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9 Mischelynn Scarlatelli, in her capacity as successor  
10 trustee of the "Armie Troy Isom and Shirley Isom  
11 Family Trust u/d/t dated December 28, 2004"

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES

14 MARK SCARLATELLI, an individual, for  
15 himself and on behalf of GAMUT  
16 CONSTRUCTION COMPANY, INC, a  
17 California Corporation,

18 Plaintiff,

19 vs.

20 GAMUT CONSTRUCTION COMPANY, INC,  
21 a California Corporation; MISCHELYNN  
22 SCARLATELLI; an individual, ARMIE TROY  
23 ISOM, an individual; SHIRLEY ISOM, an  
24 individual; ISOM ARMIE T. & SHIRLEY  
25 TRUST, a California Trust; and DOES 1 to 25  
26 inclusive,

27 Defendants.

Case No. KC066075  
Judge: Honorable Dan Thomas Oki

**TRIAL BRIEF OF DEFENDANT**  
**MISCHELYNN SCARLATELLI,**  
**SUCCESSOR TRUSTEE OF THE**  
**ARMY TROY ISOM AND SHIRLEY**  
**ISOM FAMILY LIVING TRUST**

Trial  
Date: March 7, 2016  
Time: 8:30 a.m.  
Dept.: J

Complaint Filed: June 6, 2013

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**TRIAL BRIEF**

**I. INTRODUCTION**

This is the last of 6<sup>th</sup> lawsuits filed by Plaintiff Mark Scarlatelli against his ex-wife (Mischelynn Scarlatelli), in-laws (Troy & Shirley Isom) and the Isom Trust.<sup>1</sup> The instant complaint seeks (1) restitution of money allegedly spent on construction, and (2) damages for alleged conversion of company equipment.

Preliminary, there is a procedural problem that necessitates dismissal of this action. There are no viable defendants. Claims against Mischelynn were discharged in bankruptcy and claims against the Isoms, individually and as trustees of the Isom Trust ceased to exist following their deaths. Plaintiff failed to file a creditor's claim in the estate or trust proceedings and is now statutorily barred from continuing this action against the personal representative of the Isoms' estate or the successor trustee of their trust.

In addition to this procedural dilemma, Plaintiff has not stated a legally viable claim in his Complaint. By way of history, this Court previously granted a C.C.P. §128.7 motion dismissing this action with prejudice on grounds that the claims belonged in family court and further noting that the claims lacked merit. The Court of Appeal reversed because it found there was an "objectively reasonable" basis for Plaintiff to file his claims in civil court and, therefore, §128.7 sanctions were inappropriate. However, the Court of Appeal did not reject this Court's analysis of the merits, stating instead that it "express[ed] no opinion as to whether [Plaintiff] could prevail on the merits of his claims", as it felt the merits should be "raised in a demurrer or motion for summary judgment rather than a motion for sanctions under section 128.7." Meanwhile, a second trial court analyzed Plaintiff's claims and also found them to be without merit for the same reasons this court did. Specifically, in an opinion denying a motion to strike a malicious prosecution lawsuit, Honorable Soussan G. Bruguera found there to be abundant evidence that the

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<sup>1</sup> **1<sup>st</sup> Lawsuit:** *Gamut Construction Company, Inc. v. Isom, et al.*, LASC Case No. KC063680 [dismissed]

**2<sup>nd</sup> Lawsuit:** *Bella Piazza, LLC v. Isom, et al.*, LASC Case No. KC064781 [dismissed]

**3<sup>rd</sup> Lawsuit:** *Scarlatelli v. Gamut Construction Company, Inc., et al.*; LASC Case No. KC066075 [pending action]

**4<sup>th</sup> Lawsuit:** *Scarlatelli v. Isom, et al.*, LASC Case No. KC066078 [dismissed]

**5<sup>th</sup> Lawsuit:** *Scarlatelli v. Bella Piazza, LLC, et al.*; LASC Case No. KC066079 [dismissed]

**6<sup>th</sup> Lawsuit:** *In re the Marriage of Scarlatelli*; LASC Case No. KD077685 [dismissed; appeal filed]

1 same claims for restitution and conversion that Plaintiff originally filed in his 1st lawsuit but then  
2 voluntarily dismissed before trial, were maintained without probable cause and with malice. (See  
3 Case No. BC520564.)

