# SUPERIOR COURT, STATE OF CALIFORNIA
# COUNTY OF SANTA CLARA


**Department 20, Honorable Socrates Peter Manoukian, Presiding**

**Courtroom Clerk: Hien-Trang Tran-Thien**

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Telephone: 408.882.2320

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**"Every case is important" . . . . . "No case is more important than any other."— United States District Judge Edward Weinfeld (https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html)**

**"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the Biggest Case of Your Life."—Common Wisdom.**

**As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and drink as friends." (Shakespeare, The Taming of the Shrew, act I, scene ii.)" (*Gregori v. Bank of America* (1989) 207 Cal.App.3d 291, 309.)**

**Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.* (1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)**

**By Standing Order of this Court, all parties appearing in this Court are expected to comply with the Code of Professionalism adopted by the Santa Clara County Bar Association: https://www.sccba.com/code-of-professional-conduct/**

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## DATE: Tuesday, 20 February 2024
## TIME: 9:00 A.M.

**This Department uses Zoom for Law and Motion and for Case Management Calendars. Please use the Zoom link below.**

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and ***California Rules of Court***, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

**You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.**

Join Zoom Meeting
https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dTdsc3NKNFBpSjlEam5xUT09
Meeting ID: 961 4442 7712
Password: 017350

Join by phone:
+1 (669) 900-6833
Meeting ID: 961 4442 7712

One tap mobile
+16699006833,,961 4442 7712#

## APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in-court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building. If the doors to the Old Courthouse are locked, please see the deputies at the metal detector next door at 191 North First Street.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See ***Jensen v. Superior Court (San Diego)*** (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwith. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California ***Rules of Court***, rule 3.672.

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try www.pronouncenames.com but that site mispronounces my name.

Please notify this Court immediately if the matter will not be heard on the scheduled date. ***California Rules of Court***, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. ***California Rules of Court***, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. California Rules of Court, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

**All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.**

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: Line #/name/party. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

**CIVILITY.**

In the 48 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

**COURT REPORTERS.**

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit

photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); ***California Rules of Court***, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

**PROTOCOLS DURING THE HEARINGS.**

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with ***California Rules of Court***, rule 3.1312.

**TROUBLESHOOTING TENTATIVE RULINGS.**

To access a tentative ruling, move your cursor over the line number, hold down the "Control" key and click. If you see last week's tentative rulings, you have checked prior to the posting of the current week's tentative rulings. You will need to either "REFRESH" or "QUIT" your browser and reopen it. Another suggestion is to "clean the cache" of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

**This Court's tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court's final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.**

| LINE # | CASE # | CASE TITLE | TENTATIVE RULING |
|---|---|---|---|
| LINE 1 | 19CV348624 | Long Gao et al vs Bethany Liou et al | **Order of Examination.**<br>Unless the parties agree otherwise, both parties are to appear in Department 20 at 9:00 AM via the Zoom virtual platform. The appropriate oath will be administered by the Court and the parties may conduct the examination off-line and report back to the Court. The parties may meet and confer on how to conduct the examination remotely.<br>NO FORMAL TENTATIVE RULING. |
| LINE 2 | 23CV421216 | Philips Medical Capital, Inc. vs Mark Ryuvola | **Order of Examination.**<br>Unless the parties agree otherwise, both parties are to appear in Department 20 at 9:00 AM via the Zoom virtual platform. The appropriate oath will be administered by the Court and the parties may conduct the examination off-line and report back to the Court. The parties may meet and confer on how to conduct the examination remotely.<br>NO FORMAL TENTATIVE RULING. |

| LINE # | CASE # | CASE TITLE | TENTATIVE RULING |
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| LINE 3 | 23CV413077 | Alberta Rose Josephine Jones vs Donald David Jones | **Motion of Defendant to Set Aside Default and Default Judgment.**<br>Plaintiff did not oppose the motion.<br>The motion of defendant to set aside the default/default judgment is GRANTED. The case is dismissed in its entirety as the State of Oklahoma has exclusive jurisdiction over the issues in plaintiff's complaint.<br>NO FORMAL TENTATIVE RULING. |
| LINE 4 | 23CV413077 | Alberta Rose Josephine Jones vs Donald David Jones | **Motion of Plaintiff for Sanctions against Defendant.**<br>The motion is DENIED.<br>NO FORMAL TENTATIVE RULING. |
| LINE 5 | 23CV413077 | Alberta Rose Josephine Jones vs Donald David Jones | **Motion of Plaintiff To Strike Documents Filed by Defendant in Violation of California Law and Rules of the Court.**<br>The motion is DENIED.<br>NO FORMAL TENTATIVE RULING. |
| LINE 6 | 23CV416895 | Lynley Kerr Hogan vs Michael Shtein | **Motion of Defendant to Strike Plaintiff's Complaint Pursuant to *Code of Civil Procedure*, § 425.16.**<br>Defendant Shtein's special motion to strike [***Code Civ. Proc.***, § 425.16] plaintiff's First Amended Complaint is GRANTED.<br>Defendant Shtein's request for attorney's fees will be deferred subject to counsel submitting an itemized invoice supporting the fee request.<br>SEE #12.<br>SEE ATTACHED TENTATIVE RULING. |
| LINE 7 | 23CV417418 | Erik Estavillo vs Dave Cortese; Country Club Villa | **Demurrer of Defendant to Plaintiff's Complaint.**<br>Defendant Cortese's demurrer to plaintiff Estavillo's complaint on the ground that there is a defect or misjoinder of parties [Code Civ. Proc., §430.10, subd. (d)], on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], and on the ground that the pleading is uncertain [Code Civ. Proc., §430.10, subd. (f)] is OVERRULED. Defendant shall answer within 10 days of the filing and service of this Order.<br>SEE ATTACHED TENTATIVE RULING. |

