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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. 2:10-cv-02591 MCE KJN PS

v.

JAMES O. MOLEN (also known as James-Orbin: Molen); SANDRA L. MOLEN (also known as Sandra-Lyn: Molen); BLACK HOLE ADVENTURES, A FAMILY TRUST, BY WILLIAM BAKER AND JOHN VAN AUKEN, TRUSTEES; CALIFORNIA FRANCHISE TAX BOARD; CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT; BUTTE COUNTY ASSESSOR, HOUSEHOLD BANK SB N.A.; ADVANTA BANK CORPORATION; CITIBANK SOUTH DAKOTA, N.A.; MBNA AMERICA BANK; ASSET ACCEPTANCE LLC; WELLS FARGO BANK N.A.; HOUSEHOLD BANK SB N.A.; JAMES ORBIN MOLEN LIMITED PARTNERSHIP,

Defendants.

ORDER

Presently before the court are: (1) plaintiff United States of America's motion to partially strike the answer of defendants James Molen and Sandra Molen; and (2) four motions to

1 dismiss filed by defendants James Molen, Sandra Molen, William Baker, and John Van Auken.
2 (Dkt. Nos. 5, 8, 12, 14, 15 .) Defendants Molen, Baker, and Van Auken are each proceeding
3 without counsel.¹

4 In plaintiff's motion to strike the Molens' answer in part, plaintiff asserts that
5 because defendants James and Sandra Molen are appearing pro se, or in other words without
6 counsel, they cannot properly assert defenses on behalf of certain entity defendants, namely, the
7 James Orben Molen Limited Partnership (the "Partnership") and the Black Hole Adventures
8 Trust (the "Trust"). (Mot. to Strike, Dkt. No. 5-1 at 2-4.)

9 As to the four motions to dismiss filed by defendants Molen, Baker, and Van
10 Auken, the court construes each of these nearly identical motions as moving to dismiss plaintiff's
11 complaint for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2).
12 Plaintiff has opposed all four motions to dismiss. (Dkt. No. 16.)

13 The court heard these matters on its law and motion calendar on January 27, 2011.
14 Attorney Patrick Jennings appeared on behalf the plaintiff, and defendants James O. Molen,
15 Sandra Molen, John Hugh Van Auken, and William Baker appeared without counsel.²

16 The court notes that during the hearing, defendant Van Auken expressed his
17 objection to a statement made within plaintiff's oppositions to the defendants' motions to
18 dismiss. In those oppositions, plaintiff suggested that the defendants "... argue in effect that the
19 United States of America has no authority over them." (Oppos. to Mots. to Dismiss, Dkt. Nos.
20 16 at 1-2, 16-1 at 1.) During the hearing, defendant Van Auken sought to clarify that while he
21 and the other defendants assert a lack of jurisdiction, neither he nor the other defendants have

22 ¹ This action was referred to the undersigned pursuant to Eastern District Local Rule
23 302(c)(21). (See Dkt. No. 11.)

24 ² During the hearing on January 27, 2011, James Molen notified the court that it was his
25 preference to be referred to as "James-Orbin: Molen," and that the caption in this action be amended
26 to reflect that preference. The court also notes that Sandra Molen expressed a preference to be
referred to as "Sandra-Lyn: Molen." (Dkt. No. 8, 2-3.) Accordingly, the caption is hereby amended
to reflect that these two defendants are "also known as" those preferred names.

