Poking the Bear

A Question of Judicial Authority

BY SCOTT STAFNE

Forward & editing by Avery Hufford & pam miller

Forward:

Our current times are turbulent. Things move quickly. We have a multitude of issues and problems that arise every single day of our life due to how fast our world is. We encounter things at breakneck speed because of technology. Everyone has an opinion, everyone has a voice, everyone wants to be heard. What needs to be asked when encountering our modern issues and problems is something every human being should ask themselves every time they encounter a problem: "Have our ancestors encountered these problems before, and if not, did they plan for problems like this to occur?" This is where the constitution of the United States of America comes into play. The constitution was intended to create a separation of powers. As Scott Stafne has explained to me many times, the constitution was built to prevent the power hungry nature of man from recreating the tyranny the forefathers once put their life on the line to fight against. The system was designed to turn man against himself through three individual branches of government, so that one could be no stronger than the other.

In these Briefs, attorney Scott Stafne argues these points to the court. The central issue is whether or not the judicial branch (department) can assert itself into a legislative role. How far can the judge go in interpreting the law? Is the

power of the court so vast that it can “legislate from the bench”? The point Stafne makes first, and foremost, is that under the constitution we have a separation of powers between the 3 branches of government - the Legislative branch which makes the law; the Executive branch which executes the law and finally the Judicial branch which is to interpret the law. Secondly he points out that the separation envisioned by our founders was designed to prevent a majority from ruling with an “iron fist”. The idea of the separation of powers was to create a shared power which is commonly known as checks and balances. This allowed one branch of government to challenge another's power, and thus maintaining a delicate balance of power between the three. While it is common for us to see this play out between the Executive branch and the Judicial branch (such as the recent challenge to President Trump’s Executive order regarding immigration), we are less likely to see it play out between the Judiciary and the Legislative branches. Allowing expanded powers by the court creates an uncomfortable merging and shifts the delicate power balance .creating unprecedented and unconstitutional decisions.

The Cervantes case has found its way to the ninth circuit court by way of an appeal where Stafne and another noted attorney, Dean Browning Webb are seeking

to reverse the lower court's ruling and sanctions. Within the defendant's answering brief is a citation to an unpublished opinion by the 9th Circuit in the case of *California Coal. for Families & Children v. San Diego Cty. Bar Ass'n, No. 14-56140, 2016 WL 4174772 (9th Cir. Aug. 8, 2016)* wherein the 9th Circuit makes a ruling that is unsubstantiated by the facts and evidence. In other words, can the court issue an opinion - even unpublished, that gives the lower court discretion (pursuant to Rule 8) to arbitrarily limit the number of pages of an amended complaint? And does the 9th Circuit have the authority, under the separation of powers doctrine, to make an administrative rule for the lower district courts by amending Rule 8 to allow the imposition of an arbitrary page limit?

Stafne makes a compelling argument against their ruling and shows the reader that the courts are extending beyond where their judicial powers are allowed to reach.

Article three of the constitution is what guides Stafne in framing his argument. It is reasonable considering this has most to do with the separation of powers on the judicial branch. One point Stafne makes in the case but more frequently in other cases as well, is where do the power comes from for the judges to make these decisions? Jurisdiction is not automatic for a court. Judges are not

"be all, end all" forms of arbitration. The courts only have the jurisdiction they can prove. Not only that but they have limited powers as to what they can demand in court, as do attorneys and other various parties. With our national constitution they spell out fully what the courts power have, then the laws that have been added over the years are what we have to work with. "Article Three, Section One: The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office."

The case itself arises from the Cervantes case, that started with a suit against the Deere company (and other defendants to be named in the Briefs). The plaintiff claims the defendants had violated the RICO act (Racketeer Influenced and Corrupt Organizations). The Defendants had used predatory means to gain land from said plaintiff. Stafne attempts to have the reader look at the bigger picture when analyzing the information on why such institutions commit these acts. Other cases he has (and other attorneys) reflect very similar behaviors by other parties.

Predatory lending behaviours are not uncommon and as Stafne points out in his other works, the behaviors are going by what seems to be on purpose for monied interest, or even beyond.

The plaintiff's well being is at play here, considering what is at stake is his livelihood. Such things should never be taken lightly. I feel Stafne's sees his purpose as an attorney is not merely a job to him but he has a duty with his knowledge as a citizen to show the community what is happening in these scenarios that seem to just blow right by most of us who have very busy lives. People forget, what I see Stafne struggling to explain that there are truly four branches to our government. The fourth "implied" branch being the People (not to be taken literally as something written in the country's constitution, but rather an abstract look at how it was written and who for). With that being said the only true legitimacy to our constitutional republic is what power we give it. When systems fail us or if we feel that someone else is wrong many of us decide to take authority, whether this is through protest, campaign, law, or becoming part of the government. Though this may be the way we feel, there were restrictions put into place so that those who feel they should make the rules are not going be acting as several different vested powers at once. One of the questions I ask the reader to

ponder is what is important. It's easy to look away if you are the viewer but what happens when you are a party involved.

Avery Hufford, President Church of the Gardens
Pam Miller, Secretary Church of the Gardens

Brief #1

Stafne's Motion

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CERVANTES ORCHARDS & VINEYARDS, LLC, a Washington limited liability corporation; CERVANTES NURSERIES, LLC, a Washington limited liability corporation; CERVANTES PACKING & STORAGE, LLC, a Washington limited liability corporation; MANCHEGO REAL, LLC, a Washington limited liability corporation; JOSE G. CERVANTES, individually and upon behalf of their community property marital estate; CYNTHIA C. CERVANTES, individually and upon behalf of their community property marital estate, Plaintiffs-Appellants, DEAN BROWNING WEBB; SCOTT ERIK STAFNE, Appellants, —v.— DEERE & COMPANY, a corporation; DEERE CREDIT, INC., a corporation; JOHN DEERE CAPITAL CORPORATION, a corporation; JOHN DEERE FINANCIAL, a corporation, FKA FPC FINANCIAL; DEERE CREDIT SERVICES, INC., a corporation; AMERICAN WEST	9th Cir. Nos. 15-35675,16-35220 MOTION

BANK, a corporation; T-16 MANAGEMENT CO, LTD., a Washington corporation; GARY JOHNSON, individually and upon behalf of their community property marital estate; LINDA JOHNSON, individually and upon behalf of their community property marital estate; ROBERT WYLES, individually and upon behalf of their community property marital estate; MICHELLE WYLES, individually and upon behalf of their community property marital estate; NW MANAGEMENT REALTY SERVICES, INC., a Washington corporation, AKA Northwest Farm Management Company; SKBHC HOLDINGS LLC, a Washington limited liability corporation, Defendants-Appellees.	

Relief Requested:

Scott Erik Stafne (Stafne), appellant herein, respectfully moves this Court pursuant to Art. III, §2, the Separation of Powers Doctrine, the checks and balances relating to the exercise of judicial power and 28 U.S.C. § 1291 & 1292 to withdraw this Court's opinion in *California Coal. for Families and Children v San Diego Bar. Association,* 657 Fed.Appx 675 (9th.Cir 2016)(This unpublished decision by this

Court of Appeals decision shall hereafter be referred to as "*Calif. Coal*". The proceedings in the district court below[1] which resulted in that unpublished decision shall be referred to *"San Diego Bar Ass'n"*.)

Alternatively, Stafne moves to strike from consideration in this appeal so much of the purported holding(s) in the unpublished decision of *California Coal.*, which indicates the Ninth Circuit Court of Appeals affirmed a ruling by the district court limiting the length of an amended complaint which could be filed in a complex litigation to 30 pages.

Issues:

1.) Did the panel of this Court which decided *Calif. Coal.* exercise "judicial power" pursuant to U.S. Const. Art. III when it announced the rule that district courts have discretion pursuant to Rule 8 to limit amended complaints to no more than 30 pages where that was not an issue presented by the facts in the proceedings below?

2.) Did the panel of this Court which decided *Calif. Coal.* have rule-making power consistent with the separation of powers to create

[1] Appeal from the United States District Court for the Southern District of California, Honorable Cathy Ann Bencivengo, District Judge, Presiding, D.C. No. 3:13–cv–01944–CAB–JLB.

an administrative rule for district courts amending Rule 8 so as to allow district courts to impose a 30 page limit on the filing of amended complaints under the guise that it was exercising its judicial power?

3.) Did the panel of this Court which decided *Calif. Coal.* have subject matter jurisdiction pursuant to U.S. Const. Art III, § 2 to affirm a decision or order of the district court which was never made?

4.) If the Ninth Circuit's holding in *Calif. Coal.* that district courts have discretion pursuant to Rule 8 to limit amended complaints to 30 pages regardless of circumstances amounted to a constitutional usurpation of authority by this Court, does Stafne have standing to prevent this Court from relying on this opinion or rule to sanction him? (Short Answer: YES).

Evidence Relied Upon: Stafne relies on the declaration he has filed in support of this motion. Stafne also relies on the filings in the district court in *San Diego Cty. Bar Ass'n*, No. :13–cv–01944–CAB–JLB), and in the appeal of that case before this Court. *See Calif. Coal.*

Statement of Facts: Stafne is a third generation attorney who has appealed 1.) an award of significant monetary sanctions (over $120,000) by the district court

against him personally and 2.) sanctions against his former clients which instructed Stafne and other counsel to file a well pleaded complaint and RICO Case Statement (hereafter collectively referred to as "SAC") showing Cervantes related plaintiffs (hereafter referred to as "COV") were entitled to relief. Stafne claims in his appeal briefing before this Court, and defendant/appellees did not dispute, that this page limitation was unreasonable based on the facts, circumstances, and relief sought in the SAC.

On appeal Stafne claims the district court's arbitrary, *i.e.* unreasoned, limitation of the SAC to 30 pages in the proceedings below constituted both an abuse of discretion and a due process violation. See Stafne's Opening Brief and Reply. According to Stafne this unreasoned 30 page limit on the filing of SAC caused COV's complaint to be dismissed pursuant to CR 12(b)(6) and exposed him to sanctions because his client's SAC could not be well pleaded in 30 pages.

This motion arises because defendant/appellants Deere related companies (hereafter collectively referred to as "Deere") relied upon *California Coal.* for the proposition that it is within the district court's discretion under Rule 8 to limit amended complaints to 30 pages regardless of the of the facts and circumstances necessary to establish plaintiff's claims for relief. Some of the portions of Deere's brief relying on this purported holding in *California Coal.* include:

> An order striking a complaint and setting a page-limit are reviewed for abuse of discretion. This Court has affirmed such an order in another case involving the Cervantes' same attorney, Mr. Webb. *California Coal. for Families & Children v. San Diego Cty. Bar Ass'n,* No. 14-56140, 2016 WL 4174772 (9th Cir. Aug. 8, 2016).

Deere Answering Brief (DAB), p. 12.

Further, Deere argued:

> A complaint can violate Rule 8 by virtue of its excessive length. *California Coal.*, 2016 WL 4174772. The *California Coalition* case was filed by Mr. Webb, the Cervantes' attorney in the instant case. *Id*. Plaintiffs in California Coalition initially filed a 175-page complaint with 1,156 attached pages of exhibits. *Id*. at *1. The district court dismissed the complaint with leave to amend, finding that the complaint did not comply with Rule 8 and ***instructing plaintiffs to limit the length of the amended complaint to 30 pages***. *Id*. Plaintiffs then disregarded the court's instruction and filed a 251-page amended complaint with 1,397 attached pages of exhibits. *Id*. The Ninth Circuit upheld the dismissal of the lawsuit with prejudice, concluding that dismissal of the complaint was within the discretion of the trial court. *Id*. Thus, California Coalition stands for the dual proposition that a complaint may justify a Rule 12(e) or (f) motion based on excessive length, and that page-limits may be an appropriate remedy for such a violation of the Federal Rules.

DAB, 15-16 (emphasis in original)

> As this Court has affirmed, 30 pages is plenty of space to assert a short and plain statement, even in a theoretically complex case. *California Coal*., 2016 WL 4174772.

DAB, p. 17-18.

Stafne contends Deere's argument "that 30 pages is plenty of space to assert a short and plain statement, even in a theoretically complex case" would be legally

absurd except for the fact that it parrots the language of this Court's unpublished decision, which does state and purportedly hold:

> The district court's dismissal under Rule 8 with prejudice was also appropriate. Despite the court's warning to comply with Rule 8, plaintiffs submitted an FAC that was even longer than the original complaint: the FAC is 76 pages longer than the original complaint and contains 241 more pages of exhibits. ***Clearly, the plaintiffs flagrantly disregarded the district court's instruction to keep the FAC under 30 pages.*** "The district court's discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint," *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989), and thus, dismissal of the FAC with prejudice in this case was proper.

Id, 657 Fed. Appx. at 675. (emphasis added)

The problem here is not that Deere has misquoted this Court. It is that this Court could not have affirmed the district court's discretion in *Calif. Coal.* limiting an amended complaint to 30 pages because the district court never entered a decision or order to that effect. The language of the district court's original order in dismissing the complaint pursuant to Rule 8 states in pertinent part:

> The court therefore DISMISSES plaintiff Stuart's claims for failure to comply with Rule 8. The dismissal is without prejudice and with leave to amend, ...
>
> In composing his amended complaint, Stuart must heed the statute of limitations for section 1983 and section 1985 claims brought in this court, which is generally two years.… To the extent Stuart contends that equitable tolling should apply, he must set forth specific allegations in his amended complaint to support such a theory.

CONCLUSION

> The motions to dismiss of the Superior Court and Commission on Judicial Performance defendants [Doc. No.s, 16, 22] are granted in part and denied in part. The complaint is dismissed without prejudice. Plaintiff Stuart Has leave to file an amended complaint no later than **Thursday, January 9, 2014.** Stuart may assert claims only on his behalf and should be wary of the immunity and statute of limitations issues addressed above. Though Stuart appears *pro se*, the court notes that he formally [sic] was a licensed member of the California bar with a complex litigation practice. [Doc. No. 1 ¶ 102.] It is anticipated that Stuart has the requisite knowledge and training to submit a complaint that complies with Rule eight 8 appropriately and coherently identifies his causes of action and the specific defendants he alleges liable for his asserted damages without unnecessary verbiage, argument, and rhetoric.
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> ...
>
> **IT IS SO ORDERED.**

Stafne Declaration, Ex 1, Notice of Appeal, Ex. 4.

As is apparent from the language of the above order the district court in did not instruct the plaintiff that any amended complaint must be limited to 30 pages. Nor did the district court's last order in *San Diego Cty. Bar Ass'n* which dismissed the case *with prejudice* refer to any "instruction" by the court that the amended complaint must be no longer than 30 pages.

CONCLUSION

> Plaintiff's original complaint was dismissed in part for failure to comply with Rule 8(a)'s requirement of "a short and plain statement of the claim showing that the pleader is entitled to relief." Though the court afforded plaintiffs an opportunity to amend their complaint to comply with Rule 8, plaintiffs filed an equally unmanageable amended complaint. Due to the plaintiffs' inability – or unwillingness - to file a complaint the complies with Rule 8, the court finds that granting further leave to amend would unduly prejudice defendants. Accordingly

> defendants pending motions to dismiss are granted, and this action is dismissed with prejudice. In light of this dismissal the court denies plaintiffs' motion for a preliminary injunction. [Doc. No. 109]
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> Finally, the court has reviewed the motion for sanctions filed by the Superior Court of California, County of San Diego and the Administrative Office of the Courts. [Doc. No. 160] Although the court finds that plaintiffs' amended complaint fails to comply with Rule 8, and the amended submission is even more unmanageable than the original (despite the court's admonishment that plaintiffs rid the pleading of its voluminous surplusage and argumentative text), the court does not conclude that plaintiff's filing was made solely for the purpose of harassing the defendants *or in contempt of this court order to file a rule eight compliant pleading.* No monetary sanction will be awarded, and the motion for sanctions is denied.
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> **IT IS SO ORDERED**

Stafne Declaration, Ex 1, Notice of Appeal, Ex. 1.

Argument:

I.This Court did not exercise judicial power pursuant to Art. III when it purported to affirm in Calif. Coal. the district court's discretion to impose a 30 page limit on the amended complaint.

Justice Oliver Wendell Holmes articulated the difference between a judicial inquiry and and the exercise of legislative power in *Prentis v. Atlantic Coast Line Co*., 211 U.S. 210, 226, 29 S.Ct. 67, 69, 53 L.Ed. 150 (1908):

> *A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end.* Legislation, on the other hand, looks to the

> future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power. …[2]

Id., 211 U.S. at 226, 29 S. Ct. at 69. (emphasis added)

In *Prentis* the Court needed to determine whether the Virginia State Corporation Commission, a state entity which under the Virginia constitution had both legislative and judicial power, was exercising its judicial or legislative powers when it established tariffs claimed to violate due process. According to the *Prentis* majority "[t]hat question depends not upon the character of the body, but upon the character of the proceedings." *Id.* Considering this the Supreme Court held: "The establishment of a rate is the making of a rule for the future, and therefore is an act legislative, not judicial, in kind, …" *Id.*

Because the district court in *San Diego Cty. Bar Ass'n* never entered a decision or ruling instructing the plaintiffs pursuant to Rule 8 to limit their complaint

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[2] The Supreme Court has utilized *Prentis* characterization of the difference between judicial and legislative power in numerous cases involving different fact situations. See e.g. *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 371, 109 S. Ct. 2506, 2520, 105 L. Ed. 2d 298 (1989); *Roudebush v. Hartke*, 405 U.S. 15, 20–23, 92 S. Ct. 804, 808–09, 31 L. Ed. 2d 1 (1972).

to 30 pages *Prentis* demonstrates that this Court's holding that it is within district court's discretion to do so is a legislative act, *i.e*. the creation of a rule intended to be applied in the future. This is significant because under the Constitution lower Article III courts are limited to the exercise of "judicial power".

It is axiomatic the Judicial and Legislative departments of the United States exercise different types of governmental power. Under the United States Constitution the Judicial Department exercises "judicial power". See U.S. Const. Art. III[3]. Longstanding interpretation of Article III and the separation of powers, see infra., Part IV, establishes Article III courts, like this one, are prohibited from exercising administrative or legislative power. For example, in *United States v. Ferreira*, 13 How. 40, 14 L.Ed. 42 (1852), the Supreme Court concluded Article III district courts did not have authority to adjust claims pursuant to a treaty between the

[3] Article III of the United States Constitution states in pertinent part:

> Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.
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> Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; …

United States and Spain because this was not an exercise of judicial power. *See also Buckley v. Valeo*, 424 U.S. 1, 123, 96 S. Ct. 612, 684, 46 L. Ed. 2d 659 (1976)("The Court has held that executive or administrative duties of a nonjudicial nature may not be imposed on judges holding office under Art. III of the Constitution." *Id.*, at 425 US at 123, 96 US at 684)

If the other branches of government cannot bestow on Article III courts the authority to create legislative rules, like the one this Court created in *Calif. Coal.*, then this Court cannot do so on its own under the guise of an unpublished decision. *See infra.*

II. *This Court had no rule-making authority to create an administrative rule that district courts have discretion to limit amended complaints to no more than 30 pages.*

This Court's holding, as characterized by the Deere defendants (*i.e.* 30 pages is plenty of space [under Rule 8] to assert a short and plain statement, even in a theoretically complex case) did not involve an exercise of judicial power. *See supra.* Thus, the next question to be considered is whether the creation of such a legislative rule was constitutionally appropriate under this Court's rule making power, if any.

The Federal Rules are promulgated by the Supreme Court pursuant to the Rules Enabling Act. *See Harris v. Nelson,* 394 U.S. 286, 298, 89 S.Ct. 1082, 1090, 22 L.Ed.2d 281 (1969). 28 U.S.C. § 2072 provides:

> **(a)** The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.
> **(b)** Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.
> **(c)** Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

Id.

This Court is not the Supreme Court. Therefore, it does not have authority to alter Fed. R. Civ. Pro. 8 by legislatively re-writing it so as to apply in the future. See *Prentis*, 211 U.S. at 226, 29 S. Ct. at 69. *See also Sheldon v. Sill*, 49 U.S. 441, 8 How. 441, 12 L.Ed. 1147 (1850) ("Courts created by statute can have no jurisdiction but such as the statute confers." *Id*. at 448-9)

III. This Court had no subject matter jurisdiction in California Coal. to affirm a decision of the district court limiting the filing of an amended complaint to 30 pages because such decision was never made.

Analytically, the legal issues before this Court pursuant to this motion are much like the issues the Supreme Court considered in in *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983). Plaintiffs filed petitions in the District of Columbia Court of Appeals asking for waivers of that court's admission rule requiring applicants to have graduated from a law school approved by the American Bar Association. The DC Court of Appeals issued *per*

curiam orders denying the waivers. The applicants then filed complaints in the United States District Court for the District of Columbia, challenging the District of Columbia Court of Appeals' denials of their waiver petitions and also challenging the constitutionality of the Bar admission rules. The District Court dismissed the complaints on the ground that it lacked subject-matter jurisdiction. The United States Court of Appeals for the District of Columbia Circuit reversed and remanded. The United States Supreme granted certiorari and reversed the Court of Appeals, noting that by statute an appeal of the DC Court of Appeals should have been filed directly with the Supreme Court. *Feldman*, 460 U.S. at 463–65, 103 S. Ct. at 1305–06, 75 L. Ed. 2d 206. However, the Supreme Court noted a timely constitutional attack on the DC Court's administrative rules could be filed before the district court, presumably pursuant to its federal question jurisdiction under 28 U.S.C. § 1331.

The Supreme Court's consideration of the statutory jurisdiction of both the district court and federal court of appeals in *Feldman* is significant here because it reminds us this Court had a duty when deciding issues in *Calif. Coal.* to assure itself it had subject matter jurisdiction to do so. *See e.g. Arbaugh v. Y&H Corp.,* 546 U.S. 500, 514, 126 S. Ct. 1235, 1244, 163 L. Ed. 2d 1097 (2006) citing *Ruhrgas AG v.*

Marathon Oil Co., 526 U.S. 574, 583, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999); *United States v. McIntosh*, 833 F.3d 1163, 1170 (9th Cir. 2016)

It is apparent from the record in *Calif. Coal.* this Court had no jurisdiction to affirm a decision the district court never made. The Notice of Appeal in *San Diego Cty. Bar Ass'n* states: "Notice of Preliminary Injunction Appeal; Appeal of Final Judgement". Accordingly, the appeal in *California Coal. for Families & Children v. San Diego Cty. Bar Ass'n* was premised on 28 U.S.C. §§ 1291 and 1292. See Stafne Declaration, Exhibit 1.

28 U.S.C. 1291 provides for appeals of "final decisions" actually made by district courts. 28 USC U.S.C provides for appeals of interlocutory "orders" actually made by district courts.

Because there was no final decision or interlocutory order by the federal district court in *San Diego Cty. Bar Ass'n* exercising discretion to limit any amended complaint to 30 pages this Court did not have authority under either 28 U.S.C. §§ 1291 and/or 1292 or any other statute or treaty to affirm a ruling which simply did not exist. *See e.g. Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545–46, 69 S. Ct. 1221, 1225–26, 93 L. Ed. 1528 (1949); *United States v. McIntosh*, 833 F.3d 1163, 1170 (9th Cir. 2016); *McElmurry v. U.S. Bank Nat. Ass'n*, 495 F.3d 1136,

1139–40 (9th Cir. 2007). See also *See also Sheldon*, 49 U.S. at 449 ("Courts created by statute can have no jurisdiction but such as the statute confers.").

IV. Stafne has Standing to Judicially Challenge this Court's Violations of the Separation of Powers and Checks and Balances put in place by our Founders to Protect Liberty.

Our founding fathers were aware that unless the power of judging was separated from legislative and executive power, the liberty of the people could be lost to judicial tyranny. *See* The Federalist Papers No. 47[4] & 78[5]. Accordingly,

[4] Federalist No 47, "The Particular Structure of New Government and the Distribution of Power Among its Different Parts", was written by James Madison and describes our founders concern that if governmental power is not separated people will be exposed to tyranny.

> The entire legislature can perform no judiciary act, though by the joint act of two of its branches the judges may be removed from their offices, and though one of its branches is possessed of the judicial power in the last resort. The entire legislature, again, can exercise no executive prerogative, though one of its branches constitutes the supreme executive magistracy, and another, on the impeachment of a third, can try and condemn all the subordinate officers in the executive department. The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. "When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest THE SAME monarch or senate should ENACT tyrannical laws to EXECUTE them in a tyrannical manner. " Again: "*Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for THE JUDGE would then be THE LEGISLATOR.*
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> *Were it joined to the executive power, THE JUDGE might behave with all the violence of AN OPPRESSOR.* "

"[t]he Constitution sought to divide the delegated powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial." *INS v. Chadha,* 462 U.S. 919, 951, 103 S.Ct. 2764, 2784, 77 L.Ed.2d 317 (1983). The declared purpose of separating and dividing the powers of government was to "diffus[e] power the better to secure liberty." *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 635, 72 S.Ct. 863, 870, 96 L.Ed. 1153 (1952) (Jackson, J., concurring).

In addition to separating the power of the federal government, the framers believed the structure of government must furnish the proper checks and balances between the departments. *See* Federalist Paper No. 51, which recognized that:

"Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit."

> When the Framers met for the Constitutional Convention, they understood the need for greater checks and balances to reinforce the separation of powers. As Madison remarked, "experience has taught us a distrust" of the separation of powers alone as "a sufficient security to each [branch] [against] encroachments of the others." Records of the Federal Convention of 1787, p. 77 (M. Farrand rev. 1966). "[I]t is

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(Italics added)

[5] Federalist No. 78, "The Judiciary Department" was written by Alexander Hamilton. It reiterates our founders concern the judicial department could become the basis of a tyranny which abuses the liberty of the people: "For I agree, that 'there is no liberty, if the power of judging be not separated from the legislative and executive powers.'"

> necessary to introduce such a balance of powers and interests, as will guarantee the provisions on paper." *Ibid.* The Framers thus separated the three main powers of Government —legislative, executive, and judicial—into the three branches created by Articles I, II, and III. But they also created checks and balances to reinforce that separation.

Perez v. Mortgage Bankers Ass'n, 135 S. Ct. 1199, 1216, 191 L. Ed. 2d 186 (2015) (J. Scalia concurring).

Justice Scalia provides concrete examples in *Perez* of some of the checks and balances our founders inserted into the Constitution to protect individual liberties. *Id.* But none is more clear than Article III, § 2, which limits lower federal courts' jurisdiction to that which is prescribed by law, treaties, and/or the constitution. "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; …" Our founders never intended, and sought to disallow, the prospect of federal courts maintaining a universal jurisdiction over people not limited by law. *Cf.* Federalist Papers No. 17 "(There is one transcendant advantage belonging to the province of the State governments, which alone suffices to place the matter in a clear and satisfactory light,--I mean the ordinary administration of criminal and civil justice. This, of all others, is the most powerful, most universal, and most attractive source of popular obedience and attachment.")

> To the Framers, the separation of powers and checks and balances were more than just theories. They were practical and real protections for individual liberty in the new Constitution. See Mistretta v. United States, 488 U.S. 361, 426, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989) (SCALIA, J., dissenting) ("[The Constitution] is a prescribed structure, a framework, for the conduct of government. In designing that structure, the Framers themselves considered how much commingling [of governmental powers] was, in the generality of things, acceptable, and set forth their conclusions in the document"). *The Judiciary—no less than the other two branches—has an obligation to guard against deviations from those principles.*

Perez, 135 S. Ct. at 1216–17. J. Scalia concurring (emphasis added)

Here, this Court's attempt in unpublished *California Coal.* to create a rule of procedure giving district courts discretion under Fed. R. Civ. Pro. 8 to limit amended complaints to 30 pages regardless of the circumstances violates the separation of powers and the check and balances related thereto for the reasons stated in Parts I-III[6], *supra*. The question which remains is whether Stafne has

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[6] Part I demonstrated the creation of the 30 page rule promulgated by this Court in a rule which was not based on a judicial inquiry was not based on a judicial inquiry and thus not an exercise of judicial power within the meaning of U.S. Const. Art. III.

Part II established this Court had no rule-making authority to create an administrative or legislative rule limiting amended complaints to 30 pages and that doing so violated the separation of powers.

Part III established this Court had no subject matter jurisdiction under the Constitution or the laws and treaties of the United States to review an order or decision of the district court which does not exist. Stafne established how this

standing to object to the application of this court created administrative rule against him.

"The doctrine of standing asks whether a litigant is entitled to have a federal court resolve his grievance." *United States v. McIntosh*, 833 F.3d at 1173 citing *Kowalski v. Tesmer*, 543 U.S. 125, 128, 125 S.Ct. 564, 160 L.Ed.2d 519 (2004). To have Article III standing, a litigant "must have suffered or be imminently threatened with a concrete and particularized 'injury in fact' that is fairly traceable to the challenged action ... and likely to be redressed by a favorable judicial decision." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, —— U.S. ——, 134 S.Ct. 1377, 1386, 188 L.Ed.2d 392 (2014). *See also McIntosh*, 833 F.3d at 1173.

Stafne's appeal arises out of the district court striking COV's original overlong complaint and instructing him and co-counsel to file an amended complaint and RICO case statement no longer than 30 pages pursuant to Rule 8. Although filing a well pleaded SAC consistent with Rule 8 setting for COV's entitlement to relief was not possible to do, Stafne and his co-counsel produced the best 30 page complaint they could. Defendants Deere and and Wyles then filed a

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conduct violated a check and balance imposed on the judicial department to protect citizens against judicial tyranny.

motion for Rule 11 sanctions claiming the 30 page complaint was frivolous. The district court agreed and sanctioned Stafne over $120,000 for filing the 30 page complaint the district court ordered him to file.

The only Ninth Circuit authority (persuasive or otherwise) suggesting district courts have authority pursuant to Rule 8 to instruct attorneys filing amended complaints to limit them to 30 pages regardless of the circumstances is *Calif. Coal.* For the reasons previously established *supra*, the administrative rule established in *Calif. Coal.* (*i.e.* that district courts have discretion to limit amended complaints to 30 pages) violates the separation of powers and the system of check and balances our founders set forth in the constitution to keep the Judicial Department from devolving into tyranny. Accordingly, Stafne objects to this Court considering the rule announced by this Court in *California Coal.* that district courts can arbitrarily instruct attorneys like Stafne to limit amended complaints to 30 pages.

Recent decisions from the Supreme Court and this Court establish that an individual, like Stafne, who has been injured or is imminently threatened with a particularized injury in fact that is fairly traceable to separation of powers violations has standing to challenge such violations. *See Bond v. United States,* 564

U.S. 211, 131 S.Ct. 2355, 180 L.Ed.2d 269 (2011); *United States v. McIntosh,* 833 F.3d at 1173-4.

Here, Stafne and his co-counsel have already been sanctioned by the district court over $120,000. Stafne's former law firm has been destroyed as a result of these sanctions. Deere and Wyles ask this Court to affirm these sanctions notwithstanding Stafne has testified this will prevent him from obtaining medications needed to treat life threatening conditions.

These are concrete, particularized, and imminent injuries, which are being caused by the district's court's sanctions orders and are redressable by this Court's reversal of those orders. *See United States v. McIntosh*, 833 F.3d at 1173–74 citing *Bond*, 564 U.S. at 217, 131 S.Ct. 2355.

Once standing has been established, Stafne has the right to request relief, which in this case would include either withdrawal of the *California Coal.* or that the 30 page rule set forth therein not be applied to Stafne in this case so as to affirm the imposition of sanctions against him and his former clients. *United States v. McIntosh*, 833 F.3d at 1173 (9th Cir. 2016). With regard to a party's standing to assert separation of powers and checks and balances issues affecting her/his liberties in the context of injuries resulting from violations of the separation of powers this Court recently observed:

> the *Bond* Court concluded that, "[i]f the constitutional structure of our Government that protects individual liberty is compromised, individuals who suffer otherwise justiciable injury may object." *Id.* at 223, 131 S.Ct. 2355. The Court explained that both federalism and separation-of-powers constraints in the Constitution serve to protect individual liberty, and a litigant in a proper case can invoke such constraints "[w]hen government acts in excess of its lawful powers." *Id.* at 220–24, 131 S.Ct. 2355. The Court gave numerous examples of cases in which private parties, rather than government departments, were able to rely on separation-of-powers principles in otherwise justiciable cases or controversies. [Cites].

United States v. McIntosh, 833 F.3d at 1173–74

This Court also recognized in *McIntosh*, as it was required to do, that:

> the separation of powers can serve to safeguard individual liberty and that it is the duty of the judicial department—in a separation-of-powers case as in any other— to say what the law is. *Id.* [*NLRB v. Noel Canning*, ––U.S. ––––, 134 S.Ct. 2550, 189 L.Ed.2d 538 (2014).] at 2559–60 (citing *Clinton*, 524 U.S. at 449–50, 118 S.Ct. 2091 (Kennedy, J., concurring), and quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803)); *see also id.* at 2592–94 (Scalia, J., concurring in the judgment) (discussing at great length how the separation of powers protects individual liberty). *United States v. McIntosh*, 833 F.3d 1163, 1173–74 (9th Cir. 2016)

Id., at 1174.

Here, this Court must decide whether application of an administrative rule created under the guise of the unpublished decision in *Calif. Coal.* in violation of the separation of powers and the checks and balances specifically imposed on the Judicial Department can be used as persuasive judicial authority or precedent

against Stafne, Webb, and COV to affirm an arbitrary decision of the district court limiting COV's SAC to 30 pages.

CONCLUSION

This Court should either withdraw or correct its unpublished decision in *Calif. Coal.* in such a way as to be consistent with the separation of powers doctrine and the structural checks and balances the United States Constitution imposes on lower federal courts.

Alternatively, this Court should declare the administrative rule established in *Calif. Coal.* (*i.e.* that the district court has discretion under Rule 8 to arbitrarily limit amended complaints to 30 pages) cannot constitutionally be applied in this case against Stafne.

Dated: January 10, 2017 at Arlington, Washington.

BY: /s/ Scott Erik Stafne

Scott Erik Stafne WSBA #6964

STAFNE LAW FIRM
239 N. Olympic Avenue
Arlington, WA 98223
TEL: 360-403-8700
Email: Scott@stafnelawfirm.com

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. This brief uses a proportional typeface and 14-font, and contains 4,999 words.

Dated: 10 January 2017. By: /s/ Scott E. Stafne, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on 10 January 2017, I electronically filed the foregoing with the Clerk of the court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF systems.

Dated: 10 January 2017. By: /s/ Scott E. Stafne, Esq.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CERVANTES ORCHARDS & VINEYARDS, LLC, a Washington limited liability corporation; CERVANTES NURSERIES, LLC, a Washington limited liability corporation; CERVANTES PACKING & STORAGE, LLC, a Washington limited liability corporation; MANCHEGO REAL, LLC, a Washington limited liability corporation; JOSE G. CERVANTES, individually and upon behalf of their community property marital estate; CYNTHIA C. CERVANTES, individually and upon behalf of their community property marital estate,

Plaintiffs-Appellants,

DEAN BROWNING WEBB; SCOTT ERIK STAFNE,
Appellants,

—v.—

DEERE & COMPANY, a corporation; DEERE CREDIT, INC., a corporation; JOHN DEERE CAPITAL

9th Cir. Nos. 15-35675,16-35220

DECLARATION OF APPELLANT SCOTT ERIK STAFNE IN SUPPORT OF MOTION

CORPORATION, a corporation; JOHN DEERE FINANCIAL, a corporation, FKA FPC FINANCIAL; DEERE CREDIT SERVICES, INC., a corporation; AMERICAN WEST BANK, a corporation; T-16 MANAGEMENT CO, LTD., a Washington corporation; GARY JOHNSON, individually and upon behalf of their community property marital estate; LINDA JOHNSON, individually and upon behalf of their community property marital estate; ROBERT WYLES, individually and upon behalf of their community property marital estate; MICHELLE WYLES, individually and upon behalf of their community property marital estate; NW MANAGEMENT REALTY SERVICES, INC., a Washington corporation, AKA Northwest Farm Management Company; SKBHC HOLDINGS LLC, a Washington limited liability corporation, Defendants-Appellees.	

1. My name is Scott E. Stafne. I am an attorney licensed to practice law in the state of Washington since 1976.
2. I graduated summa cum laude from DePauw University in 1974. I was the recipient of the Taylor Scholarship Award and inducted Phi Eta Sigma and Phi Beta Kappa.
3. I graduated fourth in my class from the University Iowa school of Law in 1974. I was the recipient of the Phi Delta Phi scholarship award and also inducted into the Order of the Coif.
4. I practiced law for two years in Indiana and then moved to Washington State and obtained a Masters of Law degree from the University of Washington. I have been admitted to practice law in Washington State since 1976.
5. I have handled numerous cases over the course of my career which have involved separation of powers issues, like this one. For example, the first court case I brought in Washington State when I was 28 years old was against the Secretary of State, the Secretary of the Interior, the Commandant, of the Coast Guard and others alleging the executive branch of government had in violation of the separation of powers entered into an agreement with the Executive of Canada to allow Canadian fisher persons to troll off the coast of Washington in violation of the Fisheries Conservation and

Management Act (FCMA). Judge Donald S. Voorhees agreed and enjoined the Canadian fishing off the Coast of Washington.

6. Another example of a separation of powers issue which I previously litigated involved Judge William Schwarzer's grant of an injunction prohibiting U.S. troll fisher persons from fishing in the EEZ off Oregon and Washington notwithstanding the the FCMA specifically prohibited the granting of such injunctions prior to the conclusion of judicial review. Ultimately, after having to seek and obtain relief from then Associate Justice William Rehnquist requiring this Court to act my client's challenge to the injunction, this Court overturned Judge Schwarzer's order which had been issued in violation of the Separation of Powers.

7. I have continued throughout my career to raise and litigate separation of powers issues. This has caused me to accumulate over time knowledge of the historical and legal principles which underlie the separation of powers and checks and balances issues raised in the motion this declaration is filed to support.

8. I became concerned when I read Deere's answering brief in this appeal argued:

> A complaint can violate Rule 8 by virtue of its excessive length. *California Coal.*, 2016 WL 4174772. The California

> Coalition case was filed by Mr. Webb, the Cervantes' attorney in the instant case. *Id*. Plaintiffs in California Coalition initially filed a 175-page complaint with 1,156 attached pages of exhibits. *Id*. at *1. The district court dismissed the complaint with leave to amend, finding that the complaint did not comply with Rule 8 **and instructing plaintiffs to limit the length of the amended complaint to 30 pages.** *Id*. Plaintiffs then disregarded the court's instruction and filed a 251-page amended complaint with 1,397 attached pages of exhibits. *Id*. The Ninth Circuit upheld the dismissal of the lawsuit with prejudice, concluding that dismissal of the complaint was within the discretion of the trial court. *Id*. Thus, California Coalition stands for the dual proposition that a complaint may justify a Rule 12(e) or (f) motion based on excessive length, and that page-limits may be an appropriate remedy for such a violation of the Federal Rule.

Dkt. 57, Deere's Answering Brief, p. 15-6 (emphasis in original).

9. The citation to this unpublished decision of this Court is *California Coal. for Families & Children v. San Diego Cty. Bar Ass'n*, 657 Fed. Appx. 675 (9th Cir. 2016).

10. I was taken aback by Deere's description of the the case as standing for the proposition that: "As this Court has affirmed, 30 pages is plenty of space to assert a short and plain statement, even in a theoretically complex case. California Coal., 2016 WL 4174772." DAB, p. 17-18. The reason I was surprised is because based on my 41 years of experience practicing law I know that very few decisions of federal appellate courts stand for the proposition that a federal district court can arbitrarily limit the length of an

amended complaint to 30 pages without considering whether the facts and circumstances giving rise to relief can be well pleaded within that page limitation. The reason for this is because such arbitrary decision making, not based on the facts and law of the case before the court, has little likelihood of producing a fair decision on the merits, which is the goal of the federal rules of civil procedure. See Fed. R. Civ. Pro. 1. Further, arbitrary decision-making often invites due process challenges as has the district court's limitation of the SAC to 30 pages in this case.

11. As a result of my concern over Deere's citation to Ninth Circuit authority which appeared on point and involved my co-counsel, Mr. Dean Browning Webb, I went to Pacer and reviewed the filings with the district court in order to determine whether there had ever been an order limiting the filing of any amended complaint to 30 pages by that district court in the proceedings below.

12. I found no such order.

13. I downloaded from Pacer and have attached hereto as Exhibit 1 a copy of the pertinent notice of appeal documents filed in the district court in the *California Coal.* appeal. This notice demonstrates that no decision or order of the district court limiting an amended complaint to 30 pages was ever

entered by the district court. Therefore, it would appear no decision or order limiting plaintiffs' amended complaint to 30 pages was or could have been appealed.

14. I have reviewed via Pacer the briefing and joinders in briefs filed with this Court by the parties in *California Coal. for Families & Children v. San Diego Cty. Bar Ass'n,* 657 Fed. Appx. 675 (9th Cir. 2016). None of these parties briefed the issue of whether the district court had discretion to limit the amended complaint to 30 pages.

15. After review of the briefing, I was puzzled how this Court could so squarely hold as an exercise of "judicial power" pursuant to Art. III, § 2 and 28 U.S.C. §§ 1291 and 1292 that the district court had discretion to limit an amended complaint to 30 pages regardless of the circumstances.

16. I wondered if this "holding" had been an attempt by this court to engage in Administrative rule-making which could be applied to Mr . Webb and myself.

17. After researching whether this court could engage in such rule-making. I concluded it could not. See motion.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Dated this 10th day of January 2017 at Arlington, Washington.

BY: /s/ Scott Erik Stafne

Scott Erik Stafne WSBA #6964

STAFNE LAW FIRM
239 N. Olympic Avenue
Arlington, WA 98223
TEL: 360-403-8700
Email: Scott@stafnelawfirm.com

Colbern C. Stuart III
Email: Cole.Stuart@Lexevia.com
4891 Pacific Highway Ste. 102
San Diego, CA 92110
Telephone: 858-504-0171
Facsimile: 619-231-9143
In Pro Se

Dean Browning Webb (pro hac vice)
Email: RICOman1968@aol.com
Law Offices of Dean Browning Webb
515 E 39th St.
Vancouver, WA 98663-2240
Telephone: 503-629-2176

Attorney for Plaintiff California Coalition for Families and Children, PBC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA COALITION FOR FAMILIES AND CHILDREN, PBC, and COLBERN C. STUART, Plaintiffs, v. SAN DIEGO COUNTY BAR ASSOCIATION, et al., Defendants	Case No. 3:13-cv-1944-CAB (JLB) NOTICE OF PRELIMINARY INJUNCTION APPEAL; APPEAL OF FINAL JUDGMENT Complaint Filed: August 20, 2013

Notice is hereby given that Plaintiffs CALIFORNIA COALITION FOR FAMILIES AND CHILDREN, PBC, and COLBERN C. STUART, III, in the above named case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from:

1. The Order Denying Plaintiffs' Motion for Preliminary Injunction entered in this case on July 9, 2014 (ORDER, Doc. No. 191, Exhibit "1" hereto).

2. The JUDGMENT IN A CIVIL CASE (ORDER, Doc. No. 192, Exhibit "2" hereto) and related portions of the Order Dismissing Case With Prejudice (ORDER, Doc. No. 191, Exhibit "1" hereto), both entered in this case on July 9, 2014, and all interlocutory acts and orders that gave rise to the judgment, including but not limited to the following:

A. The May 21, 2014 ORDER DENYING PLAINTIFFS' MOTION TO TAKE EARLY DISCOVERY (ORDER, Doc. No. 164, Exhibit "3" hereto);

B. The December 23, 2013 Order Granting in Part and Denying in Part Defendants' Motions to Dismiss Complaint (ORDER, Doc. No. 88, Exhibit "4" hereto), as to the following issues:

i. The dismissal "with prejudice" of Plaintiff Stuart's "claims against the Commission on Judicial Performance and against its officials, Simi and Battson, to the extent the latter are sued for damages in their official capacity. U.S. Const. Amend XI; *Ricotta v. California*, 4 F. Supp. 2d 961, 976 (S.D. Cal. 1998); Cal. Const. Art. IV, § 18(H)." (ORDER, Doc. No. 88, Exhibit "4" hereto, p. 8:5-9);

ii. The dismissal "with prejudice" of Plaintiff Stuart's "claims against the defendant judges for damages arising out of judicial acts within the jurisdiction of their courts. *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986)." (ORDER, Doc. No. 88, Exhibit "4" hereto, p. 8:2-4); and

C. District Judge Cathy Ann Bencivengo's March 26, 2014 admonishment to non-appearing co-counsel for Plaintiff California Coalition, Mr. Adam Bram, regarding Mr. Bram's intent to file a Notice of Appearance on behalf of

California Coalition. (Transcript of Proceedings from March 26, 2014 Motion Hearing, Exhibit "5" hereto, pp. 22:12-23:6);

D. The District Court's September 16, 2014 Order (ORDER, Doc. No. 12, Exhibit "6" hereto; and August 26, 2013 Order to "seal plaintiffs' complaint", Doc. No. 5, Exhibit "7" hereto) denying "AS MOOT" Plaintiff's "Ex Parte Application for Leave to File Motion for Harassment Restraining Order".

E. The March 26, 2014 Minute Order denying Motion for Sanctions against Defendants filed by plaintiff Colbern Stuart (ORDER, Doc. No. 108, Exhibit "8" hereto; and Transcript of Proceedings from March 26, 2014 Motion Hearing, Exhibit "5" hereto; pp. 20:22-22:10, 23:17-25);

F. The District Court's denial of Plaintiff's request for "counter-sanctions" in successfully opposing "the Superior Court's motion for sanctions." (ORDER, Doc. No. 88, Exhibit "4" hereto, p. 9:7-8).

Respectfully Submitted

DATED: July 14, 2014

By: /s/ Colbern C. Stuart III

Colbern C. Stuart, III, President, California Coalition for Families and Children, PBC, in Pro Se

DATED: July 14, 2014

By: /s/ Dean Browning Webb

Dean Browning Webb
Attorneys and Counselors at Law for Plaintiff California Coalition For Families and Children, PBC, a Delaware Public Benefit Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the court's CM-ECF system per Federal Rule of Civil Procedure 5(b)(2)(E). Any other counsel of record will be served by facsimile transmission and/or first class mail this 14th day of July, 2014.

By: /s/ Colbern C. Stuart III

Colbern C. Stuart, III, President,
California Coalition for Families and
Children, PBC, in Pro Se

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Case No. 13-cv-1944 CAB (JLB)

Exhibits to Notice of Preliminary Injunction Appeal;
Appeal of Final Judgment;

Exhibit 1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA COALITION FOR FAMILIES AND CHILDREN and COLBERN C. STUART, Plaintiffs, vs. SAN DIEGO COUNTY BAR ASSOCIATION et al., Defendants.	CASE NO. 13-cv-1944-CAB (JLB) ORDER DISMISSING CASE WITH PREJUDICE, DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION, AND DENYING DEFENDANTS' MOTION FOR SANCTIONS

This matter comes before the court on the omnibus motion to dismiss filed by defendant San Diego County Bar Association and on the joinders and supplemental motions of additional defendants. [Doc. Nos. 131, 134-135, 137-152.] Also before the court is plaintiffs' motion for a preliminary injunction and certain defendants' motion for sanctions. [Doc. Nos. 109, 160.]

BACKGROUND

This action was initiated in August 2013. [Doc. No. 1.] The original complaint totaled 175 pages (plus 1156 pages of exhibits) and named about fifty defendants. After hearing oral argument on several defendants' motions to dismiss, the court dismissed

the original complaint with leave to amend. The complaint was dismissed as to the two corporate plaintiffs, Lexevia, PC and California Coalition for Families and Children, because corporations must appear in court through an attorney. *D-Deam Ltd. P'Ship v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir. 2004); CivLR 83.3(k). The court dismissed plaintiff Colbern C. Stuart's claims because he failed to comply with Rule 8 of the Federal Rules of Civil Procedure. In affording plaintiffs leave to amend, the court noted that while Stuart proceeds *pro se*, he was formerly a licensed attorney with a complex litigation practice and should be capable of crafting a complaint in compliance with Rule 8.

Stuart and California Coalition filed their amended complaint on January 9, 2014.[1] [Doc. No. 90.] California Coalition is now represented by counsel Dean Browning Webb. Plaintiffs' amended complaint totals 251 pages, with 1397 more pages in exhibits. The allegations generally relate to four occurrences: Stuart's dissolution proceedings, his criminal prosecution, events at a San Diego County Bar Association seminar, and defendants' demands that Stuart remove references to judges' home addresses in the original complaint. About sixty defendants are named, some of whom are referenced only several times throughout the complaint's 1200-plus paragraphs. For instance, defendant Steven Jahr, identified as the Administrative Director of the Administrative Office of the Courts, is mentioned by name in only seven paragraphs. [*Id.* ¶¶ 12, 698, 700, 702, 738, 915k, 931.] Similarly, the only factual allegations against defendant Meredith Levin are that she is an attorney licensed to practice in California and an organizer of the SDCBA seminar. [*Id.* ¶¶ 43, 110, 152, 915nn.]

Plaintiffs divide their complaint into fifteen counts, an additional eleven RICO counts, and two counts for prospective relief. Each of the first fifteen counts is further divided into "claims." For example, Count 1 is broken down into Claims 1.1 through 1.13. In total, plaintiffs assert about 75 "claims" in their first 15 counts.

[1] Lexevia is no longer a party.

Some of plaintiffs' assertions are so implausible as to be offensive. For instance, plaintiffs accuse well over fifty defendants (including judges, attorneys, doctors, social workers, and law-enforcement officers) of conspiring to commit racketeering activity including enticement into slavery, sale into involuntary servitude, transportation of slaves, and service on vessels in slave trade, 18 U.S.C. §§ 1583-1586. [*Id.* ¶ 1000.]

Further, as with the original complaint, plaintiffs fill the amended complaint with their unique acronyms,[2] defined terms,[3] and terms with no discernable meaning.[4] Look for instance at paragraphs 683 and 684:

> 683. ALKSNE further maintained supervisory responsibility over each STUART ASSAULT COORDINATOR, the PREPARATION AND PLANNING of the SDCBA SEMINAR, and in the conduct and operation of the SD-DDICE, DDI-FICE, DDI-IACE, and STUART-AHCE ENTERPRISES. She is further a principal conductor and participant of the DDICE, the SD-DDICE, DDI-FICE, DDI-IACE, and supervisor of all San Diego affiliates and participants thereof.
>
> 684. On information and belief, ALKSNE CULPABLY and UNREASONABLY failed to perform her own PROFESSIONAL DUTIES and one or more SUPERVISORY DUTY over her subordinates, setting in motion the subordinate's acts as elsewhere

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[2] Plaintiffs' acronyms include: AHCE ("Ad Hoc Criminal Enterprise"), DDI ("Domestic Dispute Industry"), DDIA ("Domestic Dispute Industry Advocates"), DDICE ("Domestic Dispute Criminal Enterprise"), DDI-FICE ("Domestic Dispute Industry Forensic Investigator"), DDI-IACE ("Domestic Dispute Industry Intervention Advocate Criminal Enterprise"), DDIJO ("Domestic Dispute Industry Judicial Official"), DDISO ("Domestic Dispute Industry Security Officers"), DDISW ("Domestic Dispute Industry Social Workers"), DDIL ("Domestic Dispute Industry Litigants"), DVILS ("Domestic Violence Intervention Legislative Scheme"), FFR ("Family Federal Rights"), FFRRESA ("Federal Family Rights Reform, Exercise, Support, and Advocacy"), FICRO ("Federal Indictable Civil Rights Offenses"), and SAD ("Scheme and Artifice to Defraud").

[3] For instance, plaintiffs provide their own definitions for the following terms: ACCESS TO JUSTICE, ASSOCIATION, BUSINESS DEVELOPMENT, CHILL, CLAIM AND DEMAND, COLOR OF LAW DEFENDANTS, COMMERCIAL PURPOSES, COMMERCIAL SPEECH, CRUEL AND/OR UNUSUAL PUNISHMENT, CULPABLY, DOMESTIC RELATIONS CLASS, DOYNE TERRORISM, DUE ADMINISTRATION OF JUSTICE, ENGAGEMENT, EQUAL PROTECTION CLASSES, ENTERPRISE ALLEGATIONS, EXCESSIVE FORCE, EXPRESSION, FALSE IMPRISONMENT, HARASSMENT AND ABUSE, MALICIOUS PROSECUTION, OBSTRUCTION OF JUSTICE, THE PIT, PLANNING AND DELIVERY, POSITION UNDER THE UNITED STATES, PRIVACY, PROFESSIONAL DUTIES, PROSECUTORIAL MISCONDUCT, PUBLIC BENEFIT ACTIVITY, SEARCH AND SEIZURE, STUART ASSAULT, STUART ASSAULT COORDINATOR, SUBSTANTIVE DUE PROCESS, SUPERVISING DEFENDANTS, and UNREASONABLY.

[4] Plaintiffs repeatedly use terms like "black hat," "false flag," "kite bombs," "paperwads," and "poser advocacy."

> alleged, depriving Plaintiffs of rights as elsewhere alleged, causing injury in a nature and amount to be proven at trial.

[Doc. No. 90 ¶¶ 683, 684] (capitalization in original). To understand these paragraphs, one must flip back and forth to obtain definitions of terms defined in paragraphs 152 (STUART ASSAULT COORDINATOR), 931 (SD-DDICE), 940 (DDI-FICE), 937 (DDI-IACE), 944 (STUART AHCE), 147 (CULPABLY and UNREASONABLY), and 637 (SUPERVISORY DUTIES).[5]

Defendants often can't determine whether claims are asserted against them. One cause of defendants' trouble is plaintiffs' inconsistent definitions. For instance, plaintiffs first define the "CITY ATTORNEY DEFENDANTS" as defendants Emily Garson, Jan Goldsmith, and Christine Goldsmith, but later expand that group to also include Judges Wohlfeil and Schall. [*Id.* ¶¶ 349, 383.] Thus, Judges Wohlfeil and Schall cannot be sure whether Claim 3.6, asserted "against all CITY ATTORNEY DEFENDANTS," is asserted against them. [*Id.* ¶ 498.] Similarly, plaintiffs sometime identify a particular group of defendants in a claim heading, then modify that group in the ensuing paragraph. For instance, the defendants identified in the header for plaintiffs' "Racketeering Claim for Relief 3.2" are "CITY ATTORNEY DEFENDANTS, GROCH, GORE," but the ensuing paragraph additionally identifies the SDCBA. [*Id.* ¶ 1049.]

DEFENDANTS' MOTIONS TO DISMISS

After the amended complaint was filed, the court held a case management conference and established a briefing schedule for defendants' motions to dismiss. [Doc. No. 107.] In accordance with that schedule, defendant San Diego County Bar Association filed an omnibus motion to dismiss. [Doc. No. 131.] Two weeks later, additional defendants filed joinders and supplemental motions to dismiss. Plaintiffs responded in opposition to the motions, and defendants replied.

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[5] *See U.S. ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 377 (7th Cir. 2003) ("The acronyms alone force readers to look elsewhere . . . . To understand the paragraph one would have to read two exhibits and seventy-seven paragraphs scattered throughout the third amended complaint!")

In their motions to dismiss, defendants argue many grounds for dismissal, some applicable to all defendants, some tailored to subsets or individual defendants. A recurring contention–one which the court finds meritorious–is that the amended complaint should be dismissed for failure to comply with Rule 8 of the Federal Rules of Civil Procedure.

Rule 8 requires a pleader to put forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). As this court noted in its previous order dismissing the original complaint, the Ninth Circuit has affirmed dismissal on Rule 8 grounds where the complaint is "argumentative, prolix, replete with redundancy, and largely irrelevant," *McHenry v. Renne*, 84 F.3d 1172, 1177-80 (9th Cir. 1996), "verbose, confusing and conclusory," *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981), or where it is "impossible to designate the cause or causes of action attempted to be alleged in the complaint," *Schmidt v. Herrmann*, 614 F.2d 1221, 1223 (9th Cir. 1980). Further, the Ninth Circuit has "affirmed dismissal with prejudice for failure to obey a court order to file a short and plain statement of the claim as required by Rule 8, even where the heightened standard of pleading under Rule 9 applied." *McHenry*, 84 F.3d at 1178 (citing *Schmidt*, 614 F.2d at 1223-24); *see also Nevijel*, 651 F.2d at 673.

Here, in dismissing the original complaint, the court noted that while Stuart proceeds *pro se*, he was formerly a licensed member of the California bar with a complex litigation practice. [Doc. No. 88 at 9.] Thus, the court informed Stuart of its expectation that his amended complaint would comply with Rule 8. [*Id.*] Instead, plaintiffs' amended complaint–which was signed by Stuart and by Dean Browning Webb as attorney for California Coalition–is even longer than the original and remains unmanageable, argumentative, confusing, and frequently incomprehensible. [Doc. No. 90.]

Plaintiffs' repeated failure to comply with Rule 8(a) prejudices defendants, who face "the onerous task of combing through [plaintiffs' lengthy complaint] just to prepare

an answer that admits or denies such allegations and to determine what claims and allegations must be defended or otherwise litigated." *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011). And plaintiffs' noncompliance harms litigants in other matters pending before the court. "Rule 8(a) requires parties to make their pleadings straightforward, so that judges and adverse parties need not try to fish a gold coin from a bucket of mud. Federal judges have better things to do, and the substantial subsidy of litigation (court costs do not begin to cover the expense of the judiciary) should be targeted on those litigants who take the preliminary steps to assemble a comprehensible claim." *U.S. ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003).[6]

CONCLUSION

Plaintiffs' original complaint was dismissed in part for failure to comply with Rule 8(a)'s requirement of "a short and plain statement of the claim showing that the pleader is entitled to relief." Though the court afforded plaintiffs an opportunity to amend their complaint to comply with Rule 8, plaintiffs filed an equally unmanageable amended complaint. Due to plaintiffs' inability–or unwillingness–to file a complaint that complies with Rule 8, the court finds that granting further leave to amend would unduly prejudice defendants. Accordingly, defendants' pending motions to dismiss are granted, and this action is dismissed with prejudice. In light of this dismissal, the court denies plaintiffs' motion for preliminary injunction. [Doc. No. 109.]

