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9 Attorney for Plaintiffs EDITH MINNE  
10 and BONNIE LOHMANN

11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**  
13 **SACRAMENTO DIVISION**

14 EDITH MINNE and BONNIE  
15 LOHMANN, individually and as  
16 Trustee of The EDWARD and  
17 BONNIE LOHMANN 2006 Family  
18 Living Trust, and as Successor in  
19 Interest to Edward Lohmann, deceased,

20 Plaintiffs,

21 v.

22 HUIB STROOMBERG, ET AL.

23 Defendants.

24 ) CASE No. 2:09-CV-00625-JAM-KJM

25 ) **ORDER DENYING DEFENDANTS'**  
26 ) **MOTIONS TO DISMISS AND**  
27 ) **MOTION TO DISQUALIFY**  
28 ) **ABRAHAM GOLDMAN AS**  
 ) **COUNSEL FOR PLAINTIFFS**

DATE: June 3, 2009

TIME: 9:00 a.m.

DEPT: 6

JUDGE: Hon. John A. Mendez

21 This matter came to be heard before the Court, the Hon. John A. Mendez  
22 presiding, on June 3, 2009, as set by the Notice of the Clerk dated May 18, 2009  
23 (Docket No. 23).

24 Appearing for the parties was: Abraham Goldman for the plaintiffs; Huib  
25 Stroomberg *pro per*; Traci Southwell *pro per* and C. Anthony Hughes for  
26 defendant Stroomwell Investment Group, Inc.  
27  
28

**[PROPOSED] ORDER DENYING DEFENDANTS' MOTIONS TO  
DISMISS AND MOTION TO DISQUALIFY ABRAHAM GOLDMAN  
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1 Before proceeding with the various motions before the Court, the Court  
2 enquired of Mr. Stroomberg and Ms. Southwell on the record to confirm that they  
3 indeed were representing themselves and were aware of their duties and  
4 obligations under the Federal Rules of Civil Procedure and the Rules of the United  
5 States District Court for the Eastern District of California. Mr. Stroomberg and  
6 Ms. Southwell confirmed in open Court they represented themselves and that they  
7 understood their duty to follow the F.R.C.P. and the Local Rules.

8 The Court then proceeded to consider the pending motions and heard  
9 arguments from all parties on the pending motions.

10 The motions before the Court filed by defendants comprised: 1) a purported  
11 “Motion for Demurrer” filed by Huib Stroomberg (Docket No. 9 and supporting  
12 exhibits), 2) a Motion to Disqualify Plaintiffs’ Attorney filed by Huib Stroomberg  
13 (Docket No. 10), 3) a purported “Motion for Demurrer” and exhibits, filed by  
14 Traci Southwell (Docket No. 11), 4) a Motion to Disqualify Plaintiffs’ Attorney  
15 filed by Traci Southwell (Docket No. 12), 5) a purported “Motion for Demurrer”  
16 filed by defendant Stroomwell, plus exhibits (Docket No. 13) (Filed in Non  
17 Compliance), 6) a Motion to Dismiss for Nonjoinder under F.R.C.P. 21 and  
18 supporting documents filed by Stroomwell (Docket No. 14).<sup>1</sup>

19 Also before the Court was an Opposition by plaintiffs to Stroomwell’s  
20 Motion to Dismiss for Non-Joinder under FRCP 21 (Docket No. 16), Objections  
21 by plaintiffs to defendants’ Motion to Dismiss for Nonjoinder (Docket No. 17), an  
22 Opposition by plaintiffs to the two “Motions for Demurrer” by defendants  
23 Stroomberg and Southwell (Docket No. 18), plaintiffs’ Evidentiary Objections to  
24 the exhibits and declarations purportedly supporting the “Demurrers” (Docket No.  
25  
26

27 <sup>1</sup> Defendant Huib Stroomberg will be referred to in the remainder of this Order as “Stroomberg”, Traci Southwell will be  
28 referred to as “Southwell” and Stroomwell Investment Group, Inc. will be referred to as “Stroomwell”.

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1 19), plaintiffs' Opposition to defendants' Motion to Disqualify and supporting  
2 Declarations and Exhibits (Docket No. 20) and plaintiffs' Evidentiary Objections  
3 to defendants' Motion to Disqualify (Docket No. 21).

4 Also before the Court was defendants' combined Reply in Support of its  
5 "Motion for Demurrer" (Docket No. 24), defendant Stroomwell's Reply in  
6 Support of its Motion to Dismiss Under Rule 21 and a new declaration (Docket  
7 No. 25), Defendants' combined Reply to Response to Motion to Disqualify<sup>2</sup>  
8 (Docket No. 26) and Defendants' Memorandum of Points and Authorities in  
9 Reply to Plaintiffs' Opposition to Motion to Disqualify (Docket No. 27).

10 In addition before the Court in response to defendants' Replies,  
11 Memorandum and new exhibits were Plaintiffs' further Evidentiary Objections  
12 and Motion to Strike from the records of the Court Exhibit G of defendants' Reply  
13 (Docket No. 28, pages 34-38), and plaintiffs' Objections to Defendants' Reply and  
14 Supporting Declarations and Exhibits relating to Defendants' Reply in Support of  
15 Motion to Disqualify (Docket No. 32).

