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Troy Isom, Shirley Isom and Shirley Isom
6 Construction, Inc.

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11

12 TROY ISOM, an individual; SHIRLEY
ISOM, an individual; and SHIRLEY ISOM
13 CONSTRUCTION, INC., a California
Corporation

14 Plaintiffs,

15 vs.

16 MILLER MILLER & MENTHE, LLP, a
17 California Limited Liability Partnership;
DARREL C. MENTHE, an individual; and
18 DOES 1 to 25 inclusive,

19 Defendants.
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Case No. BC520564
Judge: Honorable Soussan G. Bruguera

**VERIFIED FIRST AMENDED
COMPLAINT FOR MALICIOUS
PROSECUTION**

[Filed per C.C.P. § 472.]

Action Filed: September 6, 2013
Trial Date: None set

VERIFIED FIRST AMENDED COMPLAINT FOR MALICIOUS PROSECUTION

1. Plaintiffs Troy Isom and Shirley Isom ("the Isoms") are individuals residing in the County of Los Angeles, State of California.

2. Plaintiff Shirley Isom Construction, Inc. is a Corporation doing business in the County of Los Angeles, State of California.

3. Plaintiffs are informed and believe and thereon allege that Defendant Miller Miller & Menthe, LLP is a Limited Liability Partnership doing business in the County of Los Angeles, State of California.

4. Plaintiffs are informed and believe and thereon allege that Defendant Darrel C. Menthe is a licensed attorney and partner with the firm Miller Miller & Menthe, LLP.

5. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants DOES 1 through 25, inclusive, are unknown to Plaintiffs. Plaintiffs are informed and believe and based thereon allege that Defendants DOES 1 through 25, inclusive, are each responsible in some manner for and thereby proximately caused the damages to Plaintiffs as herein alleged. Accordingly, Plaintiffs sue said Defendants by said fictitious names. Plaintiffs will seek leave to amend the Complaint to set forth the true names and capacities of said Defendants when the same have been ascertained.

6. Plaintiffs are informed and believe and based thereon allege that at all times herein mentioned each Defendant, including those named fictitiously herein, in addition to acting for himself, herself and itself and on his, her or its own behalf individually, are and were acting as the co-conspirator, agent, servant, employee and representative of, and with the knowledge, consent and permission of, each and all of the other Defendants and within the course, scope and authority of said conspiracy, agency, service, employment and representation.

7. On December 4, 2009, Mischelynn Scarlatelli filed for divorce against Defendant Mark Scarlatelli. Thereafter, at Mr. Scarlatelli's direction, two lawsuits were filed against Mrs. Scarlatelli's parents, the Isoms. The plaintiffs in these lawsuits were Gamut Construction Company, Inc. and Bella Piazza, LLC. These lawsuits were frivolous and filed for the improper purpose to harass and extort Mr. Scarlatelli's wife and in-laws during the pending divorce.

GAMUT CONSTRUCTION COMPANY, INC. v. ISOM, ET AL.

8. On April 25, 2012, an action was filed on behalf of Gamut Construction Company, Inc. ("GCC") against the Isoms and Shirley Isom Construction, Inc. in Los Angeles Superior Court entitled, *Gamut Construction Company, Inc. v. Isom, et al.*, Case No. KC063680 ("Gamut Action"). Defendants substituted in as attorneys of record for GCC on or about December 11, 2012. This action was prosecuted by Defendants without authority from GCC, an entity that Defendants had wrongly held out to be their purported client.

9. Under California law, "all corporate powers must be exercised by or under the direction of the board." (*Corp. Code* § 300(a).) The phrase "all corporate powers" certainly includes the power to prosecute and defend legal actions, as pointed out in *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787 & 796:

"It is a fundamental principle of corporate governance that the role of managing the business of the corporation is vested in its board of directors. [Citations.] This responsibility includes the prosecution, defense, and control of corporate litigation...

it is axiomatic that 'decisions of a corporation—including the decision to initiate litigation—should be made by the board of directors.' [Citations.]"

10. The decisions to file and maintain prosecution of the Gamut Action were never presented to the board of directors of GCC for approval. The board of directors of GCC never delegated to any officer exclusive power to decide whether to file or maintain lawsuits on behalf of the company; such action could only occur if approved by a majority vote of the board of directors at a scheduled meeting or by unanimous written consent of the board members. (*Corp. Code* § 307(8).)

