



Plaintiffs, via Certified Mail and First-Class Mail.

3. Plaintiffs did not receive either copy which Counsel Wallace did certify to have mailed.<sup>1</sup>
4. Plaintiffs discovered Defendants' March 27<sup>th</sup> filing on April 27<sup>th</sup>, 2012.
5. The content of Defendants' "*Response to Plaintiffs' Motion for Leave of Court to Amend Plaintiffs' Petition*" does not pertain to Plaintiffs' Motion for Leave, though rather, the content of the response is a further argument to Defendants' Motion to Dismiss.
6. Defendants' "*Response to Plaintiffs' Motion for Leave to Amend Plaintiffs' Petition*" isn't proper. The argument contained in Defendants' response to Plaintiffs' Motion for Leave to Amend is a direct argument to Plaintiffs' Response to Defendants' Motion to Dismiss. Counsel Wallace's wily act does show Counsel Wallace's misconduct was intentional and malicious.<sup>2</sup>
7. Counsel Wallace's prejudicial filing was presented for an improper purpose. Counsel Wallace did intentionally argue his "*Motion to Dismiss*" in an unserved pleading so Plaintiffs would be unprepared for the March 29<sup>th</sup> hearing.
8. Counsel Wallace's prejudicial filing did needlessly increase the cost of this litigation. Plaintiffs have now exhausted many hours and dollars as a result of

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<sup>1</sup> Plaintiffs hereby request strict proof of Counsel Wallace's alleged Certified mailing. During the pre-motion conference for this "*Motion for Sanctions*," initially Counsel Wallace asked Plaintiffs, "Do you wanna see if I have a certified mail green card that I can produce to you?" Counsel Wallace did further state, "I'll find out if there's a green card from the March 27<sup>th</sup>, 2012 document." However, by the end of said pre-motion conference, Counsel Wallace did change his tune, stating verbatim, "I'm just opposed to your motion. Go ahead and file whatever you want."

<sup>2</sup> Counsel Wallace's argument contained in Defendants' unserved response is evidenced as being sly by the simple fact that Plaintiffs' Motion for Leave WAS an unopposed motion, and does present an argument not presented in Plaintiffs' motion.

Counsel Wallace's offensive filing, to include nullifying the March 29<sup>th</sup> 2012 hearing. If Counsel Wallace's appalling accomplishment was truly a "mistake," as Counsel Wallace did indicate in his pre-motion conference for Plaintiffs' "*Motion for Sanctions*," with Plaintiffs, then Counsel Wallace would have spoken up during the March 29<sup>th</sup> hearing when the Court did ask if everyone had received copies of each party's filings. After all, Counsel Wallace's offensive argument was filed less than 45 hours before the "*Motion to Dismiss*" hearing, and filed out of time at that.

9. The legal contentions contained in Counsel Wallace's offensive filing were frivolous because they were presented in an unopposed motion filed by Plaintiffs, rather than in Defendant's Motion to Dismiss, which is the motion Defendants' argument did pertain to.
10. Counsel Wallace's contentions contained in his offensive pleading contain no evidentiary support.
11. Counsel Wallace did intentionally fail to serve Plaintiffs with a copy of Defendants' filing simply because Counsel Wallace believes he is exempt from rules of law, as during the pre-motion conference for this Motion for Sanctions, Counsel Wallace stated, "*I'm not trying to beat you up, or anything like that. I know the Court will deny it, even if it did happen. Even if you weren't served, it would've been a mistake on my part, as opposed to sanctionable conduct. Judges just don't sanction people for this.*"<sup>3</sup>
12. Counsel Wallace was premeditative in his failure to serve Plaintiffs. Counsel

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<sup>3</sup> Counsel Wallace has been unapologetic as a result of his offensive and prejudicial conduct. Rather, Counsel Wallace is displaying an indifferent, above-the-law attitude concerning his willful misconduct.

- Wallace planned to say he'd simply made a mistake in failing to serve Plaintiffs.
13. Counsel Wallace's fraud upon the court, in certifying he served a pleading in which he clearly did not, defiled the court. The integrity of the judicial process has been harmed in this case, with the fraud rising to the level of *"an unconscionable plan or scheme designed to improperly influence the Court in the Court's decisions."* Counsel Wallace's fraud was plainly designed to corrupt the legitimacy of the truth-seeking process.
  14. In this case, Counsel Wallace did manipulate the Certificate of Service for the exact result which occurred at the March 29<sup>th</sup> *"Motion to Dismiss"* hearing. Counsel Wallace's offending pleading was presented with an improper purpose because it did intend to prejudice Plaintiffs, by depriving Plaintiffs of an argument, which did lead to the wrongful dismissal of this action.
  15. Counsel Wallace's *"fraud upon the court"* reveals why Plaintiffs found themselves dumbfounded and at a loss for words during the March 29<sup>th</sup> hearing. Plaintiffs were completely unaware of Counsel Wallace's reticent stance, which resulted in a dismissal of this action, in the Court's ruling. Had Plaintiffs been aware of Counsel Wallace's argument that Defendants maintain a passive website, Plaintiffs would have adamantly opposed such mythical allegation, whereby this case could not have been dismissed.
  16. Counsel Wallace's offending filing was never well-grounded, which, being a seasoned attorney, made Counsel Wallace aware of such fact. Counsel Wallace did take advantage of pro se litigants in executing willful misconduct.
  17. Counsel Wallace's untimely response is without basis and brought frivolously. Counsel Wallace was required to file a motion for leave before filing an untimely response.
  18. Counsel Wallace's misconduct was in no way a mistake because he did certify to