Finally, the court has reviewed the motion for sanctions filed by the Superior Court of California, County of San Diego and the Administrative Office of the Courts. [Doc. No. 160.] Although the court finds that plaintiffs' amended complaint fails to comply with Rule 8, and the amended submission is even more unmanageable than the original (despite the court's admonishment that plaintiffs rid the pleading of its voluminous surplusage and argumentative text), the court does not conclude that

[6] "District judges are busy, and therefore have a right to dismiss a complaint that is so long that it imposes an undue burden on the judge, to the prejudice of other litigants seeking the judge's attention." *Kadamovas v. Stevens*, 706 F.3d 843, 844 (7th Cir. 2013).

plaintiffs' filing was made solely for the purpose of harassing the defendants or in contempt of the court's order to file a Rule 8 compliant pleading. No monetary sanction will be awarded, and the motion for sanctions is denied.

IT IS SO ORDERED.

DATED: July 8, 2014

CATHY ANN BENCIVENGO
United States District Judge

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Case No. 13-cv-1944 CAB (JLB)

Exhibits to Notice of Preliminary Injunction Appeal; Appeal of Final Judgment

Exhibit 2

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA COALITION FOR FAMILIES AND CHILDREN., a Delaware Public Benefit Corporation, and COLBERN C. STUART, an individual.

Plaintiff,

V.

San Diego County Bar Association, a California Corporation
** See Attachment for additional Defendants**

Defendant.

Civil Action No. 13CV1944-CAB-BLM

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED:

Due to plaintiffs' inability–or unwillingness–to file a complaint that complies with Rule 8, the court finds that granting further leave to amend would unduly prejudice defendants. Accordingly, defendants' pending motions to dismiss are granted, and this action is dismissed with prejudice.

Date: 7/9/14

CLERK OF COURT
JOHN MORRILL, Clerk of Court
By: s/ Y. Barajas
Y. Barajas, Deputy

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

(ATTACHMENT)

Civil Action No. 13CV1944-CAB-BLM

CALIFORNIA COALITION FOR FAMILIES AND CHILDREN., a Delaware Public Benefit Corporation, and COLBERN C. STUART, an individual,

Plaintiffs,

v.

SAN DIEGO COUNTY BAR ASSOCIATION, a California Corporation; WILLIAM D. GORE, an individual, COUNTY OF SAN DIEGO, a municipal entity; SUPERIOR COURT OF SAN DIEGO COUNTY, a municipal entity; ROBERT J. TRENTACOSTA, an individual; MICHAEL RODDY, an individual; JUDICIAL COUNCIL, a municipal entity; STEVEN JAHR, an individual; ADMINISTRATIVE OFFICE OF THE COURTS, a municipal entity; TANI G. CANTILSAKAUYE, an individual; COMMISSION ON JUDICIAL PERFORMANCE, a municipal entity; LAWRENCE J. SIMI, an individual; BRAD BATSON, an individual; NATIONAL FAMILY JUSTICE CENTER ALLIANCE, a California Corporation; LISA SCHALL, an individual; LORNA ALKSNE, an individual; OFF DUTY OFFICERS, INC., a business entity of unknown form; CHRISTINE GOLDSMITH, an individual; JEANNIE LOWE, an individual; WILLIAM MCADAM, an individual; EDLENE MCKENZIE, an individual; JOEL WOHLFEIL, an individual; MICHAEL GROCH, an individual; EMILY GARSON, an individual; JAN GOLDSMITH, an individual; CITY OF SAN DIEGO, a municipal entity; CHUBB GROUP OF INSURANCE COMPANIES, a corporation; KRISTINE P. NESTHUS, an individual; BRIAN WATKINS, an individual; KEN SMITH, an individual MARILOU MARCQ, an individual; CSB-INVESTIGATIONS, an entity of unknown form; CAROLE BALDWIN, an individual; LAURY BALDWIN, an individual; BALDWIN AND BALDIWN, a California professional corporation; LARRY CORRIGAN, an individual; WILLIAM HARGRAEVES, an individual; HARGRAEVES & TAYLOR, PC, a California Professional Corporation; TERRY CHUCAS, an individual; MERIDITH LEVIN, an individual; ALLEN SLATTERY, INC., a California Corporation, a Corporation; JANIS STOCKS, an individual; STOCKS & COLBURN, a California professional corporation; DR. STEPHEN DOYNE, an individual; DR. STEPHEN DOYNE, INC., a professional corporation; SUSAN GRIFFIN, an individual; DR. LORI LOVE, an individual; LOVE AND ALVAREZ PSYCHOLOGY, INC., a California corporation; ROBERT A. SIMON, PH.D, an individual; AMERICAN COLLEGE OF FORENSIC EXAMINERS INSTITUTE, a business entity of unknown form; ROBERT O'BLOCK, an individual; LORI CLARK VIVIANO, an individual; LAW OFFICES OF LORI CLARK VIVIANO, a business entity of unknown form; SHARON BLANCHET, an individual; ASHWORTH, BLANCHET, KRISTENSEN, & KALEMENKARIAN, a California Professional Corporation; MARILYN BIERER, an individual; BIERER AND ASSOCIATES, a California Professional Corporation; JEFFREY FRITZ, an individual; BASIE AND FRITZ, a professional corporation, and DOE Defendants herein enumerated,

Defendants.

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Case No. 13-cv-1944 CAB (JLB)

Exhibits to Notice of Preliminary Injunction Appeal;
Appeal of Final Judgment

Exhibit 3

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA COALITION FOR FAMILIES AND CHILDREN and COLBERN C. STUART, Plaintiffs, vs. SAN DIEGO COUNTY BAR ASSOCIATION, et al., Defendants.	CASE NO. 13-cv-1944-CAB (BLM) ORDER DENYING PLAINTIFFS' MOTION TO TAKE EARLY DISCOVERY [Doc. No. 164]

Plaintiffs move for leave to take the deposition of Stephen D. Lucas, counsel for defendant San Diego County Bar Association. [Doc. No. 164.] Plaintiffs argue that good cause supports the requested relief because, they contend, Mr. Lucas made improper representations in the memorandum in support of defendants' omnibus motion to dismiss and in his declaration. [*Id.* at 3.]

No cause exists for the requested relief. If any party has submitted material inappropriate at this stage for consideration, the court will not consider it. Plaintiffs' motion [Doc. No. 164] is denied.

IT IS SO ORDERED.

DATED: May 21, 2014

CATHY ANN BENCIVENGO
United States District Judge

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Case No. 13-cv-1944 CAB (JLB)

Exhibits to Notice of Preliminary Injunction Appeal;
Appeal of Final Judgment

Exhibit 4

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA COALITION FOR FAMILIES AND CHILDREN, LEXEVIA, PC, COLBERN C. STUART, Plaintiffs, vs. SAN DIEGO COUNTY BAR ASSOCIATION, et al., Defendants.	CASE NO. 13-cv-1944-CAB (BLM) ORDER

This matter came before the court on December 19, 2013 for a hearing on the Superior Court defendants' motion to dismiss [Doc. No. 16] and motion for sanctions [Doc. No. 23][1]; the motion to dismiss of defendants Commission on Judicial Performance, Brad Battson, and Lawrence J. Simi [Doc. No. 22]; and on plaintiffs' motion to strike [Doc. No. 19.] This order memorializes matters discussed at the hearing. To the extent this written order conflicts with anything said at the hearing, this written order governs.

For the reasons set forth below, the motions to dismiss are granted in part and

[1] The "Superior Court defendants" are (1) Superior Court of California, County of San Diego; (2) Honorable Robert J. Trentacosta, Presiding Judge of the Superior Court; (3) Michael M. Roddy, Executive Officer of the Superior Court; (4) the Honorable Lisa Schall; (5) the Honorable Lorna A. Alksne; (6) the Honorable Christine K. Goldsmith; (7) the Honorable Jeannie Lowe (ret.); (8) the Honorable William H. McAdam, Jr.; (9) the Honorable Edlene C. McKenzie; and (10) the Honorable Joel R. Wohlfeil. [Doc. No. 16-1 at 9.]

denied in part. The court denies both the Superior Court defendants' motion for sanctions and plaintiffs' motion to strike.

BACKGROUND

Plaintiffs Colbern C. Stuart, California Coalition for Families and Children ("California Coalition"), and Lexevia, PC filed their complaint on August 20, 2013. [Doc. No. 1.] Stuart is a co-founder, the president, and the Chief Executive Officer of California Coalition. [*Id.* ¶ 105.] Stuart also founded Lexevia, a professional law corporation, in 2008. [*Id.* ¶ 107.]

Plaintiffs assert approximately 36 claims against 49 defendants purportedly involved in San Diego's family-law community, including judges, lawyers, law firms, psychologists, social workers, and various state and municipal entities. On August 26, 2013, the court sealed the complaint because plaintiffs had listed the home addresses of several judges.

The complaint totals 175 pages, with an additional 1156 pages in exhibits and numerous acronyms of plaintiffs' invention.[2] Plaintiffs do not begin setting forth specific factual allegations as to defendants' challenged conduct until page 57, paragraph 113.

Though the complaint lacks focus, plaintiffs' claims appear to arise mainly out of two events: an April 2010 San Diego County Bar Association ("SDCBA") seminar and plaintiff Colbern Stuart's divorce proceedings. The factual allegations as to these events follow.

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[2] The court, for its own reference, created the following non-exhaustive key of plaintiffs' many acronyms: "CRCCS: civil rights civil and criminal statutes; DDI: domestic dispute industry; DDIA: domestic dispute industry advocates; DDICE: domestic dispute industry criminal enterprise; DDI-FICE: domestic dispute industry forensic investigator criminal enterprise; DDI-IACE: domestic dispute industry intervention advocate criminal enterprise; DDIJO: domestic dispute industry judicial officers; DDIL: domestic dispute industry litigants; DDIPS: domestic dispute industry professional services; DDISO: domestic dispute industry security officers; DDISW: domestic dispute industry social workers; DVILS: domestic violence intervention legislative scheme; FFR: federal family civil and other rights; FFRESSA: federal family rights reform, exercise, support, and advocacy; FLC: family law community; FL-IACE: family law intervention advocate criminal enterprise; SAD: schemes and artifices to defraud; SD-DDICE: San Diego domestic dispute industry criminal enterprise; TCE: target community estates."

1. The SDCBA Seminar

The San Diego County Bar Association hosted a seminar on April 15, 2010, with the theme: "Litigants Behaving Badly–Do Professional Services Really Work?" [Doc. No. 1 ¶¶ 114-16.] Members of plaintiff California Coalition learned of the seminar in advance and decided to organize a demonstration outside the seminar to engage professionals involved with the family law community. [*Id.* ¶¶ 117-19, 123.] California Coalition created pamphlets and signs to display at the seminar, adopting the counter-theme: "Judges Behaving Badly–If You Don't Follow The Law, Why Would We?" [*Id.* ¶ 118-19.] Defendants learned of California Coalition's intention to demonstrate outside the seminar prior to the event. [*Id.* ¶ 124.]

California Coalition members arrived early at the seminar and peacefully distributed pamphlets to attendees. [*Id.* ¶¶ 124-127.] Plaintiff Stuart did not gather outside with other California Coalition members but instead entered the seminar. [*Id.* ¶ 127.] At the time of the seminar, Stuart was a member of the SDCBA, and he had purchased admission through the SDCBA's online store. [*Id.*] About 100 legal professionals attended the seminar. [*Id.* ¶ 129.] In addition, approximately 15 uniformed Sheriff's deputies were present and moved closer to Stuart once he selected a seat. [*Id.*]

The seminar began with introductory remarks by Family Law Division Supervising Judge Lorna Alksne. [*Id.* ¶ 130.] After about two minutes of speaking, however, Judge Alksne announced that she needed to take a break "so we can straighten something out." [*Id.*] Judge Alksne then walked to the back of the conference room and conferred with several defendants. [*Id.* ¶¶ 131, 132.] Soon two security officers employed by defendant Off Duty Officer, Inc. approached Stuart, confirmed that he was Colbern Stuart, and then asked Stuart to leave the seminar. [*Id.* ¶ 133.] Stuart refused. [*Id.*] The two security guards then went back to the huddle and soon returned with two Sheriff's deputies. [*Id.* ¶ 135.] When Stuart again refused to leave, the men "forced Stuart to stand, grabbed his arms, forced his hands behind his back, and handcuffed

him. They searched his person, emptied his pockets, seized his property . . . [and] forcibly led Stuart out of the seminar in front of dozens of [his] professional colleagues." [*Id.* ¶ 135.]

The officers released Stuart outside of the SDCBA building and told him he could not return. [*Id.* ¶ 135.] The seminar reconvened, and several SDCBA panel speakers then joked that Stuart "got what he asked for . . . let's see if that gets them any publicity." [*Id.*]

2. Stuart's Divorce

On about September 12, 2008, and based on the recommendations of defendants Sharon Blanchet and Judge Wohlfeil, plaintiff Stuart hired defendant Doyne, Inc. to mediate his divorce. [Doc. No. 1 ¶¶ 216, 232, 237, 238.] Judge Wohlfeil oversaw the Stuart dissolution until December 2008, when the matter was transferred to defendant Judge Schall. [*Id.* ¶ 240.]

Doyne, Inc. made various representations in its contract with Stuart, for instance that the mediation process would be completed "in a month or two" and that fees and expenses would not exceed the initial $5,000 retainer. [*Id.* ¶¶ 217(F), (G).] Stuart asserts that Doyne, Inc. breached the contract in June 2009 by, among other things, extending the mediation for a longer period than was agreed to, filing false reports with San Diego County's child protective services alleging that Stuart had "held his son upside down over a balcony," and causing Stuart to lose custody of his son. [*Id.* ¶ 220.] As a result, on about March 1, 2009, Stuart terminated Doyne's services. [*Id.* ¶ 221.] Stuart alleges that, in retaliation, Doyne attempted to extort money from Stuart and made false statements in a hearing relating to Stuart's son. [*Id.* ¶ 224.] In addition, in May 2009, Doyne telephoned Stuart at his home and requested that Stuart pay Doyne for services he falsely claimed to have provided. [*Id.* ¶ 225.]

As referenced above, plaintiffs assert approximately 36 causes of action arising variously under 42 U.S.C. §§ 1983, 1985, and 1986, the Racketeer Influenced and Corrupt Organizations Act (RICO), the Lanham Act, the Declaratory Judgment Act, and

the common law. The Superior Court defendants filed their motion to dismiss on September 30, 2013. [Doc. No. 16.] The Commission on Judicial Performances moved to dismiss on November 14, 2013. [Doc. No. 22.] Ten more motions to dismiss were subsequently filed and scheduled for hearing on January 24, 2014. [Doc. Nos. 48, 49, 50, 51, 52, 53, 54, 62, 67, 73.] As set forth below, however, the court dismisses the entire complaint and therefore deems those latter ten motions withdrawn.

DISCUSSION

A. Plaintiffs California Coalition and Lexevia

Plaintiffs California Coalition and Lexevia are each identified in the complaint as corporations. [*Id.* ¶¶ 100, 107.] Corporations must appear in court through an attorney. *D-Deam Ltd. P'Ship v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir. 2004); CivLR 83.3(k). Here, the title page of plaintiffs' complaint indicates that Dean Browning Webb is the attorney for plaintiffs California Coalition and Lexevia, and that Mr. Webb's pro hac vice is pending. [Doc. No. 1 at 1.] In addition, the complaint's signature page again lists Mr. Webb as attorney for California Coalition and Lexevia, and above his name contains an "/s/" symbol and signature line. Nonetheless, since the complaint's filing on August 20, 2013, neither Mr. Webb nor any other attorney has entered an appearance for California Coalition or Lexevia. Further, counsel for the Superior Court defendants informs in a declaration:

> On August 26, 2013, I received a voice mail message from Mr. Webb. In his message, Mr. Webb informed me that Mr. Stuart used his name on the Complaint without his permission. Mr. Webb confirmed this information to me in subsequent telephone conversations and indicated that he intended to call the federal Clerk of Court's office to advise that office that he had not agreed to represent plaintiffs in this case.

[Doc. No. 16-3 ¶ 4.]

No counsel appeared for California Coalition or Lexevia at the motions hearing held December 19, 2013. Because plaintiffs California Coalition and Lexevia do not appear through counsel, the court **DISMISSES** their claims without prejudice.

B. Plaintiff Colbern Stuart

The court also **DISMISSES** plaintiff Stuart's claims without prejudice for failure to comply with Rule 8(a)(2), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Here, plaintiffs violate Rule 8(a)(2) in at least three ways.

First, because plaintiffs assert most of their claims on behalf of all three plaintiffs, neither the court nor defendants can distinguish Stuart's asserted harm from the corporations'. *See, e.g.*, Doc. No.1 ¶¶ 148, 150, 157, 161, 171, 175, 179, 183, 190, 192, 204, 206, 208, 215, 347, 349, 352, 354, 356, 358, 360, 366, 368, 370, 372, 374, 385 ("As an actual and proximate result, PLAINTIFFS have been HARMED.") Because the corporations have been dismissed for failure to obtain counsel, and the complaint does not identify the individual harm Stuart suffered for each claim, Stuart does not set forth plain statements of his claims showing that he is entitled to relief.

Second, Stuart fails to clearly identify each separate claim for relief. Count One, for instance, is labeled:

> Illegal Search, Seizure, Assault, Battery, Arrest, and Imprisonment
> Deprivation of Constitutional Rights Under Color of State Law
> 42 U.S.C. 1983
> U.S. Const. 1st, 4th, 5th, 6th, 7th, 8th, 14th Amend.
> Supplemental State Claims
> Against Defendants
> SDCBA, ODO, DDISO, DOES 1-15, GORE, DDIJO DOES1-50, SAC, SIMI, BATSON

[Doc. No. 1 ¶ 141.] The court cannot discern just how many separate state and federal claims Stuart intends to assert here. Further, Stuart fails to connect his factual allegations to the numerous causes of action identified. If Stuart sincerely means to assert that defendants violated his First, Fourth, Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendment rights, he must identify the factual allegations that support each alleged violation.

Finally, while dismissal on the basis of length or verbosity alone is inappropriate, *Hearns v. San Bernardino Police Dept.*, 530 F.3d 1124, 1130 (9th Cir. 2008), the Ninth

Circuit has affirmed dismissal on Rule 8 grounds where the complaint is "argumentative, prolix, replete with redundancy, and largely irrelevant;" *McHenry v. Renne*, 74 F.3d 1172, 1177-80 (9th Cir. 1996); "verbose, confusing and conclusory," *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981); or where it is "impossible to designate the cause or causes of action attempted to be alleged in the complaint," *Schmidt v. Herrmann*, 614 F.2d 1221, 1223 (9th Cir. 1980).

Here, plaintiffs' complaint totals 175 pages, with an additional 1156 pages in exhibits, substantially exceeding the length of complaints considered in Ninth Circuit cases that have affirmed dismissal on Rule 8 grounds.[3] Further, while length alone is not grounds for dismissal, plaintiffs' complaint here is confusing, redundant, conclusory, and buries its factual allegations in pages of generalized grievances about the family courts. The prolixity and inscrutability of plaintiffs' complaint is unduly prejudicial to defendants, who face "the onerous task of combing through [plaintiffs' lengthy complaint] just to prepare an answer that admits or denies such allegations and to determine what claims and allegations must be defended or otherwise litigated." *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011). Further, plaintiffs' complaint is unmanageable for the court. As the Ninth Circuit noted in *McHenry*:

> The judge wastes half a day in chambers preparing the "short and plain statement" which Rule 8 obligated plaintiffs to submit. [The judge] then must manage the litigation without knowing what claims are made against whom. This leads to discovery disputes and lengthy trials, prejudicing litigants in other case[s] who follow the rules, as well as defendants in the case in which the prolix pleading is filed. "[T]he rights of litigants awaiting their turns to have other matters resolved must be considered...." *Nevijel*, 651 F.2d at 675; *Von Poppenheim*, 442 F.2d [1047, 1054 (9th Cir. 1971).]

