

1
2 RANCHO CORDOVA, CA 95670

3
4 PLAINTIFFS, PRO SE

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6
7
8 SACRAMENTO SUPERIOR COURT
9 COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

10
11 T H,) CASE NO. 34-2020-
12 Plaintiffs,)
13) PLAINTIFFS' OPPOSITION/REPLY
14) TO DEFENDANTS' MOTION TO
15 -VS-) STRIKE; PLAINTIFFS' MOTION
16) FOR DEFAULT AND/OR FOR
17 PE HIN, et al,) SANCTIONS
18 Defendants.)
19)
20) DATE: JANUARY 6, 2021
21) TIME: 9:00 A.M.
22) DEPT: 54/ZOOM
23) JUDGE: Christopher E.
24) Krueger

25 TO THE DEFENDANTS AND THEIR ATTORNEY OF RECORD:

26 COMES NOW THE PLAINTIFFS, [redacted] (hereinafter
27 "Tom" and/or "Gayle" and/or " [redacted] ", respectively), and
28 hereby objects to the DEFENDANTS, [redacted]

[redacted], (hereinafter "S [redacted] " and/or "the

1 respectively), SLAPP motion and/or motion to
2 strike.

3 The ; further request the court enter a default
4 judgment against the pursuant to Code of Civil
5 Procedure 473(b) for failure to respond to the complaint in this
6 action within the time allowed by law.
7

8 This so called "motion to strike" is not even a valid,
9 legal or even coherent response to the complaint and is
10 just another one of their stall tactics designed to cause them
11 to spend more money to have to even prepare this opposition
12 and/or motion, and to hire an attorney for this hearing on
13 January 6, 2020, and therefore this is why they are also making
14 a motion for sanctions against each of the , and
15 their attorney of record.
16

17 Note that this action is Sacramento Superior Court case
18 number 34-2020-(while Ki man, the
19 attorney, (hereinafter "I an"), has given his
20 motion to strike case number 7. A docket check ran on
21 12/22/20 shows there is no case number involving these parties.
22 A copy of this scan is attached as Exhibit 1 to this motion.
23

24 This opposition/motion will be based upon the ;
25 notice and the supporting memorandum of points and authorities,
26 request for judicial notice, together with any and all exhibits
27

1 referenced therein and/or attached thereto, together with such
2 additional evidence and argument as the court may permit at the
3 hearing on the motion.

