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FINANCIAL MANAGEMENT COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL

MICHAEL PITTS, an individual; KAREN PITTS, an individual,

Plaintiffs,

vs.

FINANCIAL MANAGEMENT COMPANY, a company doing business in the State of California; FRIEDA RENTIE, an individual; DOES 1 through 25, inclusive,

Defendants.

Case No. BC644978

Assigned to Judge Ernest M. Hiroshige
Department 54

Complaint Filed: December 23, 2016

NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE [CCP 425.16]; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF GABRIELE M. LASHLY

[Filed concurrently with Declaration of Frieda Rentie and Declaration of Steven West]

Date: March 16, 2017
Time: 8:30 a.m.
Location: Department 54

Reservation ID: 170210195152

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 16, 2017, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Courtroom 54 of the above-entitled court located at 111 North Hill Street, Los Angeles, California 90012, defendant, FRIEDA RENTIE (an individual and d/b/a FINANCIAL

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MANAGEMENT COMPANY), will and hereby does specially move to strike plaintiffs' Complaint as a meritless SLAPP suit pursuant to Code of Civil Procedure section 425.16.

Plaintiffs' action is based on defendants' conduct in furtherance of the exercise of their constitutional rights of petition, namely serving a 60-day notice to quit. Plaintiffs cannot prevail on the merits because the service of the 60-Day Notice to Quit is absolutely privileged under Civil Code section 47; the service of the 60-Day Notice to Quit was not negligent and did not cause plaintiffs' alleged personal injury; defendant did not serve the 60-Day Notice to Quit to discriminate against plaintiffs for being pregnant or having children, but for legitimate non-discriminatory reasons; the service of the 60-Day Notice to Quit is not outrageous behavior that would cause severe emotional distress to a reasonable person; defendant has no duty of care to avoid emotional distress to plaintiffs as her tenant; and plaintiffs cannot meet their burden to show by clear and convincing evidence that defendant acted with malice, fraud or oppression when she served plaintiffs with a 60-Day Notice to Quit.

Defendant requests reimbursement of attorneys' fees and costs incurred in connection with this motion in the amount of $5,874.00, as the prevailing party, pursuant to Code of Civil Procedure section 425.16, subdivision (c).

This motion is based on this Notice, the Memorandum of Points and Authorities and the Declarations of Frieda Rentie, Steve West, and Gabriele M. Lashly concurrently filed herewith, the files and records in this action, and on such oral and documentary evidence as may be presented at the hearing.

DATED: February 16, 2017

SLAUGHTER, REAGAN & COLE, LLP

By: G. Lashly

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TABLE OF CONTENTS

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TABLE OF AUTHORITIES

Cases

Statutes

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Michael Pitts and Karen Pitts ("plaintiffs"), a married couple, have sued their former landlord, defendant Frieda Rentie ("Rentie") and her fictitious d/b/a Financial Management Company (collectively "defendant"), for serving them with a 60-Day Notice to Quit. Plaintiffs allege defendant served them with a 60-Day Notice to Quit for discriminatory reasons, in particular, for Karen Pitts being pregnant and plaintiffs having children.

Plaintiffs' action is a meritless SLAPP suit. The only alleged conduct giving rise to plaintiffs' claim for negligence, housing discrimination, and intentional and negligent infliction of emotional distress is service of the 60-Day Notice to Quit. Plaintiffs have not alleged any other conduct for their claims. Serving a 60-Day Notice to Quit is a necessary prerequisite to filing an unlawful detainer action and thus falls under the protection of the Anti-SLAPP statute. (CCP § 425.16.)

Plaintiffs cannot prevail on the merits. Serving a 60-Day Notice to Quit is absolutely protected under the litigation privilege. (Civil Code § 47.) Plaintiffs have no evidence of discriminatory animus. Defendant served the 60-Day Notice to Quit because plaintiffs had been damaging the apartment, not due to a discriminatory animus towards families with children or pregnant women. Defendant rented, and continues to rent, to tenants with children. In fact, defendant re-rented plaintiffs' unit to a family with a young child. Many units in the subject apartment building are rented to tenants with children and defendant has served no notices to quit on other tenants who were pregnant and/or had a second child while living in the subject building.

II. FACTUAL BACKGROUND

Plaintiffs rented a two-bedroom, two-bath apartment at 6125 Canterbury Drive, Culver City, California 90230 (the "subject property") from defendant beginning in 2009. (Complaint, ¶ 17.) Plaintiffs had a first child in December 2011, while living at the subject property. (Complaint, ¶ 24.) A second pregnancy sadly resulted in a miscarriage in 2014. (*Id.*, ¶ 25.)

