2-3-23
Dept. 9
TRs

1. CHERYL BLY-CHESTER v. EL DORADO COUNTY BOARD OF SUPERVISORS 22CV1334

Defendant El Dorado County Board of Supervisors ("Defendant" or "Board") moves to strike the seventh cause of action for Malicious Defamation. The moving papers were filed and served on December 27, 2022. The opposition papers were filed and served on January 11, 2023. The reply was filed and served thereafter on January 20th.

Plaintiff is a former member of the El Dorado County Planning Commission. She was removed as the result of a disciplinary hearing that was held by the Board on August 31, 2021. The hearing was held during the course of an open meeting of the board. The cause of action at issue alleges members of the Board made defamatory statements about Plaintiff during the open Board meeting. Defendant maintains that these statements are privileged under Civil Code Section 47(b) and therefore the seventh cause of action should be struck under California's anti-SLAPP statute codified in Civil Procedure Section 425.16.

Plaintiff opposes the motion on the basis that the statements were made during a retaliatory disciplinary hearing that violated California whistleblower laws and therefore they were not privileged. According to Plaintiff, the alleged disciplinary action was actually brought in response to her exposing Brown Act violations. Plaintiff argues the comments made during the hearing were not privileged given the illegality of the hearing. She further argues that the retaliatory statements and conduct that occurred both before and after the hearing are also not protected speech.

Defendant notes that none of the alleged defamatory statements occurred prior to or after the public hearing. Because all of the statements identified by Plaintiff as allegedly defamatory took place during the public hearing, all statements are privileged. According to Defendant, anything that took place before or after the hearing goes to the issue of whistleblower retaliation which is not the subject of Defendant's motion. Moreover, Defendant argues that the meeting was not criminal as a matter of law and therefore it was still protected by the anti-SLAPP statute regardless of whether it may or may not have been illegal.

<u>Anti-SLAPP Standard</u>

"A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim…" Cal. Civ. Pro. § 425.16(b)(1). Given the Legislature's concern with the chilling effect of litigation on the valid exercise of free speech, the anti-SLAPP statute is to be construed and applied broadly. Cal. Civ. Pro. § 425.16(a).

"The goal is to eliminate meritless or retaliatory litigation at an early stage of the proceedings. [Citation]. The statute directs the trial court to grant the special motion to strike 'unless the court

determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.' [Citations]. The statutory language establishes a two-part test. First, we determine whether plaintiff's causes of action arose from acts by defendants in furtherance of defendants' rights of petition or free speech in connection with a public issue. [Citations]. Assuming this threshold condition is satisfied, we then determine whether plaintiff has established a reasonable probability that she will prevail on her claims at trial." Seelig v. Infinity Broadcasting Corp., 97 Cal.App.4th 798, 806-807 (2002).

"Only a cause of action that satisfies both prongs of the anti-SLAPP statute--i.e., that arises from protected speech or petitioning and lacks even minimal merit--is a SLAPP, subject to being stricken under the statute." Navellier v. Sletten, 29 Cal.4th 82, 89 (2002).

First Prong

As a threshold issue to whether or not the anti-SLAPP statute is applicable, Defendant has the burden of establishing that Plaintiff's claim arises from Defendant's protected activity within the meaning of the statute. Cal. Civ. Pro. § 425.16(b)(1); *See also* Annette F. v. Sharon S., 19 Cal. App. 4th 1146, 1159 (2004). As used for purposes of the Anti-SLAPP statute, such protected activity is an "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" which is defined to include "(1) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." Cal. Civ. Pro. § 425.16(e).

While the scope of the anti-SLAPP statute is broad, courts have repeatedly found that it is not so broad to as include illegal activity. *See* RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc., 56 Cal. App. 5th 413 (2022). However, the bar to prove illegality is not a low one. "Protected activity loses the protection of Section 425.16 *only if* the SLAPP defendant concedes or it is conclusively established that the conduct was illegal as a matter of law. [Citation]." Salma v. Capon, 161 Cal. App. 4th 1275, 1287 (2008). "…[I]t is not sufficient that the plaintiffs can reasonably *argue* or offer *some evidence* that defendant's conduct was unlawful." Dziubla v. Piazza, 59 Cal. App. 5th 140, 151 (2020). Further, in this context "…illegal means criminal and not merely a violation of some statute." *Id.* Thus, even defamation can be protected activity under the anti-SLAPP law. *See* Hecimovich v. Encinal School Parent Teacher Organization, 203 Cal. App. 4th 450 (2012).

