TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 31, 2024, 3:00 p.m.
Courtroom 16 –Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.
Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. **23CV01893, Looney v. BFAM MGMT Inc**

Plaintiff Gary E. Looney ("Plaintiff") moves to appoint a receiver to take possession of and, if necessary, sell the liquor license of Judgment Debtor BFAM MGMT, Inc dba Chi-Chi's Mexican Cantina ("Judgment Debtor"). Plaintiff requests Landon McPherson be appointed receiver pursuant to CCP sections 564, 708.620, and 708.630 in order to enforce Plaintiff's judgment for $5,403.05.

Plaintiff states that since the judgment was entered, he has investigated the Judgment Debtor's finances to locate a bank or deposit account but has not found any such accounts. (Looney decl., ¶6.) According to Google, Chi-Chi's Mexican Restaurant is permanently closed. (*Id.*, at ¶7.) Plaintiff sent a letter to the Judgment Debtor and its personal guarantor on April 8, 2024, requesting payment on the judgment. (*Id.*, ¶8.) Plaintiff states that he has not received any response to this letter. (*Ibid*.) On April 9, 2024, Plaintiff states he served Judgment Debtor and its personal guarantor with post-judgment interrogatories and a post-judgment request for production of documents. (*Id.*, ¶9.) Plaintiff states that he has not received a response to that discovery. (*Ibid*.) Plaintiff sent a follow-up letter regarding the discovery requests. (*Id.*, at ¶10.)

Plaintiff states that the size of the judgment makes it impractical to levy on the Judgment Debtor's equipment, fixtures, or inventory pursuant to a seize and sell order. (*Id.*, ¶11.)

The court is not convinced that the seizure of Judgment Debtor's liquor license is appropriate under the circumstances in light of the small judgment amount and the high cost of a receivership.

Plaintiff has not described what specific efforts he has made to obtain payment on the judgment. For example, Plaintiff merely states he has "investigated" Judgment Debtor's finances and has not found any bank accounts. It appears Plaintiff only contacted the Judgment Debtor by mail. Calling the Judgment Debtor or its personal guarantor may determine to be more effective. It is not clear if BFAM MGMT, Inc. might have other businesses or assets that might be more effectively levied. In addition, Plaintiff states that the threat of the sale of a liquor license is often effective to obtain payment. In such case, it may be useful to first contact the Judgment Debtor or personal guarantor to inform them that a motion to appoint a receiver, including additional receivership fees, may be granted if they do not pay the judgment. This might be sufficient motivation.

Based upon the very low judgment amount, and the lack of effort established to obtain post-judgment discovery or to contact the Judgment Debtor or its personal guarantor directly over the phone, this court is not convinced that Plaintiff has sufficiently attempted to obtain the judgment amount so that the much more expensive route of appointing a receiver is warranted.

Accordingly, **the motion is DENIED without prejudice.** Due to the lack of opposition, this court's minute order shall constitute the order of the court.

2. 24CV01529, Quinn v. Redwood Empire Lodging, LP, a California Limited Partnership

1. Demurrer

Defendant Redwood Empire Lodging, LP ("Defendant") demurs to the second cause of action for nuisance, third cause of action for intentional infliction of emotional distress, fourth cause of action for breach of contract, and fifth cause of action for fraudulent concealment alleged in the complaint filed by Plaintiff Christina O. Quinn ("Plaintiff"). **The general demurrer to Plaintiff's second cause of action for nuisance is SUSTAINED with leave to amend. The remaining demurrers are OVERRULED.**

This case involves claims of a bed bug infestation in a hotel. Plaintiff seeks damages from Defendants for their alleged wanton failure to properly maintain, control, or repair Plaintiff's rented hotel rooms 148 and 105 (hereinafter "Hotel Rooms") at the Best Western Sonoma Winegrower's Inn, located at 6500 Redwood Dr., Rohnert Park, California 94928 (hereinafter "Subject Property" or "Premises"). Plaintiff alleges that Defendant was aware of the bed bug infestation and intentionally concealed it from her. Plaintiff alleges that due to the bed bugs, she suffered a severe skin rash, painful bug bites, and damage to clothing and personal belongings.

A. Second Cause of Action - Nuisance

Plaintiff's second cause of action alleges that the bed bug infestation is a nuisance pursuant to Civil Code section 3479. "Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance." (Civ. Code, § 3479.)

i. Public versus Private Nuisance

"A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." (Civ. Code, § 3480.) "Every nuisance not included in the definition of the last section is private." (Civ. Code section 3481.)

Defendant argues that Plaintiff's second cause of action fails to state whether the nuisance complained of is a "public" or a "private" nuisance, and it is therefore subject to dismissal as a matter of law pursuant to Code of Civil Procedure section 430.10(f). Subsection (f) pertains to pleadings which are uncertain. Defendant also argues that Plaintiff's second cause of action is duplicative of Plaintiff's first cause of action for negligence.

A special demurrer for uncertainty will be sustained only where the complaint is so bad that defendant cannot reasonably respond—i.e., he or she cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal. App. 4th 612, 616.) Plaintiff's nuisance cause of action does not rise to this level; Plaintiff's allegations are clear.

In addition, Defendant has not provided authority that the lack of statement whether a private or a public nuisance is intended is sufficient grounds for a general demurrer. A general demurrer can only be sustained when it disposes of an entire cause of action. If there remains any viable theory of recovery under a cause of action, the demurrer must be overruled. (*Poizner v. Fremont Gen. Corp*. (2007) 148 Cal.App4th 97, 119.) Thus, if either a public or a private nuisance is alleged, the demurrer must be overruled.

