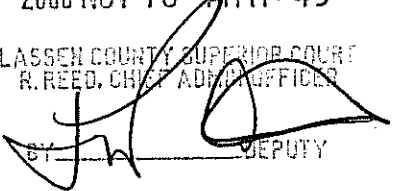


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LASSEN COUNTY SUPERIOR COURT
R. REED, CHIEF ADMINISTRATIVE OFFICER

BY  DEPUTY

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9 KANSAS INVESTIGATIVE SERVICES, INC. and
10 JAMES WALTERS

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LASSEN

13 JOSEF C. WILLIAMS,
14 Plaintiff,

15 v.

16 ABC LEGAL SERVICES, INC. and
17 DOES 1 to 10 inclusive,
18 Defendants.

CASE NO. 40817
(Hon. Stephen D. Bradbury)

KANSAS INVESTIGATIVE SERVICES,
INC. AND JAMES WALTERS' REPLY TO
CROSS-COMPLAINANT'S OPPOSITION
TO KANSAS INVESTIGATIVE
SERVICES, INC. AND JAMES WALTERS'
DEMURRER

Date: November 28, 2005
Time: 10:00 a.m.
Dept.: 1

19 ABC LEGAL SERVICES, INC.,
20 Cross-Complainant,

21 v.

22 KANSAS INVESTIGATIVE SERVICES,
23 INC.; L JAMES WALTERS aka JAMES
24 WALTERS, and ROES 1 to 10, inclusive
25 Cross-Defendants

26 //
27 //
28 //

1 I. ARGUMENT

2 A. ABC Legal Services Completely Ignores The Demurrer Test

3 Cross-Complainant ABC LEGAL SERVICES, INC. ("ABC Legal Services") erroneously
4 asserts that because it has not yet been found liable as an intentional tortfeasor to Plaintiff, its
5 claims against KANSAS INVESTIGATIVE SERVICES, INC. and JAMES WALTERS ("Cross-
6 Defendants") cannot be barred by the Court. (Opposition, 1:4-13; 2:7-24).¹ This argument is
7 meritless, and completely ignores the test under Code of Civil Procedure sections 430.10.²

8 ABC Legal Services fails to understand that Cross-Defendants, through the filing of a
9 demurrer, may object to the *face* of the Cross-Complaint because the Cross-Complaint "does not
10 state facts sufficient to constitute a cause of action." (*Code of Civil Procedure* §§ 430.10(e) and
11 430.30(a).) Cross-Defendants' demurrer may be based upon the Cross-Complaint, as well as
12 upon any matter that may be judicially noticed, *i.e.*, Plaintiff's Complaint and attached exhibits.
13 (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Code of Civil Procedure* § 430.30(a).) Since ABC
14 Legal Services cannot demonstrate it could cure each and every defect in the Cross-Complaint,
15 Cross-Defendants' demurrer must be sustained without leave to amend.³ *Id.*

16 B. ABC Legal Services' Cross-Complaint On Its Face Fails To State Any Facts
17 To Constitute Claims For Indemnity, Contribution And Declaratory Relief

18 ABC Legal Services improperly seeks relief through claims for indemnity, contribution
19 and declaratory relief for fraud it allegedly perpetrated on Plaintiff *and* Cross-Defendants.
20 Plaintiff's only claim against ABC Legal Services is for fraud, *i.e.*, *only* ABC Legal Services is
21 the alleged intentional tortfeasor. Plaintiff alleges that despite ABC Legal Services' actual

22 ¹ ABC Legal Services mistakenly argues that because there has been no finding that ABC Legal Services
23 has intentionally injured Plaintiff, Code of Civil Procedure section 875(d) does not preclude ABC Legal
Services from seeking claims for contribution and declaratory relief. (Opposition, 3:2-5).

24 ² ABC Legal Services also incorrectly asserts that "it would be inappropriate and inequitable" if the
25 Court were to sustain Cross-Defendants' demurrer at the pleading stage because ABC Legal Services has
not had the opportunity to conduct discovery. (Opposition, 2:1-6).

26 ³ In addition, Cross-Defendants, residents of the State of Kansas, as pointed out by ABC Legal Services
27 in its Opposition (2:1-2) assert the Cross-Complaint is defective because it lacks personal jurisdiction
28 over Cross-Defendants, and for failure to properly serve Cross-Defendants. (*Code of Civil Procedure*
section 418:10).

1 knowledge Plaintiff's address was incorrect (through Cross-Defendant James Walters), ABC
2 Legal Services forged a postmaster's confirmation of address, forged James Walters' Declaration
3 of Due Diligence and checked a box on the proof of service form indicating that James Walters
4 served Plaintiff under penalty of perjury, when Mr. Walters himself had left the box unchecked.
5 (Complaint ¶8).

