plummer, PC v. Cuk 30-2011 00524331 and Law Offices of Mark B. Plummer, PC v. Cuk; 30-2016-00850952-CL-BC-CJC
8. Dr. ALAI blatantly misrepresents that the Appellate Court found that the LAW OFFICES OF MARK B. PLUMMER, PC was improperly relitigating the same issues, when in fact no such finding was ever made or even requested. [Motion; page 5, line 11]
9. Dr. ALAI blatantly misrepresents that the LAW OFFICES OF MARK B. PLUMMER, PC has been "discharged from a Court ordered mental health facility" when neither MARK PLUMMER or the LAW OFFICES OF MARK B. PLUMMER, PC have ever been admitted to any mental health facility, ever. [Motion; page 6, line 27]
10. Dr. ALAI blatantly misrepresents that the LAW OFFICES OF MARK B. PLUMMER, PC has never prevailed in cases alleging fraud, when in fact it has.
11. Dr. ALAI blatantly misrepresents that the LAW OFFICES OF MARK B. PLUMMER, PC has been sanctioned for bad conduct when in fact the LAW OFFICES OF MARK B. PLUMMER, PC has **never** sanctioned for bad conduct. In Newchurch, the sanctions were reversed on appeal and the other party was required to pay the costs. (Mark Plummer did not write the Brief on the Jones appeal, rather Attorney Jones did. When she failed to substitute in Pro Per as she had agreed, it came down to file what she wrote or let the case appeal be dismissed. Obviously, that dilemma will never be repeated and Mark Plummer has several published opinions and an excellent record on appeal.)

12. Dr. ALAI blatantly misrepresents that the LAW OFFICES OF MARK B. PLUMMER, PC was found to have violated "confidentiality", when in fact that has never occurred and there has never been any such finding.

Dr. ALAI'S abuse of the Court and the litigation process, her constant lying, the frivolousness of the subject motion and the huge amount of time required to look up old cases that I did not even remember should not be tolerated, and pursuant to Code of Civil Procedure §128.5, sanctions should be awarded. Therefore, NILI N. ALAI should reimburse the LAW OFFICES OF MARK B. PLUMMER, PC for the cost of opposing the subject frivolous motion at its counsel's usual rate of $550.00 per hour, as follows:

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

Considering that NILI N. ALAI filed an entirely frivolous motion, based on one misrepresentation after another, a fee enhancement of 2 – 3 times the requested fees is appropriate. Ketchum v. Moses (2001) 24 Cal.4th 1122

DATED: January 7, 2019

LAW OFFICES OF MARK B. PLUMMER, PC

Mark B. Plummer, Attorney for Plaintiff,
LAW OFFCES OF MARK B. PLUMMER, PC

EXHIBIT B

Mark B. Plummer, Esq. #120098
LAW OFFICES OF MARK B. PLUMMER, PC
18552 Oriente Drive
Yorba Linda, California 92886
Tel: (714) 970-3131
Fax: (714) 970-3130

Attorneys for Plaintiff, LAW OFFICES OF MARK B. PLUMMER, PC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

LAW OFFICES OF MARK B. PLUMMER, PC, Plaintiff, v. MICHAEL MORGAN AND DOES 1 to 20, Defendants.	CASE NO.: 30-2014-00758926-CL-CL-CJC ~~[Proposed]~~ JUDGMENT

For good cause shown, judgment is entered in favor of LAW OFFICES OF MARK B. PLUMMER, PC, and against MICHAEL MORGAN, in the amount of $11,972.49.

Dated: 12/15/15

Judge of the Superior Court

CARMEN R. LUEGE

EXHIBIT C

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
Mark B. Plummer 120098
Law Offices of Mark B. Plummer, PC
18552 Oriente Drive
Yorba Linda, California 92886
TELEPHONE NO.: (714) 970-3131 FAX NO. (Optional): (714) 970-3130
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Law Offices of Mark B. Plummer, PC

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
JUN 09 2016
ALAN CARLSON, Clerk of the Court

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

ELECTRONICALLY RECEIVED
Superior Court of California, County of Orange
06/06/2016 at 08:33:20 AM
Clerk of the Superior Court
By Maria Gina Barr, Deputy Clerk

PLAINTIFF: Law Offices of Mark B. Plummer, PC

DEFENDANT: Jayne D. Hack

CASE NUMBER
30-2013-00695761-CL-BC-CJC

JUDGMENT

☐ By Clerk ☐ By Default ☐ After Court Trial
☒ By Court ☐ On Stipulation ☐ Defendant Did Not Appear at Trial

JUDGMENT

1. ☐ BY DEFAULT
   a. Defendant was properly served with a copy of the summons and complaint.
   b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
   c. Defendant's default was entered by the clerk upon plaintiff's application.
   d. ☐ Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
   e. ☐ Court Judgment (Code Civ. Proc., § 585(b)). The court considered
      (1) ☐ plaintiff's testimony and other evidence.
      (2) ☐ Plaintiff's written declaration (Code Civ. Proc., § 585(d)).

2. ☐ ON STIPULATION
   a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
   b. ☐ the signed written stipulation was filed in the case.
   c. ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.

3. ☒ AFTER COURT TRIAL. The jury was waived. The court considered the evidence.
   a. The case was tried on *(date and time)*: May 31, 2016
   before *(name of judicial officer)*: Corey S. Cramin
   b. Appearances by:
      ☒ Plaintiff *(name each)*:
      (1) Law Offices of Mark B. Plummer, PC
      (2)
      ☐ Plaintiff's attorney *(name each)*:
      (1) Mark B. Plummer
      (2)
      ☐ Continued on Attachment 3b.
      ☐ Defendant *(name each)*:
      (1) Jayne D. Hack
      (2)
      ☐ Defendant's attorney *(name each)*:
      (1)
      (2)
      ☐ Continued on Attachment 3b.
   c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
   d. ☒ A statement of decision (Code Civ. Proc., § 632) ☒ was not ☐ was requested.

Form Approved for Optional Use
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JUD-100 [New January 1, 2002]
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JUDGMENT

Code of Civil Procedure §§ 585, 664.6

LOMBP

PLAINTIFF: Law Offices of Mark B. Plummer, PC	CASE NUMBER:
DEFENDANT: Jayne D. Hack	2013-00695761

JUDGMENT IS ENTERED AS FOLLOWS BY: ☐ THE COURT ☐ THE CLERK

4. ☐ **Stipulated Judgment.** Judgment is entered according to the stipulation of the parties.

5. **Parties.** Judgment is

a. ☒ for plaintiff *(name each)*:
Law Offices of Mark B. Plummer, PC

and against defendant *(names)*:
Jayne D. Hack

☐ Continued on Attachment 5a.

b. ☐ for defendant *(name each)*:

c. ☐ for cross-complainant *(name each)*:

and against cross-defendant *(name each)*:

☐ Continued on Attachment 5c.

d. ☐ for cross-defendant *(name each)*:

6. Amount.

a. ☒ Defendant named in item 5a above must pay plaintiff on the complaint:

(1) ☒ Damages	$	13,205.28
(2) ☒ Prejudgment interest at the annual rate of 10 %	$	7,813
(3) ☐ Attorney fees	$	
(4) ☒ Costs	$	576
(5) ☐ Other *(specify)*:	$	
(6) TOTAL	$	21,594.28

c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) ☐ Damages	$	
(2) ☐ Prejudgment interest at the annual rate of %	$	
(3) ☐ Attorney fees	$	
(4) ☐ Costs	$	
(5) ☐ Other *(specify)*:	$	
(6) TOTAL	$	0

b. ☐ Plaintiff to receive nothing from defendant named in item 5b.
☐ Defendant named in item 5b to recover costs $
☐ and attorney fees $

d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs $
☐ and attorney fees $

7. ☐ Other *(specify)*:

Date: JUN 09 2016

JUDICIAL OFFICER
COREY S. CRAMIN

Date:

☐ Clerk, by _____, Deputy

(SEAL)

CLERK'S CERTIFICATE *(Optional)*

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy

EXHIBIT D

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

Attorney for Plaintiff:
MARK B. PLUMMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

MARK B. PLUMMER,

Plaintiff,

v.

ISAAC COHEN, ANDREW BISOM, DAY/EISENBERG, LLP and DOES 1 through 100, inclusive,

Defendants.

and related Cross-Actions.

CASE NO. 07CC05089

[redacted] JUDGMENT

Assigned for all purposes to:
JUDGE JAMES J. DI CESARE
Dept. C-18

Date: November 3, 2011
Time: 1:30 p.m.
Dept.: C-18

Plaintiff's Petition to Confirm the Award of the Arbitrator came on regularly for hearing on November 3, 2011, before the Honorable James J. Di Cesare, presiding in Department C-18 of the above-entitled Court. Having considered all moving and opposing papers, as well as oral argument, the Court hereby confirms the attached May 31, 2011 Arbitration Award made by Armand Arabian, Justice of the California Supreme Court (Retired) and enters judgment thereon in favor of Mark B. Plummer and against Andrew Bisom in the amount of $88,845.75, with all parties are denied costs.

Dated: NOV 22 2011

JAMES J. DI CESARE
JUDGE OF THE SUPERIOR COURT

EXHIBIT E

CIV-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Mark B. Plummer 120098
Law Offices of Mark B. Plummer, PC
18552 Oriente Drive
Yorba Linda, California 92886
PHONE NO.: (714) 970-3131 FAX NO. (Optional): (714) 970-3130
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Law Offices of Mark B. Plummer, PC

FOR COURT USE ONLY

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
03/06/2017 at 12:52:00 PM
Clerk of the Superior Court
By Amy Van Arkel,Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Ana, California 92886
BRANCH NAME: Central Justice Center

PLAINTIFF/PETITIONER: Law Offices of Mark B. Plummer, PC

DEFENDANT/RESPONDENT: Slobodan Cuk

REQUEST FOR (Application) ☐ Entry of Default ☐ Court Judgment ☐ Clerk's Judgment

CASE NUMBER: 30-2016-00850952-CL-BC-CJC

1. TO THE CLERK: On the complaint or cross-complaint filed
   a. on (date): 05/09/2016
   b. by (name): Law Offices of Mark B. Plummer, PC
   c. ☒ Enter default of defendant (names):
      Slobodan Cuk
   d. ☒ I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant (names):
      Slobodan Cuk

   (Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)
   e. ☒ Enter clerk's judgment
      (1) ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
      ☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The *Prejudgment Claim of Right to Possession* was served in compliance with Code of Civil Procedure section 415.46.
      (2) ☒ under Code of Civil Procedure section 585(a). *(Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)*
      (3) ☐ for default previously entered on (date):

2. **Judgment to be entered.**

	Amount	Credits acknowledged	Balance
a. Demand of complaint	$ 10,615	$	$ 10,615
b. Statement of damages *			
(1) Special	$	$	$ 0
(2) General	$	$	$ 0
c. Interest	$ 2,831	$	$ 2,831
d. Costs (see reverse)	$ 620	$	$ 620
e. Attorney fees	$	$	$ 0
f. TOTALS	$ 14,066	$ 0	$ 14,066

   g. Daily damages were demanded in complaint at the rate of: $ per day beginning (date):
   (Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)*
3. ☐ *(Check if filed in an unlawful detainer case)* **Legal document assistant or unlawful detainer assistant** information is on the reverse *(complete item 4)*.

