APPENDIX

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Appendix A

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
DIVISION FIVE

No. B275955
(Los Angeles County Super. Ct. No. LC094571)

THE PEOPLE,
Plaintiff and Respondent,
v.
MITCHELL J. STEIN.
Defendant and Appellant.

Filed: May 15, 2018

OPINION

APPEAL from a judgment of the Superior Court of the County of Los Angeles, Ann I. Jones, Judge. Dismissed, in part, and affirmed.

INTRODUCTION

The California Attorney General filed a civil action against then-attorney and defendant Mitchell Stein (defendant), as well as others, for engaging in unfair business and advertising practices and obtained a temporary restraining order (TRO) and

preliminary injunction against defendant. After settling with and obtaining final judgments against all of the other defendants, the Attorney General moved for summary adjudication of a declaratory relief claim seeking a declaration that the Attorney General was the prevailing party in the action against defendant. The trial court granted the motion and entered a judgment against defendant declaring the Attorney General the prevailing party and dismissing without prejudice all remaining claims against defendant.

On appeal, defendant challenges the summary adjudication order as legally erroneous, as well as the orders granting the TRO and preliminary injunction. In addition, defendant challenges an order entered in a separate but related action filed by the State Bar of California, pursuant to which the trial court in that action assumed jurisdiction over defendant's law practice.

We affirm the summary adjudication order and judgment based thereon, as defendant has failed to demonstrate prejudicial error warranting reversal. We dismiss the appeals from the other orders as untimely or beyond our jurisdiction.[1]

FACTUAL AND PROCEDURAL BACKGROUND

I. Commencement of the Instant Action

On August 15, 2011, the Attorney General filed this civil action (case number LC094571) in the Northwest District of the Los Angeles County Superior Court, alleging violations of Business and Professions Code sections 17200 and 17500 against a

[1] Defendant's requests for judicial notice filed January 2 and July 27, 2017, are denied as moot.

number of nonattorney and attorney defendants, including defendant. The Attorney General summarized in the operative second amended complaint the facts giving rise to the action as follows:

"Defendants prey on desperate consumer homeowners facing foreclosure and the loss of their homes by selling participation in so-called 'mass joinder' lawsuits against their mortgage lenders. Veterans of the loan modification industry, [d]efendants use deceptive advertising and telemarketing to recruit consumers to join these lawsuits, at a cost of thousands of dollars each. Consumers are led to believe that joining these lawsuits will stay foreclosures, reduce their loan balances, entitle them to monetary benefits and potentially get them their homes free and clear of their mortgage. [¶] . . . [¶] Homeowners are told that a settlement could happen at any moment and only those who have joined the lawsuit will receive the promised benefits. Defendants repeatedly make false or misleading statements to homeowners to get them to sign a retainer agreement and pay them thousands of dollars. Once homeowners sign a contract to join a 'mass joinder' lawsuit and [d]efendants take their money, as much as $10,000, from their bank accounts, homeowners find they are unable to speak with an attorney with knowledge of the lawsuit. Basic questions such as whether the homeowner has been added to the lawsuit go unanswered. Some homeowners pay [d]efendants thousands of dollars only to lose their homes shortly thereafter to foreclosure. [¶] Thousands of Californian homeowners have fallen for [d]efendants' scam, and [d]efendants have exported their mass joinder scheme nationwide."

The same day the original complaint was filed, the Attorney General applied ex parte, without notice, for a TRO. The trial court granted the TRO, which restrained defendant from "[m]aking or causing to be made . . . any untrue or misleading statements to consumers, in connection with any proposed or actual lawsuit or settlement with their home mortgage lender . . . ." The TRO further restrained defendant from engaging in "'running and capping,' the practice of a nonattorney acting for consideration . . . as an agent for an attorney or law firm, in the solicitation or procurement of business for the attorney or law firm, or [] soliciting non-attorneys to commit or join in running and capping."

On November 8, 2011, the trial court issued a preliminary injunction enjoining defendant from engaging in the acts or practices previously restrained under the TRO.[2]

II. The Federal Criminal Case and SEC Civil Action

On December 13, 2011, a federal grand jury in the Southern District of Florida returned an indictment, charging defendant with fourteen counts of conspiracy to commit mail and wire fraud, mail fraud, wire fraud, securities fraud, money laundering, and conspiracy to obstruct justice—all arising from conduct unrelated to the instant case. On May 20, 2013, a jury found defendant guilty as charged on all 14 counts of the indictment. On December 8, 2014, the Florida district court sentenced defendant to, among other things, 17

[2] The trial court had issued preliminary injunctions against the other defendants on September 6, 2011.

years in federal prison. On April 8, 2015, the Florida district court entered an amended judgment ordering defendant to pay restitution to the victims of his crimes in the amount of $13,186,025.[3]

The Securities and Exchange Commission (SEC) also brought a parallel civil action against defendant for the conduct underlying the Florida criminal case. On March 3, 2015, the U.S. District Court for the Central District of California entered judgment against defendant in the SEC's action. That judgment ordered, inter alia, that defendant disgorge $5,378,581 and pay a civil penalty in the same amount, for an aggregate judgment, including prejudgment interest, of $11,454,997.

III. Declaratory Relief in the Instant Case

During 2013, each of the other defendants in this action entered into settlement agreements with the Attorney General's Office, and final judgments were entered against them. Defendant, however, was unable to settle the claims against him.

During an April 13, 2015, status conference in this case, the trial court and the Deputy Attorney General engaged in the following discussion about bringing the action against defendant to a close: "[Deputy Attorney General]: [G]iven the reality of this case and given the fact that you can't squeeze blood from a stone, the [the Attorney General has] considered dismissal without prejudice against [defendant]. This would be, of

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[3] The Court takes judicial notice that the U.S. Court of Appeals for the Eleventh Circuit affirmed defendant's convictions on January 18, 2017, and that the U.S. Supreme Court denied defendant's petition for a writ of certiorari on December 11, 2017.

course, solely in the interest of the court's resources, as well as the state's resources. [¶] The problem from [the Attorney General's] perspective with dismissing without prejudice is first [defendant's separate civil] action against the [P]eople [for] bringing this law enforcement action [against him]. But also, the fact that under the prevailing party statute, there's a possibility that [defendant] may claim he's a prevailing party for purposes of costs. . . . [I]t's the [Attorney General's] stance that [such a result] would be inequitable and stretch[] the very definition of what a prevailing party is. [¶] So we were wondering if the court could give us any guidance on what your honor is thinking as to the prevailing party in this action. . . . [¶] . . . [¶] . . . The Court: . . . Do you have some suggestions? [¶] [Deputy Attorney General]: I was hoping the court may be willing to give some additional guidance on your thoughts as to the prevailing party in the event the [P]eople did dismiss without prejudice, if the court would be inclined to call [defendant] the prevailing party, if he did bring a motion for costs. . . . [¶] The Court: Well, one thing you might want to do . . . instead of just filing a request for dismissal[, is initiate a] summary [proceeding] . . . [¶] . . . [¶] . . . which requires court approval and in which there are certain recitations as to what has been accomplished in the suit and the findings of the court . . . and the benefits that the [Attorney General has] obtained as a result of bringing this [action]. . . . This is very new. This case is unlike any other case I've had - - [¶] . . . [¶] The Court: - - [W]ith respect to prevailing . . . in essence, [the Attorney General] did prevail. And I think [the Attorney General] did a wonderful job. [¶] . . . [¶] The Court: . . . Some people . . . turned over

money for representation . . . they didn't receive, and [the Attorney General] made sure that didn't happen again. So that might be one way of doing it. [¶] [Deputy Attorney General]: Thank you, your honor. That's very helpful guidance. [¶] . . . [¶] . . . The Court: . . . [T]he other thing I could do is . . . have a prove-up mini trial and [defendant] can submit whatever evidence he wants in writing since he can't appear by himself. . . . [¶] [Deputy Attorney General]: I'm thrilled to take both of these options back to my office."

In an April 28, 2015, minute order, the trial court directed the Attorney General to "explore the idea of adding a cause of action for declaratory relief re injunction which has already been issued." Thereafter, at a July 17, 2015, status conference, the trial court "questioned whether [the Attorney General] anticipate[d] amending its complaint against [defendant] to seek declaratory relief on the issue of costs. After [the Attorney General] confirmed that [it] plan[ned] to seek declaratory relief against [defendant], the [c]ourt sua sponte granted leave for the [Attorney General] to amend its complaint."

