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SUPERIOR COURT OF THE STATE OF CALIFORNIA

LOS ANGELES COUNTY, WEST DISTRICT (SANTA MONICA)
[Limited Civil]

VILLAGE TRAILER PARK, INC. and **VILLAGE TRAILER PARK, LLC,** a General Partnership, doing business as **VILLAGE TRAILER PARK,** *Plaintiffs,* *vs.* **BERHANE HABTE** and **DOES 1 to 10,** inclusive, *Defendants.*	Case Number: **12U02139** ***PLAINTIFFS' OPPOSITION TO DEFENDANT'S DEMURRER TO PLAINTIFFS' FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF*** Date: September 5, 2012 Time: 8:30 a.m. Dept: G Complaint Filed: June 21, 2012 First Amended Complaint filed July 27, 2012

Comes now the Plaintiffs, Village Trailer Park, Inc. and Village Trailer Park, LLC, a General Partnership, doing business as Village Trailer Park (hereinafter "Plaintiffs") to oppose the Demurrer filed by Defendant, Berhane Habte ("HABTE") to Plaintiffs' First Amended Complaint ("FAC").

It should be noted that Plaintiffs have been prejudiced in its ability to respond to HABTE's Demurrer, as although HABTE filed his Demurrer on August 2, 2012, he failed to serve it on Plaintiffs' counsel. Plaintiffs and its counsel first learned of the filing of said Demurrer when their contract attorney appeared at the August 8, 2012, hearing on HABTE's prior Demurrer to Plaintiff's original Complaint. Additional response time was lost waiting for their attorney service to obtain a copy of the Demurrer from the Court.

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MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEMURRER

1. INTRODUCTION AND STATEMENT OF FACTS.

Plaintiffs operate Village Trailer Park, located in Santa Monica, California (the "Park"). Residents lease lots ("spaces") within the Park, for which they pay monthly space rent, utilities, and service charges. The residents own the coaches that are situated on the leased spaces.

On or about February 14, 2006, Michael Carlson ("CARLSON") purchased a 1989 Skyline trailer situated on Space A-21 in the Park (the "Premises"). CARLSON and Shanna Laumeister ("LAUMEISTER") applied and were approved for tenancy, and entered into a rental agreement which is attached as Exhibit "1" to the FAC. CARLSON and LAUMEISTER thereafter occupied the premises and the trailer situated thereon, pursuant to the terms and conditions of their written rental agreement. At the time the rental agreement was executed, CARLSON was listed on title as the "Registered Owner" of said trailer, and CARLSON is currently listed on title as the "Registered Owner" of said trailer. [FAC ¶¶ 4-5.]

At some unknown time thereafter, Defendant, Berhane Habte ("HABTE") also took possession of the premises together with CARLSON and LAUMEISTER. HABTE did not apply for tenancy or execute any rental agreement with Plaintiffs for use and occupancy of the premises, and therefore has no rights of tenancy under the *Mobilehome Residency Law (Civil Code* § 798 *et seq.*). Plaintiffs thereafter allowed HABTE to occupy the premises as an additional occupant and long-term guest of said park-approved and authorized tenants, under the terms of their rental agreement with Plaintiffs. [FAC ¶ 6.]

The park-approved and authorized tenants, CARLSON and LAUMEISTER, later relocated elsewhere, leaving HABTE in occupancy of the premises under the terms of their rental agreement with Plaintiffs, yet the park-approved and authorized tenants, CARLSON and LAUMEISTER, maintained their tenancy by continuing to remit payment of the monthly rental charges pursuant to the terms of their rental agreement, until they defaulted on April 1, 2012, by failing to pay rental charges totaling $422.19. [FAC ¶¶ 7-9.]

On or about April 7, 2012, a Combined 3 Day Notice to Pay Rent or Quit, 3 Day Notice to Perform Covenants or Quit, 60 Day Notice to Terminate Possession (3/3/60 Day Notice) describing the default, demanding that payment of the delinquent rental charges be remitted, or possession of the premises be delivered, was served at the Premises by posting a copy of the notice in a conspicuous place and by mailing

a copy of the notice to the Premises by first class mail, in accordance with *Civil Code* §§798.55(b)(1), 798.56(e)(1), and §1162 of the *Code of Civil Procedure*. A true copy of the 3/3/60 Day Notice is attached as Exhibit "2" to the FAC and a true copy of the Proof of Service is attached as Exhibit "3" thereto. The 3/3/60 Day Notice, which was directed to the park-approved homeowner, CARLSON, also referenced "All Residents In Possession," which would include HABTE and any and all other additional occupants and long-term guests of the park-approved tenants. [FAC ¶ 12.]

No monies whatsoever were tendered within the statutory three (3) day payment period, thereby terminating the tenancy for the Premises as of the date the combined 3/3/60 Notice was served. HABTE remains in possession, and although the park-approved and authorized tenants, CARLSON and LAUMEISTER, reside elsewhere, CARLSON remains in possession of the premises as well, as he has effectively deprived Plaintiffs of possession of the premises following termination of tenancy by failing to remove the trailer registered in his name from the premises, and by further failing to secure the removal of his long term guest, HABTE, from the premises. [FAC ¶ 14, 16.]

