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E-FILED
2/18/2020 3:55 PM
Superior Court of California
County of Fresno
By: C. York, Deputy

6 Attorneys for Defendant HARMONY COMMUNITIES, LLC
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR COUNTY OF FRESNO**
10

11 GRUPO COMUNITARIO DE SAN MIGUEL
CUEVAS,

12 Plaintiff,

13 v.

14 HARMONY COMMUNITIES, INC.;
15 SHADY LAKES MANUFACTURED
HOUSING COMMUNITY, LLC; KMLM
16 INVESTORS, LLC; DOES 1-10,

17 Defendants.
18

Case No. 19CECG04575

**DEFENDANT HARMONY
COMMUNITIES, LLC'S NOTICE OF
MOTION AND MOTION TO STRIKE
PORTIONS FROM PLAINTIFF'S
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF ALEXI P.
ANTONIOU; [PROPOSED] ORDER**

Date: 4/29/20
Time: 3:30 p.m.
Dept.: 501

The Hon. Jeffrey Y. Hamilton, Dept. 501

Action Filed: 12/19/19

Trial Date: None Set

21
22 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on April 29, 2020 at 3:30 p.m. or as soon thereafter as the
24 matter may be heard in Department 501 of the above-captioned Court, located at 1130 "O" Street,
25 Fresno, CA 93724, Defendant Harmony Communities, LLC (hereinafter referred to as
26 "Defendant" or "Harmony") will and hereby does move this Court for an order striking the
27 portions of Plaintiff Grupo Comunitario De San Miguel Cuevas' ("Plaintiff") Complaint. The
28 Complaint contains numerous references to rent increases and evictions which are irrelevant to

LEGAL:05528-0338/13849003.1

DEFENDANT HARMONY COMMUNITIES, LLC'S NOTICE OF MOTION AND MOTION TO STRIKE
PORTIONS FROM PLAINTIFF'S COMPLAINT, ETC.

1 plaintiff's Complaint and prejudicial to Defendant. As such Defendant moves to strike any and all
2 references to rent increases and evictions, including the following from the Complaint:

- 3 ● "3. Defendant HARMONY COMMUNITIES increased rent by thirty-two
4 percent (32%) almost immediately after SHADY LAKES LLC and KMLM
INVESTORS purchased the park." (Complaint 2:7-8)
- 5 ● "threatening eviction" (Complaint 3:4)
- 6 ● "to evict" (Complaint 3:5)
- 7 ● "eviction" (Complaint 3:8)
- 8 ● "potential evictions" (Complaint 3:13)
- 9 ● "a notice of a thirty-two percent...so they may not increase or collect rent
10 while violations continue." (Complaint 6:21-26)
- 11 ● "to the rental increase or" (Complaint 7:11)
- 12 ● "the rent increase was unreasonably high, and" (Complaint 7:12)
- 13 ● "31. plaintiff's members are informed and believe and so allege that
HARMONY COMMUNITIES started to evict... due to the significant difficulty of
14 moving them." (Complaint ¶ 31, p. 9:5-12)
- 15 ● "and that the proposed rental increase was unlawful due to the ongoing
nuisance conditions in the Park." (Complaint 9:27-28)
- 16 ● "and the rent increase would remain in effect." (Complaint 10:2)
- 17 ● "(A) the thirty-two percent (32%) rent increase instituted by Defendants
was unlawful and unreasonable" (Complaint 11:8-9)
- 18 ● "(e) any additional rental increases would be unlawful" (Complaint 11:13)
- 19 ● "(a) the 32% rental increase would go into effect as planned" (Complaint
20 11:15-16)
- 21 ● "and eviction notices. Eviction of Plaintiff's members will deprive them of
22 the lawful use and enjoyment of their own home, will endanger their family, and
may result in homelessness that can have lifelong negative impacts." (Complaint
23 11: 25-27)
- 24 ● "Plaintiff's members likely will have to leave them in place if evicted."
(Complaint 12:2)
- 25 ● "and ultimately risking loss of their home and displacement due to an
26 eviction. " Complaint 12:10-11)
- 27 ● "and eviction notices" (Complaint 16:3)
- 28 ● "and eviction notices" (Complaint 16:9)

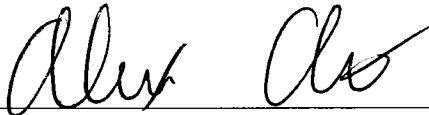
- 1 • "and evictions" (Complaint 16:11)
- 2 • "and beginning to unlawfully evict residents." (Complaint 19:21)

3 This Motion is made pursuant to California Code of Civil Procedure sections 435 and 436,
4 on the grounds that the Court may strike any matters in a complaint that are improper, irrelevant,
5 or not drawn in conformity with California laws.