On July 21, 2015, the Attorney General filed a second amended complaint, which included a fifth cause of action seeking a declaration that the Attorney General was the prevailing party in the action. The newly added fifth cause of action alleged that "[w]ith the strong injunctive and monetary results obtained against the other defendants in this case, the [Attorney General] has prevailed in this action by putting an end to the Mass Joinder scheme and obtaining restitution for harmed consumers." The second amended complaint added the following prayer

for relief: "That the Court provide declaratory relief that, as defined by Code of Civil Procedure section 1032 or any other relevant law, [the Attorney General] is the prevailing party as to [defendant] for all purposes including for purposes of fees and costs, regardless of whether the [Attorney General] in the interests of conserving state and judicial resources, dismisses without prejudice its First, Second, and Third Causes of Action against [defendants]."

On September 15, 2015, the Attorney General moved for summary adjudication of the fifth cause of action only. The Attorney General summarized the grounds for the motion as follows: "[W]ith the Temporary Restraining Order and Preliminary Injunction obtained against all defendants, including [defendant], along with the strong injunctive and monetary results obtained against the other defendants in this case, the [Attorney General] has prevailed in this action by putting an end to the Mass Joinder scheme and obtaining restitution for harmed consumers. Moreover, [defendant] not only has federal law enforcement judgments exceeding $20 million against him, he is currently serving a 17-year federal prison term and is no longer eligible to practice law. In other words, [defendant] is judgmentproof. Thus, [the Attorney General] believes that dismissing the remaining [claims] against [defendant] is appropriate in order to preserve taxpayer and judicial resources. However, [defendant] should not be able to claim that he is the prevailing party for any purposes, including costs. Such a result would be unjust. This Motion for Summary Adjudication will allow the Court to determine the prevailing party issue so that the

[Attorney General] may avoid uncertainty on this issue."[4]

On October 5, 2015, the parties stipulated to continue the hearing on the summary adjudication motion from December 11, 2015, to February 5, 2016. On January 7, 2016—one day before his opposition to the summary adjudication motion was due—defendant applied ex parte for a continuance of the hearing date on that motion. The application was supported by defendant's declaration and several exhibits. The trial court heard and denied defendant's application that day, but granted his alternative request to treat his application as his opposition to the motion for summary adjudication.

On February 5, 2016, the trial court held a hearing on the summary adjudication motion and thereafter granted it.

On April 4, 2016, the Attorney General made a motion for entry of judgment, which defendant opposed. On May 9, 2016, the trial court entered a judgment against defendant on the fifth cause of action, declaring defendant the prevailing party in the action for all purposes. Based on the Attorney General's request, the judgment also dismissed without prejudice the remaining second, third, and fourth causes of action against defendant.

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[4] On September 6, 2013, the State Bar issued an order suspending defendant from the practice of law effective October 1, 2013, due to defendant's criminal convictions in the federal case in Florida.

IV. The Related State Bar Action

On August 15, 2011, the same day the Attorney General brought the instant action, the State Bar filed in the Northwest District of the Los Angeles County Superior Court a verified petition and application for assumption of jurisdiction over defendant's law practice under Business and Professions Code section 6190 et seq., in case number LS021817.

On September 2, 2011, the trial court found that the instant action by the Attorney General (case number LC094571) was related to the State Bar action and designated this action as the "lead case." That ruling was made without prejudice to the parties making a motion to consolidate both matters. On September 7, 2011, the managing judge of the complex litigation program for the Los Angeles County Superior Court determined that the related cases should be designated as complex, transferred them to the complex litigation program, and assigned them to a judge in that program in the Civil Central West District. The two separate actions were never consolidated, however, and no party to either action ever sought to do so.

On October 13, 2011, the trial court in the State Bar action issued permanent orders authorizing the State Bar to assume jurisdiction over defendant's law practice. On April 1, 2016, the trial court granted the State Bar's request to terminate its jurisdiction over defendant's law practice, thereby effectively concluding the State Bar action (case number LS021817) against defendant.

V. The Instant Appeal

On June 30, 2016, defendant filed a notice of appeal from the judgment entered after the order granting summary adjudication in the instant case. The notice expressly referenced and attached a copy of the May 9, 2016, judgment and also referred to the order granting summary adjudication. It did not, however, mention the TRO, preliminary injunction, or order terminating jurisdiction over defendant's law practice in the State Bar action (case number LS021817).

DISCUSSION

I. Appeal from Order Assuming Jurisdiction Over Defendant's Law Practice (Case No. LS021817)

Defendant challenges the trial court's order in case number LS021817, pursuant to which the trial court assumed jurisdiction over defendant's law practice and appointed the plaintiff in that action—the State Bar—to oversee that law practice pursuant to Business and Professions Code section 6190.[5] Defendant's notice of appeal in this action, however, does not mention the October 26, 2011, order assuming jurisdiction he now challenges or the April 1, 2016, presumably final order terminating the trial

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[5] Section 6190 provides: "The courts of the state shall have the jurisdiction as provided in this article when an attorney engaged in the practice of law in this state has . . . become incapable of devoting the time and attention to, and providing the quality of service for, his or her law practice which is necessary to protect the interest of a client if there is an unfinished client matter for which no other active member of the State Bar, with the consent of the client, has agreed to assume responsibility."

court's jurisdiction over defendant's law practice. Nor does the notice mention the State Bar as a party to the appeal. Indeed, the notice of appeal was served only on the plaintiff in this action—the Attorney General—and not on the State Bar, which was the plaintiff in the other action (case number LS021817).

We agree with the Attorney General that we do not have jurisdiction to address an order entered in a separate but related action in favor of a party that is not a party to this action. Furthermore, we note any such order would have been separately appealable either as a directly appealable order when made in 2011 or after the entry of the April 1, 2016, resumably final, appealable order. Defendant did not file a timely notice of appeal from either of those orders in case number LS021817. We therefore must dismiss in this action his attempt to appeal from the order assuming jurisdiction in the State Bar action. (*See Colony Hill v. Ghamaty* (2006) 143 Cal.App.4th 1156, 1171 [where orders and judgments are separately appealable "each appealable judgment and order must be expressly specified . . . in order to be reviewable on appeal"]; *Silver v. Pacific American Fish Co., Inc.* (2010) 190 Cal.App.4th 688, 693 ["'If a judgment or order is appealable, an aggrieved party *must* file a *timely* appeal or forever *lose* the opportunity to obtain appellate review'"].)

II. Appeal from TRO and Preliminary Injunction

Defendant attempts to appeal from the August 15, 2011, TRO and the November 8, 2011, preliminary injunction entered in this action. Those orders, however, were immediately and separately appealable

under Code of Civil Procedure section 904.1, subdivision (a)(6). Because defendant did not appeal from those orders within the time provided in California Rules of Court, rule 8.104(a), we conclude his challenge to those orders in this appeal filed after entry of the final judgment in May 2016 is untimely and cannot be addressed. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 110.)

III. Appeal from Order Granting Summary Adjudication

Defendant contends that the trial court erred by granting summary adjudication of the Attorney General's declaratory relief claim. Although we have found no basis to support a stand alone cause of action for declaratory relief as a "prevailing party," we, nonetheless, affirm the trial court's order because defendant has not shown any injustice or prejudice to him arising from the grant of summary adjudication.[6] "A judgment is reversible only if any error or irregularity in the underlying proceeding was prejudicial. . . . There is no presumption of prejudice. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475.) Instead, the burden to demonstrate prejudice is on the appellant." (*Freeman v. Sullivant* (2011) 192 Cal.App.4th 523, 527-528.)

Here, defendant was obligated to demonstrate prejudice in his opening brief (*Sanchez v. State of California* (2009) 179 Cal.App.4th 467, 489), but he

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[6] We therefore do not reach defendant's other claims that the trial court erred by declining to continue the hearing on the summary adjudication motion, by making evidentiary rulings in connection with the motion, and by ultimately granting the motion.

did not. Nor could he.[7] Indeed, defendant concedes as much in his response to this Court's letter to the parties, pursuant to Government Code section 68081, requesting briefing on whether the Court should affirm based on defendant's failure to demonstrate prejudice warranting reversal. In his response, defendant again points to no prejudice or injustice resulting from the grant of summary adjudication.

Instead, defendant merely argues "the improperly adjudicated judgment *itself*" constitutes prejudice and that "requir[ing] a showing of *an additional* prejudice besides the unlawful judgment" would "create an elusive standard." The standard, however, is clear— "[n]o judgment shall be set aside" unless "the error complained of has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13; *see also* Code Civ. Proc., § 475.) We therefore conclude the summary adjudication order from which defendant appeals must be affirmed based on his failure to satisfy his affirmative duty on appeal of demonstrating prejudice warranting reversal.