## 4 **II. PROCEDURAL PROBLEMS THAT COMPEL DISMISSAL**

### 5 **A. Mischelynn's Bankruptcy**

6 Mischelynn filed for bankruptcy on May 14, 2014 while this action was pending appeal.  
7 (Case No. 2:14-bk-19424-ER.) Plaintiff was listed as a potential creditor and this case was listed  
8 as a pending action in the bankruptcy petition. A discharge order was obtained on December 22,  
9 2014 effectively discharging all claims against her.

### 10 **B. Troy Isom and Shirley Isom, as individuals**

11 Troy and Shirley Isom died a tragic death on December 26, 2014.<sup>2</sup> *Code of Civil*  
12 *Procedure* section 377.41 allows a plaintiff to continue prosecuting a pending action against the  
13 decedent's personal representative or successor in interest *if* the plaintiff can show proof of  
14 compliance with the creditor claim procedures set forth in the probate code. Specifically, *Probate*  
15 *Code* section 9370 states that an action pending against the decedent at the time of death cannot  
16 be continued against the decedent's personal representative unless a claim is first filed against the  
17 estate, the claim is rejected in whole or in part, and the plaintiff timely applies to the court in  
18 which the action is pending for an order to substitute the personal representative in the action. In  
19 this case, it is undisputed that Plaintiff failed to file a creditor's claim, which is ironic considering  
20 that defense counsel had alerted Plaintiff in a court pleading of the necessity to file a creditor's  
21 claim. *Code of Civil Procedure* section §366.2 establishes a bright line one-year deadline for  
22 claims against an estate, and that time has expired. As such, Plaintiff is statutorily barred from  
23 proceeding with this action.

### 24 **C. Troy Isom and Shirley Isom, as trustees**

25 "Unlike a corporation, a trust is not a legal entity... As such, it has no capacity to sue or  
26 be sued, or to defend an action." (*Stoltenberg v. Newman* (2009) 179 Cal. App. 4th 287, 293.) A

27 \_\_\_\_\_  
28 <sup>2</sup> A suspect was recently charged with two counts of murder in the commission of a robbery. (See  
<http://ktla.com/2016/02/03/transient-charged-with-murder-stealing-cellphone-in-killings-of-la-verne-couple/>.)



1 trust is nothing more than a collection of assets and liabilities. (*Ibid.*) Accordingly, a plaintiff is  
2 faced with the same scenario when a defendant-trustee dies: the plaintiff must comply with the  
3 statutory creditor claims procedure to continue the action against the decedent-trustee's successor  
4 in interest. (*Probate Code* §19004.) The time-period to file a creditor claim is dependent on  
5 whether the trustee has filed, published and served appropriate statutory notices, but in no event  
6 shall it be more than one year. (*Probate Code* §19100 & *Code of Civil Procedure* §366.2; see  
7 also *Stoltenberg v. Newman*, *supra* 179 Cal. App. 4th at 292-297 [applying one-year statute of  
8 limitations to bar lawsuit based on actions of deceased trustee]; *Wagner v. Wagner* (2008) 162  
9 Cal.App.4th 249, 254-257 [holding lack of strict compliance with creditor claim procedure barred  
10 plaintiff's claim against trust]; *Kapila v. Belotti (In re Pearlman)*, 2012 Bankr. LEXIS 2858  
11 [holding compliance with the creditor claim procedure is not excused by the fact that an action  
12 was already pending at the time of trustee's death as the creditor must "re-file the claim against  
13 the defendant's probate estate.]" More than one year has past since the Isoms' deaths, and no  
14 creditor claims have been filed and no attempt made by Plaintiff to substitute the successor in  
15 interest of the Isom Trust into this proceeding. As such, this action cannot proceed.