4 Dated: 12/22/20 RESPECTFULLY SUBMITTED,
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26
27

TABLE OF CONTENTS

PAGE #

1

2 BACKGROUND OF THE CASE 7

3 MEMORANDUM OF POINTS AND AUTHORITIES 14

4 i. LEGAL ARGUMENTS 14

5 1. ARGUMENT FOR DEFAULT JUDGMENT 14

6 A. COURT MAY GRANT DEFAULT JUDGMENT 14

7 B. COURT MAY GRANT DEFAULT JUDGMENT IN CASES 14

8 ASKING FOR RECOVERY OF MONEY AND/OR DAMAGES 16

9 C. WRONG CASE NUMBER ON MOTION 16

10 D. THIS ACTION HAS NOTHING TO DO WITH FREEDOM OF 17

11 SPEECH 17

12 2. ARGUMENT AGAINST MOTION TO STRIKE 19

13 A. NO GROUNDS FOR MOTION TO STRIKE PROVIDED 19

14 B. CALIFORNIA COURTS DISFAVOR MOTIONS TO STRIKE 20

15 3. RELATION BACK DOCTRINE 21

16 4. THIS CASE ISN'T TO BE RE-LITIGATED 23

17 5. COLLATRAL ESTOPPEL 23

18 6. NO RIGHT TO APPEAR AT PROVE-UP HEARING 24

19 7. DEFENDANTS FAILED TO ANSWER/RESPOND TO 24

20 WHOLE COMPLAINT 24

21 8. THE COURT MAY GRANT JUDGMENT FOR DAMAGES 24

22 9. FAILURE TO MEET AND CONFER AND 25

23 SPECIAL MOTIONS 425.16 25

24 10. OTHER PARTS REQUIRED TO QUALIFY FOR 26

25 DEFAULT JUDGMENT 26

26 A. DECLARATION NOT SALE OR INSTALLMENT CONTRACT 26

27 B. MEMORANDUM OF COSTS 26

28 C. DECLARATION OF MAILING 27

29 D. VENUE DECLARATION 27

30 E. DECLARATION OF NON-MILITARY STATUS 27

31 F. DISMISSAL OF DOE DEFENDANTS 28

32 11. OBJECTION TO GUY STILSON'S DECLARATION 28

33 12. DEFENDANT DIDN'T PROVE RIGHT TO 28

34 PROTECTED SPEECH 28

35 13. PROBLEMS WITH C.C.P. 425.16 29

36 A. C.C.P. 425.16(b)(1) DOES NOT RELATE 29

37 B. C.C.P. 425.16 GRANTS COSTS IF FRIVIOUSLY FILED 29

38 14. MOTIONS TO STRIKE CAN'T STRIKE A WHOLE ACTION 30

39 15. C.C.P. 435 AND NO MOTION TO QUASH FILED 31

40 16. THE AGREEMENT IS NOT THE BASIS OF THIS ACTION 32

41 CONCLUSION 34

TABLE OF AUTHORITIES

PAGE #

1
2 California Code of Civil Procedure Section 473(b) 14
3 California Code of Civil Procedure Section 585(a) 14
California Code of Civil Procedure Section 585, Part 2, Title 8 14
4 California Code of Civil Procedure Section 396(b) 15
California Code of Civil Procedure Section 583.210 15
5 California Code of Civil Procedure Section 583.210, Chapter 1.5 of Title 8 15
6 California Code of Civil Procedure Section 418.10 15
California Code of Civil Procedure Section 425.11 15, 24
7 California Code of Civil Procedure Section 425.115 15, 24
8 California Code of Civil Procedure Section 585 (a) 16
California Code of Civil Procedure Section 1812.10 16
9 California Code of Civil Procedure Section 2984.4 16, 27
California Code of Civil Procedure Section 586 (1) 16
10 California Code of Civil Procedure Section 437 19
California Code of Civil Procedure Section 436(a) 19
11 California Code of Civil Procedure Section 436(a)(2) 19
12 California Code of Civil Procedure Section 452 20
California Code of Civil Procedure Section 586(a)(3) 24
13 California Code of Civil Procedure Section 435 25
California Code of Civil Procedure Section 435.5(a) 25
14 California Code of Civil Procedure Section 425.16 25, 29
15 California Code of Civil Procedure Section 585.5 26
California Code of Civil Procedure Section 1801 26
16 California Code of Civil Procedure Section 2981 26
California Code of Civil Procedure Section 395(b) 26
17 California Code of Civil Procedure Section 1033.5 26
18 California Code of Civil Procedure Section 587 27
California Code of Civil Procedure Section 2984.4 27
19 California Code of Civil Procedure Section 579 28

20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES (CONTINUED)

PAGE #

CASE LAW

Clauson v. Sup. Ct. (Pedus Services, Inc.), 67 Cal. App.4th 71253, 1255 (1998) 21
Pointe SD Residential Comm. v. PCHS, 195 Cal.App.4th 265, 276 (2011) 22
Pointe SD Residential Comm. v. PCHS, 195 Cal.App.4th 279 (2011) 22
Martin v. General Finance Co., (1966) 239 CA2d 438, 443 23
English v. English, (1937) 9 C2d 805, 810 23
Burnnett v. King, (1949) 33 C2d 805, 810 23
Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc. (1984) 155 CA3d 381 24
A.I. Credit Corp. v. Legion Ins. Co., 265 F.3d 630, 637 (7th Cir. 2001) 28
Slevin v. Home Depot, 120 F. Supp 2d. 822, 835-836 (N.D. Cal. 2000) 28
Jarrow Formulas, Inc. v. LaMarche, 31 Cal. 4th at 733 28
Equilon Enters. v. Consumer Cause, Inc., 29 Cal. 4th 53, 67(2002)) 28
Cooper v. Pickett, 137 F.3d 616, 622 (9th Cir. 1997) 32

ACTS

Rees-Levering Motor Vehicle Sales and Finance Act 26
Servicemembers Civil Relief Act, 50 U.S.C. App. § 3911(2) 27
California Military and Veterans Code sections 400 and 402(f) 27

CALIFORNIA RULES OF COURT

RULE 3.1800(a)(7) 28

1 BACKGROUND OF CASE

2 This case started when the [redacted] discovered the
3 [redacted] were in escrow to sell their house located next
4 door to the [redacted], while including part of their property that
5 is an easement.
6

7 Dispute over the [redacted] NS' illegal use of this part of
8 the [redacted] property was supposedly settled in the previous
9 Sacramento Superior Court Case No. 34-2017 .

10 There was a settlement agreement reached between these parties
11 in 2019.
12

13 However, the [redacted] attorney failed to request the court
14 maintain jurisdiction over said agreement.

15 Neither of the [redacted] have any legal training, and
16 therefore didn't know they could, or should, have asked the
17 court to maintain jurisdiction over this settlement agreement.
18

19 The [redacted] HS attorney failed to request the court maintain
20 jurisdiction in order to enforce the agreement, and also failed
21 to even advise the [redacted] this should be done, or even could be
22 done.
23

24 The [redacted] honestly felt the [redacted] signing of the
25 settlement agreement was what it was on its face - a settlement
26 of the dispute that would be honored (otherwise, if required to
27 have the court maintain jurisdiction to enforce the agreement
28

1 then this would show the S had no intention of
2 honoring the agreement they signed in the first place and thus
3 it was executed by them in bad faith and with intention to
4 default the S into dismissing their cross-complaint).

5
6 They relied upon the F IS' signature on this
7 settlement agreement enough to withdraw their cross-complaint as
8 they did on July 3, 2019. The were led to believe this
9 matter was settled and put to rest when the
10 dismissed their complaint, and in reliance upon their belief the
11 agreement was signed in good faith, the ; did drop their
12 cross-complaint.
13

14 When the ; realized the were not
15 honoring this agreement - they retained another attorney who did
16 file a motion to enforce the agreement. So, the claim this
17 agreement was signed in bad faith was not part of the original
18 complaint by the defendants, nor the cross-complaint either.
19

20 This motion to enforce the agreement was denied because the
21 court maintained they hadn't been asked to maintain jurisdiction
22 over the settlement agreement when it was first signed. Both of
23 the IS are on disability at this time, and we are in a
24 nationwide economic shutdown because of COVID-19, so because
25 they're out of work, they couldn't afford to hire another
26 attorney to appeal this denial.
27
28

1 They also tried for months to find new legal counsel to no
2 avail because of COVID-19, and because this property is located
3 in Rancho Cordova, as well as attorneys not wanting to take the
4 case because of the church the defendants belong to having
5 received such negative publicity lately.
6

7 So, the IS had hoped the matter was resolved once they
8 made their point by filing the motion asking the court to
9 enforce the agreement even though they were denied.
10

11 Instead, the harassment escalated once they saw the court
12 had denied the ' motion to have this agreement enforced -
13 forcing the to file for a restraining order against their
14 neighbors in Sacramento Superior Court case number 2020-7 6
15 in July of 2020.