On or about June 21, 2012, Plaintiffs filed their Complaint in this action. On or about July 5, 2012, HABTE filed a demurrer to Plaintiffs Complaint. In lieu of opposing said Demurrer, Plaintiffs elected to exercise their right to amend their Complaint. The FAC was filed on July 27, 2012. HABTE has instituted the instant Demurrer on the grounds referenced in more detail below, and despite the amendment of the original Complaint, HABTE's grounds for the instant Demurrer essentially mirror those he raised previously. In the FAC, Plaintiffs have alleged that they are entitled to a judgment for possession of the premises because the park-approved and authorized tenants breached their rental agreement with Plaintiffs by failing to pay the rental charges due to Plaintiffs, and because CARLSON has further failed to restore possession of the premises to Plaintiffs, as both the trailer registered in CARLSON's name and HABTE remain in possession of the premises. [FAC ¶ 16.] It is important to note that Plaintiffs are not seeking to hold HABTE liable for any of the rental charges demanded in the default notice - **Plaintiffs are merely seeking to hold HABTE liable for damages accruing as a direct result of his unlawful holding over of the premises after the statutory sixty (60) day vacation period expired.** [FAC, page 5, lines 4-25.]

On or about August 2, 2012, HABTE filed the instant Demurrer, which, as noted above, he failed to serve on Plaintiff or their counsel.

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Plaintiffs have been informed by the Court that CARLSON'S default was entered on August 13, 2012.

2. HARTE'S DEMURRER IS WITHOUT MERIT BECAUSE THE NOTICE WAS ADDRESSED TO AND SERVED UPON THE APPROVED HOMEOWNER THAT IS ON TITLE TO THE TRAILER SITUATED ON THE PREMISES, PER THE REQUIREMENTS OF THE MOBILEHOME RESIDENCY LAW.

HARTE's has demurred to the FAC on the ground that the 3/3/60 Day Notice served by Plaintiffs does not comply with the requirements of the *MRL* because it was not addressed to him, or served upon him, personally. HARTE also claims that the FAC is devoid of any "statement" as to why he should be sued for unlawful detainer "based on notices that were addressed to others." A review of the relevant provisions of the *MRL* and the allegations in the FAC establish the lack of merit in HARTE's contentions.

With respect to the grounds for naming HARTE as a defendant in this action, in Paragraphs 4-5 of the FAC, Plaintiffs have clearly alleged that the only park-approved and authorized tenants of the Park are CARLSON and LAUMEISTER, and that CARLSON is the Registered Owner of the trailer situated upon the Premises. In Paragraph 6 of the FAC, Plaintiffs additionally alleged that HARTE took possession of the Premises together with the park-approved tenants, without applying for tenancy or executing any rental agreement with Plaintiff for the Premises, and that he therefore has no rights of tenancy under the *MRL.* Plaintiffs further alleged in Paragraph 6 of the FAC that HABTE was allowed to occupy the premises as an additional occupant and long-term guest of said tenants under the terms of their rental agreement.

HARTE's contention that the FAC is devoid of allegations to explain why he was named as a defendant in this action is further refuted by Paragraphs 14 and 16 of the FAC, wherein Plaintiffs alleged that HARTE has wrongfully remained in possession of the Premises, as a guest of the park-approved homeowners, after the statutory sixty (60) day termination period, following termination of the homeowner's ' tenancy. HARTE's continued occupancy of the premises is a legally sufficient basis to name HARTE as a party defendant in the instant unlawful detainer action, which has been instituted for the primary purpose of regaining possession of Plaintiffs' real property, as *Code of Civil Procedure* §1164 provides that tenants and subtenants "in actual occupancy of the premises when the complaint is filed" are proper party defendants to an unlawful detainer proceeding. The reasons for naming HARTE as a party to this action are further apparent from the Prayer of the FAC, which contains separate relief requests for CARLSON, the park-approved homeowner with rights of tenancy, and HARTE, a long-term guest without rights of tenancy. The Prayer specifically limits the

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damages sought against HARTE to "holdover" damages occasioned after the date that the statutory sixty (60) day vacation period expired, and does not include damages sought against CARLSON under the rental agreement. [FAC, page 5, lines 4-25.]

As HARTE has no tenancy rights in the Park, and he did not "magically" acquire rights of tenancy by simply moving into and occupying the Premises with CARLSON and LAUMEISTER, it was not necessary for Plaintiff to name him personally in the 3/3/60 Day Notice. In fact, if Plaintiffs had named HARTE personally in the 3/3/60 Day Notice, HARTE could have claimed that Plaintiffs were treating him like an approved tenant, and such an act could have been used to impose an implied landlord-tenant relationship between the parties. Nor did HARTE have a right to tender payment of the delinquent rental charges, as accepting a rental payment from a non-tenant of the Park clearly also create an implied rental relationship between the parties.

Maintaining the distinction between park-approved tenants and additional occupants without rights of tenancy is extremely important, as tenancies in mobilehome communities are unique in nature, in that they are governed by an entirely different statutory scheme than other types of tenancies. This scheme is known as the *Mobilehome Residency Law*, *Civil Code* §§ 798 *et seq.* ("*MRL*"). This unique relationship arises because owners of mobilehome and trailers lease their respective spaces from the park owner, but own the mobilehome or trailer that is situated on the leased homesite. Such tenancies are unique, as they can only be terminated for cause.[1] The residents are vested with rights essentially equivalent to a defeasible fee title to a mobilehome site.[2] Owners of mobilehomes in a mobilehome park who do not default on their tenancy obligations may keep their unit in place for an undetermined period of time, and are free to sell their units in place or replace their units with newer mobilehomes. Their heirs can even inherit the mobilehome, apply to establish residency and keep

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[1] *Adamson Companies v. City of Malibu* (C.D.Cal. 1994) 854 F.Supp. 1476, 1481("... if the tenant decides to live elsewhere, he does not move the coach, but rather sells it "in place." The buyer, then, becomes the new tenant. The California Mobile Home Residency Law, not challenged here, forbids the termination of a mobile home tenancy without cause, as well as the assessment of transfer fees, and requires that the park owner accept any buyer of the coach as a tenant so long as the purchaser has the ability to pay the rent. Cal.Civ.Code § 798 *et seq*. As a consequence of the tenant's guaranteed occupancy and his freedom to sell without penalty, any economic power the park owner might potentially have over the tenant is significantly lessened.")