16 *NOTE: Although Mischelynn Scaraltelli, successor trustee of the Isom Trust has not been*  
17 *formally substituted into this action, she hereby files this brief as a precaution and expressly*  
18 *reserves all defenses.*

### 19 **III. STATEMENT OF FACTS**

20 Plaintiff alleges that Gamut Construction Company, Inc. ("Gamut") incurred \$263,653.72  
21 in costs from November 30, 2005 to April 3, 2010 for construction work performed on property  
22 located at 328 Saddlehorn Lane. Plaintiff contends that Gamut had an agreement with Bella  
23 Piazza, LLC ("Bella") for payment of these costs, but that Bella failed to pay. The Complaint  
24 seeks to hold the Isom Trust liable on a theory of restitution. Also, Gamut seeks damages from  
25 the Isom Trust for alleged conversion of construction equipment in early 2010.

26 By way of history, Plaintiff had also alleged in prior actions that the Isoms agreed to  
27 relinquish ownership of two properties to Plaintiff upon completion of construction. On  
28 December 21, 2015, the family court entered a judgment against Plaintiff finding there was "no



1 evidence” to substantiate his claims for ownership to the properties. Ironically, the family court  
2 also found that Gamut had no assets and, on that basis, awarded this shell of an entity to Plaintiff.  
3 Yet, in direct contradiction, Plaintiff continues to claim in this action that Gamut has valuable  
4 equipment and accounts receivables owed by the Isom Trust.

5 **IV. LEGAL ANALYSIS**

6 The Complaint fails to state claims for restitution or conversion because this action was  
7 filed well past the statute of limitations applicable to either claim. Also, the Complaint fails to  
8 state a claim for restitution because it admits an express agreement existed for costs to be paid by  
9 Bella rather than the Isom Trust. Therefore, this Court should dismiss each cause of action in the  
10 Complaint and enter judgment in favor of the Isom Trust.

11 **A. The 1st Cause of Action For Quasi-Contract (Restitution) Fails As A Matter**  
12 **of Law, and, Therefore, Judgment On That Cause of Action Must be Entered**  
13 **In Favor of The Isom Trust**

14 **(1) The Quasi-Contract (Restitution) Claim Must Be Dismissed As Barred**  
15 **By Statute of Limitations**

16 An action based upon a restitution theory is subject to a two-year statute of limitations.  
17 (*Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App. 4th 990, 996, *citing Code of*  
18 *Civil Procedure* § 339.) Any purported obligation to pay for the cost of construction arose  
19 immediately after Gamut rendered those construction services. “The statute of limitations  
20 therefore bars the right of recovery upon an oral agreement for services performed prior to this  
21 two-year period.” (*Hocker v. Glover* (1931) 113 Cal. App. 152, 156.) Here, the civil complaint  
22 was filed on June 6, 2013, more than two years after Gamut allegedly completed construction of  
23 the house in 2010. (Complaint, ¶18.) In fact, Gamut’s own invoices indicate that the entirety of  
24 the \$263,653.72 in costs were incurred from November 30, 2005 to April 3, 2010, more than two  
25 years prior to the filing of this lawsuit. Therefore, the claim for restitution is time-barred.

26 In an attempt to get around the time-bar, Plaintiff has argued that the statute did not begin  
27 to run until he first made a written demand for payment, which he claims he first made on  
28 November 15, 2011. By that logic, if Plaintiff never made a demand, then the Isom Trust would



1 never have had an obligation to pay. This is illogical. For starters, Plaintiff's argument is based  
2 on a false representation of fact. In truth, Plaintiff made his first demand for payment as early as  
3 November 12, 2010 in a letter to the Isoms in which he threatened litigation if Gamut was not  
4 paid. On January 17, 2011, the Isoms responded to Plaintiff's letter by completely repudiating his  
5 claims and accusing Plaintiff of being a fraud. As such, Plaintiff was aware since at least January  
6 17, 2011 that the Isoms disputed his claims and were not going to pay him one cent. Secondly,  
7 Plaintiff's argument is in conflict with the law. The law states,

8 "When services are performed at the request of another without a  
9 contract, the duty implied by law to pay for them arises  
10 immediately on performance. Hence the statute begins to run, and  
the plaintiff may recover only for the value of services rendered  
within two years before the suit is filed."