6 This motion is based upon this notice, the attached memorandum of points and authorities,
7 the demurrer filed concurrently herewith, the attached Declaration of Alexi P. Antoniou, the
8 pleadings and papers on file in this matter and such argument and evidence as is presented at the
9 time for hearing of this matter.

10
11 DATED: February 18, 2020

WOOD, SMITH, HENNING & BERMAN LLP

12
13 By: 

SUMMIT S. DHILLON
ALEXI P. ANTONIOU

14 Attorneys for Defendant HARMONY
15 COMMUNITIES, LLC
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Plaintiff filed this lawsuit on December 19, 2019. This matter stems from plaintiff's
4 grievances with the new purchasers and management of a Mobile Home Park in Fresno,
5 California. Defendant Harmony Communities, LLC is the manager of the Mobile Home Park,
6 whereas co-defendants Shady Lakes Manufactured Housing Community, LLC and KMLM
7 Investors, LLC are the owners. Harmony and co-defendants have operated the Mobile Home Park
8 for less than a year and during that time have invested and continue to invest in improving the
9 conditions of the Mobile Home Park.

10 Plaintiff alleges 12 causes of action which include -three counts of nuisance, Violation of
11 C.C.P. §798.56 (d), Violation of C.C.P. §798.15, Violation of Civ. Code § 798.26, Violation of
12 Civ. Code § 1632, Breach of Implied Covenant of Good Faith and Fair Dealing, Violation of Gov.
13 Code § 12955 & § 19240(a), Violation of Gov. Code § 19240(h), Violation of the Fair Housing
14 Act: 42 USC §§3601 et seq., and Violation of Bus. & Prof. Code § 17200 et seq. As pled, several
15 causes of action in plaintiff's complaint fail to state facts sufficient to constitute viable causes of
16 action, and/or are ambiguous, uncertain, and unintelligible. Based on these errors in pleading,
17 Defendant files a demurrer concurrently with this motion.

18 This motion is being brought to strike portions of plaintiff's Complaint with references to
19 rent increases and evictions which are irrelevant to plaintiff's Complaint and prejudicial to
20 Defendant. As such Defendant moves to strike any and all references to rent increases and
21 evictions, including the following from the Complaint:

- 22 ● "3. Defendant HARMONY COMMUNITIES increased rent by thirty-two
23 percent (32%) almost immediately after SHADY LAKES LLC and KMLM
INVESTORS purchased the park." (Complaint 2:7-8)
- 24 ● "threatening eviction" (Complaint 3:4)
- 25 ● "to evict" (Complaint 3:5)
- 26 ● "eviction" (Complaint 3:8)
- 27 ● "potential evictions" (Complaint 3:13)
- 28 ● "a notice of a thirty-two percent....so they may not increase or collect rent

- 1 while violations continue." (Complaint 6:21-26)
- 2 • "to the rental increase or" (Complaint 7:11)
- 3 • "the rent increase was unreasonably high, and" (Complaint 7:12)
- 4 • "31. plaintiff's members are informed and believe and so allege that
5 HARMONY COMMUNITIES started to evict... due to the significant difficulty of
6 moving them." (Complaint ¶ 31, p. 9:5-12)
- 7 • "and that the proposed rental increase was unlawful due to the ongoing
8 nuisance conditions in the Park." (Complaint 9:27-28)
- 9 • "and the rent increase would remain in effect." (Complaint 10:2)
- 10 • "(A) the thirty-two percent (32%) rent increase instituted by Defendants
11 was unlawful and unreasonable" (Complaint 11:8-9)
- 12 • "(e) any additional rental increases would be unlawful" (Complaint 11:13)
- 13 • "(a) the 32% rental increase would go into effect as planned" (Complaint
14 11:15-16)
- 15 • "and eviction notices. Eviction of Plaintiff's members will deprive them of
16 the lawful use and enjoyment of their own home, will endanger their family, and
17 may result in homelessness that can have lifelong negative impacts." (Complaint
18 11: 25-27)
- 19 • "Plaintiff's members likely will have to leave them in place if evicted."
20 (Complaint 12:2)
- 21 • "and ultimately risking loss of their home and displacement due to an
22 eviction." Complaint 12:10-11)
- 23 • "and eviction notices" (Complaint 16:3)
- 24 • "and eviction notices" (Complaint 16:9)
- 25 • "and evictions" (Complaint 16:11)
- 26 • "and beginning to unlawfully evict residents." (Complaint 19:21)