Plaintiffs identify only one direct communication from Rentie to them in the Complaint: "Upon learning of the miscarriage, rather than apologizing or offering her condolences as most people would do, Ms. RENTIE responded along the lines of 'I didn't know [PLAINTIFFS] were pregnant!?'

as if she believed she had a right to know and should have been informed." (Complaint, ¶ 25.) Plaintiffs do not provide context for the remark. Rentie does not recall that she talked to Karen Pitts about her miscarriage. If she did make the remark, she meant to express no sentiments that she had a right to know and should have been informed about Karen Pitts' miscarriage. She considered a miscarriage/pregnancy to be the Pitts' private matter. [Rentie Dec., ¶ 18.] In any event, it is perfectly reasonable that a person might exclaim that they had not known someone was pregnant after hearing the unfortunate news of a miscarriage.

Karen Pitts became pregnant again in July 2015. On or about December 10, 2015, plaintiffs received a 60- Day Notice to Quit. The notice specified no reason for the termination of plaintiffs' lease, and that no reason was provided by any other means. (Complaint, ¶¶ 26-30.)

Defendant served plaintiffs with a 60-day notice to quit because it was a legal pre-requisite for filing an unlawful detainer action. She intended to file an unlawful detainer action against plaintiffs if they did not voluntarily vacate the premises after 60 days. This did not become necessary because plaintiffs voluntarily moved out of the apartment and formally vacated the apartment as of January 31, 2016. [Rentie Dec., ¶¶ 6, 7.]

Defendant does not have a discriminatory animus against women who are pregnant or families with minor children. She served the 60-Day Notice to Quit for non-discriminatory legitimate business reasons. Prior to the serving the 60- Day Notice to Quit, the on-site property manager, Steven West, had reported to Rentie that he had observed on several occasions plaintiffs' apartment being dirty, in particular, the stove, oven and the carpet. [Rentie Dec., ¶¶ 12-14; West Dec., ¶¶ 6-12.] In addition, West had informed Rentie that the wall and floor in the master bathroom had disintegrated because plaintiffs showered in the bathtub –without using a shower curtain. -- rather than using the shower stall in the other bathroom. Plaintiffs never informed West or Rentie, or made a maintenance request regarding the floor and wall in the master bathroom. If they had done so, defendant could have undertaken steps to prevent the walls and floor from being damaged. [Rentie Dec., ¶¶ 14-15; West Dec., ¶ 10]. West had talked to plaintiffs about these issues -- but to no avail. [West Dec., ¶ 11.] Defendant relied on the information provided by West when she served plaintiffs with the 60-notice to vacate. [Rentie Dec., ¶ 17.]

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Plaintiffs state that *they believe* the true motive for the termination of the lease was discriminatory animus toward pregnancy and families with children in general. In support of their animus claim, plaintiffs offer the paraphrased remark by Rentie that she did not know that plaintiffs had suffered a miscarriage, and various snippets of gossip plaintiffs claim they heard from other tenants. Plaintiffs only allege one statement by defendant directed at them, expressing surprise that plaintiff Karen Pitts had been pregnant. This statement alone cannot establish a discriminatory animus. Plaintiffs identify no other tenant supposedly removed from the building in a discriminatory manner. Plaintiffs admit that they had a child at the building for five years before receiving the 60-Day Notice, and that they had been pregnant twice before without receiving a notice to quit.

Instead, plaintiffs claim that unspecified residents told them, "Don't let Ms. RENTIE see you pregnant" and "If you have another child, [Ms. RENTIE] is likely to kick you out." (Complaint, ¶ 26.) Plaintiffs also claim that Ms. Rentie has been overheard by third parties making comments such as: "If they [tenants] have another child, they are out of here." "Kids are noisy. I prefer a quiet building." "If I could have it my way, we would limit the residents of this building to age 50 or older." "Whose baby is this?"; "Did you have another baby?"; "Why didn't you tell me you were pregnant when you moved in?" and "Do you know if [a given tenant] is pregnant?; Can you please find out if she is?" (Complaint, ¶ 42.) Rentie does not recall making the above referenced remarks. If she inquired about the parents of a baby, or whether a tenant had another child, or was pregnant, it was only to engage in harmless conversation and not with a discriminatory animus toward tenants who had children or were pregnant. [Rentie Dec., ¶¶ 22-23.] Rumors and gossip aside, the only statement plaintiffs allege was directed toward them is exclamation of surprise upon learning that Karen Pitts had been pregnant and had experienced a miscarriage and alleged rumors and gossip from other unidentified tenants.

Plaintiffs do not identify any other tenants whose lease was terminated due to discriminatory reasons. In fact, after plaintiffs vacated their unit, Ms. Rentie rented plaintiffs' unit (Unit 104) to another couple, Jeremy and Amy Hale. The Hales have a young child and are now occupying the unit with the child. [Rentie Dec., ¶ 20; West Dec., ¶ 14.]

Rentie does not discriminate against tenants with children. The subject property has 40 rental units. Approximately 15 of the 40 units are presently occupied by tenants with children, many of

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them by tenants with small children. Defendant does not know the exact number of units that are occupied by tenants with children because she does not inquire about tenants' familial status. [Rentie Dec., ¶ 21.] Rentie rented, and continues to rent, to tenants who are pregnant and have children. Some tenants moved into the building when they had children and some tenants' children were born while the tenants lived in the building. Some tenants' children lived in the building until they were grown and moved out. [Rentie Dec., ¶ 22; West Dec., ¶¶ 14, 15, 16, 17.]