11. Mrs. Scarlatelli controls 50% of the board of GCC and she was never consulted about and never authorized the filing or continued prosecution of the Gamut Action. Defendants were aware of these facts, as they were supplied with K-1 Statements and sworn court transcripts confirming this, and they explicitly acknowledged that there was deadlock on the board of directors. Defendants never sought appointment of a provisional director to break the deadlock, as provided in *Corporations Code* section 308(a).

1 12. Defendants were aware that their client's former counsel, Sean P. O'Connor,
2 Managing Partner of the Orange County office of Sheppard Mullin Richter & Hampton LLP,
3 advised that the board members must have a special meeting to "address the need to retain
4 counsel for Gamut Construction." Defendants ignored this sage advice from their client's former
5 counsel and continued to prosecute the Gamut Action without board approval.

6 13. **Defendants' conduct in prosecuting the Gamut Action without client**
7 **authority constituted immoral and unprofessional conduct within the meaning of *Business***
8 ***and Professions Code* Section 6106 and a violation of Sections 6068¹ and 6104². Defendants'**
9 **conduct is also a crime under *Penal Code* Section 182(a)(3).³**

10 14. Defendants also failed to investigate the merits of the complaint prior to
11 substituting in as counsel, and even afterward, continued to prosecute the action despite the clear
12 lack of evidence to substantiate the case.⁴ It took seven motions to compel before Defendants
13 finally prepared responses to discovery—on behalf of their purported client, GCC—that sought
14 disclosure of all evidence to support the complaint. The discovery responses showed that GCC
15 had no factual or legal basis for its causes of action.⁵

16 15. The complaint alleged causes of action for (a) money had and received, (b)
17 conversion, (c) trespass and (d) unjust enrichment.⁶

18 a. Money Had and Received: in support of this cause of action, Defendants
19 claimed that the Isoms owed GCC the sum of \$263,653.72 for construction
20 work. In discovery, Defendants produced computer generated statements

21
22 ¹ *Business and Professions Code* Section 6068 states, in pertinent part, "It is the duty of an attorney to... maintain those actions, proceedings, or defenses only as appear to him or her legal or just..."

23 ² *Business and Professions Code* Section 6104 states, "Corruptly or wilfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension."

24 ³ *Penal Code* Section 182(a)(3) states it is a crime "If two or more persons conspire... Falsely to move or maintain any suit, action, or proceeding."

25 ⁴ An attorney is liable for malicious prosecution not only for *initiating* the underlying action without probable cause but also for *continuing to maintain* the suit after learning it is meritless. (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 971)

26 ⁵ "In a situation of complete absence of supporting evidence, it cannot be adjudged reasonable to prosecute a claim." (*Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 597.)

27 ⁶ "Probable cause... must exist for every cause of action advanced in the underlying action. An action for malicious prosecution lies when but one of alternate theories of recovery is maliciously asserted." (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 57, n. 5)

1 purporting to prove costs owed by Bella Palazzo, LLC for labor and material
2 provided by third party vendors. Defendants produced no evidence to show
3 that these costs were owed by the Isoms directly nor did they care to explain
4 the logic behind their purported theory of liability. Further, a cause of action
5 for money had and received implies that GCC actually paid the \$263,653.72 to
6 third party vendors for which it sought reimbursement from the Isoms.
7 However, after more than a year of litigation, extensive discovery and seven
8 motions to compel, Defendants failed to produce a shred of evidence that GCC
9 actually paid out any of the \$263,653.72 in costs to third party vendors.
10 Lastly, the statute of limitations for a cause of action of money had and
11 received is two years if the underlying claim is based upon oral contract.
12 According to GCC's discovery responses, the \$263,653.72 in alleged costs
13 accrued more than two years prior to the filing of the Gamut Action.

14 b. Conversion and Trespass: in support of these causes of action, Defendants
15 claimed that the Isoms and Shirley Isom Construction, Inc. had possession of
16 and wrongly refused to return construction equipment to GCC. In actuality, an
17 unrelated judgment creditor with a \$2 million lien had attached the equipment.
18 Defendants were aware of this, yet proceeded to pretend that the Isoms and
19 Shirley Isom Construction, Inc. possessed the equipment. Shirley Isom
20 Construction, Inc. never maintained possession of the construction equipment
21 and never held an ownership interest in the property where the equipment was
22 stored. The Isoms also had no control over the equipment due to the judgment
23 creditor's attachment and did not own the property where the equipment was
24 stored.