11 (3 Witkin. California Procedure, 5th ed., Actions, Sec. 547.) Thus, it is irrelevant when Plaintiff  
12 first made a demand for payment. As a matter of law, any purported obligation to pay for the cost  
13 of construction arose immediately after Gamut performed its construction service. This is further  
14 supported by *Civil Code* §1657, which states that where the only performance required by a party  
15 is the payment of money—i.e., restitution—then such payment is due immediately upon receipt  
16 of services rendered, and hence the statute begins to run on the date such services are rendered.  
17 Since the instant complaint was filed on June 6, 2013, more than two years after completion of  
18 construction, the claim for quasi-contract (restitution) is barred by statute of limitations.

19 (2) **Even if the Statute of Limitations Has Not Run, The Quasi-Contract**  
20 **Claim Fails Because It Is Based Upon an Express Contract.**

21 The quasi-contract claim fails because Plaintiff admits an agreement existed to have  
22 Gamut's work paid for by Bella, not the Isom Trust. Indeed, Gamut invoiced Bella for all its  
23 construction services, not the Isom Trust. "[I]t is well settled that an action based on an implied-  
24 in-fact or quasi-contract cannot lie where there exists between the parties a valid express contract  
25 covering the same subject matter." (*Shvarts v. Budget Group, Inc.* (2000) 81 Cal. App. 4th 1153,  
26 1156, 1160; see also *Hedging Concepts, Inc. v. First Alliance Mortgage Company* (1996) 41  
27 Cal.App.4th 1410, 1419 ["[I]t is well settled that there is no equitable basis for an implied-in-fact  
28 promise to pay reasonable value when the parties have an actual agreement covering



1 compensation.”].) “When parties have an actual contract covering a subject, a court cannot—not  
2 even under the guise of equity jurisprudence—substitute the court's own concepts of fairness  
3 regarding that subject in place of the parties' own contract.” (*Hedging Concepts, Inc. v. First*  
4 *Alliance Mortgage Company*, supra 41 Cal.App.4th at 1419.)

5 Notably, this Court remarked on the legal deficiency of this claim in its previous order  
6 granting C.C.P. §128.7 sanctions, stating: “It was disclosed in discovery that the construction  
7 services performed by Gamut were performed for Bella Palazzo, LLC. Plaintiff provides no  
8 explanation in his Opposition that the claims against the trust are proper...” Judge Bruguera  
9 similarly commented that the claim was deficient since the evidence reflected an agreement to  
10 have costs paid by Bella, not the Isom Trust. (Judge Bruguera’s Order, p. 7, lines 16-18.)

11 **B. The 2<sup>nd</sup> and 3<sup>rd</sup> Causes of Action For Conversion and Trespass Fail As A**  
12 **Matter of Law, and, Therefore, Judgment On Those Causes of Action Must**  
13 **be Entered In Favor of The Isom Trust**

14 The second and third causes of action allege that the Isom Trust converted or trespassed  
15 upon assets of Gamut. First, Mischelynn, a 50% shareholder in Gamut consented to allow the  
16 equipment be stored on the Isom Trust property until a judgment creditor forecloses on same as  
17 she did not want Plaintiff to abscond with the assets. Her consent negates any claim of  
18 conversion or trespass. Second, these claims are barred by the three year statute of limitations.  
19 (C.C.P. §338(c).) In a letter written by Plaintiff’s attorney, it is alleged that the Isom Trust  
20 converted the assets since at least March 6, 2010, yet this lawsuit was filed more than three years  
21 later on June 6, 2013. Third, Gamut sustained no damage from loss of use of the equipment.  
22 Fourth, in March 2014, all of Gamut’s construction equipment was auctioned off through the  
23 legal judgment enforcement process to pay a judgment owed by the company, thus, Gamut does  
24 not have any further legal rights to the equipment.

