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Admitted *Pro Hac Vice*
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Counsel for the Plaintiffs
6

7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA

9 VERONICA BRILL, *et al.*

10 Plaintiffs,

11 vs.

12 MICHAEL L. POSTLE, *et al.*

13 Defendants.
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15
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Case No. 2:19-cv-02027-WBS-AC

The Honorable William B. Shubb

PLAINTIFFS' NOTICE OF MOTION FOR
SANCTIONS

Date: June 1, 2020

Time: 1:30 pm

Dept: Courtroom 5

Complaint Filed: October 8, 2019

17 Please take notice that at 1:30 pm on June 1, 2020, or as soon thereafter as the matter
18 may be heard in Courtroom 5 of the Robert T. Matsui United States Courthouse, located at 501
19 I Street, Sacramento, California 95814, pursuant to Federal Rule of Civil Procedure 11, the
20 plaintiffs herein will, and hereby do, move for the imposition of sanctions on defendant Michael
21 L. Postle. The motion and incorporated memorandum of law supporting the same are being filed
22 on the pages immediately following this notice, and the plaintiffs expressly rely upon the same,
23 together with the entire record herein, and any reply or supplemental brief that may hereafter be
24 filed.
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3 Dated this 28th day of April, 2020.
4

5 Respectfully Submitted,
6

7 **THE VERSTANDIG LAW FIRM, LLC**

8 By: /s/ Maurice B. VerStandig
9 Maurice B. VerStandig (*pro hac vice*)
10 1452 W. Horizon Ridge Pkwy, #665
11 Henderson, Nevada 89012
12 Telephone: (301) 444-4600
13 Facsimile: (301) 576-6885
14 mac@mbvesq.com
15 *Counsel for the Plaintiffs*

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CERTIFICATE OF SERVICE

I further certify that on this 28th day of April, 2020, I caused a true and correct copy of the foregoing to be served upon the following persons via this Honorable Court's CM/ECF system:

Michael L. Lipman, Esq.
Karen Lehmann Alexander, Esq.
Duane Morris LLP
750 B Street
Suite 2900
San Diego, CA 92101
Counsel for King's Casino, LLC

Heather U. Guerena, Esq.
Heather U. Guerena, Attorney at Law
7727 Herschel Avenue
La Jolla, CA 92037
Counsel for King's Casino, LLC

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Mark Mao, Esq.
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44 Montgomery Street, 41st Floor
San Francisco, CA 94104
Counsel for King's Casino, LLC

Richard Pachter, Esq.
Law Offices of Richard Pachter
555 University Avenue, Suite 200
Sacramento, CA 95825
Counsel for Justin Kuraitis

I further certify that on this 28th day of April, 2020, I have caused a true and accurate copy of the foregoing to be served on the following person via United States Mail, postage prepaid:

Michael L. Postle
3724 Deerwalk Way
Antelope, California 95843

/s/ Maurice B. VerStandig
Maurice B. VerStandig

1 Maurice B. VerStandig, Esq.
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5 E-mail: mac@mbvesq.com
Counsel for the Plaintiffs
6

7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA

9 VERONICA BRILL, *et al.*

10 Plaintiffs,

11 vs.

12 MICHAEL L. POSTLE, *et al.*

13 Defendants.
14

Case No. 2:19-cv-02027-WBS-AC

The Honorable William B. Shubb

MOTION FOR SANCTIONS AGAINST
MICHAEL L. POSTLE

15 Come now Veronica Brill (“Ms. Brill”), Kasey Lyn Mills (“Ms. Mills”); Marc Goone
16 (“Mr. Goone”), Navroop Shergill (“Mr. Shergill”); Jason Scott (“Mr. Scott”); Azaan Nagra
17 (“Mr. Nagra”); Eli James (“Mr. James”); Phuong Phan (“Mr. Phan”); Jeffrey Sluzinski (“Mr.
18 Sluzinski”), Harlan Karnofsky (“Mr. Karnofsky”); Nathan Pelkey (“Mr. Pelkey”); Matthew
19 Allen Holtzclaw (“Mr. Holtzclaw”); Jon Turovitz (“Mr. Turovitz”); Robert Young (“Mr.
20 Young”); Blake Alexander Kraft (“Mr. Kraft”); Jaman Yonn Burton (“Mr. Burton”); Michael
21 Rojas (“Mr. Rojas”); Hawnlay Swen (“Mr. Swen”); Thomas Morris III (“Mr. Morris”); Paul
22 Lopez (“Mr. Lopez”); Rolando Cao (“Mr. Cao”); Benjamin Jackson (“Mr. Jackson”); Hung
23 Sam (“Mr. Sam”); Corey Caspers (“Mr. Caspers”); Adam Duong (“Mr. Duong”); Dustin
24 McCarthy (“Mr. McCarthy”); Chou Vince Xiong (“Mr. Xiong”); Brian Olson (“Mr. Olson”);
25
26

1 Cameron Smith (“Mr. Smith”); Jordan Diamond (“Mr. Diamond”); Aronn Solis (“Mr. Solis”);
2 Alisha Daniels-Duckworth (“Ms. Daniels-Duckworth”); Christian Soto Vasquez (“Mr.
3 Vasquez”); Andrew Hernandez (“Mr. Hernandez”); Darrell Steed (“Mr. Steed”); Arish S. Nat
4 (“Mr. Nat”); Kyle Kitagawa (“Mr. Kitagawa”); Brian Michael Raasch (“Mr. Raasch”); Zeev
5 Malkin (“Mr. Malkin”); David Crittenton (“Mr. Crittenton”); Patrick Laffey (“Mr. Laffey”);
6 Paras Singh (“Mr. Singh”); Firas Bouri (“Mr. Bouri”); Idris M. Yonisi (“Mr. Yonisi”); Joshua
7 Whitesell (“Mr. Whitesell”); David Duarte (“Mr. Duarte”); Harun Unai Begic (“Mr. Begic”);
8 Brad Kraft (“Mr. Kraft”); Taylor Carroll (“Mr. Carroll”); Elias AbouFares (“Mr. AbouFares”);
9 Tyler Denson (“Mr. Denson”); Andrew Lok (“Mr. Lok”); Jake Rosenstiel (“Mr. Rosenstiel”);
10 Anthony Ajlouny (“Mr. Ajlouny”); Hector Martin (“Mr. Martin”); Dale Menghe (“Mr.
11 Menghe”); Scott Schlein (“Mr. Schlein”); Auguste Shastry (“Mr. Shastry”); Nicholas Colvin
12 (“Mr. Colvin”); Jason Markwith (“Mr. Markwith”); Brian Watson (“Mr. Watson”); Shane
13 Gonzales (“Mr. Gonzalez”); Katherine Stahl (“Ms. Stahl”); Mike Nelson (“Mr. Nelson”);
14 Brandon Steadman (“Mr. Steadman”); Bryant Miller (“Mr. Miller”); Hong Moon (“Mr.
15 Moon”); Matthew Gouge (“Mr. Gouge”); Nicholaus Wooderson (“Mr. Wooderson”); Carlos
16 Welch (“Mr. Welch”); Ariel Reid (“Mr. Reid”); Dan Mayer (“Mr. Mayer”); Anthony Giglini
17 (“Mr. Giglini”); Ryan Jaconetti (“Mr. Jaconetti”); Ariel Cris Manipula (“Mr. Manipula”);
18 Trenton Sidener (“Mr. Sidener”); James John O’Connor (“Mr. O’Connor”); Patrick Vang (“Mr.
19 Vang”); Marcus Davis (“Mr. Davis”); Adam Cohen (“Mr. Cohen”); Derick Cole (“Mr. Cole”);
20 Aaron McCormick (“Mr. McCormick”); Brennen Alexander Cook (“Mr. Cook”); Michael
21 Phonesavnh Rasphone (“Mr. Rasphone”); Benjamin Teng (“Mr. Teng”); Scott Sorenson (“Mr.
22 Sorenson”); Anthony Hugenberg (“Mr. Hugenberg”); and Billy Joe Messimer (“Mr.
23 Messimer”) (collectively, the “Plaintiffs,” with each sometimes being known as a “Plaintiff”),
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1 by and through counsel, pursuant to Federal Rule of Civil Procedure 11 and Local Rule 182,
2 and move this Honorable Court to impose sanctions upon Michael L. Postle (“Mr. Postle” or the
3 “Defendant”),¹ and in support thereof state as follows:

4 **I. Introduction**

5 This case concerns Mr. Postle’s representations he was honestly playing games of poker
6 on his own when, in fact, he was cheating at such games with the help of one or more
7 unidentified confederates. Unfortunately, it now appears his approach to this litigation is
8 identical, as he purports to be a *pro se* litigant but is, in fact, having his court papers
9 ghostwritten by one or more unidentified attorneys.
10

11 As discussed in greater detail *infra*, Mr. Postle is actively violating the Federal Rules of
12 Civil Procedure and governing case law, while his ghostwriter(s) violate the Local Rules of this
13 Honorable Court, through Mr. Postle’s signing and filing of documents he has not himself
14 authored. Circumstantial evidence suggests Mr. Postle to be appearing herein through the efforts
15 of William Portanova (“Mr. Portanova”), a well-respected local attorney. Regardless, though, of
16 whether Mr. Portanova is Mr. Postle’s ghostwriter or some other person or combination of
17 persons are tending to Mr. Postle’s legal work, it is apparent Mr. Postle is being aided by an
18 undisclosed attorney.
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25 ¹ There are other defendants to this action. They are neither defined nor referenced herein as
26 sanctions are *not* sought against these other defendants. The sanctionable conduct complained of
herein is idiosyncratic to Mr. Postle.

1 **II. Standard**

2 While the imposition of sanctions under Federal Rule of Civil Procedure 11 are to be
3 done sparingly and only where circumstances so warrant, this Honorable Court has made clear
4 the standard that governs such orders:

5 Rule 11 provides that the district court may impose sanctions upon attorneys or parties
6 “[i]f, after notice and a reasonable opportunity to respond, the court determines that
7 subdivision (b) has been violated...” As an initial inquiry, the district court must
8 determine whether a violation of Rule 11(b) has occurred. If a violation is found, the
9 court may in its discretion decide to impose sanctions. Sanctions are limited to what is
10 “sufficient to deter repetition of such conduct or comparable conduct by others similarly
11 situated.” The court has broad discretion to choose the appropriate type of sanction to
12 achieve the Rule's goal of deterring future violations.

13 *United States v. Thompson*, 2004 WL 721148, at *1 (E.D. Cal. 2004) (quoting Fed. R. Civ. P.
14 11; citing *Warren v. Guelker*, 29 F.3d 1386, 1388 (9th Cir.1994); 2 Wm. J. Moore, Federal
15 Practice § 11.23(2) (3d ed.2003); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 633 (1962)).

16 **III. Salient Facts**

17 On March 25, 2020, Mr. Postle made his first substantive filing herein, coming in the
18 form of a motion to dismiss the then-current complaint in this case (the “Motion to Dismiss”).
19 *See* Motion to Dismiss, DE #38.² Without addressing the merits, *vel non*, of the Motion to
20 Dismiss, it is a cleanly-drafted document, replete with citations to controlling law, which
21 presents every such citation in seemingly perfect Bluebook format. *Id.*, *passim*. The Motion to
22 Dismiss is signed solely by Mr. Postle, and indicates he is appearing “In pro per.” *Id.* at 1:3-4.
23 No attorney’s signature or name appears anywhere in or upon the Motion to Dismiss, save for in

24 _____
25 ² Mr. Postle previously appeared herein through his execution of stipulations concerning the
26 extension of certain deadlines. For the avoidance of doubt, each of those joint stipulations was
drafted by undersigned counsel and it is not alleged that any of them give rise to the imposition
of sanctions.

1 the certificate of service. *Id.*, *passim*. The certificate of service is signed by Mr. Portanova. *Id.* at
2 p. 15.

3 The day prior to the Motion to Dismiss being filed, Mr. Portanova e-mailed copies to
4 counsel for the other parties herein. *See* E-mail of William Portanova, attached hereto as Exhibit
5 A. Mr. Portanova has been previously identified in the press as representing Mr. Postle, albeit
6 not in specific connection with this case. *See, e.g.*, Sam Stanton, *Poker prodigy or a cheat?*
7 *Lawsuit seeks \$30 million in Stones Gambling Hall scandal*, SACRAMENTO BEE, Oct. 11, 2019,
8 <https://www.sacbee.com/news/local/article236034643.html> (“Postle has not responded to
9 requests for comment from The Sacramento Bee since last week, but his Sacramento attorney,
10 William Portanova, said Postle denies any wrongdoing.”).

11
12 There are significant similarities between Mr. Postle’s Motion to Dismiss in this case
13 and a motion seeking dismissal filed by Mr. Portanova in an unrelated case, in this Honorable
14 Court, two weeks prior. The Motion to Dismiss in this case begins, “Plaintiffs’ Complaint for
15 Damages (‘Complaint’) should be dismissed in its entirety because it fails either to state a claim
16 upon which relief can be granted or to plead fraud with particularity.” Motion to Dismiss, DE
17 #38, at p. 3. The motion seeking dismissal in Mr. Portanova’s other case begins, “Plaintiff’s
18 Complaint for Damages (‘Complaint’) should be dismissed in its entirety because it fails both to
19 state a claim upon which relief can be granted or to plead fraud with particularity.” *See United*
20 *States v. Hughes*, Case No. 2:20-cv-00321-JAM-KJN (E.D. Cal. 2020) (the “Hughes Case”), at
21 DE #6, p. 3. A courtesy copy of the motion in the Hughes Case is attached hereto as Exhibit B.
22
23

24 The similarities do not stop there; the “Standards Governing Motions to Dismiss”
25 section in the Motion to Dismiss appears to be verbatim identical to language from the motion
26

1 seeking dismissal of the Hughes Case. *Compare* Motion to Dismiss, DE #38, at pp. 4-5; Motion
2 to Dismiss in Hughes Case, attached hereto as Exhibit B, at pp. 4-6.

3 Further, Mr. Postle’s filing makes a reference to “undersigned counsel” despite there
4 being no such undersigned counsel. Motion to Dismiss, DE #38, at 2:2-4 (“Defendant Michael
5 Postle, by and through his undersigned counsel, will and hereby does move this Court...”). The
6 same reference to “undersigned counsel” appears, verbatim, in the motion filed by Mr.
7 Portanova in the Hughes Case. *See* Motion to Dismiss in Hughes Case, attached hereto as
8 Exhibit B, at 1:20-21 (obviously changing Mr. Postle’s name for that of the defendant in the
9 Hughes Case).

10
11 Upon information and belief, Mr. Postle is without a law school education. *See*
12 Declaration of Veronica Brill, attached hereto as Exhibit C, at ¶ 4. He is not listed as being a
13 member of the State Bar of California. *See* State Bar Search Results, attached hereto as Exhibit
14 D.

15
16 While it is certainly common for *pro se* litigants to make legal arguments, and to use
17 resources like Google Scholar to undertake legal research, their citations are rarely as precise as
18 those of Mr. Postle. Similarly, their papers are not normally adorned with certificates of service
19 signed by legal counsel.³

20 **IV. Argument: The Imposition of Sanctions is Appropriate**

21 Sanctions should be imposed herein because Mr. Postle’s utilization of one or more
22 attorney ghostwriter(s) contravenes the rules of this Honorable Court, deprives all involved of
23

24
25 ³ The Plaintiffs are without formal citations for these two assertions, but believe them to be
26 within the general ken of knowledge of most litigation attorneys. Further, it is strongly suspected
these two relatively uncontroversial observations are likely to mirror this Honorable Court’s
anecdotal experience.

1 the opportunity to meaningfully interact with counsel concerning the arguments being made,
2 and runs afoul of governing case law. Ghostwriting serves to undermine the normative litigation
3 process, disadvantages all other parties and their respective counsel, and evidences a flouting of
4 pertinent law.

5 As the United States District Court for the Northern District of California has had
6 occasion to observe:

7
8 Ghost-writing frustrates the application of Federal Rule of Civil Procedure 11 which
9 requires all attorneys to verify through their signatures that there are sufficient grounds
10 for the arguments in their pleadings. Moreover, the practice prevents the court from
11 examining the arguments set forth in Mr. Walker's papers during oral argument.

12 *Walker v. Pac. Mar. Assoc.*, 2008 WL 1734757, at *2 (N.D. Cal. 2008) (citing *In re Mungo*, 305
13 B.R. 762, 768 (Bank. D. S.C. 2003)).

14 Another federal court situated within California has been more pointed: “Ghostwriting
15 pleadings for pro se litigants is, of course, wholly inappropriate and potentially sanctionable
16 conduct.” *Bernal v. Rodriguez*, 2016 WL 1610597, at *3 (C.D. Cal. 2016) (citing *Ricotta v.*
17 *State of Cal.*, 4 F.Supp.2d 961, 986 (S.D. Cal. 1998); *Walker*, 2008 WL 1734757, at *2). *See*
18 *also, Makreas v. Moore Law Group, A.P.C.*, 2012 WL 1458191, at *3 (N.D. Cal. 2012)
19 (“[N]umerous courts have held the practice of ghostwriting is not permitted in the federal
20 courts.”) (citing *Duran v. Carris*, 238 F.3d 1268, 1272 (10th Cir. 2001); *Ellis v. Maine*, 448
21 F.2d 1325, 1328 (1st Cir. 1971); *Liguori v. Hansen*, 2012 WL 760747, *5 (D. Nev. 2012); *In re*
22 *Brown*, 354 B.R. 535, 541 (Bankr. N.D. Okla. 2006)).

23 To be sure, ghostwriting is not just *ipso facto* forbade because it is ought to be forbade.
24 Rather, as the United States District Court for the Central District of California has explained in
25 its detailed analysis and adoption of a federal appellate ruling:
26

1 In *Duran v. Carris*, the Tenth Circuit held that when an attorney ghostwrites filings for a
2 client who appears pro se, the attorney and the client have committed a serious ethical
3 breach. In *Duran*, the appellant presented himself to the court as pro se, when in fact an
4 attorney drafted his appellate brief. The court noted that the attorney's "actions in
5 providing substantial legal assistance to [the litigant] without entering an appearance in
6 this case not only affords [the litigant] the benefit of this court's liberal construction of
7 pro se pleadings, but also inappropriately shields [the attorney] from responsibility and
8 accountability for his actions and counsel." The court rejected the attorney's argument
9 that ghostwriting represented "a positive contribution such as reduced fees or pro bono
10 representation," because a "lawyer usually has no obligation to provide reduced fee or
11 pro bono representation; that is a matter of conscience and professionalism. Once either
12 kind of representation is undertaken, however, it must be undertaken competently and
13 ethically or liability will attach to its provider." The court held that the ghostwriting in
14 *Duran* constituted "a misrepresentation to this court by litigant and attorney." The court
15 then held "that any ghostwriting of an otherwise pro se brief must be acknowledged by
16 the signature of the attorney involved." The court also noted another potential ethical
17 problem posed by ghostwriting: An attorney is usually prohibited from withdrawal when
18 it would materially harm the client's interests; by ghostwriting, and not formally
19 appearing, an attorney can circumvent this obligation. **The Court finds the reasoning
20 of *Duran* persuasive.**

21 *Gutierrez v. City of Carson*, 2012 WL 13005846, at *4 (C.D. Cal. 2012) (quoting and citing
22 *Duran v. Carris*, 238 F.3d 1268 (10th Cir. 2001) (emphasis added).

