

1 Andrew S. Mansfield (SB No. 174556)  
45121 Ukiah St.  
2 P.O. Box 2402  
Mendocino, CA 95460  
3 707-937-0820 / FAX 707-937-0834

4 Attorney for Plaintiff Mary Geddry

5  
6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO  
7 TEN-MILE BRANCH  
8

9 MARY GEDDRY, ) UNLIMITED  
10 Plaintiff, ) Case No.: SCTM CVPO 02 88145  
11 vs. ) **OPPOSITION OF PLAINTIFF MARY**  
12 DON IVERSEN, DEE IVERSEN, RON ) **GEDDRY TO MOTION TO STRIKE**  
13 IVERSEN, MARLENE IVERSEN, JOHN ) **PORTIONS OF FIRST AMENDED**  
14 IVERSEN, MARK KALINA and BARBARA ) **COMPLAINT**  
15 KALINA, ) **DEMAND FOR JURY TRIAL**  
16 Defendants )  
17

18 **I. INTRODUCTION**

19 Don Iversen, Dee Iversen and John Iversen (three of seven defendants in this action) have  
20 filed a *second* motion to strike certain portions of a complaint filed by Ms. Geddry (in this case,  
21 the First Amended Complaint). Ron Iversen, Marlene Iversen, Mark Kalina and Barbara Kalina  
22 have all filed timely answers to the First Amended Complaint. This repeated motion to strike  
23 filed by these defendants appears to be nothing more than a delaying tactic.

24 California Code of Civil Procedure § 425.10 requires that Ms. Geddry have filed a  
25 statement of facts constituting the cause of action in ordinary and concise language. This she has

1 done. The pleading requirements in California are liberal and attorneys and judges need no  
2 longer struggle over the distinction between “ultimate facts,” “evidence,” and “conclusions” in  
3 complaints. It is sufficient that ultimate facts exist. Even if there is evidentiary matter or legal  
4 conclusions in a pleading, it can be disregarded as “surplusage.”

## 6 **II. PROCEDURAL HISTORY**

7 Ms. Geddry filed her verified complaint against Don, Dee, John, Ron and Marlane  
8 Iversen on June 7, 2002. The five defendants retained two law firms to represent them. Ron and  
9 Marlane (the parents of the confessed dog shooter, Don Iversen) are represented by Alvord &  
10 Ewing in Lakeport. Don, his wife Dee, and his brother John are represented by Petersen Law  
11 Offices in Fort Bragg. As a result of motions to strike and demurrers filed by all five defendants,  
12 Ms. Geddry amended her complaint and filed a First Amended Complaint on July 7, 2002.

13 In addition to the original five defendants, Mendocino County Sheriff and Animal  
14 Control reports, as well as other investigatory work, revealed that Mark and Barbara Kalina  
15 conspired in the planning and execution of the killing of Ms. Geddry’s dog and the other violent  
16 torts committed against her. Mark and Barbara Kalina were neighbors of Ms. Geddry and are  
17 friends of the accused Iversen family. In fact, since this litigation was commenced Mark and  
18 Barbara Kalina have rented a house on the same family compound on which Ron, Marlane, Don  
19 and Dee Iversen live.

20 Mark and Barbara Kalina are represented by the law firm of Mitchell, Brisso, Delaney &  
21 Vrieze in Eureka California. On August 21, 2002 the Kalinas filed a verified Answer responding  
22 to all ninety-three paragraphs of the First Amended Complaint. Mark and Barbara Kalina filed  
23 the appropriate verification.

1 Also on August 21, 2002, County Counsel for the County of Mendocino filed a General  
2 Demurrer on behalf of Mark Kalina alone. This opposition responds to that general demurrer  
3 which is only on behalf of Mark Kalina.

4 Eight days later, the law firm of Mitchell, Brisso, Delaney & Vrieze associated with the  
5 County Counsel's office as co-counsel for defendant Mark Kalina. Barbara Kalina, of course,  
6 remains represented only by Mitchell, Brisso, Delaney & Vrieze.

7 In the meantime, the responses taken by counsel for Ron and Marlene Iversen and Don,  
8 Dee and John Iversen have diverged. Ron and Marlene Iversen filed a verified Answer on  
9 August 21, 2002 in response to the First Amended Complaint.