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[7] For example, defendant did not even attempt to show that, but for the trial court's purported errors, it was reasonably probable that he would have filed a cost bill and successfully argued that he was the prevailing party for purposes of a cost award under Code of Civil Procedure section 1032. Similarly, he does not attempt to show that, but for the prevailing party determination, it was reasonably probable the Attorney General would have refused to voluntarily dismiss its claims against defendant anyway and proceeded to a determination of those claims on the merits, much less that it was reasonably probably defendant would have obtained a favorable merits determination.

DISPOSITION

The appeal from the order assuming jurisdiction in the separate but related case filed by the State Bar—case number LS021817—is dismissed for lack of jurisdiction. The appeals in this case from the TRO and preliminary injunction are dismissed as untimely. The summary adjudication order and judgment based thereon are affirmed.

Plaintiff is awarded costs on appeal.

KIN, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

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* Judge of the Superior Court of the County of Los Angeles appointed by the Chief Justice pursuant to Article VI, section 6, of the California Constitution.

Appendix B

Court of Appeal, Second Appellate District, Division Five – No. B275955

IN THE SUPREME COURT OF CALIFORNIA

En Banc

No. S249516

THE PEOPLE,

Plaintiff and Respondent,

v.

MITCHELL J. STEIN.

Defendant and Appellant.

Filed: Aug. 8, 2018

ORDER

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Appendix C

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 5

B275955

(Los Angeles County No. LC094571)

THE PEOPLE,

Plaintiff and Respondent,

v.

MITCHELL J. STEIN.

Defendant and Appellant.

Filed: June 4, 2018

ORDER

THE COURT:

Appellant's May 24, 2018, petition for rehearing is denied.

Appendix D

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

No. LC094571

THE PEOPLE,
Plaintiff,
v.
MITCHELL J. STEIN.
Defendant,

THE LAW OFFICES OF KRAMER AND KASLOW, *et al.*
Defendants.

Filed: May 9, 2016

~~[PROPOSED]~~ FINAL JUDGMENT AGAINST DEFENDANT MITCHELL STEIN

Following a properly noticed hearing, on February 5, 2016, the Court granted the People of the State of California's ("Plaintiff' or the "People") Motion for Summary Adjudication Against Defendant Mitchell Stein on the People's Fifth Cause of Action for declaratory relief that the Plaintiff is the prevailing party to this litigation. Accordingly, the People are entitled to declaratory relief that Plaintiff is the prevailing party to this litigation for all purposes, including costs.

Based on the Court's Order of February 5, 2016, and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

FINDINGS

1. This is an action that People of the State of California instituted under Business and Professions Code sections 17200 and 17500. On July 21, 2015, the People filed a Second Amended Complaint against Defendant Mitchell Stein and Mitchell J. Stein & Associates, Inc., adding a Fifth Cause of Action and Eighth Prayer for Relief seeking a judicial declaration that Plaintiff is the prevailing party to this litigation for all purposes, including costs.

2. Plaintiff the People of the State of California, by and through Kamala D. Harris, Attorney General, have authority under Business and Professions Code sections 17200 and 17500 and Code of Civil Procedure section 1060 to seek the relief it requested.

3. The People's Complaint states a cause of action as to Defendant Mitchell Stein.

4. This Court has jurisdiction over the subject matter of this action and the paties hereto. Venue in this Court is proper, and this Court has jurisdiction to enter this Judgment.

5. Defendant Mitchell J. Stein & Associates, Inc. has been dissolved and has not answered the People's Second Amended Complaint.

6. On August 15, 2011, following a determination that the People's likelihood of ultimate success and weighing of the equities favored their entry, Judge Frank J. Johnson entered a Temporary Restraining

Order, Asset Freeze, and Order to Show Cause re Preliminary Injunction (collectively, "TRO") against Defendants Mitchell Stein and his law firm Mitchell J. Stein & Associates, Inc. (collectively, the "Stein Defendants"). In addition to other prohibitions, the TRO enjoined the Stein Defendants from making the false and misleading misrepresentations that were alleged in the People's August 15, 2011 Complaint. Under the TRO, Stein was prohibited from soliciting non-attorneys to commit or join in running and capping. The TRO further enjoined the Stein Defendants from engaging in any acts or practices that violate Business and Professions Code section 17200 et seq. or section 17500 et seq.

7. On November 8, 2011, this Court entered a Preliminary Injunction ("PI") against the Stein Defendants. In part, the PI enjoined the Stein Defendants from making the false and misleading misrepresentations that were alleged in the People's August 15, 2011 Complaint. The Preliminary Injunction further enjoined the Stein Defendants from engaging in, or soliciting others to engage in, running and capping. Through the PI, the Court further enjoined Stein from accepting referrals of clients from non-attorneys who were not registered as a lawyer referral service with the State Bar. Moreover, the PI enjoined Stein from violating various statutes and rules related to attorney advertising, the sharing of legal fees, failing to provide client refunds, and aiding persons in the unauthorized practice of law.

8. In addition to the PI, on November 8, 2011, the Court also entered a second Asset Freeze against the

Stein Defendants and ordered Stein to preserve records.

9. On November 7, 2012, having received no responses to its August 10, 2012 Requests for Production of Documents that were propounded on Stein, the People filed a motion to compel responses, for an order waiving objections, and for monetary sanctions. On December 10, 2012, the Court ordered Stein to produce responsive documents by December 17, 2012, holding that Stein had waived all objections by failing to timely respond to the People's discovery requests. The Court fmiher ordered Stein to pay monetary sanctions to the People in the amount of $1,380.50.

10. With the exception of the Stein Defendants, the People settled with all defendants to this action. Monetary judgments against those defendants who have settled total approximately $1,900,000. In addition to these monetary judgments, the People also gained permanent injunctions against the settling defendants that prohibit them from repeating the scheme.

11. On December 13, 2011, Stein was indicted in the United States District Court for the Southern District of Florida on 14 counts of securities fraud, wire fraud, mail fraud, conspiracy to commit mail fraud and wire fraud, money laundering, and conspiracy to obstruct justice. The United States of America filed its criminal case against Stein in the United States District Court for the Southern District of Florida, case number 11-80205-CR-MARRA. On, December 19, 2011, following his indictment and the issuing of an arrest warrant by a United States

Magistrate Judge for the Southern District of Florida, Stein was arrested in Los Angeles, California, and later released on bond.

12. On March 22, 2013, then-counsel for Stein in this matter filed a motion to sever Stein from this case or, in the alternative, to continue trial in light of Stein's preparation for his federal criminal case. On April 3, 2013, the Court denied Stein's motion to sever, but continued trial in light of Stein's federal criminal trial.

13. On May 20, 2013, following a ten-day trial, a jury in the Southern District of Florida found Stein guilty on all 14 counts of securities fraud, wire fraud, mail fraud, conspiracy to commit mail fraud and wire fraud, money laundering, and conspiracy to obstruct justice. Following his conviction, Stein was immediately remanded to custody.

14. On December 4, 2014, a United States District Court entered a preliminary order of forfeiture against Stein in the amount of $5,378,581.61. On December 5, 2014, the United States District Court sentenced Stein to 204 months (i.e., 17 years) of imprisonment.

15. On December 8, 2015, the United States District Court filed its Judgment in a Criminal Case against Stein. The judgment against Stein, in addition to committing Stein to the custody of the United States Bureau of Prisons for a term of 17 years, stated that Stein's interest in the $5,378,581.61 identified in the preliminary order of forfeiture was forfeited, and that forfeiture was joint and several with Stein's coconspirator in the amount of $2,156,000.

16. On April 8, 2015, the United States District Court amended the judgment against Stein, ordering

him to pay $13,186,025.85 in victim restitution. The United States District Court found that, due to his indigence, Stein must make payments on a payment plan whereby, while he is imprisoned, he must pay 50% of any Federal Prison Industries wages, he may receive or, if he is not employed with Federal Prison Industries, $25 per quarter. Upon Stein's release, the United States District Court ordered him to pay 10% of his gross earnings until such time that the court may alter his payment schedule in the interests of justice.

17. As of the date of the People's MSA, Stein was imprisoned in a federal correctional institute in Miami, Florida, had appealed his criminal case to the Eleventh Circuit Court of Appeals, and was scheduled to be released from the custody of the Federal Bureau of Prisons on March 9, 2028.

18. On December 20, 2011, the United States Securities and Exchange Commission (the "SEC") filed its parallel civil enforcement case to the United States Department of Justice's criminal case against Stein. The SEC's action was filed in the United States District Court for the Central District of California, case no. SACVl 1-1962-JVS.

