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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JENNIFER VAN GALDER, an  
12 individual,  
13 Plaintiff,  
14 v.  
15 ROGER CLARK, an individual,  
16 MELISSA SCOTT CLARK, an  
17 individual, SOUR WINE FARMS, LLC, a  
18 Delaware limited liability company, et al.,  
19 Defendants.

Case No.: 17-cv-1623-AJB-JLB

**ORDER DENYING DEFENDANTS'  
REQUEST FOR ATTORNEY'S FEES**

(Doc. No. 46)

19 Pending before the Court is Defendants Melissa Scott Clark and Sour Wine Farms,  
20 LLC's ("Defendants") motion for attorney's fees pursuant to California Code of Civil  
21 Procedure § 405.38. (Doc. No. 46.) Plaintiff Jennifer Van Galder opposes the motion. (Doc.  
22 No. 49.) Pursuant to Civil Local Rule 7.1.d.1, the Court finds the matter suitable for  
23 determination on the papers and without oral argument. As will be explained in more detail  
24 below, the Court **DENIES** Defendants' request for attorney's fees.

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26 **BACKGROUND**

27 The instant case revolves around Plaintiff and Defendant Roger Clark's ("Roger")  
28 divorce proceedings and Roger's subsequent Chapter 7 Bankruptcy case. (Doc. No. 16 ¶¶

1 1, 2.) Plaintiff alleges that Roger and his current wife, Defendant Melissa Clark, falsified  
2 a post-nuptial agreement, altered documents to hide Roger's interest in real property, hid  
3 funds in corporate accounts to hide their income from the bankruptcy trustee, gave false  
4 testimony, and filed false proofs of claim. (*Id.* ¶¶ 16, 17, 20, 21, 24.)

5 Plaintiff filed her original complaint on August 11, 2017. (Doc. No. 1.) Shortly  
6 thereafter, all three Defendants filed separate motions to dismiss. (Doc. Nos. 7, 8, 10.) In  
7 response, Plaintiff filed her first amended complaint. (Doc. No. 16.) Defendants and Roger  
8 then filed two motions to dismiss, (Doc. Nos. 18, 24), which were granted in part and  
9 denied in part on February 27, 2018, (Doc. No. 52).

10 On October 23, 2017, Defendants filed a motion to expunge the notice of pendency  
11 of action filed by Plaintiff. (Doc. No. 32.) The motion was based on Plaintiff's failure to  
12 provide notice of the lis pendens to both Defendants and this Court prior to recordation,  
13 Plaintiff's failure to reference the operative complaint in the notice, and Plaintiff's  
14 allegedly insufficient pleading that could not establish the probable validity of her real  
15 property claim. (*See generally id.*) In opposition, Plaintiff focused solely on arguing that  
16 her claims of fraudulent conveyance were valid. (Doc. No. 37.) Additionally, Plaintiff's  
17 attorney's declaration detailed that he mailed the lis pendens to both Defendants and that  
18 due to his heart surgery, he neglected to update the lis pendens to reflect the first amended  
19 complaint. (Doc. No. 37-1 ¶¶ 16, 17.)

20 Based on all of the procedural deficiencies with Plaintiff's lis pendens, the Court  
21 granted Defendants' motion to expunge. (Doc. No. 41.) Thus, the Court did not reach the  
22 merits of Plaintiff's claim that the property at issue was fraudulently conveyed. (*See*  
23 *generally id.*)

## 24 **DISCUSSION**

25 Defendants argue that as their motion to expunge was granted by the Court, they are  
26 entitled to attorney's fees. (*See generally* Doc. No. 46.) In total, Defendants ask that the  
27 Court award them \$10,605.00 in fees for 30.3 hours worked. (*Id.* at 9; Spencer Decl. ¶¶  
28 11–14, Doc. No. 46-1.) In opposition, Plaintiff mounts that she acted with substantial

1 justification in recording the lis pendens and that her attorney’s poor health is a  
2 circumstance that would make it unjust to impose attorney’s fees.<sup>1</sup> (*See generally* Doc. No.  
3 49.)

4 Under California Code of Civil Procedure § 405.38, the party prevailing on a motion  
5 to expunge will be “awarded the reasonable attorney’s fees and costs of making or  
6 opposing the motion unless the court finds that the other party acted with substantial  
7 justification or that other circumstances make the imposition of attorney’s fees and costs  
8 unjust.” Cal. Code Civ. Proc. § 405.38. The plaintiff bears the burden of proving they acted  
9 with substantial justification. *See Doan v. Singh*, No. 1:13-CV-531-LJO-SMS, 2014 WL  
10 3867418, at \*3 (E.D. Cal. Aug. 6, 2014). “California cases have defined a ‘substantially  
11 justified’ position to mean one which is justified to a degree that would satisfy a reasonable  
12 person[.]” *Wertin v. Franchise Tax Bd.*, 68 Cal. App. 4th 961, 977 (1998) (citation  
13 omitted).

14 Presently, the Court finds that Plaintiff has presented evidence to demonstrate that  
15 the lis pendens was filed with “substantial justification.” The Court notes that Plaintiff  
16 ardently argues that the property located at 14130 Bahama Cove, Del Mar, CA 92014<sup>2</sup>—  
17 the property which was the subject of the lis pendens—was fraudulently transferred from  
18 Roger to Melissa. (Doc. No. 49 at 5–7.) To support this position, Plaintiff attaches over  
19 one hundred pages in exhibits and a declaration to her opposition brief. (Doc. No. 49-1.)  
20 Of interest to the Court is the option purchase agreement for the Bahama Cove Property  
21 signed by Roger and Melissa Clark, (*Id.* at 16–18), Roger’s Voluntary Bankruptcy Petition  
22 that listed the Bahama Cove Property as the “[s]ole and Separate Property of Wife[,] Debtor  
23 claims no interest in Spouses separate property per Nuptial Agreement[,]” (*Id.* at 33), and  
24 an Interspousal Transfer Grant Deed signed on February 20, 2015, which according to  
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26 <sup>1</sup> The Court reminds Plaintiff that per Local Rule 5.1, type must not be smaller than 14-  
27 point standard font. CivLR 5.1.a.

28 <sup>2</sup> Plaintiff states that the Bahama Cove property is located at 14140 Bahama Cove. (Doc.  
No. 49 at 1.)

1 Plaintiff surrendered Roger’s interest in the Bahama Cove Property to Melissa for no  
2 consideration, (*Id.* at 20).

3 Based off of these documents and as already outlined in the Court’s February 27,  
4 2018 order denying Defendants’ motion to dismiss Plaintiff’s fraudulent conveyance  
5 claim, Plaintiff has sufficiently alleged and adequately supported the theory that Roger  
6 fraudulently transferred his interest in the Bahama Cove Property to Melissa to defraud his  
7 creditors. (Doc. No. 52 at 12–13 (*Cf. Olivier v. NDEX West, LLC*, No. 1:09-CV-00099  
8 OWW GSA, 2009 WL 2486314, at \*6 (E.D. Cal. Aug. 12, 2009) (holding that as the  
9 plaintiff’s complaint failed to state any claim upon which relief could be granted, the  
10 plaintiff could not establish the probably validity of those claims and thus the motion to  
11 expunge the lis pendens was granted).) Furthermore, the sequence of events, as evidenced  
12 by the exhibits provided by Plaintiff, support her assertions that the transfer of the Bahama  
13 Cove Property from Roger to Melissa shortly before Roger filed for bankruptcy was meant  
14 to conceal the property from the bankruptcy trustee.

15 Accordingly, the Court concludes that Plaintiff acted with considerable justification  
16 in filing the lis pendens. This is not to say that the Court agrees with Plaintiff that a  
17 fraudulent conveyance actually occurred. The Court clarifies for both parties’ benefits, as  
18 their briefs filed with the Court have at time twisted the Court’s words for their own  
19 advantage, that it only concludes that Plaintiff has satisfied her burden in providing  
20 sufficient details to explain why she believed a lis pendens on the Bahama Cove Property  
21 was necessary and warranted. *Pierce v. Underwood*, 487 U.S. 552, 560 (1988) (finding that  
22 the question of whether a position was substantially justified “will turn upon not merely  
23 what was the law, but what was the evidence regarding the facts.”). In sum, the Court  
24 **DENIES** Defendants’ motion for attorney’s fees.

25 On a final note, though the Court need not reach this issue, the Court highlights that  
26 even if Plaintiff had failed to satisfy her burden, Defendants’ request for over \$10,000.00  
27 in attorney’s fees for over twenty-hours of work would have been deemed extremely  
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1 unreasonable.<sup>3</sup> See *Barkett v. Sentosa Properties LLC*, No. 1:14-CV-01698-LJO, 2015 WL  
2 5797828, at \*5 (E.D. Cal. Sept. 30, 2015) (emphasizing that a motion to expunge is not  
3 complex and is “based on a well-settled statutory scheme[,]” thus the defendants’ report  
4 that they expended 16.5 hours was determined to be excessive); see also *Ng v. US Bank,*  
5 *NA*, 15-cv-04998-KAW, 2017 WL 951000, at \*4 (N.D. Cal. Mar. 10, 2017) (finding 5.9  
6 hours in attorney’s fees reasonable in drafting and preparing a motion to expunge); *Doan,*  
7 2014 WL 3867418, at \*4 (finding a fee of \$2,275.00 reasonable in relation to the work  
8 needed to bring a motion to expunge a lis pendens); *Quinto v. JPMorgan Chase Bank*, No.  
9 5:11-cv-02920-LHK, 2012 WL 2792445, at \*2 (N.D. Cal. July 9, 2012) (finding an hour  
10 of time spent drafting the motion to expunge reasonable); *Bey v. Sardariani*, No. CV 08-  
11 07547 GAF (Ex), 2009 WL 235043, at \*4 (C.D. Cal. Jan. 26, 2009) (finding an award of  
12 \$500 in attorney’s fees reasonable to prepare a motion to expunge).

### 13 CONCLUSION

14 The Court finds that Plaintiff has provided sufficient reasons to justify why the lis  
15 pendens was filed. Even if Plaintiff had not provided these substantial justifications,  
16 Defendants’ motion for an award of over \$10,000.00 in attorney’s fees would have been  
17 denied based upon the extreme unreasonableness of the request per the standards set in this  
18 district. Accordingly, the Court **DENIES** Defendants’ motion for attorney’s fees.

19 **IT IS SO ORDERED.**

20 Dated: March 12, 2018

21   
22 Hon. Anthony J. Battaglia  
23 United States District Judge

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27 <sup>3</sup> Plaintiff argues that Defendants’ counsel did not provide a billable breakdown of the fees  
28 requested. (Doc. No. 49 at 8.) Plaintiff is mistaken, as Defendants’ counsel attached a  
billable breakdown to his motion. (Doc. No. 46-2.)