Here, the seventh cause of action refers only to comments made during the Board meeting as being defamatory. In contrast, Plaintiff's opposition does indicate that from March 18, 2022 to May 4, 2022, the county refused engineering reports from Plaintiff "stating that Plaintiff was not a qualified professional to perform the work." Opp., 12:27-27. Plaintiff has offered a mound of evidence to show that the August 31, 2021 hearing likely was held in violation of retaliatory whistleblower statutes; however, "likely" is not the standard here. Without conclusively establishing that the hearing was criminally illegal as a matter of law, the statements made during the hearing do fall within the scope of protected speech under the anti-SLAPP statute. Likewise, the statements regarding the county's refusal of the building permit were also made in connection with an issue under consideration or review by a legislative body and therefore fall within the protection of the statute. Thus, given the applicability of the statute, the court turns to the second prong, Plaintiff's ability to be successful in her claim.

<u>Second Prong</u>

Where the defendant sufficiently establishes protected activity, "…the burden shifts to plaintiffs in the second step to demonstrate a prima facie case that would enable them to prevail on the challenged claims. [Citations]. At this stage, '[t]he court does not weigh evidence or resolve conflicting factual claims…[but rather] accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law." <u>Dziubla v. Piazza</u>, 59 Cal. App. 5th 140, 148 (2020). This burden is met if the nonmoving party demonstrates that any challenged cause of action has "minimal merit" (*Navellier v. Sletten* 29 Cal.4th 82, 94 (2002), and it does so by making a "prima facie factual showing sufficient to sustain a favorable judgment" on that cause of action. <u>Baral v. Schnitt</u>, 1 Cal.5th 376, 384-385 (2016).

The cause of action at issue asserts a claim of defamation. The elements of a prima facie case of defamation have long been held to be as follows: (1) False statement, (2) that is unprivileged, (3) is defamatory, (4) has a tendency to injure or cause special damage, (5) publication of that statement to a third party. <u>Taus v. Loftus</u>, 40 Cal. 4th 683, 720 (2007). At issue here is largely Plaintiff's ability to show that the statements in question were not privileged as a matter of law and therefore not protected from a defamation claim.

Defendant relies heavily on Civil Code Section 47 to establish that statements made during the course of the hearing were privileged. Section 47 states, in pertinent part, "[a] privileged publication or broadcast is one made: (a) In the proper discharge of an official duty ¶ (b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law…" Here, the statements made during the course of the August Board meeting were unquestionably made during an official proceeding authorized by law and thus they are afforded the protection of privilege under Section 47. Likewise, the statements made

by Livingstone during the August 31st Board meeting were made in his capacity as County Counsel and thus were made in the proper discharge of his official duty. Once again, protected speech. Because the comments made by Livingston and the rest of the Board at the August 31st meeting fall within the parameters of Section 47 they are privileged and thus not subject to a defamation claim.

Plaintiff has established minimal merit to her claim but, with regard to the statements made during the hearing, she simply cannot overcome the privilege afforded to those statements by Section 47(b) and thus, her claim as to statements made during the Board hearing fails as a matter of law.

Turning now to the statement made after the hearing about Plaintiff's qualifications. Such statement was not made as part of an official proceeding or within the proper discharge of any official duty. Taking as true the evidence Plaintiff has provided to the court, she can certainly establish the falsity of the statement given her extensive qualifications and the declaration from former County Supervisor George Turnboo. The statement that she is unqualified, being untrue, is therefore defamatory and has the ability to injure Plaintiff's private business thereby causing her monetary damage and damage to the goodwill of her business. Finally, by establishing that the statement was made to the third party submitting the reports, Plaintiff can show publication. Thus, as to the statement made after the Board meeting, regarding Plaintiff's qualifications, Plaintiff can make a prima facie showing of defamation and therefore the anti-SLAPP motion is defeated in this regard as to that claim only.