23 Moreover, lest any doubt as to the issue remain, the Local Rules of this Honorable Court
24 are themselves quite clear: "...no attorney may participate in any action unless the attorney has
25 appeared as an attorney of record." Local Rule 182(a)(1).

26 This case concerns Mr. Postle's alleged operation of a federal racketeering enterprise,
his methodical grifting of numerous people, and his work with one or more unidentified
confederate(s). If he wishes to proceed *pro se*, that is every bit his legal right and prerogative.
But the Plaintiffs will view his assertions and representations in a fundamentally different
regard if they are made by him as opposed to if they are made by counsel. By way of anecdote
only, if a member of the bar represents a document production to be complete and simply in
need of redactions and Bates stamping before being shared, the Plaintiffs will have no problem

1 accepting this statement and gladly affording more time. By contrast, any representation of Mr.
2 Postle's, even of a procedural nature, is one the Plaintiffs will be inherently disinclined to trust
3 or credit; if he represents a document production to be tardy for ministerial reasons, the
4 Plaintiffs will be more inclined to commence coordinating a Local Rule 251(b) conference.

5 Perhaps more notably, if Mr. Postle is represented by counsel, attorneys for other parties
6 can confer with such person telephonically without concern. By contrast, if Mr. Postle is pro se,
7 communications will need to be limited to writing, as the one time undersigned counsel spoke
8 with Mr. Postle by phone the call was followed by Mr. Postle's repetitive and demonstrative
9 mischaracterizations thereof.⁴ This will matter a great deal for purposes of assembling a Rule 26
10 discovery plan, as well as for purposes of every ministerial and procedural contact that needs to
11 be made to shepherd this case along (to say nothing of any settlement conversations that may
12 ensue).

13
14 Of course, the foregoing pales in comparison to the issues that would ensue if this
15 Honorable Court elected to hold oral argument on a pending motion. While Mr. Postle could no
16 doubt endeavor to study the authorities upon which he seeks or opposes relief, it is difficult to
17 fathom he would be able to meaningfully defend and argue the merits of such a paper in the
18 manner it could be argued by its actual author.

19
20 To be sure, there is no genuine question but that Mr. Postle is using one or more
21 ghostwriter(s) in this case. Perhaps Mr. Portanova is the ghostwriter; perhaps he is not. One way
22

23
24

⁴ The sum and substance of this exchange is of no moment to the instant motion, and Mr.
25 Postle's mischaracterization was limited to subsequent e-mails with counsel; it was never
26 parroted to this Honorable Court. However, to the extent this Honorable Court believes the
details of such to be relevant to this motion, the Plaintiffs are prepared to file a supplemental
declaration of undersigned counsel.

1 or another, the conduct is sanctionable in nature. And since the ghostwriter(s) are not before this
2 Honorable Court, the only person against whom sanctions may be properly directed at this time
3 is Mr. Postle himself. The entry of one such order is altogether appropriate.

4 **V. Argument: An Appropriate Sanction is the Striking of Mr. Postle's Filing and**
5 **Issuance of an Order Directing Him to Either Proceed *Pro Se* or Have His**
6 **Counsel Enter an Appearance Within Three (3) Days**

7 This Honorable Court has extraordinary discretion in fashioning a sanction that fits the
8 conduct in question. The Plaintiffs do not presently seek a monetary sanction; enriching their
9 counsel herein for the time spent on this motion will benefit no one other than their counsel, as
10 this case has been taken on a contingent basis. Rather, an order directing Mr. Postle to cure the
11 offending conduct is altogether more appropriate, as such would actually serve to remedy the
12 underlying problem and afford clarity as to how this case will proceed.

13 Specifically, the Plaintiffs ask this Honorable Court to strike any papers drafted by
14 counsel but filed by Mr. Postle⁵ and to direct Mr. Postle to either have counsel notice an
15 appearance or to notify the court, through his own filing, that he will hereafter be proceeding
16 sans counsel. Such a filing – either from counsel or Mr. Postle – ought to be straightforward
17 (few filings are simpler than a notice of appearance or notice of intent to proceed *pro se*), and it
18 thus seems a three (3) day period to make such a filing is appropriate.

19 Should the violative behavior proceed, the Plaintiffs will assess whether or not to again
20 seek sanctions or, rather, to petition for an order to show cause. For the time being, however, the
21

22
23 _____
24 ⁵ Given the need to serve this motion three weeks prior to its filing, it is not clear, as of the
25 drafting of this motion, how many filings of Mr. Postle will be violative of governing rules and
26 case law. As of the drafting of the motion, only the Motion to Dismiss appears to be a wrongful
filing. However, it stands to reason a similar motion, seeking dismissal of the amended
complaint filed by the Plaintiffs, may be docketed prior to this motion, as may any number of
other items.

1 simple remedy of striking out the subject court papers and directing Mr. Postle to conform his
2 conduct to the rules of this Honorable Court seems a properly-tailored sanction to impose.

3 WHEREFORE, the Plaintiffs respectfully pray this Honorable Court (i) strike all filings
4 of Mr. Postle heretofore filed in this case, save for stipulations co-signed by counsel for other
5 parties herein; (ii) direct Mr. Postle to either have his counsel notice an appearance in this case,
6 or to personally file a notice of intent to proceed *pro se*, within three (3) days; and (iii) afford
7 such other and further relief as may be just and proper.
8

9
10 Dated this 28th day of April, 2020.

11
12 Respectfully Submitted,

13
14 **THE VERSTANDIG LAW FIRM, LLC**

15 By: /s/ Maurice B. VerStandig
16 Maurice B. VerStandig (*pro hac vice*)
17 1452 W. Horizon Ridge Pkwy, #665
18 Henderson, Nevada 89012
19 Telephone: (301) 444-4600
20 Facsimile: (301) 576-6885
21 mac@mbvesq.com
22 *Counsel for the Plaintiffs*

23
24
25 **[CERTIFICATE OF SERVICE ON FOLLOWING PAGE]**
26

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2020, I caused a true and accurate copy of the foregoing to be served on the following person via United States Mail, postage prepaid, pursuant to Federal Rules of Civil Procedure 11(c)(2) and 5(b)(2)(C):

Michael L. Postle
3724 Deerwalk Way
Antelope, California 95843

/s/ Maurice B. VerStandig
Maurice B. VerStandig

I further certify that on this 28th day of April, 2020, I caused a true and correct copy of the foregoing to be served upon the following persons via this Honorable Court's CM/ECF system:

Michael L. Lipman, Esq.
Karen Lehmann Alexander, Esq.
Duane Morris LLP
750 B Street
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San Diego, CA 92101
Counsel for King's Casino, LLC

Heather U. Guerena, Esq.
Heather U. Guerena, Attorney at Law
7727 Herschel Avenue
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Counsel for King's Casino, LLC

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Counsel for King's Casino, LLC

Richard Pachter, Esq.
Law Offices of Richard Pachter
555 University Avenue, Suite 200

1 Sacramento, CA 95825
2 *Counsel for Justin Kuraitis*

3 I further certify that on this 28th day of April, 2020, I have caused a true and accurate
4 copy of the foregoing to be served on the following person via United States Mail, postage
5 prepaid:

6 Michael L. Postle
7 3724 Deerwalk Way
8 Antelope, California 95843

9 /s/ Maurice B. VerStandig
10 Maurice B. VerStandig

Mac VerStandig

From: Bill Portanova <wfp@portanova.com>
Sent: Tuesday, March 24, 2020 2:51 PM
To: Michael Lipman; richard@pachterlaw.com; Mac VerStandig
Cc: William J Portanova
Subject: Brill, et al. v. Postle, et. al.; 19cv2027-MCE-AC - Defendant's Motion to Dismiss
Attachments: 20200324_DEFENDANT MICHAEL POSTLE'S NOTICE OF MOTION AND MOTION .pdf

Mr. Lipman –

At the request of Mr. Postle and with the understanding that you have agreed to service from him by email, I am attaching his Motion to Dismiss and related documents in his civil matter. Please accept this email as his service of the attached.

Thank you,

Bill Portanova

William F. Portanova

Portanova & Associates

400 Capitol Mall, Ste. 1100
Sacramento, CA 95814

(916) 444-7900 | (916) 444-7998 fax

Portanova.com

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1 WILLIAM F. PORTANOVA, State Bar No. 281364
2 PORTANOVA & ASSOCIATES
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4 Sacramento, CA 95814
5 Telephone: (916) 444-7900
6 Fax: (916) 444-7998
7 Wfp@Portanova.com

8 Attorney for Defendant
9 Owen Hughes

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 v.
15 OWEN HUGHES,
16 Defendant.

No. 2:20-CV-00321-JAM

**DEFENDANT'S NOTICE OF MOTION AND
MOTION TO DISMISS COMPLAINT**

Date: May 5, 2020
Time: 1:30 pm
Courtroom: 6, 14th Floor
Judge: Hon. John A. Mendez

17
18 PLEASE TAKE NOTICE that on May 5, 2020, or as soon
19 thereafter as this matter may be heard before the Honorable John
20 A. Mendez, Defendant Owen Hughes, by and through his undersigned
21 counsel, will and hereby does move this Court for an order
22 dismissing the claims against him for failure to allege claims of
23 fraud and misrepresentation with the required particularity under
24 Fed. R. Civ. P. 9(b) and 12 (b) (6).

25 For the reasons set forth below, Mr. Hughes respectfully
26 requests that this Court grant his Motion to Dismiss. This
27 Motion is based upon this Notice, the attached Memorandum of
28 Points and Authorities, and such other matter that may be

1 presented at the hearing thereof.

2 This motion is made following the conference of counsel
3 pursuant to the Court's standing order which took place on March
4 6, 2020.

5 Respectfully submitted,

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7 Date: March 12, 2020

/w/ William F. Portanova
WILLIAM F. PORTANOVA

8 *Attorney for defendant Owen Hughes*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Plaintiff's Complaint for Damages ("Complaint") should be dismissed in its entirety because it fails both to state a claim upon which relief can be granted or to plead fraud with particularity. The Complaint contains a jumble of regulatory guidelines and categorical allegations of failure of compliance therewith but fails to connect its scatter-shot allegations to the elements of its causes of action. As a result, the Complaint is not specific enough to give Mr. Hughes notice of the particular misconduct alleged such that he can defend against particularized allegations rather than simply deny having done anything wrong.

In Counts I and II, Plaintiff fails to plead the necessary elements of a False Claims Act ("FCA") violation with anything approaching sufficient particularity. Instead, Plaintiff presents its own unsupported conclusions as the evidence sustaining its allegations and relies on improper or illogical inference from neutral facts. As such, Plaintiff fails to plead sufficiently even to establish negligence in Mr. Hughes' accounting practices, let alone the knowledge of their categorical and complete failure that would sustain the notion that his certification as to their suitability would constitute a "false claim" under the FCA. Because Plaintiff does not satisfy its burden under the FCA, the Complaint should be dismissed under Fed. R. Civ. P. (hereinafter "Rule") 9(b) and 12(b)(6).

Plaintiff's Count III and IV should also be dismissed under Rules 8(a) and 12(b)(6). Count III purports to bring an action

1 for unjust enrichment. Unjust enrichment is not a recognized
2 cause of action under either federal or California law but rather
3 a synonym for restitution. Ninth Circuit case law permits such
4 claims to proceed as quasi-contract claims; however, a quasi-
5 contract theory of recovery fails as a matter of law where, as
6 here, there exists an undisputed allegation of an enforceable
7 contract between the parties to the action. Count IV, alleging
8 payment by mistake, is also a quasi-contract theory, and,
9 likewise, fails as a matter of law.

10 **II. Background**

11 Mr. Hughes is the former owner of a research entity known as
12 Eon Research Corporation ("Eon"). In 2007, on behalf of Eon, Mr.
13 Hughes applied for and was awarded a Small Business Innovative
14 Research ("SBIR") grant from the National Institutes of Health
15 ("NIH") to support his research into methods for identifying
16 environmental toxins. The government alleges that Mr. Hughes
17 made statements as to the accounting policies and procedures
18 pertaining to the management of this grant money that were
19 knowingly false.

20 **III. Argument**

21 A. Standards Governing Motions to Dismiss

22 Pursuant to Rule 12(b)(6), dismissal is appropriate where
23 the complaint lacks a cognizable legal theory or sufficient facts
24 to support a cognizable theory. *Navarro v. Block*, 250 F.3d 729,
25 732 (9th Cir. 2001). A complaint is also subject to dismissal
26 for failure to state a claim if the allegations on their face
27 show that relief is barred for some legal reason. *Jones v. Bock*,
28 549 U.S. 199, 215 (2007); see also *Groten v. California*, 251 F.3d

1 844 (9th Cir. 2001).