| LINE # | CASE # | CASE TITLE | TENTATIVE RULING |
|---|---|---|---|
| LINE 8 | 19CV360642 | Jennifer Bartolo et al vs State of California Department Of Transportation | **Motion of Defendant State of California Department Of Transportation to Deem Requests for Admissions Served on Plaintiffs.**<br><br>Plaintiffs provided responses on 12 February 2024.<br><br>"Under the provisions of section 2033, subdivision (k), a court must grant a motion to have admission requests deemed admitted where responses have not been served prior to the hearing or, if such responses were served, they were not in substantial compliance with section 2033, subdivision (f)(1)." (***Tobin v. Oris*** (1992) 3 Cal.App.4th 814, 827.)<br><br>In ***Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants*** (2007) 148 Cal.App.4th 390, 408-409, the Court recognized that, in exercise of its discretion and based on the circumstances of the particular case, the trial Court is in the best position to determine whether action taken subsequent to the filing of a discovery motion renders that motion moot. There is an insufficient basis in this action to determine whether or not the responses were in substantial compliance with statutory requirements and therefore, the Court will not order responses or further responses. Without copies of the unverified responses, the Court does not have sufficient information before it to grant the motion.<br><br>The motion is MOOT WITHOUT PREJUDICE to compel further responses.<br><br>SEE ATTACHED TENTATIVE RULING. |
| LINE 9 | 23CV410468 | Alfonso Tamayo et al vs VIP Relocation, Inc. et al | **Motion of Plaintiff to Compel Defendant Cornell Deon Carter to Provide Verified Responses to Form Interrogatories, Set One, and Request for Sanctions.**<br><br>Why does defense counsel believe Mr. Carter is unavailable and unreachable? What efforts have been made to contact him?<br><br>There is no dispute Defendant Carter was an employee driving a company vehicle, acting within the course and scope of his employment at the time of the alleged incident and any settlement or judgment related to Defendant Carter's claimed negligence in this action will be addressed through Defendant Carter's then-employer, Defendant VIP Relocation, Inc., under principals of respondeat superior.<br><br>So why is this discovery necessary?<br><br>NO TENTATIVE RULING. |
| LINE 10 | 22CV399529 | Lynette Fisher vs Granite Rock Company; Joel Armando Medina. | **Motion of Plaintiff to Consolidate This Case with 23CV411797.**<br><br>Defendants Granite Rock Co. and Joel Armando Medina do not oppose the motion. However, was plaintiff State Farm insurance Company in case number 23CV411797 served with the moving papers?<br><br>NO TENTATIVE RULING. The parties should attempt to get a hold of counsel for State Farm Insurance Company advise them of the motion to be heard on 20 February. |

| LINE # | CASE # | CASE TITLE | TENTATIVE RULING |
|---|---|---|---|
| LINE 11 | 23CV411285 | Katie Cane v. James Hoover et al. | **Designation of Arbitrator.**<br>Have the parties met and conferred and agreed upon an arbitrator?<br>NO TENTATIVE RULING. |
| LINE 12 | 23CV416895 | Lynley Kerr Hogan vs Michael Shtein | **Motion of Defendant for Attorney's Fees As the Prevailing Party Pursuant to Code Of Civil Procedure, § 425.16.**<br>SEE LINE #6. |
| LINE 13 | 234CV423715 | Marco Cabrales vs Ramiro Cabrales, Jr. | **Motion of Plaintiff to Consolidate This Case with 23CV421403.**<br>No party filed opposition to this motion. This Court notes that action 23 CV421403 entitled Ramiro Cabrales, Jr. v. Marco Cabrales, Judge Alloggiamento stayed the unlawful detainer action until this action is resolved or this Court rules on the motion to consolidate.<br>There is also a related case bearing case number 23PR195007 entitled Ramiro Galvan Cabrales 2009 Revocable Trust.<br>NO TENTATIVE RULING. The parties should appear and argue the motion on the merits. |
| LINE 14 | 23CV426400 | Vinay Karna vs Hewlett-Packard Enterprise; Hewlett-Packard Enterprise Co.; Dinesh Parapperi; Miguel Barrerea; | **Motion of Defendants to Compel Arbitration.**<br>NO TENTATIVE RULING. The parties should appear and argue the motion on the merits. |
| LINE 15 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 16 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 17 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 18 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 19 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 20 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 21 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 22 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 23 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 24 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 25 | | | SEE ATTACHED TENTATIVE RULING. |

| LINE # | CASE # | CASE TITLE | TENTATIVE RULING |
|---|---|---|---|
| LINE 26 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 27 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 28 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 29 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 30 | | | SEE ATTACHED TENTATIVE RULING. |

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**Calendar Line 1**

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**Calendar Line 2**

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## Calendar Line 3

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## Calendar Line 4

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**Calendar Line 5**

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**Calendar Line 6**


**SUPERIOR COURT, STATE OF CALIFORNIA**
**COUNTY OF SANTA CLARA**
**DEPARTMENT 20**

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*(For Clerk's Use Only)*

**CASE NO.: 23CV416895** **Lynley Kerr Hogan v. Michael Shtein**
**DATE: 20 February 2024** **TIME: 9:00 am** **LINE NUMBER: 06, 12**

**This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 16 February 2024. Please specify the issue to be contested when calling the Court and Counsel.**

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**Order On Defendant Michael Shtein's**
**Special Motion To Strike.**

**I. Statement of Facts.**

Plaintiff Lynley Hogan ("Hogan") rents rooms in her Los Gatos home to guests through a company called VRBO. (First Amended Complaint ("FAC"), pp. 2:28-3:1.) Hogan was in a contractual economic relationship with third party VRBO, allowing her to earn income through her rental listing on VRBO. (First Amended Complaint (*Id.* at p. 2:26-27.)

On 10 December 2022, plaintiff Hogan accepted a VRBO reservation request from defendant Michael Shtein ("Shtein") to rent a one-bedroom apartment in her house from 12 December 2022 to 24 December 2022. (FAC at p. 3:1-3.) In the fall of 2022, Hogan updated the apartment in question and created a new VRBO listing. (*Id.* at p. 3:5-6.) In preparation for Shtein's arrival, Hogan and her friend cleaned the rental space. (*Id.* at p. 3:4-5.) Hogan took pictures of the rental space before Shtein arrived. (*Id.* at p. 3:6-7.)

On 12 December 2022 at about 4:00 p.m., defendant Shtein arrived at plaintiff Hogan's property, and Hogan greeted him at the front gate. (FAC, p. 3:8-9.) Shtein told Hogan that he was not sick but had allergies from kittens that his wife had rescued. (*Id.* at p. 3:9-11.) Shtein said that he liked the American flags as well as the political and religious banners that were on Hogan's property. (*Id*. at p. 3:11-12.) Hogan gave Shtein a tour of the apartment, and Shtein said he was pleased with the condition of the rental space. (*Id*. at p. 3:13-14.)

On 13 December 2022 at approximately 7:30 a.m., VRBO customer service called plaintiff Hogan and informed her that defendant Shtein had complained about the rental space, saying that he had an allergy attack because the rental unit was "dirty, dusty, and disgusting." (FAC, p. 3:15-20.) Shtein was unhappy with his experience with VRBO, so he made efforts to get his rental payment returned and to intentionally hurt Hogan's future business. (*Id.* at p. 3:18-20.)

Plaintiff Hogan's refund policy is clearly noted on VRBO. (FAC, p. 3:21.) Defendant Shtein requested a full refund from VRBO and Hogan's business. (*Id*. at p. 3:22.) Shtein did not communicate with Hogan or attempt to

resolve the situation before contacting VRBO. (*Id.* at p. 3:23-24.) For unclear reasons, Shtein unnecessarily and maliciously left a defamatory one-star review on VRBO of Hogan's apartment. (*Id.* at p. 3:25-26.) Shtein made additional and malicious efforts to hurt Hogan's business by calling the Town of Los Gatos to complain about a missing fire alarm. (*Id.* at p. 3:27-28.)

Plaintiff Hogan received an insufficient funds notice from her bank when defendant Shtein attempted to get his money returned. (FAC, p. 4:1-2.) Hogan related her side of the story to VRBO, and VRBO ultimately did not refund Shtein's rental payment. (*Id.* at p. 4:3.) Hogan wrote to Shtein's father to tell him what happened. (*Id.* at p. 4:3-4.) Hogan closed down her business and the listing that reflected Shtein's one-star review. (*Id.* at p. 4:4-6.) Hogan lost all future rental business due to Shtein's one-star review. (*Id.* at p. 4:6.) Hogan suffered loss of income and public humiliation as a result of Shtein's unreasonable, unfair, and malicious actions. (*Id.* at p. 4:7-8.)

On 10 January 2023, defendant Shtein filed a restraining order against plaintiff Hogan. (*Shtein v. Hogan* (Super Ct. Santa Clara County, 2023, No. 23CH011327.)

On 6 June 2023,[1] plaintiff Hogan, a self-represented litigant,[2] filed a complaint against defendant Shtein asserting causes of action for:

(1) Defamation, Libel

(2) Attempted Conversion

(3) Tortious Interference

(4) Harassment

(5) Infliction of Emotional Distress

(6) Hate Crime.

On 24 July 2023, defendant Shtein filed a demurrer to the second, third and sixth causes of action of plaintiff Hogan's complaint, and on 1 August 2023, Shtein filed a special (anti-SLAPP) motion to strike the first, fourth, and fifth causes of action Hogan's complaint.

On 28 November 2023, the court ruled on defendant Shtein's demurrer and special motion to strike. The court granted the special motion to strike the first, fourth, and fifth causes of action of plaintiff Hogan's complaint. The court sustained the demurrer to the second and sixth causes of action without leave to amend and sustained the demurrer to the third cause of action with 10 days leave to amend.

