

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

LAURA LYNN HAMMETT  
Appellant(s),

9th Cir. Case No. 22-56003

District Court or

vs.

BAP Case No. 3:19-cv-00605-LL-AHG

MARY E. SHERMAN; et al.  
Appellee(s).

**APPELLANT’S INFORMAL REPLY BRIEF**

(additional sheets incorporated, up to a total of 25 pages including this form)

**For the optional reply brief in response to appellee’s answering brief(s) only.**

**List each issue or argument raised in the answering brief to which you are replying. Do not repeat arguments from your opening brief or raise new arguments except in response to arguments made in the answering brief(s).**

**Issue/Argument Number 1**

**What is the first argument in the answering brief to which you are replying?**

McGarrigle, when filing his Answering Brief<sup>1</sup> on June 5, 2023, Appeal Document 23, omitted one party from the docket entry. The procedure MKZ used to correct this docket error contradicted the procedure used by the Linda R. Kramer defendants regarding the MTD, Doc. 19. MKZ kept the second party on the cover

---

<sup>1</sup> McGarrigle-MKZ Brief cited as MKZ-pg.#, Member Respondent’s Brief Members-pg.#, Stern & Goldberg Brief S&G-pg.# and my opening brief LH-pg.#. Pg # is the electronic page number. These are abbreviations for each group, as well. MKZ and S&G together are “Attorneys”. All respondents together, “Respondents”. Documents that were not in the SER will be included in an addendum (SER-A) the respondents agreed to prepare soon after my brief is filed. Documents filed in District Court are referred to by “Doc. #”.

of the document and asked the clerk to correct the entry. The clerk noted the correction on June 7, 2023.

### **What is your reply to that argument?**

I agree with the procedure used by MKZ. In contrast, the MTD cover had only the co-trustees represented, the clerk added the individual to the docket entry, then removed the individual without any notation of the alterations.

### **Issue/Argument Number 2**

#### **What is the 2nd argument in the answering brief to which you are replying?**

As the Respondents did with the motions to dismiss, they added a multitude of facts that contradict the facts I alleged. Only some of the misstatements of my allegations are included. These are culled, to be able to stay within page limits.

1) **Misstatement:** The Attorneys were sued based solely upon their representation of two of my litigation adversaries, SSP and its manager. MKZ-9, S&G-18 – 19. **Truth:** The Attorneys represented all the members as individuals, knowing I did not receive a similar distribution. The Court relied upon this misstatement to dismiss the FAC. “Plaintiff alleges that Mr. Stern was counsel for Defendants Mary Sherman and SSP, not the other Members. See FAC ¶¶ 67.” (sic. Only one paragraph cited) 1-SER-111. The cited paragraph is a quotation from an email by Mary Sherman that calls S&G the “lawyer for the LLC and the manager”. 7-SER-1342. The Court mis-attributed Sherman’s words to me.

2) **Misstatement:** MKZ “worked on behalf of Sherman and SSP to try to resolve Hammett’s claims [after I dismissed Hammett 1]. MKZ-9. **Truth:** MKZ negotiated on behalf of all members except me, and I was excluded from the discussions and voting by the other board members.

3) **Misstatement:** S&G claimed that I added the “derivative claim of legal malpractice against Sherman”. **Truth:** I did not add Sherman to the 6<sup>th</sup> cause, malpractice. 7-SER-001392

4) **Misstatement:** S&G claimed that my allegations included Sherman “buying a computer with company funds, and converting money from Plaintiff which was later returned.” S&G-18. **Truth:** I alleged the computer was bought for personal use after the plaza was sold and more money was converted after the \$50,000 was returned. 7-SER-1329 – 1330.

5) **Misstatement:** MKZ stated that there were only two orders pertaining to it on appeal. MKZ-12,13. **Truth:** Order Doc. 191, granting “Ex Parte Mot.,” Doc. 188 and all orders concerning disqualification of Judge Sammartino also apply to MKZ. By failing to address those issues, MKZ waived argument to my appeal of those orders.

6) **Misstatement:** MKZ said, “because Hammett conceded that SSP’s manager had authority under the OA to pay attorneys’ fees, there could be no conversion claim.” MKZ-24. S&G misstated the OA permission for the manager to pay attorney fees, by omitting the exclusions. S&G-19. **Truth:** I did not concede to payment for members’ representation that is 1) excluded by the OA at § 9.1(a), “unless such person has engaged in willful misconduct [], or unless such Proceeding is to enforce contractual obligations”; where there is no written undertaking required by § 9.1(b); covered by an insurer per § 9.1(d). 5-SER-1067 – 1068. Ms. Dennis’ insurer contacted me accidentally and I have not been able to determine insurance for the other members without discovery.” 3-SER-462. Negotiations by S&G on behalf of the other members was a business expense, not a proceeding.