### 10 11 **III. ARGUMENT**

12 As with demurrers, motions to strike are disfavored. The policy of the law is to construe  
13 pleadings liberally with a view to substantial justice. Instead, defendants Don, Dee and John  
14 Iversen slow this case's progress towards trial with a motion concerning trivial, technical  
15 objections.

16 Don, Dee and John Iversen begin their legal argument by citing California Code of Civil  
17 Procedure § 425.10(a)(1) for the proposition that "only ultimate facts" may be plead in a  
18 complaint. First, there is no subsection **(a)(1)** in this code section. Second, subsection (a), which  
19 does exist, states only that a complaint shall contain "a statement of the facts constituting the  
20 cause of action, in ordinary and concise language." In addition, a supposed holding from *Green*  
21 *v. Palmer*, and 1860 Supreme Court case, is quoted on page 5 at lines 4-7. Defendants fail to  
22 inform the Court that the cited language comes from a concurring opinion and not from the body  
23 of the decision itself. Other cases cited in support of Don, Dee and John Iversen's argument date  
24 from 1897 and 1952. California has experienced substantial reform in pleading since those  
25 dates.

1 Ms. Geddry points to this lack of care taken in presenting the argument for the motion to  
2 strike portions of the First Amended Complaint to illustrate her belief that these three defendants  
3 simply desired more time to answer the complaint and hope, by legal sleight-of-hand, to perhaps  
4 strike a few of the ultimate facts plead.

5 In reality, the distinction between “ultimate facts” and “evidentiary” matters and even  
6 “legal conclusions” is of diminishing importance. California courts are increasingly liberal in  
7 their attitude toward pleading – in some cases approximating the notice-pleading standards of  
8 federal courts. One recent case held that “the distinction is not at all clear [between ultimate  
9 facts and evidentiary pleading] and involves at most a matter of degree.” It continued, “what is  
10 important is that the complaint as a whole contain sufficient facts to apprise the defendant of the  
11 basis upon which the plaintiff is seeking relief.” *Perkins v. Superior Court* (1981) 117 CA3d 1,  
12 6.

13 California Code of Civil Procedure § 436 provides two grounds upon which a court may  
14 strike certain portions of a pleading. First, a court may strike any “irrelevant, false or improper  
15 matter.” Second, a court may strike that part of a pleading not “drawn or filed in conformity  
16 with the laws of the State, a Court Rule, or an order of the court.” It is not clear from  
17 defendants’ motion to strike upon which of these grounds they based their motion.

18 Don, Dee and John Iversen do label the allegations contained in paragraphs 12 through 39  
19 as “evidentiary pleading.”<sup>1</sup> While the claim is not expressly made by defendants, most treatises  
20 analyze a charge that certain portions of a pleading are “conclusory allegations” as “irrelevant  
21 matter.” However, even if the Court determines that the complained-of paragraphs are  
22 conclusory allegations, they should not be removed from the First Amended Complaint.

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25 <sup>1</sup> Ms. Geddry is confused about exactly which paragraphs are supposed evidentiary pleadings. At page 5, line 20  
defendants identify this as paragraphs 12 through **29**. Six lines later, lines 12 through **39** are identified. On page 2,  
line 22, defendants identify the alleged evidentiary pleading as beginning with paragraph 14.

1 Conclusory allegations will *not* be stricken where they are supported by other, factual allegations  
2 in the complaint. *Perkins, supra*, at 6.

3  
4 **IV. SPECIFIC PARAGRAPHS**

5 Ms. Geddry will also respond to defendants' allegations on a paragraph-by-paragraph  
6 basis. It is simply not true that the following paragraphs contain evidentiary pleading nor is it  
7 true that the facts are repeated elsewhere.

8 Paragraph 12. It is a fact that Ms. Geddry observed her dog had been in a fight and that  
9 the Iversens accused Ms. Geddry's dog of injuring their dog that same day. This fact is an  
10 element of Ms. Geddry's claim for nuisance.

11 Paragraph 13. It is a fact that Animal Control Officer told Ms. Geddry that no one  
12 observed the fight in which the Iversens' dog was allegedly hurt. Ms. Geddry's right to recover  
13 her claim for nuisance depends on proof of this fact.

14 Paragraph 14. It is a fact that Ron Iversen came over to Ms. Geddry's home  
15 unannounced and demanded that Ms. Geddry get rid of her dog and/or pay their veterinary bills.  
16 This is an ultimate fact as to the claim for conversion of her dog.