McHenry, 84 F.3d at 1180.

The court therefore **DISMISSES** plaintiff Stuart's claims for failure to comply

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[3] *See McHenry*, 84 F.3d at 1174 (53 pages); *Hatch*, 758 F.2d at 415 (70 pages); *Nevijel*, 651 F.2d at 674 (48 pages); and *Schmidt*, 614 F.2d at 1224 (30 pages).

with Rule 8. Dismissal is without prejudice and with leave to amend, with the following exceptions. The court **DISMISSES WITH PREJUDICE** Stuart's claims against the defendant judges for damages arising out of judicial acts within the jurisdiction of their courts. *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). The court also **DISMISSES WITH PREJUDICE** Stuart's claims against the Commission on Judicial Performance and against its officials, Simi and Battson, to the extent the latter are sued for damages in their official capacity. U.S. Const. Amend XI; *Ricotta v. California*, 4 F. Supp. 2d 961, 976 (S.D. Cal. 1998); Cal. Const. Art. IV, § 18(H).

In composing his amended complaint, Stuart must heed the statute of limitations for Section 1983 and Section 1985 claims brought in this court, which is generally two years. *Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1026 (9th Cir. 2007); *McDougal v. County of Imperial*, 942 F.2d 668, 673-74 (9th Cir. 1991) (§ 1985 claims are governed by the same statute of limitations as § 1983 claims.) "Generally, the statute of limitations begins to run when a potential plaintiff knows or has reason to know of the asserted injury." *Action Apartment*, 509 F.3d at 1026-27. Here, Stuart's claims appear to arise primarily out of two events: the April 15, 2010 San Diego County Bar Association seminar and his dissolution mediation before defendant Doyne, Inc., which concluded in about November 2009. [Doc. No. 1 ¶¶ 24, 241.] These claims therefore appear barred by the statute of limitations. To the extent Stuart contends that equitable tolling should apply, he must set forth specific allegations in his amended complaint to support such a theory.

CONCLUSION

The motions to dismiss of the Superior Court and Commission on Judicial Performance defendants [Doc. Nos. 16, 22] are granted in part and denied in part. The complaint is dismissed without prejudice. Plaintiff Stuart has leave to file an amended complaint no later than **Thursday, January 9, 2014**. Stuart may assert claims only on his behalf and should be wary of the immunity and statute-of-limitation issues

addressed above. Though Stuart appears *pro se*, the court notes that he formally was a licensed member of the California bar with a complex litigation practice. [Doc. No. 1 ¶ 102.] It is anticipated that Stuart has the requisite knowledge and training to submit a complaint that complies with Rule 8 and appropriately and coherently identifies his causes of action and the specific defendants he alleges liable for his asserted damages without unnecessary verbiage, argument, and rhetoric.

The court denies plaintiffs' motion to strike and the Superior Court's motion for sanctions. [Doc. Nos. 19, 23.] Finally, the court deems withdrawn the remaining motions to dismiss. [Doc. Nos. 48, 49, 50, 51, 52, 53, 54, 62, 67, 73.]

IT IS SO ORDERED.

DATED: December 23, 2013

CATHY ANN BENCIVENGO
United States District Judge

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Case No. 13-cv-1944 CAB (JLB)

Exhibits to Notice of Preliminary Injunction Appeal;
Appeal of Final Judgment

Exhibit 5

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA COALITION FOR FAMILIES AND CHILDREN, PLAINTIFFS, VS. SAN DIEGO COUNTY BAR ASSOCIATION, ET AL., DEFENDANTS.	CASE NO.13CV1944-CAB(BLM) SAN DIEGO, CALIFORNIA MARCH 26, 2014 MOTION HEARING

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE CATHY ANN BENCIVENGO

UNITED STATES DISTRICT COURT JUDGE

OFFICIAL REPORTER: MAURALEE A. RAMIREZ, RPR, CSR
333 BROADWAY, SUITE 420
SAN DIEGO, CALIFORNIA 92101
ORDERTRANSCRIPT@GMAIL.COM
619-994-2526

APPEARANCES:

FOR THE PLAINTIFF: COLBERN C. STUART, III	COLBERN C. STUART, III IN PRO SE 4891 PACIFIC HIGHWAY, SUITE 102 SAN DIEGO, CALIFORNIA 92110
FOR THE PLAINTIFF CALIFORNIA COALITION FOR FAMILIES AND CHILDREN	DEAN BROWNING WEBB THE LAW OFFICES OF DEAN BROWNING WEBB 515 EAST 39TH STREET VANCOUVER, WASHINGTON 98663
FOR THE DEFENDANT SUPERIOR COURT OF SAN DIEGO COUNTY, AND NAMED JUDICIAL OFFICERS	MATTHEW L. GREEN BEST, BEST & KRIEGER LLP 655 WEST BROADWAY, 15TH FLOOR SAN DIEGO, CALIFORNIA 92101
FOR THE DEFENDANT COMMISSION ON JUDICIAL PERFORMANCE, LAWRENCE J. SIMI, BRAD BATSON	RICHARD F. WOLFE OFFICE OF THE ATTORNEY GENERAL 110 WEST "A" STREET, SUITE 1100 SAN DIEGO, CALIFORNIA 92101
FOR THE DEFENDANT SAN DIEGO COUNTY BAR ASSOCIATION	STEPHEN D. LUCAS LUCAS & HAVERKAMP 4350 EXECUTIVE DRIVE, SUITE 260 SAN DIEGO, CALIFORNIA 92121
FOR THE DEFENDANT SAN DIEGO COUNTY SHERIFF'S DEPT., WILLIAM D, GORE COUNTY OF SAN DIEGO	RICKY R. SANCHEZ COUNTY OF SAN DIEGO OFFICE OF COUNTY COUNSEL 1600 PACIFIC COAST HIGHWAY, ROOM 355 SAN DIEGO, CALIFORNIA 92101
FOR THE DEFENDANT NATIONAL FAMILY JUSTICE CENTER ALLIANCE	CHARLES R. GREBING WINGERT GREBING BRUBAKER & JUSKIE LLP 600 WEST BROADWAY, SUITE 1200 SAN DIEGO, CALIFORNIA 92101
FOR THE DEFENDANT BALDWIN & BALDWIN CAROLE BALDWIN LAURY BALDWIN	TIMOTHY R. PESTOTNIK PESTOTNIK & GOLD LLP 501 WEST BROADWAY, SUITE 1025 SAN DIEGO, CALIFORNIA 92101

APPEARANCES (CONTINUED):

FOR THE DEFENDANT MARILYN BIERER BIERER & ASSOCIATES	DANIEL S. AGLE KLIENEDINST PC 501 WEST BROADWAY, SUITE 600 SAN DIEGO, CALIFORNIA 92101
FOR THE DEFENDANT AMERICAN COLLEGE OF FORENSIC EXAMINERS INSTITUTE, ROBERT L. O'BLOCK	GREGORY P. GOONAN THE AFFINITY LAW GROUP 5755 OBERLIN DRIVE, SUITE 301 SAN DIEGO, CALIFORNIA 92121 – AND – THOMAS J. SCHAFBUCH (TELEPHONIC APPEARANCE) CENTER FOR NATIONAL THREAT ASSESSMENT 2750 EAST SUNSHINE STREET SPRINGFIELD, MISSOURI 65807
FOR THE DEFENDANT LOVE & ALVAREZ PSYCHOLOGY, INC. DR. LORI LOVE, LARRY CORRIGAN	RACHAEL H. MILLS OFFICES OF JAMES R. ROGERS 125 SOUTH HIGHWAY 101, SUITE 101 SOLANA BEACH, CALIFORNIA 92075
FOR THE DEFENDANT CITY OF SAN DIEGO	CHARLES TAYLOR OFFICE OF THE SAN DIEGO CITY ATTORNEY 1200 THIRD AVENUE, SUITE 1100 SAN DIEGO, CALIFORNIA 92101
FOR THE DEFENDANT DR. ROBERT A. SIMON	KATHERINE WEADOCK LEWIS BRISBOIS BISGAARD & SMITH 550 WEST C STREET, SUITE 800 SAN DIEGO, CALIFORNIA 92101
FOR THE DEFENDANT CHUBB GROUP OF INSURANCE COMPANIES	MICHAEL NARDI SELTZER CAPLAN MCMAHON VITEK 750 "B" STREET, SUITE 1200 SAN DIEGO, CALIFORNIA 92101
FOR THE DEFENDANT TERENCE CHUCAS SUSAN GRIFFIN	J. LYNN FELDNER MURCHISON & CUMMING LLP 750 "B" STREET, SUITE 2550 SAN DIEGO, CALIFORNIA 92101

APPEARANCES (CONTINUED):

FOR THE DEFENDANT: KYLE VAN DYKE
JEFFREY FRITZ, HURST & HURST
BASIE & FRITZ 701 "B" STREET, SUITE 1400
SAN DIEGO, CALIFORNIA 92101

ALSO PRESENT: ADAM GRAHAM

SAN DIEGO, CALIFORNIA; WEDNESDAY, FEBRUARY 26, 2014; 2:00 P.M.

THE CLERK: CALLING AT THIS TIME MATTER NO. 1 ON CALENDAR, 13CV1944-CAB, CALIFORNIA COALITION FOR FAMILIES AND CHILDREN, ET AL., VERSUS SAN DIEGO COUNTY BAR ASSOCIATION, ET AL.

COULD I PLEASE HAVE COUNSEL STATE THEIR APPEARANCES, BEGINNING WITH THE PLAINTIFFS.

MR. STUART: MY NAME IS COLBERN STUART.

MR. WEBB: MAY IT PLEASE THE COURT, DEAN WEBB FOR CCFC.

THE COURT: ALL RIGHT. THANK YOU.

THE CLERK: DEFENSE COUNSEL, PLEASE.

MS. WEADOCK: KATHERINE WEADOCK ON BEHALF OF DR. SIMON.

MR. ZOPATTI: CHRISTOPHER ZOPATTI ON BEHALF OF DR. STEPHEN DOYNE AND DR. STEPHEN DOYNE, INCORPORATED.

MR. LUCAS: STEVE LUCAS ON BEHALF OF THE SAN DIEGO COUNTY BAR ASSOCIATION.

MS. FELDNER: LYNN FELDNER ON BEHALF OF TERENCE CHUCAS AND SUSAN GRIFFIN.

MR. NARDI: MICHAEL NARDI ON BEHALF OF THE CHUBB GROUP OF INSURANCE COMPANIES.

MR. GOONAN: GOOD AFTERNOON, YOUR HONOR. GREGORY GOONAN ON BEHALF OF THE AMERICAN COLLEGE OF FORENSIC EXAMINERS INSTITUTE AND ROBERT L. O'BLOCK.

THE COURT: THANK YOU.

MR. GREEN: GOOD AFTERNOON, YOUR HONOR. MATTHEW GREEN ON BEHALF OF THE 13 JUDICIAL DEFENDANTS APPEARING IN THE ACTION.

MR. VAN DYKE: GOOD AFTERNOON, YOUR HONOR. KYLE VAN DYKE ON BEHALF OF JEFFERY FRITZ AND FRITZ & BASIE.

MR. WOLFE: GOOD AFTERNOON, YOUR HONOR. RICHARD WOLFE FOR DEFENDANTS SIMI AND BATSON.

MR. TAYLOR: GOOD AFTERNOON, YOUR HONOR. CHARLES TAYLOR ON BEHALF OF THE CITY OF SAN DIEGO.

MR. AGLE: GOOD AFTERNOON, YOUR HONOR. DANIEL AGLE ON BEHALF MARILYN BIERER AND BIERER & ASSOCIATES.

MR. GREBING: GOOD AFTERNOON, YOUR HONOR. CHARLES GREBING ON BEHALF OF MS. BLANCHET, MS. VIVIANO, AND THE NATIONAL FAMILY JUSTICE CENTER ALLIANCE.

THE CLERK: MR. SCHAFBUCH, WOULD YOU MIND, PLEASE, STATING YOUR APPEARANCE.

MR. SCHAFBUCH: YES. GOOD AFTERNOON, YOUR HONOR. MY NAME IS THOMAS SCHAFBUCH, AND I'M HERE REPRESENTING THE AMERICAN COLLEGE OF FORENSICS EXAMINERS AND ROBERT L. O'BLOCK.

THE COURT: THANK YOU.

MS. MILLS: GOOD AFTERNOON, YOUR HONOR. RACHAEL MILLS ON BEHALF OF LOVE & ALVAREZ, INC., LORI LOVE, AND LARRY CORRIGAN.

MR. PESTOTNIK: GOOD AFTERNOON, YOUR HONOR. TIMOTHY

PESTOTNIK ON BEHALF OF DEFENDANTS WILLIAM HARGRAEVES, HARGRAEVES & TAYLOR, MERIDITH LEVIN, LAW OFFICES OF ALLEN SLATTERY, DEFENDANT STOCKS, STOCKS & COLBURN, CAROL BALDWIN, LAURY BALDWIN, AND BALDWIN & BALDWIN.

THE COURT: THANK YOU.

IS THAT EVERYBODY?

THE CLERK: I BELIEVE THAT IS, YOUR HONOR.

MR. SANCHEZ: RICKY SANCHEZ FOR THE OFFICE OF COUNTY COUNSEL FOR THE COUNTY OF SAN DIEGO, ERRONEOUSLY SUED AS SHERIFF'S DEPARTMENT, AND SHERIFF WILLIAM GORE.

THE COURT: OKAY. THANK YOU. ALL RIGHT. THANK YOU. THIS WAS SCHEDULED TODAY AS ESSENTIALLY A CASE MANAGEMENT CONFERENCE. PREVIOUSLY THE PLAINTIFFS HAD FILED A COMPLAINT, AND THE HISTORY OF THAT WAS -- WELL, THAT WAS HEARD ON DECEMBER 19TH. THE COURT DISMISSED THE COMPLAINT WITHOUT PREJUDICE FOR A NUMBER OF REASONS, ONE OF WHICH WAS AT THE TIME, ONE OF THE PLAINTIFFS, CALIFORNIA COALITION, WAS NOT REPRESENTED BY COUNSEL AS A CORPORATION AND NEEDED TO BE REPRESENTED BY COUNSEL.

I ASKED MR. WEBB SPECIFICALLY TO BE IN ATTENDANCE TODAY AS HE HAD REPRESENTED THAT HE IS COUNSEL FOR THE CALIFORNIA COALITION FOR FAMILIES AND CHILDREN, AND I WANTED TO MAKE SURE THAT, IN FACT, HE WAS KNOWLEDGEABLE OF THE COMPLAINT, WAS ON IT, AND IS PREPARED TO GO FORWARD AS COUNSEL FOR THAT PLAINTIFF; IS THAT CORRECT, MR. WEBB?

MR. WEBB: YES, YOUR HONOR.

THE COURT: AND YOU HAVE READ THE SECOND AMENDED COMPLAINT, AND THAT IS YOUR SIGNATURE AND YOU ARE ATTESTING TO IT?

MR. WEBB: YOUR HONOR, I BELIEVE THAT'S THE FIRST AMENDED.

THE COURT: I'M SORRY, THE FIRST AMENDED.

MR. WEBB: YES, I HAVE.

THE COURT: OKAY. AND SO THE PLAINTIFF IS NOW PROPERLY REPRESENTED. MR. COLBERN STUART IS REPRESENTING HIMSELF STILL AS AN INDIVIDUAL, AND I ASKED HIM -- NOW WHEN I ORIGINALLY ASKED HIM TO REDO THE COMPLAINT, IT WAS WHEN HE WAS ONLY GOING TO BE REPRESENTING HIMSELF IN THE MATTER, AND I TOLD HIM AND DIRECTED HIM TO RESTRICT THE ALLEGATIONS OF THE COMPLAINT TO THOSE THINGS FOR WHICH HE COULD REPRESENT HIMSELF, ONLY HIS PERSONAL ALLEGATIONS.

THE COMPLAINT AGAIN COVERS THE ALLEGATIONS OF BOTH THE CALIFORNIA COALITION AND MR. STUART INDIVIDUALLY, BUT NOW THAT THERE'S COUNSEL, THAT IN AND OF ITSELF IS APPROPRIATE. THE COURT IS STILL A LITTLE CONCERNED ABOUT THE BLENDING OF THE CLAIMS OF THE TWO PARTIES WHERE IT ISN'T TERRIBLY CLEAR WHO IS MAKING THE CLAIM. THERE ARE PLACES WHERE IT IS ALLEGED TO BE MR. STUART'S CLAIM AND, YET, THE CLAIM WAS COMPLETE WITH "AND, THEREFORE, THE PLAINTIFFS" PLURAL "ARE DAMAGED," AND SO THERE IS SOME LEVEL OF UNCERTAINTY AS TO WHO IS MAKING WHICH CLAIMS,

AND THERE IS STILL SOME LEVEL OF BLENDING OF CAUSES OF ACTION WITHIN CLAIMS, WHICH IS TROUBLING TO THE COURT.

BUT THAT SAID, MY INTENT TODAY IS TO GET A SCHEDULE AND A PLAN FROM DEFENDANTS AS TO HOW THEY WANT TO PROCEED. AND I DON'T KNOW IF SOMEONE WANTS TO TAKE THE LEAD HERE IN TERMS OF LETTING ME KNOW, BUT TO THE EXTENT ANYONE DOES NOT INTEND TO PROCEED WITH SIMPLY AN ANSWER AND INTENDS TO FILE A MOTION TO DISMISS, I DON'T WANT TO GET 15 OR 16 OR 20 SEPARATE MOTIONS TO DISMISS FROM COUNSEL REPRESENTING VARIOUS SUBGROUPS OF DEFENDANTS. MY PREFERENCE WOULD BE TO GET ONE JOINT MOTION TO DISMISS THAT MAY COVER ISSUES THAT YOU JOINTLY HAVE THAT ARE THE SAME AS TO ALL OF YOU AND THEN ALLOW FOR SUPPLEMENTAL. PEOPLE CAN EITHER JOIN THAT MOTION, YOU CAN ALL FILE IT TOGETHER, OR YOU CAN FILE SUPPLEMENTAL MOTIONS THAT ADDRESS YOUR CLIENTS INDIVIDUALLY.

SO IS THERE ANYONE HERE WHO WOULD LIKE TO, ON BEHALF OF THE DEFENDANTS, LET ME KNOW HOW YOU PLAN TO PROCEED WITH A RESPONSIVE PLEADING?

SURE.

MR. LUCAS: I'LL VOLUNTEER, YOUR HONOR, SINCE I'M THE FIRST NAMED DEFENDANT. STEVE LUCAS ON BEHALF OF THE SAN DIEGO COUNTY BAR ASSOCIATION.

THE COURT: GOOD, YES.