7) **Misstatement:** S&G made several more misstatements at S&G-20 – 21. The most disturbing, which was mimicked by the Court was that I alleged that S&G “communicated to Plaintiff that her threats to her mother, Sandra Kramer, amounted to elder abuse.” **Truth:** The Court adopted a similar misstatement. “Sandi Kramer reported Plaintiff to a government agency to investigate claims of elder abuse [that was found] *invalid on its face*” became “Sandi Kramer reporting Plaintiff to a government agency for elder abuse”, which has an inference that there was elder abuse. 7-SER-1336, 1-SER-091. The Court knows the word “alleged” and should have used it. S&G made a subtle alteration to the truth to create a prejudicial statement, and their ploy apparently worked. I made no threat that amounted to elder abuse. S&G presented no emails that demonstrated elder abuse. I told my mother she cannot force the return of a gift.

8) **Misstatement:** MKZ claimed that I made an admission that my SLAPP action was a meritless claim.” MKZ-47 – 48. **Truth:** I never “admitted” that my action was meritless.

9) **Misstatement:** Members start their brief by listing Hunsaker “in all his capacities” on the cover. He was named only as a co-trustee of the L&E Trust. **Truth:** Because Hunsaker was named only as a co-trustee, I did not need to specify his conduct by name in the complaint. He and his co-trustee acted as one.

10) **Misstatement:** Respondents claim Silver Strand Plaza is a “small” “strip mall”, Members-3, and “an apartment complex” S&G-13. **Truth:** It is deceptive and contrary to the complaint to call a ±44,647 SF two-story retail center with a block long anchor and two islands a small strip mall or apartment complex. The new owners hired a management company. Management fees were used in the NOI calculation. The discrepancy between the NOI in the prospectus and what was

reported to me was not due to backing out management fees and earthquake insurance. Sherman took a full salary and hired an onsite management company for market rate for full service.

11) **Misstatement:** Members claimed, “SSP retained some cash for taxes and administrative expenses.” Member-3. The implication is that these are the only assets retained and it is a reasonable amount. **Truth:** I made the credible allegation that there is property and loans that defendants held secretly in violation of the operating agreement.

If the secret properties were liquidated, then the Respondents’ argument against dissolution is a violation of Rule 11. Respondents must disclose what non-cash assets are still held or they must dissolve the company.

The \$500,000 retained per the K-1s is excessive for “wrapping up” a company with no other assets.

12) **Misstatement:** Members claim the prior litigation “involve[ed] most of the same parties”. Members-8. **Truth:** The prior litigation had only four of the 16 named parties and involved MKZ as attorneys, not parties.

13) **Misstatement:** Members omitted important changes made in the SAC. Members-9. **Truth:** I added an alternative claim for breach of good faith and fair dealing to the breach of fiduciary duty, because it is definitely individual rather than derivative. I removed the claim to disqualify MKZ from representing SSP, as they already withdrew.

14) **Misstatement:** “Appellant alleged three statements made by Ms. Dennis or Ms. Sherman defamed her.” M-48. **Truth:** I alleged that Ms. Dennis made numerous defamatory statements against me. I did not list each separately, but

could if allowed to amend. I did enumerate “discrete” statements in SAC paragraphs 395, 418, 420, 421, 422 and 423. This is six (6).

15) **Misstatement:** Member Respondents made the deceitful representation that my claims of breach of fiduciary duty were based on: “the Member Defendants refused to vote against Mary Sherman, refused to dissolve the company, used company attorneys to represent themselves, and ‘agreeing to consider buying Plaintiff’s shares in lieu of voluntary dissolution.’ 3-SER-416-420.” M-51, 52.

**Truth:** The actual quote, with emphasis added to show the misrepresentations: “The Member Defendants breached their fiduciary duty to Plaintiff by doing actions, including but not limited to, (a) refusing to vote against acts of the Manager *that were in contravention to the OA*; (b) refusing to dissolve the Company *timely*; (c) Using the Company attorneys, [] to represent them as individuals, *even letting SSP pay for the representation without following OA requirements*; and, (d) agreeing to consider buying Plaintiff’s shares in lieu of a voluntary dissolution *that would be a reasonable action under the circumstances, but then using Stern to represent a fair price as about 1/6th the actual fair value.*” 3-SER-416

16) **Misstatement:** My motion for default against Kramer as an individual was “based solely on how the motion was entered in the docket through CM/ECF when filed”. S&G-33, fn8. **Truth:** Default was based on the cover of the MTD, Doc. 19, showing Kramer was represented in only one capacity.