25 c. Unjust Enrichment: Defendants pursued a cause of action for unjust
26 enrichment despite the fact that California does not recognize a cause of action
27 for unjust enrichment. (*Melchior v. New Line Productions, Inc.* (2003) 106
28

1 Cal.App.4th 779, 793 ["there is no cause of action in California for unjust
2 enrichment"].)

3 16. Defendants were admonished by a judge to dismiss the Gamut Action because
4 they lacked proper client authority to represent GCC. In addition, Defendants faced a sanctions
5 hearing regarding their lack of authority and the frivolity of the complaint on June 4, 2013, the
6 same day as the trial. On May 7, 2013, Defendants dismissed the Gamut Action to avoid the
7 sanctions hearing and trial. But, then, on June 6, 2013, Defendants re-filed the Gamut Action as a
8 derivative suit by Mr. Scarlatelli and added Mrs. Scarlatelli as a defendant alongside her parents
9 (Case No. KC066075). Plaintiffs filed a motion for sanctions pursuant to *Code of Civil*
10 *Procedure* section 128.7. On October 1, 2013, the court granted the motion, finding Defendants
11 had filed the action against Mr. Scarlatelli's former spouse and in-laws "***for the improper***
12 ***purpose of harassing, or to cause unnecessary delay or needless increase in the cost of***
13 ***litigation***" (Court Order, p. 6, lines 12-13 & 22-23.) The Court ordered the complaint "stricken
14 and dismissed with prejudice" and further ordered that "attorneys Adam I. Miller, Darrel C.
15 Menthe, and Miller Miller Menthe LLP are sanctioned \$9,120.00 pursuant to CCP § 128.7." A
16 true and correct copy of the Court's Order is attached as Exhibit "A"

17 ***BELLA PIAZZA, LLC v. ISOM, ET AL.***

18 17. On October 3, 2012, an action was filed on behalf of Bella Piazza, LLC ("BP")
19 against the Isoms in Los Angeles Superior Court, entitled *Bella Piazza, LLC v. Isom, et al.*, Case
20 No. KC064781 ("Bella Action"). Defendants substituted in as attorneys of record for BP on or
21 about December 12, 2012. This action was also prosecuted by Defendants without authority from
22 BP, an entity that Defendants had wrongly held out to be their purported client.

23 18. The decisions to file and maintain prosecution of the Bella Action were never
24 presented to the membership of BP for approval. A limited liability company is deemed to be
25 "member-managed" unless both the Articles of Organization and the Operating Agreement
26 provide otherwise. (*Corporations Code* § 17704.07(a).) There exists no Operating Agreement
27 for BP and its members never filed a Statement of Information with the Secretary of State
28 designating any one individual as the "manager" of the LLC. Thus, "[t]he management and

1 conduct of the limited liability company are vested in the members” who have “equal rights in the
2 management and conduct of the limited liability company's activities including equal voting
3 rights.” (*Corp. Code* § 17704.07(b)(1) & (2).) By law, a decision to file a lawsuit “shall be
4 decided by a majority of the members of the limited liability company.” (*Corp. Code* §
5 17704.07(b)(3).)

6 19. According to the complaint in the Bella Action, BP is owned 50/50 by Mark
7 Scarlatelli and Troy Isom. Troy Isom was never consulted about and never authorized the filing
8 or continued prosecution of the Bella Action. Defendants were aware of these facts as they
9 admitted the same in preparing BP’s discovery responses. Since BP is governed by its voting
10 membership and the Bella Action was filed and maintained without approval of the membership,
11 Defendants lacked client authority to prosecute that lawsuit.