MR. LUCAS: IF I COULD BORROW A PHRASE FROM THE COURT AT THE EARLIER HEARING. I SPENT AN IN ORDINANT AMOUNT OF TIME

REVIEWING THE ORIGINAL COMPLAINT AND ALSO SPENT AN IN ORDINANT AMOUNT OF TIME REVIEWING THE FIRST AMENDED COMPLAINT, WHICH HAS IN IT ABOUT 75 PAGES OF ADDITIONAL ALLEGATIONS. AND I FIND THE SAME PROBLEM WITH THE SECOND COMPLAINT THAT I FOUND WITH THE FIRST, AND INCONSISTENT WITH YOUR ORDER FOR PLAINTIFF TO PREPARE AN AMENDED COMPLAINT THAT COMPLIES WITH RULE 8, AND APPROPRIATELY AND COHERENTLY IDENTIFIES THE CAUSES OF ACTION, THE SPECIFIC DEFENDANTS IT ALLEGES LIABLE FOR DAMAGES WITHOUT UNNECESSARY VERBIAGE, ARGUMENT, RHETORIC, WE'RE STILL IN THE SAME PLACE WE WERE WITH THE ORIGINAL COMPLAINT. I DO INTEND TO FILE A MOTION TO DISMISS, BUT I'M NOT SURE WHERE TO START.

THE COURT: ALL RIGHT. WELL, THE ISSUES THAT THE COURT RAISED LAST TIME WERE SPECIFIC TO THE COMPLAINT NOT BEING IN COMPLIANCE WITH RULE 8, AND I DON'T THINK THAT IT WOULD BE MISPLACED TO REASSERT THAT GROUNDS TO DISMISS. I ASKED THE PLAINTIFF TO SIMPLIFY, TO CONCISELY STATE IN A STRAIGHTFORWARD FASHION, HIS CLAIMS, AND AS YOU'VE POINTED OUT, THE COMPLAINT HAS BALLOONED TO NOW 1200 PARAGRAPHS AND 250-PLUS PAGES, AND I DON'T THINK THERE IS ANY MORE CLARITY REALLY.

I DON'T BELIEVE THE STATUTE OF LIMITATION ISSUES HAVE BEEN RESOLVED IN LIGHT OF THE COURT'S READING. HOWEVER, IT'S NOT FOR ME TO DO YOUR HOMEWORK, UNFORTUNATELY, IN THAT REGARD. I DID A CURSORY READING -- WELL, THAT'S NOT REALLY FAIR. I SPENT A DAY AND A HALF TRYING TO READ THIS COMPLAINT, AND I AM NOT SATISFIED THAT THE PLAINTIFF HAS COME ANYWHERE CLOSE TO

WHAT THE COURT DIRECTED THE PLAINTIFF TO DO.

AND TO BE QUITE FRANK, I'VE HAD A MOMENTS WHERE I WAS THINKING ABOUT JUST SUA SPONTE DISMISSING IT. HOWEVER, MY REVIEW OF NINTH CIRCUIT CASE LAW ON THE SUBJECT SUGGESTS THAT I MUST AT LEAST FIND OUT FROM THE DEFENDANTS IF THEY CAN UNDERSTAND THE COMPLAINT AND ANSWER IT, AND RESPOND TO YOUR MOTION, NOT MY OWN MOTION. SO I'M NOT GOING TO HIDE THE FACT I THINK THIS DID NOT COMPLY WITH MY ORDER, I DON'T THINK IT'S ANY MORE CLEAR, THERE'S AN ENORMOUS AMOUNT OF SURPLUSAGE IN HERE THAT JUST MAKES IT CONFUSING. ALL OF THE ACRONYMS ARE FRUSTRATING AND -- WELL, I MEAN, I'M JUST GOING TO GET SUCKED INTO THE VORTEX OF THIS THING AGAIN.

BUT I WOULD LIKE TO SEE ONE MOTION THAT ADDRESSES THE ISSUES THE COURT PREVIOUSLY RAISED REGARDING RULE 8, REGARDING THE STATUTE OF LIMITATIONS, AND REGARDING THE IMMUNITY ISSUES ON THE BROAD PERSPECTIVE THAT MOST, IF NOT ALL, MOST OF THE DEFENDANTS MAY HAVE IMMUNITY, AND THERE ARE CERTAINLY 1983 CLAIMS AGAINST ENTITIES THAT YOU CAN'T HAVE A 1983 CLAIM AGAINST.

SO IF YOU WANT TO TAKE THE LEAD ON THAT AND THEN ALLOW OTHERS TO JOIN THAT MOTION, RATHER THAN ME GETTING THAT MOTION INDIVIDUALLY FROM EACH OF YOU, WHICH IS JUST WAY MORE WORK FOR ALL OF YOU AND ME THAN I WANT TO DEAL WITH.

MR. LUCAS: I AM WILLING TO DO THAT, YOUR HONOR. ONE CONCERN THAT I DO HAVE IS ALL THE GOVERNMENTAL ENTITIES, THE

JUDGES HAVE CERTAIN IMMUNITIES THAT APPLY THAT DON'T APPLY TO MY CLIENT.

THE COURT: THAT'S FINE.

MR. SCHAFBUCH: SAME WITH MY CLIENT. WE DON'T HAVE THOSE IMMUNITIES.

THE COURT: MY THOUGHT HERE WAS TO HAVE AN OMNIBUS MOTION FILED BY MARCH 18TH AND THEN ALLOW FOR SUPPLEMENTAL MOTIONS AS TO ANY INDIVIDUAL DEFENDANTS THAT ARE NOT COVERED BY A MORE OMNIBUS MOTION ON BROADER GROUNDS THAT WOULD BE LIMITED TO, SAY, 10 PAGES OF A MOTION DISMISS IF YOUR CLIENTS HAVE IMMUNITY ISSUES OR OTHER ISSUES THAT AREN'T COVERED IN THE BROADER MOTION. THE PLAINTIFF WOULD HAVE UNTIL APRIL 18TH TO FILE AN OPPOSITION, AND THEN REPLIES WOULD BE DUE BY APRIL 25TH. THE COURT WILL TAKE THIS MOTION ON THE PAPERS UNLESS I REQUEST ORAL ARGUMENT.

SO DOES ANYONE HAVE AN ISSUE WITH THAT OR WANT TO ADDRESS PROCEEDING IN THAT WAY? YES.

MR. NARDI: I MAY BE AT SOMEWHAT UNIQUE POSITION, YOUR HONOR.

THE COURT: YOU REPRESENT CHUBB.

MR. NARDI: THE NAME OF THE PARTY IS CHUBB GROUP OF INSURANCE COMPANIES. CHUBB GROUP OF INSURANCE COMPANIES IS NOT A LEGAL ENTITY OF ANY SORT. IT'S A TRADE NAME THAT IS USED BY A GROUP OF INSURANCE COMPANIES, APPARENTLY ONE OF WHICH INSURES THE BAR ASSOCIATION. SO I'M NOT, BY ATTENDING HERE TODAY,

INTENDING TO MAKE ANY KIND OF A GENERAL APPEARANCE OR WAIVE ANY RIGHTS OR WAIVE THE RIGHT TO QUASH SERVICE.

THERE HAS BEEN NO SERVICE OR ATTEMPTED SERVICE TO CHUBB GROUP OF INSURANCE COMPANIES. IT WOULDN'T BE EFFECTIVE ANYWAY. SO WE HAVEN'T EVEN GOTTEN TO THE POINT YET WHERE WE HAVE A VIABLE ENTITY THAT HAS BEEN NAMED IN THE PLEADING OR ATTEMPTED TO BE SERVED WITH PROCESS.

SO I THINK IT MIGHT BE PREMATURE FOR US TO START JOINING THE OTHER MOTIONS. I DON'T KNOW IF THERE IS ANY INTENT TO TRY TO SERVE THE CHUBB GROUP OF INSURANCE COMPANIES OR THE ARROYO RIO (PHONETIC) INSURANCE COMPANY, BUT I JUST WANT TO MAKE IT CLEAR BECAUSE WE'RE HERE BECAUSE WE GOT NOTICE OF THE HEARING.

AND, FRANKLY, I TOO HAVE MADE AN EFFORT TO INTERPRET THE COMPLAINT, AND IT'S DIFFICULT. I DON'T THINK IT STATES A CAUSE OF ACTION. IN ANY EVENT, I DON'T THINK THE PLAINTIFF HAS ANY STANDING TO SUE THE BAR ASSOCIATION'S INSURER AT THIS POINT. SO CLEARLY APART FROM THE PROCEDURAL PROBLEMS, IF WE EVER GET TO THE SUBSTANTIVE POINT, WE MAY BE MAKING A MOTION OF OUR OWN. WE MAY JOIN SOME OF THE OTHERS, BUT MAY MAKE SOME OF OUR OWN.

THE COURT: THAT'S FINE. AND IF ANYONE ELSE WHO IS HERE WHOSE PARTIES HAVE NOT BEEN FORMALLY SERVED YET, BUT CAME BECAUSE YOU WERE AWARE OF THE HEARING, OBVIOUSLY, YOU'RE UNDER NO OBLIGATION TO DO ANYTHING UNTIL YOU'RE SERVED. IF YOU'RE

SERVED IN THE INTERIM AND THEN WANT TO JOIN THE MOTION THAT'S FILED ON THE 18TH, YOU'RE WELCOME TO DO THAT.

MR. NARDI: THANK YOU, YOUR HONOR.

MR. STUART: YOUR HONOR, MAY I BE HEARD?

THE COURT: YES.

MR. STUART: WE HAVE SENT WAIVERS OF SERVICE AND NOTICE OF ACKNOWLEDGMENT OF RECEIPT EARLIER TO ALL THESE ENTITIES, INCLUDING CHUBB. I'M NOT AWARE THAT CHUBB HAS NOT RECEIVED THAT. WE DIDN'T RECEIVE ANY WAIVERS BACK. UNDER RULE 4, I BELIEVE, ACTUALLY THAT DEFENDANTS UPON BECOMING AWARE OF THE EXISTENCE OF A LAWSUIT, THEY HAVE AN INTEREST TO DO THAT OBLIGATION, AN AFFIRMATIVE OBLIGATION TO ASSIST IN EFFECTING SERVICE.

AND I WOULD SIMPLY REQUEST THAT THE REPRESENTATIVE OF CHUBB IDENTIFY WHO THE APPROPRIATE DEFENDANT IS HERE. THAT OBVIOUSLY IS THE ENTITY WHO INSURED THE SAN DIEGO COUNTY BAR ASSOCIATION. THEY KNOW WHO THAT IS. THEY CAN ACCEPT SERVICE TODAY. I WOULD REQUEST THAT COURT OFFER THAT OPPORTUNITY TO CHUBB.

TO THE EXTENT THAT OTHER ENTITIES WHO HAVE BEEN OFFERED THE OPPORTUNITY TO WAIVE SERVICE BY E-MAIL DATED, I THINK IT WAS FEBRUARY 9, THEY'RE PRESENT IN COURT TODAY. THEY CAN APPEAR. THEY CAN MAKE A GENERAL APPEARANCE AND GET THIS CASE STARTED RATHER THAN DEALING WITH THESE PRELIMINARY GOOSE CHASES HAVING TO DO WITH SERVICE.

THE COURT: WELL, I ASKED YOU TO FILE PROOFS OF SERVICES TO EVERYONE YOU SERVED, AND I DON'T BELIEVE WE'VE GOTTEN PROOFS FOR A LARGE NUMBER OF THE DEFENDANTS. SO IF YOU PROPERLY SERVED THEM UNDER THE RULES AND THEY HAVEN'T ANSWERED, THEN YOU NEED TO SHOW US YOUR PROOFS OF SERVICE. BUT IF ANYONE HERE WANTS TO ACCOMMODATE THE PLAINTIFFS BY ACCEPTING SERVICE TODAY BECAUSE YOU'RE HERE AND YOU HAVE AUTHORIZATION TO ACCEPT SERVICE ON BEHALF OF YOUR CLIENT, WE CAN FACILITATE MOVING THIS FORWARD.

BUT THE COURT IS NOT CHANGING THE SCHEDULE IN TERMS OF THE MOTIONS TO DISMISS. I WOULD STILL LIKE TO PROCEED ON THE SCHEDULE WE HAVE, AND ANYONE WHO IS SERVED IN THE INTERIM OR ACCEPTS SERVICE IN THE INTERIM CAN JUST JOIN INTO THIS. OTHERWISE, THIS GETS STRETCHED OUT INDEFINITELY.

MR. STUART: I AGREE, YOUR HONOR, AND THE PARTIES ARE HERE. THIS COULD BE RESOLVED TODAY.

THE COURT: WELL, IT ISN'T CONVENIENT FOR YOU, BUT IT'S YOUR LAWSUIT AND YOU NEED TO SERVE THEM, AND IF THEY DON'T WANT TO ACCEPT SERVICE, A WAIVER, THEN YOU HAVE YOUR REMEDIES, AND YOU CAN PROCEED.

MR. STUART: WE'LL TAKE NOTICE THAT DEFENDANTS HAVE ACTUAL NOTICE, AND THEY HAVE REFUSED.

THE COURT: I DON'T KNOW WHO THAT WOULD APPLY TO BECAUSE I DON'T KNOW WHO HERE HASN'T BEEN SERVED, OTHER THAN THE INSURANCE REPRESENTATIVE WHO SAID YOU NAMED THE WRONG

COMPANY.

OKAY. MR. PESTOTNIK.

MR. PESTOTNIK: JUST TO CLARIFY, DOES THE COURT WANT ALL MOTIONS OR JUST THE OMNIBUS MOTION ON THE 18TH, OR DO YOU WANT THE JOINDER MOTIONS ALSO FILED SEPARATELY FOR THAT ISSUE ON THE SAME DAY?

THE COURT: THE OMNIBUS MOTION BY THE 18TH, AND THEN IF YOU WANT TO JOIN THAT, YOU NEED TO FILE YOUR NOTICE OF JOINDER BY APRIL 1ST, AND IF YOU WANT TO SUPPLEMENT IT, THEN YOUR NOTICE OF JOINDER CAN ALSO INCLUDE ANY ISSUES THAT YOU WANT TO SUPPLEMENT WITH REGARD TO YOUR INDIVIDUAL DEFENDANTS, AND THAT SHOULD BE IN YOUR APRIL 1ST MOTION AS WELL.

MR. PESTOTNIK: PERFECT.

MR. LUCAS: STEVE LUCAS ON BEHALF OF THE BAR ASSOCIATION. I THINK THE COURT'S APPROACH TO THIS IS A GOOD ONE. I'M WILLING TO TAKE THE LABORING OAR, AS I INDICATED, BUT I DO DETECT THERE ARE GOING TO BE A NUMBER OF DIFFERENT COOKS IN THE KITCHEN, SO TO SPEAK, AND I THINK THERE'S GOING TO BE A LOT OF COORDINATION REQUIRED. THAT BEING THE CASE, I THINK THE 18TH IS A LITTLE BIT PREMATURE. IF WE COULD HAVE AN EXTRA MAYBE COUPLE WEEKS BEYOND THE 18TH, I WOULD VERY MUCH APPRECIATE THAT.

THE COURT: I DON'T WANT TO PUSH THIS OUT TOO FAR, BUT TO THE EXTENT IT FACILITATES BY HAVING YOU JOINTLY WORK TOGETHER, MEET AND AGREE ON AS MUCH AS CAN BE CONTAINED IN THE

ONE OMNIBUS MOTION SO THAT THE SUBSEQUENT MOTIONS ARE VERY NARROWLY FOCUSED TO ASSIST THE PLAINTIFFS IN HAVING TO OPPOSE SO THAT THEY'RE NOT REPEATEDLY HAVING TO ADDRESS THE SAME ISSUES, A LITTLE EXTRA TIME MIGHT BE APPROPRIATE. SO LET ME ADJUST THE SCHEDULE. OMNIBUS MOTION BY MARCH 28TH, SUPPLEMENTAL MOTIONS BY APRIL 11TH, AND THEN OPPOSITIONS WOULD MOVE OUT. I'LL GIVE YOU TO APRIL 30TH, COUNSEL, FOR THE OPPOSITIONS, AND THEN REPLIES WOULD BE DUE BY MAY 9TH. AND WE'LL DO A WRITTEN ORDER WITH THOSE DATES, SO EVERYONE HAS THEM.

MR. STUART: YOUR HONOR, MAY I BE HEARD?

THE COURT: YES.

MR. STUART: WE'D REQUEST SIMPLY A BIT MORE LEAD TIME. THAT'S GOING TO BE LESS THAN 30 DAYS ON OPPOSING WHAT LOOKS TO BE A SUBSTANTIAL MOTION, AND THE DEFENDANTS AT THIS POINT HAVE HAD SINCE JANUARY 9 TO LOOK AT THE FIRST AMENDED COMPLAINT. THAT GIVES THEM 90 DAYS TO TAKE A LOOK AT WHAT THEY'RE OPPOSING. WE WOULD REQUEST THAT SAME PERIOD OF TIME, 90 DAYS, TO OPPOSE.

THE COURT: I'M NOT GOING TO GIVE YOU 90 DAYS TO OPPOSE A MOTION TO DISMISS, COUNSEL. IF YOU WANT MORE TIME THAN THE TIME THE COURT IS ALLOTTING, WHICH WOULD BE MORE THAN THE NORMAL TWO WEEKS YOU WOULD GET, GIVEN THE NUMBER OF PEOPLE YOU HAVE SERVED, I'LL GIVE YOU SOME ADDITIONAL TIME. I'LL GIVE YOU 30 DAYS.

SO ONE MORE TIME. MARCH 28TH FOR THE OMNIBUS MOTION, APRIL 11TH FOR ANY SUPPLEMENTAL MOTIONS OR JOINDERS, AND THE COURT WILL GIVE THE PLAINTIFFS UNTIL MAY 16TH TO FILE AN OPPOSITION, AND MAY 30TH FOR REPLIES. AND, AGAIN, IT WILL BE ON THE PAPERS UNLESS I ASK FOR ORAL ARGUMENT.

MR. STUART: THANK YOU, YOUR HONOR.

MR. SANCHEZ: YOUR HONOR RICKY SANCHEZ, COUNTY COUNSEL. ARE WE TO UNDERSTAND THAT THE SUPPLEMENTAL ARGUMENTS ARE LIMITED TO 10 PAGES?

THE COURT: YES, PLEASE.

MR. AGLE: ON THE OMNIBUS BRIEF, A NUMBER OF ATTORNEYS ARE GOING TO BE ADDED TO IT. CAN WE GET AN EXTENDED PAGE LIMIT?

THE COURT: YES, THE OMNIBUS BRIEF, PLEASE, NOT MORE THAN 30 PAGES. I THINK THE POINTS ARE VERY DIRECTED HERE. GOD KNOWS VOLUME HAS BEEN THE TOUCHSTONE OF THIS CASE SO FAR. I DON'T NEED TO HEAR IT. BUT I WOULD LIKE THE OMNIBUS BRIEF TO BE 30 PAGES OR LESS. YOU DO NOT NEED TO REPEAT THE FACTS. YOU DON'T NEED TO GIVE ME ANY MORE HISTORY. I THINK WE NEED TO PICK UP WHERE WE LEFT OFF FROM THE FIRST ROUND OF MOTIONS TO DISMISS.

SIMILARLY WITH ANY OF THE SUPPLEMENTAL, MINIMIZE THE AMOUNT OF FACTUAL RECITATION AND JUST GIVE ME WHATEVER IS VERY SPECIFIC THAT REQUIRES THE COURT TO KNOW ABOUT WHATEVER THE LEGAL ISSUE IS THAT YOU'RE ARGUING FOR GROUNDS FOR GROUNDS FOR

MOTION TO DISMISS UNDER 12(B)(6). SO IS THAT WORKING NOW? DO WE HAVE DATES EVERYONE CAN WORK WITH?

MR. WEBB, DO YOU HAVE ANYTHING?

MR. WEBB: YES, IF I MAY. IF IT PLEASE THE COURT, WITH REGARD TO PLAINTIFFS' CONSOLIDATED COMBINED RESPONSE BRIEF WOULD THE SAME NUMBER MUCH PAGES, PAGE LIMITATION APPLY?