Date: March 6, 2017
Mark B. Plummer
(TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

FOR COURT USE ONLY

(1) ☒ Default entered as requested on (date): 03/06/2017
(2) ☐ Default NOT entered as requested (state reason):

David H. Yamasaki, Clerk of the Court Clerk, by A. Van Arkel, Deputy

CIV-100

PLAINTIFF/PETITIONER: Law Offices of Mark B. Plummer, PC	CASE NUMBER:
DEFENDANT/RESPONDENT: Slobodan Cuk	30-2016-00850952-CL-BC-CJC

4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant ☐ did ☐ did not for compensation give advice or assistance with this form.
(If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state):
a. Assistant's name:
b. Street address, city, and zip code:
c. Telephone no.:
d. County of registration:
e. Registration no.:
f. Expires on *(date):*

5. ☒ **Declaration under Code of Civil Procedure Section 585.5** *(required for entry of default under Code Civ. Proc., § 585(a)).* This action
a. ☐ is ☒ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
b. ☐ is ☒ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
c. ☐ is ☒ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was
a. ☐ **not mailed** to the following defendants, whose addresses are **unknown** to plaintiff or plaintiff's attorney *(names):*

b. ☒ **mailed first-class, postage prepaid,** in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
(1) Mailed on *(date):* 03/06/17 (2) To *(specify names and addresses shown on the envelopes):*
Slobodan Cuk
38 Coronado Pointe
Laguna Niguel, CA 92677

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.
Date: 03/06/17

Mark B. Plummer
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

7. **Memorandum of costs** *(required if money judgment requested).* Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

a. Clerk's filing fees	$	370
b. Process server's fees	$	250
c. Other *(specify):*	$	
d.	$	
e. TOTAL	$	620

f. ☐ Costs and disbursements are waived.
g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date: 03/06/17

Mark B. Plummer
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

8. ☒ **Declaration of nonmilitary status** *(required for a judgment).* No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date: 03/06/17

Mark B. Plummer
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

EXHIBIT F

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") reflects the settlement that was entered into by and between plaintiff Mark B. Plummer ("Plaintiff"), and defendant Bank of America, N.A. ("BANA") (together referred to as the "Settling Parties").

RECITALS

This Agreement reflects the terms of the settlement that was made and entered into by the Settling Parties, with reference to the following facts:

A. On or about November 28, 2011, Plaintiff filed an action against BANA entitled *Plummer v. Bank of America, N.A.* Case No. 30-2011-00525808-CU-CL-CJC, in the Superior Court for the County of Orange, State of California (the "Action").

B. BANA denies Plaintiff's claims, but desires to settle the claims on the terms and conditions set forth below in order to avoid the burden, expense, and uncertainty of continuing litigation.

C. This Agreement is not, and may not be construed or used as an admission or concession by or against any party on any point of fact or law, or of any alleged fault, wrongdoing or liability whatsoever. The same is true of any document referred to or prepared in connection with this Agreement or any action taken to effectuate this Agreement. This Agreement shall not be construed as, or be deemed evidence of, a waiver of any applicable statute of limitations, defense, or plea in abatement.

AGREEMENTS

In consideration of the foregoing recitals and the mutual promises set forth below, the Settling Parties agree as follows:

1. BANA will pay Plaintiff the total sum of $30,000 by check, in a check made payable to _____, after receipt of a completed W-9.

2. Plaintiff and BANA will each bear their own costs and fees.

3. Within 5 (five) business days of receipt of the settlement check referenced to in paragraph 1, Plaintiff will file a Request for Dismissal of the Action with prejudice as to BANA.

4. Plaintiff acknowledges full satisfaction of all Settled Claims, and generally release, settle and discharge the Released Parties from all Settled Claims.

   a. For purposes of this paragraph, "Released Parties" means and includes (i) Bank of America, N.A.; (ii) Bank of America Corporation; (iii) each parent, subsidiary, affiliate, predecessor, and successor of each entity identified or described in clauses (i) or (ii); and (iv) each officer, director, insurer, employee, agent, and attorney of each released corporation or other entity.

b. For purposes of this paragraph, "Settled Claims," means and includes any and all claims, actions, causes of action, offsets or liabilities, whether known or unknown, suspected or unsuspected, contingent or matured, which Plaintiff has had, now have, or may in the future have, arising out of any act, omission, transaction or event which occurred, in whole or in part, prior to the signing of this Agreement, including but not limited to any claim (i) which is or could have been alleged in the Action, or (ii) which arises from or in connection with the facts referenced to in the Action.

5. Plaintiff waives and relinquishes, to the fullest extent permitted by law, the benefits of California Civil Code section 1542 and all similar state or federal statutes or rules of law. Plaintiff acknowledges that he understands that California Civil Code section 1542 states:

> **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

6. The release stated above shall be and remain effective despite any discovery by Plaintiff of facts in addition to or different from those, which he now knows or believes to be true with respect to the subject matter of the release.

7. This Agreement constitutes the entire agreement between the parties with respect to settlement of the Action. This Agreement supersedes all prior negotiations and agreements. It may not be modified or amended except by a writing signed by all parties to this Agreement.

8. If any party brings a motion or suit to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees in addition to all other costs allowed by law.

9. This Agreement may be signed in one or more counterparts. Facsimile and .PDF signatures shall be effective upon transmission and any received facsimile or .PDF copies shall be treated as though they were originals bearing original signatures. The parties to this Agreement will execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.

10. Each party to this Agreement warrants that he, she, or it is acting on his, her, or its own independent judgment and on the advice of his, her, or its own counsel and not in reliance on any warranty or representation, express or implied, of any nature or kind of any other party.

11. Plaintiff warrants that as of the date of the signing of this Agreement, Plaintiff has the sole right and authority to execute this Agreement, and that he has not sold, assigned, transferred, conveyed or otherwise disposed of or encumbered any claim or demand released or to be dismissed by virtue of this Agreement. Plaintiff further represents and warrants that, to the best of his knowledge, as of the date of execution of this Agreement, he does not have any claims against BANA other than those released.

12. This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of California. This Agreement is jointly drafted and shall not be construed against any party on the ground that the Agreement or any part of it was drafted by one party rather than the other.

13. Except as otherwise provided in this paragraph, no party nor any attorney for a party shall disclose, disseminate or publicize, by press release, posting on the Internet, e-mail, or any other means, any information about this settlement, this Agreement, or any of its terms. Upon inquiry, the parties may only inform others that a mutually satisfactory settlement has been reached. Notwithstanding the foregoing, this Agreement or its terms may be disclosed to the extent required to (a) obtain court approval for dismissal of the Action, (b) respond to an order, inquiry, or subpoena issued by a court, government, or administrative agency, (c) obtain appropriate legal, tax or financial advice from a party's own professionals, (d) report income or expense to appropriate tax authorities, (e) make required reports to shareholders or regulatory agencies, (f) enforce this Agreement, or (g) respond to subsequent litigation, claims, or bring any motion for good faith settlement, if necessary.

14. Plaintiff agrees that he will not oppose and will stipulate to the good faith of this settlement in the event that BANA moves for a good faith order.

15. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but rather, the Agreement shall be construed and enforced with the minimum reformation necessary.

16. By entering into this Agreement, no party is admitting any liability, and this Agreement should not be construed as an admission of liability by any party.

AGREED:

Dated: _____, 2013

MARK B. PLUMMER

By:_____

Dated: _____, 2013

BANK OF AMERICA, N.A.

By:_____

Its:_____

ATTACHMENT "5"

Filed 10/11/17 Jones v. Feldsott CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

DONNA JONES, Plaintiff and Appellant, v. STANLEY FELDSOTT et al., Defendants and Respondents.	G053974 (Super. Ct. No. 30-2014-00758872) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed.

Law Offices of Mark B. Plummer and Mark Brennan Plummer for Plaintiff and Appellant.

Feldsott Lee Pagano & Canfield, Martin L. Lee and Stanley Feldsott for Defendants and Respondents.

INTRODUCTION

Donna Jones appeals from a judgment in favor of the law firm of Feldsott & Lee (Feldsott) and Stanley Feldsott. Feldsott represented Jones and another owner in an arbitration against the homeowners' association (HOA) of their condominium complex, after the HOA levied an emergency special assessment against their units. Feldsott persuaded the arbitrator the assessments were improper. After the arbitrator made an interim decision in the homeowners' favor, but before he ruled on their entitlement to attorney fees and costs, the parties agreed to a universal settlement of $50,000.

Jones then got into a dispute with Feldsott about how much of the $50,000 was coming to her. She ultimately claimed the fees of the experts used at the arbitration should be paid out of the settlement. Feldsott's position was that she was entitled to be reimbursed for her court costs (which did *not* include the experts' fees) and for the $6,000 she had paid to retain the firm. This sum amounted to about $16,000. The remaining $34,000, per the retainer agreement, would be the firm's attorney fees. Feldsott had not hired the experts and did not feel responsible for paying their fees.

When this dispute could not be resolved, Feldsott filed an interpleader action, naming Jones and the other homeowner, and deposited the amount equal to the costs and the retainer with the Los Angeles Superior Court. This case was heard and appealed, and the reviewing court has issued its opinion.

Jones sued Feldsott and Stanley Feldsott individually in Orange County Superior Court for professional negligence, breach of fiduciary duty, and conversion, the conversion claim stemming from filing the interpleader. After a six-day court trial, the court held in favor of the defendants, finding that Jones had not proved her case. In particular, the court held Feldsott did not have a conflict of interest disqualifying it from obtaining its fees and it had not represented to Jones that she could collect expert fees out of any award or settlement.

Jones' formulation of the issues on appeal has made review extremely difficult, so we have relied on the causes of action as pleaded in her complaint in organizing the following opinion. Substantial evidence supports the trial court's conclusion that Jones did not carry her burden of proof with respect to negligence or breach of fiduciary duty. Both the litigation privilege and res judicata prevent us from reopening any issue relating to the interpleader. Therefore we therefore affirm the judgment.

FACTS

Jones owns two condominiums in a complex located in Long Beach. In early 2012, she received a notice from the HOA informing all owners of an emergency special assessment. Plaster had fallen off one condo's balcony, and the HOA decided all the balconies had to be demolished and rebuilt on an emergency basis. The special assessment in total was $500,100; Jones' original share totaled $16,000 for her two units, payable in the summer of 2012.

Jones believed the demolition on an emergency basis was unnecessary, and she enlisted the help of a contractor of her acquaintance, Carl Modugno, to check out it out.[1] Modugno in turn asked a civil engineer, Mark Rieser, to assist him. The two visited the complex on several occasions between February and September 2012, during which time they observed the demolition and reconstruction of the balconies. Both Modugno and Rieser were of the opinion there was no emergency.[2]

In October 2012, Jones sought out Feldsott to represent her against the HOA in an effort to get her assessment canceled. She signed a retainer agreement with

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[1] According to a trial exhibit, the City of Long Beach did not notify the HOA that it would have to do something about the balconies until March 1, 2012. The HOA then noticed an owners meeting for March 19, 2012, to discuss paying for the repairs. Modugno recorded two visits to the site in February 2012 and one visit on March 19 on a bill he subsequently submitted for his services.

[2] Modugno testified that at this point there was no firm agreement about whether or how he and Rieser would be paid for their work. If they were hired as experts, they would submit invoices. If they were not, they and Jones would "reach[] an equitable settlement."

the firm. As relevant here, the retainer agreement provided she would pay a flat fee of $6,000. Any recovery of attorney fees above that amount would go to the firm.[3]

Jones asked Stanley Feldsott if other condominium owners could join in the litigation. He told her they could, and the fee would not be increased because it made no difference whether the firm represented one owner or multiple owners. The work would be the same.

Jones attempted to get other condominium owners to join with her, but only Christine Frau ultimately agreed to do so. Frau paid Jones $3,000 as her share of the flat fee, and, following Jones' instruction, she wrote a letter to Feldsott asking to have her name added to the proceedings.

The dispute went to arbitration with JAMS, and Jones and Frau prevailed. The assessment was reversed as to them, and the arbitrator invited them to apply for attorney fees and costs. Feldsott submitted a memorandum of costs for $12,358, which included the usual items for service of process and photocopies. It also included approximately $10,000 for JAMS fees and $800 for court reporters for the arbitration hearing itself. The cost bill did *not* include any amounts for expert witness fees. Feldsott also planned to put in for approximately $64,000 in attorney fees.

Before the arbitrator ruled on the fees and costs, the parties entered into settlement negotiations, with Jones kept completely in the loop. The HOA at first offered $42,000 – $12,000 for costs and $30,000 for attorney fees. With Jones' and Frau's approval, Feldsott rejected the fee portion offer, deciding to allow the arbitrator to set its fees.[4] The HOA then raised the offer to $50,000, which was accepted. After some

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[3] The condominium's covenants, conditions, and restrictions (CC&R's) provided that a prevailing party in a dispute with the HOA would be entitled to attorney fees and "costs of court."