[2] *Rancho Santa Paula Mobilehome Park, Ltd. v. Evans* (1994) 26 Cal.App.4th 1139, 1146, 32 Cal.Rptr.2d 464, 468 ("... the MRL, in order to protect the mobilehome owner, prohibits the park management from evicting a homeowner or refusing to renew a lease except for specified reasons. Thus the MRL gives the homeowner a potential qualified life estate in the park. . ."). See, *Civil Code* §798.55(a): ("The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.")

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the mobilehome in place after the death of the approved homeowner. *Civil Code* § 798.78.[3] Moreover, the task of terminating a mobilehome tenancy can be very burdensome based on the special protections afforded to mobilehome owners under the *MRL*. *Civil Code* § 798.55(a).[4] No mobilehome tenancy may be terminated, ever, except for specified reasons defined by statute. *Civil Code* § 798.55(b).[5] Thus, it is important for mobilehome park owners/landlords, such as Plaintiffs, to pre-screen and approve potential residents before granting said individuals long-term rights of tenancy in the Park.

Park management has the right of prior approval of a prospective purchaser of a mobilehome that will remain in the park, before the close of the sale. *Civil Code* §798.74, and once a prospective purchaser has been approved for tenancy, escrow must receive either a fully executed copy of the rental agreement, or written confirmation that the Park management and the prospective purchaser have agreed to the terms and conditions of a rental agreement, before escrow can close to complete the sale. *Civil Code* §798.75.[6] The *MRL* also sets

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[3] *Civil Code* §798.78 ("(a) An heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death shall have the right to sell the mobilehome to a third party in accordance with the provisions of this article . . .¶(c) Prior to the sale of a mobilehome by an heir, joint tenant, or personal representative of the estate, that individual may replace the existing mobilehome with another mobilehome, either new or used, or repair the existing mobilehome so that the mobilehome to be sold complies with health and safety standards provided in Sections 18550, 18552, and 18605 of the *Health and Safety Code*, and the regulations established thereunder. . . ¶(d) In the event the heir, joint tenant, or personal representative of the estate desires to establish a tenancy in the park, that individual shall comply with those provisions of this article which identify the requirements for a prospective purchaser of a mobilehome that remains in the park.")

[4] *Schmidt v. Superior Court* (1989) 48 Cal.3d 370, 377 256 Cal. Rptr. 750 ("Beginning in the late 1960's, the Legislature undertook significant statutory regulation of both mobilehomes and mobilehome parks, addressing a number of concerns that arose out of the unique features of the mobilehome park phenomenon. (See, e.g., Stats. 1967, ch. 1056, § 2, p. 2664; Stats. 1973, ch. 785, § 1, p. 1404; Stats. 1977, ch. 845, § 1, p. 2538.) In 1975, the Legislature amended former section 789.10 to protect the interests of mobilehome owners by placing limitations on a mobilehome park owner's discretion to disapprove the continued leasing of spaces in the mobilehome park to purchasers of mobilehomes located in the park. (Stats. 1975, ch. 146, § 3, pp. 280-281.)")

[5] *Civil Code* §798.55 (b) (1):("The management may not terminate or refuse to renew a tenancy, except for a reason specified in this article and upon the giving of written notice to the homeowner, . . . to sell or remove, at the homeowner's election, . . . "); *Civil Code* §798.56 ("(a) Failure of the homeowner or resident to comply with a local ordinance or state law or regulation . . . within a reasonable time after the homeowner receives a notice of noncompliance from the appropriate governmental agency. ¶(b) Conduct by the homeowner or resident, upon the park premises, that constitutes a substantial annoyance . . . ¶(c)(1) Conviction of the homeowner or resident for prostitution, for a violation of subdivision (d) of Section 243, paragraph (2) of subdivision (a), or subdivision (b), of Section 245, Section 288, or Section 451, of the Penal Code, or a felony controlled substance offense, . . . ¶(d) Failure of the homeowner or resident to comply with a reasonable rule or regulation . . . ¶(e)(1) Nonpayment of rent,. . . ¶(f) Condemnation of the park. . . (g) Change of use of the park . . . " Even when tenancy is terminated, the defaulting resident has the right to sell the mobilehome in the park.")

[6] *Civil Code* §798.74(a) ("The management may require the right of prior approval of a purchaser of a mobilehome that will remain in the park and that the selling homeowner or his or her agent give notice of the sale to the management before the close of the sale..."); and *Civil Code* §798.75 (a) ("An escrow, sale, or transfer agreement involving a mobilehome located in a park at the time of the sale, where the mobilehome is to remain in the park, shall contain a copy of either a fully executed rental agreement or a statement signed by the park's management and the prospective homeowner that the parties have agreed to the terms and conditions of a rental agreement.").

forth the requirements for rental agreements that are offered for mobilehome spaces, and provides that rental agreements must be in writing. *Civil Code* § 798.15.[7]

The *MRL* specifically defines those persons who have tenancy rights in mobilehome parks. A "Homeowner" is a person who has a tenancy in a mobilehome park under a rental agreement. *Civil Code* §798.9. A "Resident" is a homeowner or other person who lawfully occupies a mobilehome. *Civil Code* §798.11. Moreover, under *Civil Code* §798.34, guests of approved residents are not granted rights of tenancy.

The *MRL* further specifically addresses what procedures must be followed to terminate a mobilehome tenancy and what individuals are required to receive a notice of default and any notice of termination of tenancy related thereto before eviction proceedings may be instituted. *Civil Code* §798.55 provides, in relevant part:

> (b) (1) The management may not terminate or refuse to renew a tenancy, **except** for a reason specified in this article and **upon the giving of written notice to the homeowner**, in the manner prescribed by Section 1162 of the Code of Civil Procedure, to sell or remove, at the homeowner's election, the mobilehome from the park within a period of not less than 60 days, which period **shall** be specified in the notice. **A copy of this notice shall be sent to the legal owner, as defined in Section 18005.8 of the Health and Safety Code, each junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, and the registered owner of the mobilehome, if other than the homeowner**, by United States mail within 10 days after notice to the homeowner. The copy may be sent by regular mail or by certified or registered mail with return receipt requested, at the option of the management. **[Emphasis added]**.

The procedures for terminating a tenancy for nonpayment of rental charges is governed by *Civil Code* §798.56, which provides as follows:

> §798.56. A tenancy **shall** be terminated by the management **only** for one or more of the following reasons:
>
> (e) (1) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided that the amount due has been unpaid for a period of at least five days from its due date, and provided that **the homeowner shall be given a three-day written notice subsequent to that five-day period to pay the amount due or to vacate the tenancy**. For purposes of this subdivision, the five-day period does not include the date the payment is due. **The three-day written notice shall be given to the homeowner** in the manner prescribed by Section 1162 of the Code of Civil Procedure. **A copy of this notice shall be sent to the persons**

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[7] *Civil Code* §798.15. ("The rental agreement shall be in writing and shall contain, in addition to the provisions otherwise required by law to be included, all of the following: (a) The term of the tenancy and the rent therefor. (b) The rules and regulations of the park. (c) A copy of the text of this chapter shall be attached as an exhibit and shall be incorporated into the rental agreement by reference... (d) A provision specifying that (1) it is the responsibility of the management to provide and maintain physical improvements in the common facilities in good working order and condition ... (e) A description of the physical improvements to be provided the homeowner during his or her tenancy. (f) A provision listing those services which will be provided at the time the rental agreement is executed and will continue to be offered for the term of tenancy and the fees, if any, to be charged for those services. (g) A provision stating that management may charge a reasonable fee for services relating to the maintenance of the land and premises upon which a mobilehome is situated in the event the homeowner fails to maintain the land or premises in accordance with the rules and regulations... (h) All other provisions governing the tenancy.")

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> **or entities specified in subdivision (b) of Section 798.55 within 10 days after notice is delivered to the homeowner. . . . [Emphasis added].**

It is clear from the Legislature's use of the words **"shall"** and **"only"** in the first paragraph of §798.56, and the use of the words **"shall"** and **"except"** in §798.55(b), that the Legislature intended the provisions of §798.56 to **exclusively** define the grounds and procedures for terminating a tenancy in a mobilehome park.

The provisions of the *MRL* supersede general laws, including those which would have application but for the more specific treatment accorded by the Legislature. *De Anza Santa Cruz Mobile Estates Homeowners Assn. v. De Anza Santa Cruz Mobile Estates* (2001) 94 Cal.App.4th 890, 114 Cal.Rptr.2d 708, held:

> . . . it is a generally accepted rule of statutory construction that a general statute must bow to a more specific statute addressing the same subject. (See, Schmidt v. Superior Court (1989) 48 Cal.3d 370, 383, 256 Cal.Rptr. 750, 769 P.2d 932 ["Under traditional principles of statutory interpretation, there can be no question but that the later enacted and more specific provisions of section 798.76 relating to adults-only rules in mobilehome parks would prevail over the more general provisions of the Unruh Act."]; accord, Miller v. Superior Court (1999) 21 Cal.4th 883, 895, 89 Cal.Rptr.2d 834, 986 P.2d 170 [specific statute controls even if another, " ' "standing alone, would be broad enough to include the subject to which the more particular provision relates." ' "].) *Id.*, 94 Cal.App.4th 890, 911-912 [114 Cal.Rptr.2d 708, 724-725].[8]

In *Schmidt v. Superior Court* (1989) 48 Cal.3d 370, 256 Cal.Rptr. 750, 769 P.2d 932, the California Supreme Court held that the Legislature, in enacting the Unruh Act, did not intend to overrule the provisions of *Civil Code* §798.76, which permitted age discrimination in mobile home park leasing, stating:

> "Both the Mobilehome Residency Law and the Unruh Act are, however, statutory enactments of equal legislative dignity, and while the Unruh Act unquestionably embodies a fundamental public policy in this state, the Unruh Act does not, by virtue of the importance of its general policy alone, necessarily prevail over other inconsistent statutes. The Legislature is free, of course, to repeal section 798.76 in whole or in part, or to subordinate the provisions of section 798.76 to any other legislation, including the Unruh Act. But the decision whether the broad policy of the Unruh Act should supersede the provisions of [section] 798.76 is a matter of legislative, not judicial, prerogative. Our inquiry must be whether the Legislature has decreed that the provisions of the Unruh Act are to displace section 798.76. As we shall see, the Legislature clearly has not done so.'" *Id* at p. 382-383; 256 Cal.Rptr. 750, at 757-758; 769 P.2d 932, 939-940.