THE COURT: OH, DEAR GOD. YES, BUT YOUR RESPONSE TO THE OMNIBUS BRIEF CAN'T EXCEED 30 PAGES.

MR. WEBB: THANK YOU, YOUR HONOR.

THE COURT: I DON'T WANT A BUNCH OF ATTACHMENTS THAT SAY, GO SEE SOMETHING ELSE. I WANT A RESPONSE THAT'S 30 PAGES.

MR. WEBB: YES, YOUR HONOR.

THE COURT: OR LESS. WITH REGARD TO THE SUPPLEMENTAL BRIEFS, YOU'RE ALSO LIMITED TO 10 PAGES IN RESPONSE TO EACH SUPPLEMENTAL BRIEF THAT MIGHT BE FILED BY ANY OF THE DEFENDANTS. THIS IS STILL GOING BE A LOT OF PAPER.

MR. GREBING: CHARLES GREBING. SORRY TO BE PICKY. I REPRESENT SHARON BLANCHET. SHE WAS THE SUBJECT OF A PRIOR ACTION BROUGHT BY PLAINTIFF AGAINST HER WHICH WAS DISMISSED IN THE SUPERIOR COURT AFTER A HEARING. I HAVE PRESENTED IN MY ORIGINAL MOTION TO THE COURT ON HER BEHALF THE DOCUMENTS FOR THE COURT TO TAKE JUDICIAL NOTICE OF TO DEMONSTRATE THAT FACT. IF I CAN'T GO BEYOND THE 10, I NEED SOME PAGES TO BE ABLE TO GIVE YOU THOSE DOCUMENTS.

THE COURT: THAT'S FINE. EXHIBITS THAT THE COURT IS

BEING ASKED TO TAKE JUDICIAL NOTICE OF ARE NOT PART OF YOUR 10-PAGE LIMIT.

MR. GREBING: THANK YOU.

THE COURT: THE 10 PAGES IS FOR YOUR ARGUMENT. BUT WHAT I DON'T WANT TO SEE IS IF YOU GET TO YOUR 10 PAGES AND THEN YOU START DOING DECLARATIONS TO GET STUFF IN, IT'S LIKE, LET'S MAKE EXHIBITS --

MR. GREBING: UNDERSTOOD. THANK YOU.

THE COURT: -- THAT ARE REAL EXHIBITS. THANK YOU.

ALL RIGHT. ANYBODY ELSE GOT ANYTHING?

ALL RIGHT. WE WILL ISSUE THE SCHEDULE AGAIN. QUICKLY, ONE MORE TIME JUST TO RUN THROUGH IT:

OMNIBUS MOTION, MARCH 28TH; SUPPLEMENTAL MOTIONS, APRIL 11TH; PLAINTIFFS' OPPOSITIONS, MAY 16TH; REPLY BRIEFS MAY 30TH ON THE PAPERS. 30 PAGES FOR THE OMNIBUS MOTION, 30 PAGES FOR THE OPPOSITION AND THE OMNIBUS MOTION, 10 PAGES FOR THE SUPPLEMENTAL MOTIONS AND THE OPPOSITIONS TO THE SUPPLEMENTAL MOTIONS. AND I'M GOING TO LIMIT REPLIES TO 5 PAGES. YOU GET 10 PAGES FOR THE OMNIBUS MOTION AND 5 PAGES FOR REPLY TO THE SUPPLEMENTALS. YOU REALLY SHOULDN'T HAVE TO EXCEED THAT. THAT'S ALL.

MR. STUART: YOUR HONOR, I HAVE ONE OTHER MATTER, JUST HOUSEKEEPING CLEAN UP FROM THE DECEMBER 19TH HEARING, IF I MAY.

THE COURT: YES.

MR. STUART: AT THE DECEMBER 19TH HEARING, THE

PLAINTIFF HAD SCHEDULED A RULE 11 MOTION. THE COURT DID NOT ADDRESS THAT MOTION. IT INSTEAD ADDRESSED THE INITIAL BODY OF RULES OF MOTIONS TO DISMISS. THERE WAS A COUNTERMOTION FOR RULE 11 SANCTIONS THAT WAS BROUGHT BY THE DEFENDANTS, THE JUDICIAL DEFENDANTS, THAT THE COURT DID DENY. HOWEVER, THE COURT DID NOT ADDRESS THE PLAINTIFFS' MOTION FOR RULE 11 SANCTIONS. I BELIEVE THAT WAS ACTUALLY SCHEDULED SOME TIME IN JANUARY. IT SORT OF -- I THINK IT MAY HAVE SLID BETWEEN THE CRACKS WITH THE GRANTING OF THE MOTION, THE COURT'S TAKING OFF THE OTHER --

THE COURT: WHAT WAS THE BASIS OF THE MOTION?

MR. STUART: RULE 11?

THE COURT: YES.

MR. STUART: THAT THE MOTIONS TO DISMISS WERE FRIVOLOUS.

THE COURT: WELL, SINCE THE MOTION TO DISMISS WAS GRANTED, THEY WEREN'T FRIVOLOUS, SO THE MOTION IS DENIED.

MR. STUART: I WOULD GUESS THAT WOULD BE THE COURT'S RULING. HOWEVER JUST AS A MATTER FOR THE RECORD --

THE COURT: WELL, IT'S NOW RULED ON, ON THE RECORD. IT'S DENIED. THE MOTIONS WERE NOT FRIVOLOUS IN THAT THEY WERE GRANTED.

MR. STUART: MAY WE HAVE AN ORDER ON THAT, PLEASE?

THE COURT: I'M SORRY?

MR. STUART: MAY WE HAVE A WRITTEN ORDER ON THAT?

THE COURT: IT WILL BE IN A MINUTE ORDER OF THIS HEARING. YOUR MOTION IS DENIED FOR SANCTIONS IF THE BASIS OF THAT MOTION WAS THAT THE MOTIONS TO DISMISS WERE FRIVOLOUS. THE COURT GRANTED THE MOTION TO DISMISS. YOU WERE LUCKY YOU WEREN'T SANCTIONED FOR FILING A COMPLAINT REPRESENTING A CORPORATION WHEN YOU KNEW, AS A DISBARRED LAWYER, YOU HAD NO RIGHT TO DO THAT. AND SO YOU'RE REALLY PUSHING YOUR LUCK, MR. STUART. THAT MOTION IS DENIED. IT WILL BE REFLECTED IN THE MINUTE ORDER FOR TODAY IF IT'S STILL OUTSTANDING.

MR. STUART: THANK YOU, YOUR HONOR.

THE COURT: YES.

MR. GRAHAM: YOUR HONOR, MY NAME IS ADAM GRAHAM. I HAVE AN APPLICATION PENDING TO -- FOR CO-COUNSEL FOR PLAINTIFF, AND AS TO THE RECORD, THERE'S NOTHING BEEN DONE WITH IT. I WAS JUST WONDERING...

THE COURT: I DON'T KNOW WHAT YOU'RE TALKING ABOUT. YOU HAVE AN APPLICATION PENDING FOR WHAT?

MR. GRAHAM: I'M AN ATTORNEY IN LOS ANGELES. I AM A MEMBER OF THE CALIFORNIA BAR, AND I FILED TO BE ABLE TO APPEAR IN THIS CASE.

THE COURT: OKAY. IT HASN'T GOTTEN TO ME YET. I HAVEN'T SEEN IT.

MR. GRAHAM: OKAY.

THE COURT: ARE YOU APPLYING TO BE LOCAL COUNSEL?

MR. GRAHAM: I AM GOING TO BE CO-COUNSEL.

THE COURT: JUST COUNSEL OF RECORD?

MR. GRAHAM: CO-COUNSEL.

THE COURT: YOU REALLY TO WANT DO THAT?

MR. GRAHAM: YES, YOUR HONOR.

THE COURT: OKAY. FINE. WELL, WHEN IT GETS TO ME, I'LL TAKE CARE OF IT IN DUE COURSE. I HAVE NOT SEEN IT YET.

MR. SCHAFBUCH: I JUST WANT TO MAKE SURE I HEARD, BECAUSE I CAN'T HEAR EVERYTHING CLEARLY HERE. WAS IT THE SAN DIEGO BAR IS GOING TO BE ONE OF THE KEY CONTACT PEOPLE FOR HELPING FACILITATE THIS OMNIBUS?

THE COURT: YES. MR. LUCAS, WHO IS REPRESENTING THE CALIFORNIA BAR ASSOCIATION, HAS TAKEN ON THE LABORING OAR TO ORGANIZE THE OMNIBUS MOTION. EVERYONE, HOWEVER, IS INVITED TO WORK WITH HIM TO HAVE THEIR ISSUES, TO THE EXTENT THEY'RE GENERIC TO THE GROUP, BE INCLUDED IN THAT MOTION; SO YOU SHOULD CONTACT MR. LUCAS.

THE CLERK: YOUR HONOR, FOR THE RECORD, THE MINUTE ORDER OF THE DECEMBER 19TH DATE DOES REFLECT THAT THE MOTION FOR SANCTIONS WAS DENIED. IT ALSO CONSISTENTLY WITH THE ORDER THAT WAS ISSUED, DOCKET NO. 88, DATED DECEMBER 23RD, ALSO ADDRESSES THAT MOTION.

THE COURT: YES, IT DOES. COURT DENIES PLAINTIFFS' MOTION TO STRIKE. NO, THIS IS THE SUPERIOR COURT'S MOTION FOR SANCTIONS. HE SAID HE HAD A MOTION. HIS MOTION IS DENIED. IT'S DONE WITH.

IS THERE ANYBODY ELSE? ANYBODY? GOOD. ALL RIGHT. THANK YOU ALL VERY MUCH.

MR. LUCAS: THANK YOU, YOUR HONOR.

MR. STUART: THANK YOU, YOUR HONOR.

MR. SCHAFBUCH: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

(COURT IN RECESS AT 2:29 P.M.)

*** *END OF REQUESTED TRANSCRIPT* ***

CERTIFICATE OF OFFICIAL REPORTER

I, MAURALEE RAMIREZ, FEDERAL OFFICIAL COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 24THDAY OF MARCH 2014.

/S/ MAURALEE RAMIREZ_____
MAURALEE RAMIREZ, CSR NO. 11674, RPR
FEDERAL OFFICIAL COURT REPORTER

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Case No. 13-cv-1944 CAB (JLB)

Exhibits to Notice of Preliminary Injunction Appeal; Appeal of Final Judgment

Exhibit 6

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA COALITION FOR FAMILIES AND CHILDREN, LEXEVIA, PC, COLBERN C. STUART, Plaintiffs, vs. SAN DIEGO COUNTY BAR ASSOCIATION, et al., Defendants.	CASE NO. 13-cv-1944-CAB (BLM) ORDER [Doc. Nos. 4, 6]

This matter is before the court on plaintiff Colbern C. Stuart's *ex parte* petition for permission to file documents electronically in this action. [Doc. No. 6.] The court **GRANTS** this motion and instructs plaintiff to contact the Clerk of Court, (619)-557-5600, for further instructions.

Also before court is plaintiff's "*ex parte* application for leave to file and/or supplement motion for harassment restraining order." [Doc. No. 4.] Plaintiff filed this application after receiving a letter from Kristine Nesthus, Esq., counsel for the Superior Court of California, County of San Diego, informing plaintiff that he had improperly included the addresses of California judges in his complaint. The court has since ordered that plaintiff's complaint be sealed. [Doc. Nos. 5, 9.] Thus, plaintiff's *ex parte*

application [Doc. No. 4] is **DENIED AS MOOT**. If plaintiff desires to amend his complaint, he should consult the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: September 16, 2013

CATHY ANN BENCIVENGO
United States District Judge

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Case No. 13-cv-1944 CAB (JLB)

Exhibits to Notice of Preliminary Injunction Appeal; Appeal of Final Judgment

Exhibit 7

MINUTES OF THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Case Name: ***California Coalition for Families and Children, et al. v. San Diego County Bar Association, et al.*** Case No: **13cv1944 CAB (BLM)**

Hon. Cathy Ann Bencivengo Ct. Deputy Lori Hernandez Rptr. Tape:

Plaintiffs' complaint [Doc. No. 1] contains confidential information. Accordingly, the clerk of court is **DIRECTED TO SEAL** plaintiffs' complaint.

Date: August 26, 2013

Initials: DWG

California Coalition for Families and Children, et al. vs. San Diego County Bar Association, et al,

United States District Court, Southern District of California
Case No. 13-cv-1944 CAB (JLB)

Exhibits to Notice of Preliminary Injunction Appeal;
Appeal of Final Judgment

Exhibit 8

CLOSED,SEALDC

U.S. District Court
Southern District of California (San Diego)
CIVIL DOCKET FOR CASE #: 3:13-cv-01944-CAB-JLB

California Coalition for Families and Children. et al v. San Diego County Bar Association et al
Assigned to: Judge Cathy Ann Bencivengo
Referred to: Magistrate Judge Jill L. Burkhardt
Demand: $9,999,000
Cause: 18:1962 Racketeering (RICO) Act

Date Filed: 08/20/2013
Date Terminated: 07/09/2014
Jury Demand: Plaintiff
Nature of Suit: 470 Racketeer/Corrupt Organization
Jurisdiction: Federal Question

Plaintiff

California Coalition for Families and Children.
a Delaware Corporation

represented by **Eric W. Ching**
402 W. Broadway, Ste 2500
San Diego, CA 92101
510-449-1091
Fax: 619-615-0904
Email: eching100@gmail.com
TERMINATED: 05/09/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Dean Browning Webb
The Law Offices of Dean Browning Webb
515 East 39th Street
Vancouver, WA 98663
(503)629-2176
Fax: (503)629-9527
Email: ricoman1968@aol.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Lexevia, PC
a California Professional Corporation
TERMINATED: 01/09/2014

Plaintiff

Colbern C. Stuart
4891 Pacific Highway
Suite 102
San Diego, CA 92110

represented by **Colbern C Stuart , III**
4891 Pacific Highway
Suite 102
San Diego, CA 92110

02/26/2014	108	Minute Entry for proceedings held before Judge Cathy Ann Bencivengo: Case Management Conference held on 2/26/2014. Omnibus briefing schedule is set by the court. Further written order will follow. Pro se plaintiff requested the court to address 39 Motion for Sanctions against defendants filed by plaintiff Colbern Stuart. The motion is denied NUNC PRO TUNC to 12/19/2013. A motion hearing was held on December 19, 2013 and at that hearing the court dismissed the complaint in its entirety. As such, all pending motions were deemed withdrawn by the court (see docket entry 86).(Court Reporter/ECR Mauralee Ramirez). (Plaintiff Attorney Dean Webb and Colbern Stuart (pro se)). (Defendant Attorney Stephen Lucas, Daniel Agle, Gregory Goonan, Charles Grebing, Matthew Green, Rachael Mills, Lynn Feldner, Katherine Weadock, Timothy Pestotnik, Ricky Sanchez, Thomas Schafbuch (telephonic appearance), Kyle Van Dyke, Richard Wolfe, Mike Nardi, Steve Doyne and Charles Taylor). (no document attached) (lmh) (Entered: 02/26/2014)
02/28/2014	109	MOTION for Preliminary Injunction *Regarding Domestic Violence Restraining Orders: First Amend.* by California Coalition for Families and Children.. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration, # 3 Exhibit Part 1 (Inc. Decl.), # 4 Exhibit Part 2, # 5 Exhibit Part 3, # 6 Exhibit Part 4, # 7 Exhibit Part 5, # 8 Exhibit Part 6, # 9 Exhibit Part 7, # 10 Exhibit Part 8, # 11 Exhibit Part 9, # 12 Exhibit Part 10, # 13 Exhibit Part 11, # 14 Exhibit Part 12, # 15 Exhibit Part 13, # 16 Exhibit Part 14, # 17 Exhibit Part 15, # 18 Exhibit Part 16, # 19 Exhibit Part 17, # 20 Exhibit Part 18, # 21 Exhibit Part 19, # 22 Exhibit Part 20, # 23 Exhibit Part 21, # 24 Exhibit Part 22, # 25 Exhibit Part 23, # 26 Exhibit Part 24)(Stuart, Colbern) (yeb). (Entered: 02/28/2014)
03/04/2014	110	MINUTE ORDER: On February 28, 2014, Plaintiffs filed a motion for preliminary injunction. [Doc. No. 109 .] In light of the current scheduling order regarding the Defendants motion to dismiss Plaintiffs first amended complaint, [Doc. No. 105] the Court sets the following briefing schedule for plaintiffs motion for preliminary injunction [Doc. No. 109]: Responsive briefs will be filed no later than June 13, 2014; Plaintiffs may file a reply brief no later than June 20, 2014. The hearing on Plaintiffs motion for preliminary injunction [Doc. No. 109], currently set for April 22, 2014, is hereby continued to June 27, 2014 at 2:00 p.m. in Courtroom 4C.(yeb) (Entered: 03/04/2014)
03/05/2014	111	MOTION to File Documents Under Seal (Stuart, Colbern) (sjt). (Entered: 03/05/2014)
03/05/2014	112	(Filed as Sealed Document 114 on 3/6/2014) SEALED LODGED Proposed Document re: 111 MOTION to File Documents Under Seal. Document to be filed by Clerk if Motion to Seal is granted. (With attachments)(Stuart, Colbern)(sjt). (Main Document 112 replaced on 3/6/2014) (sjt). Modified to add filing date of lodgement on 3/6/2014 (sjt). (Entered: 03/05/2014)
03/06/2014	113	ORDER granting 111 Motion to File Documents Under Seal. Mr. Ching shall file his reply, if any, on or before March 12, 2014. Upon completion of the briefing, the Court will take the matter under submission pursuant to Civil Local Rule 7.1(d)(1) and no personal appearances will be required. Signed by Magistrate Judge Barbara Lynn Major on 3/6/2014. (sjt) (Entered: 03/06/2014)
03/11/2014	115	Notice of Document Discrepancies by Judge Cathy Ann Bencivengo Rejecting

Brief #2

DEERE APPELLEES' RESPONSE TO APPELLANT'S MOTION

Nos. 15-35675, 16-35220

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CERVANTES ORCHARDS & VINEYARDS, LLC,
a Washington limited liability corporation; *et al.*,

Appellants/Plaintiffs

v.

DEERE & COMPANY, a corporation; *et al.*,

Appellees/Defendants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON AT YAKIMA
No. 1:14-cv-03125-RMP

DEERE APPELLEES' RESPONSE TO APPELLANT'S MOTION

John S. Devlin III, WSBA No. 23988
Abraham K. Lorber, WSBA No. 40668
Attorneys for Appellees Deere & Company, Deere Credit, Inc., John Deere Capital Corporation, John Deere Financial, f.s.b. f/k/a FPC Financial, and Deere Credit Services, Inc.

LANE POWELL PC
1420 Fifth Avenue, Suite 4200
Seattle, Washington 98101-2338
Telephone: 206.223.7000
Facsimile: 206.223.7107

RESPONSE

Appellees Deere & Company, Deere Credit, Inc., John Deere Capital Corporation, John Deere Financial, f.s.b., f/k/a FPC Financial, and Deere Credit Services, Inc. (collectively, "Deere") respectfully submit this response to the Motion for Miscellaneous Relief (Dkt. 86-1) filed by Appellants ("the Cervantes").