have mailed the offensive filing by Certified Mail, less than 45 hours before the March 29<sup>th</sup> "Motion to Dismiss" hearing, indicating there is a Certified Mail receipt. If such action could be construed as a mistake, then the integrity of a "Certificate of Service" is forever destroyed.

## **II. REMEDY REQUESTED:**

19. Plaintiffs' hereby request Counsel Wallace to withdraw Defendants' offensive and prejudicial pleading.
20. Plaintiffs hereby request compensation for the time and expense Plaintiffs have expended as a result of Counsel Wallace's offensive misconduct, in the amount of \$700.00, and any further remedy available.

## **III. LEGAL ARGUMENT:**

21. Under Fed R. Civ. Proc. 15(a), *"a party may amend his pleading once as a matter of course at any time before a responsive pleading is served."*

Defendants did not file a responsive pleading and a "Motion to Dismiss" is not a 'responsive pleading' within the meaning of the Rule. Neither the filing nor granting of such a motion before answer terminates the right to amend; an order of dismissal denying leave to amend at that stage is improper. Schreiber Distributing v. Serv-well Furniture Co., 806 F. 2d 1393, 1401 (9<sup>th</sup> Cir. '86).

Counsel Wallace did file a frivolous response, which was ungrounded and only done so to cause delay, increase the cost of litigation and unfairly influence the Court against Plaintiffs.

22. The Ninth Circuit has made clear that *"in exercising its discretion, a court must be guided in the underlying purpose of Rule 15 – to facilitate decision on the merits rather than on the pleadings or technicalities,"* Leighton, 833 F. 2d

- at 186, quoting U.S. v. Webb, 655 F. 2d 977, 79 (9<sup>th</sup> Cir. '81).
23. Courts possess the inherent power to vacate or amend a judgment obtained by fraud on the court, Toscano v. CIR, 441 F. 2d 930 (9<sup>th</sup> Cir. 1971), but that power is narrowly construed, applying only to fraud that defiles the court or is perpetrated by officers of the court. When it is concluded that the integrity of the judicial process has been harmed, however, and the fraud rises to the level of "*an unconscionable plan or scheme which is designed to improperly influence the court in its decisions*," the Court can not only act, though should. England 281 F. 2d at 309; Levander v. Prober, 180 F. 3d 1114, 1119 (9<sup>th</sup> Cir. 1999).
24. Prejudice is not an element of fraud on the court. Hazel-Atlas, 322 U.S. at 238, 64 S. Ct. 997; Pumphrey v. K.W. Thompson Tool Co., 62 F. 3d 1128, 1132-33 (9<sup>th</sup> Cir. 1995). Fraud on the court occurs when the misconduct harms the integrity of the judicial process, regardless of whether the opposing party is prejudiced. Alexander v. Robertson, 882 F. 2d 421, 424 (9<sup>th</sup> Cir. 1989).
25. The perpetrator of the fraud should not be allowed to dispute the effectiveness of the fraud after the fact. Hazel-Atlas, 322 U.S. at 247, 64 S. Ct. 997; Pumphrey, 62 F. 3d at 1133.
26. As the Supreme Court observed more than fifty years ago, "[t]ruth needs no disguise." Hazel-Atlas, 322 U.S. at 247, 64 S. Ct. 997.
27. In this case, the Court believed it was hearing a legitimate adversarial dispute when, in fact, the proceeding was a charade fraught with concealed motives

and false testimony. What did occur clearly was designed to defile the court itself, and the offensive action was carried out by an officer of the court.

Toscano, 441 F. 2d at 933.

28. Counsel Wallace's fraud did corrupt the adversarial nature of the proceeding, the integrity of the witnesses, and the ability of the Court to judge impartially. England, 281 F. 2d 304. This harm is noteworthy not only because it defiled the sanctity of the court and the confidence of all future litigants, but also because it did violate the rights of Plaintiffs. Levander, 180 F. 3d at 1118.
29. Tampering with the administration of justice in this manner involves far more than an injury to a single litigant. It is a wrong against the institution set up to protect and safeguard the public. Counsel Wallace has advised Plaintiffs that his misconduct is unsanctionable because it was a "*mistake*" on his part. If a sworn officer of the court mistakenly certifies to have served a pleading the sworn officer did not serve, then a "*Certificate of Service*" would serve no purpose whatsoever. If Counsel Wallace is correct in his assertion that Courts just don't sanction attorneys for failing to serve a document despite certifying the document as being served, then that would make the law ambiguous in its requirement of a "*Certificate of Service*." <sup>4</sup>
30. This Court does have the inherent power to vacate the judgment of dismissal, and fashion an appropriate remedy. Chambers v. NASCO, Inc., 501 U.S. 32, 44-45, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991); Hazel-Atlas, 322 U.S. at 250, 64 S. Ct. 997; Fink v. Gomez, 239 F. 3d. 989, 992 (9<sup>th</sup> Cir. 2001).

