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Attorneys for Plaintiff/Cross-Defendant  
Larry Birkhead

**FILED**  
LOS ANGELES SUPERIOR COURT

OCT 26 2007

JOHN A. CLARKE, CLERK

BY A E LA FLEUR-CLAYTON, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES

LARRY BIRKHEAD, an Individual  
Plaintiff

vs.

DEBRA OPRI, an Individual;  
OPRI & ASSOCIATES a Professional law  
Corporation and DOES 1 through 50,  
inclusive,

Defendants

DEBRA A. OPRI, an Individual; and  
OPRI & ASSOCIATES, a Professional  
Law Corporation,

Cross-

Complainants,

vs.

LARRY BIRKHEAD, an Individual; and  
ROES 1 through 10, Inclusive,

Cross-Defendants.

Case No. BC372018  
Related to BS 109143 (lead case)

[re-assigned for All Purposes to the Honorable Judge  
Charles Lee, Department "33"]

**NOTICE OF RULING AND NOTICE  
OF TRIAL-SETTING CONFERENCE**

DATE: OCTOBER 25, 2007  
TIME: 8:30 A.M.  
DEPT.: 33

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on October 25, 2007, at 8:30 a.m., in Department 33 of  
the Los Angeles Superior Court (Central District), the Honorable Charles C. Lee, Judge, presiding,

1 Defendants/Cross-Complainants Opri & Associates and Debra Opri's Motion for Reconsideration  
2 of the Court's Order Dated September 4, 2007, and Motion to Stay These Proceedings Pending the  
3 Hearing on Opri's Motion for Reconsideration of the Court's Denial of Opri's Petition to Compel  
4 Arbitration came on regularly for hearing. Plaintiff/Cross-Defendant Larry Birkhead appeared  
5 through Michael L. Trope, of Trope & DeCarolis, LLP. Plaintiff/Cross-Defendant did not  
6 personally appear. Defendants/Cross-Complainants Debra Opri and Opri & Associates appeared  
7 through David Owen, of Nemecek & Cole, APC. Defendants/Cross-Complainants did not  
8 personally appear.

9 The Court issued a written tentative ruling on both motions and then gave counsel for all  
10 parties the opportunity to argue the tentative ruling. Both counsel argued extensively. Then, the  
11 Court, having considered all the papers, ruled that its tentative ruling constituted the final ruling,  
12 to wit:

13 Petitioner's motion to stay proceedings pending hearing on motion  
14 for reconsideration of court's denial of petition to compel  
arbitration.

15 Denied on grounds set forth in the opposition papers.

16 Petitioner's motion for reconsideration of the court's order dated  
17 September 4, 2007.

18 Denied on grounds set forth in the opposition papers. There are no  
19 new facts, circumstances, or law. The declarations provided by  
20 petitioners could have been supplied earlier in a timely fashion, but  
21 were not. As regards the Walker declaration, it does not provide it  
22 was made under penalty of perjury under the laws of the state of  
California and cannot be considered. Even if Opri had filed an  
23 additional or supplemental declaration on or after August 21, 2007,  
24 and before September 4, 2007, the court could still have properly  
25 taken into consideration that one was not filed earlier in the normal  
26 course, namely, the reply papers. Finally, even if the court were to  
27 consider the declarations submitted by petitioners in connection  
with the motion for reconsideration, it would still deny the petition.

28 Plaintiff Birkhead's request to strike the declarations of David B.  
Owen dated September 14, 2007, Debra Opri dated September 14,  
2007, Dana Walker dated August 29, 2007, and Alex Palabrica  
dated September 14, 2007, in their entirety, filed in support of  
defendant's/cross-complainant's motion for reconsideration of  
court's order dated September 4, 2007.

1 Denied. The court was required to read the declarations in  
2 order to rule on these motions; the court has, however, ruled on the  
3 various specific evidentiary objections offered by Birkhead to the  
4 declarations, as reflected on the forms submitted by Birkhead. The  
5 clerk has the original of the court's rulings on these objections. As  
6 to the Dana Walker declaration, however, since it was not signed  
7 under penalty of perjury under the laws of the state of California, the  
8 motion to strike the Dana Walker declaration is granted. As to  
9 defendant's objections to plaintiff's declarations, the court rules as  
10 follows: Re Andrew Stein declaration, all objections overruled; Re  
11 Michael L. Trope declaration, all objections overruled.

12 A true and correct copy of the Court's tentative ruling is attached hereto as **Exhibit "A"**  
13 and incorporated by reference.

14 After the Court ruled, Defendants/Cross-Complainants took their Notice of Motion and  
15 Motion for Protective Order, set for hearing for November 1, 2007, off calendar.