On 6 December 2023, plaintiff Hogan filed the FAC, stating a single cause of action for Intentional Interference with Prospective Economic Relations/Advantage.

On 28 December 2023, defendant Shtein filed a motion for attorney's fees and a special (anti-SLAPP) motion to strike Hogan's FAC.

## II. Defendant Shtein's special motion to strike plaintiff Hogan's FAC is GRANTED.

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[1] This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (***Government Code***, §§ 68600–68620). The California ***Rules of Court*** state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil ***Rules of Court***, Rule 3.714(b)(1)(C) and (b)(2)(C).)

[2] Although a judge should ensure that self-represented litigants are not being misled or unfairly treated (see ***Gamet v. Blanchard*** (2001) 91 Cal.App.4th 1276, 1284), self-represented litigants are not entitled to special treatment with regard to the ***Rules of Court*** or ***Code of Civil Procedure***. "[W]e cannot disregard the applicable principles of law and accord defendant any special treatment because he instead elected to proceed in propria persona. [Citations.]" (***Stein v. Hassen*** (1973) 34 Cal. App. 3d 294, 303.) "A litigant has a right to act as his own attorney [citation] 'but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts.'" (***Lombardi v. Citizens Nat'l Trust & Sav. Bank*** (1955) 137 Cal.App.2d 206, 208-209.)

Defendant Shtein brings his special motion to strike [***Code Civ. Proc.***, § 425.16] on the grounds that the act underlying plaintiff Hogan's claim for intentional interference with prospective economic relation/advantage arise from defendant Shtein's exercise of protected free speech rights. (Mot., p. 1.)

**1. The two-step procedure for anti-SLAPP motions.**

***Code of Civil Procedure*** section 425.16 requires a court to engage in a two-step process when determining whether a defendant's anti-SLAPP motion should be granted. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one "arising from" protected activity. The moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken in furtherance of the defendant's right of petition or free speech under the United States or California Constitution in connection with a public issue. If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim. In making these determinations, the trial court considers the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based. (***Equilon Enterprises v. Consumer Cause, Inc.*** (2002) 29 Cal.4th 53, 67.)

More recently, the California Supreme Court clarified:

> At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them. When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. The court, without resolving evidentiary conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken. Allegations of protected activity supporting the stricken claim are eliminated from the complaint, unless they also support a distinct claim on which the plaintiff has shown a probability of prevailing.

(***Baral v. Schnitt*** (2016) 1 Cal.5th 376, 396.)

**2. Step one – arising from protected activity.**

> A defendant meets the burden of showing that a plaintiff's action arises from a protected activity by showing that the acts underlying the plaintiff's cause of action fall within one of the four categories of conduct described in section 425.16, subdivision (e). [Citation.] Those four categories are: "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, 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; (4) or 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."

(***Siam v. Kizilbash*** (2005) 130 Cal.App.4th 1563, 1569; emphasis added.)

> In applying section 425.16, subdivision (b)(1), the mode of proceeding and the applicable analysis at the often-elusive first step have been worked out in some detail in the case law. The court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. To determine whether a cause of action arises from protected activity, we disregard its label and instead examine its gravamen by identifying the allegedly wrongful and injury-producing conduct … that provides the foundation for the claim., i.e., the *acts on which liability is based*; the statutory phrase [cause of action … arising from] means simply that the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech.

> A claim arises from protected activity when that activity underlies or forms the basis for the claim. Critically, the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech. The focus is on determining what the defendant's activity [is] that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning. If the core injury-producing conduct upon which the plaintiff's claim is premised does not rest on protected speech or petitioning activity, collateral or incidental allusions to protected activity will not trigger application of the anti-SLAPP statute; the question is whether the protected activity is merely an incidental part of the cause of action.

(***Oakland Bulk & Oversized Terminal, LLC v. City of Oakland*** (2020) 54 Cal.App.5th 738, 752-753; italics original; internal brackets, quotation marks and citations omitted.)

Here, as the moving party, defendant Shtein must make a threshold showing that the sole cause of action in the FAC arises from protected activity. According to Shtein, the claim alleged by plaintiff Hogan in her FAC (whether styled as "intentional inference with contractual relations" or "intentional interference with contractual relations with prospective economic advantage") arises from two acts the call to the Town of Los Gatos and the one-star review. (Mot., p. 2:6-16.) In addition to the allegations related to the VRBO review, the FAC includes an allegation that Shtein attempted to hurt Hogan's business by calling the Town of Los Gatos to report a missing fire alarm. (FAC, p. 3:27-28.)

However, the gravamen of the FAC is that Shtein hurt Hogan's business by posting the one-star review on VRBO. Repeated references to the one-star review are found throughout the FAC. (*Id.* at pp. 2-5.) The VRBO review is the act upon which Shtein's alleged liability is based. Thus, to meet his initial burden, Shtein must establish that the online review is protected speech. As the court explained in its 28 November 2023 minute order, whether the review is protected speech depends upon whether it was made in a public forum and whether it concerned a matter of public interest.