12 20. **Defendants’ conduct in prosecuting the Bella Action without client authority**
13 **constituted immoral and unprofessional conduct within the meaning of *Business and***
14 ***Professions Code* Section 6106 and a violation of Sections 6068 and 6104. Defendants’**
15 **conduct is also a crime under *Penal Code* Section 182(a)(3).**

16 21. Defendants also failed to investigate the merits of the complaint prior to
17 substituting in as counsel, and even afterward, continued to prosecute the action despite the fact
18 the complaint was completely without factual or legal merit. The complaint in the Bella Action
19 alleged a single cause of action for quiet title on the theory that BP held equitable ownership of a
20 piece of real property based on an oral agreement. However, the subject real property was owned
21 by a family trust; the Isoms *individually* did not own the real property and were not proper parties
22 to a quiet title action. Further, more than 100 years of uncontradicted legal precedent make clear
23 that a party claiming equitable title cannot maintain a quiet title action against a legal owner of
24 record. And, California's Statute of Frauds, *Civil Code* § 1624, and related case law, holds that
25 oral agreements to transfer an interest in real property are unenforceable. Lastly, according the
26 complaint, the oral promise sought to be enforced was made seven years prior to filing suit and
27 was, thus, time barred.

22. Defendants were admonished by a judge to dismiss the Bella Action because they lacked proper client authority to represent BP. On May 22, 2013, Defendants dismissed the Bella Action. But, then, on June 6, 2013, Defendants re-filed the Bella Action as a derivative suit by Mr. Scarlatelli and added claims for declaratory relief and breach of fiduciary duty alongside the original quiet title cause of action. Plaintiffs filed a motion to require posting of a security bond under *Corporations Code* section 17501(b) on the ground that there was no reasonable likelihood of success on the merits and, thus, the derivative action did not benefit the corporate entity. In response, and prior to the hearing on said motion, Defendants filed an amended complaint that eliminated the quiet title cause of action—the only claim that appeared in the original Bella Action—thereby conceding its frivolity. In summary, the Bella Action, and the claims therein, which amounted to a sole cause of action for quiet title, was dismissed, re-filed and then again dismissed by Defendants—all at considerable cost to Plaintiffs.

23. Defendants acted without probable cause and with malice in filing, prosecuting and maintaining the Gamut Action and Bella Action, including the re-filed and dismissed cases that duplicated the claims in the Gamut Action and Bella Action. Defendants knowingly and intentionally prosecuted the Gamut Action and Bella Action and the subsequent duplicative actions against Plaintiffs despite the fact and knowledge that no evidence existed to support the causes of action raised in those complaints. Defendants prosecuted these actions for an improper purpose of harassing and extorting Mr. Scarlatelli's estranged wife and in-laws (i.e., Plaintiffs herein) during the pending divorce proceedings. Defendants threatened Plaintiffs with endless and costly litigation if their extortionate settlement demands were not accepted. Moreover, Defendants prosecuted claims that were already raised in the family court divorce proceeding, thereby exposing Mrs. Scarlatelli and her parents to a multiplicity of actions over the same subject matter. On August 19, 2013, another court awarded sanctions under *Code of Civil Procedure* section 128.7 on a related action (Case No. KC066078) filed by Defendants against Plaintiffs, finding that Defendants had improperly filed a duplicative civil action in defiance of the family law court's exclusive jurisdiction. In all, two motions for sanctions under section

1 128.7 were granted disposing of later duplicative court actions (Case Nos. KC066075 &
2 KC066078) filed and maintained by Defendants.

3 24. As a direct and proximate result of Defendants' actions, Plaintiffs suffered actual
4 and consequential damages, including substantial attorneys' fees and costs, in an amount to be
5 determined at the time of trial, but believed to be in excess of the jurisdictional minimum of this
6 Court. In addition, Plaintiffs are entitled to recover exemplary and punitive damages.

7 **RELIEF REQUESTED**

8 WHEREFORE, Plaintiffs pray for Judgment against Defendants, as follows:

9 1. That upon a finding that Defendants violated *Business and Professions Code*
10 Sections 6068, 6104, 6106 and/or *Penal Code* Section 182(a)(3) (see ¶¶ 9-13 & 19-21), the Court
11 refer the matter to the California State Bar and/or District Attorney's Office for appropriate
12 review and action;

13 2. For actual and consequential damages;

14 3. For punitive damages;

15 4. For costs of suit herein; and,

16 5. For such other and further relief as the Court deems just and proper.

17 Dated: October 3, 2013

DAGRELLA LAW FIRM, PLC

18
19 By:

JERRY R. DAGRELLA

Attorney for Plaintiffs Troy Isom, Shirley
Isom and Shirley Isom Construction, Inc.

EXHIBIT “A”

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Superior Court of California
County of Los Angeles

OCT - 1 2013

Sherril R. Carter Executive Officer/Clerk
By G. Berni, Deputy

5 Attorney for Defendants
6 Mischelynn Scarlatelli, Armie Troy Isom, Shirley
7 Isom, and "Armie Troy Isom and Shirley Isom,
8 trustees Armie Troy Isom and Shirley Isom Family
Trust u/d/t dated December 28, 2004" erroneously
sued as "Isom Armie T. & Shirley Trust, a
California Trust"

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES - POMONA COURTHOUSE
12

13 MARK SCARLATELLI, an individual, for
14 himself and on behalf of GAMUT
CONSTRUCTION COMPANY, INC., a
California Corporation,

15 Plaintiff,

16 vs.

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

22 Defendants.
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Case No. KC066075
Judge: Honorable Dan Thomas Oki

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION FOR
SANCTIONS AGAINST PLAINTIFF
MARK SCARLATELLI AND HIS
ATTORNEYS DARREL C. MENTHE,
ADAM I. MILLER AND MILLER MILLER
MENTHE, LLP PURSUANT TO CODE OF
CIVIL PROCEDURE SECTION 128.7**

Hearing:

Date: October 1, 2013

Time: 8:30 a.m.

Dept.: J

Action Filed: June 6, 2013

Trial Date: None set

[PROPOSED] ORDER

On October 1, 2013, the Court heard oral argument on the motion of Defendants Mischelynn Scarlatelli, Armie Troy Isom, Shirley Isom, and "Armie Troy Isom and Shirley Isom, trustees Armie Troy Isom and Shirley Isom Family Trust u/d/t dated December 28, 2004" *erroneously sued as* "Isom Armie T. & Shirley Trust, a California Trust" (collectively, "Defendants") for sanctions against Plaintiff Mark Scarlatelli ("Plaintiff") and his attorneys Darrel C. Menthe, Adam I. Miller and Miller Miller Menthe, LLP pursuant to Code of Civil Procedure section 128.7. Jerry R. Dagrella of Dagrella Law Firm, PLC appeared as attorney for Defendants. Adam I. Miller of Miller Miller Menthe, LLP appeared as attorney for Plaintiff.

Having considered all the papers submitted, and heard oral argument, the Court rules as follows:

This action was filed on June ⁶~~13~~, 2013 by Plaintiff Mark Scarlatelli, individually and on behalf of Gamut Construction Company, Inc., and against Defendants Gamut Construction Company, Inc., Mischelynn Scarlatelli, Armie Troy Isom, Shirley Isom, and the Isoms as trustees of a family trust. In his Complaint, Plaintiff alleges that Gamut built a home in La Verne on property owned by either the Isoms or the trust, and after construction was complete title to the property was to be transferred to Bella Palazzo, LLC, an entity in which Defendant Troy Isom and Plaintiff each have a 50% interest. On 11/15/11, Plaintiff requested that the Property be transferred to Bella Pallazo, LLC, but the Isoms refused, and also refused to pay Gamut Construction Company, Inc. for the construction. The Complaint, filed 6/6/13, asserts causes of action for:

1. Quantum Meruit
2. Conversion
3. Trespass to Chattels
4. Breach of Fiduciary Duty

Defendants Mischelynn Scarlatelli, Armie Troy Isom, Shirley Isom, and Armie Troy Isom and Shirley Isom, Trustte of the Armie Troy Isom and Shirley Isom Trust u/d/t Dated December 28, 2004 move to strike the Complaint herein, dismiss the action, and impose reasonable attorney

1 fees and costs in the amount of \$9,120.00 against Plaintiff and his attorneys pursuant to CCP §
2 128.7 on the ground that the Complaint is without factual or legal merit and was filed primarily
3 for an improper purpose to harass Defendants.

4 On 12/4/09, Defendant Mischelynn Scarlatelli filed for divorce against Plaintiff Mark
5 Scarlett, which remains pending. On 9/18/12 and 10/3/12, Plaintiff filed 2 civil suits against
6 Mischelynn's parents, the Isoms. Case No. KC063680 was assigned to Department J and
7 KC064781 was assigned to Department H. After Defendants filed motions for sanctions pursuant
8 to CCP § 128.7, counsel for Plaintiff dismissed those lawsuits on May 7, 2013 and May 22, 2013
9 respectively. The court takes judicial notice of its files in those actions.