The Cervantes ask the Court to withdraw or "strike" portions of its opinion in *California Coal. for Families and Children v San Diego Bar. Assoc.*, 657 Fed. App'x 675 (9th Cir. 2016), a separate, unrelated case.[1] In its answering merits brief, Deere cited *California Coal.* for the unremarkable proposition that a district court has discretion to limit the number of pages permitted for an amended complaint.[2] The Cervantes argue that, because the district court in the *California Coal* case did not actually impose a page limit, this Court exceeded its judicial power.[3]

To the extent the Cervantes question the authority or applicability of *California Coal.* to the facts of this case, they were free to raise that issue in their Reply Brief—and did.[4] Moreover, while it is clear that a panel of the Court may

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[1] Motion p. 1., Dkt 86-1.

[2] Deere's Answering Brief p. 12, Dkt. 62.

[3] *Id.* at p. 2

[4] Stafne Reply Brief p. 29, Dkt. 69.

withdraw its own opinion, and the Court as a whole can do so when rehearing a case *en banc*, Deere questions whether this Court's panel has authority to withdraw an opinion issued in a separate case by a different panel.

Even if this Court were to consider the Cervantes' motion on the merits, there is no basis to disturb *California Coal.* It is no outlier. This Court has held that Federal Rules of Civil Procedure 8 and 12 give the district court discretion to impose page limits on amended complaints. *See Lamon v. Ellis*, 584 Fed. App'x 514 (9th Cir. 2014); *Kelley v. Rambus, Inc.*, 384 Fed. App'x 570 (9th Cir. 2010). Other Circuit Courts agree. *See Barnes v. Tumlinson,* 597 Fed. App'x 798 (5th Cir.), *cert. denied*, 136 S. Ct. 485 (2015); *McFarlin v. Douglas Cty.*, 587 Fed. App'x 593 (11th Cir. 2014); *Cesarani v. Graham*, 25 F.3d 1044 (5th Cir. 1994).

The Cervantes' motion should be denied and, for the reasons set forth in Deere's Answering Brief, the judgment of the district court should be affirmed.

RESPECTFULLY SUBMITTED this 23rd day of January, 2017.

LANE POWELL PC

By *s/ Abraham K. Lorber*
John S. Devlin III
WSBA No. 23988
Abraham K. Lorber
WSBA No. 40668
Attorneys for Appellees Deere & Company, Deere Credit, Inc., John Deere Capital Corporation, John Deere Financial, f.s.b. f/k/a FPC Financial, and Deere Credit Services, Inc.

CERTIFICATE OF SERVICE

I, Peter C. Elton, hereby certify that on the 23rd day of January, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated this 23rd day of January, 2017.

s/ Peter C. Elton
Peter C. Elton

Brief #3

SCOTT E. STAFNE'S REPLY TO RESPONSE

TO MOTION REGARDING CALIFORNIA

COALITION

15-35675, 16-35220

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

15-35675

CERVANTES ORCHARDS & VINEYARDS, LLC, a Washington limited liability corporation; CERVANTES NURSERIES, LLC, a Washington limited liability corporation; CERVANTES PACKING & STORAGE, LLC, a Washington limited liability corporation; MANCHEGO REAL, LLC, a Washington limited liability corporation; JOSE G. CERVANTES, individually and upon behalf of their community property marital estate; CYNTHIA C. CERVANTES, individually and upon behalf of their community property marital estate,

Plaintiffs-Appellants,

—v.—

DEERE & COMPANY, a corporation; DEERE CREDIT, INC., a corporation; JOHN DEERE CAPITAL CORPORATION, a corporation; JOHN DEERE FINANCIAL, a corporation, FKA FPC FINANCIAL; DEERE CREDIT SERVICES, INC., a corporation; AMERICAN WEST BANK, a corporation; T-16 MANAGEMENT CO, LTD., a Washington corporation; GARY JOHNSON, individually and upon behalf of their community property marital estate; LINDA JOHNSON, individually and upon behalf of their community property marital estate; ROBERT WYLES, individually and upon behalf of their community property marital estate; MICHELLE WYLES, individually and upon behalf of their community property marital estate; NW MANAGEMENT REALTY SERVICES, INC., a Washington corporation, AKA Northwest Farm Management Company; SKBHC HOLDINGS LLC, a Washington limited liability corporation,

Defendants-Appellees.

(*Caption continued on inside cover*)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

SCOTT E. STAFNE'S REPLY TO RESPONSE TO MOTION REGARDING CALIFORNIA COALITION

SCOTT E. STAFNE, ESQ.
STAFNE LAW FIRM
239 North Olympic Avenue
Arlington, Washington 98223
(360) 403-8700 Fax (360) 386-4005
Attorneys for Plaintiffs-Appellants

16-35220

CERVANTES ORCHARDS & VINEYARDS, LLC, a Washington limited liability corporation; CERVANTES NURSERIES, LLC, a Washington limited liability corporation; CERVANTES PACKING & STORAGE, LLC, a Washington limited liability corporation; MANCHEGO REAL, LLC, a Washington limited liability corporation; JOSE G. CERVANTES, individually and upon behalf of their community property marital estate; CYNTHIA C. CERVANTES, individually and upon behalf of their community property marital estate,

Plaintiffs-Appellants,

DEAN BROWNING WEBB; SCOTT ERIK STAFNE,

Appellants,

—v.—

DEERE & COMPANY, a corporation; DEERE CREDIT, INC., a corporation; JOHN DEERE CAPITAL CORPORATION, a corporation; JOHN DEERE FINANCIAL, a corporation, FKA FPC FINANCIAL; DEERE CREDIT SERVICES, INC., a corporation; AMERICAN WEST BANK, a corporation; T-16 MANAGEMENT CO, LTD., a Washington corporation; GARY JOHNSON, individually and upon behalf of their community property marital estate; LINDA JOHNSON, individually and upon behalf of their community property marital estate; ROBERT WYLES, individually and upon behalf of their community property marital estate; MICHELLE WYLES, individually and upon behalf of their community property marital estate; NW MANAGEMENT REALTY SERVICES, INC., a Washington corporation, AKA Northwest Farm Management Company; SKBHC HOLDINGS LLC, a Washington limited liability corporation,

Defendants-Appellees.

Two defendants/appellees have joined in Deere's opposition (DO) to Stafne's motion to withdraw *California Coal. for Families and Children v San Diego Bar Ass'n*, 657 Fed. App'x 675 (9th Cir. 2016). This reply will first demonstrate why each of Deere's three arguments to Stafne's motion have no merit. Stafne will then demonstrate why this Court has no discretion to violate the United States Constitution.

Deere first suggests Stafne should have made his constitutional argument that this Court, i.e. the Ninth Circuit Court of Appeals, had no judicial power under the Constitution to announce *Calif. Coal.* as part of his merits briefing. DO 1. But Deere is incorrect. Stafne properly filed a motion because he was seeking relief "pursuant to Art. III, §2, the Separation of Powers Doctrine, the checks and balances relating to the exercise of judicial power and 28 U.S.C. § 1291 & 1292" to have this Court withdraw a decision neither it, nor a panel thereof, had the Constitutional authority to adjudicate. *See* Federal Rules of Appellate Procedure 27(a) which states: "an application for an order or other relief is made by motion…"

Deere next argues cryptically, without citation to any case or other legal authority, that the panel of judges who consider this appeal may not have

authority to withdraw the unpublished decision of the panel of judges which decided *Calif. Coal.* DM, 1-2. In this regard, Deere warns:

> Moreover, while it is clear that a panel of the Court may withdraw its own opinion, and the Court as a whole can do so when rehearing a case *en banc*, Deere questions whether this Court's panel has authority to withdraw an opinion in a separate case by a different panel."

Id.

Stafne disagrees. It is black letter law that no court within the judicial department can exercise judicial power except that which is conferred by the Constitution. Deere does not dispute that this Court violated the Constitution for the reasons stated in Stafne's motion. Accordingly, it is Stafne's position that this Court as an intermediate federal Circuit Court of Appeals has a duty to withdraw this unpublished decision. *See infra*.

Deere's failure to demonstrate why this Court, as a whole, does not have a duty to abdicate legislative decisions made by a panel of this Court is troubling. Nonetheless, as a conscientious officer of this Court, Stafne will explain the obligations of panels of this Court vis a vis one another.

In the Ninth Circuit, panels of this Court must follow Ninth Circuit precedent. As this Court recently observed in *Mohamed v. Uber Techs., Inc.*, 836 F.3d 1102, (9th Cir. 2016): "Binding authority must be followed unless and

until overruled by a body competent to do so." *Id.,* at 1111 citing *Hart v. Massanari*, 266 F.3d 1155, 1170 (9th Cir. 2001); and *Miller v. Gammie*, 335 F.3d 889, 899–900 (9th Cir. 2003) (en banc). *Miller* identifies the limited circumstances when a three-judge panel of the Ninth Circuit is not bound by Circuit precedent[1].

The limited circumstances where one panel of this Court can change precedent understandably do not include those instances where a panel of this Court makes legislative rulings because such decisions are beyond the authority of courts to make. Similarly, it is doubtful these panel-conflict rules apply to another panel's unpublished decision, like *Calif. Coal*, which is not precedent. *See* U.S. Ct. App. 9th Cir. Rule 36-3(a)[2].

Finally Deere argues:

> [e]ven if this Court were to consider Cervantes' motion on the merits there is no basis to disturb *Calif. Coal.* It is no outlier[3]. This

[1] This Court recently reaffirmed the basic tenets of *Grammie*, but fleshed in nuances in *Lair v. Bullock*, 798 F.3d 736, 745 (9th Cir. 2015).

[2] Circuit Rule 36-3(a) provides in pertinent part:

> **Not Precedent.** Unpublished dispositions and orders of this Court are not precedent…

[3] Dictionary.com (last accessed 1/29/2017) defines the word "outlier" as a noun which means:

> Court has held that Federal Rules of Civil Procedure 8 and 12 give the district court discretion to impose page limits on amended complaints.

DO, 2.

In support of its position that *Calif. Coal.* is no "outlier" Deere cites four unpublished opinions. Stafne asserts that Deere's inability to cite any precedent for the proposition it asserts demonstrates *Calif. Coal.* is an outlier[4]. See note 2. But even if *Calif. Coal.* is not an outlier and even if the panel had voted to publish that decision and it was precedent, this Court could not allow this decision to stand because it was entered in obvious violation of the separation of powers and this Court had no jurisdiction to affirm a decision the district court never made. *See* Stafne's motion.

Deere's refusal to defend the constitutionality of the legislative rule set forth in *Calif. Coal.* that a district court has discretion to limit complaints to 30

> something that lies outside the main body or group that it is a part of, as a cow far from the rest of the herd, or a distant island belonging to a cluster of islands:
> *The small factory was an outlier, and unproductive, so the corporation sold it off to private owners who were able to make it profitable.*

[4] None of the unpublished decisions Deere cites hold that a district court is free to impose a page limit under Rule 8 or 12 without first considering that amount of pages which will be necessary to prepare a well pleaded complaint sufficient to provide all parties basic due.

pages, no matter what the circumstances, is not a course of action this Court can take. This is because "(i)t is exclusively the province and duty of the judicial department to say what the law is." *United States v. Nixon*, 418 U.S. 683, 703 (1974) quoting *Marbury v. Madison*, 1 Cranch, 137, 2 L.Ed. 60 (1803).

There is plenty of precedent that the other branches of government, i.e. the Executive and Congress, cannot act in violation of the separation of powers and contrary to its checks and balances. For example, in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) the judicial department was asked to decide whether the President was acting within his constitutional power when he issued an order directing the Secretary of Commerce seize most of the Nation's steel mills in order to prevent them from being shut down as a consequence of labor unrest. The Supreme Court observed: "The President's power, if any, to issue the order must stem from either an act of Congress or from the Constitution." *Youngstown Sheet & Tube Co.*, 343 U.S. at 585. Finding the President had no statutory or constitutional authority to take steel mills, notwithstanding their importance in providing for the national defense, the Court decided:

> The Founders of this Nation entrusted the law making power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for

> freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand.

Youngstown Sheet & Tube Co., 343 U.S. at 589.

The Court's ruling in *Youngstown* that the executive cannot exercise legislative power the Constitution gives to Congress, applies also to the judicial branch of government.

I.N.S. v. Chadha, 462 U.S. 919 (1983), ironically affirming a decision of this Court, held a section of the Immigration and Nationality Act authorizing one House of Congress, by resolution, to invalidate a decision of Executive Branch to allow a particular deportable alien to remain in the United States violated the separation of powers. The Court reasoned that because the action by the House in vetoing the executive's action constituted the exercise of legislative power it was subject to the constitutional requirements of passage by a majority of both Houses and presentation to the President. *I.N.S. v. Chadha*, 462 U.S. at 952–58.

In voiding the House of Representative unilateral veto of the executive department's decision allowing Chahda to say in the U.S., Chief Justice Burger concluded:

> The choices we discern as having been made in the Constitutional Convention impose burdens on governmental processes that often seem clumsy, inefficient, even unworkable, but those hard choices

> were consciously made by men who had lived under a form of government that permitted arbitrary governmental acts to go unchecked. There is no support in the Constitution or decisions of this Court for the proposition that the cumbersomeness and delays often encountered in complying with explicit Constitutional standards may be avoided, either by the Congress or by the President. See *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 72 S.Ct. 863, 96 L.Ed. 1153 (1952). With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution.

I.N.S. v. Chadha, 462 U.S. at 959.

Just as Congress was required to follow the checks and balances necessary to exercise its legislative power, the principles established in *Chadha* require this Court to follow those checks and balances necessary for this Court to exercise judicial power.

So the question here is do the same rules which apply to the President and the Congress also apply to this intermediate Court of Appeals? With all due respect the answer must be "yes".

Regardless of whether it was a panel of this Court or a unanimous decision signed off on by every judge of this Circuit court, judges do not have the constitutional authority to legislate or exercise anything other than judicial

power. Nor can this Court (or the President or Congress) make decisions outside those the Constitution allows. *See* Stafne's opening motion.

Assuming the worst about this Court's *Calif. Coal.* decision, it constituted an abuse of power in creating a legislative rule intended to be used against specific attorneys who practice law on behalf of ordinary people against wealthy corporations and elites. Even giving this Court the benefit of the doubt, that its motives were not malevolent, its decision in *Calif. Coal.* is incomprehensible. How does a court of appeals affirm a decision which was not made by a lower court?

Moreover, it is problematic this Court would chose to so blatantly abuse its judicial power in *Calif. Coal.*, an appeal fraught with important family law abuse issues that deserved to be heard fairly and in the context of a proper exercise of judicial power by this Court. *Cf. Mann v. Cty. of San Diego*, 147 F. Supp. 3d 1066, 1076 (S.D. Cal. 2015), *on reconsideration in part,* 3:11-CV-0708-GPC-BGS, 2016 WL 3365746 (S.D. Cal. June 17, 2016); *Swartwood v. County of San Diego*, 84 F.Supp.3d 1093, 1116–19 (S.D.Cal.2014); and *Parkes v. County of San Diego*, 345 F.Supp.2d 1071, 1092–95 (S.D.Cal.2004).

Conclusion.

Deere does not challenge that this Court's decision in *Calif. Coal.* was entered in violation of its constitutional authority. Accordingly, this Court should treat its usurpation of the power of the other branches of government in the same way it has traditionally treated separation of powers of other branches of government, i.e. voiding them.

Dated this 30th day of January, 2017 at Arlington, Washington.

BY: s/ Scott E. Stafne

Scott Erik Stafne, Esq.

STAFNE LAW FIRM
239 N. Olympic Avenue
Arlington, WA 98223
(360) 403-8700

CERTIFICATE OF COMPLIANCE

Pursuant to the rules of the 9th Circuit Court of Appeals this motion complies with the length limit of FRAP 27 and has 1731 words excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

BY: s/ Scott E. Stafne

Scott Erik Stafne, Esq.

STAFNE LAW FIRM
239 N. Olympic Avenue
Arlington, WA 98223
(360) 403-8700

CERTIFICATE OF SERVICE

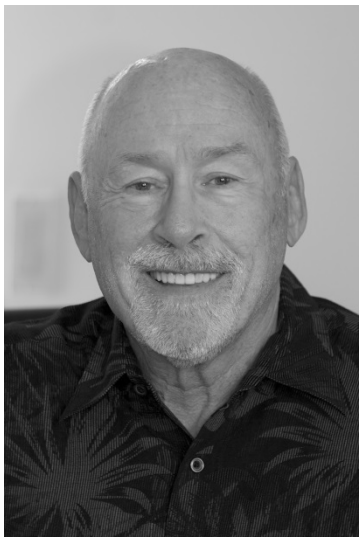
I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on January 30, 2017.

BY: s/ Scott E. Stafne

Scott Erik Stafne, Esq.

STAFNE LAW FIRM
239 N. Olympic Avenue
Arlington, WA 98223
(360) 403-8700

Scott Stafne



Scott Stafne is an attorney based in Arlington, Washington. Scott Erik Stafne is a third-generation lawyer. Mr. Stafne cares about the law, its process and its evolution.

Mr. Stafne graduated summa cum laude from Depauw University and was awarded the Taylor Scholarship Award. Stafne graduated fourth in his class from the University of Iowa Law School in 1974, and was the recipient of the Phi Delta Phi scholarship award. He holds a Masters of Law degree in Law and Marine Affairs from the University of Washington. He is a member of Phi Eta Sigma, Phi Beta Kappa and the Order of the Coif.

Mr. Stafne has litigated and lobbied on behalf of many clients and causes throughout his long career. For the most part, he has represented people; not corporations. He has been described as “the people’s lawyer”.

Stafne is not without his critics. Washington’s attorney general Bob Ferguson has filed a Civil Investigative Dispute against him and his former law firm, Stafne Trumbull PLLC, to which the firm responed. A federal judge has also threatened Stafne with sanctions for, among other things, filing a complaint which alleges that John Deere companies likely discriminated against his clients based on national origin. They are Hispanic. Many of the applicable pleadings related to this ongoing dispute can be reviewed at his academia.edu page

While much of Stafne's practice has been devoted to litigation, he has on many occasions been involved in more full spectrum advocacy. Full spectrum advocacy involves an all out assault against an adversary. In other words, full spectrum advocacy is not limited to legal representation before judges and courts, but involves engaging society morally, socially, politically, spiritually, and from a common sense perspective to facilitate a change from irresponsible or immoral or evil practices.

Stafne's experience in representing American fisherman and processing interests after the passage of the Fishery Conservation and Management Act in 1976 is an example of his previous utilization of full spectrum advocacy. As part of his representation of American fishermen Stafne advocated for his clients before Congress, the state legislature, state and federal agencies.

He was appointed as an industry advisor on behalf of American fishermen to both the Pacific and North Pacific Coast Fishery Councils' Industry Advisory Boards as well as an observer to the bilateral treaty negations between the United States and Canada with regard to the conservation and management of salmon.

Instead of just legal briefs, Stafne also authored several white papers with regard to the sablefish, salmon, and off-shore processing. (He represented the first US-Soviet joint venture company in obtaining its license from the U.S. State Department and other government agencies to fish off the Alaska Coast.)

His full spectrum advocacy of the troll industry caused Stafne to be called to testify before a U.S. Senate subcommittee with regard to the impact of litigation he brought challenging an executive agreement between the US and Canada to allow Canadian trollers to violate an American statute enacted to protect his clients.

More recently, Stafne and his former partner, Josh Trumbull, engaged in full spectrum advocacy when they pointedly criticised a Washington Senator who proposed legislation to make it easier for the banks to foreclose on people's homes. Senate Bill 5968, once exposed to the light of day, was unable to make any real progress towards enactment. (Hopefully, the legislator who proposed the bill, Senator Stephen Hobbes, will be shown out the door as well of the Senate as well.)

Although Stafne Trumbull PLLC has now closed, their fight for justice for the people of America against government-corporate interests goes on. No matter how hard evil seeks to impose its darkness, it can never win.