19. Following Stein's conviction, the SEC moved for summary judgment on certain claims for relief against Stein related to violations of the federal securities laws. On February 18, 2015, the United States District Court granted, in part, the SEC's motion for summary judgment against Stein. On March 3, 2015, the United States District Court entered final judgment against Stein in the SEC's enforcement action. In addition to imposing certain

restraints and injunctions, the SEC judgment found Stein liable for disgorgement of $5,378,581.61, plus prejudgment interest of $697,833.91, and a civil penalty in the amount of $5,378,581.61. Under the terms of the March 3, 2015 final judgment, Stein was to pay the SEC $11,454,977.13 within 14 days.

20. Federal law enforcement judgments against Stein exceed $20,000,000.

21. On March 26, 2013, Stein filed in his criminal case an "Emergency Application" seeking the appointment of investigators and expert witnesses under the Criminal Justice Act, citing his indigence. On or about April 4, 2013, a United States Magistrate Judge for the Southern District of Florida declared Stein indigent for purposes of the appointment of standby counsel under the Criminal Justice Act. On or about April 26, 2015, Stein signed under penalty of perjury a Motion and Affidavit for Leave to Appeal in Forma Pauperis the SEC's judgment against him. Stein's Motion and Affidavit for Leave to Appeal in Forma Pauperis states: "Because of my poverty I am unable to pay the costs of the proposed appeal proceeding or to give security therefor." In his Motion and Affidavit for Leave to Appeal in Forma Pauperis, Stein checked a box indicating "No" in response to the question: "Do you own any cash or do you have money in a checking or savings account?" In his Motion and Affidavit for Leave to Appeal in Forma Pauperis, Stein also checked a box indicating "No" in response to the question: "Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?" On April 29, 2015, the United States

District Court for the Central District of California granted Stein's motion to proceed in forma pauperis in his appeal of the judgment against him in the SEC enforcement action.

22. In March 2009, Stein filed for voluntary Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of Florida, case number 09-14345-PGH. On February 7, 2011, the bankruptcy court confirmed Stein's First Amended Plan to repay his creditors. On January 27, 2015, the United States Trustee moved the bankruptcy court to dismiss Stein's bankruptcy, citing Stein's admitted indigence and "long term incarceration" as reasons to believe that Stein could not make any payments under the First Amended Plan. On February 24, 2015, the United States Bankruptcy Court for the Southern District of Florida granted the United States Trustee's motion to dismiss, setting aside Stein's First Amended Plan and dismissing Stein's bankruptcy case. After the bankruptcy court's granting of the United States Trustee's motion to dismiss, Stein's remaining assets are not protected from creditors' claims.

23. On or about December 10, 1985, Stein was admitted to the State Bar of California. On October 26, 2011, this Court entered an order whereby the State Bar assumed jurisdiction over Stein's law practice in In the Matter of the Assumption of Jurisdiction Over the Law Practice of Mitchell J. Stein, dba Mitchell J. Stein. On or about January 1, 2012, the State Bar entered an order involuntarily enrolling Stein as an inactive member of the State Bar. In light of Stein's federal conviction, on or about October 1, 2013, the

State Bar suspended Stein from practicing law. The State Bar has stated in public filings that upon finality of Stein's conviction (i.e., when the Eleventh Circuit Court of Appeals affirms his conviction), the State Bar will seek a request for summary disbarment against Stein.

24. The People filed this action to shut down the Mass Joinder scheme, which had preyed upon thousands of distressed homeowners with false and misleading representations. With the aid of the State Bar and the Court-appointed Receiver in this action, the People achieved its goal of putting an end to the Mass Joinder scheme. The monetary components of the judgments against all of the settling defendants have helped to penalize those defendants and to provide restitution to victims. In part, the settling defendants are enjoined from making untrue or misleading statements to consumers in connection with any proposed or actual lawsuit or settlement with a home mortgage lender, participating in running and capping, and engaging the in the unauthorized practice of law.

25. Following Stein's conviction in the summer of 2013, this matter has been effectively stayed as to the Stein Defendants.

26. Stein's First Amended Answer contains no affirmative defenses to the People's Second Amended. Complaint.

27. The need for a permanent injunction against Stein is reduced given the 17-year prison sentence he is serving and the fact that he is ineligible to practice law in California.

TERMS OF FINAL JUDGMENT

Declaratory Judgment

28. Plaintiff is entitled to declaratory relief pursuant to Code of Civil Procedure section 1060, following the Court's granting of the People's Motion for Summary Adjudication of its Fifth Cause of Action against Defendant Stein.

29. As defined by Code of Civil Procedure section 1032 or any other relevant law, Plaintiff is the prevailing party as to Defendant Stein for all purposes, including for purposes of fees and costs, regardless of whether the People, in the interests of conserving state and judicial resources, dismisses without prejudice its First, Second, and Third Causes of Action against Defendant Stein.

Dismissal Without Prejudice of Remaining Causes of Action

30. In order to preserve state and judicial resources, the People requested to dismiss without prejudice its First, Second, and Third Causes of Action against Defendant Stein.

31. In order to preserve Judicial and State recourses, the Court dismisses the People's First, Second, and Third Causes of Action against Defendant Stein without prejudice.

32. The Court also dismisses without prejudice the People's Causes of Action against Defendant Mitchell J. Stein & Associates, Inc., a dissolved corporation, and the defendants sued as DOES 1 through 100.

Additional Provisions

33. This Judgment resolves the People's Fifth Cause of Action for Declaratory Relief, dismisses without prejudice the People's First, Second, and Third Causes of Action against Defendant Stein, and dismisses without prejudice the People's Causes of Action against Defendant Mitchell J. Stein & Associates, Inc., a dissolved corporation.

34. This Judgment does not resolve, release, or waive, and shall not be construed as resolving, releasing, or waiving, any claims that the People may have against the Stein Defendants that do not involve the above.

35. Nothing in this Judgment shall be construed as relieving the Stein Defendants of their obligation to comply, or as prohibiting the Stein Defendants from complying, with all applicable state and federal laws, regulations, and rules, nor shall any of the provisions of this Judgment be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

36. This Court shall retain jurisdiction over this matter for the purposes of enabling any party to this Judgment to apply to the Court at any time, and after serving notice to all other parties to this Judgment, for such further orders and directions as might be necessary or appropriate for the construction or carrying out of this Judgment.

37. The provisions of this Judgment are separate and severable from one another. If any provision is stayed or determined to be invalid, all of the remaining provisions shall remain in full force and effect.

38. This Judgment shall take effect immediately upon entry by the clerk of this Court, and the clerk is ordered to enter it forthwith.

Dated: [handwritten: May 9], 2016

Ann I. Jones

JUDGE OF THE SUPERIOR COURT

Appendix E

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

No. LC094571

THE PEOPLE,
Plaintiff,
v.
MITCHELL J. STEIN.
Defendant,

THE LAW OFFICES OF KRAMER AND KASLOW, *et al*.
Defendants.

Filed: Feb. 5, 2016

~~[PROPOSED]~~ ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION AGAINST DEFENDANT MITCHELL STEIN

Plaintiff the People of the State of California's ("Plaintiff" or the "People") Motion for Summary Adjudication ("MSA") against Defendant Mitchell Stein ("Defendant" or "Stein") came on for hearing in Department 308 of this Court on February 5, 2016, at 10:00 a.m, before the Honorable Jane Johnson. Representing Plaintiff the People of the State of

California was Deputy Attorney General David Jones. Mr. Stein appeared telephonically. No other parties made appearances.

For the reasons set forth more fully below, after full consideration of the evidence, as well as the parties' written and oral submissions, it appears and the Court finds Plaintiff has shown by admissible evidence, and not contradicted by other evidence, that there is no triable issue of material fact as to the People's fifth cause of action and that, therefore, Plaintiff is entitled to summary adjudication of its fifth cause of action for declaratory relief that Plaintiff is the prevailing party to this litigation for all purposes, including costs, regardless of whether Plaintiff at a future date dismisses its remaining causes of action against Mr. Stein. The Court reaches this finding for the followin reasons:

1. Defendant Mitchell J. Stein & Associates, Inc. has been dissolved and has not answered the People's Second Amended Complaint. (People's Separate Statement of Facts ("Sep. State."), Fact 1.)