A public nuisance is an interference with the rights of the community at large. (*Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 302.) A nuisance may be both public and private, but to proceed on a private nuisance theory the plaintiff must prove an injury specifically referable to the use and enjoyment of his or her land. (*Ibid*.) The essence of a private nuisance is an interference with the use and enjoyment of land and "... without it, the fact of personal injury, or of interference with some purely personal right, is not enough for such a nuisance." (*Venuto v. Owens-Corning Fiberglas Corp*. (1971) 22 Cal.App.3d 116, 124.) The injury which may entitle a private person to maintain an action to abate a public nuisance must be an injury to plaintiff's private property, or to a private right incidental to such private property; ..." (*Id.,* at pg. 125.)

Plaintiff argues that the nuisance cause of action is sufficient because Defendant had a duty to provide a habitable hotel room to Plaintiff, Defendant failed to do so in breach of this duty, and the breach caused Plaintiff to suffer damages from a bed bug infestation. (Oppo., 3:24-26.) Plaintiff's complaint alleges: Defendant failed to correct the uninhabitable conditions, (complaint, ¶65), failed to take measures to immediately abate the nuisance (*id.*, ¶67), failed to remediate the bed bug infestation (*id.*, ¶¶67-68), failed to maintain the rooms and the common areas of the Premises (*id.*, ¶69), failed to repair defects and uninhabitable conditions (*id.*), failed to eliminate the bed bug infestation (*id.*), and failed to abate the bed bug infestations (*id.*, ¶¶72, 73).

In *El Escorial Owners' Assn. v. DLC Plastering, Inc*. (2007) 154 Cal.App.4th 1337, the plaintiff failed to allege sufficient facts so that the court could conclude that a nuisance existed within the provisions of the statute. (*Id.* at p. 1349.) The plaintiff neither alleged facts to describe the nuisance nor showed how the nuisance cause of action differed from an alleged negligence cause of action.

(*Ibid.*) The court noted that a cause of action alleging a continuing nuisance is usually accompanied by a request for an injunction, but that plaintiff only sought the same monetary relief that it requested in its first cause of action. (*Ibid*.) Where negligence and nuisance causes of action rely on the same facts about lack of due care; i.e., the defendant's negligent conduct, the nuisance claim is a negligence claim. (*Ibid*.)

However, a plaintiff may allege both negligence and a nuisance if warranted by the facts. "A nuisance may be either a negligent or an intentional tort." (*Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 920, citing *Sturges v. Charles L. Harney, Inc.* (1958) 165 Cal.App.2d 306, 321.) In *Stoiber*, the plaintiff sufficiently alleged a cause of action for nuisance, in addition to negligent violation of a statute, by alleging that defendant had actual knowledge of defective conditions in the premises including leaking sewage, deteriorated flooring, a falling ceiling, a leaking roof, broken windows, and other unsafe and dangerous conditions. (*Ibid*.) She alleged that defendants: "In maintaining said nuisance, ... acted with full knowledge of the consequences thereof and the damage being caused to plaintiff, and their conduct was willful, oppressive and malicious." (*Ibid*.)

Plaintiff's allegations are similar in that she alleges Defendant intentionally and willfully failed to remedy or disclose the bed bug infestation. However, the plaintiffs in *Stoiber* were tenants. A person renting a room makes herself a lodger and not a tenant. (*Sloan v. Court Hotel* (1945) 72 Cal.App.2d 308, 314.) Plaintiff was a lodger; she did not have a landowner's or tenant's interest in real property. Therefore, she cannot allege a cause of action for a private nuisance.

Plaintiff argues her nuisance cause of action is not duplicative because she has sufficiently plead that the bed bug infestation is injurious to the health and safety of the public at large, as an infestation can spread widely in public if not abated. These allegations appear to be alleged to support a cause of action for a public nuisance. While a private nuisance is designed to vindicate individual land ownership interests, a public nuisance is not dependent on an interference with any particular rights of land: The public nuisance doctrine aims at the protection and redress of community interests. (*Citizens for Odor Nuisance Abatement v. City of San Diego* (2017) 8 Cal.App.5th 350, 358.)

However, to constitute a public nuisance, the allegations must allege that the condition affected a substantial number of people. (CACI 2020.) Plaintiff alleges the bed bug infestation is a public nuisance because: "these defective and uninhabitable conditions (bed bug infestations) are injurious to the health and safety of Plaintiff and the public at large, indecent and offensive to the senses of Plaintiff and the public at large, and interfere substantially with Plaintiff's comfortable enjoyment of the Premises (for which Plaintiff paid to stay) and interfered substantially with Plaintiff's enjoyment of life as Plaintiff was massacred and attacked by bed bugs during Plaintiff's paid stay at the Premises." (Complaint, ¶64.)

Plaintiff's allegations are either conclusory or speculative as they do not provide a factual showing that a substantial number of people were actually injured by the alleged infestation and, in her opposition, Plaintiff only argues that they *could* spread to the community at large.

In sum, Plaintiff's second cause of action does not state a cause of action for private nuisance because it does not allege any injury to Plaintiff's interest in real property. Nor does it allege a public nuisance because it does not allege facts showing that the bed bug infestation affected a large number of people. Therefore, the complaint fails to allege facts sufficient to constitute a cause of

action for nuisance. Accordingly, the general demurrer to the second cause of action for nuisance is SUSTAINED with leave to amend.