2 The factual allegations in a complaint “must be enough to
3 raise a right to relief above the speculative level.” *Bell*
4 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “A claim
5 has facial plausibility when the plaintiff pleads factual content
6 that allows the court to draw the reasonable inference that the
7 defendant is liable for the misconduct alleged.” *Ashcroft v.*
8 *Iqbal*, 556 U.S. 662, 678 (2009). While a plaintiff need not
9 establish a probability of success on the merits, he or she must
10 demonstrate “more than a sheer possibility that a defendant has
11 acted unlawfully.” *Id.* Importantly, “[w]here a complaint pleads
12 facts that are merely consistent with a defendant’s liability, it
13 stops short of the line between possibility and plausibility of
14 entitlement to relief.” *Id.*

15 The pleading of a cause of action involving fraud or mistake
16 is subject to the significantly more exacting standards of Rule
17 9(b). In contrast to the more lenient standard set forth in Rule
18 8(a)(2), Rule (9)(b) requires that a party “state with
19 particularity the circumstances constituting fraud or mistake” in
20 his or her complaint. Fraud must be plead “with a high degree of
21 meticulousness.” *Desaigoudar v. Meryercord*, 223 F.3d 1020, 1022
22 (9th Cir. 2000). The allegations of fraud “must be accompanied by
23 ‘the who, what, when, where, and how’ of the misconduct charged”
24 and “must ‘set forth more than the neutral facts necessary to
25 identify the transaction.’” *Vess v. Ciba-Geigy Corp. USA*, 317
26 F.3d 1097, 1106 (9th Cir. 2003).

27 The exacting specificity required by Rule 9(b) functions “to
28 give defendants notice of the particular misconduct so that they

1 can defend against the charge and not just deny that they have
2 done anything wrong." *Vess, supra*, at 1106. Rule 9(b) also
3 functions to deter the filing of actions as a pretext for
4 discovery of unknown wrongs, to protect defendants from "the harm
5 that comes from being subject to fraud charges, and to prohibit
6 plaintiffs from unilaterally imposing upon the court, the parties
7 and society enormous social and economic costs absent some
8 factual basis." *Bly-Magee v. California*, 236 F.3d 1014, 1018 (9th
9 Cir. 2001). The remedy when a plaintiff fails to plead fraud
10 with particularity is the same as in a Rule 12(b)(6) motion for
11 failure to state a claim on which relief can be granted. *Vess*,
12 317 F.3d at 1107.

13 In deciding whether to grant a motion to dismiss, a court
14 must accept as true all "well-pleaded factual allegations."
15 *Iqbal, supra*, 556 U.S. at 678. A court is not, however,
16 "required to accept as true allegations that are merely
17 conclusory, unwarranted deductions of fact, or unreasonable
18 inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988
19 (9th Cir. 2001). Further, a court need not accept as true
20 pleadings that are no more than "[n]aked assertion," "labels and
21 conclusions," or "formulaic recitation of the elements of a cause
22 of action." *Iqbal, supra*, 556 U.S. at 678; see also *Sprewell*,
23 266 F. 3d 979, 988. A court "need not assume the truth of legal
24 conclusions cast in the form of factual allegations." *United*
25 *States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th
26 Cir. 1986).

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B. Counts I and II Must be Dismissed for Failing to Plead Fraud with Particularity

1. Legal Standard

The FCA makes liable anyone who “knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval,” or “knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.” 31 U.S.C. § 3729(a) (1) (A), (B). A prima facie claim under the FCA requires a showing that: “(1) the defendant made a claim against the United States; (2) the claim was false or fraudulent; and (3) that the defendant knew the claim was false or fraudulent.” *U.S. ex rel. Oliver v. Parsons Co.*, 195 F.3d 457, 461 (9th Cir. 1999). Claims are not “false” under the FCA when reasonable persons can disagree regarding whether a service was properly billed to the Government. *United States v. Prabhu*, 442 F. Supp. 2d 1008, 1026 (D. Nev. 2006); see also *Hagood v. Sonoma County Water Agency*, 81 F.3d 1465, 1477 (9th Cir.1996).

The element “knowingly” under the FCA can be satisfied by one of three possible levels of scienter: actual knowledge, deliberate ignorance, or reckless disregard of the truth or falsity of the statement at issue. 31 U.S.C. § 3729(b) (1) (A). Innocent mistakes and negligence, however, do not lead to FCA liability. *Wang v. FMC Corp.*, 975 F.2d 1412, 1420 (9th Cir.1992).

2. Argument

Plaintiff’s Complaint fails to articulate a theory of fraud with requisite particularity. Instead, Plaintiff sidesteps this

1 requirement in favor of a lengthy recitation of applicable
2 regulations, followed by conclusory allegations stating that Eon
3 was categorically out of compliance with those regulations and,
4 therefore, assorted certifications he made to the contrary were
5 knowingly false. Plaintiff relies on categorical or vague
6 language in making its allegations with no attempt to ground
7 those allegations with relevant factual assertions as to any
8 statement's falsity. The net effect is to deny Mr. Hughes the
9 ability to defend himself, instead leaving him able only to "deny
10 he has done anything wrong."

11 Plaintiff impermissibly relies on its own conclusions as to
12 the sufficiency of Eon's accounting procedures to allege the
13 falsity of Mr. Hughes' certifications. Rather than laying out
14 with specificity the manner in which it believes those accounting
15 procedures to have been lacking, Plaintiff relies entirely on
16 "[n]aked assertion," "labels and conclusions," or "formulaic
17 recitation of the elements of a cause of action" of the type
18 specifically disallowed to sustain a pleading against a motion to
19 dismiss. As a result, it is unclear wherein lies the basis for
20 Plaintiff's allegation that any of the various statements and
21 certifications Mr. Hughes made during the course of his SBIR
22 grant were knowingly false or fraudulent.

23 Plaintiff's deficiently pleaded allegations as to accounting
24 procedures begin at paragraph 37. Complaint at ¶37, ECF 1.
25 Several of the principal allegations consist almost entirely of
26 language pulled from relevant regulations followed by categorical
27 statements that Defendant failed to comply therewith. See
28 Complaint at ¶37-42. For example, in lieu of the requisite

1 particularized facts, Plaintiff instead alleges:

2 "Eon's accounting records did not 'identify the
3 source and application of funds for HHS-sponsored
4 activities' or permit '[c]omparison of outlays with
5 budget amounts for each award.' To the contrary, Hughes
6 knew that Eon's records were sloppy, incomplete, and
7 inaccurate, and that, in fact, Eon did not maintain
8 records that substantiated how it used the federal
9 funds it received. Eon's records could not support any
10 reconciliation between disbursements of Grant funds and
11 use for proper Grant-related purposes." ¶38.