16 The IS are asking the court to take judicial notice of
17 these other actions.
18

19 The P IS retaliated against the asking for
20 a protective order by filing their own restraining order request
21 against the S.
22

23 The court denied both party's request for restraining
24 orders which were both heard on November 13, 2020. This denial
25 was because by that time the had moved out of the
26 house next door to an unknown location, so the court figured
27
28

1 with them moved out there wouldn't be a need for a protective
2 order against anyone.

3 Wondering why this harassment had started up against them
4 so severely about June of 2020, the S started doing some
5 investigation online.
6

7 This is when they discovered the 3 were in
8 escrow to sell their house along with the 'S' easement
9 included as part of the deal - with no consideration, or consent
10 being given to or rendered by the for their property to
11 this sale.
12

13 This easement being included in the sale as if it belonged
14 to the was confirmed in discussions between the
15 ; and n - the ' attorney who
16 falsely tried to claim the money that was paid in settlement of
17 claims was instead money used to purchase this easement.
18

19 Since this was not the case, in order to stop their
20 property from being sold by the P S, the
21 started trying to file a lis pendens against the]
22 property in order to protect their property from being sold
23 until this action could be filed.
24

25 There were problems with this because the surveyor didn't
26 record his survey which showed this easement belonged to the
27
28

1 by paying the money, he was supposed to pay the recorder
2 to have this done.

3 This is why the HS' are reserving their right to amend
4 this complaint because they may have to name the surveyor in
5 this action as a defendant if they can't resolve this with him
6 as they're trying to do now out of court.

8 Because July of 2020 was right in the middle of the COVID-
9 19 shutdown that has affected the California courts, and again
10 because there aren't a lot of attorneys willing to take on a
11 case concerning property in Rancho Cordova, (even more attorneys
12 have been unwilling to take on this case because of the
13 reputation of the church the S belong to has - see
14 Exhibit 2 to see what that reputation is) - the ; were
15 unable to find an attorney to aid them in this case until only a
16 few days ago.

18 Therefore, they had to file this action pro se, along with
19 appearing in their restraining order case pro se as well. The
20 S didn't even know the court could be, or should be, asked
21 to maintain jurisdiction to enforce the agreement in case the
22 other parties didn't sign it in good faith until approximately
23 July of 2020 when they hired a paralegal to type up their legal
24 papers.
25
26
27
28

1 Luckily, the sale was called off once this action was
2 filed, and the [redacted] moved out of the house next door -
3 causing most of the problems to abate for now.

4 However, since they have moved out it's clear they will be
5 attempting to sell the house again in the future. Therefore,
6 the issue of who owns the land in dispute needs to have
7 ownership clarified before they attempt to sell the
8 property again by trying to throw this land in to "sweeten the
9 deal" as they tried to do in this July 2020 sale they just tried
10 to pull off.

11 The complaint in this action was filed on August 6, 2020.
12 A Notice and Acknowledgment of Receipt was emailed, and faxed,
13 to [redacted], attorney at law, requesting he sign for the
14 summons and complaint in this action so as to avoid the
15 having to pay to have professional service done, and thus
16 incurring additional expense.

17 [redacted] had already been calling and emailing the
18 [redacted] declaring he was the attorney representing the
19 [redacted] in these matters.

20 Because of the restraining order applications, along with
21 Mr. [redacted] declaring to the [redacted] S he was the [redacted]
22 attorney - the [redacted] have tried to avoid any direct personal
23 contact with them even to effect service of the summons and
24

1 complaint - and this is why they asked [redacted] to accept
2 service of the summons and complaint in this action on their
3 behalf.

4 [redacted] an did refuse to sign and return the form
5 confirming service of the summons and complaint by email in
6 order to protect everyone from potential exposure to COVID-19 as
7 well as the plaintiffs' having to incur additional expense to
8 execute personal service.
9

10 This prompted [redacted] ms, a paralegal, to do a service
11 of the summons and complaint by certified mail on 9/23/20. The
12 proof of service is attached as Exhibit 3 to this motion.
13

14 No answer, or responsive pleading, has been filed yet by
15 the P [redacted] VS in this instant action except for this motion
16 to strike filed on October 16, 2020, marked as case number
17 18CV333877, which also failed to answer the parts they didn't
18 request to be struck - so this motion is completely irrelevant,
19 unresponsive, vague, confusing, ambiguous, and basically hasn't
20 served as a valid response to the [redacted] complaint in any way,
21 shape or form.
22

23 This is why the [redacted] s feel this motion is not a responsive
24 pleading, and why they feel the defendants are essentially in
25 default at this time.
26
27
28

1 Because of being forced to retain an attorney to help with
2 this hearing and this opposition/motion, this is why the ;
3 further are requesting sanctions against the , and
4 Mr. Bridgman to cover these costs they've been forced to bear.
5

6 MEMORANDUM OF POINTS AND AUTHOTITIES

7 ii. LEGAL ARGUMENTS

8 17. ARGUMENT FOR DEFAULT JUDGMENT

9 E. COURT MAY GRANT DEFAULT JUDGMENT

10 California Code of Civil Procedure Section 473(b) provides
11 in pertinent part, "The court may, upon any terms as may be
12 just, relieve a party or his or her legal representative from a
13 judgment, dismissal, order, or other proceeding taken against
14 him or her through his or her mistake, inadvertence, surprise,
15 or excusable neglect."
16

