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SACRAMENTO SUPERIOR COURT
STATE OF CALIFORNIA

WILLIAM O. TOWER,)	Case No.: 06AS03504
)	
Plaintiff,)	Department 45
)	
vs.)	
)	RULING ON SHORT CAUSE CIVIL
)	TRIAL
SUZANNE SHELL and EFFIE BELOU aka))	
LINDA ELF, et al.,)	
)	
Defendants.)	

Trial commenced on May 20, 2008, at 9 a.m., in Department 45, in the above entitled matter. Plaintiff William O. Tower appeared in pro per, on his complaint stated against Defendants Suzanne Shell, Corinne Merwin, Linda Elf a.k.a. Effie Belou a.k.a. L. E. Bellas, American Family Rights Center, American Family Rights Institute, Family Rights Advocacy Institute, CCC, Inc, Does and Roes 1-50.

All Does and Roes are hereby dismissed.

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1 The Court determined that the American Family Rights Center, the American
2 Family Rights Institute, the Family Rights Advocacy Institute, and CCC, Inc., have never
3 been properly served. Thus, they are not before the Court, the Court has no jurisdiction
4 over them and no judgment can be entered against them. They are hereby dismissed
5 as named defendants in the action.

6 The Court further determined that Corrine Merwin has never been properly
7 served. She is therefore dismissed from the action.

8 The Court also determined that, based on an order entered by Judge
9 ShelleyAnne Chang of Dept. 54 on November 3, 2006, Defendant Suzanne Shell made
10 a general appearance in the case after having filed a "Special Motion to Strike" based
11 on the asserted application of the anti-SLAPP statute. Subsequent to the denial of the
12 motion to strike, Defendant Shell elected to appeal the denial, and that appeal is now
13 pending before the Third District Court of Appeal as Case No. C056214. Ms. Shell has
14 not filed an answer in the instant trial court matter.

15 The filing of the appeal automatically stays further action in this court, pending
16 resolution of the issues stated therein. (Code of Civil Procedure section 916.) As a
17 result, the Court, at the request of Plaintiff Tower, exercises its discretion under Code of
18 Civil Procedure section 1048(b) to sever the action as to Defendant Shell only.

19 Plaintiff Tower is ordered to give notice to Defendant Shell within five days of
20 issuance of this order and to provide her a copy of the same. Plaintiff Shell shall file all
21 proofs of service for such notices with the Court.

22 Further, Plaintiff Tower is ordered to provide notice of any further proceedings in
23 this severed action as against Ms. Shell, at her last known address, until further order of
24 the Court. Plaintiff Shell shall file all proofs of service for such notices with the Court.

25 See California Rule of Court 3.1312 and Sacramento County Local Rule 313.

1 **The Court hereby orders this severed portion of this case stayed pursuant to**
2 **Code of Civil Procedure section 916 as to defendant Shell only.** The Court orders that
3 the severed action as to Defendant Shell only shall be placed back on the civil active list
4 and the parties are ordered to appear for a Case Management Conference on
5 September 18, 2008 in Department 45, at 8:30 a.m., to advise of the status of the case
6 and appeal. Plaintiff Tower and Defendant Shell are ordered to file a Case
7 Management Conference Statement 15 days before the scheduled hearing. Should the
8 parties advise that the appeal is still pending, the Court likely will continue to the case
9 management conference to a further date. Plaintiff Tower to give notice of all further
10 case management conferences until further order of the Court and to file proof of same
11 with the Court.

12 The Court now turns to the remaining issues before it, namely the complaint
13 stated by Tower against Elf, also known as Effie Belou or L.E. Bellos (hereinafter "Elf")
14 and Elf's cross-action.

15 **Defendant Elf appeared at trial. She presented the Court with Set No 1 Request**
16 **for Admissions, and a court order dated August 27, 2007, signed by Judge Shellyanne**
17 **Chang deeming her requests for admission in defense of Tower's complaint admitted.**
18 **Plaintiff Tower admitted in open court that he had not filed any response to the requests**
19 **to have the admissions deemed admitted, and that he did not move to set aside Judge**
20 **Chang's order, of which he had notice.** As a result, the Court reviewed the admissions
21 in the context of the Tower complaint, which states causes of action for libel per se,
22 defamation, slander, conspiracy, and the intentional infliction of emotional harm.

23 **The Court now finds, after said review and argument by the parties, for**
24 **Defendant Elf on all actions stated in the complaint on the grounds that Plaintiff is**
25 **unable to establish a prima facie case on any or all of his theories as a result of the**

1 extensive deemed admissions. Plaintiff Tower's only argument against such a ruling by
2 this Court at this time was that he was never properly served with the request for
3 admissions. However, Judge Chang found otherwise and said ruling was not
4 challenged. The Court therefore rules that judgment shall be had in favor of Defendant
5 Elf on the Tower Complaint, and Plaintiff Tower shall take nothing against her.

6 Turning to the verified cross-complaint filed by Elf against Tower, which was
7 inappropriately entitled a "verified counterclaim" and incorrectly appended to her
8 "verified answer" to Plaintiff's complaint, the Court notes that, after a review of the file,
9 the Clerk of the Court improperly entered a default against Cross-Defendant Tower on
10 October 4, 2007. Defendant Tower had filed an unverified answer to the verified
11 counterclaim on August 8, 2007. While an unverified answer to a verified counterclaim
12 or cross-complaint is subject to a demurrer or a motion to strike, Cross-complainant Elf
13 made no such motion. The Court hereby orders the default taken on October 4, 2007
14 against Cross-complainant Tower vacated.

15 The Court advised Cross-complainant Elf that she could proceed to put on her
16 case and evidence against Tower and the Court would hear it. Cross-complainant Elf
17 advised the court that she was not prepared to proceed with evidence. Having failed to
18 present any evidence or to establish a prima facie case, the Court enters judgment for
19 Cross-complainant Tower on the Elf cross-complaint.

20 No request for statement of decision having been made, and the trial having
21 lasted less than one day, judgment will be entered consistent with the above ruling of
22 the Court.

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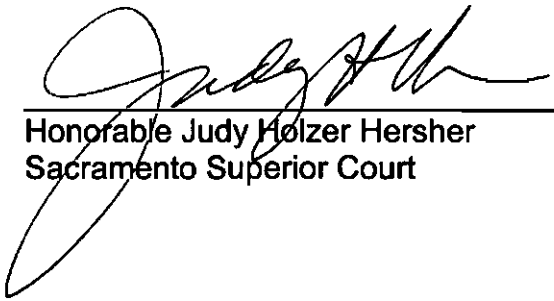
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1 The clerk is ordered to prepare a judgment consistent with this ruling. Any
2 request for costs shall be filed consistent with CCP 1032 et. seq. and the applicable
3 California Rules of Court and Local Rules.

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5 It is so ordered.

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9 Dated: **MAY 21 2008**



Honorable Judy Holzer Hersher
Sacramento Superior Court

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