B. Third Cause of Action - IIED

Plaintiff's third cause of action alleges that Defendant intentionally and willfully failed to remedy the bed bug infestation.

i. Extreme and Outrageous Conduct

Defendant argues that Plaintiff's complaint does not sufficiently allege intentional conduct sufficient to support a cause of action for intentional infliction of emotional distress.

"The elements of a prima facie case for the tort of intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct" (*Wilson v. Hynek* (2012) 207 Cal.App.4th 999, 1009.)

ii. Factual determination

Whether the conduct alleged in this case is extreme and outrageous so as to result in severe mental distress is a factual question which cannot be determined as a matter of law to fail to state a cause of action for intentional infliction of emotional distress. (*Stoiber v. Honeychuck, supra,* 101 Cal.App.3d 903 at pg. 922.)

iii. Respondeat Superior

Defendant cites cases relating to the theory of respondeat superior; i.e., holding an employer and/or corporation responsible for the misconduct of an employee. (See, e.g., *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296-297; *C.R. Tenet Healthcare Corp*. (2009) 169 Cal.App.4th 1094, 1110.)

Defendant is alleged to be a California Limited Partnership. The limited partnership itself cannot be the negligent actor; an individual is the actor acting on behalf of the partnership. A limited partnership entity may be liable for loss or injury caused by the conduct of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership. (Corp. Code section 15904.03.)

Here, Plaintiff alleges that defendants intentionally failed to remedy the bed bug infestation. Defendants are Defendant Redwood Empire Lodging, LP, and DOES 1-20. (Complaint, ¶1.) DOES 1-20 are alleged to have acted in concert in their capacities as owners, lessors, and/or managers of the Subject Property to violate Plaintiff's rights in order to maximize profits by keeping the Subject Property fully rented, even with the knowledge of the bed bug infestations. (*Id.*, ¶¶13-19.) Therefore, despite not presently being aware of the identity of the owners, lessors, and/or managers, Plaintiff has alleged that they are the responsible actors.

iv. Specificity in pleading

In reply, Defendant argues, without citation to appropriate authority, that Plaintiff must allege specific facts regarding Defendant's alleged prior knowledge; e.g., whether Defendant knew about the bed bugs 10 minutes prior or ten months prior. However, less specificity is required where "defendant must necessarily possess full information concerning the facts of the controversy." (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 216.) Here, the identity of owners, lessors, and/or managers and their awareness of any bed bug infestation is readily available to Defendant.

Plaintiff sufficiently alleges the elements of a cause of action for intentional infliction of emotional distress. Therefore, the demurrer to this cause of action for is OVERRULED.

C. Fourth Cause of Action – Breach of Contract

Plaintiff's fourth cause of action alleges that she entered into a valid hotel rental agreement with Defendant to rent the Hotel Rooms whereby she obtained possession and enjoyment of the Premises. The complaint states that the hotel rental agreement did not contain all the terms of the agreement, merely setting forth the parties, the date, the payment amount, and certain other terms. The complaint states that the written portion of the contract is attached as Exhibit A. Exhibit A details Plaintiff's rental of Room 148A from June 8 through June 17, and her rental of Room 105 on June 18 and 19. The complaint goes on to state that Defendant breached the covenant of good faith and fair dealing implied in all contracts.

In every contract or agreement there is an implied promise of good faith and fair dealing. This implied promise means that each party will not do anything to unfairly interfere with the right of any other party to receive the benefits of the contract. Good faith means honesty of purpose without any intention to mislead or to take unfair advantage of another. Generally speaking, it means being faithful to one's duty or obligation. (CACI 325.)

Defendant argues that Plaintiff's fourth cause of action for breach of contract is uncertain and fails to state facts sufficient to constitute a cause of action because Plaintiff fails to state whether the contract at issue was written, oral, or implied by conduct. Defendant argues that the exhibits that Plaintiff has attached to the complaint to evidence a contract are, in fact, simply receipts, and not a contract that would satisfy the elements of this cause of action.

Plaintiff may plead the legal effect of a contract. (C*onstruction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal. 4th 189, 198-199.) Here, the complaint sufficiently alleges a breach of the covenant of good faith and fair dealing. It alleges an agreement whereby Plaintiff paid to rent the Hotel Rooms. This agreement is evidenced by receipts showing the payment terms and rental dates. Plaintiff alleges that she performed under the contract because she paid the rental price. That the Hotel Rooms would be habitable is implied in the contract. Plaintiff alleges that the known bug bed infestation prevented her from enjoying habitable conditions.

A general demurrer must be overruled if the complaint alleges any cause of action. Here, the fourth cause of action alleges a breach of the covenant of good faith and fair dealing. Therefore, the demurrer to the fourth cause of action is OVERRULED.

D. Fifth Cause of Action - Fraudulent Concealment

Plaintiff's fifth cause of action alleges that Defendant had prior knowledge about the bed bug infestation in the Hotel Rooms but willfully concealed this information from Plaintiff.

Defendant argues that Plaintiff's fifth cause of action is uncertain and fails to state facts sufficient to constitute a cause of action. Defendant argues it should be dismissed because Plaintiff fails to adequately state who allegedly made false representations; whether such person(s) had authority to speak on behalf of Defendant; to whom such person(s) spoke; what such person(s) said or wrote; and when such person(s) made such statements. Defendant argues that Plaintiff's allegations do not meet the level of specificity required for a claim of fraudulent concealment. Defendant argues to properly allege fraud against a corporation, a plaintiff must plead the names of the persons allegedly making the false representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written. (See *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.)