2. On August 15, 2011, following a determination that the People's likelihood of ultimate success and weighing of the equities favored their entry, Judge Frank J. Johnson entered a Temporary Restraining Order, Asset Freeze, and Order to Show Cause re Preliminary Injunction (collectively, "TRO") against Defendants Mitchell Stein and his law firm Mitchell J. Stein & Associates, Inc. (collectively, the "Stein Defendants"). In addition to other prohibitions, the TRO enjoined the Stein Defendants from making the false and misleading misrepresentations that were alleged in the People's August 15, 2011 Complaint.

Under the TRO, Stein was prohibited from soliciting non-attorneys to commit or join in running and capping. The TRO further enjoined the Stein Defendants from engaging in any acts or practices that violate Business and Professions Code section 17200 et seq. or section 17500 et seq. (Sep. State., Facts 2-5.)

3. On November 8, 2011, this Court entered a Preliminary Injunction ("PI") against the Stein Defendants. In part, the PI enjoined the Stein Defendants from making the false and misleading misrepresentations that were alleged in the People's August 15, 2011 Complaint. The Preliminary Injunction further enjoined the Stein Defendants from engaging in, or soliciting others to engage in, running and capping. Through the PI, the Court further enjoined Stein from accepting referrals of clients from non-attorneys who were not registered as a lawyer referral service with the State Bar. Moreover, the PI enjoined Stein from violating various statutes and rules related to attorney advertising, the sharing of legal fees, failing to provide client refunds, and aiding persons in the unauthorized practice of law. (Sep. State., Facts 6-10.)

4. In addition to the PI, on November 8, 2011, the Court also entered a second Asset Freeze against the Stein Defendants and ordered Stein to preserve records. (Sep. State., Fact 11.)

5. On November 7, 2012, having received no respondes to its August 10, 2012 Requests for Production of Documents that were propounded on Stein, the People filed a motion to compel responses, for an order waiving objections, and for monetary

sanctions. On December 10, 2012, the Court ordered Stein to produce responsive documents by December 17, 2012, holding that Stein had waived all objections by failing to timely respond to the People's discovery requests. The Court further ordered Stein to pay monetary sanctions to the People in the amount of $1,380.50, (Sep. State., Facts 12-14.)

6. With the exception, of the Stein Defendant, the People settled with all defendants to this action. Monetary judgments against those defendants who have settled total approximately $1,900,000. In addition to these monetary judgments, the People also gained permanent injunctions against the settling defendants that prohibit them from repeating the scheme. (Sep. State., Facts 15-17.)

7. On December 13, 2011, Stein was indicted in the United States District Court for the Southern District of Florida on 14 counts of securities fraud, wire fraud, mail fraud, conspiracy to commit mail fraud and wire fraud, money laundering, and conspiracy to obstruct justice. The United States of America filed its criminal case against Stein in the United States District Court for the Southern District of Florida, case number 11-80205-CR-MARRA. On December 19, 2011, following his indictment and the issuing of an arrest warrant by a United States Magistrate Judge for the Southern District of Florida, Stein was arrested in Los Angeles, California, and later released on bond. (Sep. State., Facts 18-20.)

8. On March 22, 2013, then-counsel for Stein in this matter filed a motion to sever Stein from this case or, in the alternative, to continue trial in light of Stein's preparation for his federal criminal case. On

April 3, 2013, the Court denied Stein's motion to sever, but continued trial in light of Stein's federal criminal trial. (Sep. State., Facts 21-22.)

9. On May 20, 2013, following a ten-day trial, a jury in the Southern District of Florida found Stein guilty on all 14 counts of securities fraud, wire fraud, mail fraud, conspiracy to commit mail fraud and wire fraud, money laundering, and conspiracy to obstruct justice. Following his conviction, Stein was immediately remanded to custody. (Sep. State., Facts 23-24.)

10. On December 4, 2014, a United States District Court entered a preliminary order of forfeiture against Stein in the amount of $5,378,581.61. On December 5, 2014, United States District Court sentenced Stein to 204 months (i.e., 17 years) ofimprisonment. (Sep. State., Facts 25-26.)

11. On December 8, 2015, the United States District Court filed its Judgment in a Criminal Case against Stein. The judgmen against Stein, in addition to committing Stein to the custody of the United States Bureau of Prisons for a term of 17 years, stated that Stein's interest in the $5,378,581.61 identified in the preliminary order of forfeiture was forfeited, and that forfeiture was joint and several with Stein's coconspirator in the amount of $2,156,000. (Sep. State., Facts 27-28.)

12. On April 8, 2015 the United States District Court amended the judgment aginst Stein, ordering him to pay $13,186,025.85 in victim restitution. The United States District Court found that, due to his indigence, Stein must make payments on a payment plan whereby, while he is imprisoned, he must pay

50% of any Federal Prison Industries wages he may receive or, if he is not employed with Federal Prison Industries, $25 per quarter. Upon Stein's release, the United States District Court ordered him to pay 10% of his gross earnings until such time that the court may alter his payment schedule in the interests ofjustice. (Sep. State., Facts 29-31.)

13. As of the date of the People's MSA, Stein was imprisoned in a federal correctional institute in Miami, Florida, had appealed his criminal case to the Eleventh Circuit Court of Appeals, and was scheduled to be released from the custody of the Federal Bureau of Prisons on March 9, 2028. (Sep. State., Fact-32.)

14. On December 20, 2011, the United States Securities and Excpange Connnission (the "SEC") filed its parallel civil enforcement case to the United States Department of Justice's criminal case against Stein. The SEC's action was filed in the United States District Court for the Central District of California, case no. SACVl 1-1962-JVS. (Sep.. State., Facts 33-34.)

15. Following Stein's conviction, the SEC moved for summary judgment on certain claims for relief against Stein related to violations of the federal securities laws. On February 18, 2015, the United States District Court granted, in part, the SEC's motion for summary judgment against Stein. On March 3, 2015, the United States District Court entered final judgment against Stein in the SEC's enforcement action. In addition to imposing certain restraints and injunctions, the SEC judgment found Stein liable for disgorgement of $5,378,581.61, plus prejudgment interest of $697,833.91, and a civil

penalty in the amount of $5,378,581.61. Under the terms of the March 3, 2015 final judgment, Stein was to pay the SEC $11,454,977.13 within 14 days. (Sep. State., Facts 35-39.)

16. Federal law enforcement judgments against Stein exceed $20,000,000. (Sep. State., Fact 40.)

17. On March 26, 2013, Stein filed in his criminal case an "Emergency Application" seeking the appointment of investigators and expert witnesses under the Criminal Justice Act citing his indigence. On or about April 4, 2013, a United States Magistrate Judge for the Southern District of Florida declared Stein indigent for purposes of the appointment of standby counsel under the Criminal Justice Act. On or about April 26, 2015, Stein signed under penalty of perjury a Motion and Affidavit for Leave to Appeal in Forma Pauperis the SEC's judgment against him. Stein's Motion and Affidavit for Leave to Appeal in Forrna Pauperis states: "Because of my poverty I am unable to pay the costs of the proposed appeal proceeding or to give security therefor." In his Motion and Affidavit for Leave to Appeal in Forma Pauperis, Stein checked a box indicating "No" in response to the question: "Do you own any cash or do you have money in a checking or savings account?" In his Motion and Affidavit for Leave to Appeal in Forma Pauperis, Stein also checked a box indicating "No" in response to the question: "Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?" On April 29, 2015, the United States District Court for the Central District of California granted Stein's motion to proceed in forma pauperis in

his appeal of the judgment against him in the SEC enforcement action, (Sep. State., Facts 41-47.)

18. In March 2009, Stein filed for voluntary Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of Florida, case number 09-14345-PGH. On February 7, 2011, the bankruptcy court confirmed Stein's First Amended Plan to repay his creditors. On January 27, 2015, the United States Trustee moved the bankruptcy court to dismiss Stein's bankruptcy, citing Stein's admitted indigence and "long term incarceration" as reasons to believe that Stein could not make any payments under the First Amended Plan. On February 24, 2015, the United States Bankruptcy Court for the Southern District of Florida granted the United States Trustee's motion to dismiss, setting aside Stein's First Amended Plan and dismissing Stein's bankruptcy case. After the bankruptcy court's granting of the United States Trustee's motion to dismiss, Stein's remaining assets are not protected from creditors' claims. (Sep. State., Facts 48-52.)

19. On or about December 10, 1985, Stein was admitted to the State Bar of California. On October 26, 2011, this Court entered an order whereby the State Bar assumed jurisdiction over Stein's law practice in In the Matter of the Assumption of Jurisdiction Over the Law Practice of Mitchell J. Stein, dba Mitchell J. Stein. On or about January 1, 2012, the State Bar entered an order involuntarily enrolling Stein as an inactive member of the State Bar. In light of Stein's federal conviction, on or about October 1, 2013, the State Bar suspended Stein from practicing law. The

State Bar has stated in public filings that upon finality of Stein's conviction (i.e., when the Eleventh Circuit Court of Appeals affirms his conviction), the State Bar will seek a request for summary disbarment against Stein. (Sep. State., Facts 53-57.)