[4] In order not to prejudice Jones and Frau, Feldsott agreed to refund the initial $6,000 flat fee regardless of the arbitrator's ruling on the fees. Thus the clients would not be at risk if Feldsott failed to secure a fee award greater than $30,000.

changes insisted on by Jones, she signed the settlement agreement on November 25, 2013.

Feldsott then undertook to refund the initial $6,000 fee and pay out the amounts from the cost bill. The rest it kept as its attorney fees.

At this point, things went south. Jones demanded the return of all fees and costs she had paid (leaving nothing for Frau) and stated that "the experts must be paid for services rendered." In addition, Jones began dunning Frau for half of the expert fees, which totaled about $8,000. Jones told Frau she would apply the $3,000 refund Frau was due to the amount owing, leaving Frau with an additional $1,175 to pay. She also told Frau that she expected Frau to pay half of the interest on the amounts Jones had fronted for the litigation.

Frau then emailed Feldsott in some distress, explaining she had been under the impression that $3,000 was all she had to pay. Jones had never told her she could be liable for additional amounts to pay experts or anything else. Frau offered to walk away from the $3,000 reimbursement if Jones would release her from any obligation to pay more money. Jones refused.

Perceiving a dispute had developed between its two clients, Feldsott informed them that it could not get involved. It gave Jones and Frau the choice between sending it joint directions as to how to divide up the settlement money owing to them or telling it to hold the amount in its trust account until they decided how to divide it. If they could not agree to one of these options, Feldsott would interplead the net amount of the cost recovery and the $6,000.

Jones would not agree to release Frau, so Feldsott filed a complaint in interpleader in Orange County Superior Court, an action Jones had transferred to Los Angeles Superior Court. The amount interpleaded was $16,637, which broke down to Jones' initial fee payment of $6,000 and $12,358 recovered from the arbitration as costs, minus $1,721 in costs Feldsott had advanced. The Los Angeles Superior Court granted

Feldsott's motion to be discharged in interpleader, dismissing the firm and granting it attorney fees of $9,655. The Second District Court of Appeal affirmed the order.[5]

Jones originally filed a cross-complaint in the Los Angeles interpleader case, but, faced with Feldsott's demurrer, motion to strike, and motion for sanctions, she dismissed the cross-complaint and filed this suit in Orange County, essentially duplicating her Los Angeles cross-complaint. Her first amended complaint contained causes of action for professional negligence, breach of fiduciary duty, and conversion. The case was tried to the court over six days in May 2016, during which time Jones, Stanley Feldsott, Modugno, and Frau testified. Jones also had an expert, John Adams, who testified as to the standard of care.

The court issued its ruling on July 6, 2016. It first dealt with the issues in terms of Jones' damages.[6] The court identified 10 categories of damages: expert fees and costs from the arbitration, together with interest; Feldsott's attorney fees from the arbitration; fees and costs relating to the interpleader and its appeal, including the value of Jones' time ($75,000); emotional distress and loss of quality of life; and punitive damages.

The court held Jones had not proven emotional distress or punitive damages, nor had she shown damages stemming from Feldsott's interpleader. The court further observed that the fees awarded in the interpleader were set by the Los Angeles Superior Court; it refused to reconsider those fees.[7]

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[5] We have taken judicial notice of the opinion in *Feldsott & Lee v. Jones* (Sept. 6, 2016, B262710) [nonpub. opn.], per Feldsott's request. According to the opinion, Jones dodged service of process, moved to quash service and to transfer, and filed a cross-complaint, causing Feldsott to prepare a demurrer, a motion to strike, and a motion for sanctions under Code of Civil Procedure section 128.7, thus accounting for the more than $9,000 in fees.

Feldsott has requested judicial notice of the briefs filed in the *Feldsott & Lee v. Jones* appeal, which request we deny. We also deny Feldsott's motion for sanctions for filing a frivolous appeal.

[6] In her trial brief, Jones requested nine categories of damages: four categories stemming from the interpleader and its appeal, arbitration costs and interest thereon, all Feldsott's attorney fees from the arbitration settlement, emotional distress and loss of quality of life ($75,000) and punitive damages.

[7] At the time the court made its ruling in this case, the opinion in the appeal of the Los Angeles case had not yet been issued.

The court next dealt with the damages for the breach of fiduciary duty claim. It held Jones had not proven the elements of the breach by preponderance of the evidence. The "conflict" Jones alleged between herself and Frau did not develop until after the arbitration was over and the case had settled. When it did develop, Feldsott immediately informed Jones and Frau that it could not be involved and interpleaded the amount of the settlement funds ($16,637) as to which it made no claim. Jones failed to prove her claim that Feldsott was not entitled to *any* fees at all (her claim the whole $50,000 from the settlement belonged to her).

Finally, the court addressed the heart of the lawsuit – Jones' claim that the settlement money should be used to pay the experts, Modugno and Reiser. The CC&R's entitled the prevailing party to recover "costs of court," without defining what those were. Jones, who is a lawyer, did her own research on costs. She evidently became confused by the language of Code of Civil Procedure section 1033.5, subdivision (a)(8), which allows a prevailing party to claim as costs "[f]ees of expert witnesses ordered by the court." She seemed at first to have thought this subdivision referred to experts *hired by her.*

The court did not find Jones' testimony that Feldsott had told her she could recover expert fees credible. It found instead that Feldsott did *not* promise recovery of expert fees. It also decided she would not have agreed to a pre-arbitration offer to settle with the HOA under Code of Civil Procedure section 998 that would have shifted the expert fees to the HOA. It entered final judgment in favor of Feldsott and Stanley Feldsott.

DISCUSSION

We have encountered several difficulties in reviewing the judgment in this case. The operative pleading was the first amended complaint, which was inexplicably

omitted from the record.[8] We augmented the record on our own motion to obtain it. But the trial as represented by the record seemed to be only occasionally related to the allegations of the first amended complaint. When it issued the decision, the trial court did not frame it in terms of the complaint's causes of action but rather mainly in terms of categories of Jones' damages. Finally, the issues on appeal identified in Jones' opening brief have only a tenuous relationship to the court's decision. For example, Jones asks us to reverse the "judgment" that interpleading money in the Los Angeles County Superior Court was not conversion. There is no such judgment. There is also no judgment that the settlement fund did not include expert witness fees, another "judgment" Jones asks us to reverse.

The first amended complaint contained three causes of action, for professional negligence, breach of fiduciary duty, and conversion. The trial court, in effect, held Jones had not carried her burden of proof with respect to any cause of action. We address each in turn.

On appeal, Jones did not identify any cause of action for which she claims she met her burden of proof. And she did not point to any procedural irregularity that would have caused a miscarriage of justice.

I. Professional Negligence/Malpractice

"The elements of a cause of action in tort for professional negligence are: (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." (*Budd v. Nixen* (1971) 6 Cal.3d 195, 200 (*Budd*), superseded by stat. on other grounds.)

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[8] Jones requested leave to file a second amended complaint to add a claim for punitive damages. The court reserved its ruling until trial, and the complaint was marked "received" rather than "filed" until the court ruled.

In the first amended complaint, Jones alleged Feldsott was negligent in failing to include the expert fees in the cost bill and in failing to make sure the settlement agreement allocated the settlement amount between attorney fees and costs. In her opening brief, however, Jones does not identify this purported lapse as an issue on appeal. In fact, she does not identify *any* issue relating to professional negligence on appeal.[9] We therefore affirm the judgment as to the cause of action for negligence.

II. Breach of Fiduciary Duty/Conflict of Interest

The elements of a cause of action for compensatory damages for a breach of fiduciary duty are a fiduciary relationship, a breach of that relationship, and proximately caused damages. (*O'Neal v. Stanislaus County Employees' Retirement Assn.* (2017) 8 Cal.App.5th 1184, 1215.) Whether a fiduciary duty has been breached is a question of fact. (*Ibid.*)

The breach of fiduciary duty claim in Jones' complaint alleged a string of misconduct. Most of the allegations concerned the settlement agreement. Jones alleged it was negotiated in secret, without her consent, and did not preserve her rights against the HOA or Frau or her right to recover her expert fees. Jones also alleged Feldsott breached its fiduciary duty by failing to include the expert fees in the arbitration cost bill and by filing the interpleader without depositing the full amount in dispute. She asked for "compensatory damages" "in an amount of unreimbursed costs and expenses, attorneys' fees and costs, lost interest and other damages to be proved at trial." She also sought punitive damages.

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[9] Legal malpractice and breach of fiduciary duty by a lawyer are not the same thing. A malpractice claim speaks to an attorney's competence, while a breach of fiduciary duty claim "requires some further violation of the obligation of trust, confidence, and/or loyalty to the client. [Citation.] ['[F]iduciary breach allegations that constitute negligence, which do not implicate a duty of confidentiality or loyalty, and are merely duplicative of a negligence cause of action, do not support a cause of action for fiduciary breach'].]" (*Broadway Victoria, LLC v. Norminton, Wiita, & Fuster* (2017) 10 Cal.App.5th 1185, 1193.) The only issue of this kind Jones has identified on appeal dealt with Feldsott's duty of loyalty, so she has abandoned any claim that Feldsott committed malpractice. (See *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1170.)

On appeal, Jones did not discuss the breaches of fiduciary duty alleged in the complaint. Jones now bases her contention that Feldsott breached its fiduciary duty on two grounds. First, Feldsott did not have a signed retainer agreement with Frau. Second, Feldsott did not get Jones' "informed written consent" to represent Frau without a retainer agreement, which consent she claimed Feldsott had to obtain under rule 3-310(C) of the California Rules of Professional Conduct. Jones asserts that allowing Frau to "free ride" in the arbitration (i.e., without a retainer agreement) breached Feldsott's duty of loyalty to Jones by sticking her with paying the experts' fees. This argument assumes that if Feldsott had obtained a written retainer agreement from Frau, Frau would have been equally liable with Jones for the expert fees incurred in the arbitration.

Before we discuss the specific fiduciary duty issues Jones has identified in this appeal, we observe that rule 1-100(A) of the Rules of Professional Conduct provides in pertinent part, "These rules are not intended to create new civil causes of action. Nothing in these rules shall be deemed to create, augment, diminish, or eliminate any substantive legal duty of lawyers or the non-disciplinary consequences of violating such a duty." The trial courts are not normally responsible for enforcing the Rules of Professional Conduct. (*Conservatorship of Becerra* (2009) 175 Cal.App.4th 1474, 1484.)

While violating a rule of professional conduct may subject an attorney to State Bar discipline, a client seeking to hold an attorney liable in compensatory damages for breach of fiduciary duty must prove each element of these causes of action by a preponderance of the evidence: duty, breach of duty, and proximately caused damages. The same goes for a cause of action for malpractice. Without proof of proximately caused damages, a client cannot recover for either kind of breach of duty. (See *Benasra v. Mitchell Silberberg & Knupp LLP* (2004) 123 Cal.App.4th 1179, 1183 [breach of fiduciary duty; *Budd, supra*, 6 Cal.3d at p. 200 [malpractice];].

A retainer agreement with Frau would not have made her liable for the expert fees or any portion of them. The retainer agreement required the client to

reimburse the firm "for all actual costs and expenses incurred" by the firm and authorized the firm to hire expert witnesses at the client's expense. Feldsott did not hire Modugno or Riesner, the experts. Jones hired them. Their deal – such as it was – was with her. The agreement they had with her began many months before Jones consulted Feldsott. Even if Frau and Feldsott had entered into a retainer agreement, it would not have covered these experts' bills. Jones was not injured as to the experts' fees by the absence of a retainer agreement with Frau.

Frau stated unequivocally both before and during trial that she would not have joined in the arbitration if she had been required to pay more than the $3,000 she paid to Jones (*not* to Feldsott) as her half of the attorney fees. Jones' assertion that she would have been able to pass half of the expert fees off to Frau finds no support in the record.