17 Such a request without an attorney "affidavit of fault" is
18 discretionary with the trial court.
19

20 F. COURT MAY GRANT DEFAULT JUDGMENT IN CASES ASKING FOR
21 RECOVERY OF MONEY AND/OR DAMAGES

22 Pursuant to the Code of Civil Procedure § 585(a), the court
23 clerk may enter Default Judgment only on cases arising on
24 contract or judgment for recovery of money or damages. C.C.P.
25 Part 2, Title 8, 585:
26
27
28

1 “Judgment may be had, if the defendant fails to answer the complaint, as follows: (a) In
2 an action arising upon contract or judgment for the recovery of money or damages only, if the
3 defendant has, or if more than one defendant, if any of the defendants have, been served, other
4 than by publication, and no answer, demurrer, notice of motion to strike of the character
5 specified in subdivision (f), notice of motion to transfer pursuant to Section 396b, notice of
6 motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of
7 Title 8, notice of motion to quash service of summons or to stay or dismiss the action pursuant to
8 Section 418.10, or notice of the filing of a petition for writ of mandate as provided in Section
9 418.10 has been filed with the clerk of the court within the time specified in the summons, or
10 within further time as may be allowed, the clerk, upon written application of the plaintiff, and
11 proof of the service of summons, shall enter the default of the defendant or defendants, so
12 served, and immediately thereafter enter judgment for the principal amount demanded in the
13 complaint, in the statement required by Section 425.11, or in the statement provided for in
14 Section 425.115, or a lesser amount if credit has been acknowledged, together with interest
15 allowed by law or in accordance with the terms of the contract, and the costs against the
16 defendant, or defendants, or against one or more of the defendants. If, by rule of court, a
17 schedule of attorneys’ fees to be allowed has been adopted, the clerk may include in the
18 judgment attorneys’ fees in accordance with the schedule (1) if the contract provides that
19 attorneys’ fees shall be allowed in the event of an action thereon, or (2) if the action is one in
20 which the plaintiff is entitled by statute to recover attorneys’ fees in addition to money or
21 damages. The plaintiff shall file a written request at the time of application for entry of the
22 default of the defendant or defendants, to have attorneys’ fees fixed by the court, whereupon,
23 after the entry of the default, the court shall hear the application for determination of the
24 attorneys’ fees and shall render judgment for the attorneys’ fees and for the other relief
25 demanded in the complaint, in the statement required by Section 425.11, or in the statement
26 provided for in Section 425.115, or a lesser amount if credit has been acknowledged, and the
27 costs against the defendant, or defendants, or against one or more of the defendants. (b) In other
28 actions, if the defendant has been served, other than by publication, and no answer, demurrer, notice of
motion to strike of the character specified in subdivision (f), notice of motion to transfer pursuant to
Section 396b, notice of motion to dismiss pursuant to Article 2 (commencing with Section 583.210) of
Chapter 1.5 of Title 8, notice of motion to quash service of summons or to stay or dismiss the action
pursuant to Section 418.10 or notice of the filing of a petition for writ of mandate as provided in Section
418.10 has been filed with the clerk of the court within the time specified in the summons, or within
further time as may be allowed, the clerk, upon written application of the plaintiff, shall enter the default
of the defendant. The plaintiff thereafter may apply to the court for the relief demanded in the complaint.
The court shall hear the evidence offered by the plaintiff and shall render judgment in the plaintiff’s favor
for that relief, not exceeding the amount stated in the complaint, in the statement required by Section
425.11, or in the statement provided for by Section 425.115, as appears by the evidence to be just. If the
taking of an account, or the proof of any fact, is necessary to enable the court to give judgment or to carry
the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a
reference for that purpose. If the action is for the recovery of damages, in whole or in part, the court may
order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of
a long account is involved, by a reference as above provided. (d) In the cases referred to in subdivisions
(b) and (c), or upon an application to have attorneys’ fees fixed by the court pursuant to subdivision (a),
the court in its discretion may permit the use of affidavits, in lieu of personal testimony, as to all or any
part of the evidence or proof required or permitted to be offered, received, or heard in those cases. The

1 facts stated in the affidavit or affidavits shall be within the personal knowledge of the affiant and shall be
2 set forth with particularity, and each affidavit shall show affirmatively that the affiant, if sworn as a
3 witness, can testify competently thereto. (f) A notice of motion to strike within the meaning of this
4 section is a notice of motion to strike the whole or any part of a pleading filed within the time which the
5 moving party is required otherwise to plead to that pleading. The notice of motion to strike shall specify a
6 hearing date set in accordance with Section 1005. The filing of a notice of motion does not extend the
7 time within which to demur.

8 C.C.P. 585 (a) Every application to enter default under subdivision (a) of Section 585
9 shall include, or be accompanied by, an affidavit stating facts showing that the action is or is not
10 subject to Section 1812.10 or 2984.4 of the Civil Code or subdivision (b) of Section 395.

11 C.C.P. 586 (1) If the complaint has been amended, and the defendant fails to answer it, as
12 amended, or demur thereto, or file a notice of motion to strike, of the character specified in
13 Section 585, within 30 days after service thereof or within the time allowed by the court.

14 Since there was a contract between these parties to not
15 sell, or attempt to sell, this easement the defendants did try
16 to sell, and because this action is trying to recover the money
17 they've lost because of damages caused them by the defendants -
18 the court has jurisdiction to enter a default judgment in this
19 action.

20 G. WRONG CASE NUMBER ON MOTION

21 While it states on the caption the defendants filed a
22 "motion to strike" on October 16, 2020 - it is CLEARLY non-
23 responsive to the summons and complaint in this action, case
24 number 34-2020-0 S, because all of these
25 pleadings are marked as case number 1 77.

26 Therefore, NOTHING has been filed in response and
27 defendants are in default as of October 23, 2020.

1 H. THIS ACTION HAS NOTHING TO DO WITH FREEDOM OF SPEECH

2 These pleadings state they are a "SLAPP MOTION" regarding
3 the defendants' freedom of speech, and then proceed to go into
4 an entirely non-sensical argument basically taking the position
5 the defendants were allowed to sign an agreement they had no
6 intention of keeping, and in fact violated, because this
7 agreement was supposedly done within the defendants' protected
8 right of "free speech".
9

10 Anyone knows there are limitations to the rights of free
11 speech, including the fact one can't use their speech to incite
12 a riot, to commit hate crimes, to threaten another human being,
13 nor to commit crimes such as fraud or conversion.
14

15 To make such an argument as Plaintiff is making here
16 would be the same as saying anyone can walk into a bank and say
17 to the teller "give me all your money" and that this is
18 protected free speech.
19

20 Also, the Plaintiff's instant action herein is not based upon
21 "statements made in court papers seeks to subject defendant to
22 liability for protected activity and is subject to the anti-
23 SLAPP statute" as alleged in the defendant's Memorandum of
24 Points and Authorities, page 5, lines 13-15, nor upon "claims
25 that are clearly in violation of the anti-SLAPP statute: s
26 claim s acted fraudulently or otherwise in violation
27
28

1 of S [redacted] rights when [redacted] exercised their free speech
2 rights and right to petition by filing a dismissal of
3 F [redacted] ns' claims in the Underlying Action" as alleged in
4 the Memorandum's Conclusion.
5

6 If one READS the [redacted] complaint, you'll see that this
7 action was based upon the PE' [redacted] ;' attempt to sell the
8 Smiths' property which was put into escrow in about June-July of
9 2020 - said ACTIONS being a violation of the settlement
10 agreement.
11

12 To further claim that the F [redacted] IS are allowed to
13 violate this agreement simply because the [redacted] IS' didn't
14 distrust them, and their attorney, enough to request the court
15 maintain jurisdiction over said agreement, and to require the
16 court to enforce the agreement - is another way of saying the
17 [redacted] ' had no intention of honoring this agreement
18 "unless forced to" by the court, which means they were
19 fraudulently induced into dismissing their cross-complaint.
20

21 The agreement didn't state it wouldn't be honored unless
22 enforced by the court - so the S [redacted] were led to believe the
23 [redacted] INS, and their attorney, drew up and agreed to this
24 agreement in good faith - but now they want to act like they
25 don't have to comply with its terms unless forced by the court.
26 Meaning they had no intention of honoring said agreement at all
27

1 to begin with - intentions made clear when they tried to sell
2 the SMITHS land out from under them, and then further
3 threatening the ; with legal action when they tried to
4 protect said land from being sold.
5

6 So, this whole motion by the defendants' is moot,
7 irrelevant, non-sensical, and unresponsive to the complaint -
8 thereby placing the -----S in default at as of October
9 23, 2020 (30 days after they were served by certified mail by
10

11
12 **18. ARGUMENT AGAINST MOTION TO STRIKE**

13 C. NO GROUNDS FOR MOTION TO STRIKE PROVIDED

14 Cal. Code Civ. Proc §437 states the "grounds for the motion
15 to strike must appear" in the motion to strike. Again, this has
16 the wrong case number, so in reality this is not a motion to
17 strike for this action so no grounds have been provided in THIS
18 ACTION.
19

20 Second, their claim they want to "strike all claims" in the
21 complaint based on the right of free speech isn't relevant here
22 even if the court grants this motion is a proper motion to
23 strike in this action.
24

25 According to Cal. Code Civ. Proc. §436(a)); or (2) to
26 strike any pleading or part thereof" not drawn or filed in
27 conformity with the laws of this state, a court rule or order of
28

1 court" - yet the defendants' attorney doesn't provide any of
2 these grounds upon which to have all of the plaintiffs' claims
3 struck because he's referring to the settlement agreement, which
4 the plaintiffs are referring to the defendants' actions to
5 attempt to sell their property without their consent in this
6 action - period - agreement or not.

8 The fact this property was outlined in the agreement
9 discussed here is just referenced by the plaintiffs to show the
10 court the defendants KNEW this property wasn't theirs to begin
11 with - so their attempt to sell the property in question was
12 done intentionally and willfully - further providing evidence
13 that the agreement was signed while they had no intentions of
14 honoring it to begin with and therefore was void on its face.

16 But the defendants give no grounds for why their complaint
17 based upon the defendants attempt to sell their property in July
18 of 2020 should have all of their causes of action struck.

20 Therefore, they have not responded to the complaint in this
21 action and should be considered in default by this court.

