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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); et al.,

Defendants.

ORDER

Defendants James Molen and Sandra Molen (the “defendants”) are proceeding without counsel in this action.¹ Presently before the court is defendants’ “Motion To Strike All References To James-Orbin: Molen And Sandra-Lyn: Molen As A.K.A.’s Of The Defendants.” (Dkt. No. 88.) Plaintiff the United States (the “plaintiff”) filed a non-opposition to the motion. (Dkt. No. 90 at 88.) Because oral argument would not materially aid the resolution of the pending motion, the matter is submitted on the briefs and record without a hearing. See Fed. R. Civ. P. 78(b); E. D. Local Rule 230(g). The undersigned has fully considered the briefs and the record in this case and, for the reasons that follow, the undersigned grants defendants’ motion.

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

1 I. BACKGROUND

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

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

13 Defendants filed a verified Answer to the complaint on November 15, 2010.
14 (Answer, Dkt. No. 4.) In that answer, defendants asserted defenses, including a lack of personal
15 jurisdiction, on behalf of themselves as individuals, as well as on behalf of entities (i.e., the trust
16 and the partnership). (Id. at 1-2, 5, 7, 8.) The portion of the Answer asserting defenses on behalf
17 of these entities has since been stricken. (Dkt. Nos. 26.)

18 During a hearing on January 27, 2011, defendant James Molen informed the court
19 of his preference to be referred to as “James-Orbin: Molen,” and of his preference that the
20 caption in this action be amended to reflect the preferred name. Sandra Molen had also
21 expressed a preference to be referred to as “Sandra-Lyn: Molen.” (Dkt. No. 8, 2-3.)
22 Accordingly, the court amended the case caption to reflect that these two defendants are also
23 known as these “preferred” names. (Dkt. No. 26.)

24 II. LEGAL STANDARD

25 Rule 12(f) of the Federal Rules of Civil Procedure states that a district court “may
26 strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or

1 scandalous matter.” Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010)
2 (citing Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993), rev’d on other grounds by
3 Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994)). “The function of a 12(f) motion to strike is to
4 avoid the expenditure of time and money that must arise from litigating spurious issues by
5 dispensing with those issues prior to trial” Id. Granting a motion to strike may be proper if
6 it will make trial less complicated or eliminate serious risks of prejudice to the moving party,
7 delay, or confusion of the issues. Fantasy, 984 F.2d at 1527-28; Travelers Cas. and Sur. Co. of
8 America v. Dunmore, No. CIV. S-07-2493 LKK-DAD, 2010 WL 5200940, at *3 (E.D. Cal. Dec.
9 15, 2010) (unpublished) (same). Motions to strike are generally disfavored, and in determining
10 whether to grant a motion to strike a district court resolves any doubt as to the sufficiency of a
11 defense in defendant’s favor. E.g., Mag Instrument, Inc. v. JS Prods., Inc., 595 F. Supp. 2d 1102,
12 1106 (C.D. Cal. 2008) (internal citations omitted).

13 III. DISCUSSION

14 Defendants seek to “strike all of Plaintiff’s references to JAMES-ORBIN:
15 MOLEN or James-Orbin: Molen and SANDRA-LYN: MOLEN or Sandra-Lyn: Molen as a.k.a.’s
16 of the Defendants.” (Dkt. No. 88 at 2.) In particular, defendants argue that “[t]he Defendants are
17 pro per legal fictions. The supposed a.k.a.’s are not legal fictions or a.k.a.’s of the Defendants;
18 but instead, are the agents and executors for the Defendants. James-Orbin: Molen and Sandra-
19 Lyn: Molen are natural human beings under common law born on the soil of California and are
20 not to be confused with being one and the same as the legal fiction defendants.” (Id.)

21 Puzzlingly, defendants’ request to strike all references to what they have
22 previously described as their “preferred” names directly conflicts with defendants’ previous
23 requests to this court. As described above, defendants have expressed their wish that their
24 preferred names be used in this action. Accordingly, the court amended the case caption to
25 reflect that these two defendants are “also known as” these preferred names. (Dkt. No. 26.)

26 Plaintiff has explicitly not opposed the striking of defendants’ “preferred” names

1 from the pleadings . (Dkt. No. 90 at 4.) Plaintiff has also compellingly explained that continued
2 use of defendants' preferred names as "a.k.a.'s" in this case causes needless confusion and
3 irrelevant arguments. (Id. at 4-5.)

4 The undersigned agrees with defendants and plaintiff that continued use of
5 defendants' preferred names constitutes a "redundant" or "immaterial" matter that should be
6 stricken from the pleadings. See Whittlestone, 618 F.3d at 973. Rather than alleviating
7 defendants' concerns regarding their names, as was intended, amending the case caption and
8 pleadings to refer to defendants' "a.k.a.'s" has only spawned confusion and led to further
9 concerns from defendants. Even though defendants themselves requested that they be called by
10 their preferred names with particularized punctuation (i.e., "James-Orbin: Molen"), use of those
11 names has managed only to offend defendants' beliefs/theories regarding the interplay between
12 the so-called "a.k.a.'s" and defendants' alleged status as "legal fictions" versus "agents and
13 executors." Because continued use of these "a.k.a.'s" would lead to further confusion and
14 "redundant" or "immaterial" issues and arguments, and because plaintiff agrees with defendants
15 that these preferred names should be stricken, all references to "a.k.a.'s" shall stricken from the
16 pleadings pursuant to Rule 12(f). Defendants' motion to strike (Dkt. No. 88) is granted.

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

18 1. Defendants' "Motion To Strike All References To James-Orbin: Molen
19 And Sandra-Lyn: Molen as A.K.A.'s Of The Defendants" (Dkt. No. 88) is granted.

20 2. The motion's hearing date, which is currently set for September 15, 2011,
21 is vacated.

22 IT IS SO ORDERED.

23 DATED: August 19, 2011

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25 _____
26 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE