Recommended Tentative:

1. Motion: Dismiss

Defendants' motion to dismiss the action as to Dolores Gutierrez, Ana Bertha Naranjo, Raul Naranjo, and Juan Carlos Sanchez is granted.

2. Motion: Enter Judgment of Dismissals

Defendants motion to enter judgment of dismissals is denied as untimely served since the proof of service did not account for the manner of service.

3. Motion for Summary Judgment or SAI

Defendants request for judicial notice is granted. Defendants' objections to evidence are overruled. Based on the available evidence, the court finds the Notice is admissible evidence. Therefore, defendants have failed to show an absence of evidence on this element. The motion for summary judgment or adjudication of issues is denied.

Parties/Attorneys:

Plaintiffs	Alma Alfaro and numerous other current and former residents (plaintiffs) of Nomad Village Mobilehome Park (hereinafter "the Park"), a mobilehome park located in Santa Barbara, CA	Allen, Semelsberger & Kaelin James Allen Jessica Taylor David Semelsberger Sarcout Zangana
Defendant	Waterhouse Management Corp. Lazy Landing LLP	James Ballantine

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MEMORANDUM

There is a lengthy litigation history between the owners and management of Nomad Village Mobile Home Park ("the Park") and the mobile homeowners living in the Park ("Homeowners"). Two related actions are currently pending. The instant motions involve only one of the actions: *Alfaro v. Waterhouse Management Corp*. (Case No. 17CV02185). [1]

On May 17, 2017, Homeowners filed their complaint asserting claims arising from defendants' alleged failure to maintain the Park and violations of the Mobilehome Residency Law. Homeowners seek damages and equitable relief under alternative legal theories arising from substandard living conditions at the Park.

At the December 19, 2023 CMC, the parties presented the court with a Joint Case Management Order in which they stipulated to extend the 5-year limitation for bringing these matters to trial to December 31, 2024. The court signed the order in open court. Trial was set for November 4, 2024. At the October 29, 2024 CMC, the court vacated the November 4, 2024 trial and reset it for March 25, 2025. Mr. Ballantine represented that a written Stipulation and Order so extending the five-year statute to March 31, 2025 had been prepared. No such stipulation appears in the record. The court directs the parties to submit a properly executed stipulation.

1. Motion: Dismiss

This matter was filed on May 5, 2017, by some 70 plaintiffs, including Dolores Gutierrez, Ana Bertha Naranjo, Raul Naranjo, and Juan Carlos Sanchez. At the time, they were represented by Allen, Semelsberger & Kaelin. On February 8, 2019, the court granted counsel's motion to be relieved as counsel for Ana Bertha Naranjo and Raul Naranjo and on July 5, 2019, the court granted counsel's motion to be relieved as counsel for Dolores Gutierrez and Juan Carlos Sanchez on the basis there had been a breakdown in communication. These plaintiffs have been self-represented since then.

[1]The other case is *Waterhouse v. Hamrick et al*. (Case No. 17CV05698.) This malicious prosecution action was filed on December 18, 2017, by Lazy Landing and Waterhouse against Homeowners (including Debra Hamrick). Specifically, the second amended complaint was filed on June 5, 2019, alleging (1) wrongful use/malicious prosecution of civil proceedings based on Case No. 1468773: *Hamrick v. Board of Supervisors*; (2) wrongful use of administrative proceedings based on the challenge to the 2016 rent increase; (3) wrongful use of administrative proceeding based on the challenge to the 2017 rent increase; and (4) wrongful use of administrative proceeding based on the complaint made to the Public Utilities Commission. On May 29, 2024, the court issued its order dismissing the case as to Debra Hamrick for failure to bring it to trial under Code of Civil Procedure sections 583.310 and 583.360. That order is on appeal.

Defendant now moves to dismiss these defendants for failure to bring the case to trial within five years as required by Code of Civil Procedure section 583.310. The motion was timely served by mail. There is no opposition.

An action must be brought to trial within 5 years after it is commenced against the defendant. If not, dismissal is mandatory on motion of any party, or on the court's own motion. (Code Civ. Proc. §§ 583.310, 583.360.) The 5-year statute begins to run when the action is "commenced against the defendant." It continues to run until the action is "brought to trial." (Code Civ. Proc. §§ 583.310.)

Following the outbreak of COVID-19 in March 2020, the Judicial Council adopted an emergency rule which tolled the deadlines to bring a civil action to trial under sections 583.310 and 583.320. Emergency rule 10, effective April 6, 2020, provides in pertinent part as follows: "(a) ... [¶] Notwithstanding any other law, including Code of Civil Procedure section 583.310, for all civil actions filed on or before April 6, 2020, the time in which to bring the action to trial is extended by six months for a total time of five years and six months." (Cal. Rules of Court, appendix I, emergency rule 10.)[1] The five-year period begins to run when the initial complaint is filed in the action. (*Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 723; *State ex rel. Sills v. Gharib-Danesh* (2023) 88 Cal.App.5th 824, 841.)

The time to commence trial began to run on May 5, 2017, when the complaint was filed in this case. Pursuant to the Code of Civil Procedure 583.310 and Emergency Rule 10, the period expired November 5, 2022, a Saturday. (www.timeanddate.com, last accessed 2/7/2025.) If the last day falls on a weekend or court holiday, the 5-year period runs until the next court day pursuant to Code of Civil Procedure § 12a. (*Holland v. Dave Altman's R.V. Ctr.* (1990) 222 Cal.App.3d 477, 480, fn. 4.) Time was thus extended to November 7, 2022. In addition, any period during which the court's jurisdiction to try the case was suspended was suspended. (Code Civ. Proc., § 583.340, subd. (a).) Here, the case was on appeal from 07/19/2021 to 10/10/2022. This is a period of 458 days. While defendant failed to indicate whether the matter was stayed on appeal either by the trial court or the appellate court, it would make no difference. Even excluding this period from the calculation, the self-represented parties would have had to bring the matter to trial by February 8, 2024. That date has passed.

The parties may extend the 5-year period by either written stipulation, or oral agreement entered into in open court and recorded in the minutes or a transcript of the proceedings. (Code Civ. Proc. § 583.330.) Although some plaintiffs have stipulated to extend the period, these plaintiffs have not.

The motion to dismiss the action as to Dolores Gutierrez, Ana Bertha Naranjo, Raul Naranjo, and Juan Carlos Sanchez is granted.

2. Motion: Enter Judgment of Dismissals

On August 30, 2024, Defendants' counsel served identical Code of Civil Procedure section 998 Offers entitled "Defendants' Offer to Compromise [C.C.P. § 998]" on each of the remaining Plaintiffs represented by Plaintiffs' counsel in both related actions. On September 30, 2024, Plaintiffs' counsel provided eleven signed acceptances of the § 998 Offers.[2] By the terms of the acceptance, the accepting plaintiff agreed as follows:

> "Plaintiff, within l0 days of acceptance of this offer, will file a request for dismissal with prejudice of this action in its entirety against all Defendants; Defendants within 10 days of Plaintiff's acceptance of this offer will file a Request for Dismissal of Related Case Number 17CV5698, ("Related Action") with prejudice as to Plaintiff."
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> Complicating matters, however, the agreement stated: "Plaintiff and Defendants will agree to a mutual release, in the form of the Agreement for Mutual Dismissals and Releases attached hereto . . ."

None of the accepting plaintiffs signed the Agreement for Mutual Dismissals and Releases, which each provided: "Each of the Parties agrees to file dismissals with prejudice of the Lawsuit as to the other Party *within ten (10) Court days of delivery of a fully executed version of this Agreement to the other Party*."

Defendants move to dismiss the eleven named plaintiffs who have accepted settlement offers pursuant to Code of Civil Procedure section 998. The motion was not timely served on plaintiffs' counsel. The proof of service is dated January 24, 2025. To be timely, the motion must have been served at least 16 court days prior to the hearing (Code Civ. Proc., § 1005, subd. (b)), which is January 24, 2025.[3] Moreover, that period is extended by the manner of service. Since mailing addresses are provided, presumably the notices were mailed. Thus, the notice period is extended by 5 calendar days. (Code Civ. Proc., §1005, subd. (b).) Since the service did not account for the manner of service, the motion must be denied as untimely even though the motion is unopposed.

The motion to enter judgment of dismissals is denied as untimely served.

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[2] The following plaintiffs signed acceptances: Marycarmen Diaz, Ricardo Gerardo Diaz, Mary Elizabeth Elinore Lopez, Thomas William Lopez, Dara V. Mitchum, David L. Mitchum, Lorena Perez, Stephen Nicholas Schmitter, Pedro Segovia, Rosa Segovia, and Diana Triana.

[3] February 12, 2025, is a court holiday [Lincoln's Birthday], as is February 17, 2025 [President's Day].

3. Motion: Summary Judgment or Summary Adjudication of Issues

a. Request for Judicial Notice

Defendants requests the court take judicial notice of the following:

- The filing and existence of Plaintiffs' Second Amended Complaint, filed herein on September 30, 2020;
- Memorandum from Assembly Committee on Judiciary Analysis re: AB 4012, the legislative history regarding the Mobilehome Residency Law, Cal. Civ. Code § 798, et seq., including Cal. Civ. Code § 798.84.

As there is no opposition to this request, the court grants it.

b. Objections to Evidence

In reply, defendants assert four objections to the declaration of attorney Adrian Paris. Objection No. 1 is purportedly to Paris's authentication of the attached deposition of Arthur Allen. The objection, however, is to the content of the evidence given in deposition rather than its authentication. The objection is thus overruled. Objection Nos. 2 and 3 are to Paris's representations that the court has already ruled on the issues presented by this motion. In ruling on the motion, the court need only rule on those evidentiary objections that it deems material to disposition of the motion. (Code Civ. Proc. § 437c, subd. (q).) The court finds these matters to be immaterial to the disposition of the motion. Objection No. 4 is to attorney Paris's authentication of Mr. Allen's responses to form interrogatories. Again, the objection should be to the content of the interrogatory, not its authentication. The objections are overruled.

c. Second Amended Complaint

The operative pleading is the second amended complaint. It alleges that the defendants have failed to maintain the mobilehome park as follows: (1) utilities including sewer, water lines, electrical system, drainage system, gas lines; (2) infrastructure and common areas including streets, swimming pool, jacuzzi, clubhouse, laundry room, landscaping, restroom, playground; (3) security including lighting. In addition, plaintiffs allege that management is not responsive to complaints made by residents, fails to fulfill its obligations when an owner attempts to sell its home, makes unauthorized entries into mobilehome spaces, and discriminates, retaliates and harasses residents who have asserted their rights. Plaintiffs allege that as a result of managements inattention, crime has occurred in the Park, including selling drugs. The SAC alleges the following causes of action: (1) nuisance; (2) breach of contract; (3) breach of the covenant of good faith and fair dealing; (4) intentional interference with property rights; (5) negligence; (6) breach

of statutes; (7) breach of warranty of habitability; (8) breach of the covenant of quiet enjoyment; (9) breach of unfair competition law; (10) declaratory relief; and (11) unlawful retaliation.

The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party must show that the undisputed facts, when applied to the issues framed by the pleadings, entitle the moving party to judgment. (*Juge v. County of Sacramento* (1993) 12 Cal.App.4th 59, 66.) The moving party's evidence must be directed to the claims or defenses raised in the pleadings. (*Keniston v. American Nat'l Ins. Co*. (1973) 31 Cal.App.3d 803, 812.) The pleadings therefore determine what issues are material in a summary judgment motion.

Moreover, defendant can obtain summary judgment by showing that an essential element of plaintiff's claim cannot be established. Defendant does so by presenting evidence that plaintiff "does not possess and cannot reasonably obtain, needed evidence." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 854.)

d. Analysis

Here, defendants assert that plaintiffs cannot prove compliance with the notice requirements of the Mobilehome Residency Law ("MRL"), Civil Code Section 798 et seq. In California, all mobilehome tenancies are governed by the MRL. (*Greening v. Johnson* (1997) 53 Cal.App.4th 1223, 1226 ("[The MRL] extensively regulates the landlord-tenant relationship between mobilehome park owners and residents."). Civil Code section 798.84 is part of the MRL and provides before any action may be brought against the management of a mobilehome park for allegedly failing to maintain the park, the management must be notified in writing of the basis of the claim and the relief requested. Specifically, section 798.84 provides:

> "(a) No action based upon the management's alleged failure to maintain the physical improvements in the common facilities in good working order or condition or alleged reduction of service may be commenced by a homeowner unless the management has been given at least 30 days' prior notice of the intention to commence the action.
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> (b) The notice shall be in writing, signed by the homeowner or homeowners making the allegations, and shall notify the management of the basis of the claim, the specific allegations, and the remedies requested. A notice by one homeowner shall be deemed to be sufficient notice of the specific allegation to the management of the park by all of the homeowners in the park.
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> * * *

> (d) For purposes of this section, management shall be deemed to be notified of an alleged failure to maintain the physical improvements in the common facilities in good working order or condition or of an alleged reduction of services upon substantial compliance by the homeowner or homeowners with the provisions of subdivisions (b) and (c), or when management has been notified of the alleged failure to maintain or the alleged reduction of services by a state or local agency."

Plaintiffs allege compliance with this notice requirement in paragraph 16 of the SAC and attach a copy of the notice ("Notice") to the SAC as Exhibit A. The Notice, dated January 11, 2017, informed defendants of the problems residents are experiencing with the sewer, water, electrical, and gas systems in the park, as well as the problems with specific common areas that are not safely managed or maintained. The Notice is signed by Park resident Tony Allen. On January 5, 2018, the court (Judge Maxwell) found the Notice survived defendants' demurrer that had asserted it was deficient because it failed to identify specific dates, times, and locations for each failed condition or problem, and it failed to identify the name or space number of the homeowner making the allegations. Judge Maxwell held "there is nothing in Section 798.84 that requires that level of detail." (Paris Decl., Exh. B.)[4]

Defendants now assert that plaintiffs have no evidentiary basis for admitting the Notice into evidence to prove satisfactory compliance with subdivision (a), nor is there evidence that defendants were notified by a regulatory agency of the existence of the park conditions alleged by plaintiffs, as is permitted by subdivision (d). In other words, defendants positions the Notice requirement as an element of each cause of action (see Motion, pp. 10-11[5]) and assert that because plaintiffs cannot prove compliance, they cannot establish an essential element of their claim. Such a showing shifts the evidentiary burden to plaintiff to raise a triable issue of fact as to that element of the cause of action. (Code Civ. Proc. § 437c, subd. (p)(2).) Usually, the absence of evidence consists of admissions by plaintiff following sufficient discovery to the effect that plaintiff has discovered nothing to support an essential element of the cause of action. (See *Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at 855; *Union Bank v. Sup.Ct. (Demetry)* (1995) 31 Cal.App.4th 573, 590.) Here, however, defendant argues that the evidence is *inadmissible* at trial, which is usually challenged by motion in limine,[6] not summary judgment or adjudication of issues.

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[4] There is nothing in the record that suggests Judge Maxwell considered the issue raised here, e.g., whether plaintiffs have sufficient evidence to admit the Notice into evidence. Judge Staffel later reaffirmed Judge Maxwell's ruling; he also did not consider the issue raised here. The court thus rejects plaintiffs' argument that this motion is a motion for reconsideration.

[5] In addition, defendants have raised the failure to properly comply with the pre-filing requirements of Civil Code section 798.84 as a defense. (See Answer, 1st Affirmative Defense.)

[6] A motion in limine is a motion "at the threshold" of trial to exclude evidence deemed inadmissible and prejudicial by the moving party. (*People v. Morris* (1991) 53 Cal.3d 152, 188 (disapproved on other grounds by *People v.*

Defendants' primary argument is that Tony Allen (who is known to both parties as Arthur Anthony Allen) cannot authenticate this Notice. They assert that Allen testified that while he signed the Notice, he did not prepare the January 11, 2017 letter (Evidence in Support of Motion, Ex. 1 Allen Deposition, 167: 17-22), that he did not provide any information contained in the letter (Evidence in Support of Motion, Ex. 1, Allen Deposition, 168: 13-20), and that he never had any communications with any homeowner or resident of the Park about the contents of the January 11, 2017 letter (Evidence in Support of Motion, Ex. 1, Allen Deposition, 173: 10-13). They conclude: "Plaintiffs have no evidentiary basis for admitting the January 11, 2017, letter into evidence at trial based on the deposition testimony given in this case, and the mandatory Prefiling letter, on which the Plaintiffs' action is based, the "January 11, 2017 letter", on which the Second Amended Complaint is based, cannot be authenticated." (Motion, p. 24-28.)

Defendants have not provided legal analysis in support of their argument that the Notice cannot be authenticated. This alone is reason to deny the motion. "[California Rules of Court] Rule 3.1113 rests on a policy-based allocation of resources, preventing the trial court from being cast as a tacit advocate for the moving party's theories by freeing it from any obligation to comb the record and the law for factual and legal support that a party has failed to identify or provide." (*Quantum Cooking Concepts, Inc. v. LV Assocs., Inc.* (2011) 197 Cal. App. 4th 927, 934; *Trinkle v. California State Lottery* (2003) 105 Cal.App.4th 1401, 1413 ["unless a party's brief contains a legal argument with citation of authorities on the point made, the court may treat it as waived and pass on it without consideration"].)

For completeness, however, the court considers the following rules regarding authenticity. Before a writing can be considered credible evidence, its genuineness must be established according to legal standards. (*McAllister v. George* (1977) 73 Cal.App.3d 258, 262, "Authentication" means either:

- the introduction of evidence sufficient to sustain a finding that the writing is what the proponent claims it is; or
- "the establishment of such facts by any other means provided by law" (e.g., by stipulation or admissions).

(Evid. C. § 1400 (emphasis added); *People v. Goldsmith* (2014) 59 Cal.4th 258, 266-267; *Jacobson v. Gourley* (2000) 83 Cal.App.4th 1331, 1334; *People v. Smith* (2009) 179 CA4th 986, 1001.)

Witness testimony or other evidence may be used to authenticate a writing when an objection to its authenticity is raised. (See *People v. Smith* (2009) 179

Stansbury (1995) 9 Cal.4th 824, 830, fn. 1); *FMC Corp. v. Plaisted & Companies* (1998) 61 Cal.App.4th 1132, 1168.)

Cal.App.4th 986, 1001-1002—documents authenticated by circumstantial evidence, content and location.) The party offering the writing has the burden of offering sufficient evidence of its authenticity to sustain a finding of fact to that effect. (Evid. C. § 403, subd. (a)(3).) The judge alone determines whether there is sufficient evidence to sustain a finding of authenticity. [Evid. C. §§ 403, 1400; *Fakhoury v. Magner* (1972) 25 Cal.App.3d 58, 65.) As long as the proponent's evidence would support a finding of authenticity, the writing is admissible. The fact conflicting inferences can be drawn regarding authenticity goes to its weight as evidence, not its admissibility. (*McAllister v. George* (1977) 73 Cal.App.3d 258, 261-263.) If there is sufficient evidence to support court's finding of authentication, "the authenticity of the document becomes a question of fact for the trier of fact." (Evid. C. § 1400, Law Rev. Comm'n Comment; *McAllister v. George* (1977) 73 Cal.App.3d 258, 262.)

Here, the Allen deposition confirms that Tony Allen "doesn't recall" making any written complaint to any defendant about anything related to the park. (Evidence in Support of Motion, Ex. 1 Allen Deposition, p. 117, ll. 22-25.) However, he confirmed that it was his signature on the Notice (*Id.,* p. 167, ll. 8-18), he read it before he signed it (*Id.,* p. 168, ll. 1-2), that he understood it to be a letter that has to go to management prior to an action for failure to maintain (Paris Decl., Exh. A, Allen Deposition, p. 169, ll. 5-18; 171, ll. 8-13); that he hadn't read it in six-and-a-half years, and he doesn't have any recollection of providing any information contained in the letter. (Evidence in Support of Motion, Ex. 1 Allen Deposition., p. 168, ll. 17-20.)[7] This is sufficient for admissibility.

In any event, it's unclear the homeowner who signed the notice is required to have personal knowledge of the letter's contents for it to be admissible. The letter does not have independent evidentiary value since its not being introduced to prove the park failed to maintain the property. Instead, it is being introduced for the nonhearsay purpose of proving that notice was given. With that understanding, the homeowner, e.g., Tony, need only confirm he signed the letter and that it was sent (to the best of his knowledge). Requiring knowledge of the evidentiary allegations in the letter is arguably a red herring.

[7] In addition, Allen submitted sworn interrogatory responses verifying his knowledge of the conditions contained in the Notice. (Paris Decl., Exhibit D, 12:10-15—" I am further informed and believed that Defendants created and maintained a nuisance on their property and breached their duties to Plaintiffs by substantially failing to provide and maintain the Park's common areas, facilities, services, and physical improvements in good working order and condition and by reducing services. Defendants' failure in this respect is outlined more fully in the Notice of Intention To Commence Actions, served on Defendants on or about January 13, 2017.") However, the responding party may not use its own interrogatory responses in its own favor. (Code Civ. Proc., § 2030.410; see also *Great American Ins. Cos. v. Gordon Trucking, Inc*. (2008) 165 Cal.App.4th 445, 450—trial court did not abuse its discretion in sustaining plaintiff's objection to defendant's use of its own interrogatory responses as evidence supporting its statement of undisputed facts.) The court nevertheless finds that even after excluding this evidence, there remains sufficient evidence to support authentication of the Notice of Intent.

Based on the available evidence, the court finds the Notice is admissible evidence. Therefore, defendants have failed to show an absence of evidence on this element. The motion for summary judgment or adjudication of issues is denied.