The complaint alleges that at all times relevant thereto, Defendant and DOES 1-20, through their employees and managing agents were aware of the existence of bed bugs in the Subject Property and the Hotel Rooms. (Complaint, ¶¶102-103.) Plaintiff alleges that Defendant, DOES 1-20, and their employees and agents intentionally failed to disclose the material facts of the bed bug infestations and intended to deceive Plaintiff. (*Id.*, ¶¶105, 106.) Plaintiff further alleges: "Such conduct was taken by an officer or managing agent(s) of the Defendants and DOES 1-20, or alternatively, said Defendants authorized, ratified or approved the conduct of these officers or managing agents of the Defendants. These unlawful acts were further ratified by said Defendants and done with a conscious disregard for the Plaintiff's rights and with the intent, design and malicious purpose of injuring the Plaintiff." (*Id.*, ¶110.)

The complaint contains allegations against DOE defendants indicating that Plaintiff is not yet aware of the identity of the individuals who are the alleged bad actors. As noted above, there is a recognized exception to the strict pleading standard in common law fraud actions when it appears that the facts lie more within the defendant's knowledge than plaintiffs: i.e., less specificity is required where "defendant must necessarily possess full information concerning the facts of the controversy." (*Committee on Children's Television, Inc. v. General Foods Corp., supra,* 35 Cal.3d at pg. 216.) Here, Defendant can determine from the information it possesses who Plaintiff intends to accuse.

The demurrer to Plaintiff's fourth cause of action for fraudulent concealment is OVERRULED.

E. Conclusion and Order

The general demurrer to Plaintiff's cause of action for nuisance is SUSTAINED with leave to amend. The remaining demurrers are OVERRULED.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

2. Motion to Strike

Defendant moves to strike the portions of Plaintiff's complaint requesting punitive damages, attorney fees, and the second cause of action for nuisance for being duplicative. **The motion is DENIED.**

A. Nuisance

Due to the ruling on the demurrer, the motion to strike this cause of action is MOOT.

B. Punitive Damages

Defendant argues that Plaintiff does not adequately allege that Defendant's conduct rose to a "despicable" or "criminal" level that showed extreme indifference to Plaintiff's rights. However, no authority is cited that the alleged knowingly concealing and intentionally exposing a hotel guest to a bed bug infestation is not oppressive, malicious, or fraudulent. Such conduct would appear to meet the definition of "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others," and/or "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (See Civil Code section 3294.)

Defendant also argues that to plead punitive damages against a corporate employer, a plaintiff must show some evidence of fault by the employer itself. Here, Defendant is alleged to be a limited partnership. And, while Plaintiff does not know the identities of the partners, owners, or managing agents, as discussed above, she has alleged that they are the responsible bad actors.

C. Attorney Fees

Defendant argues that Plaintiff has not provided any allegations or facts regarding any statutory, contractual, or other basis for the recovery of attorney fees.

i. CCP section 1021.5

Plaintiff argues that she is entitled to attorney fees pursuant to CCP section 1021.5. Section 1021.5 provides:

> Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code.
>
> Attorneys' fees awarded to a public entity pursuant to this section shall not be increased or decreased by a multiplier based upon extrinsic circumstances, as discussed in *Serrano v. Priest*, 20 Cal.3d 25, 49.

Plaintiff argues that there is a public interest worth protecting in providing habitable Hotel Rooms. Furthermore, bed bugs travel and can easily spread and cause city and county wide infestations if not remediated promptly. Therefore, this pending suit is enforcing an important public policy.

Defendant has not addressed CCP section 1021.5. Therefore, it has not met its burden on this issue.

ii. Civil Code section 1717

Plaintiff also argues that she should be entitled to attorney fees pursuant to Civil Code section 1717 based upon the parties' contract. However, Plaintiff has not alleged that the parties' contract contains an attorney fee provision. The receipts provided attached as Exhibit A to the complaint do not contain such a provision.

D. Conclusion and Order

Defendant has not met its burden on this motion. The motion is DENIED. Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

3. SCV-267587, Felker v. JRK Residential Group, Inc.

Defendants JRK Residential Group, Inc. and JRK Property Holdings, Inc. ("Defendants") move for summary adjudication of the first cause of action for Unfair Competition and the second cause of action under the Consumer Legal Remedies Act ("CLRA") alleged in the complaint of Plaintiffs Sharon Felker, Herman Grishaver, Edgar Cruz Soriano, and Jeanace Zetino ("Plaintiffs"). Defendants argue plaintiffs Edgar Cruz Soriano and Herman Grishaver, the class representatives for the proposed section 396 class, and former class representative (and current putative class member) Sharon Felker, cannot show a violation of section 396 for multiple independent reasons. **The motion is DENIED.**

1. Objections

The court declines to rule on Plaintiffs' objections. (CCP section 437c(q).)

2. Allegations

Plaintiffs' first cause of action is for Unfair Competition, Business & Professions Code section 17200 et seq., based upon rental price gouging under Penal Code section 396, brought by plaintiffs Sharon Felker, Herman Grishaver, and Edgar Cruz Soriano. Plaintiffs second cause of action is for violation of the CLRA also based upon an alleged violation of Penal Code section 396.

Plaintiffs' second amended complaint ("SAC") alleges that Defendants' adhesive lease contracts contained unlawful rent increases, charges, and fees. Plaintiffs allege that Defendants price gouged during a state of emergency in violation of Civil Code section 396, increased rent over allowed limits in violation of Civil Code section 1947.12(a), required Plaintiffs to obtain renter's insurance naming Defendants as an additional interested party, and that they charged excessive late fees in violation of Civil Code section 1671.

Plaintiffs Edgar Cruz Soriano, Herman Grishaver, and Sharon Felker all lived in apartments at the Vineyard in Sonoma County. (Defendant's Undisputed Material Fact ["UMF"] No. 1.)

3. Executive Orders

On October 9, 2017, Governor Brown issued a proclamation of a state of emergency, which declared a state of emergency in Sonoma, Napa, and Yuba counties. (UMF No. 2.)

Executive Order No. B-43-17 was issued on October 18, 2017, and states: "The provisions of California Penal Code section 396 prohibiting price gouging in times of emergency will remain in effect until April 18, 2018, to protect the disaster survivors in the affected counties. The 30-day time period limitation under subsection (b) is hereby waived." (UMF No. 3.)

Executive Order No. B-51-18 was issued on April 13, 2018, and states: "IT IS HEREBY ORDERED THAT the provisions of Penal Code section 396, subdivisions (b) and (c), prohibiting price gouging in time of emergency, will remain in effect until December 4, 2018, in Lake, Mendocino, Napa, Solano, and Sonoma Counties. The time period limitations under those subdivisions are hereby waived." (UMF No. 4.)

Executive Order No. B-59-18 was issued on November 28, 2018, and states: "IT IS HEREBY ORDERED THAT the provisions of Penal Code section 396, subdivisions (b) and (c), prohibiting price gouging in time of emergency, will remain in effect until May 31, 2019, in Lake, Mendocino, Napa, Santa Barbara, Shasta, Siskiyou, Sonoma, and Ventura counties. The time period limitations under those subdivisions are hereby waived." (UMF No. 5.)

Executive Order No. N-22-19 was issued on December 23, 2019, and states: "IT IS HEREBY ORDERED THAT the time limitations set forth in Penal Code section 396, subdivisions (b), (c), (e), and (f), prohibiting price gouging in time of emergency, are waived. These price gouging protections will remain in effect through December 31, 2020, in Butte, Los Angeles, Mendocino, Napa, Santa Barbara, Sonoma, and Ventura counties." (UMF No. 7.)

Executive Order No. N-85-20 was issued on December 30, 2020, and states: "IT IS HEREBY ORDERED THAT the time limitations set forth in Penal Code section 396, subdivisions (b), (c), (e), and (f), prohibiting price gouging in time of emergency, are waived. These price gouging protections will remain in effect through December 31, 2021, in Butte, Los Angeles, Mendocino, Napa, Sonoma, and Ventura counties." (UMF No. 8.)

4. Overview of Arguments

Defendants argue that Cruz's claims fail as a matter of law because he contractually agreed, before the emergency declaration, to increases above 10% in the event his tenancy went month to month (which it did), and his rental price increases did not occur during a period when section 396 protections were in place.

Defendants argue Grishaver's section 396-based claims fail because his rental price increases did not exceed 10%, his rents were paid by his insurer, his leases were not eligible for section 396 protection, and/or his rental price increases did not occur during a period when section 396 protections were in place.

Defendants argue Felker's claims fail because she contractually agreed, prior to the emergency declaration, to rental increases above 10% in the event her tenancy went month to month (which it did), and the increases did not occur during a period when section 396 protections were in place.

5. Penal Code section 396

Defendants lay out the requirements of Penal Code section 396(e). The statute applies to leases that are no longer than a year. The rental price increase must be more than 10%. The statute does not apply if a contractual agreement existed to increase the rent prior to an emergency declaration. Section 396's requirements periodically changed from the time the statute was enacted.

Effective January 1, 2021, subsection (e) provides: "(e) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city, county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period the proclamation or declaration is extended by the applicable authority, it is unlawful for any person, business, or other entity, to increase the rental price, as defined in paragraph (11) of subdivision (j), advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent. However, a greater rental price increase is not unlawful if that person can prove that the increase is directly attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term that caused the rent to be increased greater than 10 percent or that an increase was contractually agreed to by the tenant prior to the proclamation or declaration. It shall not be a defense to a prosecution under this subdivision that an increase in rental price was based on the length of the rental term, the inclusion of additional goods or services, except as provided in paragraph (11) of subdivision (j) with respect to furniture, or that the rent was offered by, or paid by, an insurance company, or other third party, on behalf of a tenant. This subdivision does not authorize a landlord to charge a price greater than the amount authorized by a local rent control ordinance."

Defendants do not adequately discuss Penal Code 396(b), which also addresses housing: " Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, and for a period of 30 days following that proclamation or declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent greater than the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency, or prior to a date set in the proclamation or declaration. However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, during the state of emergency or local emergency, and the price is no more than 10 percent greater than the total of the cost to the seller plus the markup customarily applied by that seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency. If the person, contractor, business, or other entity did not charge a price for the goods or services immediately prior to the proclamation or declaration of

emergency, it may not charge a price that is more than 50 percent greater than the cost thereof to the vendor as "cost" is defined in Section 17026 of the Business and Professions Code."

6. Edgar Cruz Soriano

Cruz moved into the Vineyard in August 2016 and moved out before October 2019. Cruz entered into a 12-month lease running from September 1, 2017, to August 31, 2018, at a rental rate of $2,042, including a $25 or $35 charge for parking. (UMF No. 10.) Cruz's tenancy went month to month starting on September 1, 2019, at a rental rate of $3,065. (UMF No. 12.)