**i. <u>Public Forum</u>**

"A public forum is a place open to the use of the general public for purposes of assembly, communicating thoughts between citizens, and discussing public questions." (***Kurwal v. Harrington, Foxx, Dubrow & Canter, LLP*** (2007) 146 Cal.App.4th 841, 846; internal quotation marks and citations omitted.) "Cases construing the term [public forum] as used in section 425.16 have noted that the term is traditionally defined as a place that is open to the public where information is freely exchanged. Under its plain meaning, a public forum is not limited to a physical setting, but also includes other forms of public communication." (***Kronemyer v. Internet Movie Database Inc.*** (2007) 150 Cal.App.4th 941, 950; internal quotation marks and citations omitted.)

"Web sites accessible to the public … are 'public forums' for purposes of the anti-SLAPP statute. [Citations.]" (***Barret v. Rosenthal*** (2006) 40 Cal.4th 33, 41, fn. 4.) Statements published on a website that are "accessible to anyone who chooses to visit [the website] … hardly could be more public." (***Wilbanks v. Wolk*** (2004) 121 Cal.App.4th 883, 895 (***Wilbanks***); see also ***Wong v. Jing*** (2010) 189 Cal.App.4th 1354, 1366 [it is settled that websites accessible to the public are public forums] (***Wong***).)

Here, defendant Shtein contends that plaintiff Hogan voluntary placed herself and her apartment into a public forum by using VRBO and acting as an online lodgekeeper. (Mot., p. 4:12-15.) Relying upon ***Wong***, Shtein analogizes the customer reviews posted on VRBO to customer reviews posted on Yelp and Amazon. (*Id.*, pp. 4-5.) In ***Wong***, the defendants' negative Yelp review of the plaintiff dentist was found to be protected conduct sufficient to support the defendants' special motion to strike under the anti-SLAPP statute. (***Wong***, *supra*, 189 Cal.App.4th at pp. 1359, 1366.)

In opposition, while plaintiff Hogan argues that her current and future business are not public issues (Opp., p. 4:25), she does not appear to dispute that the one-star review was posted to a public forum. Thus, the court finds that defendant Shtein meets his burden of establishing that he made in VRBO review in a public forum.

**ii. <u>Issue of Public Interest</u>**

Defendant Shtein contends that his online review is protected under the anti-SLAPP statute because it deals with housing, an issue of public interest. (Mot., p. 5:8-9.) "The definition of 'public interest' within the meaning of the

anti-SLAPP statute has been broadly construed to include not only government matters, but also private conduct that impacts a broad segment of society…." (***Tuchscher Development Enterprises, Inc. v. San Diego Unified Port. Dist.*** (2003) 106 Cal.App.4th 1219, 1233 [quoting and citing ***Damon v. Ocean Hills Journalism Club*** (2000) 85 Cal.App.4th 468, 479].) A consumer's statement about the quality of a seller's product or service, when it affects a large number of persons, "generally is viewed as information concerning a matter of public interest." (***Wilbanks***, *supra*, 121 Cal.App.4th at pp. 898-899.)

In ***Rand Resources, LLC v. City of Carson*** (2019) 6 Cal.5th 610 (***Rand Resources***), the California Supreme Court adopted a general definition of "public interest" that identifies three nonexclusive categories of qualifying statements. "The first is when the statement or conduct concerns a person or entity in the public eye; the second, when it involves conduct that could directly affect a large number of people beyond the direct participants'; and the third, when it involves 'a topic of widespread, public interest." (***Rand Resources***, *supra*, 6 Cal.5th at p. 621; internal quotation marks and citations omitted.) "In making a public interest determination, however, it is critical to identify the specific speech that is the subject of the claims in the lawsuit." (***Li v. Jin*** (2022) 83 Cal.App.5th 481, 495; internal quotation marks and citations omitted.) "There must exist 'some degree of closeness between the challenged statements and the asserted public interest.'" (***Ibid.***, quoting and citing ***FilmOn.com Inc. v. DoubleVerify Inc.*** (2019) 7 Cal.5th 133, 150 (***FilmOn***).)

In ***FilmOn***, our high court "articulated a two-step inquiry for deciding whether the activity from which a lawsuit arises falls within section 425.16(e)(4)'s protection: first, we ask what public issue or issues the challenged activity implicates, and second, we ask whether the challenged activity contributes to public discussion of any such issue. (***FilmOn***, *supra*, 7 Cal.5th at pp. 149-150.) If the answer to the second question is yes, then the protections of the anti-SLAPP statute are triggered, and the plaintiff in the underlying lawsuit must establish 'a probability' of prevailing before the action may proceed." (***Geiser v. Kuhns*** (2022) 13 Cal.5th 1238, 1243 (***Geiser***).) "Only when an expressive activity, viewed in context, cannot reasonably be understood as implicating a public issue does an anti-SLAPP motion fail at ***FilmOn***'s first step." (***Id.*** at p. 1254.) For example, in ***Geiser***, the California Supreme Court found an issue of public interest where a sidewalk protest involving a family's eviction also concerned "broader issues of unfair foreclosure and evictions." (***Id.*** at p. 1255.)

In this case, as detailed in the court's 28 November 2023 minute order, the VRBO review relates to an issue of public interest because it can reasonably be understood to contribute to public discussion not only of the particular accommodation rented by defendant Shtein, but also to a more general discussion regarding the substantial rent-by-owner industry. While the court again acknowledges plaintiff Hogan's position that her current and future business are not public issues, she does not appear to offer any further argument or authority in opposition, as to the public interest issue.

