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February 10, 2014

Honorable Paul R. Haerle, Presiding Justice,
Honorable Steven A. Brick, Associate Justice, and
Honorable James A. Richman, Associate Justice
California Court of Appeal
First Appellate District, Division Two
350 McAllister Street
San Francisco, CA 94102

Re: ***REQUEST FOR PUBLICATION OF OPINION***
Moriarty v. Laramar Management Corporation.
Appeal No. A137608 (District One, Division Two)

Dear Justices of the Court of Appeal;

Pursuant to CRC 8.1120(a), Respondent John Moriarty requests that the Court certify for publication its opinion in in *Moriarty v. Laramar Management Corporation*, Case No. A137608. The opinion merits publication under CRC 8.1105(c)(3), (4), (6), and (7).

I represent the Plaintiff, John Moriarty, in his suit against his previous landlord, Laramar Management Corporation. I have practiced primarily in the area of landlord-tenant law during my 10-year legal career. I believe publication of the *Moriarty v. Laramar Management* case will greatly assist tenant and landlord attorneys in distinguishing actions that are validly subject to anti-SLAPP motions from those that do not arise from protected activity. Furthermore, publication of *Moriarty v. Laramar Management* can greatly aid the Legislature as it clearly illustrates the unintended negative impact of California's anti-SLAPP statute on its constituents.

California Rule of Court 8.1105 sets forth the standards for certification of an opinion for publication. *Moriarty v. Laramar Managment* meets several of these standards in that it modifies, explains, and/or criticizes with reasons given, an existing rule of law (Rule 8.1105(c)(3)); advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule (Rule 8.1105(c)(4)); involves a legal issue of continuing public interest (Rule 8.1105(c)(6)); and makes a significant contribution to legal literature by reviewing the judicial history of cases involving Code of Civil Procedure §425.15 in the area of landlord-tenant law ((Rule 8.1120(c)(7).)

CRC 8.1105(c)(4)- Advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule.

The goal of California's anti-SLAPP statute is to deter the "chilling" effect of SLAPP suits upon the public's ability to "petition for the redress of grievances" - which includes the cost put forth to defend such suits. Section 425.16 (a) states, "The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process." However, in practice, Defendants property owners in landlord/tenant disputes have begun an abusive practice of routinely bringing motions under the anti-SLAPP statute in an abuse of the judicial process – solely seeking to deter Plaintiffs with meritorious claims from litigation and forcing undue delay through meritless appeals such as this matter. My colleagues and I are all too familiar with this practice as we face this issue on a daily basis.

This court agrees with other tenant advocates and I that anti-SLAPP motions to strike are used by wolves in sheep's clothing that bring these suits under the guise that their Constitutional Rights are being infringed. The opinion in *Moriarty v. Laramar Management* clearly clarifies the effect of the anti-SLAPP statute as well as criticizes what it has evolved into. This court states in the first paragraph of its opinion:

"Another appeal in an anti-SLAPP case. Another appeal by a defendant whose anti-SLAPP motion failed below. Another appeal that, assuming it has no merit, will result in an inordinate delay of the plaintiff's case and cause him to incur more unnecessary attorney fees."

My office is aware of many circumstances where a tenant receives an Unlawful Detainer Complaint at some point during the duration of his tenancy. When tenants file suit after receiving such a notice, defendants frequently respond with a SLAPP motion to strike (Code of Civil Procedure §425.16). The threat of defending against a SLAPP motion, which is expensive and could also result in an attorney's fee award if the motion is granted, discourages many tenants from pursuing valid claims that they have against their landlords. Further, defending these motions is used as a delaying tactic for Defendants as litigating these special motions to strike can take months and even years. Here, my office filed a complaint against Laramar Management on May 21, 2012. Typically, our cases conclude within a year of the complaint being filed per the State mandated goals to meet due process requirements. However, Mr. Moriarty's case has been held in limbo for over 20 months and will likely not have his rights vindicated for well over two years. Tenant attorneys- most with small practices- are then forced to litigate these summary-judgment-like motions at an early stage of the litigation with little to no discovery completed and with limited resources adding further undue burden to their representation.

It is necessary to publish this option to both further interpret California's anti-SLAPP statute and aid in possible future reform of the statute by emphasizing the Court's recognition of the abuse of process ensuing under this law.

CRC 8.1105(c)(6)–The decision involves legal issues of continuing public interest.

The number of published decisions in the past decade which concern the application of the litigation privilege to actions based upon local rent and eviction control laws by way of anti-SLAPP motions demonstrate a continuing public interest in the legal issues addressed in this case. The distinction

between protected communications which form the basis of a cause of action from those which merely precede or trigger the cause of action, appears to be a matter of confusion for practitioners. This case adds needed clarification regarding the limits of Code of Civil Procedure section 425.16 motions.

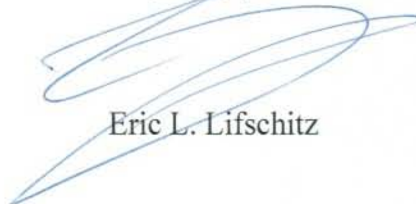
Further, in enacting the anti-SLAPP statute, the Legislature acknowledges that a continuing public interest is "to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process." (Code of Civil Procedure section 426.16(a).) Here, the continuing public interest is exactly the same- to encourage participation in matters of public significance, i.e. vindicating a tenant's right to sue for his landlord's continued harassment and uninhabitable living conditions. This participation should not be chilled through the abuse of bringing anti-SLAPP motions to strike against these tenants.

CRC 8.1105(c)(7)–The decision makes a significant contribution to legal literature by reviewing the judicial history of the anti-SLAPP and litigation privilege statutes.

Moriarty v. Laramar Management Corporation provides a review of recent cases delineating the boundaries of Code of Civil Procedure section 425.16. It discusses the growing body of cases which analyze the difference between activity arising out of protected activity, and those in which the gravamen of the cause of action does not arise from such activity. This review will assist practitioners in determining when protected activity is *insufficient* to support an anti-SLAPP action. Hopefully, it will help to curtail the filing of baseless anti-SLAPP actions both here in San Francisco and across the state.

For all of the foregoing reasons, Respondent John Moriarty respectfully request that the Court's opinion in *Moriarty v. Laramar Management Corporation* be certified for publication.

Very truly yours,



Eric L. Lifschitz

CERTIFICATE OF SERVICE
Moriarty v. Laramar Management Corporation, et al.
Court of Appeal-First Appellate District-Division Two
Appeal No. A137608

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 345 Franklin Street, San Francisco, CA 94102.

On February 10, 2014, I served the following document:

REQUEST FOR PUBLICATION OF OPINION

On all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Curtis F. Dowling, Esq. Dowling & Marquez, LLP 703 Market Street, Suite 1610 San Francisco, CA 94103 ***Counsel for Laramar Management Corp***	William F. Horsey, Esq. Michael K. Johnson, Esq. Christoper J. Nevis, Esq. Lewis Brisbois Bisgaard and Smith 333 Bush Street, Suite 1100 San Francisco, CA 94104 ***Counsel for 2363 Van Ness Ave LLC and Laramar Management Corp***
Patrick J. Torsney, Esq. Law Offices Of Baker & Associates 655 North Central Ave, Ste. 2100 Glendale, CA 91203 ***Counsel for 2363 Van Ness Ave LLC and Laramar Management Corp***	

XX **MAIL (C.C.P. § 1013a, 2015.5)**: I caused such envelope to be deposited in the mail, with postage thereon fully prepaid, addressed to the addressee(s) designated.

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

Dated: February 10, 2014

Thomas Farrell
Office Manager / Paralegal