22 D. CALIFORNIA COURTS DISFAVOR MOTIONS TO STRIKE

23 California courts disfavor motions to strike and, pleadings
24 must be "liberally construed, with a view to substantial justice
25 between the parties." Cal. Code Civ. Proc. §452.
26
27
28

1 On a motion to strike, the court considers the complaint's
2 allegations in context and presumes them as true: "[j]udges read
3 allegations of a pleading subject to a motion to strike as a
4 whole, all parts in their context, and assume their truth."
5 *Clauson v. Sup. Ct. (Pedus Services, Inc.)*, 67 Cal. App.4th
6 71253, 1255 (1998).

8 Under these standards, Defendants fail to demonstrate the
9 merit in any part of its Motion to Strike.

10 **19. RELATION BACK DOCTRINE**

11 The defendants are asking the court in their motion to
12 basically strike all causes of action in this action because the
13 original complaint, and cross-complaint between these parties,
14 was dismissed when an agreement was supposedly reached between
15 these parties - and the court was not asked to maintain
16 jurisdiction over said agreement to enforce compliance.
17

18 However, the plaintiffs did refer to this agreement, and
19 these previous actions because of the "relation back doctrine"
20 which applies for statute of limitations purposes.
21

22 Tellingly, defendants cite no case law or other authority
23 in support of its argument and fails to even mention the
24 relation back doctrine. The relation back doctrine allows an
25 amended complaint to relate back to the original complaint for
26 statute of limitations purposes if the "amendment (1) rests on
27
28

1 the same general set of acts; (2) involves the same injury; and
2 (3) refers to the same instrumentality. *Pointe SD Residential*
3 *Comm. v. PCHS*, 195 Cal.App.4th 265, 276 (2011).

4 "An amended complaint relates back to an earlier complaint
5 if it is based on the same general set of facts, even if the
6 plaintiff alleges a different legal theory or new cause of
7 action." *Id.* "The criterion of relation back is whether the
8 original complaint gave the defendant enough notice of the
9 nature and scope of the plaintiffs claim that he shouldn't have
10 been surprised by the amplification of the allegations of the
11 original complaint in the amended one." Pointe SD, 195
12 Cal.App.4th at 279.

13
14
15 The s didn't reopen their original complaint against
16 the defendants because this action is based upon the defendants'
17 recent new actions in 2020 wherein, they attempted to sell the
18 plaintiffs' property without their consent and/or knowledge.

19
20 The only reason that these other actions, and the agreement
21 between them, was referenced in this action was to "refer back"
22 to these other actions, and the agreement, in order to show the
23 court these defendants "should not have been surprised" to find
24 the plaintiffs' had a problem with the defendants trying to sell
25 their property. These other actions, and the signed agreement,
26 proves the defendants knew this was the plaintiffs' property,
27
28

1 they had specifically agreed not to encroach upon this easement
2 in that settlement agreement, so the fact the plaintiffs were
3 damaged by these recent actions was "no surprise" to the
4 defendants.

5
6 **20. THIS CASE ISN'T TO BE RE-LITIGATED**

7 In *Martin v. General Finance Co.*, the California Court of Appeal held
8 that a Default Judgment is treated as a judgment "on the merits" and res
9 judicata as to the claim involved. (1966) 239 CA2d 438, 443.

10 Therefore, Defendants are not permitted to relitigate his or her
11 liability on the claim. *Id.* However, it appears that's what they're
12 attempting to do in this so called "SLAPP" motion.

13 **21. COLLATRAL ESTOPPEL**

14 In *English v. English*, the California Court of Appeal held
15 that a Default Judgment collaterally estops the Defendant from
16 raising issues in a later lawsuit that were necessarily
17 adjudicated against Defendant in the earlier action. (1937) 9
18 C2d 805, 810.

19
20 However, the collateral estoppel is limited to material
21 issues well pleaded in the complaint in the former action. It
22 does not apply to immaterial allegations or issues not raised in
23 the pleadings. *Burnett v. King*, (1949) 33 C2d 805, 810.

24
25 ///

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27 ///

1 **22. NO RIGHT TO APPEAR AT PROVE-UP HEARING**

2 While in default Defendants have NO RIGHT to appear at
3 prove-up hearing. *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.*
4 (1984) 155 CA3d 381.
5

6 **23. DEFENDANTS FAILED TO ANSWER/RESPOND TO WHOLE COMPLAINT**

7 C.C.P. 586 (a) (3) If a motion to strike, of the character specified in Section 585, is
8 granted in whole or in part, and the defendant fails to answer the unstricken portion of the
9 complaint within the time allowed by the court, no demurrer having been sustained or being then
pending.

10 In other words, the defendants are in default of the parts
11 not in the SLAPP motion should the court find it is a responsive
12 pleading.

13 **24. THE COURT MAY GRANT JUDGMENT FOR DAMAGES**

14 The court clerk may enter judgment for the following: (1)
15 restitution of premises in unlawful detainer actions; (2) costs
16 against Defendant or Defendants, or against one or more of the
17 Defendants; (3) interest allowed by law or in accordance with
18 the terms of the contract; (4) the principal amount demanded in
19 the complaint, CCP §425.11 statement of damages, or the CCP
20 §425.115 statement reserving the right to punitive damages, or a
21 lesser amount if credit has been acknowledged by the Plaintiff.
22
23

24 The plaintiffs are asking for these items to be judged and
25 have provided defendants a statement of damages.

26 ///

27 ///

28

1 Granted, this requirement doesn't apply for Special Motions
2 under C.C.P. 425.16, which is why the plaintiffs further believe
3 the only reason I n filed this Special Motion 425.16
4 was to avoid this requirement to meet and confer because a SLAPP
5 motion doesn't even apply to this case. He did this knowing it
6 would require the plaintiffs to have to incur the expense of
7 retaining counsel in order to respond to this gibberish and does
8 constitute grounds for why the plaintiffs are asking this court
9 for sanctions and/or costs.
10

11 **26. OTHER PARTS REQUIRED TO QUALIFY FOR DEFAULT JUDGMENT**

12 **G. DECLARATION NOT SALE OR INSTALLMENT CONTRACT**

13 Declaration under Code Civ. Proc., §585.5, this action is
14 not a on a contract or installment sale for goods or services
15 subject to Civ. Code, § 1801 et seq. (Unruh Act). It is not on
16 a conditional sales contract subject to Civ. Code, § 2981 et
17 seq. (Rees-Levering Motor Vehicle Sales and Finance Act), It is
18 also not for an obligation for goods, services, loans, or
19 extensions of credit subject to Code Civ. Proc., § 395(b).
20
21

22 **H. MEMORANDUM OF COSTS**

23 Memorandum of costs (required if money judgment requested).
24 Costs and disbursements will be provided at the time of hearing.
25 (Code Civ. Proc., § 1033.5):
26
27
28

1 I. DECLARATION OF MAILING

2 Declaration of mailing (Code Civ. Proc., § 587) was sent to
3 the defendants on December 23, 2020 mailed first-class, postage
4 prepaid, in a sealed envelope addressed to each defendant's
5 attorney of record or, if none, to each defendants' last known
6 address as follows:
7

8
9
10
11
12
13 J. VENUE DECLARATION

14 Plaintiff declares that since the jurisdiction for this
15 case is this court because the properties of both parties are
16 within the jurisdiction of this court pursuant to Civil Code §
17 2984.4. The injury occurred to plaintiffs in this jurisdiction
18 also.
19

20 K. DECLARATION OF NON-MILITARY STATUS

21 Declaration of non-military status (required for a
22 judgment). No defendant named in item 1c of the application is
23 in the military service as that term is defined by either the
24 Servicemembers Civil Relief Act, 50 U.S.C. App. § 3911(2), or
25 California Military and Veterans Code sections 400 and 402(f).
26
27
28

1 L. DISMISSAL OF DOE DEFENDANTS

2 Request for Default is only requested against the couple,

3
4
5 Any other "doe" defendants should be dismissed from this
6 judgment and/or order. CCP 579, CRC 3.1800(a)(7).

7 **27. OBJECTION TO GUY STILSON'S DECLARATION**

8 Objection is made on the grounds I n's statements
9 lack foundation. *A.I. Credit Corp. v. Legion Ins. Co.*, 265 F.3d
10 630, 637 (7th Cir. 2001). I n's statements amount to
11 nothing more than speculation as to what may or may not have
12 happened in this case.
13

14 As a result, there are insufficient facts to establish the
15 basis for this opinion. *Slevin v. Home Depot*, 120 F. Supp 2d.
16 822, 835-836 (N.D. Cal. 2000), stating that a declaration based
17 on speculation is irrelevant and should not be considered.
18

19 **28. DEFENDANT DIDN'T PROVE RIGHT TO PROTECTED SPEECH**

20 Defendants must first "make a threshold showing that the
21 challenged cause of action is one arising from protected
22 activity." *Jarrow Formulas, Inc. v. LaMarche*, 31 Cal. 4th at
23 733 (quoting *Equilon Enters. v. Consumer Cause, Inc.*, 29 Cal.
24 4th 53, 67(2002)).
25

26 ///

27 ///

1 **29. PROBLEMS WITH C.C.P. 425.16**

2 The defendants rely primarily upon C.C.P. 425.16 in this
3 motion to strike.

4 A. C.C.P. 425.16(b) (1) DOES NOT RELATE

5 C.C.P. 425.16 states, “(b)(1) *A cause of action against a person arising from*
6 *any act of that person in furtherance of the person's right of petition or free speech under the*
7 *United States Constitution or the California Constitution in connection with a public issue*
8 *(emphasis added).”*

9 However, the issues raised by plaintiffs' complaint are not
10 “public issues”. The issues in plaintiffs' complaint are based
11 upon the defendants' actions that damaged them directly and
12 privately.
13 privately.

14 B. C.C.P. 425.16 GRANTS COSTS IF FRIVIOUSLY FILED

15 C.C.P. 425.16(c) 2(b) states, “If the court finds that a
16 special motion to strike is frivolous, or is solely intended to
17 cause unnecessary delay, the court shall award costs and
18 reasonable attorney's fees to a plaintiff prevailing on the
19 motion, pursuant to Section 128.5.”

20 This motion was clearly filed strictly to cause more
21 harassment to the plaintiffs, as has been an ongoing pattern
22 from the defendants for some time now and evidenced clearly by
23 the fact their attorney couldn't even get the case numbers
24 correct, or even a relevant argument for a motion to strike.
25 correct, or even a relevant argument for a motion to strike.
26 correct, or even a relevant argument for a motion to strike.
27 correct, or even a relevant argument for a motion to strike.
28

1 This is all the more reason why the plaintiffs feel they will
2 prevail in this action and/or why the court should grant them
3 sanctions and/or costs they've had to incur simply because of
4 not wanting the defendants to sell off their land.
5

6 On one hand, the defendants' attorney argues that the terms
7 contained in their agreement were "private" and not supposed to
8 be viewed by any other parties, or even provided to the court.
9 But then they argue their rights of free speech were violated by
10 this action. However, C.C.P. 425.16 defines the exact speech:

11 "(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the
12 United States or California Constitution in connection with a public issue" includes: (1) any written or oral
13 statement or writing made before a legislative, executive, or judicial proceeding, or any other official
14 proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue
15 under consideration or review by a legislative, executive, or judicial body, or any other official proceeding
16 authorized by law, (3) any written or oral statement or writing made in a place open to the public or a
public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the
exercise of the constitutional right of petition or the constitutional right of free speech in connection with a
public issue or an issue of public interest."

17 None of which applies to the settlement agreement in the
18 previous action, nor this action for that matter.

19 **30. MOTIONS TO STRIKE CAN'T STRIKE A WHOLE ACTION**

20 The defendants' motion is asking to basically strike the
21 whole action based on C.C.P. 425.16.

22 However, C.C.P. 431.10 shows "irrelevant matter" can NOT
23 mean an ENTIRE PLEADING. The words "irrelevant matter" refers
24 only to material within a pleading that is irrelevant to the
25 cause of action, not the entire cause of action itself.
26
27
28

1 Yet the defendants' motion to strike is not specific in
2 what they want to see stricken, and in fact they're asking for
3 the entire action to be struck.

4 **31. C.C.P. 435 AND NO MOTION TO QUASH FILED**

5 On page 3, line 9 of the defendants Memorandum of Points
6 and Authorities, they state they were not "properly served" with
7 the complaint.

8 C.C.P. 435 allows a party to file a motion to strike
9 "within the time allowed to respond to a pleading." A Motion to
10 strike has to be filed within the properly allowed time based
11 upon calculations starting from the date of service of said
12 action. Yet the defendants state they weren't properly served -
13 so how shall we calculate if their motion to strike was properly
14 served or not then if this is their position? We see no motion
15 to quash service of the summons for which we have a proof of
16 served dated September 23, 2020 signed by Jody Williams.

17 Without said motion to quash service, we believe the proper
18 date the summons and complaint were served upon the defendants
19 was then 9/23/20. However, the papers filed by the defendants
20 were for case number 1 7 - which isn't this action.

21 Therefore, the plaintiffs feel the defendants are in
22 default at this time.
23
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1 **32. THE AGREEMENT IS NOT THE BASIS OF THIS ACTION**

2 The defendants are basing this motion to strike upon the
3 agreement from the previously filed other case.

4 However, THIS action is based upon the recent action by
5 defendants to sell their property without their knowledge and/or
6 consent, which just happened to be in violation of this
7 agreement.
8

9 Said agreement being mentioned in this action to show the
10 court they were not "caught by surprise" by the plaintiffs'
11 allegations in this action, and were attempting to sell this
12 property willfully, intentionally, and maliciously knowing that
13 it wasn't their property to sell.
14

15 Their intent was more than "just talk" as their house was
16 in escrow and about to be sold along with the plaintiffs'
17 property - said sale which would have been completed had not the
18 plaintiffs' first sent a demand letter to cease this sale and
19 their intent to file this action.
20

21 While a court may not consider material beyond the
22 pleadings in general, it may do so if the material in question
23 is part of the complaint. Cooper v. Pickett, 137 F.3d 616, 622
24 (9th Cir. 1997).
25

26 In order for a document to be part of a complaint, it must
27 be cited, quoted or referenced in that complaint. Id. at 623.
28

1 Defendants contend that the Complaint in this case is about the
2 violation of this agreement that was previously denied
3 enforcement by this court, while in reality this action is based
4 upon the recent actions of the defendants to sell the
5 plaintiffs' property that wasn't theirs - agreement or not.
6

7 Defendants speculate that plaintiffs relied on this
8 agreement in drafting their Complaint. Such speculation is
9 insufficient to justify considering this agreement on a motion
10 to dismiss.
11

12 While the plaintiffs did "refer back" to this agreement,
13 and the other complaint", this action is based upon entirely
14 whole and new actions by the defendants to sell their property
15 which was in escrow still as of July 1, 2020 - not being
16 canceled until the plaintiffs served the realtor and the escrow
17 company with their demand letter to stop this sale or they
18 intended to file this action. While the sale was canceled, the
19 defendants have done nothing to confirm they won't try this
20 again. In fact, their attorney tried to claim the plaintiffs
21 "sold this property" as part of the settlement agreement, which
22 was not the case. Irrespective of this agreement, the survey
23 done on the plaintiffs' property proves that the property in
24 question belongs to them, and them alone. A copy of which was
25
26
27
28

1 previously provided to this court when they tried to apply for a
2 lis pendens to attempt to stop this referenced sale.

3 **CONCLUSION/PRAYER**

4 PLAINTIFFS RESPECTFULLY REQUEST THE COURT TO:

- 5
- 6 1. To deny defendants' motion to strike;
 - 7 2. Since this action is not based upon a contract, to grant
8 the request for entry of default judgment against the
9 defendants, S
 - 10 3. Grant plaintiffs' requests in their original complaint;
 - 11 4. Dismiss any "doe" defendants;
 - 12 5. To grant sanctions and/or costs and/or damages incurred
13 along with pre-judgment and post-judgment interest as
14 allowed by law in an amount to be provided at time of the
15 hearing; and
 - 16 6. Any judgement/award for court fees that have been paid by
17 by the fee waiver plaintiffs' have in place will be used
18 to reimburse the court;
 - 19
 - 20

21 Plaintiffs declare under penalty of perjury under the laws
22 of the State of California that the foregoing in this pleading
23 is true and correct.

24 Dated: 12/22/20

25 RESPECTFULLY SUBMITTED,

26 _____
27
28