**iii. Exception to Anti-SLAPP Statute**

Plaintiff Hogan contends that Shtein's statements were false or opinion, which she asserts are not protected under the anti-SLAPP statute. (Opp., pp. 5-6.) Not all statements are protected under the anti-SLAPP statute. In ***Flatley v. Mauro*** (2006) 39 Cal.4th 299 (***Flatley***), the California Supreme Court held that "where a defendant brings a motion to strike under section 425.16 based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech or petition rights, but either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action." (***Flatley***, *supra*, 39 Cal.4th at p. 320.) "The rationale is that the defendant cannot make a threshold showing that the illegal conduct falls within the purview of the statute and promotes section 425.16's purpose to prevent and deter lawsuits [referred to as SLAPP's] brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (***Id.*** at p. 316, internal quotation marks and citations omitted.)

The illegality exception to ***Code of Civil Procedure*** section 425.16 articulated in ***Flatley*** is narrow. The party opposing the anti-SLAPP motion must either show that the other party concedes to the illegal activity, or that the alleged illegality is conclusively established by uncontroverted evidence. (***Flatley***, *supra*, 39 Cal.4th at p. 320.) In ***Flatley***, the Supreme Court determined that the anti-SLAPP statute did not apply to the defendant's speech, which it determined to be extortion as a matter of law. (***Id.*** at p. 333.) There, the defendant did not dispute that he sent the

letters that the court later determined was extortion as a matter of law, nor did he contest the contents. (***Id.*** at pp. 328-329.) The defendant also did not contest the version of the telephone calls he allegedly made as set forth in the plaintiff's opposition to the motion to strike. (***Ibid***.) As a result, the court determined that the evidence was uncontroverted. (***Ibid***.)

Similarly, in ***Lefebvre v. Lefebvre*** (2011) 199 Cal.App.4th 696 (***Lefebvre***), the appellate court concluded that defendant's actions in filing a false police report against the plaintiff did not involve an exercise of the right of petition or free speech. This is because the defendant did not deny she had "submitted an illegal, false criminal report" against the plaintiff. (***Lefebvre***, *supra*, 199 Cal.App.4th at p. 705.) Because the record conclusively established the defendant's statements to police were false, and thus illegal under ***Penal Code*** section 148.5 (it is a misdemeanor to make a false police report), the court properly denied the anti-SLAPP motion. (*Id.* at pp. 701, 705-706.)

But, in a case where factual disputes concerning the illegality of the statements or conduct are at issue, the ***Flatley*** exception is inapplicable. (***Seltzer v. Barnes*** (2010) 182 Cal.App.4th 953, 965-967 *(**Seltzer***).) For example, in ***Seltzer***, the plaintiff failed to conclusively establish the illegality of settlement negotiations at issue as there were several factual disputes, including the defendant's intent, during the proceedings. (***Id.*** at p. 965.) "[C]onduct that would otherwise be protected by the anti-SLAPP statute does not lose its coverage simply because it is alleged to have been unlawful." (***Hansen v. Department of Corrections & Rehabilitation*** (2008) 171 Cal.App.4th 1537, 1545.) The party opposing the special motion to strike bears the burden to show that no factual dispute exists as to the illegality of the conduct underlying the complaint. (***Seltzer***, *supra*, 182 Cal.App.4th at p. 965.)

Here, plaintiff Hogan has failed to provide any evidence to demonstrate the falsity of defendant Shtein's statements or to show that the property was not in the condition Shtein spoke about in his review. The exception set forth in ***Flatley*** is inapplicable because Hogan has not met her burden of showing that no factual dispute exists as to the alleged falsity or illegality of the statements and conduct underlying her claims.

Thus, for the reasons discussed above, the court finds that defendant Shtein meets his burden of establishing that the claim(s) asserted in the FAC arise from activity protected under the anti-SLAPP statute.

**3. Step two – probability of prevailing.**

As the court found defendant Shtein met his burden on step one of the analysis, the burden shifts to plaintiff Hogan to demonstrate a likelihood of prevailing on the merits of the claim(s) asserted in the FAC.

"[I]f a court ruling on an anti-SLAPP motion concludes the challenged cause of action arises from protected petitioning, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. To satisfy this prong, the plaintiff must state and substantiate a legally sufficient claim. Put another way, the plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (***Jarrow Formulas, Inc. v. LaMarche*** (2003) 31 Cal.4th 728, 741; internal citations and punctuation omitted.)

"The court does not weigh credibility or comparative strength of the evidence. The court considers defendant's evidence only to determine if it defeats plaintiff's showing as a matter of law." (***Soukup v. Law Offices of Herbert Hafif*** (2006) 39 Cal.4th 260, 291 (***Soukup***).) The plaintiff must show there is admissible evidence that, if accepted as true, would be sufficient to sustain a favorable judgment. (***McGarry v. University of San Diego*** (2007) 154 Cal.App.4th 97, 108.) "The showing must be made through 'competent and admissible evidence.' Thus, declarations that lack foundation or personal knowledge, or that are argumentative, speculative, impermissible opinion, hearsay, or conclusory are to be disregarded." (***Gilbert v. Sykes*** (2007) 147 Cal.App.4th 13, 26; internal citations omitted.)