27 Plaintiff's multiple references to rent increases and evictions are irrelevant since they are
28 not essential to any of Plaintiff's claims, and are inadmissible, prejudicial and unwarranted.
29 Plaintiff seeks to introduce these allegations for their prejudicial impact against Defendants and as
30 such they should be stricken.

31 **II. THE COURT IS AUTHORIZED TO STRIKE IRRELEVANT MATTERS**

32 A party served with a complaint may move the court to strike the pleading or any part
33 thereof. *See Code Civ. Proc.* § 435(b)(1). The court may strike any portion "not drawn or filed in

1 conformity with the laws of this state, a court rule, or an order of the court.” *Id.* at § 436(b).

2 Code of Civil Procedure § 436 provides:

3 The court may, upon a motion made pursuant to Section 435, or at any
4 time in its discretion, and upon terms it deems proper;

5 (a) Strike out any irrelevant, false, or improper matter inserted in any
6 pleading.

7 (b) Strike out all or any part of any pleading not drawn or filed in
8 conformity with the laws of this state, a court rule, or any order of the
9 court.

10 The court may strike irrelevant, false, or improper matters from any pleading. Code Civ.
11 Pro. §§ 435 and 436. The term “irrelevant matter” is defined as an “immaterial allegation” under
12 Code of Civ. Pro. § 431.10(c), thus making it proper for the court to strike any claim that is either
13 not essential to the statement of a claim, that is neither pertinent to nor supported by an otherwise
14 sufficient claim, or a demand for judgment requesting relief not supported by the allegations of the
15 complaint. Code of Civ. Pro. § 431.10(b).

16 **III. PORTIONS OF THE COMPLAINT REFERENCING RENT INCREASES OR**
17 **EVICCTIONS ARE IRRELEVANT**

18 An immaterial allegation in a pleading, which has the same meaning as an "irrelevant
19 matter" for our purposes, is one that is not essential to a statement of claim or defense, or is
20 otherwise impertinent to or unsupported by an otherwise sufficient claim or defense. Code Civ.
21 Proc. §§ 431.10(b) and (c). A complaint only need allege facts sufficient to state a cause of action;
22 each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged.

23 *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-550

24 An allegation should be stricken when "[i]t is stuffed full of irrelevant matters--
25 suggestions, charges and statements, which serve no useful purpose, and are only calculated, when
26 read to the jury, to excite prejudice against the defendants." *See, Green v. Palmer* (1860) 15 Cal.
27 411, 414. With respect to matters that are not essential to the claim or defense, the adverse party
28 may move to strike out the unessential parts. *Id.* at 416. "Courts have inherent authority to strike
scandalous and abusive statements in pleadings." *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1070
[151 Cal.Rptr.3d 65, 91-92]

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As stated above, plaintiff's Complaint alleges 12 causes of action against Defendant. These causes of action range from nuisance (causes of action 1-3), and numerous other allegations of violation of the Mobile Home Residency Law, Breach of the Implied Covenant of Good Faith and Fair Dealing, Housing Discrimination, Retaliation, and Violation of Unfair Competition Law. **Notably none of these causes of action relate to improper rent increases or improper evictions.** References to rent increases or eviction are irrelevant since they do not support any of plaintiff's causes of action. As the Court in *Green (Supra)* recognized early in our judicial history, these irrelevant matters are likely only inserted by Plaintiff to excite prejudice against Defendant and should be removed from the pleadings.

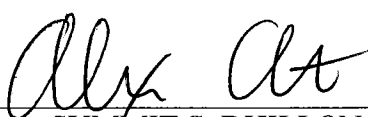
Here, Plaintiff only references rent increases and eviction in an attempt to excite prejudice against Harmony. These allegations are irrelevant and should be stricken from plaintiff's complaint.

IV. CONCLUSION

Plaintiff's Complaint contains multiple irrelevant matters that are pled for no legitimate purpose except to incite prejudice against Defendant. Therefore this motion must be granted.

DATED: February 18, 2020

WOOD, SMITH, HENNING & BERMAN LLP

By: 
SUMMIT S. DHILLON
ALEXI P. ANTONIOU
Attorneys for Defendant HARMONY
COMMUNITIES, LLC

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DECLARATION OF ALEXI P. ANTONIOU

I, Alexi P. Antoniou, declare as follows:

1. I am an attorney at law duly admitted to practice before the courts of the State of California. I am a senior associate with Wood, Smith, Henning & Berman LLP, attorneys of record for Defendant Harmony Communities, LLC. I know the following facts to be true of my own knowledge, and if called to testify, I could competently do so.

2. This declaration is offered in support of Defendant's Motion to Strike Portions of Plaintiff Grupo Comunitario De San Miguel Cuevas' ("Plaintiff") Complaint and made in compliance with Code of Civil Procedure § 435.5

3. On February 4, 2020 I advised plaintiff's counsel via telephone conversation that I had initially reviewed plaintiff's complaint and I identified potential grounds for a challenge to the pleading.

4. On February 13, 2020 I contacted plaintiff counsel's office via telephone to discuss my specific concerns with the pleading, but was unable to reach counsel. I left a voicemail.

5. Immediately after calling plaintiff counsel's office on February 13, I prepared email correspondence outlining my concerns with the pleading. A true and correct copy of my email is attached as **Exhibit A**.

6. On February 14, 2020 plaintiff's counsel called my office and we had a lengthy discussion regarding the pleading but were ultimately unable to reach an understanding.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed February 18, 2020, at Fresno, California.



Alexi P. Antoniou

EXHIBIT A

Alexi P. Antoniou

From: Alexi P. Antoniou
Sent: Thursday, February 13, 2020 3:59 PM
To: 'Mariah Thompson'
Cc: Summit S. Dhillon
Subject: Grupo Comunitario de San Miguel Cuevas v. Harmony Communities et. al

Mariah:

I write to continue our previous discussion on 2/4/2020 and to continue the meet and confer process as required by *Code of Civil Procedure* 430.41 and 435.5. I left a brief voicemail with your office today as well.

I believe that, as pled, there are grounds for a demurrer and a motion to strike on behalf of Harmony Communities, Inc. With regard to the Demurrer, CCP 798.84 requires 30 days notice, signed by at least one resident, be served on management regarding allegations for failure to maintain. This notice must be served prior to the initiation of a lawsuit, and the purpose is to give an opportunity to cure the problem. I don't believe that was done in this case.

For the motion to strike, I believe that any and all references to rent increases, the amount of rent increases, and evictions are all subject to strike. As pled, there is no cause of action specifically relating to evictions or the amount of rent or rent increases, and my understanding is that there have been no eviction actions since Harmony began management. As such these references irrelevant to the causes of action and as a result are subject to strike. See *CCP 436* and *CCP 431.10*

Since the issue is that my client was not given proper notice and an opportunity to cure as intended by *CCP 798.84*, it would be my strong preference to attempt to work through the issues as intended by the statute. Specifically I hope we can reach an agreement whereby you agree to withhold from defaulting on my client for 30 days, and I would withhold from bringing my motions, you would provide "the basis of the claim, the specified allegations, and remedies requested" (*CCP 798.84 (b)*) and we will make a good faith effort to address the specific allegations and the remedies requested. I think this is a good opportunity for us to work together to reach a mutually beneficial solution for all interested parties in an efficient manner.

Feel free to contact me if you would like to discuss further. Thank you,

Alexi

Alexi P. Antoniou

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PROOF OF SERVICE

I am employed in the County of Fresno, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 7108 North Fresno Street, Suite 250, Fresno, CA 93720-2952.

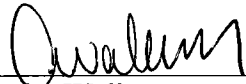
On February 18, 2020, I served the following document(s) described as **DEFENDANT HARMONY COMMUNITIES, LLC'S NOTICE OF MOTION AND MOTION TO STRIKE PORTIONS FROM PLAINTIFF'S COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ALEXI P. ANTONIOU; [PROPOSED] ORDER** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I placed true copies of the foregoing document(s) enclosed in sealed envelopes addressed as shown on the Service List. I am "readily familiar" with Wood, Smith, Henning & Berman's practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Fresno, California, on that same day following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 18, 2020, at Fresno, California.



Cathy Walker

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SERVICE LIST
Grupo Comunitario De San Miguel Cuevas v. Harmony Communities, Inc.
Fresno County Superior Court Case No. 19CECG04575

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