20. The People filed this action to shut down the Mass Joinder scheme, which had preyed upon thousands of distressed homeowners with false and misleading representations. With the aid of the State Bar and the Court-appointed Receiver in this action, the People achieved its goal of putting an end to the Mass Joinder scheme. The monetary components of the judgments against all of the settling defendants have helped to penalize those defendants and to provide restitution to victims. In part, the settling defendants are enjoined from making untrue or misleading statements to consumers in connection with any proposed or actual lawsuit or settlement with a home mortgage lender, participating in running and capping, and engaging the in the unauthorized practice of law. (Sep. State., Facts 58-61.)

21. Following Stein's conviction in the summer of 2013, this matter has been effectively stayed as to the Stein Defendants. (Sep. State., Fact 62.)

22. Stein's First Amended Answer contains no affirmative defenses to the People's Second Amended Complaint. (Sep. State., Fact 63.)

23. The need for a permanent injunction against Stein is reduced given the 17-year prison sentence he is serving and the fact that he is ineligible to practice law in California. (Sep. State., Fact 64.)

The Court's evidentiary rulings are contained in the attached Ruling Regarding the People's

Evidentiary Objections to Defendant Stein's Evidence Submitted in Opposition to the People's Motion for Summary Adjudication.

THE COURT THEREFORE FINDS that there is no issue of material fact with respect to Plaintiff's fifth cause of action because: (1) plaintiff has met its burden of showing there is no defense to its fifth cause of action; (2) Plaintiff has proved each element of its fifth cause of action entitling it to judgment; and (3) Defendant Stein has failed to demonstrate the existence of a triable, material factual dispute. Therefore, Plaintiff's fifth cause of action must be adjudicated in favor of the People and against Defendant Stein for declaratory relief that the People is the prevailing party to this litigation for all purposes, including costs, regardless of whether Plaintiff at a future date dismisses its remaining causes of action against Mr. Stein.

IT IS THEREFORE ORDERED that People's motion for summary adjudication is GRANTED and that the final judgment as to the People's Fifth Cause of Action shall be based upon those issues so established in the People's favor.

Dated: [handwritten: 2-5-16]

By: [handwritten: signature]
HONORABLE JANE JOHNSON
Judge of the Superior Court

Appendix F

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

No. LC094571

THE PEOPLE,
Plaintiff,
v.
MITCHELL J. STEIN.
Defendant,

THE LAW OFFICES OF KRAMER AND KASLOW, *et al*.
Defendants.

Status Conference

April 13, 2015

Before the Honorable Jane Johnson
Judge of the Suprior Court

THE COURT: Good afternoon.

MR. ROBERTSON: Good afternoon, your Honor.

MR. JONES: Good afternoon.

MR. MORGENSTERN: Good afternoon.

THE COURT: All right. People and of the State of California versus the Law Offices of Kramer and Kaslow. Before I ask you to state your appearances, I'm going to sign the order appointing court approved reporter.

Okay. Please state your appearances.

MR. MORGENSTERN: Eli Morgenstern on behalf of the Office of Chief Trial Counsel and of the State Bar, the petitioner.

MR. JONES: David Jones on behalf of plaintiff, the People of the State of California.

MR. ROBERTSON: Andrew Robertson for the receiver, Thomas McNamara.

THE COURT: You may all sit down, if you'd like. All right. So this case is finally coming to an end; correct?

MR. JONES: Hopefully, your Honor.

THE COURT: All right. So you got my tentative on both of these motions in order to approve transfer and omnibus motion for order approving the procedures of the receiver.

I just want to ask one question, Mr. Morgenstern, has Mr. Stein actually been disbarred?

MR. MORGENSTERN: No, he hasn't, your Honor.

THE COURT: He hasn't?

MR. MORGENSTERN: No. The status of the case is -- the State Bar has filed notices of disciplinary charges against Mr. Stein in unrelated matters to the criminal case. Those matters have been abated. The State Bar court has abated those matters. And we are

waiting the resolution of the criminal case. Assuming the 11th Circuit affirms the conviction, the criminal conviction will result in a summary disbarment.

THE COURT: I see. Okay.

MR. MORGENSTERN: So Mr. Stein is not entitled to practice law, but he's not been disbarred.

THE COURT: Yeah. Okay. Because that other matter is just going on and on. This is the criminal case where he's currently serving for -- how many years? Is it that one, or is this a different one?

MR. MORGENSTERN: The Florida federal case.

THE COURT: Right. Okay. Okay. All right.

MR. JONES: I'm sorry, your Honor. That matter is up on appeal right now.

THE COURT: Oh, it is?

MR. JONES: Yes.

THE COURT: I didn't realize that. Okay. All right. Well, I know we were awaiting sentencing on that and where he was going to be incarcerated.

MR. JONES: I believe he's still in Miami.

THE COURT: All right. Do you have any questions or any comments on anything I had to say here?

MR. ROBERTSON: I'll try to respond to your question number two. I would have to check with the receiver's controller. I know that the -- what happens is sometimes in these frozen accounts, the bank will tell us that there is $104,000. And then when we give them an instruction to please transmit it, it comes in as 120 or maybe 90. So what we try to do is -- it's the

estimate based on our current information. So I guess that's why the numbers are a little less than precise. But the concept is whatever is frozen in Kramer's name, which we know is approximately -- somewhere in that 609 to 643 -- it will all be transferred. But it's hard, totally without the banks being here, to know exactly what that will be.

THE COURT: So you almost have to check daily?

MR. ROBERTSON: Well, you just have to send the instructions saying what's in the amount. And then sometimes it arrives in our bank and the numbers aren't totally -- I mean, assuming they're not dramatic variances.

THE COURT: Okay. So there is the proposed revised order for the restitution. So it says approximately $643,658.

MR. ROBERTSON: Yes.

THE COURT: That's the ballpark? It may be a little bit more; is that right?

MR. ROBERTSON: Yes. Well, it could be a little bit less. I appreciate that it's -- in our experience over a decade or so, often the surprises tend to be on the higher side. But it's not completely precise.

THE COURT: Okay.

MR. ROBERTSON: I think you raised a good point on this notice. The order on 5(D) of proposed order, it -- I probably should add that the receiver would file and post on the website -- on line 23, and post on the receiver's website the final schedule. I think you are correct. It's not completely clear on how this information would get to the claimants.

THE COURT: Just a moment. Which page?

MR. ROBERTSON: Page 5, paragraph 5(D).

THE COURT: Okay. Well, the notice -- is it the notice of receivership restitution program?

MR. ROBERTSON: This would be -- your paragraph 3 of your tentative raised a question about how will the notice of the final schedule be delivered to the claimant. So I think the -- the proposed order only -- should also indicate that we would -- to be clear, it would be filed on the website, the final approved schedule. I guess the scrivener of this interpreted as flowing from C. But it probably would be better if we say "the receiver shower if you any submitted objection on the file and post on the receivers website."

THE COURT: Okay. This should be part of the proposed order?

MR. ROBERTSON: Yes.

THE COURT: Okay. I can't find it. If I send this down, can you?

MR. ROBERTSON: Oh, certainly. Line 23.

THE COURT: Okay. Line 23. It should say -- all right. So I should interlineate?

MR. ROBERTSON: Yes. That will make it clear.

THE COURT: "The receiver shall" --

MR. ROBERTSON: "Review any submitted objections and file and submit -- and post on the receivers website."

THE COURT: Okay. So file and post on the receiver's website?

MR. ROBERTSON: Yes.

THE COURT: Okay.

MR. ROBERTSON: And on your last point, your Honor, I think you raised an excellent point. The order does not specifically addressed the procedures by which an unhappy claimant could object to the Court. So I guess we probably defer how you think we should best describe that. We were probably leaving it to the imagination. I think it's a very good point. Probably submit a written objection to the Court within 14 days after receiver -- I guess for clarity we can insert the specific address.

THE COURT: Written?

MR. JONES: Perhaps by a letter addressed to the Court?

MR. ROBERTSON: Yes. Whatever the Court would think would make the most sense at this point. I think the notion was that we would file -- we would file the final approved list. And then if anybody looks at that and didn't see their name, they could then file a procedure to, in essence, appeal to the receiver. And if the receiver continued to leave it off the list, when we made our motion later for approval, that would give them one last attempt to come to the Court to say "I got denied initially, then I appealed the receiver and got denied again, now I would like the Court to consider my claim should be honored."