Defendant did and does not terminate any tenancies because a tenant has a child or multiple children [Rentie Dec., ¶ 23] and has no policies which discriminate against families with children or pregnant present or prospective tenants. [Rentie Dec., ¶ 25; West Dec., ¶¶ 14, 15, 16, 17.] Nor does defendant terminate a tenancy when a tenant has another child. In fact, the tenants in Unit 307 recently had a second child while living at the subject property and are still living there. They were not served with a notice to quit. [West Dec., ¶ 17.]

III. PLAINTIFFS' CLAIMS FALL UNDER THE ANTI-SLAPP STATUTE

Code of Civil Procedure section 425.16, the so called "anti-SLAPP" statute, is designed to deter and quickly dispose of frivolous litigation arising from a defendant's exercise of the right of petition or free speech under the United States or California Constitution. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 311-312.)

In ruling on a special motion to strike, the court follows a two-step analysis that involves shifting burdens. The moving defendant carries the initial burden to show that the challenged cause of action arises from protected free speech or petitioning activity. (*Coretronic Corp. v. Cozen O'Connor* (2011) 192 Cal.App.4th 1381, 1387.) The burden is satisfied by demonstrating that the conduct underlying the plaintiff's claim fits into a category of protected activity set forth in section 425.16, subdivision (e). (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.)

Once defendant's threshold showing has been made, the burden shifts to the plaintiff to produce evidence establishing a probability of prevailing on the cause of action. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67). To meet this burden, the plaintiff must plead and substantiate a legally cognizable claim for relief. (*Oasis West Realty, LLC v. Goldman* (2001) 51 Cal.4th 811, 820). "Put another way, the plaintiff must demonstrate that the complaint is both legally

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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." (*Ibid.*)

The entire complaint is based on service of the 60-Day Notice to Quit. Under the statute, the act in furtherance of a defendant's right of petition or free speech includes "any written or oral statement or writing made before a ... judicial proceeding, or any other official proceeding authorized by law." (CCP § 425.16, subd. (e).)

Serving a notice to quit constitutes protected activity under section 425.16 because it is a prerequisite to filing an unlawful detainer lawsuit, which is itself an exercise of the constitutional right to petition. (Civil Code section 1946.1; *Birkner v. Lam* (2007) 156 Cal.App.4th 275, 281–283; *Wallace v. McCubbin* (2011) 196 Cal.App.4th 1169, 1186; *Navellier v. Sletten* (2002) 29 Cal.4th 82, 90.) Notice terminating a tenancy qualifies as protected speech or petitioning activity if it is a "legal prerequisite for bringing an unlawful detainer action," in which case the notice constitutes "activity in furtherance of the constitutionally protected right to petition. [Citation.]" (*Birkner, supra*, 156 Cal.App.4th at p. 282.) Here, there is no dispute that service of a termination notice was legally required before defendant could file an unlawful detainer action had plaintiffs had refused to move out. (See CCP§§ 1161, subd. (1), 1162; Civ. Code, § 1946.1.) When defendant served the 60-Day Notice to Quit she intended filing an unlawful detainer if plaintiffs did not vacate the premises voluntarily.

Defendant anticipates that plaintiffs may argue that the claims did not arise out of the 60-Day Notice to Quit, but out of housing discrimination. However, the key question is whether a landlord's protected activity "merely 'preceded' or 'triggered' the tenant's lawsuit," in which case the anti-SLAPP motion fails, "or whether it was instead the 'basis' or cause' of that suit," in which case the anti-SLAPP motion succeeds. (*Clark v. Mazgani* (2009) 170 Cal.App.4th 1281, 1289.)

Here the entire action is based ***on nothing but serving a notice to quit***. Where the landlord's alleged misconduct consisted of only protected activity, namely serving a notice to quit, it falls under the Anti-SLAPP statute. (*Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467; see also *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) When "the sole basis of liability asserted in the tenant's complaint is the filing and prosecution of [an] unlawful detainer action," (or, as here, the

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service of a 60-Day Notice to Quit is the necessary prerequisite to filing an unlawful detainer action), courts have granted special motions to strike under section 425.16. (*Ben–Shahar* (2014) 231 Cal.App.4th 1043, 1051.) For example, in *Feldman v. 1100 Park Lane Associates, supra,* 160 Cal.App.4th 1467, a landlord filed an unlawful detainer complaint against tenants in an apartment building. *(Id.* at p. 1475.) The tenants filed a cross-complaint, bringing allegations of retaliatory eviction, negligence, negligent misrepresentation, and breach of contract, among others. (*Id.* at pp. 1474–1475.) The landlord filed an anti-SLAPP motion to strike the cross-complaint, contending that the tenants' causes of action arose from protected activity. (*Id.* at p. 1476.) The Court of Appeal reversed the trial court's denial of the motion with respect to most of the causes of action, finding that the landlord's alleged misconduct consisted of only protected activity, namely serving a notice to quit, filing the unlawful detainer, and making "threaten[ing]" statements in anticipation of litigation. (*Id.* at pp. 1483–1484.) The tenants' suit was based on these protected activities, not merely triggered by them. (*Ibid.)*