12 Much of the language of the paragraph is simply the language of
13 the regulations recited earlier in the Complaint stated as
14 negations. Plaintiff does not allege specifically who, why,
15 when, or how the accounting system failed through particularized
16 claims but rather offers its own conclusions as evidence of its
17 allegations. Instead of the requisite fact pleading, Plaintiff
18 offers a tautology. As a result of this circular logic, there is
19 nothing specific within this allegation to rebut or defend. Much
20 of Plaintiff's pleading regarding the alleged accounting failures
21 follow this format, impermissibly relying on Plaintiff's own
22 conclusions to support its allegations. See also ¶37-42.

23 In perhaps the most egregious example of this defective and
24 impermissible rote recitation in place of necessary fact
25 allegations, in the paragraph 41, Plaintiff simply restates the
26 regulations, quoted at length in paragraphs 24 and 27, in the
27 negative. ¶24, 27, 41. There is not even a slight attempt to add
28 factual particularity to the "naked assertions" and "formulaic
recitations" such that Mr. Hughes would be able to defend himself
against government claims.

29 The balance of Plaintiff's allegations are neutral or
30 irrelevant descriptions of the factual context in which Mr.

1 Hughes was operating his business. Innocent and permissible
2 activities are pleaded as indicia of accounting fraud without any
3 attempt to connect them with the relevant regulations the
4 government alleges Mr. Hughes falsely certified himself to comply
5 with. For instance, the government misleadingly points to
6 transfers of funds between the Eon business account and Mr.
7 Hughes personal account and to Mr. Hughes' draws of owner equity
8 from the Eon account in the form of personal expenditures as
9 evidence of knowing accounting failures. ¶37, 44. But in fact, a
10 draw of owner's equity is the only manner by which one can pay
11 oneself and account for it properly under the law. Additionally,
12 the relevant regulatory statements from the Office of Management
13 and Budget specifically state that use of separate accounts shall
14 not be required for recipients of federal awards. See OMB
15 Circular 110.22(h)(2)(i)(1) ("Federal awarding agencies shall not
16 require separate depository accounts for funds provided to a
17 recipient or establish any eligibility requirements for
18 depositories for funds provided to a recipient"). Plaintiff's
19 attempt to portray Mr. Hughes' legal use of a single business
20 account as evidence of some kind of illegal accounting practice
21 is unfounded and non sequitur. Moreover, Plaintiff makes its non
22 sequitur allegation without specificity or directly connecting
23 this conduct to the allegations of false claims.

24 Likewise are the multiple references Plaintiff makes to
25 drawdowns "after the grant performance period had ended." ¶31,
26 32, 46. Such withdrawals of funds after the grant period are not
27 prohibited under 45 C.F.R. 74 and Plaintiff makes no attempt to
28 articulate why they should give rise to an inference that Mr.

1 Hughes was acting fraudulently in certifying compliance the
2 relevant regulations. Similarly, the government alleges that
3 certain reporting documents were filed outside of the “required
4 timeframe” with no articulation of how this is related to
5 forgoing allegations of false certification or even specific
6 citation to a specific statement or certification. ¶40. Moreover,
7 the government’s own allegation seems to imply that any alleged
8 tardiness in filing was due to concern with ensuring accounting
9 accuracy.

10 The few assorted other allegations that Plaintiff offers in
11 support of its claims that Mr. Hughes knowingly misrepresented
12 his compliance with federal regulations are vague to the point of
13 unintelligibility and the government makes no effort to connect
14 them to the complained of false certification. For instance, the
15 unsupported conclusion that “Eon’s accounting records could only
16 substantiate that it used approximately \$254,745 for allowable
17 grant purposes.” ¶40. Not only is this a legal conclusion, but it
18 gives no detail as to what transactions were “unallowable” or
19 make any attempt to connect it to a certification or statement
20 from Mr. Hughes. Likewise, the allegation that “at least \$64,000
21 of Grant funds were improperly used on expenses Eon incurred
22 after the Grant period had concluded” is a legal conclusion and
23 untied to Plaintiff’s allegation of submission of false
24 certifications. ¶45.

25 Even the alleged statements of Mr. Hughes and his employee
26 are post-facto attempts to narrate mundane accounting practices
27 from eight years prior. Assuming arguendo that the statements
28 are accurate, the government makes no attempt to connect them

1 with the allegedly false certifications from years prior. At
2 best, the statements ascribed to Mr. Hughes are ambiguous and
3 reflective of a sense of responsibility for any historical
4 accounting errors brought to light during the audit. By
5 contrast, the alleged statements of the employee directly
6 contradict the government's allegation of control failures,
7 implying that there existed segregation of roles between the
8 person submitting costs and the person booking them, as well as
9 the proper functioning of those roles in that irregular cost
10 submissions were investigated and documented.

11 To satisfy the particularity requirement of Rule 9(b),
12 "[a]verments of fraud must be accompanied by 'the who, what,
13 when, where, and how' of the misconduct charged" and "must 'set
14 forth more than the neutral facts necessary to identify the
15 transaction.'" *Vess*, 317 F.3d at 1106. Plaintiff's articulation
16 of its theory as to the knowing falsity of Mr. Hughes'
17 certifications to the government do not remotely approach what is
18 required under Rule 9(b). Instead of offering details that would
19 reasonably suggest that Mr. Hughes knowingly presented a false or
20 fraudulent claim for payment or approval to the government,
21 Plaintiff uses its own conclusions to sustain its allegations.
22 If the government's theory is that Mr. Hughes failed to implement
23 a sufficient accounting system under federal regulations and then
24 knowingly lied about that fact, they must present facts in
25 support of that theory sufficient to allow an inference in favor
26 of their claims.

27 As the Ninth Circuit has pointed out, the FCA knowledge
28 standard does not extend to honest mistakes, but only to "lies."

1 See *Hagood*, 81 F.3d at 1478 (“requisite intent is the knowing
2 presentation of what is known to be false, as opposed to innocent
3 mistake or mere negligence”). Indeed, Congress specifically
4 amended the FCA to include this definition of scienter, to make
5 “firm ... its intention that the act not punish honest mistakes
6 or incorrect claims submitted through mere negligence.” *U.S. ex*
7 *rel. Hochman v. Nackman*, 145 F.3d 1069, 1072 (9th Cir. 1998)
8 (quoting S.Rep. No. 99-345, at 7 (1986), reprinted in 1986
9 U.S.C.C.A.N. 5266, 5272).