TENTATIVE RULING #1: DEFENDANT'S SPECIAL ANTI-SLAPP MOTION TO STRIKE PLAINTIFF'S SEVENTH CAUSE OF ACTION IS GRANTED IN PART AND DENIED IN PART. THE MOTION IS GRANTED ONLY AS TO THE CAUSE OF ACTION FOR MALICIOUS DEFAMATION AS TO ALL CLAIMS MADE DURING THE AUGUST 31, 2021 BOARD OF SUPERVISORS MEETING. SUCH CLAIMS ARE TO BE STRICKEN FROM THE SEVENTH CAUSE OF ACTION AND DISMISSED WITH PREJUDICE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M.

2-3-23
Dept. 9
TRs

LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. CHRISTINE CAMBRIDGE ET. AL. V. MARSHALL MEDICAL 22CV1292

TENTATIVE RULING #2: PARTIES ARE ORDERED TO APPEAR FOR ORAL ARGUMENT. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3. JULIEANN CHONG V. EDYTHE PAULINE BROWN 22CV0406

Plaintiff has filed a Petition for Approval of Compromise of Claim requesting the court approve the personal injury settlement reached on behalf of the minor. Appearances by the petitioner and the minor are always required for an approval of a minor's compromise pursuant to California Rule of Court, Rule 7.952(a). The parties are ordered to appear.

TENTATIVE RULING #3: THE PARTIES ARE ORDERED TO APPEAR. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4. MICHAEL LOEWEN V. JAMES MASTEN PC20200307

TENTATIVE RULING #4: PARTIES ARE ORDERED TO APPEAR FOR ORAL ARGUMENT. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5. NAME CHANGE OF RENEE DEAN 22CV1738

TENTATIVE RULING #5: THE PETITION FOR CHANGE OF NAME IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6. PHILLIP HADLOCK V. MARSHALL MEDICAL PC20200122

Marshall Medical's Motion for Summary Judgment

At the hearing on November 18, 2022, the court continued the matter to February 3, 2023 for further argument and the court's decision. Plaintiff and Defendant Marshall Medical are ordered to appear for oral argument.

Los Rios Community College District's Motion for Summary Judgment or, alternatively, Summary Adjudication

On August 19, 2022, Los Rios Community College Distrist ("District") filed a Motion for Summary Judgment or, alternatively, for Summary Adjudication. The District challenges Plaintiff's General Negligence, Negligent Hiring/Retention, and Battery causes of action. The District concurrently filed a Memorandum, a Separate Statement, two Declarations, and its evidence in support of the motion.

On October 24, 2022, Plaintiff filed an Opposition to the motion, along a Separate Statement, Declaration, and evidence in support of its opposition.

District's Objection to Written Journal

On November 10, 2022, the District filed an objection to the written journal of Dawn Hadlock, as provided by Plaintiff in support of his opposition to the Motion for Summary Judgment or, alternatively, Summary Adjudication. The court rules as follows.

The court sustains the objection under Evidence Code §§ 1400-1401 and 1200, finding the document to lack authentication and to constitute inadmissible hearsay.

While the court would overrule the objection if based only on the other grounds cited (i.e., Evidence Code §§ 356, 210, 702(a), 800, and 801(b)), the court need not fully address these grounds as the court has sustained the objection as noted above.

The court has not considered the written journal in its analysis.

Motion for Summary Judgment or Adjudication

The District claims that it is immune from all claims under Education Code § 87706, which states the following:

> "Notwithstanding any other provision of this code, no community college district, or any officer or employee of such district or board shall be responsible or in any way liable for the conduct or safety of any student of the public schools at any time when such student is not in school property, unless such district has undertaken to provide transportation for such student to and from the school premises, has undertaken a school-sponsored activity off the premises of such school, has otherwise specifically

assumed such responsibility or liability or has failed to exercise reasonable care under the circumstances.

In the event of such a specific undertaking, the district shall be liable or responsible for the conduct or safety of any student only while such student is or should be under the immediate and direct supervision of an employee of such district or board."

While the District acknowledges that two of its students were involved in the alleged incident at Marshall that gave rise to this action, the District asserts that it is not responsible for the conduct of these students as the District did not assume responsibility for the students during their time at Marshall. The District continues that even if they had assumed responsibility the students were not under the immediate or direct supervision of an employee of such district or board, the second prong under Education Code § 877706.