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<sup>4</sup> If a sworn officer of the court certifies to have done something, then the officer of the court is required to ensure their certification is legitimate. Otherwise, the certification, indeed, is fraudulent.



31. Whenever any officer of the court commits fraud during a proceeding in the court, he or she is engaged in "*fraud upon the court.*" In Bulloch v. United States, 763 F. 2d 1115, 1121 (10<sup>th</sup> Cir. 1985), the Court did state, "*Fraud upon the court is fraud which is directed to the judicial machinery itself, and is not fraud between the parties or fraudulent documents, false statements or perjury. It is where the court or a member is corrupted or influence is attempted or where the judge has not performed his judicial function ... thus where the impartial functions of the court have been directly corrupted.*"
32. "*Fraud upon the court*" has been defined by the 7<sup>th</sup> Circuit Court of Appeals to "*embrace that species of fraud which does, or attempts to defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.*" Kenner v. C.I.R., 387 F. 3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, 60.23.
33. The 7<sup>th</sup> Circuit further stated "*a decision produced by fraud upon the court is not, in essence, a decision at all, and never becomes final.*"
34. "*Fraud upon the court*" makes void the order and judgments of that court. It is also clear and well-settled Illinois law that any attempt to commit "*fraud upon the court*" vitiates the entire proceeding. The People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934). Under Illinois and Federal law, when any officer of the court commits "*fraud upon the court,*" the orders and judgments of that court are void, of no legal force or effect.



35. The simple fact that Counsel Wallace's initial reaction to Plaintiffs' notification was, *"I know the Court will deny it, even if it did happen. Even if you weren't served, it would've been a mistake on my part, as opposed to sanctionable conduct,"* evidences Counsel Wallace's intentional misconduct. Had Counsel Wallace indeed served Plaintiffs, then Counsel Wallace's initial reaction would have been words such as, *"Yes, I did, too, serve you."* The fact that Counsel Wallace's reaction was haughty, rather than apologetic does evidence Counsel Wallace's misconduct as being intentional.
36. Counsel Wallace has taken advantage of pro-se litigants and ignored rules of law. During the pre-motion conference for this "Motion for Sanctions," Counsel Wallace seemed agitated that Plaintiffs were in contact with him for a pre-motion conference, stating, *"Let me put it very clearly to you. I am opposed to your motion. I am opposed to any ruling you have been seeking from the United States District Court throughout this entire case. I will remain opposed to anything you file. And you can certify that you conferred with me if you want to. But go ahead and file whatever you wanna file."*
37. Counsel Wallace should be sanctioned for his willful abuse of the judicial process because he is a lawyer that has intentionally practiced a fraud upon the court. Levander, 180 F. 3d at 1119; see also Gomez v. Vernon, 255 F. 3d 1118, 1133-34 (9<sup>th</sup> Cir. 2001).

#### IV. PRAYER:

WHEREFORE, Plaintiffs have clearly and convincingly demonstrated fraud upon the court. To deter repetition of the offensive conduct committed by

Counsel Wallace, Plaintiffs pray this Honorable Court will sanction Counsel Wallace to the extent the Court sees fit, in addition to reversing this Court's Judgment for Dismissal, on the basis that Defendants did commit fraud upon the Court in order to receive a favorable verdict.

Respectfully Submitted,



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#### **CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of Plaintiffs' **MOTION FOR SANCTIONS** has been served upon Counsel Wallace by enclosing a copy of the same in a sealed envelope and mailing via the United States Postal Service's Certified Mail, on May 3<sup>rd</sup>, 2012, with Certified Label No.: 7011 2000 0001 3223 9551.

#### **Defendants:**

Woodland Lakes Trusteeship, Inc., National Development Company, Inc., Clyde W. Engle, Francis Oscar Darian, Jr., Lawrence Deis, Craig Kinmann, Arthur Hurlburt, Russell Richards, Deborah Clutter, Patricia Edgar, Crystal Kallansrud, Simone Hatton, Linda Wade, Larry Anderson and Thomas Leon Colyott.

#### **ATTORNEY OF RECORD:**

Woodland Lakes Trusteeship, Inc., et al  
ATTN: Casey T. Wallace  
% Haynes Boone, Attorneys and Counselors  
1221 McKinney Street, Suite 2100  
Houston, Texas 77010-2007

Signed and served this 3<sup>rd</sup> day of May, 2012



Dave Campbell Dawn Campbell