17) **Misstatement:** S&G quoted me as basing my motion for disqualification on, “decisions on this case that are contrary to reasons given for decisions...made on other cases;”. S&G-32 – 33. **Truth:** The words replaced by “...” were “she has”, meaning Judge Sammartino made decisions on this case that are contrary to

reasons given for decisions Judge Sammartino, herself made on other cases. *Gottesman* in particular, which was cited by S&G numerous times at S&G-22, 36, 38, 39, and numerous times on 42, though S&G did not include “42” on the table of authorities.

### **Issue/Argument Number 3**

#### **What is the 3rd argument in the answering brief to which you are replying?**

“Hammett was repeatedly warned of the folly of suing litigation counsel in such a manner. (SER-945-46, 936-39, 941-43.)” MKZ-10. There was a discussion of the Anti-Slapp statute, CCP §425.16 directly following.

#### **What is your reply to that argument?**

The implication was that MKZ warned me that the claims against them were subject to the anti-SLAPP statute. Reading through the entirety of the cited pages yields not a single mention of CCP §425.16. MKZ discussed CCC § 1714.10, which has no fee shifting provision, and California Corporations Code 800, the Derivative Action Statute.

Notice that the group of pages was not cited as 4-SER-936 – 943. The two missing pages were: One, an exhibit label. The second, the first page of Patrick McGarrigle’s declaration that purportedly lays a foundation for the email exhibits. 4-SER-944. Why leave out that page? That is where Mr. McGarrigle swore under penalty of perjury to only the first sentence. The rest of the declaration and exhibits were not under penalty of perjury.

MKZ said I had no “standing” and the rights belonged to SSP pursuant to § 800. 4-SER-942, 945 ¶ 6. That is not the same as being unauthorized to argue on behalf of a corporation. “On behalf of the corporation” is only said once in § 800 at (b)(1). Unfortunately, it is on line 8 of 12, FindLaw.com - California Code, Corporations

Code - CORP § 800. I only had to read the 1<sup>st</sup> line to find that I met the requirements. At line 4 it says “provided, that any shareholder who does not meet these requirements”, so I skipped to the next section and did not see “on behalf of”.

Mr. McGarrigle wrote by email, “Section 800(b) bars you from instituting any legal action on SSPs behalf.” 4-SER-938. I dismissed *Hammett I* because MKZ promised to provide all the books and records. MKZ lied. My attorney did not include a derivative claim, and MKZ tried to convince us that the claim must be derivative. I was confused because Mr. McGarrigle insisted my individual claims must be derivative in *Hammett I*, then said I could not write any of the claims as derivative because they belonged to SSP. I read § 800 and it looked like Mr. McGarrigle was wrong. Had we kept *Hammett I*, even if that court demanded the claims be derivative, my attorney could have made a change in the labeling on amendment. That was before the Schrage appeal, and the Central District didn’t order Schrage to make his claims derivative. I had made the demands that would allow me to change the claims to derivative. The Attorneys had unclean hands.

MKZ never said that I could not file a derivative claim because I am not authorized to practice law. MKZ claimed I wanted limited scope representation “to litigate what Hammett knew to be derivative claims that she could not prosecute as a pro se litigant. (SER-1321-23, 1324-1405.)” MKZ-36. I did not have innate knowledge of what a derivative suit is and specified that I did not understand.

I said from the start that I was bringing the conspiratorial individual claims after filing a motion for leave under CCC § 1714.10. *Cortese* did not have a conversion claim. Neither conversion nor legal malpractice are conspiratorial. The malpractice was simply that the attorneys did not warn SSP about the conflict of dual representation, and then advised SSP to do things that would cause legal liability.



Conversion was taking money that the attorneys knew was tainted. Regardless, § 1714.10 does not have a fee shifting provision.

I said in my notice of dismissal, Doc. 38, that I would still file the individual conspiratorial claims after obtaining leave under 1714.10. My complaint was Respondents working in concert to convince me that my shares were worth less than value and concealing the fraudulent books from me, even to this day.

#### **Issue/Argument Number 4**

##### **What is the 4th argument in the answering brief to which you are replying?**

MKZ gives a highly inaccurate statement of the negotiations with my counsel and me. MKZ-18 – 22. MKZ concludes: “McGarrigle honestly and reasonably believed that Hammett would refile the lawsuit against SSP and its manager. (SER 1095.)” (SIC. MKZ did not include volume numbers.) MKZ-22

##### **What is your reply to that argument?**

I would not refile the suit if I received the complete records and was made whole. In fact, I offered to settle for \$54,500, less than the capital shown on my K-1 and was turned down. Declaration of Patrick C. McGarrigle, 5-SER-1088.

MKZ claimed we had “informal discovery”. MKZ-29. SSP refused to provide complete books and records, forcing me to file suit for formal discovery.