The District further cites a portion of its contract with Marshall which states, "[Marshall] shall accept from the District the mutually agreed upon number of students enrolled in the Program and shall provide the students with supervised clinical experience." As such, the District contends that it is undisputed that no one from the District supervised the students while interning at Marshall.

Plaintiff counters that, in the contract between Marshall and the District, the District assumes responsibility by agreeing to "(e) maintain liability insurance coverage to protect the District and faculty for negligent acts of faculty and malpractice insurance for students participating in the program at the facility, and (f) provide worker's compensation insurance for students participating in the program at the facility…" Plaintiff adds that under Section 10 of the contract, titled "Supervision of Students," it states, "[e]ach student shall be subject to the rule and regulations of the Agency and the District."

Plaintiff argues that both statements demonstrate a triable fact regarding whether the District is immune from liability under Education Code § 87706.

As to the negligent hiring/retention claim specifically, the District argues that as a matter of law Plaintiff cannot state a claim under this theory as there is no employer-employer relationship between the two students in question and the District. While Plaintiff does not specifically address this cause of action in its opposition, Plaintiff generally objects to what it characterizes as the "District's unwillingness to openly disclose material facts despite their duty (and ability) to do so…" (Plaintiff's Opposition at page 9.)

"The purpose of summary judgment is to penetrate through pleadings to ascertain, by means of affidavits, the presence or absence of triable issues of material fact. (Molko v. Holy Spirit Assn. (1988) 46 Cal.3d 1092, 1107 [252 Cal.Rptr. 122, 762 P.2d 46].) The trial judge determines whether triable issues of fact exist by examining the affidavits and evidence, including any reasonable inferences which may be drawn from the facts. (People v. Rath Packing Co. (1974) 44 Cal.App.3d 56, 61-64 [118 Cal.Rptr. 438].) The evidence of the moving

party is strictly construed and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party resisting the motion. (Stationers Corp. v. Dun & Bradstreet, Inc. (1965) 62 Cal.2d 412, 417 [42 Cal.Rptr. 449, 398 P.2d 785].)" (Crouse v. Brobeck, Phleger & Harrison (1998) 67 Cal.App.4th 1509, 1524.)

"In ruling on the motion, the court must "consider all of the evidence" and "all" of the "inferences" reasonably drawn therefrom (id., § 437c, subd. (c)), and must view such evidence (e.g., Molko v. Holy Spirit Assn., supra, 46 Cal.3d at p. 1107, 252 Cal.Rptr. 122, 762 P.2d 46; Stationers Corp. v. Dun & Bradstreet, Inc. (1965) 62 Cal.2d 412, 417, 42 Cal.Rptr. 449, 398 P.2d 785) and such inferences (see, e.g., Crouse v. Brobeck, Phleger & Harrison (1998) 67 Cal.App.4th 1509, 1520, 80 Cal.Rptr.2d 94 [review on appeal]; Ales-Peratis Foods Internat., Inc. v. American Can Co. (1985) 164 Cal.App.3d 277, 280, 209 Cal.Rptr. 917, fn. * [same]), in the light most favorable to the opposing party." (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 843.)

"A defendant has met its burden of showing a cause of action has no merit if it 'has shown that one or more elements of the cause of action ... cannot be established, or that there is a complete defense to that cause of action. Once the defendant ... has met that burden, the burden shifts to the plaintiff ... to show ... a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff ... may not rely upon the mere allegations or denials of its pleading to show ... a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists ....' (Id., subd. (o)(2); Parsons v. Crown Disposal Co. (1997) 15 Cal.4th 456, 464 & fn. 4 [63 Cal.Rptr.2d 291, 936 P.2d 70].)" (Scheiding v. Dinwiddie Constr. Co. (1999) 69 Cal.App.4th 64, 69.)

Under CCP 437c(h), "[i]f it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due."

The court finds that Plaintiff essentially is arguing that there are facts that exist which might establish a triable material issue and that the District deprived Plaintiff of these material facts. Specifically, Plaintiff argues that the contract terms reflect that the District assumed responsibility for liability and assumed responsibility for supervising the students by requiring the students to follow its rules. While the court agrees with the District that these provisions in and of themselves do not establish the District's assumption of liability nor its assumption of immediate or direct supervision responsibilities, the court finds that through further discovery Plaintiff may undercover facts which do establish triable material issues.