10 Then, only a few weeks later, on 6/6/13, Attorney Menhe filed three more lawsuits on
11 behalf of Plaintiff, including this action, raising the same claims and allegations as the previous
12 lawsuits that he dismissed. Counsel for Defendants contends that Attorney Menhe is well aware
13 of the fact that the family law court has exclusive jurisdiction over these claims.

14 Counsel for Defendants contends that all of the causes of action relate to claims for
15 damages and return of construction equipment belonging to Gamut Construction, Inc., not Mark
16 Scarlatelli individually, that this derivative action was filed in violation of Corp. Code 800(c), and
17 that the claims against the Isoms individually are without merit because they are not the owners
18 of the property.

19 Defendants also contend that the quantum meruit claim is barred by the two-year statute
20 of limitations because construction was completed in 2010 and this action was filed on June 6,
21 2013; that quantum meruit also fails because discovery in the prior actions demonstrated that the
22 services were performed for Bella Pallazo, LLC rather than the Isoms or the trust; and that the
23 conversion and trespass causes of action fail because the equipment has been on the property for
24 more than three years prior to filing suit. Further, Mischelynn Scarlatelli is a 50% shareholder of
25 Gamut Construction, Inc. and has as much right as Plaintiff to manage the assets of the
26 corporation pending an order of the family law court.

27 In opposition, Plaintiff contends that the defects in the prior cases had to do with corporate
28 authority. The cases were brought directly in the name of the corporate entities, but Defendants

1 argued that Plaintiff lacked authority to bring the action in the name of the corporation. Therefore,
2 Plaintiff decided to re-file the complaints as derivative actions, which a shareholder can do. The
3 sanctions motion should not to be employed as a pleading challenge, nor is every attorney
4 warranting that his or her pleading is 100% demurrer-proof when signing it.

5 Plaintiff argues that sanctions are not warranted, and that the issue is whether the civil
6 action is in reality the family law action reframed as a civil action. Here, the causes of action
7 against Mischelynn are not of the type that the family court has jurisdiction. They do not relate to
8 a division of marital assets, but are derivative actions filed on behalf of the company that
9 Mischelynn owns with Plaintiff.

10 In reply, counsel for Defendant contends that Plaintiff has conducted discovery in the
11 family law action on the very same issues he now contends are not subject to family court
12 jurisdiction. Gamut Construction, Inc. is a 100% community property business that is already the
13 subject of litigation in the family court, which has exclusive jurisdiction over the division of
14 community property. Troy and Shirley Isom are not proper parties to this action, and have
15 provided declarations disclaiming their individual ownership of the real property, as well as
16 copies of the deed.

17 **SAFE HARBOR:**

18 A motion for sanctions under CCP 128.7 cannot be filed until 21 days after it has been
19 served. During this time, the party being served has the opportunity to correct the violation, and if
20 it does so, the sanctions motion cannot be filed or pursued. (CCP 128.7(c)(1).)

21 The motion was served on 6/27/13, and filed more than 21 days thereafter on 7/19/13.
22 Accordingly, Defendants provided the requisite safe harbor.

23 **MERITS:**

24 By presenting to the court, whether by signing, filing, submitting, or later advocating, a
25 pleading, petition, written notice of motion, or other similar paper, an attorney is certifying that to
26 the best of the person's knowledge, information, and belief, formed after an inquiry reasonable
27 under the circumstances that THE PLEADING IS NOT BEING PRESENTED PRIMARILY
28 FOR AN IMPROPER PURPOSE, SUCH AS TO HARASS OR TO CAUSE UNNECESSARY

1 DELAY OR NEEDLESS INCREASE IN THE COST OF LITIGATION, and that the claims,
2 defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous
3 argument for the extension, modification, or reversal of existing law or the establishment of new
4 law. (CCP 128.7(b)(1)-(2).) The attorney or party presenting a pleading or other paper to the court
5 certifies that, to the best of that person's knowledge and belief "formed after an inquiry reasonable
6 under the circumstances," the allegations and other factual contentions have evidentiary support
7 or, "if specifically so identified, are likely to have evidentiary support after a reasonable
8 opportunity for further investigation or discovery." (CCP 128.7(b)(3).)

9 On 12/4/09, Defendant Mischelynn Scarlatelli filed for divorce against Plaintiff Mark
10 Scarletti.

11 Plaintiff Mark Scarletti has now filed five separate lawsuits against Mischelynn, her
12 parents, and her parent's trust, alleging claims on behalf of Gamut Construction Company, Inc.

13 MOTION OF DEFENDANT MISCHELYNN SCARLATELLI:

14 "Where a proceeding has been assigned for hearing and determination to one department
15 of the superior court by the presiding judge and the proceeding has not been finally disposed of, it
16 is beyond the jurisdictional authority of another department of the same court to interfere with the
17 exercise of the power of the department to which the proceeding has been so assigned. If such
18 were not the law, conflicting adjudications of the same subject-matter by different departments of
19 the one court would bring about an anomalous situation and doubtless lead to much confusion....

20 "One department of the superior court cannot enjoin, restrain, or otherwise interfere with
21 the judicial act of another department of the superior court. Even between superior courts of
22 different counties, having coequal jurisdiction over a matter, the first court of equal dignity to
23 assume and exercise jurisdiction over a matter acquires exclusive jurisdiction. A judgment
24 rendered in one department of the superior court is binding on that matter upon all other
25 departments until such time as the judgment is overturned...

26 "Either spouse in a marital dissolution action may join third parties claiming an interest in
27 alleged community property. Moreover, given that a divorce action divides community property
28 and establishes support obligations, third parties claiming an interest in alleged community

1 property have the right to intervene in the action if the spouses do not join them. Strong policy
2 reasons underlie this rule....

3 "There are sound reasons in policy why the court in a divorce action should be permitted
4 to adjudicate the rights of third parties in property alleged by one or both of the spouses to be
5 community property. One of the duties of the court sitting as a court of equity in a divorce
6 proceeding is to make an equitable distribution or award of community property and to provide
7 for the wife's support. The court can scarcely make a fair distribution community property
8 without determining what property is community. If property alleged by one of the spouses to be
9 community is in fact in whole or in part claimed by third persons, the court should determine as
10 between the spouses whether the property is community, or owned by third persons. If a third
11 party cannot be made a party and his rights adjudicated, it may be held in a separate action
12 brought by or against such claimant that he is the owner of the property, with the result that a
13 division of all community property made between the spouses in the divorce action, based on a
14 determination that certain property was owned by them, will be rendered inequitable as between
15 them." (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1449-1451.)

16 "Family law cases should not be allowed to spill over into civil law. ALMOST ALL
17 EVENTS OCCURRING IN FAMILY LAW LITIGATION CAN BE REFRAMED AS CIVIL
18 LAW ACTIONS, AND IT IS INCUMBENT ON COURTS TO EXAMINE THE SUBSTANCE
19 OF CLAIMS, NOT JUST THEIR NOMINAL HEADINGS....

20 Under the rule of exclusive concurrent jurisdiction, when two superior courts have
21 concurrent jurisdiction over the subject matter and parties, the first to assume jurisdiction has
22 exclusive and continuing jurisdiction; the rule does not require absolute identity of parties, causes
23 of action or remedies sought; if the first court has the power to bring before it all the necessary
24 parties, application of the rule is not precluded merely because the parties in the second action are
25 not identical." (*Burkle v. Burkle* (2006) 144 Cal. App. 4th 387.)

26 Gamut Construction, Inc. is community property owned by both Defendant and Plaintiff.
27 This asset is a subject matter that the pending dissolution of marriage proceeding has exclusive
28 jurisdiction over as the dissolution action was filed first. Plaintiff contends that *Burkle v. Burkle*

1 does not apply because the causes of action against Mischelynn do not relate to the split of marital
2 assets, but are derivative actions filed on behalf of the company that Mischelynn owns with
3 Plaintiff. However, as Burkle points out: "the rule does not require absolute identity of parties,
4 causes of action or remedies sought; if the first court has the power to bring before it all the
5 necessary parties, application of the rule is not precluded merely because the parties in the second
6 action are not identical." (*Burkle v. Burkle* (2006) 144 Cal. App. 4th 387.)

7 Here, like in *Burkle*, the parties have already conducted discovery in the dissolution action
8 on the subject matter in the within civil lawsuit. The claims relate to community property jointly
9 owned by Plaintiff and Defendant Mischelynn, and even though they may involve third parties,
10 may be decided by the family law court. In addition, Plaintiff has apparently attempted to split his
11 claims into three more separate lawsuits, needlessly increasing the cost of litigation. Accordingly,
12 the court finds that Plaintiff brought this action against his former spouse for the improper
13 purpose of harassing, or to cause unnecessary delay or needless increase in the cost of litigation.

14 MOTION OF ARMIE TROY ISOM AND SHIRLEY ISOM INDIVIDUALLY:

15 Plaintiff contends that individual Defendants Troy and Shirley are proper parties because
16 they are "closely intertwined with the operation of the property." (Opposition, 7:24-25.)
17 However, on 6/27/13, the Isoms provided declarations disclaiming their individual ownership of
18 the real property, along with the property deed. After being so notified, Plaintiff and his counsel
19 had a duty to perform a reasonable inquiry under the circumstances that their factual contentions
20 have evidentiary support. Plaintiff provides no evidence or argument aside from pure speculation
21 that the Isoms are liable in their individual capacities. The court finds that Plaintiff brought the
22 action against his former in-laws in their individual capacities for the improper purpose to harass,
23 or to cause unnecessary delay or needless increase in the cost of litigation.

24 MOTION OF ARMIE TROY ISOM AND SHIRLEY ISOM AS TRUSTEES:

25 It was disclosed in discovery that the construction services performed by Gamut were
26 performed for Bella Palazzo, LLC. (Dagrella Decl., Pars. 2-3.) Plaintiff provides no explanation
27 in his Opposition that the claims against the trust are proper, or why the trust cannot be joined in
28 the family law proceeding.

1 The motion is granted and the Complaint herein is ordered stricken and dismissed with
2 prejudice to allow the claims to be adjudicated in the family law proceeding. Plaintiff and his
3 attorneys Adam I. Miller, Darrel C. Menthe, and Miller Miller Menthe LLP are sanctioned
4 \$9,120.00 pursuant to CCP § 128.7, payable to counsel for Defendants within 30 days.

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7 Dated: OCT 1 2013

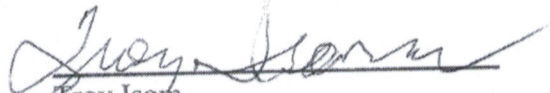
Dan T. Oki

HONORABLE DAN THOMAS OKI

VERIFICATIONS

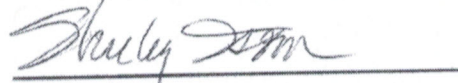
I, Troy Isom, am a party in the above entitled action. I have read the foregoing **VERIFIED FIRST AMENDED COMPLAINT FOR MALICIOUS PROSECUTION** and know the contents thereof to be true of my own knowledge, except as to those things stated upon information and belief, and as to those I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed October 3, 2013, at La Verne, California.


Troy Isom

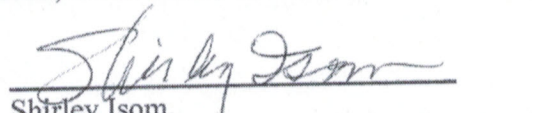
I, Shirley Isom, am a party in the above entitled action. I have read the foregoing **VERIFIED FIRST AMENDED COMPLAINT FOR MALICIOUS PROSECUTION** and know the contents thereof to be true of my own knowledge, except as to those things stated upon information and belief, and as to those I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed October 3, 2013, at La Verne, California.


Shirley Isom

I, Shirley Isom, am President of Shirley Isom Construction Inc., a party in the above entitled action. I have read the foregoing **VERIFIED FIRST AMENDED COMPLAINT FOR MALICIOUS PROSECUTION** and know the contents thereof to be true of my own knowledge, except as to those things stated upon information and belief, and as to those I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed October 3, 2013, at La Verne, California.


Shirley Isom,
President, Shirley Isom Construction, Inc.

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VERIFIED FIRST AMENDED COMPLAINT FOR MALICIOUS PROSECUTION

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