10 This is because the FCA is not intended to be some wide-
11 ranging statute to police all types of regulatory or contractual
12 compliance. See, e.g., *United States ex rel. Willard v. Humana*
13 *Health Plan*, 336 F.3d 375, 381 (5th Cir.2003)
14 (“The False Claims Act does not create liability merely for a
15 healthcare provider's disregard of Government regulations or
16 improper internal policies unless, as a result of such acts, the
17 provider knowingly asks the Government to pay amounts it does not
18 owe”) (citation omitted); *U.S. ex rel. Swafford v. Borgess Med.*
19 *Ctr.*, 98 F. Supp. 2d 822, 828 (W.D. Mich. 2000), *aff'd*, 24 F.
20 *App'x* 491 (6th Cir. 2001) (the “FCA is not an appropriate vehicle
21 for policing technical compliance with administrative
22 regulations”; mere violations of administrative regulations are
23 not actionable under the FCA “unless the violator knowingly lies
24 to the Government about them”).

25 While a court must accept as true all “well-pleaded factual
26 allegations.” *Iqbal, supra*, 129 S. Ct. at 1950, a court is not
27 “required to accept as true allegations that are merely
28 conclusory, unwarranted deductions of fact, or unreasonable

1 inferences." *Sprewell, supra*, at 988. Here, Plaintiff's pleading
2 fails entirely to allege that Mr. Hughes' accounting procedures
3 were even slightly deficient, let alone sufficiently so that
4 describing them in compliance with government regulation would
5 constitute a "knowingly false certification." The government
6 presents its own unsupported conclusions as the evidence
7 sustaining its allegations and relies on improper or illogical
8 inference from neutral facts. As such, Plaintiff fails to plead
9 sufficiently even to establish negligence in Mr. Hughes'
10 accounting practices, let alone the knowledge of their
11 categorical and complete failure that would sustain the notion
12 that his certification as to their suitability would constitute a
13 "false claim" under the FCA.

14 Accordingly, Plaintiffs Counts I and II should be dismissed
15 for failure to plead fraud with particularity as required under
16 Rule 9(b).

17 B. Counts III and IV Must be Dismissed for Failing to
18 State a Claim Under Which Relief Can Be Granted

19 Plaintiff purports to bring a cause of action for "unjust
20 enrichment." Federal common law does not provide for such a
21 cause of action. Federal courts within the Ninth Circuit have
22 uniformly held that unjust enrichment is a remedy, not a cause of
23 action. See *Newsom v. Countrywide Home Loans, Inc.*, 714 F.Supp.2d
24 1000, 1009-1010 (N.D.Cal.2010). The Ninth Circuit has held,
25 applying California law principles, that a plaintiff attempting
26 to assert a claim for unjust enrichment "though inartful, [is]
27 better read as raising a valid quasi-contract claim seeking the
28 remedy of restitution." See *Astiana v. Hain Celestial Grp., Inc.*,

1 783 F.3d 753, 762 (9th Cir. 2015).

2 Ninth Circuit case law is clear that no recovery is possible
3 under quasi-contract theories where a valid express contract
4 exists. *See Paracor Finance, Inc. v. General Electric Capital*
5 *Corporation*, 96 F.3d 1151, 1167 (9th Cir. 1996) (“unjust
6 enrichment is an action in quasi-contract, which does not lie
7 when an enforceable, binding agreement exists defining the rights
8 of the parties.”); *see also Newberry Corp. v. Fireman's Fund Ins.*
9 *Co.*, 95 F.3d 1392, 1405 (9th Cir. 1996) (stating the “a party to
10 an enforceable contract may not seek recovery for a contract
11 breach by resort to extra-contractual theories.”)

12 Here, there is an undisputed allegation by the government of
13 a valid, existing contract between Mr. Hughes and the NIH.
14 Therefore, Plaintiff’s Counts III and IV should be dismissed.

15
16 Respectfully submitted,

17
18 Date: March 12, 2020

/w/ William F. Portanova
WILLIAM F. PORTANOVA

19
20 *Attorney for defendant Owen Hughes*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VERONICA BRILL, *et al.*

Plaintiffs,

vs.

MICHAEL L. POSTLE, *et al.*

Defendants.

Case No. 2:19-cv-02027-WBS-AC

The Honorable William B. Shubb

DECLARATION OF VERONICA BRILL

1. My name is Veronica Brill, I am over the age of eighteen, and I am competent to testify to the matters set forth herein.

2. I am a plaintiff in the above-captioned proceeding.

3. Prior to this case being initiated, I personally knew Michael Postle (“Mr. Postle”), played poker with Mr. Postle on myriad occasions, and considered Mr. Postle to be a friend.

4. During the course of my knowing Mr. Postle, it was at all times my understanding he had never attended law school.

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

DocuSigned by:

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Veronica Brill

Executed on 4/6/2020



The State Bar of California

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1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA

4 VERONICA BRILL, *et al.*

5 Plaintiffs,

6 vs.

7 MICHAEL L. POSTLE, *et al.*

8 Defendants.

Case No. 2:19-cv-02027-WBS-AC

The Honorable William B. Shubb

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR SANCTIONS
AGAINST MICHAEL L. POSTLE

9 Upon consideration of the Plaintiffs' Motion for Sanctions Against Michael L. Postle
10 (the "Motion"), any opposition thereto, the authorities cited therein, and the record herein, it is,
11 this _____ day of _____, 2020, by the United States District Court for the Eastern
12 District of California, hereby:

13 ORDERED, that the Motion be, and hereby is, GRANTED; and it is further

14 ORDERED, that all filings of Michael L. Postle heretofore made in the above-captioned
15 case, excepting those co-signed by counsel for one or more other parties to the case, be, and
16 hereby are, STRICKEN; and it is further

17 ORDERED, that within three (3) days of the date of this order, Michael L. Postle shall
18 either cause his counsel to notice an appearance in this case or shall personally file with the
19 Clerk of this Court a notice of intent to proceed *pro se*.
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23 _____
24 Hon. William B. Shubb
25 United States District Judge
26

CERTIFICATE OF SERVICE

I further certify that on this 28th day of April, 2020, I caused a true and correct copy of the foregoing to be served upon the following persons via this Honorable Court's CM/ECF system:

Michael L. Lipman, Esq.
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Law Offices of Richard Pachter
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Sacramento, CA 95825
Counsel for Justin Kuraitis

I further certify that on this 28th day of April, 2020, I have caused a true and accurate copy of the foregoing to be served on the following person via United States Mail, postage prepaid:

Michael L. Postle
3724 Deerwalk Way
Antelope, California 95843

/s/ Maurice B. VerStandig
Maurice B. VerStandig

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