The court notes that while a motion to compel further responses, as discussed more fully below, is not appropriate, the time for discovery has yet to elapse. Nor has either party

provided evidence to the court to show that Plaintiff has already exhausted all available discovery tools. The court exercises its discretion under CCP 437c(h) to continue the motion to July 9, 2023 ay 8:30 a.m. in Department 9 to allow for further discovery.

Plaintiff Motion to Compel or to Reopen Discovery

As part of its October 24, 2022 Memorandum in Opposition to the District's Motion, Plaintiff included a Motion to Compel Further Responses or, alternatively, to Reopen Discovery. Plaintiff filed a Separate Statement in support of the Motion.

On November 4, 2022, the District filed an Opposition to the Motion to Compel, a Separate Statement, and a Declaration in support of its opposition. Additionally, that same day the District filed a request for sanctions in the amount of $1,140 as reasonable costs and attorney's fees in opposing motion to be charged jointly and severally against Plaintiff and his counsel.

On November 7, 2022, Plaintiff filed an Opposition to the sanctions request as well as a Declaration in support thereof.

Setting aside the alleged procedural deficiencies, particularly issues of proper notice, in including the Motion to Compel in Plaintiff's Opposition to the Motion for Summary Judgment, the court finds that both parties acknowledge that Plaintiff's deadline to file a motion to compel further responses is significantly past the 45-day deadline. Plaintiff prays that if the court finds it lacks cause to consider the motion due to its untimeliness that the court set aside its failure to file the motion within the 45-day timeframe under Code of Civil Procedure ("CCP") § 473(b).

Assuming for the sake of argument that relief under CCP § 473(b) were appropriate for failure to meet discovery deadlines, the court finds that this request is untimely.

CCP § 473(b) states, in pertinent part, that "[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken."

It is undisputed that Plaintiff's application for the set aside relief is more than six months from the deadline for filing the motion to compel. Therefore, the court finds that both the motion to compel further responses as well as request relief under CCP § 473(b) are untimely, and the court denies both requests.

As to the request to reopen discovery, upon review of the file and as noted by the District, trial has not been set in the matter and therefore the court finds that discovery has yet to close. As such, the court finds this request to be moot.

Regarding the request for sanctions, under CCP § 2030.300(d), "[t]he court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

Given the clear untimeliness of both the motion to compel and the request under CCP § 473(b) and given the mootness of the motion to reopen discovery, the court finds that Plaintiff did not act with substantial justification. While Plaintiff articulates his frustration with the District's failure to provide information he contends is essential to his case and put the District on notice at an August 2022 Case Management Conference that he would be seeking legal relief, Plaintiff still must seek the appropriate legal relief, if available, under the statutes. He failed to do so, and therefore the court finds that sanctions are appropriate.

However, the court declines to issue sanctions in the full amount as requested by the District, finding that it would have been reasonable for the District to meet and confer with Plaintiff to seek a withdrawal of the motion, prior to incurring the additional attorney's fees, given the obvious deficiencies in Plaintiff's motion. The court sanctions Plaintiff and his counsel, jointly and severally, in the amount of $500, payable by February 15, 2023.

TENTATIVE RULING #6: PLAINTIFF AND DEFENDANT MARSHALL MEDICAL ARE ORDERED TO APPEAR FOR ORAL ARGUMENT. THE COURT EXERCISES ITS DISCRETION UNDER CCP 437C(H) TO CONTINUE THE DISTRICT'S MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUDICATION TO JULY 9, 2023 AY 8:30 A.M. IN DEPARTMENT 9 TO ALLOW FOR FURTHER DISCOVERY. THE COURT DENIES PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES AND MOTION TO REOPEN DISCOVERY. UNDER CCP § 2030.300(D), THE COURT SANCTIONS PLAINTIFF AND HIS COUNSEL, JOINTLY AND SEVERALLY, IN THE AMOUNT OF $500, PAYABLE BY FEBRUARY 15, 2023. NO HEARING ON THE DISTRICT'S MOTION, PLAINTIFF'S MOTION REGARDING DISCOVERY, OR ON THE COURT'S ISSUANCE OF SANCTIONS AGAINST PLAINTIFF WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE

OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7. ROLANDO SANCHEZ V. GENERAL MOTORS, LLC. 22CV0884

TENTATIVE RULING #7: MATTER IS CONTINUED TO FEBRUARY 10, 2023 AT 8:30 A.M. IN DEPARTMENT 9.

8. SUNSET MHC LLC V. NICO ORTEGA 22UD0319

Defendants move for an order sustaining their demurrer to the complaint filed by Plaintiff in the above referenced matter. Defendants filed and served their moving papers on December 27, 2022. The opposition was filed and served on January 17, 2023. Plaintiff asks the court to overrule the demurrer, order Defendants to answer the complaint and set the matter for trial.

Defendants filed a reply on January 27, 2023. There is no Proof of Service on file indicating that Plaintiff was served with the reply. Without a Proof of Service, the court cannot consider the reply.

The demurrer is predicated on Defendants' contention that the complaint fails to state facts sufficient to constitute a cause of action. Defendants point to deficiencies in the 3-day notice and the 60-day Mobilehome Residence notice.

Standard on a Demurrer

A demurrer raises only issues of law, not fact, regarding the form and content of the pleadings of the opposing party. Cal. Civ. Pro. §§ 422.10 and 589. It is not the function of the demurrer to challenge the truthfulness of the complaint, instead, for the purposes of testing the sufficiency of the cause of action, the demurrer admits the truth of all material facts in the pleading. Aubry v. Tri-City Hosp. Dist, 2 Cal. 4th 962, 966-967 (1992); Serrano v. Priest, 5 Cal. 3d 584 (1971); Adelman v. Associated Int'l Ins. Co., 90 Cal. App. 4th 352, 359 (2001). A demurrer can only challenge defects that appear on the face of the pleading and other matters that are judicially noticeable, the challenging party cannot make allegations of fact to the contrary. Blank v. Kirwan, 39 Cal. 3d 311, 318 (1985); Donabedian v. Mercury Ins. Co., 116 Cal. App. 4th 968 (2004); Harboring Villas Homeowners Assn. v. Sup. Ct., 63 Cal. App. 4th 426 (1998). For that reason, "[t]he hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable." Fremont Indemnity Co. v. Fremont General Corp., 148 Cal. App. 4th 97, 114 (2007).

Tenant Protection Act

According to Defendants' the unlawful detainer action brought by Plaintiff is improper and should be dismissed because the 3-day notice overstates the amount of rent due because it includes amounts due pursuant to an illegal rent increase under the Tenant Protection Act of 2019. Defendants argue that rent was increased from $585 a month to $754 per month. They argue this exceeds the increase amount allowed by the Tenant Protection Act because it is more than 5%.

Plaintiff opposes the demurrer on the basis that Defendants have misinterpreted the law. Regarding the rent increase, Plaintiff notes that the act allows for an increase of either 5%

plus the percentage change in cost of living based off the Consumer Price Index (CPI), or a 10% increase, whichever is less. Using the CPI plus 5% would equal an amount greater than 10% so the maximum amount rent could be increased is 10%. Further, the act only applies to increases in rent from the 12 months prior to the effective date of the increase. The rental rate of $585 commenced on August 1, 2016, while the $754 rate commenced on January 1, 2022. Due to rent increases during that time period, Defendant's rent immediately prior to the $754 amount was $704. Thus, the raise was not more than 10% and Plaintiff claims it did not increase rent more than once in a 12-month period.

"…[A]n owner of residential real property shall not, *over the course of any 12-month period*, increase the gross rental rate for a dwelling or a unit more than 5 percent plus the percentage change in the cost of living, or 10 percent, whichever is lower…" Cal. Civ. Code. § 1947.12(a)(1)(emphasis added).

As discussed above, the court's inquiry into the validity of a demurrer is limited to the four corners of the pleadings. Here, there is nothing in the pleadings to indicate that Plaintiffs violated the Tenant Protection Act. The rental agreement attached to the complaint indicates that rent was $580 beginning August 1, 2016. The three-day notice, also attached to the complaint, indicates rent in the amount of $754 as of August 17, 2022. There are no facts within the confines of the pleadings that would indicate that the rent was impermissibly increased in the six years that passed from 2016 to 2022. Thus, Defendants' demurrer on this basis fails and the court must turn to the Mobilehome Residency Laws.