The McGarrigle declaration with its exhibits was not signed under penalty of perjury, except the first paragraph. (5-SER-1082) Mr. McGarrigle, therefore, may not be technically guilty of perjury for the profusion of lies, but he is in violation of Rule 11. My Evidentiary Objections to the Declaration of Patrick C. McGarrigle gives a concise listing of unacceptable evidence. (4-SER-658 – 667)

Instead of looking through the evidence I presented in rebuttal to the unsworn testimony and ruling on my objections, the Court made the errant presumption that “voluntary” dismissal of the void claim meant the attorney defendants prevailed.

The respondents claim they wanted to “permit the company to wind up its business”. MKZ-31. This is not true. They turned down my offer to settle and wind up the business with me receiving 20% less than my stated capital account. The Members’ opposition to the TAC shows they still intend to control my money.

### **Issue/Argument Number 5**

#### **What is the 5th argument in the answering brief to which you are replying?**

Attorneys claimed that I “chose to dismiss [MKZ] from the action”, MKZ-25, and my dismissal was “in response to the anti-SLAPP motion”, S&G-13, 19, 20. The Court adopted the argument that the dismissal was voluntary. 1-SER-131

#### **What is your reply to that argument?**

"[A] plaintiff's voluntary dismissal raises a presumption that the defendant is the prevailing party that the plaintiff can rebut by explaining its reason for dismissal." *Gottesman*, 263 F. Supp. 3d at 1043. Emphasis added.

### **Issue/Argument Number 6**

#### **What is the 6th argument in the answering brief to which you are replying?**

The fee awards are “subject to review only for an abuse of discretion.” MKZ-27.

#### **What is your reply to that argument?**

The attorney fee awards were based on the presumption that the Attorneys were the prevailing party. A motion to strike is reviewed de novo. Their motion should have failed because the claim was void, the causes not subject to anti-SLAPP, I was not

allowed early discovery or the Attorneys did commit malpractice and conversion, making it an abuse of discretion to award any attorney fees.

MKZ cited to *Graham-Sult* at MKZ-13 regarding standard of review. *Graham-Sult* also states “Striking Plaintiffs' conversion [] claims against [defendant] was erroneous, because: (a) taking possession of personal property, [] and (c) receiving consideration for stock sold after a probate court entered its final order, are not protected activities.” *Graham-Sult v. Clainos*, 756 F.3d 724, 731 (9th Cir. 2014)

### **Issue/Argument Number 7**

#### **What is the 7th argument in the answering brief to which you are replying?**

“The fact that Hammett could not bring a derivative action showed that her derivative claim lacked merit.” MKZ-36

#### **What is your reply to that argument?**

I am not allowed to bring a claim on behalf of another “person” no matter how right I am. It has nothing to do with the merits. In fact, the rule forbidding the unauthorized practice of law is in place to protect people who have a meritorious claim from hiring someone who is incompetent to represent them.

This is the classic case of the defendant winning on a technicality – the technicality being my lack of licensure to represent the LLC on a meritorious claim.

### **Issue/Argument Number 8**

#### **What is the 8th argument in the answering brief to which you are replying?**

The Attorneys warned me that my derivative case was “untenable” and, therefore, I should have known it was on behalf of the LLC. MKZ-36, 37, S&G-70.

#### **What is your reply to that argument?**

Nowhere in the profuse proceedings and emails prior to my notice of dismissal, did anyone say the derivative claim was void and must be dismissed because I am unauthorized to practice law. Untenable  $\neq$  Void. I figured it out on my own and it shocks the conscience that the Court and the Attorneys remained silent and tried to have the members of SSP lose their right to sue by beating a non-attorney on the void claim. I specified in the FAC that the Attorneys threatened me with a malicious prosecution case after I lost, but there was no mention of my lack of license to file a derivative case in the FAC. 7-SER-1389 – 1390.

### **Issue/Argument Number 9**

#### **What is the 9th argument in the answering brief to which you are replying?**

Because I wrote, in the same email where I said I learned the derivative claim was “on behalf” of SSP, that “there is no incentive for me to hire an attorney myself to pursue that claim”, citing SER-925, I had only my own interests in mind. MKZ-37

#### **What is your reply to that argument?**

The entire email, 4-SER-925, shows that when I wrote the FAC I mistakenly thought I was arguing on my own behalf. If I knew the derivative claim was on behalf of SSP, I would not have filed it. I can only protect my own interests.

### **Issue/Argument Number 10**

#### **What is the 10th argument in the answering brief to which you are replying?**

MKZ argued that I waived arguments concerning the reasonableness of the fees. MKZ-40. “The uncontested evidence also established that the work performed was both reasonable and necessary given the circumstances of the action.” MKZ-42.