Cruz's lease that began on September 1, 2017, contains a provision providing that JRK would "give [Cruz] at least 60 days notice during a month to month tenancy before we raise the rent more than 10% (over the previous 12 months)." (UMF No. 13.)

On July 26, 2019, Cruz notified JRK of his intent to vacate after his current lease expired. (UMF No. 16.) Cruz's July 26, 2019, notice was sent less than 60 days before the expiration of his lease on August 31, 2019. (UMF No. 17.)

The only facts disputed are with respect to a renewal letter. Defendants state that on May 28, 2019, JRK sent a notice to Cruz, explaining that his lease was set to expire on August 31, 2019 and that if he did not renew by August 31 or provide written notice 60 days in advance that he was vacating, he would "automatically roll into a month-to-month lease" at the "current market rent of [$]3252 monthly." (Defendants' fact No. 14.) Defendants state that their May 28, 2019, notice was provided more than 60 days before the expiration of Cruz's lease on August 31, 2019. (Defendants' fact No. 15.)

Plaintiffs dispute these last two facts. They argue that a renewal offer letter dated 5/28/2019 exists in Defendants' records; but, to the extent Defendants are asserting that it was sent to or received by Cruz, Cruz testified that he did not recognize the letter and did not remember reading any correspondence about renewal rates. (Plaintiffs' facts in opposition, Nos. 14, 15.)

a. Contractual Agreement

Starting in 2021, Penal Code section 396(e) provided that a rental price increase greater than 10% after an emergency declaration is not unlawful if an increase was contractually agreed to by the tenant prior to the proclamation or declaration. Defendants argue that Cruz cannot establish a section 396 violation because he contractually agreed, before the declaration of an emergency, to the increase that occurred. Defendants cite their material fact numbers 10 and 13.

Number 10 establishes that Cruz entered into a 12-month lease running from September 1, 2018, to August 31, 2019, at a rental rate of $2,229, including a $25 or $35 charge for parking. Number 13 establishes that Cruz's lease that began on September 1, 2017, contains a provision providing that JRK would "give [Cruz] at least 60 days' notice during a month to month tenancy before we raise the rent more than 10% (over the previous 12 months)." (UMF No. 13.)

Defendants have not cited authority that giving Cruz 60 days' notice during a month-to-month tenancy is the same as the required contractual agreement to an increase over 10% during an emergency proclamation. The subject contract does not expressly allow a rental increase despite a potential emergency proclamation disallowing rental increases more than 10%. It seems doubtful

that a contractual provision allowing for 60 days' notice overrides a state of emergency declaration and Penal Code section 396's provision disallowing rent increases over 10%.

7. Gaps in emergency proclamations

Defendants argue that the pre-2021 version of Penal Code section 396 required the Governor to make emergency declarations every 30 days as the statute then in effect specified an effective period of 30 days. They argue that the "state of emergency" does not suspend or override that requirement. Neither case cited, *Newsom v. Superior Court* (2021) 63 Cal.App.5th 1099 nor *640 Tenth, LP v. Newsom* (2022) 78 Cal.App.5th 840 dealt with Penal Code section 396.

Defendants cite analyses by the Senate Appropriations Committee and the Assembly's Commission on Public Safety to establish that the 30-day period for emergency proclamations could not be waived. Defendants have not provided the specific document cited. Nor have they established that the analysis is relevant with respect to the finalized statute. Nor have Defendants provided the prior versions of section 396 that they rely upon.

Defendants argue that Penal Code section 396 is a criminal statute and thus the rule of lenity is applicable. However, they have not cited authority that a non-restrictive 30-day requirement cannot be waived. It would appear to put form over substance to require the Governor to issue an emergency proclamation every 30 days instead of specifying up front, "as needed," the number days the emergency proclamation would be in place.

8. 10% Increase

Defendants argue that Cruz's rent was only increased 9.2%. However, Defendants admit that Cruz's rent increased more than 10% on September 1, 2019, and they have not established that the emergency order then in place was invalid based upon the Governor's failure to issue proclamations every 30 days instead of specifying the duration of the proclamation up front. Cruz's rent was raised on September 1, 2019, to $3,065. (UMF No. 12.) This was after the state of emergency proclamation. (UMF No. 2.) It was an increase over 10%.

9. Herman Grishaver

Defendants argue that Grishaver cannot establish a section 396 violation because (1) the rental rate in his pre-2019 leases increased by less than 10% over the base rent, (2) Grishaver's insurer paid the rent during the course of his November 2017 lease, and (3) for his applicable post-November 2017 leases, any rental price increases over 10% did not occur when section 396 protections were in place.

Grishaver lived at the Vineyard from November 2017 to November 2020. (UMF No. 18.) Grishaver entered into a 6-month lease running from November 5, 2017, to May 13, 2018, at a rental rate of $2,666.35 per month. (UMF No. 23.) Grishaver entered into a 3-month lease running from May 14, 2018, to August 4, 2018, at a rental rate of $2,690 per month. (UMF No. 24.) Grishaver entered into a 14-month lease running from August 5, 2018, to October 4, 2019, at a rental rate of $2,690 per month. (UMF No. 25.) Grishaver entered into a 7-month lease running from October 5, 2019, to May 4, 2020, at a rental rate of $3,054 per month. (UMF No. 26.) Grishaver entered into a 4-month lease running from May 5, 2020, to September 7, 2020, at a rental rate of $3,054 per month. (UMF No. 27.) Grishaver's tenancy went month to month starting on September 8, 2020, at a rental rate of

$3,054. (UMF No. 28.) Therefore, rents increased greater than 10 percent. While Defendants again argue that the emergency declarations were invalid during the time frames when rents increased greater than 10%, they have not provided sufficient authority to support their position.