<u>Mobilehome Residency Laws</u>

In addition to their arguments regarding the 3-day notice, Defendants argue that Plaintiff is not entitled to unlawful detainer due to their failure to comply with Sections 798.55 and 798.73 of the Mobilehome Residency Laws ("MRL"). According to Defendants, the 60-day notice provided to them by Plaintiff was invalid because it incorrectly advised Defendants of their rights under the MRL. The notice states, "…you may not represent that [the mobilehome] may remain at its present location after it is sold…unless you pay past due rent and utilities upon the sale of the mobilehome." Compl. Ex. 2, pg. 3. Defendants maintain the MRL forbids Plaintiffs from removing a mobilehome after the sale to a third party on the basis that the original owner has not paid rent.

Plaintiff points to Civil Code Section 798.55(b)(2), which states that the homeowner shall pay past due rent and utilities upon the sale of the mobile home. Further, Plaintiff relies on Section 798.73(e), which states that management of a mobile home park may require the removal of the mobile home if management has provided the new homeowner notice of the reason for removal.

The legislature has recognized the unique challenges involved with moving a mobilehome and thus, they have enacted a specific set of procedures regulating the processes by which mobilehome residents may be evicted. Cal. Civ. Code § 798.55(a). First and foremost, mobilehome tenancy may only be terminated where management first gives written notice to the homeowner to either sell or remove the mobilehome from the mobilehome park within a period of no less than 60 days. Cal. Civ. Code. § 798.55(b)(1). The notice of termination must include "…the reason relied upon for the termination with specific facts to permit determination of the date, place, witnesses, and circumstances concerning that reason." Cal. Civ. Code. § 798.57. All that is required for effective notice is substantial compliance assuring fair notice for the owner. Adamson Companies v. Zipp, 163 Cal. App. 3d Supp. 1 (1984) (disapproved of on other grounds).

Here, the notice of termination includes all the required elements of Section 798.57, but it includes additional information regarding what Defendants could or could not represent in the marketing of their mobilehome. Nothing in the code requires the 60-day notice to include a recitation of the tenant's rights in selling the mobilehome and Defendants cite no law to indicate that a notice which includes additional information, but is mistaken in the information included, is de facto invalid and therefore would render the unlawful detainer action vulnerable to demurrer. Moreover, Defendants have not shown that the notice was insufficient in providing them fair notice of the reason for termination and circumstances surrounding that reason.

Defendants raise their demurrer on two main grounds (1) alleged violations of the Tenant Protection Act and (2) alleged violations of the Mobilehome Residency Laws. The court does not find violations of either. Therefore, Defendants' demurrer is overruled.

TENTATIVE RULING #8: DEFENDANTS' DEMURRER IS OVERRULED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE

DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9. TODD SPERRY ET AL V. ALGONQUIN POWER & UTILITIES PC20180378

Plaintiffs move for an order setting trial and granting trial preference given the impending five-year statute of limitations. Defendants have not opposed the motion.

The complaint in this matter was filed on July 27, 2018. Thus, the five-year statute of limitations to bring the matter to trial expires on July 27, 2023. Trial was previously set for November 3, 2020 but was vacated due to the COVID-19 outbreak. No new trial date was ever reset.

"The court may, in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference." Cal. Civ. Pro. § 36(e). Where a motion for preference is granted, trial is to be set within 120 days of the date the motion was granted. Cal. Civ. Pro. § 36(f). Any continuance of the trial date shall not be longer than 15 days and shall not cause the trial to commence longer than 120 days from the date the trial preference was granted. *Id.*

The court finds good cause to grant the motion to set trial and for trial preference. The matter was originally set to be heard in 2020 but through no fault of either party, it was taken off calendar. It is now imperative that it be rescheduled prior to the expiration of the five-year statute of limitations set by Civil Procedure Section 583.310 ("an action shall be brought to trial within five years after the action is commenced against the defendant."). In order to ensure that Plaintiffs have their day in court, the motion is granted. Parties are to appear to set trial dates.

TENTATIVE RULING #9: PLAINTIFFS' MOTION TO SET TRIAL AND FOR TRIAL PREFERENCE IS GRANTED. THE PARTIES ARE ORDERED TO APPEAR AT 8:30 A.M. IN DEPARTMENT 9 TO CHOOSE TRIAL DATES. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.