25 **(1) There Was Consent To Store The Equipment On The Property And**  
26 **No Authorization From Gamut’s Board To Remove The Equipment**

27 The Complaint admits the equipment was stored on the property with consent.  
28 (Complaint, ¶22.) Yet, lack of consent is an essential element of the torts of conversion and



1 trespass. (*Tavernier v. Maes* (1966) 242 Cal.App.2d 532 ("As to intentional invasions of the  
2 plaintiff's interests, his consent negatives the wrongful element of the defendant's act, and  
3 prevents the existence of a tort."].) Thus, the act of storing equipment on the property cannot  
4 constitute a conversion since Plaintiff admits the equipment was stored with consent.

5 Rather, Plaintiff alleges that the Isom Trust "refuse[d] Gamut access to the Equipment"  
6 and that this refusal to grant access to the property constitutes conversion.<sup>3</sup> (Complaint, ¶23.)  
7 However, Plaintiff cannot show that Gamut even authorized the equipment to be removed.

8 Gamut is a corporation governed by its board of directors. Indeed, under California law,  
9 "all corporate powers must be exercised by or under the direction of the board." (*Corp. Code* §  
10 300(a).) As explained in *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787 & 796:

11 "It is a fundamental principle of corporate governance that the role  
12 of managing the business of the corporation is vested in its board of  
13 directors. [Citations.]..."

14 Since Gamut is a corporation governed by its board of directors, any decision to remove  
15 the equipment had to be voted on by the board of directors. This is particularly the case when the  
16 corporation was a community owned entity with no active business and the owners were in the  
17 middle of a divorce. To allow one spouse to remove and abscond with the entity's assets prior to  
18 trial in the family law court would prejudice the other spouse. It is undisputed that Mischelynn  
19 owned 50% of Gamut and controled 50% of the vote on the board of directors; therefore, her vote  
20 was necessary in order to gain the required majority approval for any action of the corporation.  
21 However, Mischelynn did *not* consent to have Plaintiff abscond with equipment of Gamut. As  
22 such, Plaintiff's unilateral decision to remove the equipment is not an authorized action of Gamut  
23 because it was not approved by Gamut's board of directors. The only way to break the deadlock  
24 on the board of directors was for Plaintiff to file a petition for appointment of a provisional  
25 director under Corporations Code section 308(a) or seek approval from the family law court.  
26 Plaintiff never filed such a petition nor sought approval from the family law court, and instead

26 <sup>3</sup> Plaintiff makes reference to a dispute over unpaid rent/storage fees from Gamut for use of the property site and  
27 suggests it was improper to demand storage fees because Gamut's use of the site was supposedly free and without  
28 payment of rent. However, the dispute over storage fees is irrelevant to the determination of the legal issues herein,  
i.e., whether the conversion or trespass causes of action lacked merit on the basis that the equipment was stored on  
the property with consent or that the claims are barred by statute of limitations.



1 elected to use the community business—without Mischelynn’s approval—to file a lawsuit against  
2 Mischelynn’s parents.

3 Plaintiff alleges that Mischelynn breached her fiduciary duties by “refus[ing] to consent  
4 [to] any action by Gamut to collect the Equipment”. (Complaint, ¶37.) Thus, Plaintiff concedes  
5 that Mischelynn’s vote was necessary to authorize removal of the equipment and that he never  
6 obtained her vote to do so. Plaintiff cannot state causes of action for conversion or trespass  
7 without first showing that Gamut authorized removal of the equipment and was then refused  
8 access. Plaintiff’s unilateral demand for personal access to the property site to remove the  
9 equipment does not constitute an action of Gamut and, as such, cannot be the basis for asserting  
10 claims of conversion and trespass against the Isom Trust.

11 **(2) The Claims Are Barred By Statute of Limitations**

12 Even if the Court were to find that the refusal to release Gamut equipment to Plaintiff  
13 personally constituted an act of conversion, the claim would be barred by statute of limitations.  
14 “Code of Civil Procedure section 338, subdivision (c) provides for a three-year statute of  
15 limitations for actions alleging conversion.” (*Strasberg v. Odyssey Group, Inc.* (1996) 51  
16 Cal.App.4th 906, 915.) “[T]he statute of limitations applying in conversion actions... begins to  
17 run from the date of the conversion even though the injured person is ignorant of his rights.”  
18 (*Bennett v. Hibernia Bank* (1956) 47 Cal. 2d 540, 561.)