Here, the FAC contains a single cause of action for "Intentional Interference with Prospective Economic Relations/Advantage." (FAC, pp. 4-5.) However, the allegations appear to reference both contractual and noncontractual economic relationships. As the court discussed in its 28 November 2023 minute order, California courts recognize the related but distinct torts of intentional interference with contract and intentional interference with prospective economic advantage. (***Korea Supply Co. v. Lockheed Martin Corp.*** (2003) 29 Cal.4th 1134, 1157 ["the tort of interference with contract is merely a species of the broader tort of interference with prospective economic advantage"] (***Korea***).)

"The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (***Pacific Gas & Electric Co. v. Bear Stearns & Co.*** (1990) 50 Cal.3d 1118, 1126; see also ***Korea***, *supra*, 29 Cal.4th at pp. 1157-1158.)

The broader tort of intentional interference with prospective economic advantage has slightly different elements, "usually stated as follows: (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." (***Korea***, *supra*, 29 Cal.4th at p. 1153.) Thus, both of these "intentional interference" torts require the complaint to allege an actual breach or disruption of the relationship with a third party.

In her opposition, plaintiff Hogan contends that she can meet her burden on step two by making a *prima facie* showing for any part of her claim. (Opp., p. 6:11-25.) But even accepting this contention *arguendo*, Hogan still must show a probability of prevailing on some part of her claim. She must show there is admissible evidence that, if accepted as true, would be sufficient to sustain a favorable judgment. Though Hogan asserts that she has made such showing with a plethora of admissible evidence, she does not direct the court to any admissible evidence establishing the elements of her claims.

As defendant Shtein argues, the argumentative and speculative assertions found in plaintiff's FAC are not substitute for facts sufficient to sustain plaintiff Hogan's burden on step two of the anti-SLAPP analysis. (Mot., p. 6:7-16.) Hogan's theory for relief is premised on the assumption that "no one would ever consider renting an apartment rated one of five stars." (FAC, p. 4:23.)

Hogan has not proffered any evidence of an actual breach or disruption of an economic relationship with a third party. There is no allegation or evidence that VRBO removed the listing because of Shtein's review, or that a prospective renter cancelled a reservation upon seeing the review. Rather, based upon the allegations of the FAC itself, Hogan voluntarily removed the listing herself after seeing the one-star review. (*Id*. at pp. 2:19-20; 4:5-6; 4:23-24; 5:13-14.)

This sequence of events cannot establish damages proximately caused by Shtein's acts, whether under a theory of intentional interference with contractual relations or intentional interference with prospective economic advantage. Further, Hogan offers no evidence supporting her claim of damages.

In sum, because Hogan has not proffered admissible evidence to support the elements of her claims, she fails to meet her burden in establishing a probability of prevailing on the merits of her claims. Accordingly, defendant Shtein's special (anti-SLAPP) motion to strike plaintiff's FAC is GRANTED.

**III. Order.**

Defendant Shtein's special motion to strike [***Code Civ. Proc.***, § 425.16] plaintiff's First Amended Complaint is GRANTED.

Defendant Shtein's request for attorney's fees will be deferred subject to counsel submitting an itemized invoice supporting the fee request.

**DATED:**

**HON. SOCRATES PETER MANOUKIAN**
*Judge of the Superior Court*
*County of Santa Clara*

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**Calendar Line 7**


**SUPERIOR COURT, STATE OF CALIFORNIA**
**COUNTY OF SANTA CLARA**
**DEPARTMENT 20**

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*(For Clerk's Use Only)*

**CASE NO.: 23CV417418** **Erik Estavillo v. Dave Cortese, et al.**
**DATE: 20 February 2024** **TIME: 9:00 am** **LINE NUMBER: 07**
**This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 16 February 2024. Please specify the issue to be contested when calling the Court and Counsel.**

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**Order On Demurrer To Plaintiff's Complaint.**

**I. Statement of Facts.**

Plaintiff Erik Estavillo ("Estavillo") is permanently disabled, suffering from Crohn's disease, depression, obsessive-compulsive disorder, and panic disorder. (Complaint, ¶4.) Plaintiff Estavillo is a resident at defendant Country Club Villa Apartments ("Apartments") which is owned by defendant David Dominic Cortese ("Cortese") and his family. (Complaint, ¶¶4 and 6.)

Plaintiff Estavillo purchased a new vehicle and sought a parking permit from defendant Apartments in order to park on defendant Apartments' property, near his apartment. (Complaint, ¶7.) Defendant Apartments' community manager informed plaintiff Estavillo that only two vehicles at a time can park on the property and any additional vehicles had to park outside of the property or in the visitor section which consists of only12 parking spaces for nearly 1000 residents. (Complaint, ¶8.)

Plaintiff Estavillo complied initially but defendant Apartments' Security Supervisor (Steve Havilla) began ticketing plaintiff Estavillo's vehicle for not leaving the premises by 8:30 a.m., despite the vehicle having a disabled handicap placard. (Complaint, ¶10.) Other vehicles were not ticketed. (*Id.*)

Defendant Apartments' property manager (Tricia Morse) invited plaintiff Estavillo to write a letter requesting a third parking permit so he could park near his apartment or requesting an exemption to park in the visitor section without threat of tow. (Complaint, ¶11.) Plaintiff Estavillo wrote the letter, but Morse never responded. (Complaint, ¶12.) Morse later left a voicemail stating she conferred with defendant Cortese and an attorney and plaintiff was no longer allowed to enter the main office or get within 10 feet of any personnel despite never filing a restraining order.