6 There is no question that ABC Legal Services seeks indemnity from Cross-Defendants for
7 fraud allegations that are alleged *solely* against ABC Legal Services. ABC recognizes this
8 asserting that Plaintiff alleges that Cross-Defendants were also the victims of ABC Legal
9 Services' fraud asserting that Plaintiff's Complaint "is primarily based on allegations made by
10 Cross-Defendants,...." (Opposition, 1:27-2:1). Therefore, it is disingenuous for ABC Legal
11 Services to argue that it should be entitled to maintain its claims against Cross-Defendants under
12 the "equitable indemnity rule." California law is clear that intentional tortfeasors such as ABC
13 Legal Services have no legal standing to assert any form of indemnity claim (including claims of
14 declaratory relief and contribution) against alleged non-tortfeasors such as Cross-Defendants (the
15 cases cited by Cross-Defendants in their demurrer and raised by ABC Legal Services in its
16 Opposition support this position).

17 ABC Legal Services requests that the Court completely ignore well-settled law and the
18 allegations asserted by Plaintiff against it, *i.e.*, one claim of fraud. Since Plaintiff's Complaint
19 and ABC Legal Services' Cross-Complaint are void of any fact that even suggests Cross-
20 Defendants are intentional tortfeasors, ABC Legal Services' claims of indemnity, contribution
21 and declaratory relief fail. Therefore, the Court should sustain Cross-Defendants' demurrer
22 without leave to amend.

23 **C. ABC Legal Services Has No Standing To Assert A Fraud Claim**

24 ABC Legal Services speciously asserts that even if Plaintiff did not allege Cross-
25 Defendants engaged in fraudulent conduct, it should be allowed to do so if the Court sustains the
26 demurrer with leave to amend. (Opposition, 3:7-13). Where a court grants leave to amend, the
27 scope of the amendment is limited to the claim of which the demurrer was sustained (not leave to
28 file a new cause of action). *See People v. Clausen* (1967) 248 Cal.App.3d 770, 785-786. Thus,

1 the scope of any amendment would be limited to ABC Legal Services' claims of indemnity,
2 contribution and declaratory relief (upon which ABC Legal Services fails to state sufficient facts
3 to support these claims). Therefore, ABC Legal Services seeks impermissible relief from the
4 Court.

5 If, however, ABC Legal Services intends to seek relief to file an amended Cross-
6 Complaint (through a motion) against Cross-Defendants for fraud, this in no way revives any
7 indemnity claim stemming back to Plaintiff's allegations of fraud against ABC Legal Services,
8 i.e., ABC Legal Services cannot complain that Cross-Defendants are concurrent intentional
9 tortfeasors. This claim would solely be between ABC Legal Services and Cross-Defendants,
10 upon which ABC Legal Services would be required to specifically plead facts that Cross-
11 Defendants somehow committed fraud on ABC Legal Services. Considering there are no facts
12 alleged by Plaintiff and/or ABC Legal Services that Cross-Defendants in any way were involved
13 in any fraudulent conduct, this relief should be denied.

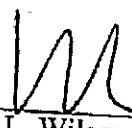
14 As mentioned above, Plaintiff's claims that Cross-Defendants as well as Plaintiff are the
15 victims of ABC Legal Services' fraud. ABC Legal Services' Cross-Complaint on its face is
16 defective as to its claims for indemnity, contribution and declaratory relief against Cross-
17 Defendants. The Court should sustain Cross-Defendants' demurrer without leave to amend.

18 **II. CONCLUSION**

19 For the reasons set forth above, Cross-Defendants respectfully request that the Court
20 sustain the demurrer as to all causes of action without leave to amend.

21
22 DATED: November 15, 2005

JAMPOL ZIMET SKANE & WILCOX LLP

23
24
25 By: 
26 Wendy L. Wilcox
27 Christopher J. Weber
28 Attorneys for Cross-Defendants KANSAS
INVESTIGATIVE SERVICES, INC. and JAMES
WALTERS

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is JAMPOL ZIMET SKANE & WILCOX LLP, 800 Wilshire Boulevard, Suite 1450, Los Angeles, California 90017.

On November 15, 2005, I served the within document described as:

KANSAS INVESTIGATIVE SERVICES, INC. AND JAMES WALTERS' REPLY TO CROSS-COMPLAINANT'S OPPOSITION TO KANSAS INVESTIGATIVE SERVICES, INC. AND JAMES WALTERS' DEMURRER (40817)

- by transmitting via facsimile the document listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via _____.
- by causing personal delivery by an agent of _____ of the document(s) listed above to the person(s) at the address(es) set forth below.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 15, 2005, at Los Angeles, California.

Evelyn Ruano
Evelyn Ruano

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SERVICE LIST

**Josef C. Williams v. ABC Legal Services, et al.
[Kansas Investigative Services, Inc. and James Walter]
Lassen County Case No.: 40817**

<p>Jeffrey D. Stearman LAW OFFICES OF JEFFREY D. STEARMAN 2601 E. Chapman Avenue, Suite 114 Fullerton, CA 92831 Tel. (714) 871-7778 Fax (714) 871-7806 Counsel for Plaintiff</p>	<p>Joseph C. Campo, Esq. LEWIS, BRISBOIS, BISGAARD & SMITH LLP 221 N. Figueroa Street, Suite 1200 Los Angeles, CA 90012 Tel. (213) 250-1800 Fax (213) 250-7900 Counsel for Defendant ABC Legal Services, Inc</p>
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