17 Paragraph 15. It is a fact that Mr. Iversen provided Ms. Geddry with a bill for his dogs'  
18 alleged injuries. This is an ultimate fact as to the claim for conversion of her dog.

19 Paragraph 16. It is a fact that Iversens installed only a partial chain link fence around  
20 their property and their dogs continued to roam the neighborhood freely. This is an ultimate fact  
21 as to Ms. Geddry's claim for nuisance.

22 Paragraph 17. It is a fact that the Iversens' dogs entered Ms. Geddry's property on May  
23 2, 2002 and this is an ultimate fact as to her claim for nuisance.

24 Paragraph 18. This paragraph contains a crucial fact. Deputy Sheriff Walker  
25 investigated the death of the Iversens' dog on June 1, 2002. It is an ultimate fact that he

1 informed Ms. Geddry the place of death for that dog was up the road and across from the Iversen  
2 property. Don Iversen now claims he was investigating the place of the Iversen dog death when  
3 he parked his vehicle and walked around with a shotgun in front of Ms. Geddry's residence.  
4 This is an ultimate fact as to conversion, negligent infliction of emotional distress, intentional  
5 infliction of emotional distress, trespass to land and assault.

6 Paragraph 19. It is a fact that Office Walker exonerated Ms. Geddry's dog from any dog  
7 fight or in the death of the Iversen dog. This is an ultimate fact in Ms. Geddry's claim for  
8 intentional infliction of emotional distress.

9 Paragraph 20. It is a fact that the Iversens stalked her dog on the day of June 1, 2002.  
10 This is an ultimate fact in Ms. Geddry's claim for intentional infliction of emotional distress.

11 Paragraphs 21 through 24. These paragraphs recount the facts of the discharge of the  
12 firearm onto Ms. Geddry's property, the killing of her dog, and her witnessing of the Iversen  
13 vehicle. It contains ultimate facts as to all claims.

14 Paragraphs 25 and 26. It is a fact that Don and John Iversen were apprehended by the  
15 CHP and Sheriff shortly after the shooting and that Don Iversen confessed to the shooting and of  
16 fleeing the scene of the crime. This is an ultimate fact as to both negligent and intentional  
17 infliction of emotional distress.

18 Paragraphs 27 and 28. It is a fact that the Iversens "co-owned" the dogs that were the  
19 nuisance and it is an ultimate fact relating to nuisance. It is also an ultimate fact and predicate in  
20 the conspiracy charge.

21 Paragraphs 29-31. Ms. Geddry pleads on information and belief that the co-conspirators  
22 met to plan the events described in the complaint.

23 Paragraphs 32-34. These paragraphs contain the facts that a Sheriff's Report and an  
24 Animal Control report were issued. Each discusses the ultimate facts of the nuisance,  
25

1 conversion, negligent infliction of emotional distress, intentional infliction of emotional  
2 distress, trespass and assault charges.

3 Paragraphs 35 and 36. It is a fact that Mark Kalina used his position as Deputy District  
4 Attorney to suppress the investigation and it is an ultimate fact as to the conspiracy count.

5 Paragraphs 37-39. It is a fact that Lieutenant Arbayo issued a report about the Geddry  
6 dog killing on June 20, 2002. That report directly questions whether the Don Iversen claim of  
7 self-defense is supportable. That is an ultimate fact as to an affirmative defense to all claims.

8 Further, Mr. Kalina, on behalf of the co-conspirators, had Mr. Arbayo driven from his position as  
9 a result of the report that provided a truthful evaluation of Don Iversen's conduct. That is an  
10 ultimate fact as to the conspiracy charge.

11  
12 **V. CONCLUSION**

13 A motion to strike is a disfavored motion. Arguments about whether Ms. Geddry has  
14 included too much detail (admitting that she has plead all ultimate facts), even if true, are a  
15 technical distraction and waste of judicial resources. Four of the seven defendants have filed  
16 verified answers to the First Amended Complaint. The motion to strike by these defendants  
17 should be denied and they should also be instructed to move this case along by filing an answer.

18  
19 Dated this 10<sup>th</sup> Day of September, 2002

20 By: \_\_\_\_\_  
21 45121 Ukiah St.  
22 P.O. Box 2402  
23 Mendocino, CA 95460  
24 707-937-0820 / FAX 707-  
25 937-0834  
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