On 13 June 2023[3], plaintiff Estavillo filed the instant complaint against defendants Cortese and Apartments. In relevant part, the complaint alleges, "The policy of [Apartments] … violate Californian law which states that any violation of the ADA is considered a civil rights violation…." (Complaint, ¶14.)

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[3] This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil Rules of Court, Rule 3.714(b)(1)(C) and (b)(2)(C).)

On 30 October 2023, defendant Apartments filed an answer to plaintiff Estavillo's complaint.

On 13 November 2023, defendant Cortese filed the motion now before the court, a demurrer to plaintiff Estavillo's complaint.

## II. Analysis.

### A. Defendant Cortese's demurrer to plaintiff Estavillo's complaint is OVERRULED.

#### 1. Defect or misjoinder.

Among other grounds, defendant Cortese demurs to plaintiff Estavillo's complaint by asserting there is a defect or misjoinder of parties. A demurrer may be made on the ground that there is a defect or misjoinder of parties. (Code Civ. Proc. §430.10, subd. (d).) "Demurrers on this ground lie only where it appears on the face of the complaint (or matters judicially noticed) that: some third person is a 'necessary' or 'indispensable' party to the action; and hence must be joined before the action may proceed [or] plaintiffs lack sufficient unity of interest [CCP §378]; or there is no common question of law or fact as to the defendants [CCP §379]." (Weil & Brown et al., CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 2020) ¶7:79, p. 7(I)-41.)

Although defendant Cortese has asserted this ground for demurrer, defendant Cortese offers no cogent discussion or argument in support of this particular ground.

#### 2. Failure to state facts sufficient to constitute a cause of action.

Instead, defendant Cortese takes issue with plaintiff Estavillo's allegation that defendant Cortese is an owner of the defendant Apartments. Defendant Cortese contends judicially-noticed facts establish otherwise. Defendant Cortese asks this court to take judicial notice[4] of a recorded quitclaim deed wherein Country Club Villa Properties, a California General Partnership, formerly known as Country Club Villa Apartments, a joint venture quitclaimed real property with an Assessor's Parcel Number of 599-38-35 to Country Club Villa Properties, a California General Partnership, on or about 13 December 1986.

Defendant Cortese contends that although plaintiff Estavillo did not define the location of the Apartments in the complaint, the quitclaim deed concerns the Apartments and the quitclaim deed establishes that defendant Cortese does not own the Apartments. In this court's opinion, the quitclaim deed does not establish either of these factual assertions.

The quitclaim deed reflects a single transaction at a single moment in time (nearly 40 years ago). Even if the court were to assume that the quitclaim deed concerns the Apartments, it does not establish whether defendant Cortese owned or did not own the Apartments at the time plaintiff Estavillo filed his complaint or during the events alleged in the complaint.

#### 3. Uncertainty.

Defendant Cortese argues additionally that he is "forced to guess as to the nature of the claim against him and cannot adequately prepare to defend against same."[5]

> "'[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.'" (*Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 848, fn. 3 [222 Cal. Rptr. 3d 360]; accord, *Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135 [146 Cal. Rptr. 3d

[4] "[A] court may take judicial notice of the fact of a document's recordation, the date the document was recorded and executed, the parties to the transaction reflected in a recorded document, and the document's legally operative language, assuming there is no genuine dispute regarding the document's authenticity. From this, the court may deduce and rely upon the legal effect of the recorded document, when that effect is clear from its face." (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 265.)

[5] See page 3, lines 9 – 10 of the Memorandum of Points and Authorities in Support of Demurrer to Plaintiff's Complaint.

173].) "'A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.'" (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822 [245 Cal. Rptr. 3d 378], quoting *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616 [17 Cal. Rptr. 2d 708].)

(*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.)

As noted above, the complaint alleges, in relevant part, "The policy of [Apartments] … violate Californian law which states that any violation of the ADA is considered a civil rights violation…." (Complaint, ¶14.) Plaintiff Estavillo clarifies in his opposition that he is asserting a violation of the Unruh Civil Rights Act pursuant to Civil Code sections 51 – 52. In the court's view, plaintiff Estavillo's complaint is not so uncertain that defendant Cortese cannot discern the claim being asserted or what issues must be admitted or denied.

Accordingly, defendant Cortese's demurrer to plaintiff Estavillo's complaint on the ground that there is a defect or misjoinder of parties [Code Civ. Proc., §430.10, subd. (d)], on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], and on the ground that the pleading is uncertain [Code Civ. Proc., §430.10, subd. (f)] is OVERRULED.

**III. Order.**

Defendant Cortese's demurrer to plaintiff Estavillo's complaint on the ground that there is a defect or misjoinder of parties [Code Civ. Proc., §430.10, subd. (d)], on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], and on the ground that the pleading is uncertain [Code Civ. Proc., §430.10, subd. (f)] is OVERRULED. Defendant shall answer within 10 days of the filing and service of this Order.

_____ _____

**DATED:**

**HON. SOCRATES PETER MANOUKIAN**
***Judge of the Superior Court***
***County of Santa Clara***

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