The court applied similar reasoning to reverse the denial of a special motion to strike in *Birkner, supra*, 156 Cal.App.4th 275. There, the landlord filed a notice to terminate the tenancy of tenants in a San Francisco apartment so that the landlord could move his mother into the apartment. (*Id.* at p. 279.) The tenants claimed that they were protected from eviction under the local rent ordinance and sued on several causes of action. (*Id.* at pp. 278–279.) The landlord moved to strike the complaint on anti-SLAPP grounds. (*Id.* at p. 278.) The Court of Appeal ruled in favor of the landlord, noting that "plaintiffs' causes of action do not challenge the validity of the Rent Ordinance or any activity by [the landlord] that preceded the service of the termination notice." (*Id.* at p. 283.) Consequently, the tenants' causes of action were based on the landlord's protected activity. (*Id.* at pp. 282–283.) Plaintiffs' causes of action include no allegations of actions by the landlord separate from and in addition to the landlord's protected activity in serving a 60-day Notice to Quit.

The instant case is akin to *Birkner* and *Feldman* in that the entire basis for plaintiffs' causes of action appears to be protected activity. In their complaint, plaintiffs claim that "Shortly after learning of PLAINTIFFS' expected child in early December 2015, DEFENDANTS gave PLAINTIFFS' sixty (60) days' notice of the termination of their lease, the minimum permitted by law, on or about

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December 10, 2015. [Complaint, ¶ 28]. "DEFENDANTS' "Sixty Day Notice To Quit", the document notifying PLAINTIFFS that their lease was being terminated, did not specify any reason for the termination of PLAINTIFFS' lease. Nor did DEFENDANTS offer any explanation to PLAINTIFFS for their eviction. The true motive for which DEFENDANTS terminated PLAINTIFFS' lease was their discriminatory animus against" pregnant women, young children, families with young children. [Complaint, ¶ ¶ 29-31.] Plaintiffs' cause of action for negligence stated that "When terminating PLAINTIFFS' lease, DEFENDANTS did not use the ordinary care and skill to prevent harm to plaintiff Karen Pitts, who was pregnant at the time, and whose pregnancy was known to DEFENDANTS [Complaint, ¶45], and that "DEFENDANTS unlawfully and discriminatorily terminated PLAINTIFFS' lease, on or about December 10, 2015" when defendant served the 60-Day Notice to Quit. [Complaint, ¶ ¶ 55, 64.] Likewise, the claims for intentional and intentional infliction of emotional distress are only based on the service of the notice to quit. [Complaint, ¶¶ 73, 78.] In fact, other than serving the 60-Day Notice to Quit, plaintiffs have not identified any conduct by which defendant caused them harm.

The service of a notice to vacate, of course, constituted protected activity. (*Birkner, supra*, 156 Cal.App.4th at pp. 281–283.) Nowhere in the complaint, however, do plaintiffs point to an action by defendant that could be construed as discrimination of pregnancy or family status -- other than defendant's protected activity of serving a 60-Day Notice to vacate the apartment.

It is not relevant that some of their causes of action claimed discrimination rather than wrongful eviction. Our Supreme Court has stated that "[t]he anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's activity that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning." (*Navellier, supra*, 29 Cal.4th at p. 92.) Accordingly, in *Feldman, supra*, 160 Cal.App.4th 1467, the court held that the anti-SLAPP statute barred causes of action for retaliatory eviction, negligence, breach of the implied contract of quiet enjoyment, wrongful eviction, breach of contract, and unfair business practices, because all of these were based on the same protected activity by the landlord. *(Id.* at pp. 1475, 1484.) This principle does not change when a plaintiff alleges discrimination on the basis of disability or, as here, on familial status. (*Wallace, supra*, 196 Cal.App.4th at pp. 1188–1190.)