Defendants also argue that from November 5, 2017, until October 9, 2019, Grishaver's insurance company, State Farm, paid his rent. (UMF No. 29.) However, effective January 1, 2019, Penal Code section 396(e) provided: "It shall not be a defense to a prosecution under this subdivision…that the rent was offered by, or paid by, an insurance company, or other third party, on behalf of a tenant." Grishaver's rent increased over 10% in October of 2019. Therefore, that Grishaver's insurance provider may have paid part of Grishaver's rent is not a defense.

10. Sharon Felker

Defendants argue that Felker cannot establish a section 396 violation because (1) she contractually agreed, before the declaration of an emergency, to the increase that occurred; and (2) she cannot show that a rental price increase of more than 10% occurred when section 396 protections were in place.

The language in Felker's lease was the same as in Cruz's. As discussed above, Defendants have not cited applicable authority that this language constitutes consent to an increase over 10% during an emergency proclamation.

Felker lived at the Vineyard from August 2016 to March 2022. (UMF No. 30.) Felker entered into a 12-month lease running from August 9, 2017, to August 8, 2018, at a rental rate of $2,008 per month. (UMF No. 31.) Felker entered into a 12-month lease running from August 9, 2018, to August 8, 2019, at a rental rate of $2,147 per month. (UMF No. 32.) Felker paid $2,172 from August 9, 2019, through August 10, 2020. (UMF No. 33.) Starting September 2020, Felker's rent went to $2,353 per month. (UMF No. 39.) Therefore, Felker's rent increased more than 10% after the emergency proclamations.

11. Alternate Grounds for UCL cause of action

Plaintiffs note in opposition that they are not only basing their first cause of action for violation of Business & Professions Code section 17200 et seq. on a violation of Penal Code section 396. Plaintiffs' second amended complaint alleges that the conduct of Defendants constitutes unfair and/or unlawful business acts practices under Business & Professions Code § 17200; and that it violates Civil Code section 1947.12. (SAC, ¶¶118, 119.)

The UCL defines "unfair competition" as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." (Bus. & Prof. Code, § 17200.) By proscribing "any unlawful" business act or practice (*ibid.*), the UCL "borrows" rules set out in other laws and makes violations of those rules independently actionable. (*Zhang v. Superior Court* (2013) 57 Cal.4th 364, 370 [citing case].) However, a practice may violate the UCL even if it is not prohibited by another statute. (*Ibid.*) Unfair and fraudulent practices are alternate grounds for relief. (*Ibid* [citing case].)

Defendants have not addressed the "unfair" prong of Business & Professions Code section 17200 et seq., nor have they addressed Civil Code section 1947.12. Therefore, they have not met their burden on this cause of action.

12. Civil Code section 1781

Plaintiffs also note that Civil Code section 1781(c) is intended to preclude a defendant from eliminating, one by one, individually named plaintiffs and thus derailing the CLRA class action. (*Princess Cruise Lines, Ltd. v. Superior Court* (2009) 179 Cal.App.4th 36, 42.) In other words, the entire action must be challenged, if it is challenged at all. (*Ibid*.)

13. Conclusion and Order

Defendants have not met their burden on this motion. The motion for summary adjudication is DENIED. Plaintiffs' counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

4. SCV-270338, Salazar v. Pacific Gas and Electric Company

Defendant Mountain F. Enterprises, Inc. ("MFE") moves for summary judgment against Plaintiff Olegario Santino Salazar ("Plaintiff") on the basis that the undisputed facts establish a complete defense to Plaintiff's action. MFE argues that the *Privette* Doctrine bars liability against the hirer of an independent contract whose employee is injured. Pursuant to Plaintiff's request, **the motion is CONTINUED to December 11, 2024, at 3:00 p.m., in Department 16**.

Plaintiff's complaint alleges that defendants owned, possessed, supervised, operated, maintained, leased, occupied, and/or otherwise controlled a worksite located in Santa Rosa, California with approximate GPS coordinates (38.497504, 122.612897) and with the nearest street address of 6101 Cleland Road, Santa Rosa, California in Sonoma County (the "Premises"). Plaintiff alleges that on approximately October 12, 2020, while Plaintiff was present at the Premises, defendants' negligence caused a tree to fall upon him and cause him severe injuries, including but not limited to fractures, lacerations, and a brain injury. Plaintiffs allege causes of action for: 1) General Negligence; 2) Premises Liability; and 3) Negligent Undertaking.

MFE argues this case is a classic example subject to the *Privette* Doctrine. It argues that it provides various remediation services to PG&E in connection with areas near power lines that have been damaged by wildfire. In 2020, PG&E requested that MFE provide those services with respect to the "Glass Fire" that occurred in Sonoma County. MFE in turn hired AAA Tree Service ("AAA") to provide remediation services hat PG&E needed in a specific geographic portion of the burn area. Plaintiff was an employee of AAA. Therefore, MFE argues that Plaintiff's exclusive remedy is against AAA under the Workers' Compensation Act.

In opposition, Plaintiff argues that MFE has been stonewalling Plaintiff's discovery attempts. On February 27, 2024, Plaintiff noticed the deposition of MFE's custodian of records, requesting production of key documents to establish Plaintiff's theory of MFE's theory of retained control over the Premises.

On April 24, 2024, MFE's motion to quash the deposition notice of MFE's custodian of records was denied and the court ordered the parties to meet and confer to find a mutually acceptable deposition date within 45 days of the order. Plaintiff's counsel states that despite the court's order, the 45-days

has come and gone, and no deposition has been taken. (Carr decl., ¶¶6-8.) On July 3, 2024, Plaintiff filed a motion for terminating, evidence, and issue sanctions against MFE for its failure to produce its custodian of records. As of the date the court reviewed this matter, that motion has not yet been set for a hearing. Plaintiff requests this court either deny the motion for MFE's failure to produce required evidence or to continue the motion so that Plaintiff's discovery motion can be heard.

Based upon MFE's failure to provide its custodian of records in sufficient time to allow Plaintiff to obtain needed evidence to oppose this motion, the court will continue MFE's motion for summary judgment. The motion is CONTINUED to December 11, 2024, at 3:00 p.m., in Department 16.

5. <u>SCV-270409, Fischer v. Fischer</u>

Plaintiff Cindy Fischer ("Plaintiff" or "Cindy") moves pursuant to CCP section 437(b) and (d) to set aside and vacate the order vacating the trial date entered on March 21, 2024, and for an order finding that the underlying settlement agreement between Plaintiff and Defendant Craig Fischer ("Defendant" or "Craig") is void and unenforceable. **The motion is GRANTED.**

CCP §473(b) provides a Court may relieve a party from a judgment or order due to "mistake, inadvertence, surprise or excusable neglect." (*Hopkins & Carley v. Gens* (2011) 200 Cal. App. 4th 1401, 1410.) Fraud is grounds where it is shown on the theory that the fraud caused a mistake on the part of the party seeking relief. (*Rice v. Rice* (1949) 93 Cal. App. 2d 646, 651.) Courts also have the inherent authority to vacate a judgment or order as void "on equitable grounds such as extrinsic fraud or extrinsic mistake." (*Bae v. T.D. Service Co. of Arizona* (2016) 245 CalApp.4th 89, 97.)

Plaintiff states that a central issue in this case is the disposition of a lease option for commercial properties at 2475 and 2487 Bluebell Drive in Santa Rosa (the "Property"), which has an appraised value of a little less than $500,000. (Plaintiff's decl. ¶3.) At no time prior to or during the settlement conference did Defendant, his wife Janice Fischer, or their counsel John Scott, mention that that landlord had filed, and Janice had been served with, an unlawful detainer action. (*Id.*, ¶7.) After the settlement, on April 1, 2024, counsel for the receiver, David Chandler, tendered rent to the landlord's attorney. (*Id.*, ¶8.) Tender was rejected. (*Id.*, ¶9.) One of the reasons for the rejection was that an unlawful detainer action was pending. (*Ibid*.) CJ Fischer LLC's default was entered in the UD action on April 10, 2024. (Request for Judicial Notice, Exhibit L.) Plaintiff states that, had she known an unlawful detainer action had been filed against the business to vacate properties at 2475 and 2487 Bluebell, she would not have entered into the settlement agreement. (Plaintiff's decl., ¶14.)

The parties' settlement agreement is dated March 21, 2024. In January 2024, the court-appointed receiver, Randy Sugarman, found a 3-day notice to quit dated January 9, 2024. Thereafter, both Cindy and Mr. Sugarman tendered rent, both of which were rejected by the landlord. The landlord also rejected the rent for February and March. (Memo., 5:1-2.) Craig represented that he would contact the landlord about exercising the option. This, despite the UD action having been filed on February 27, 2024, and summons and complaint having been served on March 7, 2024. Subsequent to the parties signing the settlement agreement, Cindy learned that the Property's landlord had filed a UD action and that the landlord had served Janice with the summons and complaint on March 7, 2024.

In opposition, defendants Craig Fischer, Janice Chaney, Fischers Collision Center LLC, and CJ Fischer LLC argue that Cindy has merely changed her mind, that she should have known about the UD, that service of the UD summons and complaint on defendants is insufficient to find Craig and/or Janice concealed the UD action, and that the settlement agreement contemplated not being able to exercise the option. Defendants argue that the lack of payment of rent should have put Cindy on notice that a UD action was imminent and that she should have questioned whether a UD action had been filed.

Defendants also argue that all parties to this case were aware that the exercise of the option was contingent upon the lessee's fulfillment of all its obligations as provided in the lease, such as timely payment of rent. All parties knew that January, February, and March rent had gone unpaid. Therefore, Defendants argue that the option was already lost. They argue that judicial economy is best served by maintaining the existing settlement agreement.

In reply, Plaintiff argues the settlement agreement expressly bound the defendants to cooperate with the Receiver's efforts to cure the defaults by those defendants under the lease option, and thereby to resuscitate the option. Plaintiff argues Defendants have consistently failed and refused to cooperate with the Receiver, sabotaging the Receiver's effort to save the option, and depriving Cindy of the benefit of the settlement agreement. Plaintiff argues defendants also breached the agreement in other ways; however, the breach of the agreement is not a cause to set it aside under CCP section 473(b) or (d).

A three day notice to quit was found by the Receiver in January. Rent was not accepted for January, February, and March. As a result of the default, the option would need to be resuscitated or renegotiated with the landlord. Regardless, defendants clearly did not disclose a material fact while negotiating the settlement. Plaintiff's counsel communicated that the option was the most valuable asset. The UD action has a significant impact on that asset. Defendants' failure to disclose the UD action constitutes sufficient cause to set aside the settlement agreement under CCP section 473(b) and pursuant to this court's equitable powers.

The motion is GRANTED. Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.