16 The Court also set a trial-setting conference for December 20, 2007, at 8:30 a.m., in  
17 Department 33.

18 The Court ordered Plaintiff/Cross-Defendant to prepare a notice of ruling.

19 Dated: OCTOBER 25, 2007

TROPE & DECAROLIS, LLP

20 By: 

MICHAEL L. TROPE

21 Attorneys for Plaintiff/Cross-Defendant  
22 LARRY BIRKHEAD  
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45-45-54

# EXHIBIT A

DEPT 33

THURSDAY, OCTOBER 25, 2007

TENTATIVE RULINGS

10. CANERO V. MATTA: BC 366509

Plaintiff's motion to compel responses to special interrogatories, set one, monetary sanctions.

Granted on grounds set forth in the moving papers. There is no written opposition to this motion. Verified responses without objections due within 20 days. Sanctions in the amount of \$500 assessed against defendant, due and payable to plaintiff's counsel within 30 days, for failure to respond to an authorized method of discovery.

Plaintiff's motion to compel responses to form interrogatories set two, monetary sanctions.

Granted on grounds set forth in the moving papers. There is no written opposition to this motion. Verified responses without objections due within 20 days. Sanctions in the amount of \$500 assessed against defendant, due and payable to plaintiff's counsel within 30 days, for failure to respond to an authorized method of discovery.

Plaintiff's motion to deem admitted request for admissions and request for genuineness of documents, set one, monetary sanctions.

Granted on grounds set forth in the moving papers. There is no written opposition to this motion. Matters are deemed admitted, and documents are admitted genuine. Verified responses without objections due within 20 days. Sanctions in the amount of \$500 assessed against defendant, due and payable to plaintiff's counsel within 30 days, for failure to respond to an authorized method of discovery.

11. BIRKHEAD V. OPRI: BC 372018.

Petitioners' motion to stay proceedings pending hearing on motion for reconsideration of court's denial of petition to compel arbitration.

EM 17

Denied on grounds set forth in the opposition papers.

12. Petitioners' motion for reconsideration of the court's order dated September 4, 2007.

Denied on grounds set forth in the opposition papers. There are no new facts, circumstances, or law. The declarations provided by petitioners could have been supplied earlier in a timely fashion, but were not. As regards the Walker declaration, it does not provide it was made under penalty of perjury under the laws of the state of California and cannot be considered. Even if Opri had filed an additional or supplemental declaration on or after August 21, 2007, and before September 4, 2007, the court could still have properly taken into consideration that one was **not** filed earlier in the normal course, namely, the reply papers. Finally, even if the court were to consider the declarations submitted by petitioners in connection with the motion for reconsideration, it would still deny the petition.

Plaintiff Birkhead's request to strike the declarations of David B. Owen dated September 14, 2007, Debra Opri dated September 14, 2007, Dana Walker dated August 29, 2007, and Alex Palabrica dated September 14, 2007, in their entirety, filed in support of defendant's/cross-complainant's motion for reconsideration of court's order dated September 4, 2007.

Denied. The court was required to read the declarations in order to rule on these motions; the court has, however, ruled on the various specific evidentiary objections offered by Birkhead to the declarations, as reflected on the forms submitted by Birkhead. The clerk has the original of the court's rulings on these objections. As to the Dana Walker declaration, however, since it was not signed under penalty of perjury under the laws of the state of California, the motion to strike the Dana Walker declaration is granted. As to defendants' objections to plaintiff's declarations, the court rules as follows: Re Andrew Stein declaration, all objections overruled; Re Michael L. Trope declaration, all objections overruled.

10/19/07

2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
5 and not a party to the within action; my business address is 11620 Wilshire Boulevard, Suite 710,  
6 Los Angeles, California 90025.

6 On, October 25, 2007, I served the foregoing documents described as **NOTICE OF  
7 RULING AND NOTICE OF TRIAL SETTING CONFERENCE** on the interested party(ies) in  
8 this action:

8  **BY PLACING**

9  the original  a true copy thereof enclosed in sealed envelopes addressed as follows:

10 David B. Owen  
11 Nemecek & Cole  
12 15260 Ventura Blvd., Suite 920  
13 Sherman Oaks, California 91403

12  **VIA MAIL**

13  I am "readily familiar" with the firm's practice of collection and processing  
14 correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal  
15 Service on that same day, with postage thereon fully prepaid, at 11620 Wilshire Blvd., Los  
16 Angeles, California, in the ordinary course of business. I am aware that on motion of the  
17 party served, service is presumed invalid if postal cancellation date or postage meter date is  
18 more than one day after date of deposit for mailing in affidavit.

16  **VIA FEDERAL EXPRESS**

17 I deposited the Federal Express Envelope in the Federal Express drop box located at 11620  
18 Wilshire Boulevard, Los Angeles, California 90025.

18  **VIA TELECOPIER**

19 A copy of the above-referenced document(s) was transmitted, via facsimile transmission, to  
20 the above addressee on said date.

20  **VIA PERSONAL SERVICE**

21 I personally delivered such envelope(s) to the offices of the addressee during regular business  
22 hours on said date.

22 I declare, under penalty of perjury, under the laws of the State of California, that the above  
23 is true and correct.

24 Executed October 25, 2007, at Los Angeles, California.

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