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Department of Fair Employment & Housing v. 1105 Alta Loma Road Apartments, LLC (2007) 154 Cal.App.4th 1273 (*DFEH*) does not require a different result. In *DFEH*, a landlord decided to remove a building from the rental market and, pursuant to the requirements of the Ellis Act (Gov. Code, § 7060 et seq.), served the building's tenants with notice that they would be required to leave within 120 days. (*Id.* at p. 1276.) Tenants who were disabled or met other criteria could remain in their apartments for up to one year, but only if they notified the landlord in writing. (*Id.* at p. 1277.) One of the tenants sent the required notice of her disability, but the landlord asked for documentation of the disability. (*Id.* at p. 1278.) The tenant provided a letter from her doctor, but the landlord was unsatisfied with the information in the letter. (*Id.* at p. 1279.) The organization representing the tenant refused to provide more documentation, and the landlord filed an unlawful detainer. (*Id.* at pp. 1279–1280.) The Department of Fair Employment and Housing filed suit against the landlord, alleging disability discrimination, and the landlord responded with an anti-SLAPP motion. (*Id.* at p. 1280.) The Court of Appeal affirmed the trial court's denial of the anti-SLAPP motion, finding that "the communications and the actual eviction itself were not the acts attacked in DFEH's complaint. Instead, the allegations of wrongdoing in DFEH's *complaint arose from Alta Loma's alleged acts of failing to accommodate Mangine's disability.*" (Id. at p. 1284, emphasis added.) The crucial distinction between the instant matter and *DFEH* is that "DFEH ... sued [the landlord] for its alleged acts in failing to make a reasonable accommodation for [the tenant's] disability." (*DFEH, supra*, 154 Cal.App.4th at p. 1285.) The protected activity was mere "evidence of [the landlord]'s alleged disability discrimination." (*Ibid.*) In the current case, by contrast, there is no distinction between the alleged discrimination and the protected activity. The protected activity of serving the notice to quit was not evidence of discrimination, but ***was the alleged act of discrimination itself.*** (See *Feldman, supra*, 160 Cal.App.4th at p. 1484 [granting a special motion to strike because "[t]he activities that allegedly breached the contract were the protected activities"].) Because the sole basis of liability asserted in plaintiffs' complaint was the service of the notice to quit – which is protected activity --, plaintiffs' cause of action arose from protected activity.

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IV. PLAINTIFFS CANNOT SHOW THEY COULD PREVAIL ON THE MERITS

Since plaintiffs' claims are based on protected pre-litigation conduct, plaintiffs have the burden to show that they could prevail on the merits. They cannot meet that burden.

A. Service of a notice to quit is absolutely protected under the litigation privilege

Generally, a publication made in a "judicial proceeding" is absolutely privileged. (C.C. § 47(b).) "The usual formulation" of the scope of the so-called "litigation privilege" is that it "applies to any communication made (a) in judicial or quasi-judicial proceedings; (b) by litigants or other participants authorized by law; (c) to achieve the objects of the litigation; and (4) having some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 C.3d 205, 212.) It is "absolute" and applies to all claims -- except for malicious prosecution. *(Id,* at 215-216.))

The service of the 60-day notice to quit is absolutely protected by the litigation privilege under Civil Code section 47, as it is a necessary step to file an unlawful detainer action. (*Feldman, supra,* 160 Cal.App.4th at 1488.) The notice to quit was clearly connected to and logically related to an unlawful detainer action under serious consideration at the time the notice was served because defendant intended to file an unlawful detainer action if plaintiff had not voluntarily quit the premises. (Rentie Dec., ¶¶ 6-7.) Since the entire complaint is based on the service of the 60-Day notice to quit, ***all causes of action are barred by the litigation privilege.***

Even assuming for the sake of argument that the claims are not barred by the litigation privilege, plaintiffs still cannot meet their burden to show that they could prevail on the merits.

B. Plaintiffs cannot prevail on their First Causes of Action for Negligence

The elements of a negligence cause of action are the existence of a legal duty of care, breach of that duty, and proximate cause resulting in injury. (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917-918.) In this case, plaintiffs allege "When terminating PLAINTIFFS' lease, DEFENDANTS did not use the ordinary care and skill to prevent harm to plaintiff Karen Pitts, who was pregnant at the time, and whose pregnancy was known to DEFENDANTS" (Complaint, ¶ 45) and, as a result, Karen Pitts suffered bodily injury "including but not limited to, preeclampsia, giving birth prematurely via caesarian section, and an inpatient hospital stay, pain and suffering, and extreme and severe mental anguish and emotional distress." (Complaint, ¶ 46.)

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A residential, non-fixed-term tenant must be given at least 60 days' notice of termination if the tenant has resided in the unit for at least one year. (Civ. C. § 1946.1(b).) Landlords need not state a reason for serving a notice—i.e., the notice to terminate may be served for any reason or no reason at all. Thus, defendant used ordinary care and skill when serving a notice to quit and defendant did not violate any duty by serving a 60-Day notice to quit.

Although plaintiff Karen Pitts claims she suffered personal injury, plaintiff cannot prove that service of the 60-Day notice caused her physical injury. Plaintiffs cannot prove a causative link between the service of the notice to quit and Karen Pitts' childbirth complications. No reasonable, credible expert will testify that service of a notice to quit will cause preeclampsia, premature birth or other medical conditions. If anything, the Complaint suggests that such complications were possible irrespective of where plaintiffs were living, as Karen Pitts had previously experienced a miscarriage.

C. Plaintiffs cannot prevail on their Second Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing

"The law implies in every contract a covenant of good faith and fair dealing, meaning that neither party will do anything which will injure the right of the other to receive the contract's benefits." (*Bushell v. JPMorgan Chase Bank, N.A.* (2013) 220 Cal.App.4th 915, 928-929.)