1 argued that the United States of America lacks authority over them.³

2 The court further notes that during the hearing on January 27, 2011, defendant
3 James Molen represented that, aside from the defendants’ four motions to dismiss for lack of
4 personal jurisdiction, the court was obligated to address additional defense motions that Mr.
5 Molen claimed were also before the court. A review of the court’s docket indicates that Mr.
6 Molen was referencing the motion captioned “Motion for Judicial Notice . . . Motion to Dismiss
7 under FRCP 12(b)(6) . . . Motion to Render Judgment on Implied Contract under 28 USC
8 §1367(a)” (“Motion to Render Judgment”) that he and Sandra Molen filed the day before the
9 hearing on January 26, 2011. (Mot. to Render Jdgmt., Dkt. No. 19 at 1.) During the hearing, the
10 court expressed that it would deny all of the defendants’ motions before it; however, the court
11 herein takes no position on the Molens’s Motion to Render Judgment. That motion was not filed
12 in accordance with Eastern District Local Rule 230(b), which requires filing and serving motions
13 at least 28 days before the hearing date. That rule makes it procedurally improper to file a
14 motion the day before the date it is set to be heard, but that is what the Molens apparently sought
15 to do with their Motion to Render Judgment. Therefore, contrary to Mr. Molen’s statements
16 during the hearing on January 27, 2011, the substance of the Molens’s Motion to Render
17 Judgment was not properly before the court. The procedural deficiencies of that motion will be
18 addressed by separate minute order.

19 The undersigned has considered the briefs, oral arguments, and the record in this
20 case and, for the reasons stated below, orders that plaintiff’s motion to strike the answer in part is
21 granted, and that the four motions to dismiss filed by defendants Molen, Baker, and Van Auken
22 are denied.

23 ////

24
25 ³ Counsel for plaintiff indicated that plaintiff did not intend to mischaracterize defendants’
26 arguments, and that henceforth those arguments would be characterized as objecting particularly to
the “jurisdiction” of the United States rather than the “authority” of the United States.

1 I. RELEVANT FACTUAL BACKGROUND

2 On September 23, 2010, plaintiff filed its complaint against defendants Molen,
3 Baker, Van Auken, the Trust, the Partnership, and others. (Compl., Dkt. No. 1.) The complaint
4 alleges multiple failures to pay federal taxes by the Molens and the Partnership. (Compl. ¶¶ 17-
5 18, 28, 30, 34, 36-41.) The complaint also alleges that the Trust is both a sham and the Molens’s
6 alter ego, and plaintiff seeks to set aside the purported transfer of real property from the Molens
7 to the Trust. (Id. ¶¶ 42-54, p. 13 ¶¶ D-E.) Plaintiff seeks foreclosure of tax liens encumbering
8 the Molens’s alleged real property in Butte County, California. (Id. at p. 13 ¶ I.)

9 As to the Molens, the complaint alleges that defendants James and Sandra Molen
10 “reside in Butte County, California, within this judicial district” (Compl. ¶ 5.) The
11 complaint further alleges that the Molens have occupied 189 Connors Avenue in Butte County,
12 California, “as their residence from at least 1976 to the present.” (Compl. ¶¶ 17-18, 44, 49.)

13 As to Baker and Van Auken, the complaint alleges that the Trust, “by William
14 Baker and John Van Auken, trustees, if it exists, has its principal place of business within this
15 judicial district. . . .” (Compl. ¶ 6.) While plaintiff ultimately seeks to have the Trust
16 disregarded as a sham, plaintiff has alleged that the Molens formed the Trust and that the Butte
17 County property was ostensibly transferred to the Trust, albeit without consideration. (Compl. ¶
18 36, 39, 45-46, 49.) The complaint also alleges that the Trust, if it exists, currently holds title to
19 real property located in Butte County. (Id.) Baker and Van Auken have not answered the
20 complaint and have filed the pending motions to dismiss. (Dkt. Nos. 7, 10.)

21 According to the court’s docket, the Molens filed a verified answer to the
22 complaint on November 15, 2010. (Answer, Dkt. No. 4.) In that answer, the Molens asserted
23 defenses on behalf of themselves as individuals, including a lack of personal jurisdiction. (Id. at
24 1-2 (denying plaintiff’s allegations of jurisdiction and purporting to appear “specially, and not
25 generally”).) However, the answer also purports to assert defenses on behalf of the Trust and the
26 Partnership in the following capacities: James Orbin Molen as “General Manager” of the Trust

1 and “General Partner” of the Partnership, and Sandra Molen as “General Partner” of the
2 Partnership. (Id. at 2, 5, 7, 8.)