19 It is undisputed that the Isom Trust refused access to the property for at least three years  
20 prior to the filing of this lawsuit. Plaintiff concedes this point in a letter that states:

21 “First and foremost, it must be understood that the Gamut  
22 Construction Equipment was never ‘abandoned.’... In fact, on the  
23 weekend of the March 6, 2010, the location was made inaccessible  
24 to Gamut Construction employees with the installation of a lock  
25 and chain which were mounted without Gamut Construction’s  
26 consent or knowledge, even though they were still utilizing the  
27 Mission location at that time. Not only were the employees of  
28 Gamut Construction denied access to their information at the  
29 Mission location, they were also warned in writing that if they were  
30 to attempt to enter the property, they would be considered  
31 trespassing and the ‘proper authorities’ would be called.”

32 Based on Plaintiff’s own letter, the Isom Trust refused access to the property since at least  
33 March 6, 2010. Not only does Plaintiff admit in a letter that the conversion took place in early  
34



1 2010, but he actually filed a previous lawsuit for conversion against Mischelynn in which he  
2 accused her of “withholding equipment and business records from Gamut” “sometime before  
3 April 2010”. Thus, he twice concedes that the alleged conversion took place in early 2010.  
4 However, this lawsuit was filed more than three years later on June 6, 2013. Plaintiff cannot  
5 extend the statute by arguing he made another demand for access to the equipment at a later date.  
6 (*Coy v. E.F. Hutton & Co.* (1941) 44 Cal.App.2d 386, 390 [“the running of the statue cannot be  
7 extended by making a tender and demand at a later date.”].) Therefore, this lawsuit is time-barred  
8 and judgment should be entered in favor of the Isom Trust.

9           **(3) Gamut Was Stripped Of Its Possessory Rights Due To A Writ Filed By**  
10           **A Judgment Creditor, And Cannot Prove Damages**

11           There can be no action for conversion or trespass unless Gamut has possession or right to  
12 immediate possession at time of the alleged conversion or trespass. (*Taylor v. S & M Lamp*  
13 *Company* (1961) 190 Cal.App.2d. 700.) On July 29, 2010, a creditor with a \$2 million claim  
14 obtained a writ of attachment against all of Gamut’s equipment and subsequently obtained a  
15 formal judgment. Thus, the conversion and trespass claims have no merit since Plaintiff sought to  
16 abscond with equipment that was subject to a writ of attachment, which Mischelynn sought to  
17 protect. (*See Gardena Valley Airport v. All American Sports* (1964) 230 Cal.App.2d 478, 483  
18 [“An act done to preserve and protect the property in order that it may remain subject to the  
19 lien... is not a wrongful conversion.”].) Further, the \$2 million judgment morphs any value that  
20 Gamut could possibly receive from return of the equipment, which means Gamut sustained no  
21 damage due to the equipment being stored—or converted—at property owned by the Isom Trust.  
22 Also, since Gamut has not been engaged in any active business for many years, and was recently  
23 in suspended status with the Secretary of State, it cannot prove it was damaged by the loss of the  
24 equipment for the period of time until it was auctioned off to pay a court judgment.

25           **(4) Gamut’s Equipment Was Auctioned Off To Pay A Judgment, And,**  
26           **Thus, It Has No Further Legal Rights To The Equipment**

27           In March 2014, Gamut’s equipment was auctioned off to pay a costs judgment owed by  
28 the company to Troy Isom—obtained in the 1<sup>st</sup> Lawsuit—which judgment was assigned to Troy



1 Isom Equipment. Thus, Gamut does not have any further legal rights to the equipment.  
2 Plaintiff's attorney has hinted that he will seek to re-characterize the conversion claim to attack  
3 the legitimacy of the March 2014 auction due to defects in notice—this would mean the purported  
4 act of conversion took place almost a year after this June 2013 lawsuit was filed. No attempt has  
5 been made to amend the complaint to state a new or different claim for conversion, nor would it  
6 be appropriate to permit such an amendment on the day of trial. The Isom Trust was not involved  
7 in the March 2014 auction, and Troy Isom Equipment, the judgment creditor that actually  
8 auctioned the equipment, is not a party to this action. Thus, any issues Plaintiff has with the  
9 auction is irrelevant to this proceeding and must be raised in a separate action to set aside the  
10 auction.

11 **V. CONCLUSION**

12 Plaintiff's claims are deficient on the pleadings and should be dismissed outright.<sup>4</sup> As a  
13 matter of law, Plaintiff has failed to state any viable cause of action against the Isom Trust.  
14 Therefore, the complaint should be dismissed and judgment entered in favor of the Isom Trust.

15 Dated: February 29, 2016 DAGRELLA LAW FIRM, PLC

16  
17 By: \_\_\_\_\_

JERRY R. DAGRELLA

18 Attorney for Defendant Mischelynn Scarlatelli, in her capacity  
19 as successor trustee of the "Armie Troy Isom and Shirley Isom  
20 Family Trust u/d/t dated December 28, 2004"

21  
22 \_\_\_\_\_  
23 <sup>4</sup> "A motion for judgment on the pleadings may be made at any time either prior to the trial or at the trial itself."  
24 (*Stoops v. Abbassi* (2002) 100 Cal.App.4<sup>th</sup> 644, 650.) As pointed out in the California Practice Guide, *Civil*  
25 *Procedure Before Trial* (The Rutter Group 2012), paragraphs 7:276, 7:277, although the statutory basis for a motion  
26 for judgment on the pleadings was added in 1994 and sets forth limitations on the grounds and procedures for the  
27 motion, "these limitations may be meaningless because a nonstatutory motion for judgment on the pleadings  
28 apparently survives *without* such limitations." (*Id.*, p. 7:277; see *Smiley v. Citibank (South Dakota) N.A.* (1995) 11  
Cal.4th 138, 145, n. 2; *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.) "[T]hese cases reach a  
practical result. A court should be able to decide there is no valid cause of action at any time. There is no point in  
forcing a case to go to trial because the motion... failed CCP § 438 requirements." (*Civil Procedure Before Trial*,  
*supra*, p. 7:277; see also *Lucas v. County of Los Angeles* (1996) 47 Cal.App.4th 277, 284-285 [trial courts have  
inherent power to control litigation and conserve judicial resources through whatever procedural vehicle reaches that  
result].)



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**PROOF OF SERVICE**

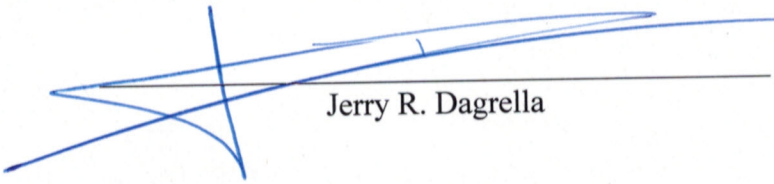
At the time of service I was over 18 years of age and not a party to this action. My business address is Dagrella Law Firm, 11801 Pierce St., Suite 200, Riverside, California 92503. On March 3, 2016, I served a copy of the following document(s):

**TRIAL BRIEF OF DEFENDANT MISCHELYNN SCARLATELLI, SUCCESSOR TRUSTEE OF THE ARMY TROY ISOM AND SHIRLEY ISOM FAMILY LIVING TRUST**

**By e-mail or electronic transmission.** Based on an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

<b>Stephen R. Wade</b> <b>The Law Offices of Stephen R. Wade</b> <b>350 W. Fourth Street</b> <b>Claremont, CA 91711</b> <a href="mailto:srw@srwadelaw.com">srw@srwadelaw.com</a>	<b>Attorney For:</b> <b>Plaintiff Mark Scarlatelli, an individual, for himself and on behalf of Gamut Construction Company, Inc.</b>
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 3, 2016, at Riverside, California.

  
Jerry R. Dagrella