#### **What is your reply to that argument?**

I did not caption a section, “The Attorney Fees were Unnecessary”, but I argued the point vehemently. The derivative malpractice claim is void. Anything more

than a notice to the Court that said “we decline to respond to the derivative claim filed by a non-attorney” was not necessary. There is no fee shifting for writing and filing that one notice. I obviously would have agreed the claim was void because I am the one who pointed it out once I made the discovery.

There would still have been the conversion claim, but taking money from me or SSP to represent the Members as individuals is definitely not a claim subject to an anti-SLAPP motion, even if the conversion was accomplished in a conspiracy. If the money taken belonged to SSP, the conversion claim was derivative, and therefore void, the same as the malpractice claim.

California Code, Civil Code - CIV § 1714.10 has no fee shifting provision.

### **Issue/Argument Number 11**

#### **What is the 11th argument in the answering brief to which you are replying?**

Members argue that my argument that derivative claims pursued by non-attorneys are void ab initio is “preposterous, without merit, and warrants no further discussion.” Member-32,41 “It is not Respondents’ fault Appellant is not an attorney and improperly filed a derivative action.” Member-11

#### **What is your reply to that argument?**

The argument is not supported by any authority. Pro se litigants are excused from providing caselaw at this appellate court. Licensed attorneys are not.

To disprove that the argument is “preposterous”, I am including caselaw here.

*Alexander & Baldwin, LLC v. Armitage*, 151 Hawai‘i 37 (2022), 508 P.3d 832.

“circuit court should have sua sponte exercised its power to prevent the unauthorized practice of law by preventing Nation’s foreign minister and prime minister, who were non-attorneys, from representing Nation [.]” hn 3. “as matter of

first impression, prime minister's and foreign minister's unauthorized practice of law required vacation of trial court's judgment against Nation [.]” hn 5

I offered bountiful caselaw on the subject in my Memorandum in Support of Plaintiff's Motion to Vacate Void Orders Granting Attorneys' Fees, Doc. 177-2. Respondents excluded that document from the excerpts, though they impermissibly included the Attorney Defendants' memos in response that addresses whether the claims I agreed were derivative were void ab initio. Index pg. 7, 9, 2-SER-248 – 270, 3-SER-624 - 635. Three cases I relied upon were inaccurately distinguished by the Attorney Defendants: *Russell v. Dopp*, 36 Cal. App. 4th 765 (1995), *City of Downey v. Johnson*, 263 Cal. App. 2d 775 (1968), and *Davis Test Only Smog Testing v. Department of Consumer Affairs*, 15 Cal.App.5th 1009 (2017).

“Generally, unlicensed person cannot appear in court for another person, and **any** resulting judgment is a nullity.” *Russell*, bold added. Not just the judgments adverse to the represented litigants.

From my Motion to Recuse: “What [a party unauthorized to practice law] purported to do for [another party] in place of an attorney was a nullity, and that fact should have been known to the court and to opposing counsel.” (*People By & Through Dep't of Pub. Works v. Malone*, 232 Cal. App. 2d 531, 537, 42 Cal. Rptr. 888, 892 (Ct. App. 1965)) (2-SER-343)

By refusing to address my arguments meaningfully, the Members waived any argument. Another good reason not to resort to calling my arguments “preposterous” is that it lacks civility. “[T]he better practice is usually to lay out the facts and let the court reach its own conclusion.” *Bennett v. State Farm Mut. Auto. Ins. Co.*, 731 F.3d 585 (6th Cir. 2013). Respondents had no facts to present.

**Issue/Argument Number 12**

**What is the 12th argument in the answering brief to which you are replying?**

Members applaud and mimic the Court’s misinterpretation of *Streit*, arguing that “A ‘special appearance’ is not the same thing as ‘limited scope’ representation”. Members-10, 14.

**What is your reply to that argument?**

*Streit* actually says that technically a “special appearance” is only to challenge jurisdiction. Informally, the two designations are interchangeable. The *Streit* court decided the attorneys who made appearances for a limited purpose were under the same duty of care as the attorneys who handled all matters. I argued prejudice because without an attorney’s assistance, I did not understand complex concepts like derivative actions, I had to travel to California (which I did once and the court cancelled the hearing on the morning of my flight, which was non-refundable), and I have several ailments including “brain fog” and fatigue, (which was diagnosed as Hashimoto’s Disease after the judgment was final). I had prescription medication for anxiety and physical pain, had an alarming vitamin D deficiency and off the charts thyroglobulin antibodies and COVID-19 twice. 3-SER-619 – 623

It is bizarre and sadistic that the defendants say there was no prejudice to me because I am killing myself to complete my work.

