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 16 THOMAS McCOY

FILED
 ALAMEDA COUNTY

FEB 07 2017

CLERK OF THE SUPERIOR COURT
 By *Robt Clarke*
 Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 UNLIMITED CIVIL JURISDICTION

15 MILTIADES MANDROS,

16 Plaintiff,

17 vs.

18 THOMAS McCOY, et al.

19 Defendants.

Case No.: RG-16-837906

~~PROPOSED~~ ORDER GRANTING
 DEFENDANT THOMAS MCCOY'S
 MOTION TO STRIKE PROTECTED
 PORTIONS OF PLAINTIFF'S
 COMPLAINT FOR DAMAGES

22 Defendant THOMAS McCOY's special motion to strike the protected portions of
 23 plaintiff's complaint came on regularly for hearing at 3:00 p.m. on January 19, 2017 in
 24 department 16 of the above-entitled court, the Honorable Stephen M. Pulido, presiding. Plaintiff
 25 was represented by WookSun Hong, and defendant was represented by Curtis F. Dowling. The
 26 court having reviewed the moving and opposing papers, and good cause appearing therefor;

27 IT IS HEREBY ORDERED: 1

1 1. Defendant’s motion is **GRANTED**. More specifically, the court adopts its
2 tentative ruling on the motion, which is attached hereto as Exhibit “A” and which is fully
3 incorporated herein. As a result of the adoption of the tentative ruling, the court now being
4 authorized by Baral v. Schnitt, 1 Cal.5th 376 (2016) to surgically excise the protected portions of a
5 “mixed” cause of action which have no merit, the court hereby strikes any claim for damages
6 arising from privileged communications, and specifically strikes the following from the
7 complaint:
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- 9 A. The text “threats of owner move-in” at 2:19;
10 B. Paragraph 66 of the Complaint for Damages (hereafter “Complaint”) at
11 10:5-6;
12 C. Paragraph 78 of the Complaint at 11:20-21;
13 D. Paragraph 85 of the Complaint at 12:18-19;
14 E. Paragraph 95 of the Complaint at 14:6-7;
15 F. Paragraph 97 of the Complaint at 14:13-16;
16 G. Paragraph 98 of the Complaint at 14:17-18;
17 H. Paragraph 109 of the Complaint at 16:23-24;
18 I. Paragraph 113 of the Complaint at 17:7-8;
19 J. Paragraph 119 of the Complaint at 18:5-7;
20 K. Exhibit 6
21 L. Exhibit 8
22 M. Exhibit 9.


23 Defendant is entitled to reasonable attorneys’ fees as a result of prevailing on his motion, per the
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1 provisions of Code of Civil Procedure § 425.16(c)(1).

2 *February*
Dated: January 7, 2017

3 
4 Hon. Stephen M. Pulido
5 Judge of the Superior Court

6 **Approved as to form:**

7 Dated: January ____, 2017

8 LAW OFFICES OF WOOKSUN HONG

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11 _____
By: WookSun Hong, Esq.
12 Attorneys for Plaintiff
MILTIADES MANDROS

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EXHIBIT "A"

This Tentative Ruling is made by Judge Stephen Pulido The Special Motion of Defendant Thomas McCoy to Strike the Protected Portions of the Complaint of Plaintiff Miltiades Mandros for Violation of the Oakland Just Cause for Eviction Ordinance (Municipal Code Â§ 8.22.300 et seq.), pursuant to CCP Â§ 425.16(b)(1), is GRANTED. Plaintiff Mandros is a tenant in property owned by Defendant McCoy located at 1544 4th Avenue, in Oakland. Plaintiff filed his Complaint for Damages against Defendant on November 4, 2016. The Court has reviewed the allegations in the Complaint. Plaintiff alleges that Defendant has employed unfair and abusive tactics to force him to leave his low-cost apartment. Plaintiff alleges that Defendant intends to remodel the unit and rent it to someone else for more money. Plaintiff, who is elderly, alleges that he would suffer undue hardship because he cannot afford current rents in the San Francisco Bay Area. In paragraphs 51, 58, 66, 74 and 75, Plaintiff alleges that after he refused to leave voluntarily, Defendant then false represented that his son would be moving into Plaintiff's unit. Defendant had his attorneys serve Plaintiff with a 60-day "OMI Notice" pursuant to the City of Oakland's Just Cause for Eviction Notice. On November 23, 2016, Defendant McCoy filed his Unlawful Detainer Complaint against Mandros. Defendant McCoy has met his initial burden of showing that the protected portions of the Complaint of Plaintiff Mandros seek damages against him for exercising his right to petition. See CCP Â§ 425.16(b)(1) and (e)(2). Plaintiff's central contention is that Defendant has served on him a fraudulent OMI Notice in order to evict him from his apartment. In *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1250-1252, the California Supreme Court held that the City's municipal ordinance making the service of an eviction notice as a method of harassment was void because it is preempted by the litigation privilege set forth in Civil Code Â§ 47(b). The Court rejected the argument that the litigation privilege did not apply because the eviction notice was served prior to the actual commencement of litigation. *Id.* at 1251 ("A prelitigation communication is privileged only when it relates to litigation that is contemplated in good faith and under serious consideration."). The holding in *Action Apartment Assn.* was cited with approval by the court of appeal in *Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1480. In *Feldman*, the tenants' claims dealt with both conduct prior to and after the commencement of the unlawful detainer lawsuit. *Id.* at 1473-1475. Finally, in *Birkner v. Lam* (2007) 156 Cal.App.4th 275, 284-285, the court of appeal reversed the decision of the trial court denying the landlord's anti-SLAPP motion in a case in which the tenants argued that he served a fraudulent Ellis Act notice in order to obtain possession of the premises. The *Birkner* court held that the service of the Ellis Act notice was unquestionably an act in furtherance of the landlord's right to petition because he was required to serve it prior to filing an unlawful detainer lawsuit. *Id.* at 283-284. *Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, 118-119, cited by Plaintiff in his opposition memorandum, is readily distinguishable on the very different set of facts before the court in that case. In *Du Charme*, the plaintiff was fired from his position with Local 45 of the IBEW for financial mismanagement. *Id.* at 113. In connection with the termination, Local 45 published certain allegedly libelous statements about *Du Charme's* involvement in the criminal conduct of Local 45 business manager James Earl Jackson. *Id.* Jackson was charged with embezzlement and later pled guilty. *Id.* The court's holding that the publication of the allegedly libelous statement did not involve an issue of public interest, for purposes of CCP A§ 425.16(e)(3) and (4), has little relevancy to the issues in this case involving Defendant's argument under CCP Â§ 425.16(e)(2). As Defendant has met his initial burden of demonstrating that Plaintiff has filed his action based on Defendant's protected activity, the burden shifts to Plaintiff to

EXHIBIT "A"

present admissible evidence to support his claim that he will probably prevail at trial. See Chavez v. Mendoza (2001) 94 Cal.App.4th 1083, 1087 (evidence presented must be admissible). Plaintiff has not met his burden of presenting admissible evidence in this case. Indeed, Plaintiff presented no evidence with the opposition that he filed on January 5, 2017. Counsel for Defendant shall prepare a Proposed Order and submit it for the Court's consideration after giving Plaintiff's counsel an opportunity to approve it as to form. See Rule of Court 3.1312. NOTICE: Effective June 4, 2012, the Court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201.