THE COURT: Right. What page are you on now?

MR. ROBERTSON: This is the next paragraph, paragraph E.

THE COURT: Claimat who desires to object to the final schedule of approved claims and who has previously submitted a written objection to the receiver pursuant to paragraph 4C may do so by submitting written objection to the Court within 14 days after the receiver has posted the final schedule of approved claims.

So what about to the address that is set forth in the posted final schedule approved claims?

MR. ROBERTSON: Okay.

THE COURT: In other words, there could be a notice on that, you know, if you have an objection. I mean, that might be of the best way to do it. What do you think about that?

MR. ROBERTSON: Yes. We could do that.

THE COURT: So you have, like, some notice as part of that that tells them that they have a further objection. Would that be better?

MR. ROBERTSON: Yes. One question I raised with the Court. You notice that in 5(D) it says "all decisions of the receiver set forth in the schedule shall be final."

And I know in your internal discussion it was a notion that the Court might want to leave an avenue for somebody to come to the Court. But I guess if you felt that having the receiver's decision be final was satisfactory, then paragraph 5(E) would become irrelevant. But I think our thought was that in sort of embracing the due process of it, they'd have one last chance. Bear in mind that our prediction here is hat these claims -- these payments are going to be between $1 and $300. It somewhat impacts how much

procedure we put in place. So I think from our standpoint, if the Court was comfortable with E not being there, we certainly would be.

THE COURT: Yeah. Because they have a chance to object to the receiver; right?

MR. ROBERTSON: Yes.

THE COURT: At this point I don't really think it's necessary to come back to Court. That would be very awkward. Because I don't think we have a further hearing on this, except a sort of nonappearance report to the Court that all distributions have been made.

MR. ROBERTSON: We would bring a motion for final fees and then distribution -- to approve the distribution. Yes. There's no question. I think we put that in there on sort of -- possibly the Court would be concerned that it should get some opportunity. But if that's acceptable to the Court, E could just be deleted, and the receiver's decision would be final. Because I think it gets the Court into a very unpredictable -- you know, what did it file and not file, is there a hearing.

THE COURT: And how much inquiry is -- because it will have been some proportionate amount that people get; right?

MR. ROBERTSON: It's going to be a per capita. And -- to give the Court some comfort on that, I think our notion is that we will do a review – we're permanently looking for felony mistakes, not infractions. So if the person can't -- like if they put the wrong lawyer, "I hired some non-defendant," or they -- there are some very obvious that are talking about a different universe of lawyers. But the -- I think the claimants are going to benefit from the fact this is

going to be a fairly 10,000 foot review. And all close calls will go to the claimant.

THE COURT: Do you have any comment?

MR. JONES: I think what the receiver is saying sounds reasonable. We'll defer to the Court whether --

THE COURT: I really don't think it's necessary.

MR. ROBERTSON: That would be fine with us, your Honor. It takes an extra step out of it.

THE COURT: I would be very surprised if -- I'm not sniffing at that amount. That's substantial money for anybody. But to come here and attend a hearing and have a representation and so on, probably most people aren't going to take that step. So I think we could eliminate that paragraph, 5(E).

MR. ROBERTSON: That's 5(E).

THE COURT: Knowing that they already have the opportunity to object to the receiver. Okay.

MR. MORGENSTERN: Your Honor, the issue regarding Mr. Stein, his funds have not been included in this restitution program.

Could you help me explain what the issues are.

MR. JONES: My understanding is when the receiver was appointed and the asset freeze was instituted, about $2,500, approximately, was in Stein's personal account. And that still at issue in the People versus Law Offices of Kramer and Kaslow. Somewhere in the neighborhood of $28,000 or $30,000 -- I don't have the exact figures offhand -- were held in law firm account. And those became part of the State Bar's assumption of jurisdiction proceeding. Perhaps Mr. Morgenstern could explain that proceeding.

THE COURT: Okay. All right.

MR. MORGENSTERN: Those accounts have been frozen, but they have not been added to this receiver restitution program, because the civil case with respect to Mr. Stein has not come to an end. Is there a way -- is there any advice the Court could offer?

THE COURT: The way it can come to an end?

MR. MORGENSTERN: No. What we should do with the frozen funds.

THE COURT: I don't know what to do with the frozen funds. Because I remember we had this discussion. Because I thought that maybe those funds were going to be scooped up by someone else, because there's so many claims out there against him. And it's been almost impossible to get a trial in this case.

MR. JONES: And I apologize for that, your Honor.

THE COURT: It's not your fault. It's because we never know where he is.

MR. JONES: My understanding is that the $2,000 and the $28,000 are separate issues. The $2,000 is at issue in our case as long as our case continues. And I'm obviously not in the State Bar. But my understanding of that assumption of jurisdiction order has been that the State Bar and now step into the shoes of that law practice.

MR. MORGENSTERN: Right. We're going to have to do something at some point with the $28,000 or approximately that's in those frozen accounts. Perhaps it would be best included in this restitution program.

MR. JONES: Correct me if I'm wrong. But my understanding is that they do not need a final judgment in the People's case in order to act on it.

THE COURT: All right. So that what they could do is that $28,000 could be assigned to the receiver?

MR. MORGENSTERN: I think it could.

THE COURT: And then distributed?

MR. MORGENSTERN: Yes.

MR. ROBERTSON: Mechanically, you could add a subparagraph D on the list of funds on paragraph 3 that would say all funds are to remain frozen in the --

MR. JONES: I'm sorry, is this paragraph 4?

MR. ROBERTSON: Oh, yes. Sorry. Paragraph 3 -- 4. We can insert a paragraph 4D that will refer to all funds which remain frozen in the identified accounts of Mitchell Stein.

MR. JONES: Of the law firm accounts?

MR. ROBERTSON: Yes. The law firm accounts.

THE COURT: That would appear on page 3?

MR. ROBERTSON: Yes. 3, line 6. We could add a subparagraph D. So I guess all funds which remain frozen in the --

MR. MORGENSTERN: I hold account of --

MR. ROBERTSON: Mitchell Stein.

MR. MORGENSTERN: Right.

MR. ROBERTSON: What institution is that?

MR. MORGENSTERN: I don't know offhand.

THE COURT: Okay. Well, I have been adding little things here and there. I'm wondering if it would just be a good idea to submit a revised order. But I think that makes sense. Then we're just left with $2,500 in the People's case.

MR. ROBERTSON: So we'll add a paragraph D that refers to the Stein accounts. And we'll add the website reference and will take out the court appeal part. Okay?

THE COURT: Okay.

MR. JONES: Your Honor, does this need to be under a newly noticed motion, the further revised order?

THE COURT: I don't think so.

MR. JONES: Okay.

THE COURT: I don't think so. No.

MR. ROBERTSON: And, your Honor, between now and when we send it back by tomorrow or so, if there is a clear answer to your question about the amount, we'll address that also. I'll meet with the controller and make sure we can get it pinned down.

THE COURT: Well, I think I just questioned why it was only approximate. I mean, if it's in the ballpark --

MR. ROBERTSON: Yeah. That's why. It seems like it shouldn't be an issue. If you call Bank of America and ask how much is in the account, they will tell you. We've had many -- several instances -- and it's generally been to the positive -- we say, "please empty that account" And $42,000 is in it and the cashier's

check shows up for $96,000. And somebody calls and says, “what happened?”

Sometimes it's in these consumer cases were there is ACH charges and somehow get credited back. But sometimes somebody in the funds delivery Department didn't get the right information.

MR. JONES: And to be clear, sometimes it will be smaller if they are taking away monthly charges on the amount.

MR. ROBERTSON: Yes.

THE COURT: All right. Okay. So then when can you submit a revised order?

MR. ROBERTSON: By tomorrow. First thing tomorrow.

THE COURT: Okay.

MR. ROBERTSON: Sometime tomorrow.

MR. MORGENSTERN: I can as well.

MR. JONES: Yes.

MR. MORGENSTERN: Same with the State Bar, your Honor.

THE COURT: And then you'll get the information as to the banking information to the receiver who is going to prepare the orders?

MR. MORGENSTERN: I will, your Honor.

THE COURT: Okay. All right. So it was your concern because this was not -- Mr. Stein was not given notice. Is that your concern?

MR. JONES: I'm sorry, your Honor?

THE COURT: Was your concern because Mr. Stein was not given notice that maybe his funds in the

State Bar account were going to be transferred to the receiver?

MR. JONES: I don't think there is a notice issue there, your Honor. I think it was probably just us overlooking that account when we were initially putting together the restitution point.

THE COURT: OK. alright.

MR. JONES: Most likely because of this initial confusion that the People versus Law Offices of Kramer and Kaslow is continuing whereas the State Bar's proceeding against him has reached a point where they can't dole out this money.

THE COURT: Okay. Alright. So with respect to the procedures for the receivership restitution program, we need to add additional accounts; do we?

MR. ROBERTSON: Do you mean for Stein?

THE COURT: Uh-huh.

MR. ROBERTSON: Yes. I see in the -- in the revised order, it would be in the insert of subparagraph D.

THE COURT: Yeah. But there is another order, Proposed Order Re Procedure Receivership Restitution Program. Are these -- oh, the $609,000, is that in the receivers account?

MR. ROBERTSON: No. I think what you -- I believe in the omnibus motion the orders I believe are most current based upon the controller's input.

THE COURT: Okay. But there's two motions, a motion for order to approve transfer of frozen funds to receivership restitution fund.

MR. MORGENSTERN: That's the State Bar's matter, your Honor.

THE COURT: It's yours. So in that you need to add Mr. Stein. So the State Bar has to revise the order, and the receiver has to revise his order to take these into account.

MR. MORGENSTERN: I understand.

THE COURT: Okay. All right. Just so we have a focus and a due date, today is Monday. By Wednesday can you both get me your revised letters?

MR. ROBERTSON: You bet. Wednesday is fine. Yes.

MR. MORGENSTERN: Yes, your Honor.

THE COURT: Okay. Perfect. Okay. All right. Great. Fine.

So then now are we ready for our status conference?

MR. JONES: We are, your Honor.

THE COURT: All right. So what do we do?

MR. JONES: Well, having just discussed restitution, I think flows nicely into where I was wanting to start when we discussed the status of this case. I think it's the People's position that we prevailed in this action. As you'll recall earlier in the case there were temporary restraining orders, asset freezes and preliminary injunction issued against each defendant, including Mitchell Stein. Of course, the Court had to define that the People had a likelihood of success on the merits as to each defendant, including Stein, and Stein had the opportunity and indeed took advantage of the opportunity to be heard on those motions. With

the exception of Stein, we've now settled with every defendant for amounts totaling just over $1.9 million. We've also gotten strong injunctions against the type of behavior that the People sought to stop when they filed this action.

And so we're left just with Stein. The joint actions -- well, not join. But the actions of state and federal law enforcement have put it into Stein's ability to harm consumers. In this case, as I just mentioned, we have the preliminary injunction, which helped end his involvement in -- well, which helped the mass scheme.

In terms of the federal criminal SCC case, as the Court is aware, Stein was sentenced to 17 years in federal prison. Between that criminal action and SEC action, there's currently about $30 million in restitution, penalties on disgorgement orders against Stein. Through the actions of the State Bar, Stein is unable to practice law. And assuming the 11th Circuit affirms his criminal conviction, he'll be similarly disbarred.

So the result of all of this is Stein is in a position where he has judgments that exceed his ability to ever likely pay them, as well as a lengthy prison sentence. So that leaves us with what we do with Stein in our case. As we just explained, there's really only about $2,000, in the neighborhood, in Stein's personal accounts that were frozen by the receiver and not subject to the State Bar's assumption of jurisdiction order. The People are extremely mindful of the Court's time as well as the state resources being expended on this matter. To that end we've reached out a number of times to propose a settlement with Mr. Stein. We've

offered what really is our best and final offer and he has rejected that.

The People also, in the months since we've effectively stalled this case, we've examined going -- continuing the trial on all of the allegations. Some of them are likely a smaller subset of the allegations in order to try to speed along the trial. We've also considered a dispositive motion practice. But given the reality of this case and given the fact that you can't squeeze blood from a stone, the People have also considered dismissal without prejudice against Mr. Stein. This would be, of course, solely in the interest of the Court's resources, as well as the state's resources.

The problem from our perspective -- from the People's perspective with dismissing without prejudice is first Stein's action against the People in bringing this law enforcement action. But also, the fact that under the prevailing party statute, there's a possibility that Stein may claim he's a prevailing party for purposes of costs. And under the circumstances of this case, I think it's the People stance that that would be inequitable and stretched the very definition of what a prevailing party is. So we were wondering if the Court could give us any guidance on what your Honor is thinking as to the prevailing party in this action. And I'm prepared to speak more on that issue if you would prefer.

THE COURT: Why wouldn't you think about a dispositive motion?

MR. JONES: Without getting too much into --

THE COURT: But it seems to me -- I mean, then he's given due process. He can file responsive of papers if he wants to, you know.

MR. JONES: Stein has continually contested the factual underpinnings of the case, which I think -- well --

THE COURT: Yeah. Right. That's true. But there have been certain findings already.

MR. JONES: That's true, your Honor.

THE COURT: And there's an injunction in place.

MR. JONES: That's true, your Honor.

THE COURT: So I don't know. Do you have some suggestions?

MR. JONES: Well, I was hoping the Court may be willing to give some additional guidance on your thoughts as to the prevailing party in the event the People did dismiss without prejudice, if the Court would be inclined to cal Stein the prevailing party, if he did bring a motion for costs. And like I said, I'm happy to speak more to that issue now.

THE COURT: Well, one thing you might want to do is instead of just filing a request for dismissal that is sort of summary -- but I'm thinking off the top of my head because I haven't really thought about it –

MR. JONES: I appreciate that.

THE COURT: -- is one which requires court approval and in which there are certain recitations as to what has been accomplished in the suit and the findings of the Court and so on and so forth, and the benefits that the People of the State of California have

obtained as a result of bringing this motion and finding with respect -- perhaps. I don't know. This is very new. This case is unlike any other case I've had –

MR. JONES: I appreciate that, your Honor.

THE COURT: -- with respect to prevailing. And in essence, you did prevail. And I think you did a wonderful job.

MR. JONES: Thank you, your Honor.

THE COURT: You sort of made sure that -- you know, it was a scheme that was voiced to the client. Some people that turned over money for representation that they didn't receive, and you made sure that didn't happen again. So that might be one way of doing it.

MR. JONES: Thank you, your Honor. That's very helpful guidance.

THE COURT: I mean, we could actually have a record of that. I could set an OSC re dismissal. Not for failure to prosecute but for the inability to obtain Mr. Stein for trial. I mean, it's been very difficult.

MR. JONES: And likely unable to -- or unlikely to get easier as time goes by, at least for the foreseeable future.

THE COURT: Yeah. You know, I honestly thought it would work out because -- once you finally found out there where is he was incarcerated, with all the technology that we have today. But the other thing I would do is just -- I could have a prove-up mini trial and he can submit whatever evidence he wants in writing since he can't appear by himself. That's another thing we can do.

MR. JONES: I'm thrilled to take both of these options back to my office.

THE COURT: Well, just talk. But we should really set a status conference out there so that you can come back with some ideas and figure out how we can go about it.

MR. JONES: Of course. And I think both of those are very attractive options that we'd like to pursue.

THE COURT: Well, then I look forward to getting the proposed orders. And it would be very helpful for me if you just get me a red-line version in addition to the one for me to execute so I see those changes are there. And the same thing with the addition of Mr. Stein to your proposed, as well.

MR. MORGENSTERN: Thank you.

THE COURT: Okay. We need to set a status conference. And then I'll ask People to give notice of what we did today.

Forty-five days?

MR. JONES: Your Honor, the difficulty is that I'm going to go try to climb Mt. McKinley, which will take me out of state and basically make me unreachable from about May 12th until June 9th. And I'm the attorney assigned to this case. If the Court wants --

THE COURT: I don't care. We can set it out.

THE CLERK: Last week of June?

MR. JONES: Yes. Your Honor, if the People would like to pursue one of those two options we

discussed earlier, can we file something before that date just to speed things along?

THE COURT: Yes. Okay. All right. So we'll just set it for the end of June.

THE CLERK: June 26th at eleven o'clock.

THE COURT: Okay. The People to give notice. Thank you very much.

(Whereupon at 2:31 P.M., the proceedings were adjourned.)

Appendix G

CONSTITUTIONAL AND STATUTORY PROVIDIONS INVOLVED

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Cal. Const., art. VI, § 13

No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

Cal. Code Civ. Proc., § 475

The court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of said court, does not affect the substantial rights of the parties. No judgment, decision, or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear

from the record that such error, ruling, instruction, or defect was prejudicial, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown.