

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JULIE CAIRONE<sup>1</sup>, et al.,  
Plaintiffs,  
v.  
PROSPECT MORTGAGE, LLC,  
Defendant.

CASE NO. 13-722 RAJ  
ORDER

This matter comes before the court on plaintiffs’ motion to strike defendant’s jury trial demand. Dkt. # 18.

Federal Rule of Civil Procedure 12(f) allows for a court to “strike from a pleading ... any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. Proc. 12(f). The function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev’d on other grounds*, 510 U.S. 517 (1994). Immaterial matter is that which has no essential or

<sup>1</sup> Although Ms. Cairone was terminated as a party to this action, the parties have not moved the court for an order formally changing the caption. The court will continue to caption this case with Ms. Cairone as the plaintiff, and ORDERS the parties to do so as well on all future filings.

1 | important relationship to the claim for relief or the defenses being pleaded, and  
2 | impertinent matter consists of statements that do not pertain, and are not necessary, to the  
3 | issues in question. *Id.* Motions to strike are generally disfavored, and should be denied  
4 | unless the matter has no logical connection to the controversy at issue and may prejudice  
5 | one or more parties. *Johnson v. U.S. Bancorp*, Case No. C11-2010RAJ, 2012 WL  
6 | 6615507, \*7 (W.D. Wash. Dec. 18, 2012). In deciding a motion to strike, the court must  
7 | view the pleading in the light most favorable to the pleading party. *Id.*

8 |         The Constitutions of the United States and Washington guarantee the right to trial  
9 | by jury in civil cases. U.S. Const. Amend. VII; Wash. Const. art. 1, § 21. The parties  
10 | agree that parties may waive their civil right to trial by jury through contractual waivers.  
11 | Dkt. # 18 at 4; Dkt. # 19 at 5; *see also Frontline Processing Corp. v. First State Bank of*  
12 | *Eldorado*, 389 Fed. Appx. 748, 754 (9th Cir. 2010) (plaintiff waived right to jury trial  
13 | based on jury-trial waiver provision in contract); *Ingle v. Circuit City Stores, Inc.*, 328  
14 | F.3d 1165, 1170 (9th Cir. 2003) (arbitration agreements are subject to defenses that apply  
15 | to contracts, and federal courts should apply ordinary state-law principles that govern the  
16 | formation of contracts); *Adler v. Fred Lind Manor*, 153 Wash. 2d 331, 360, 103 P.3d 773  
17 | (Wash. 2005) (“by knowingly and voluntarily agreeing to arbitration, a party implicitly  
18 | waives his right to a jury trial by agreeing to an alternate forum, arbitration.” ).

19 |         The Washington Supreme Court<sup>2</sup> has stated:

20 |         The doctrine of waiver ordinarily applies to all rights or privileges to which  
21 | a person is legally entitled. A waiver is the intentional and voluntary  
22 | relinquishment of a known right, or such conduct as warrants an inference  
23 | of the relinquishment of such right. It may result from an express  
24 | agreement or be inferred from circumstances indicating an intent to waive.  
25 | It is a voluntary act which implies a choice, by the party, to dispense with  
something of value or to forego some advantage. The right, advantage, or  
benefit must exist at the time of the alleged waiver. The one against whom

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26 |         <sup>2</sup> It is unclear to the court why plaintiffs have cited legal authority from other  
27 | jurisdictions.

1 waiver is claimed must have actual or constructive knowledge of the  
2 existence of the right. He must intend to relinquish such right, advantage or  
3 benefit; and his actions must be inconsistent with any other intention than  
4 to waive them.

5 \* \* \*

6 An implied waiver may arise where one party has pursued such a course of  
7 conduct as to evidence an intention to waive a right, or where his conduct is  
8 inconsistent with any other intention than to waive it. . . .

9 *Bowman v. Webster*, 44 Wash. 2d 667, 669-70, 269 P.2d 960 (Wash. 1954).

10 Here, plaintiffs were opt-in plaintiffs in a collective class action against defendant  
11 in the Eastern District of California (the “*Sliger*” litigation). Based on a review of that  
12 docket, the named plaintiffs made a demand for a jury trial upon filing the complaint in  
13 October 2010. Case No. C11-465-LKK-EFB, Dkt. # 1. However, plaintiffs in this action  
14 did not opt-in to the *Sliger* litigation until after the class had been conditionally certified  
15 and over a year after the initial demand for a jury trial, between November 22, 2011 and  
16 February 28, 2012. Dkt. # 1, Ex. A. In January 2013, the *Sliger* court entered an order  
17 decertifying the class pursuant to a stipulation of the parties. Plaintiffs filed this case in  
18 April 2013, and did not demand a jury trial.

19 The court finds that the simple act of opting in to a class action does not indicate a  
20 course of conduct that evidences an intention to waive the jury waiver agreements, or  
21 demonstrate that plaintiffs’ conduct in opting in was inconsistent with any other intention  
22 than to waive the agreements. As the parties are well aware, putative class members  
23 frequently opt-in to class actions pursuant to a notice and simply wait for resolution of  
24 the case. There is no evidence that plaintiffs took any actions in the *Sliger* litigation,  
25 other than filing a consent to make a claim under the Fair Labor Standards Act. Such an  
26 action is insufficient as a matter of law to implicitly waive the jury waiver agreement,  
27 especially where the jury demand was made prior to their involvement in the case.

1           Additionally, the jury waiver agreements explicitly evidence the parties' intent to  
2 waive the right to a jury in a civil case, and to have all disputes resolved by a judge.<sup>3</sup> The  
3 court finds that plaintiffs have provided sufficient authentication of the jury waivers  
4 where they were produced by defendant as part of the personnel files in the *Sliger* action.  
5 Dkt. # 21-1 (Hansen Decl.) ¶¶ 3-6; *see Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 777  
6 n.20 (9th Cir. 2002) (citing other legal authority for the propositions that documents  
7 produced by a party in discovery are deemed authentic when offered by the part-  
8 opponent and that authentication can be accomplished through judicial admissions such  
9 as production of items in response to discovery requests).

10           For all the foregoing reasons, the court GRANTS plaintiffs' Rule 12(f) motion to  
11 strike defendants' jury demand. Given that defendant has not produced the personnel file  
12 for plaintiff Marta Montalto, and the court does not have evidence of an explicit jury  
13 waiver between her and defendant, this order does not apply to her. If such a waiver is  
14 found in her personnel file, she may file a motion to strike at that time.

15           Dated this 12th day of March, 2014.

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18           The Honorable Richard A. Jones  
19           United States District Judge  
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22           <sup>3</sup> Although the jury waiver was not signed by defendant, it nevertheless demonstrates that  
23 defendant intended to waive its own right to a jury trial. The agreement provides: "Although the  
24 Company believes that our internal complaint resolution procedures should be sufficient to  
25 resolve any workplace problems that you may have, we recognize that sometimes  
26 notwithstanding everyone's best efforts, a matter cannot be resolved informally. In those rare  
27 instances, **we believe** that our nation's judges (such as federal judges who are appointed by  
Congress for life and thus are free from any outside bias or influence) are in the best position to  
resolve **our workplace disputes**. Accordingly, **we have created this policy**, which, in effect,  
says that if you file a lawsuit, a judge will decide if we acted correctly or incorrectly." Dkt. # 18-  
2 at 2-6 (Ex. 1 to Mot.) (emphasis added).