**Issue/Argument Number 13**

**What is the 13th argument in the answering brief to which you are replying?**

“Appellant can point to no prejudice she suffered as a result of the denial [of the recusal].” Pg. 11.

**What is your reply to that argument?**

The prejudice is that Judge Sammartino's rulings were adopted as "law of the case", instead of issues such as choice of law being viewed afresh. The Court adopted many of the misstatements, some pointed out in Issue Number 2.

#### **Issue/Argument Number 14**

##### **What is the 14th argument in the answering brief to which you are replying?**

"Appellant identifies no portion of any court order that adopts an allegedly false or misleading statement." M-12.

##### **What is your reply to that argument?**

It shows bias against me that the Court ignored the contemptuous number of violations of Rule 11 by the defendants. Because courts usually deny attorney fees to pro se litigants, the defendants acted like they would have no sanctions for their misconduct, and so far, they have not. The Court has an inherent power to sanction misconduct like this and should have.

Within the length confines of this brief, I cannot show each adoption of a false and misleading statement. Here is one that was the Court's basis for calling the complaint derivative. SSP stated: "When stripped away from the eighty-one pages detailing Hammett's intrafamilial squabbles, Hammett's complaint boils down to a single theory: Sherman took funds that should have been classified as distributions, which rightfully belonged to all SSP members, and consequently, SSP should pay damages directly to Hammett." (Doc. 37-1, 1:11) 4-SER-798

#### **Issue/Argument Number 15**

##### **What is the 15th argument in the answering brief to which you are replying?**

Respondents claim the intimidating footnote implying I had no evidence that the clerk altered the docket entry 19 to include Kramer as an individual and then



changing it back after I told him I had a copy of the unchanged version was a “judicial ruling”. M-25

**What is your reply to that argument?**

The footnote was intimidating. I allege that Judge Sammartino and the clerk violated 18 USC 241. I could not fight my 42 USC 1983 complaint for lack of energy and money post COVID-19.

**Issue/Argument Number 16**

**What is the 16th argument in the answering brief to which you are replying?**

Without a citation, it is unclear what Schrage case Appellant mimicked.

**What is your reply to that argument?**

Schrage was cited at LH-43 and in BIS of motion for leave to retain limited scope representation, Doc. 11-3. The appeal is 69 Cal. App. 5<sup>th</sup> 126.

**Issue/Argument Number 17**

**What is the 17th argument in the answering brief to which you are replying?**

“Appellant’s TAC (and her SAC) illustrated that SSP has assets.” M-31

**What is your reply to that argument?**

The Respondents and the Court are playing games instead of pursuing a just outcome. The Respondents imply in the Brief that there is only cash left. This does not preclude that the remaining secret assets were liquidated or fraudulently transferred during the pendency, but there is no excuse now to thwart dissolution.

**Issue/Argument Number 18**

**What is the 18th argument in the answering brief to which you are replying?**

“Under California law, specific performance is a remedy for breach of contract, not an independent claim” and a “right to an accounting is derivative; it must be based on other claims.”

**What is your reply to that argument?**

Pro se litigants are not held to the same standard of pleading, as to form, just as to substance. While my attempt to simplify the complaint was amateurish, and done while extremely fatigued and stressed, it is easy to understand my meaning. An amendment would be almost as simple as adding a cause of action for breach of contract against each defendant member.

In other words, the Court should have changed the label from an accounting to a “breach of contract”. After all, the Court supposedly corrected me for calling derivative claims individualized claims. There is an appearance of bias when the Court only clarifies issues in favor of the represented parties.

**Issue/Argument Number 19**

**What is the 19th argument in the answering brief to which you are replying?**

“Appellant’s Opening Brief does not raise an issue with the District Court’s findings regarding the prejudice suffered by the Defendants and has thus conceded the point.” M-34

**What is your reply to that argument?**

I wrote: “The length of time that has passed is due to the pandemic, my ill health, and the court’s long pauses before issuing rulings.” LH-30 Justice delayed is justice denied to me, not the respondents. They have my money. I offered to settle for less than is in my capital account before filing, and they refused.

**Issue/Argument Number 20**

**What is the 20th argument in the answering brief to which you are replying?**

“Member Respondents are unable to respond to Appellant’s assertion” because they say I failed to properly cite to the case. M-40. I did not elaborate on why the Nelson Court “got it wrong”.

**What is your reply to that argument?**

The COA allows for informal briefing. Question 8 relieves me from referring to cases. I discussed the law behind Nelson in Answer 8 section IV and my memorandums in the District Court, sometimes not specifying *Nelson*.

The Nelson Court got it wrong in the same way the District Court got it wrong in this case. As Member Respondents repeated: “the business judgment rule “protects a board’s good faith decision to reject a derivative lawsuit” *so long as the majority of the board does not have a personal interest in the lawsuit’s outcome.*’ Id. at 831 (quoting *Desaigoudar v. Meyercord*, 133 Cal. Rptr. 2d 408, 416 (Ct. App. 2003)).” M-52. Emphasis added. Loni Anderson, the defendant in Nelson, had the majority vote and had a personal interest in the lawsuit’s outcome. Likewise, the Members have an interest in keeping the books and records concealed, because they all benefitted by receiving distributions I did not receive.

**Issue/Argument Number 21**

**What is the 21st argument in the answering brief to which you are replying?**

“Respondents deny ever misstating any factual allegations in Appellant’s Complaint or misconstruing her arguments.” M-42. And they claim the Court did not rely on the misstatements, so ignoring them was harmless error. “Harmless error is insufficient.” M-41 – 44.

**What is your reply to that argument?**

Respondents failed to raise these contentions and arguments at the District Court. New arguments cannot generally be raised on appeal. (An exception is when proceedings were void ab initio.) See Doc. 94 in general.

In fact, the Sherman Defendants addressed the declaration that listed many of the numerous misstatements of what Plaintiff wrote in the FAC. Doc. 94 at 7. They did not deny making the misstatements. They only asked the Court to strike and ignore the declaration.

The Court has an inherent power to sanction parties for misconduct in litigation. 28 USC 1927 and Rule 11 motions are also available. Those sanctions would be appropriate as the Defendants multiplied the work for the unrepresented plaintiff, and increased her stress which harmed her physical health.

The apparently biased Court chose instead to ignore the misrepresentations enumerated in the declaration at the request of the Defendants.

### **Issue/Argument Number 22**

**What is the 22nd argument in the answering brief to which you are replying?**

Citing *Eitel*, 782 F.2d at 1471 [sic], M-45, the Member respondents then give arguments against “default judgment” instead of “clerk’s default”. The implied argument is that Default under 55(a) is the same thing as Default Judgment under 55(b).

**What is your reply to that argument?**

Entry of Clerk’s Default and Default Judgment are two separate procedures. I misspoke when I filed Doc. 23, though I described an entry of clerk’s default rather than a default judgment. Substance, not caption controls. I corrected myself immediately when filing Doc. 25 within an hour. Either would be appropriate, as

there was no appearance on behalf of Kramer as an individual yet. Documents filed by the defaulted defendant before a motion to set aside cannot be considered.

*The Eitel* citation is actually 782 F.2d at 1470. It supports my case 100%.

“Eitel apparently fails to understand the two-step process required by Rule 55. See *6 Moore's Federal Practice* p 55.02, at 55-8. Here, the entry of default pursuant to Rule 55(a) was proper. However, because McCool had filed a notice of appearance, entry of judgment by the clerk under Rule 55(b) (1) as requested by Eitel would have been improper. Because of McCool's appearance, the district court, not the clerk, was required to enter the default judgment.” Here, Rule 55(a) was proper.

The Court did not require the mandatory clerk's default and made her decision as if there was a motion under 55(c) filed. The Court wrote, “the Kramer Defendants filed the Kramer Motion on July 30, 2019”. 1-SER-099. The cover of the document, Doc. 19 and the docket entry do not name Kramer as an individual.

### **Issue/Argument Number 23**

#### **What is the 23rd argument in the answering brief to which you are replying?**

“Appellant is domiciled in Arkansas, both currently and when the statements were allegedly made, and it is there, if anywhere, where the bulk of the harm would occur.” M-48

#### **What is your reply to that argument?**

There is supplemental case law decided by the United States Supreme Court June 22, 2023, *Yegiazaryan v. Smagin*, 599 U.S. –, 2023 WL 4110234. The Supreme Court rejected the Seventh Circuit's “bright line rule” that foreign plaintiffs may only experience injuries involving intangible property at their place of residence, opting instead for a “context-specific” approach taken by the Second, Third, and Ninth Circuits. The Supreme Court agreed with the Ninth Circuit, holding that U.S

courts assessing whether a plaintiff has pled a domestic injury in the RICO context must engage in a circumstantial inquiry which “considers all case-specific facts bearing on *where the injury ‘arises,’ not just where it is ‘felt.’*” There is no reason the Ninth Circuit should apply a different standard in the defamation context.

I purposely left the harms I suffered in Arkansas out of the FAC to foreclose on the choice of law being Arkansas. I added paragraph 32 to the SAC. 3-SER-499. I explained that my primary business contacts are in California. I did not ask for damages for the statements made to Arkansans, citing them as evidence of malice.

#### **Issue/Argument Number 24**

**What is the 24th argument in the answering brief to which you are replying?**

Member Respondents presented caselaw, *Abogados v. AT&T Inc.*, 223 F.3d 932, 934 (9th Cir. 2000), to support the argument that Arkansas’ rather than California’s “interest would be the more impaired if its law were not applied.” M-49

**What is your reply to that argument?**

*Abogados v. AT T, Inc.* cites *Hurtado v. Superior Court*, 522 P.2d 666, 669 (Cal. 1974) for the opinion that it is the defendants who are protected by Mexico’s law and the defendants were in California, so California law should apply. Likewise, the defendants except Dennis in this case were in California. California law should apply. The law in Dennis’ residence and in most all other states is the same as California and different from Arkansas.

#### **Issue/Argument Number 25**

**What is the 25th argument in the answering brief to which you are replying?**

“[T]he SAC does not allege what Jeffrey Sherman allegedly did.” M-53

**What is your reply to that argument?**

Jeffrey Sherman is named as a co-trustee to the J & M Sherman Family Trust and is therefore culpable for all decisions of either co-trustee.

**Issue/Argument Number 26**

**What is the 26th argument in the answering brief to which you are replying?**

Plaintiff conceded [her claims were derivative in nature] when she alleged that these actions were “not in the best interest of the Company.” M-53.

**What is your reply to that argument?**

The actions not being in the best interest of the Company is evidence of malice and wrongdoing against me as an individual.

**Issue/Argument Number 27**

**What is the 27th argument in the answering brief to which you are replying?**

Members imply that I did not allege fraud or negligence. M-54.

**What is your reply to that argument?**

I relied upon the fraudulent statements of Sherman and Stern to determine my shares were worth 1/3<sup>rd</sup> the actual value. If I knew the true value, I would have gotten a lawyer to represent me a lot sooner.

**Issue/Argument Number 27**

**What is the 27th argument in the answering brief to which you are replying?**

The Court “denied Plaintiff’s objections to Defendants’ declarations as untimely filed in accordance with the court’s briefing schedule. (1-SER-131.)”

**What is your reply to that argument?**

This argument is in my favor. At 1-SER-131 in fn10, the Court referred to the scheduling order, Doc. 46. SER-A

The Court ordered “[o]ppositions to all motions set for hearing on October 24, 2019, **SHALL BE FILED** on or before September 26, 2019.” (Emphasis the Court’s) My objections to evidence were filed on October 10, 2019. 3-SER-364, 4-SER-677. But objections to evidence, even written, as in a motion in limine, are not the opposition. I made this written chart of evidentiary objections with a column for the Court to sustain or overrule because I feared I would forget something or be prohibited from making my objections at the hearing. I even specified, “Plaintiff did not need to object or respond to ‘evidence’ in the declarations of [McGarrigle] because the bulk of the declarations were not made under penalty of perjury. An ‘errata’ was filed on behalf of [McGarrigle] on September 24, 2019, ECF No. 76, untimely to allow Plaintiff to respond. The following objections are lodged so as to preserve Plaintiffs right on appeal to argue the issues raised if the Court errantly allows the ‘errata’.” 4-SER-659

In fact, the Court vacated the hearing, dkt. Entry 97. Text only. 7-SER-1468.

Should the 9<sup>th</sup> Circuit reach the question of whether the Attorneys prevailed on the merits, it should consider the evidentiary objections. The Court should consider the evidence plaintiff presented also. 4-SER-681 – 783, and Doc. 104, the exhibits SSP marked as “Confidential” which were allowed to be entered on the record. SER-A

### **Issue/Argument Number 27**

**What is the 27th argument in the answering brief to which you are replying?**

S&G argue that the order declaring Judge Sammartino’s disqualification “moot” could not be changed on reconsideration because I introduced no new evidence or change in law. S&G-35.

**What is your reply to that argument?**



Another reason to reconsider is manifest injustice. As I argued, moot means there is no live dispute for a court to resolve. The bias of the judge presiding who decided the Attorneys prevailed and made “law of the case” is a live dispute.

**Issue/Argument Number 27**

**What is the 27th argument in the answering brief to which you are replying?**

Respondents impermissably included these documents that give legal arguments in the SER without explanation of an exception to *Ninth Circuit Rule 30-1.4*: 2-SER-162 – 172, 2-SER-248 – 270, 2-SER- 323 – 335, 3-SER-624 – 635, 3-SER-636 – 646, 4-SER-678 – 680, 4-SER-888 – 903, 5-SER-991 – 995, 6-SER-1078 – 1081, 7-SER-1310 – 1318.

**What is your reply to that argument?**

The Court should disregard arguments in the listed documents.

Laura Lynn Hammett

/s/Laura Lynn Hammett

Name

Signature

16 Gold Lake Club Road

Conway, Arkansas

72032

July 26, 2023

Address

Date