16 After considering the entire record, including the original Complaint  
17 (Docket No. 1), and arguments of counsel and the parties, the Court ruled on the  
18 above matters as follows:  
19

20 The format of defendants' moving papers did not conform to the  
21 requirements of the Local Rules.

22 The Court considered and ruled on the several Evidentiary Objections and  
23 the Motion to Strike filed by plaintiffs (Dockets No. 19, 20, 21, 28 and 32). The  
24 Court found Plaintiffs' Objections to be well taken and granted each objection  
25 filed by plaintiffs, and the Motion to Strike Exhibit G from plaintiffs' Reply  
26

27 <sup>2</sup> Sixteen page Memorandum of Points and Authorities filed without required Table of  
28 Contents and Table of Authorities, plus new Exhibits A-O

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1 (Docket No. 26 at pages 34-38). The objections were sustained on the grounds  
2 stated by plaintiffs in the Objections. Regarding Exhibit G (Docket No. 26 at  
3 pages 34-38), the Court further found Exhibit G was an attorney-client privileged  
4 document between two non-parties to this case, and it had no relevance to any of  
5 the issues before the Court.

6 The Court gave defendant Stroomwell's attorney and the individual  
7 defendants full opportunity to attempt to explain the relevance of Exhibit G. No  
8 sufficient explanation being given, the objections to Exhibit G were sustained, the  
9 Motion to Strike Exhibit G was granted, and the Clerk is directed to remove  
10 Exhibit G from the record.

11 The Court considered the Motion to Disqualify Mr. Goldman as Plaintiffs'  
12 Attorney and the various memoranda, replies and exhibits, and further allowed the  
13 parties to present oral argument on the issues raised by that motion. After  
14 consideration of all the papers on file, the Court's ruling on the various objections  
15 and the arguments of the parties and counsel, the Motion to Disqualify Mr.  
16 Goldman was denied in its entirety.

17 The Court considered the various purported "Demurrers" filed by each of  
18 the defendants, and all supporting papers, oppositions, replies and the objections  
19 filed by the parties. The Court heard oral argument on the purported "Motions for  
20 Demurrer". The Court found that these moving papers designated "Demurrers"  
21 were inappropriate under the Federal Rules of Civil Procedure. However, the  
22 Court addressed the issues raised in each motion as motions to dismiss under  
23 F.R.C.P. Rule 12(b)(6). After hearing oral argument by counsel and the *pro per*  
24 parties, the Court denied each "Motion for Demurrer" on the basis that the  
25 allegations of the Complaint stated legal claims for relief under the Federal Rules  
26 of Civil Procedure, and that the evidentiary materials submitted by defendants  
27  
28

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1 improperly attempted to challenge the Complaint as motions for summary  
2 judgment.

3 The Court considered the motion filed by defendant Stroomwell for  
4 dismissal under Rule 21. The Court denied the motion on the grounds that the  
5 Rule 21 motion was not well founded. As this case is based on federal question  
6 jurisdiction (RICO), there was no issue regarding diversity or misjoinder, and  
7 there was no basis for bringing a motion under Rule 21.

8 In plaintiffs' Opposition to the "Motions for Demurrer", plaintiffs indicated  
9 that they would voluntarily dismiss without prejudice and ask for leave to replead  
10 the Fourth Claim of the Complaint for Breach of Fiduciary Duty. Accordingly,  
11 the Court granted the motion by defendants to dismiss the Fourth Claim, without  
12 prejudice, and ordered plaintiffs to file an amended complaint on or before June  
13 23, 2009.  
14

15 The Court directed plaintiffs' counsel, Mr. Goldman, to prepare an Order  
16 for the Court's review consistent with the Court's rulings.

17  
18 Dated: June 22, 2009

/s/ John A. Mendez

John A. Mendez

Judge of the United States District Court  
For the Eastern District of California

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**PROOF OF SERVICE**

**[PROPOSED] ORDER DENYING DEFENDANTS' MOTIONS TO  
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1  
2 This certifies that I am over the age of 18 years, not a party, and am  
3 employed at Yuba County, California, at 12896 Rices Crossing Road, Oregon  
4 House, California. Pursuant to common business practice, I served the attached:

5 **[PROPOSED] ORDER DENYING DEFENDANTS' MOTIONS TO**  
6 **DISMISS AND MOTION TO DISQUALIFY ABRAHAM GOLDMAN**  
7 **AS COUNSEL FOR PLAINTIFFS**

8 on the following parties and attorneys in this action by causing a true and correct  
9 copy thereof to be hand delivered addressed as shown below, on *June 11, 2009* to:

10 HUIB STROOMBERG  
11 P.O. Box 341  
12 Dobbins, CA 95935

In Pro Per

13 TRACI SOUTHWELL  
14 P.O. Box 341  
15 Dobbins, CA 95935

In Pro Per

16 I am familiar with common business practice regarding collection and  
17 processing of documents for mailing with the United States Postal Service. Such  
18 documents were sealed, prepaid and placed for collection on the date stated above.

19 I declare under penalty of perjury under the laws of the United States of  
20 America that the foregoing is true and correct, and that this declaration was  
21 executed *June 11, 2009*, at Oregon House, Yuba County, California.

22 Dated: June 11, 2009

23 /s/Katherine W. Lendech  
24 Katherine W. Lendech

25  
26  
27  
28 **[PROPOSED] ORDER DENYING DEFENDANTS' MOTIONS TO**  
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**AS COUNSEL FOR PLAINTIFFS**