3 Also according to the court’s docket, plaintiff filed its pending motion to strike
4 the answer in part on November 30, 2010. (Dkt. No. 5.) The Molens have not filed any written
5 opposition to plaintiff’s motion, and no other party has opposed the motion. See E. Dist. Local
6 Rule 230(c).⁴

7 Defendants Molen, Baker, and Van Auken each filed motions to dismiss and
8 supporting affidavits on December 7, 2010, then refiled their motions on December 22, 2010,
9 pursuant to a minute order dated December 10, 2010. (Mots. to Dismiss, Dkt. Nos. 7-10, 12-15;
10 Minute Order, Dkt. No. 11.)⁵ The undersigned addresses the more recently-filed motions from
11 Baker, Van Auken, and James Molen, and the only motion filed by Sandra Molen. (Mots. to
12 Dismiss, Dkt. Nos. 8, 12, 14, 15.)

13 Defendants’ four motions to dismiss and supporting affidavits are nearly identical,
14 are wide-ranging in both style and scope, and do not clearly set out the legal or factual bases
15 supporting dismissal of the complaint. However, it is clear that these motions and supporting
16 affidavits repeatedly assert a lack of personal jurisdiction. (See, e.g., Van Auken Mot. to
17 Dismiss, Dkt. No. 12 at 4-5.) The first paragraph of the “FACTS BEFORE THE COURT”
18 section of each motion references Federal Rule of Civil Procedure “12(b)(2)” and “lack of
19 jurisdiction over the person.” (See, e.g., id. at 4.) The undersigned is aware that these
20 defendants likely prepared these motions without the assistance of counsel, and will construe the
21

22 ⁴ Local Rule 230(c) provides, in pertinent part, that a “responding party who has no
23 opposition to the granting of the motion shall serve and file a statement to that effect, specifically
24 designating the motion in question. No party will be entitled to be heard in opposition to a motion
25 at oral arguments if opposition to the motion has not been timely filed by that party.” This rule
26 notwithstanding, the court heard arguments from the defendants despite their failure to file timely
oppositions to the plaintiff’s motion to strike.

⁵ From a review of the court’s docket, it appears Sandra Molen did not refile her original
motion to dismiss. (Dkt. No. 8.)

1 motions as motions to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil
2 Procedure 12(b)(2).

3 Plaintiff filed an opposition to the two motions to dismiss filed by Baker and Van
4 Auken, arguing that because these two defendants “were named in their capacities as trustees in
5 order to obtain jurisdiction over the Black Hole Adventures Trust,” any appearance by Baker and
6 Van Auken in this action is an attempted appearance on behalf of the Trust, and trusts are entities
7 that can only be represented by licensed attorneys. (Oppo. to Baker’s & Van Auken’s Mots. to
8 Dismiss, Dkt. No. 16 at 2-3.)

9 Plaintiff also filed an opposition to the Molens’ two motions to dismiss, arguing
10 that personal jurisdiction exists as to the Molens because they “reside in and conduct business
11 within” this forum. (Oppo. to Molens’s Mots. to Dismiss, Dkt. No. 16-1 at 3.)

12 II. LEGAL STANDARDS

13 A. Motion to Strike

14 Rule 12(f) of the Federal Rules of Civil Procedure states that a district court “may
15 strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or
16 scandalous matter.” Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010)
17 (citing Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993), rev’d on other grounds by
18 Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994)). “The function of a 12(f) motion to strike is to
19 avoid the expenditure of time and money that must arise from litigating spurious issues by
20 dispensing with those issues prior to trial” Id. Granting a motion to strike may be proper if
21 it will make trial less complicated or eliminate serious risks of prejudice to the moving party,
22 delay, or confusion of the issues. Fantasy, 984 F.2d at 1527-28; Travelers Cas. and Sur. Co. of
23 America v. Dunmore, No. CIV. S-07-2493 LKK-DAD, 2010 WL 5200940, at *3 (E.D. Cal. Dec.
24 15, 2010) (unpublished) (same). Motions to strike are generally disfavored, and in determining
25 whether to grant a motion to strike a district court resolves any doubt as to the sufficiency of a
26 defense in defendant’s favor. E.g., Mag Instrument, Inc. v. JS Prods., Inc., 595 F.Supp.2d 1102,

1 1106 (C.D. Cal. 2008) (internal citations omitted).

2 The Ninth Circuit Court of Appeals has permitted motions to strike and motions
3 to dismiss pleadings filed by pro se parties on behalf of entity defendants such as trusts. C.E.
4 Pope Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987) (in deciding the issue
5 presented in two cases consolidated for appeal, Ninth Circuit Court of Appeals affirmed one
6 district court’s grant of a motion to dismiss a complaint and another court’s grant of a motion to
7 strike a complaint where each pleading was filed by pro se individual on behalf of a trust).

8 B. Motions to Dismiss

9 Under Rule 12(b)(2) of the Federal Rules of Civil Procedure, a defendant may
10 move to dismiss for lack of personal jurisdiction. On a motion to dismiss for lack of personal
11 jurisdiction, a plaintiff bears the burden of demonstrating that jurisdiction exists.
12 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004); Rio Props., Inc. v.
13 Rio Int’l Interlink, 284 F.3d 1007, 1019 (9th Cir. 2002).

14 Although the burden is on the plaintiff to demonstrate that the court has
15 jurisdiction over the defendant, in the absence of an evidentiary hearing, the plaintiff need only
16 make “a prima facie showing of jurisdictional facts to withstand the motion to dismiss.” Brayton
17 Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1127 (9th Cir. 2010) (citing Pebble Beach,
18 Co. v. Caddy, 453 F.3d 1151, 1154 (9th Cir. 2006)) (internal quotation marks omitted).

19 Additionally, “uncontroverted allegations in [plaintiff’s] complaint must be taken
20 as true, and conflicts between the facts contained in the parties’ affidavits must be resolved in
21 [plaintiff’s] favor.” Brayton Purcell LLP, 606 F.3d at 1127 (citing Rio Props., Inc., 284 F.3d at
22 1019 (observing that only “uncontroverted allegations in [the] complaint must be taken as
23 true”)); see also Pebble Beach, 453 F.3d at 1154 (“[F]or the purpose of this [prima facie]
24 demonstration, the court resolves all disputed facts in favor of the plaintiff”); see also Am. Tel. &
25 Tel. Co. v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588-89 (9th Cir. 1996) (stating that
26 uncontroverted allegations in complaint must be taken as true, and “conflicts between the facts

1 contained in the parties' affidavits must be resolved in [plaintiff's] favor for purposes of deciding
2 whether a prima facie case for personal jurisdiction exists"); see Data Disc, Inc. v. Sys. Tech.
3 Assoc., 557 F.2d 1280, 1284 (9th Cir. 1977) (in considering the motion, a court may "assume the
4 truth of allegations in a pleading" to the extent that such allegations are not "contradicted by
5 affidavit"); see also Hedges Indus. Enterprises, Inc. v. Rio Tinto PLC, No.
6 CV-09-8113-PCT-GMS, 2010 WL 2662270, at*4 (D. Ariz. Jul. 1, 2010) (unpublished) (same).

7 III. DISCUSSION

8 A. Plaintiff's Motion to Strike the Answer in Part

9 Plaintiff seeks to strike those portions of the Molens's answer that assert defenses
10 on "behalf of the Black Hole Adventures Trust and the James Orbin Molen Limited Partnership"
11 on the grounds that the Molens are appearing without counsel and cannot appear on behalf of
12 entities like trusts and partnerships. (Mot. to Strike, Dkt. No. 5 at 4.) Although plaintiff failed to
13 specify whether such circumstance makes the asserted defenses "insufficient, immaterial, or
14 impertinent" under Federal Rule 12(f), plaintiff's argument is nonetheless well-taken.

15 The general rule in federal litigation is that a non-attorney can represent himself
16 on his own behalf. See 28 U.S.C. § 1654 (stating that "[i]n all courts of the United States the
17 parties may plead and conduct their own cases. . . ."); C.E. Pope Equity Trust v. United States,
18 818 F.2d 696, 697 (9th Cir. 1987). However, although an individual has the right to represent
19 himself, an individual does not have the right to appear on behalf of anyone other than himself.
20 C.E. Pope Equity Trust, 818 F.2d at 697 (citing Russell v. United States, 308 F.2d 78, 79 (9th
21 Cir. 1962)); see also Knoefler v. United Bank of Bismark, 20 F.3d 347 (8th Cir. 1994) (citing
22 C.E. Pope Equity Trust, and holding that pro se purported trustees had no right to represent
23 trusts).

24 Further, pursuant to this court's local rules, "[a] corporation or other entity may
25 appear only by an attorney." Local Rule 183(a). Case law within the Ninth Circuit is in accord.
26 It is well-settled that "[a] corporation may appear in federal court only through licensed counsel."

1 United States v. High Country Broad. Co., 3 F.3d 1244, 1245 (9th Cir.1993) (per curiam); see
2 also Rowland v. Cal. Men’s Colony, Unit II Men’s Advisory Council, 506 U.S. 194, 202 (1993)
3 (acknowledging that courts have held that the rationale for the rule requiring that corporations
4 appear in federal court through an attorney “applies equally to all artificial entities”); Church of
5 the New Testament v. United States, 783 F.2d 771, 773-74 (9th Cir. 1986) (applying rule to
6 unincorporated associations).

7 The rule requiring entity defendants to appear only through counsel applies
8 equally to partnerships. As to business entities taking the form of partnerships, the Ninth Circuit
9 Court of Appeals has held that a partnership is the sort of entity that may appear only by an
10 attorney. D-Beam Ltd. P’ship v. Roller Derby Skates, Inc., 366 F.3d 972, 973-74 (9th Cir. 2004)
11 (holding that it is “a longstanding rule that [c]orporations and other unincorporated associations
12 must appear in court through an attorney” and applying that rule to partnerships) (citation
13 omitted); see also Q1, LLC v. County of Sacramento, No. 2:08-cv-1564 JAM KJN PS, 2010 WL
14 682534, at *1 (E.D. Cal. Feb. 23, 2010) (unpublished) (applying D-Beam and Eastern District
15 Local Rule 183(a) to an individual purporting to appear on behalf of a limited liability company).

16 Similarly, the rule requiring entity defendants to appear only through counsel
17 applies to trusts. C.E. Pope Equity Trust, 828 F.2d at 698 (holding that even a party’s status as
18 trustee does not include the right to present pro se arguments in federal court, and while Federal
19 Rule of Civil Procedure 17(a) authorizes a trustee of an express trust to sue on behalf of the trust
20 without joining the trust beneficiaries, it does not authorize the trustee to proceed pro se); see
21 also Alpha Land Co. v. Little, 238 F.R.D. 497, 502 (E.D. Cal. 2006) (“a trust can only be
22 represented by an attorney in federal court”) (emphasis in original) (citing C.E. Pope Equity
23 Trust, 828 F.2d at 697 and 28 U.S.C. § 1654).

24 The court in C.E. Pope Equity Trust held that, despite his status as the trustee, the
25 individual could not appear pro se on the trust’s behalf. C.E. Pope Equity Trust, 818 F.2d at
26 697-98. The court also held, however, that there is an exception to the general rule: an individual

1 who is the trust’s “beneficial owner” may appear pro se on the trust’s behalf. Id. (quoting 28
2 U.S.C. § 1654). The court explained,

3 Here the record does not identify the Trusts’ beneficiaries. Because Stradley
4 is not the actual beneficial owner of the claims being asserted by the Trusts
(so far as one can tell from the record), he cannot be viewed as a ‘party’
5 conducting his ‘own case personally’ within the meaning of Section 1654.

6 Id. (emphasis in original); Simon v. Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008) (where
7 pro se party conceded that he was alleged to be representing his employer benefit plan, court
8 held that “[b]ecause [he] is not the actual beneficial owner of the claims being asserted” he could
9 not be “viewed as a ‘party’ conducting his ‘own case personally’”); accord Alpha Land Co., 238
10 F.R.D. at 502 (“Although individuals who are parties to an action may appear in propria persona,
11 this exception applies only to individuals who are asserting their own personal rights or
12 interests”).)

13 Here, the Molens have appeared pro se and purported to assert defenses on behalf
14 of the Partnership. (Molens’ Answer, Dkt. No. 4 at 2, 5, 7, 8.) As to the defenses asserted on the
15 Partnership’s behalf, D-Beam and the above-referenced authorities provide that the Partnership
16 can only appear through a licensed attorney. See, e.g., D-Beam, 366 F.3d at 973-74. Nothing in
17 the record before the court indicates that either of the Molens are licensed attorneys. Because the
18 Molens have not demonstrated that they can appear on the Partnership’s behalf, the defenses they
19 asserted on the Partnership’s behalf are necessarily “insufficient defenses” at this time and should
20 be stricken. (Fed. R. Civ. P. 12(f).) Accordingly, the undersigned orders that plaintiff’s motion
21 to strike the answer in part is granted and the answer is partially stricken with respect to defenses
22 asserted on behalf of the Partnership.

23 Likewise, the Molens purport to assert defenses on behalf of the Trust. (Molens’
24 Answer at 2, 5, 7, 8.) However, C.E. Pope Equity Trust and the above-cited authorities provide
25 that the Trust can only appear through a licensed attorney, subject to the exception for a trust’s
26 “beneficial owner.” C.E. Pope Equity Trust, 818 F.2d at 697-98. Aside from the complaint’s

1 allegations that the Trust is a sham and the property it holds actually belongs to the Molens, at
2 this time there is no evidence before the court indicating that defendants Molen are the Trust's
3 "beneficial owners." Here, just as in C.E. Pope Equity Trust, nothing in the record identifies the
4 Trust's beneficiaries or otherwise confirms that the Molens are "the actual beneficial owner[s] of
5 the [defenses] being asserted" on the Trust's behalf.⁶ See *id.* Therefore, at least on the present
6 record, with respect to representing the Trust neither James nor Sandra Molen can be viewed as a
7 "party" conducting his or her "own case personally." See *id.* Accordingly, the Molens are
8 presently barred from representing the Trust and asserting defenses on its behalf without
9 retaining counsel for the Trust. See *id.* at 697-98.

10 Because the Molens have not demonstrated that they can properly appear on the
11 Trust's behalf, the defenses they asserted on the Trust's behalf are necessarily "insufficient
12 defenses" at this time and should be stricken. Fed. R. Civ. Proc. 12(f). Accordingly, the
13 undersigned grants plaintiff's motion to strike the answer in part with respect to defenses asserted
14 on behalf of the Trust, but reminds the Molens that they are permitted to file a motion for leave
15 to amend to amend their answer on behalf of the Trust if the motion adequately demonstrates the
16 Molens' "beneficial ownership" of the Trust.

17 ////

18 _____
19 ⁶ The undersigned notes that the Molens may face a "no win" situation in choosing whether
20 to attempt to represent the Trust themselves. They may proceed pro se on the Trust's behalf only
21 if they show that they are the Trust's "beneficial owners." But if they make such a showing, they
22 risk losing the defensive argument that they *lack* ownership and control over the Trust such that it
23 is not the "sham" plaintiff alleges. See generally Maisano v. Welcher, 940 F.2d 499, 501 (9th Cir.
24 1991) (describing how pro se defendants seeking to represent a trust may face a "no-win" situation
25 in that such representation may cause them to "lose" other defenses). In Maisano, the court held that
26 where the record "contain[ed] considerable evidence indicating not only that the Maisanos were the
beneficiaries of the Trust, but also that they were the actual owners of the seized vehicle" and
included "testimony and exhibits presented at a hearing on the Maisanos' motion for a temporary
restraining order show[ing] that Mr. Maisano paid cash for the vehicle and kept its maintenance
records in his own name," the pro se Maisanos "placed themselves in a no-win situation . . ." *Id.*
The court stated: "If the [personal property] belongs to the trust, the Maisanos have no standing to
sue and their case must be dismissed. If the [personal property] actually belongs to the Maisanos,
they lose their argument that the IRS seized property belonging to the wrong party." *Id.*

1 B. Motions to Dismiss for Lack of Personal Jurisdiction

2 Defendants Molen, Baker, and Van Auken each argue that the complaint should
3 be dismissed for lack of personal jurisdiction.⁷ (Dkt. Nos. 8, 12, 14, 15.) It is well-settled that
4 personal jurisdiction exists over those who reside within the forum state. See generally Pennoyer
5 v. Neff, 95 U.S. 714 (1877) (providing that one means of establishing personal jurisdiction is to
6 demonstrate that the defendant is a “resident” of the forum state); Brayton Purcell LLP v.
7 Recordon & Recordon, 361 F. Supp. 2d 1135, 1138 (N.D. Cal., 2005) (citing Pennoyer and
8 stating that “[t]his Court has the power to hear a case against a defendant who resides anywhere
9 in this state.”).

10 1. Motions to Dismiss by the Molens

11 Plaintiff opposed the two motions to dismiss filed by the Molens (Dkt. Nos. 8,
12 15), arguing that because the complaint alleges that those defendants reside in Butte County,
13 California, personal jurisdiction is proper as to them. (Dkt. No. 16-1 at p. 3.) Plaintiff’s
14 argument is well-taken.

15 The complaint alleges that the Molens “reside within this judicial district” and,
16 more specifically, that they “reside in Butte County, California” and have done so from 1976 to
17 present. (Compl. ¶¶ 4, 5, 44, 49.) The complaint also alleges that Butte County is within this
18

19 ⁷ Personal jurisdiction can either be general or specific. Schwarzenegger v. Fred Martin
20 Motor Co., 374 F.3d 797, 802 (9th Cir. 2004) (citing Helicopteros Nacionales de Colombia, S.A. v.
21 Hall, 466 U.S. 408, 414 & n. 9 (1984).) A defendant is subject to general jurisdiction only where
22 the defendant’s contacts with a forum are “substantial” or “continuous and systematic.” Easter v.
23 Am. West Financial, 381 F.3d 948, 960-61 (9th Cir. 2004.) A defendant is subject to specific
24 personal jurisdiction where: “(1) The non-resident defendant must purposefully direct his activities
25 or consummate some transaction with the forum or resident thereof; or perform some act by which
26 he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking
the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to
the defendant’s forum-related activities; and (3) the exercise of jurisdiction must comport with fair
play and substantial justice, i.e. it must be reasonable.” Schwarzenegger, 374 F.3d at 802 (9th Cir.
2004) (citing Lake v. Lake, 817 F.2d 1416, 1421 (9th Cir. 1987). Plaintiff bears the burden of
satisfying the first two prongs of the test. Id. (citing Sher v. Johnson, 911 F.2d 1357, 1361 (9th Cir.
1990).)

1 judicial district and the jurisdiction of this court. (Id. ¶ 5.) Pursuant to the above-cited
2 authorities governing motions to dismiss for lack of personal jurisdiction, plaintiff has met its
3 burden and made a prima facie showing that the court has jurisdiction. See Brayton Purcell LLP,
4 606 F.3d at 1127.

5 Further, the Molens have not directly controverted these allegations in any
6 material way. In support of his motion to dismiss, defendant James Molen declared that:

7 James-Orbin: Molen, makes his place of house keeping within the venue
8 and jurisdiction of Butte county - Act of March 19, 1853, St. 1856, 37,
9 Statutes of California, and, California state, California Constitution 1849
Article XII Boundary, one of the United State of America - United States
Statues at Large Vol 9 page 452, and not a Federal National Regional Area.

10 (Mot. to Dismiss, Dkt. No. 15 at p. 2 ¶ 5 (spelling and punctuation as in original).) Defendant
11 Sandra Molen used this exact same language in her supporting declaration. (Dkt. No. 8 at p. 2 ¶
12 5.) These statements are insufficient to directly contradict the allegation that the Molens reside
13 in “Butte County, California,” an area within this judicial district and the jurisdiction of this
14 court. (Compl. ¶ 5, Dkt. No. 1.) Indeed, the defendants’ statements affirm the allegation that
15 they reside in Butte County. Because “uncontroverted allegations in [plaintiff’s] complaint must
16 be taken as true, and conflicts between the facts contained in the parties’ affidavits must be
17 resolved in [plaintiff’s] favor,” plaintiff has properly pleaded the basis for personal jurisdiction
18 over the Molens. See Brayton Purcell LLP, 606 F.3d at 1127.

19 Plaintiff has alleged the basis for personal jurisdiction on the basis of residence
20 within the forum, and the Molens have not directly contradicted that allegation. See id.
21 Accordingly, the undersigned denies the Molens’ motions to dismiss.

22 2. Motions to Dismiss by Defendants Baker and Van Auken

23 Defendants Baker and Van Auken filed motions to dismiss for lack of personal
24 jurisdiction. (Dkt. Nos. 12, 14.) Plaintiff opposes those two motions, arguing that defendants
25 Baker and Van Auken are named only in their capacities as trustees of the Trust, not in their
26 capacities as individuals, and thus that their appearances in this action are improper pro se

1 appearances on the Trust's behalf. (Dkt. No. 16 at pp. 2-3.) Plaintiff's argument is well-taken.

2 For the same reasons the Molens cannot assert defenses on the Trust's behalf, as
3 explained above, defendants Baker and Van Auken likewise cannot appear in this action and file
4 motions to dismiss on the Trust's behalf. See C.E. Pope Equity Trust, 818 F.2d at 697-98. The
5 complaint names defendants Baker and Van Auken in their capacities as trustees and not as
6 individuals, so motions filed by those individuals can only logically be construed as motions filed
7 on the Trust's behalf. Nothing in the record indicates that defendants Baker and Van Auken are
8 attorneys that could properly represent the Trust. See id. Moreover, nothing in the record
9 indicates either of these defendants is the Trust's beneficial owner and could thus represent the
10 Trust pro se. See id. Accordingly, the undersigned denies the motions to dismiss filed by Baker
11 and Van Auken.

12 For the foregoing reasons, IT IS HEREBY ORDERED that:

13 1. Plaintiff's motion to strike the answer in part is granted;
14 2. The answer (Dkt. No. 4) is hereby stricken to the extent it asserts defenses
15 on behalf of the Black Hole Adventures Trust and the James Orbin Molen Limited Partnership.
16 However, to the extent that the Trust and/or Partnership retains a licensed attorney, such attorney
17 may file timely answers or responsive pleadings on behalf of those entities; or, in the case of the
18 Trust, to the extent the Molens seek to show they are the Trust's "beneficial owners" and assert
19 defenses on behalf of the Trust, within 30 days of the effective date of this order the Molens may
20 file a motion (a) proving such beneficial ownership and (b) requesting leave to amend their
21 answer;

22 3. The motions to dismiss filed by defendants Molen, Baker, and Van Auken
23 (Dkt. Nos. 7-10, 12, 14, 15) are denied; and

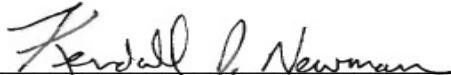
24 4. The caption for this case is hereby amended to reflect the Molens' desire
25 to be referred to by their preferred names. All future filings in connection with this case shall

26 ///

1 reflect that James O. Molen is “also known as James-Orbin: Molen,” and that Sandra Molen is
2 “also known as Sandra-Lyn: Molen.”

3 IT IS SO ORDERED.

4 DATED: January 28, 2011

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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE
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