Most importantly, the trial court found that Feldsott's representation of Jones and Frau did not create a conflict of interest. This determination turns on individual facts. (See *Vivitar Corp. v. Broidy* (1983) 143 Cal.App.3d 878, 882.) "A conflict of interest between jointly represented clients exists 'whenever their common lawyer's representation of the one is rendered less effective by reason of his representation of the other.' [Citation.]" (*Foremost Ins. Co. v. Wilks* (1988) 206 Cal.App.3d 251, 260.)

Substantial evidence supports the trial court's conclusion that no conflict of interest between Jones and Frau arose while Feldsott was representing them in the arbitration. At that point, Jones' and Frau's interests were identical – obtain removal of the emergency special assessments on their condominiums. Representing Frau added no expenses to the amounts Jones had already agreed to pay. The dispute between Jones and Frau arose *after* Feldsott had completed the task for which it was retained.

Although Jones alludes to this only obliquely, her assumption seems to be that because of the conflict between her and Frau, the money Feldsott obtained as its fees

should be paid over to her.[10] She repeatedly asserted that an attorney who has a conflict of interest or breaches a duty of loyalty waives its fees. She discussed several cases she claimed uphold her views on this point. (*Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135 (*Fair*); *A.I. Credit Corp., Inc. v. Aguilar & Sebastinelli* (2003) 113 Cal.App.4th 1072 (*A.I. Credit*); *Jeffrey v. Pounds* (1997) 67 Cal.App.3d 6 (*Jeffrey*); *Goldstein v. Lees* (1975) 46 Cal.App.3d 614 (*Goldstein*).)

Jones ignores the difference between the circumstances of this case and the circumstances of the cases she cited. In all those cases, without exception, attorneys were suing clients for unpaid fees, either under a contract or under quantum meruit. In all those cases, the courts decided that the clients did not have to pay the fees because the attorneys had conflicts.[11] (*Fair, supra,* 195 Cal.App.4th at p. 1169 [quantum meruit]; *A.I. Credit, supra,* 113 Cal.App.4th at pp. 1076, 1079 [disqualified attorney not entitled to fees; summary judgment granted on cross-complaint for fees]; *Jeffrey, supra,* 67 Cal.App.3d at p. 12 [attorney entitled to compensation only up to beginning of conflict]; *Goldstein, supra,* 46 Cal.App.3d at p. 617 [contract for legal services void for conflict; no quantum meruit recovery].)

That is not the situation here. Feldsott is not suing Jones for unpaid fees. What is more, Jones did not pay the fees Feldsott gained from arbitration. The HOA's insurer paid them through the settlement.

The trial court also found that the settlement agreement did not create a conflict between Feldsott and Jones. Jones knew of and approved the settlement

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[10] She asserts that the court erred when it held that Feldsott "did not waive its fees at the initial point when [Feldsott] had an undisclosed conflict of interest by undertaking to represent . . . Frau, a second client."

[11] In only one cited case, *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.* (2016) 244 Cal.App.4th 590, has a court suggested that a law firm might have to *return* fees already paid by a client because of a conflict of interest. (*Id.* at p. 620.) The Supreme Court granted review of this case in April 2016, so it has no binding or precedential effect. Jones cited this case to us without complying with California Rule of Court, rule 8.1115(e). We were not amused.

negotiations, which included the return to her of her initial attorney fee payment of $6,000. Substantial evidence supports this conclusion as well.

On appeal, Jones made a different – and confusing – argument that Feldsott had a conflict with her. Although this argument is exceedingly difficult to understand, we *think* Jones is maintaining that Feldsott should have settled with the HOA *before* arbitration, but went through arbitration in order to increase its fees.[12] We can make no sense of this. As far as we can tell from this record, there were no settlement overtures *before* the arbitration itself. The HOA was motivated to settle *after* it lost because it was looking down the barrel of a substantial award of attorney fees and costs. In any event, this novel argument, which credits Feldsott with the *sang froid* to gamble that it would win in the arbitration, is not supported by any allegation in the first amended complaint and, so far as the record indicates, was never raised during the evidence portion of the trial. It cannot make its debut here. (See *Varjabedian v. Madera* (1977) 20 Cal.3d 285, 295, fn. 11.)

III. Conversion

"'"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. . . ." [Citation.]' [Citations.]" (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208.) Money can be the subject of a conversion cause of action only if a specific identifiable sum is involved. (*PCO, Inc. v.*

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[12] "[T]he interests of Ms. Jones and Feldsott & Lee were also conflicted, since a settlement (if not dropping the case outright) was better for Ms. Jones, while Feldsott & Lee could only recover more than the $6,000.00 flat fee if there was an "award" of more fees after arbitration, which there never was, although Feldsott & Lee took $33,362.50 in additional fees out of their Attorney-Client Trust Account, over Ms. Jones' objection and despite her request for fee arbitration. . . . (It appears that after creating the original conflict of interest with Ms. Jones, whereby Feldsott & Lee benefited from proceeding to arbitration, while Ms. Jones benefited from settlement, they added Ms. Frau on terms were [*sic*] she would benefit from an arbitration, like they would, to help cajole Ms. Jones into proceeding with the arbitration." The record contains no evidence of Frau "cajoling" Jones to do anything. It also contains no evidence that Jones was reluctant to arbitrate.

Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP (2007) 150 Cal.App.4th 384, 396.)

In the third cause of action for conversion, Jones's complaint alleged that Feldsott "arrogated to themselves a fund belonging to [Jones]," i.e., the settlement proceeds, without specifying the amount of this fund. She also alleged that Feldsott failed to provide an accounting for the fund.

On appeal, Jones asks us instead to reverse the judgment that Feldsott did not convert her money by depositing $16,000 with the court in the Los Angeles interpleader action. She further asserts that we should reverse the judgment that Feldsott did not breach its duty of loyalty by refusing to disburse to her the undisputed funds, which it interpleaded instead.

There is no explicit judgment, pro or con, on a cause of action for conversion. So there is nothing on that score to reverse.

What the trial court found, and we agree, was that it was not going to get involved in the interpleader action. At the time of the trial, the discharge and fee order was on appeal before the Second District Court of Appeal, and any issues related to the interpleader would be determined by that court. Likewise, the disbursement of the interpleaded funds was an issue for the court hearing the interpleader, not the Orange County Superior Court.

Jones could not prevail on any issue connected with the interpleader for two reasons. First, the litigation privilege of Civil Code section 47, subdivision (b), protects Feldsott from liability stemming from filing the complaint in interpleader. Jones is, in effect, suing Feldsott for publications made in a judicial proceeding. Feldsott's conduct in this regard is absolutely privileged. (See *Silberg v. Anderson* (1990) 50 Cal.3d 205, 215-216.)

Second, the Second District Court of Appeal has now spoken on this issue. It has affirmed the order discharging Feldsott under Code of Civil Procedure section

386.5 and affirmed the trial court's order granting Feldsott its fees and costs in that action. (Code Civ. Proc., § 386.6.) This decision is final. Jones cannot now challenge either the filing of the complaint in interpleader or the award of fees. Both were decided adversely to her in the Los Angeles case. (See *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824-825.)

IV. Other Issues on Appeal

Jones' opening brief identifies two issues unconnected with any cause of action pleaded in her complaint. We address these two orphaned issues.

A. The Composition of the Settlement Fund

On appeal, Jones has requested a reversal of the judgment "that the $50,000.00 release and settlement agreement does not include expert fees." There is no such ruling in the judgment.

The court did state that Jones knew as of August 2013, before the arbitration, that expert fees were not recoverable as court costs, and the evidence supports this conclusion. Code of Civil Procedure section 1033.5, subdivision (b)(1), explicitly states that "[f]ees of experts not ordered by the court" "are not allowable as costs, except when expressly authorized by law." No law expressly authorized payment of expert fees as court costs in this case.

The settlement fund was always composed of the court costs, as set forth in the cost bill, and attorney fees. The cost bill amount was a fixed amount. The only amount in play was the amount of the attorney fees. With the clients' approval, Feldsott rejected the first offer for fees, after insuring that the clients would not suffer if the arbitrator awarded it less than the offer, and agreed to the second offer. During these negotiations, the expert fees were never part of the settlement fund. Jones could have had no expectation of recovering anything from the settlement fund for expert fees.

Jones' argument in the opening brief that the settlement agreement *did* include money to pay expert fees – a matter of contract interpretation – shades into an

argument that the agreement *should have* included money to pay expert fees. The argument relies on Jones' testimony that Feldsott told her expert fees were recoverable. The trial court did not believe that testimony. It found that Feldsott had *not* told her she could recover those fees. Substantial evidence supports this finding, and we do not disturb findings of fact supported by evidence on appeal. On the contrary, we resolve conflicts in the evidence in favor of the judgment. (See *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1127.)

B. Damages

The court stated that Jones had not offered evidence to support the following categories of damages: emotional distress and quality of life, punitive, Jones' time spend on the interpleader, and costs and attorney fees associated with the interpleader. Jones disagreed and pointed us to two exhibits admitted during trial by stipulation. Exhibit 77 was a list headed "Binding Arbitration Costs" and included entries for JAMS fees, court reporter fees, the retainer agreement ($6,000), and, of course, the expert fees in the amount of $8,875.[13] Exhibit 78, entitled "Interpleader Defense Expenses," included amounts for various motions and legal fees for the interpleader itself and for the appeal. Jones asserts that these two exhibits support her claims for damages.[14]

The stipulation regarding these two exhibits is somewhat murky, but it is clear enough to convince us that the parties were stipulating that the numbers represented

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[13] The total amount from the experts' invoices was $8,125.

[14] Jones complained several times during trial that she had not seen any money from the arbitration settlement, not even the court costs and the $6,000 refund. The reason for this is obvious. Feldsott had to interplead these funds, and, according to the opinion of the Second District Court of Appeal, Jones dragged out the proceedings by evading service and filing meritless pleadings. She then appealed the order discharging Feldsott. So naturally the disbursal of the funds was held up while these procedures played out.

the damages Jones was *claiming* and that the total was correct. Both exhibits were admitted as summaries.[15] No concession was involved.

Jones evidently misunderstood what the stipulation was intended to accomplish. The lists of damages were objectionable on both authentication and hearsay grounds. (See Evid. Code, § 1400 [authentication]; *Harris v. Alcoholic Beverage Control Appeals Board* (1963) 212 Cal.App.2d 106, 121 [hearsay].) What the stipulation did was to admit them into evidence, despite these objections, for what they were – compilations. They did not constitute evidence of the actual damages, but only of the amounts by category of the damages Jones was claiming. They were two lists, nothing more. Stipulating that the lists could come in did not prove, for example, that Jones actually incurred $12,000 in attorney fees for the interpleader appeal.

The damages listed in exhibit 77 were nearly all covered in the cost bill or in the presettlement agreement with Feldsott. The only item not so covered was the expert fees. The court's holding that various categories of damages lacked sufficient evidence is irrelevant on this appeal, since Jones abandoned most of the issues on which the damages listed in exhibit 77 would be meaningful. For example, she presented no argument on appeal that the evidence of exhibit 77 supported an award of punitive damages or emotional distress damages.

Exhibit 78 listed all the damages Jones was claiming regarding the interpleader. The trial court correctly decided not to get involved in any issues relating to the interpleader. As we have already discussed, Jones is not entitled to any damages relating to the interpleader proceeding as a matter of law.

We note that, as a practical matter, Jones' ability to do a cost/benefit analysis is somewhat impaired. She complains she had to spend $25,000 to have a

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[15] Feldsott made other objections to exhibit 78 on the grounds that these damages had not been pleaded in the first amended complaint, had not been substantiated by documents in discovery, and were the subject of an appeal presently before the Second District Court of Appeal. The court put off ruling on these objections until all the evidence was in.

$16,000 special assessment removed and she would not have done so had she known she would not get her costs back.

Jones' original assessment was $16,000, and she was willing to pay Feldsott $6,000 to have it canceled. So she must have considered this amount reasonable. Modugno and Rieser billed $8,125 in expert fees, and she incurred approximately $12,000 in court costs. After the arbitration and the settlement wrapped up, and under the terms of her deal with Feldsott, she was going to recoup her court costs *and* the $6,000 she paid Feldsott, leaving a net outlay of a little over $2,000 (instead of $6,000) to remove a $16,000 assessment. This seems like a bargain to us. Now, however, she is liable for at least $9,000 in fees from the interpleader, and she has invested an unknown, but probably not inconsiderable, amount to prosecute this action. She is, of course, entitled to spend her money as she pleases, but she cannot then be heard to bemoan the injustice of her fate.

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

Far more serious, however, were the repeated misrepresentations of the cases cited to support appellant's arguments. For example, counsel frequently asserted that the fee-waiver cases cited in the opening brief approved of "disgorgement" of attorney fees as a remedy for a conflict-of-interest ethical violation. Every one of the cases cited involved an action by an attorney against a client for payment of fees. In each

case, the remedy was that the client did not have to pay the fees. None of these cases approved of or even considered "disgorgement" as a remedy. As far as this record indicates, disgorgement was never mentioned as a possible remedy for conflict of interest.

As a widely used treatise on appellate practice observes, "Misstatements, misrepresentations and/or material omissions of the relevant facts or law can instantly 'undo' an otherwise effective brief, waiving issues and arguments; it will certainly cast doubt on your credibility, may draw sanctions . . . and may well cause you to *lose the case!* (2 Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2016) ¶ 9:27, p. 9-8.) After laboriously checking the record and the cases for ourselves in this appeal, we can attest to the accuracy of this observation.[16]

DISPOSITION

The judgment is affirmed. Respondents' request to take judicial notice of the briefs filed in the interpleader appeal, *Feldsott & Lee v. Jones*, B262710, is denied. Respondents' motion for sanctions is denied. Respondents are to recover their costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

THOMPSON, J.

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[16] We are not admirers of respondents' briefing either. Respondents spent over 11 pages of a 47-page brief quoting page after page of a single case. They used up another 17 pages quoting entire sections verbatim from Witkin's California Procedure. While this may be a tribute to counsel's ability to copy and paste, it hardly qualifies as appellate advocacy.

ATTACHMENT "6"

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

30-2016-00831688-CU-FR-CJC
Judge Sheila Fell

MARK B. PLUMMER,

Plaintiff,

v.

WELLS FARGO BANK, N.A., ERIC PATHE, and DOES 1 through 100, inclusive,

Defendants.

CASE NO.

COMPLAINT FOR DAMAGES

1. NEGILIGENCE;
2. BREACH OF CONTRACT;
2. FRAUD.

Plaintiff, MARK B. PLUMMER, alleges as follows:

FIRST CAUSE OF ACTION
(NEGLIGENCE – against all Defendants)

1. At all times relevant, Plaintiff, MARK B. PLUMMER, was an individual residing in the City of Yorba Linda, County of Orange, State of California.

2. At all times relevant, Defendant, WELLS FARGO BANK, N.A., was a business entity, form unknown, doing business as a provider of refinancing in the City of Yorba Linda, County of Orange, State of California.

3. At all times relevant, Defendant, ERIC PATHE, was an individual doing business as a independent financial professional specializing in refinancing in the City of Yorba Linda, County of Orange, State of California. Defendant ERIC PATHE specifically referred to his expertise as an independent financial professional prior to working with Defendant, WELLS FARGO BANK, N.A.,

as a reason that Plaintiff should believe his representation that adding the Equity Line to the refinance would not change it from a "no cash out refinance to a "cash out refinance", would not change the required loan to value ratio, would not increase the commission and costs and would not require any additional cash at closing from Plaintiff.

4. All representations and contracts referred to herein were made and/or executed in the City of Yorba Linda, County of Orange, State of California.

5. At all times relevant, Defendant, ERIC PATHE, was the authorized agent of Defendant, WELLS FARGO BANK, N.A., and all representations made by ERIC PATHE were representations made by WELLS FARGO BANK, N.A. At all times relevant, Defendant, ERIC PATHE, was also a manager of Defendant, WELLS FARGO BANK, N.A.'S Mortgage/Refinance Department based in Irvine, California, which covered refinances in Yorba Linda, California.

6. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as DOES 1 through 100, inclusive, and therefore sues said Defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and/or capacities when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named Defendants was a partner, agent, manager or owner in one of the other Defendants, or was otherwise responsible in some manner for Plaintiff's damages as herein alleged.

7. Plaintiff is informed and believes, and on that basis alleges, that at all times herein mentioned, each of the Defendants was the agent, servant, owner, representative, alter-ego or employee of each of the other Defendants, and at all times herein mentioned, was acting within the scope and course of that agency or employment.

8. The damages herein alleged were the natural and probable result of a prior agreement between the Defendants, and each of them, with each other, to perform wrongful or illegal acts. Specifically, WELLS FARGO BANK, N.A. imposed such a high quota on its Irvine Mortgage/Refinance Department that it was virtually impossible for said department to meet its quotas without making misrepresentations to customers. Defendant, WELLS FARGO BANK, N.A. was well aware of the results of its excessive quota requirement, including the "bait and switch scheme" employed by ERIC PATHE, as alleged herein, and subsequently ratified such conduct.

9. Defendant, WELLS FARGO BANK, N.A., had advance knowledge of the unfitness of Defendant, ERIC PATHE, and its other employees, but nevertheless employed him and them with a conscious disregard for the rights and safety of others, authorized and ratified the wrongful conduct causing the injuries and damages alleged herein, and were personally guilty of oppression, fraud and malice. The advance knowledge of the unfitness of Defendant, ERIC PATHE, and other employees, of WELLS FARGO BANK, N.A., and the conscious disregard, authorization, ratification and acts of oppression, fraud and malice on the part of Defendant, WELLS FARGO BANK, N.A., and its other employees, were on the part of its Officers, Directors and Managing Agents.

10. On October 8, 2014, Defendant, ERIC PATHE, telephoned Plaintiff and told Plaintiff that he was calling on behalf of WELLS FARGO BANK, N.A. and could offer him a refinance of a 30-year fixed mortgage, at 4%, with no out-of-pocket closing costs, which would close within 30 days. Attached hereto as Exhibit A, and incorporated by reference, is a confirming email that ERIC PATHE sent Plaintiff on October 9, 2014 with a loan application.

11. Plaintiff explained to ERIC PATHE and WELLS FARGO BANK, N.A., that he had already started a refinance with Monarch Capital Home Loans, had already been approved for 4.25% 30-year fixed refinance and that Plaintiff had already paid his bank the fee for subrogating his Equity Line. However, Monarch Capital Home Loans now required Plaintiff to pay an amount of cash at closing which was significantly exceeded their estimate and which they blamed on a low appraisal which was purportedly due to a Solar Panel Installation that had not yet been completed. Plaintiff provided a detailed email with all the pertinent information to ERIC PATHE and WELLS FARGO BANK, N.A., along with the completed refinance application on October 10, 2014.

12. After reviewing the application, ERIC PATHE and WELLS FARGO BANK, N.A. represented that the refinance would not be a problem because Plaintiff needed an 80% loan to value ratio, and the $990,000.00 appraisal for the Equity Line from a year earlier was sufficient, and the new one would be higher, so Plaintiff easily qualified. ERIC PATHE and WELLS FARGO BANK, N.A. also suggested that the Equity Line also be rolled into to refinance and Plaintiff said that he did not want to do so, both because he still needed to use it to pay for the Solar Panel installation and because it made more sense to subrogate the Equity Line, which he had already paid for when refinancing

though Monarch Capital Home Loans. Plaintiff told ERIC PATHE and WELLS FARGO BANK, N.A. that he only wanted a simple refinance of the First Mortgage, with no cash out and no significant cash to be paid at closing. ERIC PATHE and WELLS FARGO BANK, N.A. said they would comply with his requests.

13. ERIC PATHE and WELLS FARGO BANK, N.A. represented to Plaintiff that based on the application, the documents submitted and the prior appraisal, the refinance at 4% was basically a done deal. Then the file would be suspended pending the completion of the Solar Panel installation and the filing of his 2013 and 2014 tax returns, at which point the file would be unsuspended, WELLS FARGO BANK, N.A. would perform its own appraisal, which would be higher with the Solar Panels installed, and the refinance would close within a week or 2 the completion of the Solar Panel installation and the filing of the tax returns. Attached hereto as Exhibit B are email communications pertaining to formulating this plan.

14. This sounded like a good plan, Plaintiff believed that ERIC PATHE and WELLS FARGO BANK, N.A. were competent and telling the truth, so in reliance thereon, Plaintiff cancelled the refinance with Monarch Capital Home Loans and proceeded with basically the same refinance with WELLS FARGO BANK, N.A. that he had been doing with Monarch Capital Home Loans, to wit, a simple refinance of the of the First Mortgage only, at 4%, with no cash out and the Equity Line being subrogated.

15. On January 14, 2015, ERIC PATHE and WELLS FARGO BANK, N.A. were notified that the installation of the Solar Panels had been completed, and the 2013 and 2014 Tax Returns filed and ERIC PATHE and WELLS FARGO BANK, N.A. were provided with copies of the filed Tax Returns and signed off permits. On January 14, 2015, ERIC PATHE and WELLS FARGO BANK, N.A. responded by saying "This should be fairly cut and dry for us. I have everything from the last go around a couple months ago." At that point, the only thing left to do was to get an appraisal, so the "no cash-out refinance" should have closed in early February 2015, at the latest.

16. WELLS FARGO BANK, N.A. somehow managed to get nothing done for the next month, but finally on February 20, 2015, Plaintiff was informed that the property had appraised at $1,051,000.00, which was ample, considering that the $990,000.00 appraisal for the Equity Line from

a year earlier had been sufficient, and gave Plaintiff a 65% ratio, when a ratio of under 80% was required. At that point ERIC PATHE reviewed the numbers with Plaintiff, which was still 4% fixed, a week from closing and now significant cash required from Plaintiff at closing. At this point ERIC PATHE and WELLS FARGO BANK, N.A. renewed their suggestion that the Equity Line be rolled into the refinance by pointing out that this would result in a 72% ratio which was still well below the 80% required, considering the new appraised value. Plaintiff opined that the difference between the current 4.88% on the Equity Line and the 4% on the refinance, over 25 years, didn't sound like enough of a difference to save Plaintiff any significant money, and based on his experience with Monarch Capital Home Loans, the inclusion of the Equity Line in the refinance would have triggered extra closing costs and cash due at closing, which is why he did not roll the Equity Line into the refinance with Monarch Capital Home Loans. ERIC PATHE represented that in his professional capacity as an independent financial specialist, in addition to his status as the authorized agent of WELLS FARGO BANK, N.A., he guaranteed Plaintiff that after all costs and savings triggered by the inclusion of the Equity Line in the refinance were considered, Plaintiff would realize a net savings of over $700.00 per year and that no additional cash payment by Plaintiff would be required at closing. When asked why the inclusion of the Equity Line in the refinance with Monarch Capital Home Loans would have triggered fees, costs and cash out-of-pocket at closing, but none of these were triggered by the inclusion of the Equity Line in the refinance with WELLS FARGO BANK, N.A., ERIC PATHE and WELLS FARGO BANK, N.A. represented that they had a better product because WELLS FARGO BANK, N.A. was a direct lender and made disparaging remarks about Monarch Capital Home Loans having make more money up front. Based on the representations of ERIC PATHE as an independent financial specialist, and on behalf of WELLS FARGO BANK, N.A., and in reliance thereon, Plaintiff agreed to roll over the Equity Line into the refinance, something that he had elected not to do with the Monarch Capital Home Loans refinance and would not have done with ERIC PATHE and WELLS FARGO BANK, N.A. if the inclusion of the Equity Line in the refinance would have triggered extra closing costs, commissions and/or cash due at closing

17. On March 17, 2015, now over a month after the refinance was supposed to have closed, ERIC PATHE and WELLS FARGO BANK, N.A., informed Plaintiff that the loan had been approved

but now WELLS FARGO BANK, N.A. required that Plaintiff pay $32,000.00 in cash to close. Plaintiff objected that ERIC PATHE and WELLS FARGO BANK, N.A. had always represented that there would be no significant cash out-of-pocket required to close. ERIC PATHE agreed that he had always represented that there would be no significant cash out-of-pocket required to close, but explained that the "nothing significant out-of-pocket to close representation" applied to the refinance that Plaintiff had requested, and that Plaintiff had been told that he was receiving, not the refinance that ERIC PATHE and WELLS FARGO BANK, N.A. had actually processed. ERIC PATHE and WELLS FARGO BANK, N.A. further explained that by rolling the Equity Line into the refinance, it made the refinance a "cash-out refinance", even though Plaintiff was not receiving any cash out and did not want a "cash-out refinance", and that this was harder to qualify for and massively increased the commission and other costs, and changed the loan to value requirement to under 75%, rather than the 80% that he had told Plaintiff, which is why WELLS FARGO BANK, N.A. now needed $32,000.00 in cash from Plaintiff to close.

18. In response Plaintiff stated that he had not requested a "cash-out loan", did not want a "cash-out loan", had been told that he receiving a "no cash-out loan" just as he had been approved for at Monarch Capital Home Loans when ERIC PATHE and WELLS FARGO BANK, N.A. had contacted him and represented that they could give him the same refinance on better terms, that this was directly contrary to his prior representations and that 72%, was still less than 75%, so his excuse that the finance was over 75% was not true anyway. A detailed written explanation was requested but ERIC PATHE and WELLS FARGO BANK, N.A. refused and indicated that as a matter of policy they do not put such information in writing.

19. However, ERIC PATHE did respond by acknowledging that what he had said would be done had not been done, but argued that WELLS FARGO BANK, N.A. had such a tough quota requirement that "no cash-out refinances" frequently just got written up as "cash-out refinances" to meet the quota. He pleaded with Plaintiff to take the "cash-out refinance", pointed out that over the life of the loan he would get much of the extra, up-frond cash expense back and threatened to delay or sabotage the refinance if Plaintiff did not agree. Plaintiff again reasserted that he had not requested a "cash-out refinance", did not want a "cash-out refinance", had been getting a "no cash-out refinance"

from Monarch Capital Home Loans when ERIC PATHE and WELLS FARGO BANK, N.A. had contacted him and represented that they could give him the same refinance on better terms, and that he expected WELLS FARGO BANK, N.A. to honor its representations.

20. On March 30, 2015, ERIC PATHE and WELLS FARGO BANK, N.A. finally processed the subordination agreement on the Equity Line which would have been completed in January 2015 if ERIC PATHE and WELLS FARGO BANK, N.A. had ever had any intention with proceeding with the refinance as originally represented, and in a letter dated April 16, 2015 Plaintiff was informed that he had been approved for the "no cash-out refinance" that he had requested, but that the approval expired March 19, 2015. Attached as Exhibit C, is a copy of the "second" Acceptance Letter from WELLS FARGO BANK, N.A., dated April 16, 2016, but which expired on March 19, 2015. Plaintiff is informed and believes that WELLS FARGO BANK, N.A. treated the "no cash-out refinance" as being approved in February 2015, as it should have been, and expiring on March 19, 2015 if the final employment verification and other formalities were not completed by then, but by not doing any of these things in early March 2015, or even notifying Plaintiff of the approval before it expired, ERIC PATHE and WELLS FARGO BANK, N.A. made certain that Plaintiff would not receive the refinance that he had bargained for, had cancelled his approved refinance with Monarch Capital Home Loans for, had paid for a second appraisal for and had paid a second subrogation fee on the Equity Line for.

21. At all times relevant, Plaintiff had performed all requirements on his part to be performed, was fully qualified for the refinance that he had been promised and had in fact been approved for that finance, yet WELLS FARGO BANK, N.A. refused to honor the agreement.

22. When ERIC PATHE and WELLS FARGO BANK, N.A. represented that they would provide the same refinance that Plaintiff had already been accepted for at Monarch Capital Home Loans on better terms, which was not true, they failed to use reasonable care when making said representation and/or providing the refinance services associated therewith.

23. When ERIC PATHE and WELLS FARGO BANK, N.A. represented that they were processing a "no cash-out refinance" for Plaintiff, but instead processed a "cash-out refinance", they failed to use reasonable care when making said representation and/or providing the refinance services

associated therewith.

24. When ERIC PATHE and WELLS FARGO BANK, N.A. represented that they could and would process the refinance within 30 days, then took several months to do so, they failed to use reasonable care when making said representation and/or providing the refinance services associated therewith.

25. When ERIC PATHE and WELLS FARGO BANK, N.A. represented that there would be no significant cash required from Plaintiff at the time of closing, when in fact WELLS FARGO BANK, N.A. wanted Plaintiff to pay $32,000.00 at closing, they failed to use reasonable care when making said representation and/or providing the refinance services associated therewith.

26. When ERIC PATHE and WELLS FARGO BANK, N.A. represented that Plaintiff needed a loan to value ratio of under 80%, when in fact the required ratio was 75%, they failed to use reasonable care when making said representation and/or providing the refinance services associated therewith.

27. When ERIC PATHE and WELLS FARGO BANK, N.A. delayed the processing of the "no cash-out refinance", caused the approval to expire before Plaintiff was even informed of it and failed to obtain final employment verification and final details prior to March 19, 2015, they failed to use reasonable care in their transaction with Plaintiff.

28. Plaintiff relied on the truth of the representations made by ERIC PATHE and WELLS FARGO BANK, N.A. as alleged herein and would not have either cancelled his already accepted refinance with Monarch Capital Home Loans, done any business with Defendants, and/or agreed to include the Equity Line in the refinance if he had known that the representations made by ERIC PATHE and WELLS FARGO BANK, N.A. were not true.

29. As a legal and proximate result of the negligence of the Defendants, and each of them, as alleged herein, the Plaintiff has suffered emotional distress.

30. As a further direct and proximate result of Defendant's negligence, and each of them, as alleged herein, Plaintiff has incurred incidental and other special damages, in an amount which is not currently known, but will be proven at the time of trial, but which includes approximately $1,000.00 per month, starting in March 2015, for the next 25 years, for total damages of $300,000.00,

plus the interest thereon.

31. In prosecuting the subject action, the Plaintiff will incur attorney fees and costs. Said attorney fees and costs will continue to accrue as this action is pursued, in an amount which is not currently known, but will be proven at the time of trial.

SECOND CAUSE OF ACTION
(BREACH OF CONTRACT – against
Defendants, WELLS FARGO BANK, N.A. and DOES 1 – 80)

32. Plaintiff hereby incorporates paragraphs 1 through 28 of this complaint as though fully set forth at this point.

33. Plaintiff gave said Defendants valuable consideration and fully performed all obligations under the subject oral, written, implied in fact and implied by law contract to receive a "no cash-out refinance" before the end of February 2015. Additional consideration given by Plaintiff included cancelling his "no cash-out refinance with Monarch Capital Home Loans, in reliance on the representations of the Defendants, after paying for an appraisal and the subrogation fees for the Equity Line.

34. Defendants, WELLS FARGO BANK, N.A. and DOES 1 through 80, and each of them, breached the subject contract to provide the refinance on the terms promised, first by substituting another product and then by refusing to honor its approval of the correct product.

35. As a direct and proximate result of the breach of said contract by said Defendants, and each of them, Plaintiff has been relieved of any further performance required on his part.

36. In every contract, including the subject oral, implied in fact, implied in law and express contract between Plaintiff and WELLS FARGO BANK, N.A., DOES 1 through 80, and each of them, there are mutual implied covenants of good faith and fair dealing and there is an obligation running from each of the contracting parties to the other under which the parties have a duty to act fairly, reasonably and honestly towards each other in discharging contractual responsibilities.

37. As a further direct and proximate result of Defendant's breach of contract, and each of them, as alleged herein, Plaintiff has incurred incidental and other special damages, in an amount which is not currently known, but will be proven at the time of trial.

38. As a further direct and proximate result of Defendant's breach of contract, and each of them, as alleged herein, Plaintiff has special damages, including approximately $1,000.00 per month, starting in March 2015, for the next 25 years, for total contract damages of $300,000.00, plus the interest thereon.

39. In prosecuting the subject action, the Plaintiff will incur attorney fees and costs. Said attorney fees and costs will continue to accrue as this action is pursued, in an amount which is not currently known, but will be proven at the time of trial.

THIRD CAUSE OF ACTION
(FRAUD – against all Defendants)

40. Plaintiff hereby incorporates paragraphs 1 through 27 of this complaint as though fully set forth at this point.

41. The promises and representations made by Defendants, ERIC PATHE, WELLS FARGO BANK, N.A. and Does 1 through 100, and each of them, as identified in paragraphs 10 through 19, inclusive, were false and made with no intention of keeping such promises. Said Defendants, and each of them, intended to induce Plaintiff into cancelling his approved refinance with Monarch Capital Home Loans by making false promises, as alleged herein.

34. The promises and representations made by said Defendants, and each of them, identified in identified in paragraphs 10 through 19, inclusive, were made by said Defendants, with the intent to induce Plaintiff into entering a contract with said Defendants and their affiliates, which Defendants had no intention of performing.

35. Plaintiff was unaware of the falsity of the above referenced promises and representations, and since they appeared to be true based on the information available to Plaintiff, Plaintiff reasonably relied on those representations. Therefore, Plaintiff was induced into, and did, cancel his approved refinance with Monarch Capital Home Loans and enter into a contract for a refinance with the Defendants.

36. If Plaintiff had known that the representations made by said Defendants, and each of them, identified in identified in paragraphs 10 through 19, inclusive, were false, he would not have cancelled his approved refinance with Monarch Capital Home Loans and would have closed that

refinance in 2014, would not have entered into any contract with the Defendants, or any of them, and would not have paid for a second appraisal or a second subordination agreement.

37. As a legal and proximate result of the fraud of the Defendants, and each of them, as alleged herein, the Plaintiff has suffered emotional distress.

38. As a further direct and proximate result of Defendant's fraud, and each of them, as alleged herein, Plaintiff has incurred incidental and other special damages, in an amount which is not currently known, but will be proven at the time of trial.

39. As a further direct and proximate result of Defendant's fraud, and each of them, as alleged herein, Plaintiff has special damages, including approximately $1,000.00 per month, starting in March 2015, for the next 25 years, for total special damages $300,000.00, plus the interest thereon.

40. In prosecuting the subject action, the Plaintiff will incur attorney fees and costs. Said attorney fees and costs will continue to accrue as this action is pursued, in an amount which is not currently known, but will be proven at the time of trial.

41. Defendants, ERIC PATHE, WELLS FARGO BANK, N.A. and Does 1 through 100, and each of them, made the false representations identified in paragraphs 10 through 19, inclusive, fraudulently, maliciously and oppressively. The conduct of said Defendants, and each of them, as described herein, was and is despicable, vile, base, contemptible, miserable, wretched and loathsome, and carried on with a willful and conscious disregard of the rights of Plaintiff. Defendants knew and intended that said conduct has caused and will continue to cause Plaintiff the harm and damages as alleged herein. That by reason of said conduct as described herein, Plaintiff is entitled to exemplary damages.

WHEREFORE, Plaintiff, MARK B. PLUMMER, prays for judgment as follows:

First Cause of Action: Against Defendants, WELLS FARGO BANK, N.A., ERIC PATHE and DOES 1 – 100, and each of them, jointly and severally, as follows:

1. For special damages according to proof;
2. For general damages according to proof;
3. For interest, attorney's fees and other incidental damages;

4. For costs of suit incurred herein; and

5. For such other and further relief as the court deems just and proper.

Second Cause of Action: Against Defendants, WELLS FARGO BANK, N.A. and DOES 1 – 80, and each of them, jointly and severally, as follows:

1. For special damages according to proof;

2. For interest, attorney's fees and other incidental damages;

3. For costs of suit incurred herein,

4. For exemplary damages; and

5. For such other and further relief as the court deems just and proper.

Third Cause of Action: Against Defendants, WELLS FARGO BANK, N.A., ERIC PATHE and DOES 1 – 100, and each of them, jointly and severally, as follows:

1. For general damages according to proof;

2. For special damages according to proof;

3. For interest, attorney's fees and other incidental damages;

3. For costs of suit incurred herein,

4. For exemplary damages; and

5. For such other and further relief as the court deems just and proper.

DATED: January 18, 2016

LAW OFFICES OF MARK B. PLUMMER, PC

Mark B. Plummer, Attorney for Plaintiff,
MARK B. PLUMMER

FHA Removal of PMI

Eric.Pathe@wellsfargo.com

Thu 10/9/2014 2:57 PM

To:lombp@hotmail.com <lombp@hotmail.com>;

1 attachment (143 KB)

Loan Application.pdf;

Mark

Thank you for taking the time to discuss the opportunity to have your monthly Property Mortgage Insurance Premium removed and your existing home financing needs. In order to help you better evaluate your mortgage options. I put together this email describing what we previously discussed.

Please note the rate quote we discussed is subject to change until locked, only valid on the day of quote, and will expire by the end of business. Mortgage rates change daily, sometimes several times per day so if you are interested in discussing this further please review this 2 step process below:

Step 1.) Borrower Application In order for me to provide a proposal, I will need to fill out a thorough **LOAN APPLICATION** by asking you several questions. Note the initial application does not require verifying or running your credit.

We can do this via a phone consultation or via email and the application enclosed as an attachment (allow 10 minutes to complete the phone application process).

Step 2.) Wells Fargo Detailed Proposal Once I have received your application, I will provide you with a detailed proposal that includes multiple options with the Interest Rate, APR, and monthly payment.

It is my pleasure to provide answers and discuss financial solutions that work for you and your family, so please do not hesitate to contact me at any time.

I look forward to working with you!

Why work with Eric Pathe and Wells Fargo Home Mortgage on your refinance?

- ✓ Number 1 mortgage lender in the nation!
- ✓ Award winning team – Top 25 in America out of nearly 11,000 loan officers.
- ✓ In house processing staff with an average of 15 years experience.

✓ Industry leading turn times from start to finish of your loan transaction.
✓ 24/7 Concierge style service to guide you through every step of the refinance process

Get prequalified | Loan calculator | Request a personal consultation

WELLS FARGO HOME MORTGAGE

Eric Pathe
Home Mortgage Consultant
NMLSR ID 899494

Wells Fargo Home Mortgage
4590 MacArthur Blvd. Suite 200
Newport Beach, CA 92660
Tel: 949-734-9812
Fax: 866-793-1646

eric.pathe@wellsfargo.com
www.wfhm.com/eric-pathe

Together we'll go far

Save details to address book

Eric Pathe

Home Mortgage Consultant
NMLSR ID 899494

Wells Fargo Home Mortgage | 4590 MacArthur Blvd. Suite 200 | Newport Beach, CA 92660
Tel 949-734-9812 | Fax 866-793-1646

eric.pathe@wellsfargo.com | http://www.wfhm.com/eric-pathe

From: Britton.Hennessey@wellsfargo.com
To: lombp@hotmail.com
CC: Eric.Pathe@wellsfargo.com
Subject: refinance
Date: Tue, 21 Oct 2014 21:03:52 +0000

Hello Mr. Plummer,

First of all, thanks for submitting everything you have so far...

After reviewing all of the information that you sent in there are a couple of questions/conditions that we still need.

1. Underwriting is requiring that we submit 2013 1040's as the deadline for filing the extensions was Oct. 15th, I know that as of your letter to Eric on the 10th you had not filed. When do you plan on filing and can you send me the extension request?
2. W2's for 2012 and 2013
3. I think you may have sent Eric the initial disclosures that he emailed out to you. I do not have them and Eric may have inadvertently deleted. Can you please resend?
4. Lastly, I would like to order your appraisal today, can you please call Eric or myself with your credit card #?

Thank you very much,

Britton Hennessey

Mortgage Sales Assoc
NMLSR ID 926395

Wells Fargo Home Mortgage | 4590 Macarthur Blvd | Newport Beach, CA 92660
MAC E2219-020
Tel (949) 809-5319

Britton.Hennessey@wellsfargo.com

From: Eric.Pathe@wellsfargo.com
To: lombp@hotmail.com
Subject: FW: refinance
Date: Thu, 23 Oct 2014 14:07:05 +0000

Mark

You filing your taxes will not jeopardize this transaction regardless of what you claim, write off, etc. However, it does appear that we will need them to be filed.

Can we schedule a time to chat today to discuss a game plan?

April 16, 2015

Mark Plummer
18552 ORIENTE DR
YORBA LINDA, CA 92886

Subject: Your Commitment Letter

Dear Mark Plummer:

Congratulations! We're happy to tell you that your loan application has been approved based on the terms and conditions included in this Commitment Letter. Please be sure to read all the information carefully.

You're just a few steps away

Additional documents are needed in order to complete the final underwriting and funding of your mortgage loan. These documents, along with terms and conditions, are explained on the following pages. Please remember that we must receive all documentation required in this Commitment Letter. It's important to submit your required documentation as quickly as possible to ensure an on-time closing.

Don't change a thing

Our loan commitment to you is based on the product and terms we discussed, as well as information you provided, including your current income, credit rating, debts and property condition. Please do not apply for additional credit until your loan is closed, as this may affect the approval of your loan.

Contact Information

We understand that some of the requirements and conditions may sound confusing or technical. All the help you need is just a phone call away.

Name: ERIC PATHE
Phone: 949-734-9812

Information to keep at hand

Here are some important facts about your loan, terms and expiration dates. Please refer to this section when contacting us.

Customers:	Mark Plummer	Product:	Fixed Rate Mortgage
Loan Number:	XXXXXX3122	Loan term/loan purpose:	360 months/Refinance
Property Address:	18552 ORIENTE DR, YORBA LINDA, CA 92886	Interest rate/APR:	4.000%/4.015%
Occupancy:	PrimaryResidence	Monthly payment amount: (includes principal, interest, taxes and insurance)	$3,289.40
Property type:	SingleFamily		
Sales price/loan amount:	$0.00/$689,000.00	This letter expires:	March 19, 2015
		Rate lock-in expiration date:	April 22, 2015

* This APR is an estimate based on information we have at this time. This APR is not a committed term under this commitment letter, and it can change based on factors such as changes in third party fees or the terms of your loan.

On behalf of the entire Wells Fargo Bank team, thank you for choosing us for your home financing needs.

Sincerely,

Liz Bryant
EVP, Head of Retail Fulfillment and Home Equity

EXHIBIT C

ATTACHMENT "7"

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and ~~not~~ a party to the within entitled action; my business address is:

18552 Oriente Drive
Yorba Linda, California 92886

On **January 29, 2019**, I served the foregoing document(s) described as follows:

NOTICE OF MOTION AND MOTION FOR TERMINATING AND MONETARY SANCTIONS

On all interested parties as follows:

Nili N. Alai
14 Monarch Bay Plaza, Suite 383
Dana Point, California 92629
Fax (714) 583-6997

Frank Satalino, Esq.
Law Offices of Frank Satalino
19 Velarde Court
Rancho Santa Margarita, CA 92688
Fax (949) 459-5789

_____ (BY EXPRESS MAIL) By mailing the above identified document via Express, Overnight Mail, fully prepaid at the United States Post Office at Yorba Linda, California.

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

_____ (BY FACSIMILE) By telecopying a true copy thereof to the party at the above facsimile number.

__X___ (STATE) I Declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **January 29, 2019**, at Yorba Linda, California

~~C.S. Duffy~~ Mark Plummer

Mark B. Plummer, Esq. #120098
LAW OFFICES OF MARK B. PLUMMER, PC
18552 Oriente Drive
Yorba Linda, California 92886
Tel: (714) 970-3131
Fax: (714) 970-3130

Attorneys for Plaintiff, MARK B. PLUMMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

MARK B. PLUMMER,

Plaintiff,

v.

BANK OF AMERICA, N.A. and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 30-2011-00525808-CU-CL-CJC

NOTICE OF ERRATA RE: OPPOSITION TO JUDGMENT ON THE PLEADINGS

Judge KIRK H. NAKAMURA
Dept. C-8

Date: July 19, 2012
Time: 2:00 p.m.
Dept.: C-8

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that when Plaintiff, Mark B. Plummer, timely filed his opposition to Defendant, BANK OF AMERICA, N.A.'S Motion for Judgment on the Pleadings, he inadvertently put the wrong date of the hearing on his opposition. (See attached.)

Dated: July 8, 2012

LAW OFFICES OF MARK B. PLUMMER, PC

Mark B. Plummer, Attorney for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 ~~and not a party~~ to the within entitled action; my business address is:

LAW OFFICES OF MARK B. PLUMMER, PC
18552 Oriente Drive
Yorba Linda, California 92886

On **July 8, 2012**, I served the foregoing document(s) described as follows:

NOTICE OF ERRATA RE: OPPOSITION TO JUDGMENT ON PLEADINGS

On all interested parties as follows:

Kristin L. Walker, Esq.
SEVERSON & WERSON
19100 Von Karman Avenue, Suite 700
Irvine, California 92612
Fax (949) 442-7118

_____ (BY EXPRESS MAIL) By mailing the above identified document via Express, Overnight Mail, fully prepaid at the United States Post Office at Yorba Linda, California.

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

__X___ (BY FACSIMILE) By telecopying a true copy thereof to the party at the above facsimile number.

__X___ (STATE) I Declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **July 8, 2012**, at Yorba Linda, California

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and ~~not~~ a party to the within entitled action; my business address is:

LAW OFFICES OF MARK B. PLUMMER, PC
18552 Oriente Drive
Yorba Linda, California 92886

On **December 27, 2018**, I served the foregoing document(s) described as follows:

DEMURRER TO CROSS-COMPLAINT

On all interested parties as follows:

Elmira R. Howard, Esq.
ANDERSON, MCPHARLIN & CONNERS LLP
707 Wilshire Blvd., Ste. 4000
Los Angeles, CA 90017-3623

_____ (BY MAIL) By mailing the above identified document via Express, Overnight Mail, fully prepaid at the United States Post Office at Yorba Linda, California.

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

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Executed on **December 27, 2018,** at Yorba Linda, California

~~G.S. Duffy~~ MARK PLUMMER

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and ~~not~~ a party to the within entitled action; my business address is:

18552 Oriente Drive
Yorba Linda, California 92886

On **December 18, 2018**, I served the foregoing document(s) described as follows:

NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE; DECLARATIONS OF MARK PLUMMER AND JOCELYN PLUMMER IN SUPORT THEREOF

On all interested parties as follows:

Nili Alai, M.D.
14 Monarch Bay Plaza, Suite 383
Dana Point, California 92629
Fax (714) 583-6997

Frank Satalino, Esq.
Law Offices of Frank Satalino
19 Velarde Court
Rancho Santa Margarita, CA 92688
Fax (949) 459-5789

_____ (BY EXPRESS MAIL) By mailing the above identified document via Express, Overnight Mail, fully prepaid at the United States Post Office at Yorba Linda, California.

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

_____ (BY FACSIMILE) By telecopying a true copy thereof to the party at the above facsimile number.

__X___ (STATE) I Declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **December 18, 2018**, at Yorba Linda, California

~~C.S. Duffy~~ Mark B. Plummer

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and n a party to the within entitled action; my business address is:

18552 Oriente Drive
Yorba Linda, California 92886

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_____ (BY FACSIMILE) By telecopying a true copy thereof to the party at the above facsimile number.

__X___ (STATE) I Declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **December 18, 2018**, at Yorba Linda, California

~~C.S. Duffy~~ Mark B. Plummer

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

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18552 Oriente Drive
Yorba Linda, California 92886

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On all interested parties as follows:

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Fax (714) 583-6997

Frank Satalino, Esq.
Law Offices of Frank Satalino
19 Velarde Court
Rancho Santa Margarita, CA 92688
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__X___ (STATE) I Declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **December 18, 2018**, at Yorba Linda, California

~~C.S. Duffy~~ Mark B. Plummer

Mark B. Plummer, SBN 120098
LAW OFFICES OF MARK B. PLUMMER, PC
18552 Oriente Drive
Yorba Linda, California 92886
lombp.law@gmail.com
Tel: (714) 970-3131
Fax: (714) 970, 3130

Attorneys for Plaintiffs and Cross-Defendants: WAJIA GHAFOORI and LAW OFFICES OF MARK B. PLUMMER, PC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – NORTH JUSTICE CENTER

WAJIA GHAFOORI AND LAW OFFICES OF MARK B. PLUMMER, PC, Plaintiffs, vs. ROSS REZAEI, SEVENTO7 PHYSICAL & HAND THERAPY and DOES 1 through 100, inclusive, Defendants. and related Cross-Actions.	CASE NO. 30-2018-01014163-CU-CO-CJC **[Reservation No. 72954639]** NOTICE OF DEMURRER AND DEMURRER TO CROSS-COMPLAINT AND DECLARATION OF MARK B. PLUMMER Date: February 4, 2019 Time: 2:00 p.m. Dept.: N-17

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

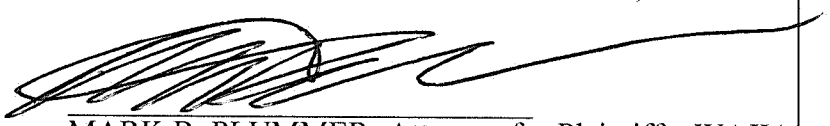
PLEASE TAKE NOTICE that on February 4, 2019, at 2:00 p.m., in Department N-17 of the above identified court, located at 1275 North Berkeley Avenue, Fullerton, California 92838, the Demurrer of Cross-Defendants, WAJIA GHAFOORI and LAW OFFICES OF MARK B. PLUMMER, PC, will be heard. (MARK PLUMMER as an individual has never been served.)

This Demurrer is made on the grounds that the contract attached to the Cross-Complaint, which is the sole basis for the relief prayed for in the Cross-Complaint, does not allow any of the relief requested in the Cross-Complaint.

This motion is based on the attached Demurrer and Memorandum of Points and Authorities, the Court's file herein and upon such evidence as the Court will accept at the hearing of this motion.

DATED: December 26, 2018

LAW OFFICES OF MARK B. PLUMMER, PC



MARK B. PLUMMER, Attorney for Plaintiffs: WAJIA GHAFOORI and LAW OFFICES OF MARK B. PLUMMER, PC

contract. Tillson v. Peters (1940) 41 Cal.App.2d 671 Additionally, the 2-year Statute of Limitations has run an any claims based on an oral or implied contract. Accordingly, the Demurrer should be granted with prejudice since there is no way that the Cross-Complaint can be cured without directly contradicting the facts already plead.

6th Cause of Action for Money Had and Received: For the reasons explained above, there was an express contract which Cross-Defendant complied with and Cross-Complainant breached. Claiming that Cross-Complainant should receive quantum meruit is entirely inconsistent with the Cross-Complaint, as a matter of law, because the Cross-Complaint that states that Exhibit 1 to the Cross-Complaint and the assignment of Ms. Ghafoori's Cal-Optima benefits were the only operative agreements during all times relevant and there can be no equitable recovery if there is an express contract. Tillson v. Peters (1940) 41 Cal.App.2d 671 Additionally, the 2-year Statute of Limitations has run an any claims based on an oral or implied contract. Accordingly, the Demurrer should be granted with prejudice since there is no way that the Cross-Complaint can be cured without directly contradicting the facts already plead.

IV
CONCLUSION

The subject Cross-Complaint is a farce and obviously was filed in bad faith. The subject Demurrer should be granted without leave to amend because any amendment would need to contradict the facts already plead.

DATED: December 26, 2018

LAW OFFICES OF MARK B. PLUMMER, PC

MARK B. PLUMMER, Attorney for Plaintiffs and Cross-Defendants: WAJIA GHAFOORI and LAW OFFICES OF MARK B. PLUMMER, PC

DECLARATION OF MARK B. PLUMMER

I, MARK B. PLUMMER, declare as follows:

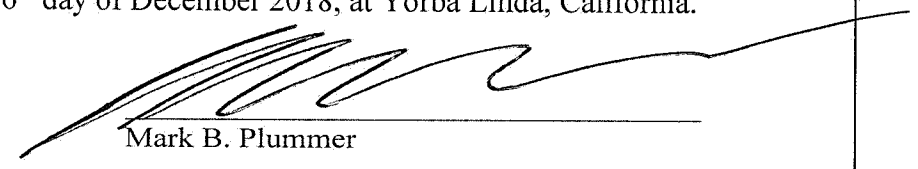
1. I am an attorney duly licensed to practice before all the courts of the State of California, and am the attorney for Plaintiffs and Cross-Defendants: WAJIA GHAFOORI and LAW OFFICES OF MARK B. PLUMMER, PC. If called upon to testify as a witness, I could and would competently testify to all the facts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

2. On or about December 5, 2018, I spoke by phone to Elmira Howard about whether or not she would be willing to drop the subject Cross-Complaint altogether, or at least drop the claims for which the Statute of Limitations had run.

3. Ms. Howard refused to drop or amend anything.

4. In as much as the facts plead were entirely inconsistent with the causes of action, which therefore precluded any meaningful amendments, there did not seem to be much point in discussing the case with her further.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26th day of December 2018, at Yorba Linda, California.



Mark B. Plummer

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and ~~not~~ a party to the within entitled action; my business address is:

LAW OFFICES OF MARK B. PLUMMER, PC
18552 Oriente Drive
Yorba Linda, California 92886

On **December 27, 2018**, I served the foregoing document(s) described as follows:

DEMURRER TO CROSS-COMPLAINT

On all interested parties as follows:

Elmira R. Howard, Esq.
ANDERSON, MCPHARLIN & CONNERS LLP
707 Wilshire Blvd., Ste. 4000
Los Angeles, CA 90017-3623

_____ (BY MAIL) By mailing the above identified document via Express, Overnight Mail, fully prepaid at the United States Post Office at Yorba Linda, California.

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

_____ (BY FACSIMILE) By telecopying a true copy thereof to the party at the above facsimile number.

__X___ (STATE) I Declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **December 27, 2018,** at Yorba Linda, California

~~G.S. Duffy~~ MARK PLUMMER

ATTACHMENT "8"

DECLARATION OF JAMES BOHM

I make the following declaration based on my personal knowledge.

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

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

JAMES G. BOHM

DECLARATION OF CHRISTOPHER BAYUK

1. I am an attorney duly licensed in the State of California, and admitted to appear before the courts. I am not party to this action and make the following testimony under oath based on my personal knowledge and facts.
2. I am familiar with the Law Offices of Mark B. Plummer and Mark B. Plummer, Esq., having defended a number of lawsuits brought by the Law Offices of Mark B. Plummer and subsequently Mark B. Plummer, including a suit brought against me personally by Mr. Plummer, *infra*.
3. The summary of the various law suits filed are summarized below:
    - **ACTION 1: FAMILY LAW ACTION:** *Cuk v. Cuk* Case: 04 D 008550. The initial Petition was filed on or about September 23, 2004. Based upon a variety of filings the action was bifurcated into two (2) trials. The first related solely to the claim that the marriage was a nullity.[1] The net effect of the nullity trial was that the Petitioner, Slobodan Cuk incurred approximately $800,000.00 in attorney's fees and costs, plus $425,000.00 in sanctions and attorney's fees that were awarded to Respondent and her attorneys for pursuing frivolous and B/s/ad Faith claims. Judgment on the sanctions and fees was entered in favor or Respondent's attorneys.
    - **ACTION 2: LEGAL MALPRACTICE ACTION:** *Cuk v. Burch et al.* Case: 30-2009-00300602. The complaint was filed on behalf of Mr. Cuk by the Law Offices of Mark B. Plummer, PC on September 8, 2008. Although the Law Offices of Mark B. Plummer, PC agreed to advance costs, it refused to pay an expert, resulting in the firm's termination from Dr. Cuk's representation in late September/October 2011. Merritt McKeon stepped in and assumed the representation of Dr. Cuk in the legal malpractice action. Within two (2) months of being terminated by Dr. Cuk, the Law Offices of Mark B. Plummer filed Action 3 against Dr. Cuk alleging that he was entitled to his entire contingency fee on any recovery either in the legal malpractice action or any future Bad Faith claim that might be filed on behalf of Dr. Cuk. 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

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

- **ACTION 3: COLLECTION ACTION:** *Law Offices of Mark B. Plummer, P.C. v. Slobodan Cuk et al.* Case: 30-2011-00524331. The complaint was filed on November 21, 2011. Subsequently, on May 29, 2012, Plaintiff filed a First Amended Complaint, naming defendant Merritt McKeon as an additional defendant. Because of her being named as a defendant, while the underlying legal malpractice action was still pending. Defendant McKeon filed a cross-complaint against the Law Offices of Mark B. Plummer, P.C., and Mark Plummer, individually, for past services rendered on Mr. Plummer's divorce, enforcement of an agreement to pay referral fee, and for quantum meruit work performed by McKeon pertaining to the legal malpractice action – Action 2. Bayuk & Associates, Inc., was retained to represent both Dr. Cuk and Ms. McKeon in the action brought by the Law Offices of Mark B. Plummer, P.C. I also assisted Ms. McKeon in bringing the Legal Malpractice action to a close more than a year after the Law Offices of Mark B. Plummer, P.C., was terminated for cause. Action 3 settled before trial, amore detailed summary of the resolution of the case is discussed *infra*.
- **ACTION 4: DECLARATORY RELIEF ACTION:** *ProCentury Insurance Company v. Slobodan Cuk.* United States District Court, Central District of California Case: 8:13-CV-311-JST. The complaint was filed on February 21, 2013, and Trial was set for June 2, 2013. Based upon the stipulated judgment reached in the legal malpractice action, a cross-claim was filed on behalf of Slobodan Cuk on or about April 26, 2013. Ms. McKeon performed no work on either the Declaratory Relief Action or on behalf of Dr. Cuk on his Counter-Claim for Bad Faith, and she claimed no fee on the matter.

Bayuk & Associates, Inc., prepared and performed all work relating to both defending and the DRA action and pursuing the Bad Faith Claim. During the course 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

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

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

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

4. THE SETTLEMENT OF COLLECTION ACTION 1:

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

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

II. **SETTLEMENT TERMS & CONDITIONS**

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

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

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

5. **The releases set forth above shall be effective as of the date of March 5, 2014, and shall extend to all present and/or potential claims, actions, causes of action, suits, damages, liabilities, demands, costs, expenses (including attorneys' fees), known or unknown, that the parties have against each other, which may exist against the Parties hereto, or any of them, or any of the related persons, up to and 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).[2]

VII. ADDITIONAL PROVISIONS

6. **This Agreement and any attachments contain the entire Agreement**

[2] Section IV of the Agreement included a comprehensive waiver of California Civil Code §1542.

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

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

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

5. THE SETTLEMENT OF COLLECTION ACTION 2:

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

6. On or about November 23, 2015, the matter proceeded to Trial. After Mr. Plummer rested the Plaintiff's case, the Court entered Judgment for the Defendants and subsequently 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

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 ins true and correct.

DATE: January 15, 2019

/S/CBayuk

Christopher Bayuk

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.

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

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

Frank Satalino

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 14th day of January, 2019, at Palm Beach Gardens, Florida.

Mark Eisenberg, Esq., Declarant

Exhibit "A"

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

Arbitrator

IN RE BINDING ARBITRATION

MARK B. PLUMMER, Plaintiff/Claimant, vs. ANDREW S. BISOM and DAY/EISENBERG LLP. Defendants/Respondents/	ADR Case No 11-2638-AAT AWARD

The parties entered into a binding arbitration which was heard on May 6, 2011.

I, THE UNDERSIGNED ARBITRATOR, having duly heard the proofs and allegations of the Parties, do hereby, AWARD as follows:

STATEMENT OF THE CASE

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

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

DISCUSSION

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

CONCLUSION AS TO DAY/EISENBERG

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

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

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

CONCLUSION AS TO ANDREW BISOM

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

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

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

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

AWARD

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

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

DATED: 5/31/2011

Respectfully submitted,

Hon. Armand Arabian
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 court 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