Plaintiffs here allege that defendant "made covenants that they would act in good faith and deal fairly with PLAINTIFFS." (Complaint, ¶ 49.) Defendant supposedly breached the covenant by "acting and failing to act as alleged herein, including but not limited to discriminating against PLAINTIFFS based on their joint pregnancy, and prematurely terminating PLAINTIFFS' lease." (Complaint, ¶ 50.)

As explained above, a landlord may serve a 60-day notice to quit without giving any reasons. Therefore, serving the 60-day notice terminating plaintiffs' tenancy did not violate the covenant of good faith and fair dealing. There is no nebulous good faith and fair dealing cause of action for terminating the tenancy of a pregnant tenant where no contractual term is specified and the termination is done in accordance with the law and proper notice procedures, as was the case here. In any event, as explained in more detail below, the 60-day notice to quit was based on legitimate and non-discriminatory reasons.

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D. Plaintiffs cannot prevail on the Causes of Action for Housing Discrimination because defendant had legitimate, non-discriminatory reasons to serve the 60-Day Notice to Quit

Plaintiffs' third cause of action is for Housing Discrimination in violation of the Fair Employment and Housing Act ["FEHA"] (Gov't Code § 12920, 12921(b), 12955) and the fourth cause of action is for Housing Discrimination in violation of the Unruh Civil Rights Act (Civil Code §§ 51, et seq., 52(a).)

Plaintiffs allege the "true motivating reason(s)" for the termination was a discriminatory animus against "women or are pregnant or expecting children," "couples who are pregnant or expecting children," "children in general, especially young children," "families with minor children, especially young children;" "families with multiple minor children, especially those with young children;" and "people with disabilities or medical conditions." (Complaint, ¶ 55.) Plaintiffs' allegations under the Unruh Civil Rights Act mirror their FEHA allegations.

FEHA, Government Code section 12955(a), makes it unlawful "[f]or the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, familial status, source of income, disability, or genetic information of that person."

The Unruh Act, Civil Code § 51(a), provides that "[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

In general, plaintiffs must prove that they are members of a protected class who have suffered injury because of alleged discrimination on the basis of membership in the protected class. (*Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 250 (9th Cir. 1997) ["The FHA [the federal equivalent to FEHA) provides a private right of action for an 'aggrieved person' subjected to 'an alleged discriminatory housing practice.'"].)

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Plaintiffs will be unable to prove housing discrimination in violation of FEHA and the Unruh Act. Plaintiffs admitted in their complaint that they lived at the subject property with a child for years with no issues, that they were pregnant twice with no issues, that defendant once noted that she hadn't known plaintiff Karen Pitts was pregnant, that they heard rumors that defendant did not like children, that they cannot identity any other tenant removed from the building for a discriminatory reasons, and they received no stated reason for their 60-Day Notice (nor was any stated reason required.)

The foregoing falls far short of establishing a housing discrimination claim, and actually indicates plaintiffs *did not* experience discrimination on the basis of family status, and have never observed any such discrimination.

Even assuming for the sake of argument that the harmless remark by Rentie that she did not know that Karen Pitts had a miscarriage and unspecified rumors and gossip were sufficient to establish a prima facie case of discrimination, plaintiffs still cannot prevail because defendant had bona fide, legitimate, non-discriminatory reasons to serve the 60-Day notice to quit. Plaintiffs engaged in extremely poor housekeeping, had caused damage to the apartment in the master bathroom by spilling water when showering in the bathtub without a shower curtain which caused the walls and floor in the master bathroom to be damaged and to disintegrate. Plaintiffs failed to inform defendant about the damage to the floor and walls so that further damage could be prevented, and indicated to the on-site manager that they would be unwilling to do so in the future. [West Dec., ¶¶ 6-11.]

Once the landlord meets the rebuttal burden of establishing a nondiscriminatory justification (i.e., that he or she would have made the same decision even absent the tenant's protected group status), the presumption of intentional discrimination disappears. (*Reeves v. Sanderson Plumbing Products, Inc., supra*, 530 US 133, 143(2000)). The burden then shifts back to the tenant to produce evidence that the landlord's proffered reason is pretextual. The tenant may successfully prove intentional discrimination either by showing that a discriminatory reason more likely motivated the landlord, or by showing that the landlord's proffered explanation is "unworthy of credence". (*Reeves v. Sanderson Plumbing Products, Inc.* 530 US at 143.) Plaintiffs are unable to do either. Generally, a defendant's particular business interest in maintaining order, complying with legal requirements, or protecting a

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business reputation or investment are recognized as sufficient to justify distinctions among tenants, customers, etc. (see Gov. C. § 12955.8(b); *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1162 [landlord's "minimum income policy" protects legitimate business interest in ensuring full and timely payment of rent; see also *In re Cox* (1970) 3 Cal.3d 205, 212, 217 [business establishments may promulgate "reasonable regulations that are rationally related to the services performed and facilities provided."]

Here, defendant served the 60-Day Notice for legitimate, non-discriminatory business reasons, in particular, to keep the subject property in order and prevent plaintiffs from causing further damage to the unit. Plaintiffs cannot prove that this reason was "pre-textual" and that defendant intended to discriminate against tenants with children or pregnant women for the simple reason that the unit was re-rented to another member of same protected class, a family with children. [Rentie Dec., ¶ 20; West Dec., ¶ 15.] Defendant rented and continues to rent to tenants who are pregnant and have children. Another unit, Unit 308, which became vacant after plaintiffs moved out, was also rented to tenants with a small child. [Rentie Dec., ¶ 20-23.] The tenants in Unit 307 had a second child while living at the subject property and are still living there. They were never served with a notice to quit. [West Dec., ¶ ¶ 14-18.]

E. Plaintiffs cannot prevail on the Fifth and Sixth Causes of Action for Intentional or Negligent Infliction of Emotional Distress

A cause of action for intentional infliction of emotional distress exists when there is (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 780; quoting *Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1609.)

"In order for conduct to be considered outrageous for the purpose of tort liability, it 'must be so extreme as to exceed all bounds of that usually tolerated in a civilized society.'" (*Moncada*, 221 Cal.App.4th at 780 (quoting *Trerice v. Blue Cross of California* (1989) 209 Cal.App.3d 878, 883).) "[T]he defendant's conduct must be intended to inflict injury or engaged in with the realization that

injury will result." (*Plotnik*, 208 Cal.App.4th at 1610.)

Plaintiffs' only evidence of "extreme" or "outrageous" conduct are (1) a remark by Rentie that she was surprised to learn that plaintiff Karen Pitts was pregnant, (2) secondhand rumors that defendant sometimes made inquiries about children, and (3) the claim that plaintiffs received a 60-Day Notice while plaintiff was pregnant (for the third time at the property.) Service of notice to quit in no way amounts to outrageous conduct not tolerated in civil society as it is a legal pre-requisite for filing an unlawful detainer and protected by the litigation privilege. In addition, defendant had bona fide, legitimate, non-discriminatory reasons to serve plaintiffs with a 60-day notice to quit.

Plaintiffs also cannot prevail on the Sixth Cause of Action for Negligent Infliction of Emotional Distress. Negligent infliction of emotional distress is *not* an independent tort. (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1071-1072.) Rather, "the *negligent* causing of emotional distress is ... the tort of *negligence* .... The traditional elements of duty, breach, causation and damages apply." (*Id.*) Unless defendant has assumed a duty to plaintiff in which emotional condition of plaintiff is an object, recovery is available only if an emotional distress arises out of defendant's breach of some other legal duty and emotional distress is proximately caused by that breach of duty; even then, with rare exceptions, breach of duty must threaten physical injury, not simply damage to property or financial interest. (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 985.)

Plaintiffs allege that the conduct of defendant in serving them with a 60-Day Notice constituted a breach of the "duty of care owed to PLAINTIFFS to protect them from foreseeable harm." (*Complaint*, ¶ 79.) However, a landlord has no duty to prevent emotional distress to his tenants. Plaintiffs cannot establish a cause of action for negligence because defendant's conduct of serving a 60-Day notice was absolutely protected under the litigation privilege and defendant had legitimate, non-discriminatory reasons for serving the 60-Day notice to quit.

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V. DEFENDANT IS ENTITLED TO ATTORNEYS' FEES AS THE PREVAILING PARTY

Code of Civil Procedure section 425.16, subdivision (c) (1) provides that the prevailing defendant is entitled to recovery his or her attorneys' fees and costs incurred in connection with the special motion to strike.

Defendant's attorneys, Slaughter, Reagan & Cole, LLP, spent 24.2 hours to analyze the complaint and consult with their clients about the special motion to strike. [Declaration of Gabriele M. Lashly, ¶ 4.] Defendant anticipates that it will take her attorneys another 5 hours to analyze plaintiff's opposition and prepare a reply, as well as another 5 hours to prepare for and attend the hearing on the special motion to strike, including travelling from counsels' office in Ventura, to the court in Los Angeles, for a total of 34.2 hours and $5,814.00 in attorneys' fees. [Declaration of Gabriele M. Lashly, ¶¶ 4 -6.] Defendant also incurred costs in connection with the motion in the amount of $60.00. [Declaration of Gabriele M. Lashly, ¶ 7.]

VI. CONCLUSION

For the reasons stated above, moving defendant respectfully requests this Court to grant the special motion to strike and award defendant her attorneys' fees in the amount of $5,874.00 as the prevailing party on the motion to strike.

DATED: February 16, 2017

SLAUGHTER, REAGAN & COLE, LLP

By: _____

William M. Slaughter
Megan C. Winter
Gabriele M. Lashly
Jonathan D. Marshall
Attorneys for Defendant,
FRIEDA RENTIE individually and
d/b/a FINANCIAL MANAGEMENT COMPANY

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DECLARATION OF GABRIELE M. LASHLY

I, Gabriele M. Lashly, hereby declare:

1. I am an attorney licensed to practice in California and an associate with Slaughter, Reagan & Cole, LLP, attorneys of record for defendant in this action. As such, I have personal knowledge of the matters stated herein and could competently testify thereto.

2. I make this declaration in support of defendant's special motion to strike (Code of Civil Procedure §425.16).

3. Megan Winter is the partner in my firm primarily responsible for handling this file and communicating with the client and carrier. I am the attorney in my office responsible for preparing the special motion to strike.

4. Ms. Winter has been practicing in California for more than 13 years and has wide experience in civil litigation. I have been practicing in California for almost 25 years and I am a certified appellate specialist with wide experience in law and motions and appeals.

5. The hourly billing rate charged in this matter is $170.00 an hour, which is below the market rate for comparable services by private counsel with the same qualifications and experience in the Los Angeles area.

6. Ms. Winter has spent 2.6 hours analyzing the complaint and consulting with the client and carrier regarding the Anti-SLAPP motion. I have spent 21.6 hours to analyze the merits of the Anti-SLAPP motion, consult with my client about the factual background and the declarations for the special motion to strike, and to research and prepare the special motion to strike, including the supporting declarations. This time does not include the time for preparing the demurrer and motion to strike which had been filed previously.

7. I anticipate that it will take me another 5 hours to analyze plaintiffs' opposition and prepare a reply, as well another 5 hours to prepare for and attend the hearing on the special motion to strike, including travelling from counsel's office in Ventura to the courthouse in Los Angeles, for a total of 34.2 hours or $5,814.00 in fees.

8. My office has also incurred $60.00 in costs in connection with the filing of the Anti-SLAPP motion.

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

Executed this 16th day of February, 2017, at Ventura, California.

Gabriele M. Lashly

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STATE OF CALIFORNIA, COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action. My business address is 625 E. Santa Clara Street, Suite 101, Ventura, California 93001.

On February 16, 2017, I served the foregoing document(s) described as: **NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE [CCP 425.16]; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF GABRIELE M. LASHLY; DECLARATION OF FRIEDA RENTIE; DECLARATION OF STEVEN WEST** on the interested parties in this action, by placing ____ the original __X__ a true copy thereof enclosed in a sealed envelope addressed as follows: SEE ATTACHED SERVICE LIST

__X__ **(BY FIRST CLASS MAIL)**___ **(BY EXPRESS MAIL)** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Ventura, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

___**(BY FACSIMILE TRANSMISSION)** On this date, I transmitted from a facsimile transmission machine in Ventura, California, whose telephone number is (805) 644-2131 the above-named document was transmitted to the interested parties herein whose facsimile transmission telephone numbers are included in the attached Service List. The above-described transmission was reported as complete without error by a transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission. A true and correct copy of the said transmission report is attached hereto and incorporated herein by this reference.

__X__ **(BY OVERNIGHT CARRIER)** I placed the above-named document in an envelope or package designated by [Golden State Overnight Carrier/UPS/Federal Express/other carrier] ("express service carrier") addressed to the parties listed on the service list herein, and caused such envelope with delivery fees paid or provided for to be deposited in a box maintained by the express service carrier. I am "readily familiar" with the firm's practice of collection and processing of correspondence and other documents for delivery by the express service carrier. It is deposited in a box maintained by the express service carrier on that same day in the ordinary course of business.

___ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office of the addressee.

__X__ **(State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

___ **(Federal)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 16, 2017, at Ventura, California.

Chris Bradley

Chris Bradley

SERVICE LIST
Pitts v. Financial Management Company, et al.
Los Angeles Superior Court Case No. BC644978

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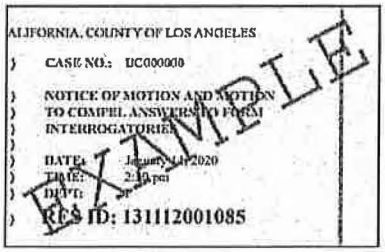

RESERVATION INFORMATION

Reservation ID:	**170210195152**
Transaction Date:	February 10, 2017
Case Number:	BC644978
Case Title:	MICHAEL PITTS ET AL VS FINANCIAL MANAGEMENT COMPANY ET AL
Party:	RENTIE FRIEDA (Defendant/Respondent)
Courthouse:	Stanley Mosk Courthouse
Department:	54
Reservation Type:	**Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion)**
Date:	3/16/2017
Time:	08:30 am

FEE INFORMATION (Fees are non-refundable)

First Paper Fee: Party asserts first paper was previously paid.

Description	Fee
Special Motion to Strike under CCP Section 425.16 (Anti-SLAPP motion)	$60.00
Total Fees:	**Receipt Number: 1170210K2855** **$60.00**

PAYMENT INFORMATION

Name on Credit Card:	William Slaughter
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