Thus, the provisions of the *MRL* governing the procedures for terminating a mobilehome tenancy, and for instituting an eviction action to remove any persons wrongfully holding over after termination of tenancy, supercede the general provisions of landlord-tenant law, and Plaintiffs were only statutorily required to serve the "homeowner" with the 3/3/60 Day Notice, as well as any other legal owners, registered owners, or junior

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[8] See also, *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 82 Cal.Rptr.2d 368] (stating that the "legislative regulation of vehicle rental agreements is more specific than the general anti-discrimination provisions of [the UCRA] ... [and the UCRA] specifically provides that it must not be construed to confer any right or privilege on a person which is otherwise conditioned or limited by law" (*Id.* at 1504, 82 Cal.Rptr.2d 368).

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lienholders reflected on title to the trailer (of which there are none.) The *MRL* does not require Plaintiffs to address a 3/3/60 Day Notice to, or serve a 3/3/60 Day Notice upon, any persons other than the "homeowner," such as HABTE, who do not have rights of tenancy, and are merely residing at the Premises under the "homeowner's" rental agreement as an additional resident, guest, or caregiver of the "homeowner."

It is clear that the California Legislature intended that the service of a tenancy termination notice on the "homeowner" was sufficient to secure the removal of all persons residing at the Premises, if the default was not timely cured, for if it were otherwise, the Legislature could have easily have used the word "residents" (defined in *Civil Code* §798.11 as "a homeowner or other person who lawfully occupies a mobilehome") instead of, or along with, the word "homeowner" (defined in *Civil Code* §798.9 as "a person who has a tenancy in a mobilehome park under a rental agreement") when designating, in *Civil Code §§*798.55(b)(1) and 798.56(e)(1), who must receive notice of a default and a tenancy termination notice.[9] In essence, the Legislature intended that "service on one [the homeowner] is service on all" persons residing at the Premises.

Although not statutorily required, Plaintiffs did include a reference to "All Other Residents in Possession" in its 3/3/60 Day Notice, which was included as an added measure to give HABTE, and any other persons who may be occupying the Premises, with notice of the approved-homeowner's default, as well as the need to vacate the premises within sixty (60) days if the default was not cured by the "homeowner." There is no question that, at a minimum, HABTE would have actual knowledge of the issuance of the 3/3/60 Day Notice by way of the copy of the 3/3/60 Day Notice which was posted as the homesite, given that Defendant is the only person who was actually physically occupying the mobilehome at the time the 3/3/60 Day Notice was served, through the present date.[10] In light of the foregoing, HABTE's demurrer to should be overruled.

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[9] Many provisions of the *MRL* specifically refer to the rights of "residents" and/or "guests." *See*, §§798.23; 798.24; 798.25(b); 798.26; 798.34; 798.36(b)(1)-(4); 798.42; 798.43.1; 798.44; 798.50; 798.51; and 798.52.

[10] As noted previously, although CARLSON resides elsewhere, he effectively remains in possession of the Premises by depriving Plaintiffs of possession following termination of his tenancy, by failing to remove his trailer from the Premises, and by further failing to secure the removal of HABTE from the premises. [FAC ¶ 14, 16.] An unlawful detainer action may be pursued against CARLSON under the reasoning applied in *Cohen v. Superior Court* (1967) 248 Cal.App. 2d 551, 56 Cal.Rptr. 813, which held that a holdover tenancy existed with respect to a vacating lessee, even though the lessee turned over the keys to the premises and removed some of its equipment and personal property, if the failure to remove the remaining equipment and personal property effectively deprived the landlord of possession of the premises. *See also*, *Mattas Motors Inc. V. Heritage Homes of Nebraska, Inc.* (1987 Colo. App.) 749 P.2d 458, which found that a holdover tenancy existed due to the lessee's failure to remove a modular home on the leased premises. Here, the trailer owned by the lessee (CARLSON), and the lessee's guest (HABTE) remain in possession of the Premises, and Plaintiffs cannot regain actual possession of the Premises until both the trailer and HABTE are removed from the Premises.

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3. HABTE'S DEMURRER ON THE GROUND THAT THE 3/3/60 DAY NOTICE FAILS TO COMPLY WITH THE SPECIFICITY REQUIREMENTS OF *CIVIL CODE* § 798.57 IS WITHOUT MERIT, AS SAID NOTICE COMPLIES WITH THE REQUIREMENTS OF BOTH *CIVIL CODE* § 798.57 AND *CIVIL CODE* § 798.56(e)(1).

HABTE has additionally demurred to the FAC on the ground that the 3/3/60 Day Notice served by Plaintiffs does not comply with the requirements of the *Civil Code* §798.57 of the *MRL*, which provides:

> §798.57. The management shall set forth in a notice of termination, the reason relied upon for the termination with specific facts to permit determination of the date, place, witnesses, and circumstances concerning that reason. Neither reference to the section number or a subdivision thereof, nor a recital of the language of this article will constitute compliance with this section.

Although not cited by HABTE is his demurrer, additional specificity and format requirements for mobilehome tenant default notices are set forth in *Civil Code* §798.56(e)(1), which provides as follows:

> §798.56. A tenancy shall be terminated by the management only for one or more of the following reasons:
>
> (e) (1) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided that the amount due has been unpaid for a period of at least five days from its due date, and provided that **the homeowner shall be given a three-day written notice subsequent to that five-day period to pay the amount due or to vacate the tenancy**. For purposes of this subdivision, the five-day period does not include the date the payment is due. **The three-day written notice shall be given to the homeowner** in the manner prescribed by Section 1162 of the Code of Civil Procedure. A copy of this notice shall be sent to the persons or entities specified in subdivision (b) of Section 798.55 within 10 days after notice is delivered to the homeowner. If the homeowner cures the default, the notice need not be sent. The notice may be given at the same time as the 60 days' notice required for termination of the tenancy. A three-day notice given pursuant to this subdivision shall contain the following provisions printed in at least 12-point boldface type at the top of the notice, with the appropriate number written in the blank:
> "Warning: This notice is the (insert number) three-day notice for nonpayment of rent, utility charges, or other reasonable incidental services that has been served upon you in the last 12 months. Pursuant to Civil Code Section 798.56 (e) (5), if you have been given a three-day notice to either pay rent, utility charges, or other reasonable incidental services or to vacate your tenancy on three or more occasions within a 12-month period, management is not required to give you a further three-day period to pay rent or vacate the tenancy before your tenancy can be terminated."
> **[Emphasis added]**

However, one only has to look at the combined 3/3/60 Notice and the provisions of the *MRL* governing termination of tenancy to see that this ground for demurrer is wholly without any legal merit. In accordance with the requirements of *Civil Code* §§798.56(e)(1) and 798.57, the combined 3/3/60 Notice was prepared by Plaintiffs in the specified statutory format, which included the required warning language. It clearly reflected

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that under the rental agreement for the Premises, the monthly rental rate was $360.00; rent in the amount of $360.00 was unpaid for the billing month of April 2012; charges for electricity in the amount of $35.49 and trash in the amount of $26.70 were owed for said period; and a total sum of $422.19 was owed and must be paid to cure the default. Thus, the specificity requirements of *Civil Code* §798.56(e)(1) have been satisfied.

The combined 3/3/60 Notice further reflected that it was being served due to non-payment of the April 2012 rental charges, that said sums were evidenced by the Park's books and records, and known to the Park managers, and that the failure to pay said rental charges within the three (3) day payment period would result in termination of tenancy, thereby satisfying the statutory specificity requirements of *Civil Code* §798.57.

Finally, as noted above, the 3/3/60 Notice was addressed to, and properly served upon, approved homeowner with rights of tenancy, as required by *Civil Code* §798.56(e)(1). As also noted previously, although not statutorily required, the notice additionally referenced "All Residents in Possession," as an added measure to provide notice to any other persons residing at the premises of the default, and the need to vacate within sixty (60) days if the default was not timely cured. Thus, HABTE's demurrer should be overruled.

4. HABTE'S DEMURRER IS WITHOUT MERIT BECAUSE TERMINATION OF THE APPROVED HOMEOWNER'S TENANCY WAS AUTHORIZED UNDER THE SANTA MONICA RENT CONTROL CHARTER AMENDMENT AND THE *MRL*.

HABTE'S demurrer is further premised upon his claim that Plaintiffs have failed to comply with the termination of tenancy requirements of § 1806(a) of the *Santa Monica Rent Control Charter Amendment,* which authorizes termination of tenancy under the following circumstances:

> "(1) The tenant has failed to pay the rent to which the landlord is entitled under the rental housing agreement and this Article."

As stated above, *Civil Code* §798.56(e)(1)) of the *MRL* also authorizes termination of tenancy due to "nonpayment of rent, utility charges, or reasonable incidental service charges . . ."

The FAC alleges that the approved "homeowners" with rights of "tenancy" failed to tender their required monthly rental payment for the month of April 2012, and further failed to timely remit the delinquent rental payment after being served with the required 3/3/60 Day Notice which was prepared and served in accordance with the requirements of *Civil Code* §798.56(e)(1) and §798.57. Said failures constitute sufficient grounds for termination of the "tenancy" for the Premises under both § 1806(a) of the *Santa Monica Rent Control Charter Amendment* and *Civil Code* §798.56(e)(1).

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As established above, HABTE was not a "homeowner" as defined in the *MRL*, and he did not have any "tenancy" in the Park to terminate. In fact, he did not even have any "rental housing agreement" with Plaintiff, and therefore was not contractually required to pay any "rent" to the Park, nor did he have any legal right to cure any default of the approved homeowners. Thus, he has no standing to allege any purported violation of the tenancy termination provisions of the *Santa Monica Rent Control Charter Amendment* or the *MRL*.

5. THE DEMURRER IS WITHOUT MERIT BECAUSE ANCILLARY ISSUES REGARDING WHETHER A COPY OF THE MRL WAS ATTACHED TO THE HOMEOWNERS RENTAL AGREEMENT OR THE HOMEOWNERS RECEIVED A COPY OF SAID AGREEMENT AFTER ITS EXECUTION MAY NOT BE ADJUDICATED IN THIS SUMMARY UNLAWFUL DETAINER PROCEEDING.

HABTE alleges that no cause of action is stated because a copy of the *MRL* was not attached to the rental agreement that was attached to the Complaint as Exhibit 1, and because there is no allegation in the Complaint that a fully executed copy of the rental agreement was returned to the homeowner within 15 business days after Park management received the rental agreement signed by the homeowners. Clearly, these ancillary issues are not appropriate grounds for demurring to the FAC filed in this non-payment of rent eviction action.

Under California law, unlawful detainer is a summary proceeding designed to preserve the peace by promoting the speedy settlement of disputes over possession by legal means, rather than by self-help. The issues which may be adjudicated in such a proceeding are limited to those which relate to possession of the premises. Such proceedings cannot be extended by implication to any persons other than the real occupants of the property in possession, and cannot be used for any other purpose. *Klein v. Loeffler* (1929) 96 Cal. App. 383, 274 P 373; *Seidell v. Anglo-California Trust Co.* (1942) 55 Cal. App. 2d 913, 132 P2d 12; *Staudigl v Harper* (1946) 76 Cal. App. 2d 439, 173 P2d 343. Issues extrinsic to the possessory right are generally excluded, even though they arise out of the same subject matter of the action. *Lakeside Park Asso. v. Keithly* (1941) 43 Cal. App. 2d 418, 110 P2d 1055; *D'Amico v. Riedel* (1949) 95 Cal. App. 2d 6, 212 P2d 52. Thus, the only issues which may be raised in this action are those which establish or rebut a claim for possession of the premises as a result of the failure of the approved-homeowners to pay their April 2012 rental payment to Plaintiff. Any other claims or disputes between Plaintiffs, the approved-homeowners and/or HABTE regarding other tenancy and non-tenancy related issues must be excluded from this action.

Clearly, issues regarding whether Plaintiffs complied with their legal obligations under the *MRL* in February of 2006 with respect to the offering of the rental agreement for the Premises entered with homeowners

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CARLSON and LAUMEISTER are clearly outside of the scope of this summary unlawful detainer proceeding, as they have nothing to do with the issues of possession arising from the failure to remit payment of the April 2012 rental charges. This is especially true with respect to HABTE, who does not even have legal standing to raise such issues, as he was not even involved in the tenancy application process, he was not a signatory to the rental agreement, and the events at issue took place more than six (6) years ago.

It is additionally noteworthy that the provisions of the *MRL* cited by HABTE, *Civil Code* §§798.15(c) and 798.16(b), pertain to the requirements for entering into a mobilehome tenancy, not to terminating a mobilehome tenancy once it is established. Moreover, there is nothing in the *MRL* which provides that any alleged failure to comply with said requirements constitutes a bar to any suit for unlawful detainer arising from the tenant's default and/or that the park owner is required to plead compliance with said requirements in its unlawful detainer complaint. Furthermore, even if Plaintiffs had failed to comply with their legal obligations under the *MRL* regarding the offering, execution, and return of the approved-homeowners' rental agreement, which Plaintiffs expressly deny, such conduct would merely provide CARLSON and LAUMEISTER with grounds for instituting suit against Plaintiffs for damages and/or to recover the statutory award authorized under *Civil Code* §798.86 for each purported "willful violation" of the *MRL*. However, any such claim would be time barred by the three-year statute of limitations under *Code of Civil Procedure* §338 for bringing an action upon a liability created by a statute, as the events alleged by HABTE occurred in February 2006.

It also is noteworthy that when the approved homeowners, CARLSON and LAUMEISTER, entered into the rental agreement with the Park, they acknowledged, in writing, their receipt of a copy of the *MRL* (along with receipt of the Park Rules and Regulations and other documents) at ¶31 of the rental agreement (See, Exhibit 1 attached to the Complaint). Thus, there is no factual basis whatsoever for HABTE contending otherwise. HABTE's demurrer is therefore without merit, and should be overruled.

6. HABTE'S FILING OF A NOTICE OF RELATED CASE DOES NOT PROVIDE A BASIS FOR DEMURRING TO THE FAC.

HABTE has also demurred to the FAC on the ground that even if he had been served with a tenancy termination notice, "the Complaint states no ultimate facts sufficient to counter [his] defense as alleged in Case No. BC 483237, a related case which Defendant asked this Court to declare related to this one by filing concurrently with his Demurrer a Notice of Related Case(s) . . . " and since Plaintiffs did not file any objection

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to said Notice, Plaintiffs are barred from proceeding further with this action.

Although HABTE filed a Notice of Related Case, which Plaintiffs did not respond to, this does not mean that this summary unlawful detainer case is automatically stayed or consolidated with the designated related civil case, or that this action may be concluded by the mere filing of demurrer. It is apparent from reading *Rule* 3.300 *et seq.* of the *California Rules of Court* that the procedures set forth therein were implemented in an effort to achieve judicial economy. Said procedures merely require a party to notify the Court when an action is related to another action involving the same parties, claims, questions of law and fact, claims against title to, or damages to, the same property, actions arising from the same or substantially same transactions, incidents or events, and matters that are likely for other reasons to require substantial duplication of judicial resources if heard by different judges. [*Rule* 3.300(a)-(b).] The filing of such a notice merely results in giving notice to the Court that the related matters may be transferred to or from a particular court or department, to be heard by the same judge. A judicial officer then needs to decide whether the cases must be ordered related and assigned to the same department, per the procedures set forth in *Rule* 3.300(h).

Absent the issuance of a court order consolidating the cases, in order to obtain a stay of this summary unlawful detainer proceeding and/or consolidation of the designated actions for trial, HABTE must file a motion seeking such relief. If and when such a stay request or consolidation motion is filed, Plaintiffs intend to vehemently object thereto, on the grounds that such relief would completely defeat the summary nature of the unlawful detainer remedy, and would constitute a "counterclaim" by the defendant, which is expressly prohibited in an unlawful detainer action. *Knowles v. Robinson* (1963) 60 C2d 620, 626-627, 36 CR 33, 37; The Rutter Group, *Landlord Tenant Law* § 8:406. Indeed, filing a cross-complaint in a summary unlawful detainer action may be sanctionable conduct under *Code of Civil Procedure* §128.7. Although HABTE has exercised his right to seek affirmative relief in a separate civil action, his efforts to prevent Plaintiffs from maintaining the instant summary unlawful detainer action would have precisely the same destructive effect as filing an authorized cross-complaint in this proceeding.

In essence, HABTE is attempting to have this unlawful detainer action adjudicated within the context of his pending civil action. This is not permitted under California law. (See, *Childs v. Eltinge* (1973) 29 Cal.App.3d 843, 105 Cal.Rptr. 864, wherein the appellate court held that "... except perhaps by mutual consent of the parties, an unlawful detainer action may not generally be tried together with other causes." Id. at p. 853,

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105 Cal.Rptr. 864, 870. The *Childs* court further held that a lessee did not to have the right to refuse to pay disputed rent, and then file and serve an action for declaratory relief, thereby preventing the lessor from employing the summary remedies which the lessor is entitled under the unlawful detainer statutes, because "[i]f such were the rule, it would be within the power of the lessee to render nugatory the statutorily prescribed unlawful detainer procedures." *Id.* at p. 853-854, 105 Cal.Rptr. 864, 871-872.)

California law recognizes the right of a property owner to be able to recover possession of real property without delay, and the summary unlawful detainer procedures were created in recognition of this right. Courts are required to give unlawful detainer actions priority over most other types of civil actions. Code of Civil Procedure §1179(a); CEB, *California Landlord Tenant Law Practice*, 2nd Ed., §9.6 and §9.7. A mobilehome park owner is entitled to utilize these summary eviction procedures when a mobilehome tenancy is terminated pursuant to the requirements of *Civil Code* §798.55 and §798.56. However, *Civil Code* §798.55 prevented Plaintiffs from instituting an unlawful detainer action against Defendants for a period of sixty (60) days after a notice of termination of tenancy was served. HABTE took advantage of this stay period by lodging a "preemptive strike" against Plaintiffs on April 20, 2012, just thirteen (13) days into the stay period, in a calculated effort to block Plaintiffs from pursuing its summary eviction rights under the *MRL* upon expiration of the stay period. If defaulting mobilehome tenants (or, in this case, their guests!) are permitted to use this sixty (60) day stay period to file a civil lawsuit to prevent a park owner from maintaining its summary eviction action to regain possession of its real property, then the unlawful detainer remedies authorized under the *MRL* would be rendered meaningless. This clearly was not the intent of the California Legislature.

It is acknowledged that there will be claims and defenses in the instant unlawful detainer action which will likely be dispositive of some of the claims and defenses alleged in HABTE's Civil Complaint, such as whether Plaintiffs' lawfully terminated the rental agreement for the Premises under the provisions of the *MRL*, whether HABTE was the victim of unlawful harassment and/or retaliation, and whether the legal notices were properly served in accordance with the provisions of the *MRL*. Given that said action is a summary proceeding, this case will proceed to trial well before the civil action is even at issue. However, HABTE's rights will be adequately protected, as Plaintiffs must prove that legally sufficient grounds for termination of tenancy exist, as mobilehome tenancies can only be terminated "for cause." In the event that Plaintiffs establish the elements of their prima facie case, the burden of proof will shift to HABTE to provide proof in support of any denied

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allegations, and to present any affirmative defenses which would defeat Plaintiffs' right to recovery. The Rutter Group, *California Practice Guide: Landlord-Tenant*, §8.7, §§9.202-9.206, §§9.236-9.241, and §9.243. HABTE therefore has an opportunity to argue, as defenses to this action, that his conduct has a legitimate purpose and is constitutionally protected, and that Plaintiffs have purportedly engaged in wrongful acts of harassment, retaliation, and constructive eviction against him.

7. HABTE'S DEMURRER ON THE GROUND OF UNCERTAINTY IS WITHOUT MERIT.

HABTE's final ground for demurrer is that for all of the reasons he previously stated as grounds for demurrer, the FAC is uncertain, and that this uncertainty renders him unable to prepare are a defense to the allegations stated therein. This contention is without merit, for all of the reasons explained in detail above.

While HABTE feigns ignorance regarding why he was named in the FAC, it is clear from the allegations of the FAC that HABTE was named in this action because he held over in possession of the Premises after termination of the Park-approved homeowner's tenancy. Had he timely vacated the Premises, Plaintiffs would not have named HABTE in this action, and they would not be entitled to seek any judgment against him. However, by electing to wrongfully hold over in possession of the Premises after the sixty (60) day termination period provided for in the *MRL*, HABTE not only subjected himself to suit for unlawful detainer, but also became liable for all holdover damages accruing during his period of wrongful detention.

8. CONCLUSION.

FOR THE FOREGOING REASONS, Plaintiffs respectfully request that this Court deny HABTE'S Demurrer to the First Amended Complaint, in its entirety, and that said Defendant be required to file an answer to the First Amended Complaint within a period of five (5) days.

Dated: August 20, 2012

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PROOF OF SERVICE

CASE NAME: Village Trailer Park, etc . vs. Habte
CASE NUMBER: 12U02139

I am employed by the law firm of DOWDALL LAW OFFICES, A.P.C. located at 284 North Glassell Street, Orange, California 92866. I am over the age of 18 and not a party to this action.

I am readily familiar with DOWDALL LAW OFFICES' practice for collection and processing of documents for mailing with the United States Postal Service, and that practice is that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

On this date I caused to be served the within: **PLAINTIFFS' OPPOSITION TO DEFENDANT'S DEMURRER TO PLAINTIFFS' FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action, delivering a true and correct copy to the following:

Berhane Habte
2930 Colorado Ave., Ste. A-21
Santa Monica, CA 90404

[XX] (**By First Class Mail**) I caused each envelope with postage fully prepaid, to be placed in the United States Mail at Orange, California to the above named person on August 21, 2012, to the address listed above

[ ] **(By Overnight Mail)** I caused each envelope with postage fully prepaid, to be sent by Federal Express on _____, 2012, to the address listed above; tracking number

[ ] (**By Facsimile**) I caused each document to be sent by Automatic Telecopier on _____, 2012, I transmitted the above-referenced documents to interested parties, via facsimile transmission to the facsimile numbers listed above. The sending facsimile machine telephone number was: (714) . The transmission was reported as complete (all pages were received) and without error. The attached facsimile transmission reports were properly issued by the transmitting facsimile machine.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this day, August 21, 2012, at Orange, California.

Susan L. Tovar