

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, November 12, 2025
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa**

The 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, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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1-2. 23CV01745, Johnson v. Wiener

Plaintiff Nory Johnson (“Plaintiff”) filed the complaint (“Complaint”) in this action against defendants Daisy Weiner (“Weiner”), Lily Williams (“Williams”, together with Weiner, “Defendants”), and Does 2-100 for a cause of action for motor vehicle negligence.

This matter is on calendar for Williams’s demurrer to the Complaint pursuant to CCP § 430.10(e) for misjoinder of Williams, and for Williams’s motion to dismiss under *Barrows v. American Motors Corp.* (1983) 144 Cal.App.3d 1, 7-10.

The Demurrer is **OVERRULED**. The motion to dismiss is **DENIED**.

I. Legal Standards

A. Demurrers Generally

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). In the

event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

A demurrer can be utilized where a complaint discloses some defense that would bar recovery, including where it shows that the statute of limitations has run. *Guardian North Bay, Inc. v. Sup. Ct.* (2001) 94 Cal.App.4th 963, 971-972. But to be subject to a general demurrer, the running of the statute must appear "clearly and affirmatively" from the face of the complaint; it is not enough that the complaint *might* be time-barred. *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42. If the dates in question are not shown on the face of the complaint, there is no ground for demurrer, as dates are not an essential element of a cause of action. *See, e.g. Union Carbide Corp. v. Sup.Ct.* (1984) 36 Cal.3d 15, 25. Furthermore, a demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a).

B. Doe Amendments

When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, ... and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly.

CCP § 474.

"A plaintiff may use section 474 whenever he has no actual knowledge of the defendant; constructive or legal knowledge will not deprive the plaintiff of the remedy." *Sobeck & Associates, Inc. v. B & R Investments No. 24* (1989) 215 Cal.App.3d 861, 867. "The ignorance of which Code of Civil Procedure section 474 speaks is actual ignorance, and a plaintiff will not be refused the right to use a Doe pleading even where the plaintiff's lack of actual knowledge is attributable to plaintiff's own negligence." *Grinnell Fire Protection System Co. v. American Sav.*

& *Loan Assn.* (1986) 183 Cal.App.3d 352, 359. “The plaintiff’s knowledge is tested at the time suit is filed, and there is no requirement that the plaintiff exercise diligence to discover the identity of the defendant after filing the complaint.” *Sobeck & Associates, Inc. v. B & R Investments No. 24* (1989) 215 Cal.App.3d 861, 867.

“If the identity of the Doe defendant is known but, at the time of the filing of the complaint the plaintiff did not know facts that would cause a reasonable person to believe that liability is probable, the requirements of section 474 are met.” *McOwen v. Grossman* (2007) 153 Cal.App.4th 937, 943; see also *Munoz v. Purdy* (1979) 91 Cal.App.3d 942, 947 (“Section 474, however, does not relate to the steps which should be taken after the filing of the action; it is restricted to the knowledge of the plaintiff at the time of filing of the complaint.”). “Section 474 allows a plaintiff in good faith to delay suing particular persons as named defendants until he has knowledge of sufficient facts to cause a reasonable person to believe liability is probable.” *Dieckmann v. Superior Court* (1985) 175 Cal.App.3d 345, 363. “The fact that the plaintiff had the means to obtain knowledge is irrelevant.” *General Motors Corp. v. Superior Court* (1996) 48 Cal.App.4th 580, 594. “In short, section 474 does not impose upon the plaintiff a duty to go in search of facts she does not actually have at the time she files her original pleading.” *Id.* at 596.

“Code of Civil Procedure section 474 is to be liberally construed. [Citation.]” (*Citation.*) Nevertheless, its requirements, as so construed, are mandatory. (*Citation.*) Failure to comply with Code of Civil Procedure section 474 does not prevent a plaintiff from filing an amendment adding a new defendant; however, it does prevent the amendment from relating back. (*Citations.*)

Fireman’s Fund Ins. Co. v. Sparks Construction, Inc. (2004) 114 Cal.App.4th 1135, 1143–1144 (internal citations omitted).

“The lack of knowledge of the true name of a defendant, however, must be ‘real and not feigned.’ (*Citation.*) A plaintiff must actually be ignorant of the facts giving him a cause of action against a defendant.” *Munoz v. Purdy* (1979) 91 Cal.App.3d 942, 947. “[I]gnorance of the facts is the critical issue, and whether it be due to misfortune or negligence is not relevant.” *Breceda v. Gamsby* (1968) 267 Cal.App.2d 167, 174–175. Courts may find actual ignorance where defendants are closely associated corporations which create “an inferable source of reasonable confusion by the plaintiff and of awareness by the intended defendant of plaintiff’s mistake.” *Omega Video Inc. v. Superior Court* (1983) 146 Cal.App.3d 470, 480

Where plaintiff does not have genuine ignorance at the time the complaint is filed, the amendment under CCP § 474 is not effective, and a motion to quash or demurrer may be granted accordingly. *McClatchy v. Coblenz, Patch, Duffy & Bass, LLP* (2016) 247 Cal.App.4th 368, 375 (“*McClatchy*”); *Marasco v. Wadsworth* (1978) 21 Cal.3d 82, 89. If the court does not find actual ignorance, it must grant defendants relief where the statute of limitations has passed. *Optical Surplus, Inc. v. Superior Court* (1991) 228 Cal.App.3d 776, 784. Where plaintiff *does* have knowledge of a Doe defendant’s identity at the time of filing the complaint, and the statute of limitations has passed at the time of the Doe amendment, defendant does not need to prove any prejudice to prevail. *Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 177.

In contrast, a motion stating that plaintiff has unduly delayed amending under CCP § 474 is not related to jurisdiction. *Barrows v. American Motors Corp.* (1983) 144 Cal.App.3d 1, 7-10 (“*Barrows*”); *A.N. v. County of Los Angeles* (2009) 171 Cal.App.4th 1058, 1064. It is a motion predicated not on statute of limitation, but on laches. *Barrows v. American Motors Corp.* (1983) 144 Cal.App.3d 1, 8. “Where plaintiff does not know the facts giving rise to a cause of action against a person when the complaint is filed, and after acquiring the necessary knowledge amends the complaint to substitute that person as a named defendant in place of a fictitious one, the amendment relates back to the filing of the original complaint unless the newly named defendant can show actual prejudice resulting from unreasonable delay in filing the amendment.” *Hazel v. Hewlett* (1988) 201 Cal.App.3d 1458, 1466. Prejudice is something more than the basic prejudice associated with the passing of statute of limitations, but rather specific prejudice related to the delay in filing after finding the information that defendant is potentially culpable. *Barrows v. American Motors Corp.* (1983) 144 Cal.App.3d 1, 9.

While the title of the motion is not controlling, so long as the gravamen of the motion relates to the Doe amendment, a citation to CCP § 474 will suffice. *A.N. v. County of Los Angeles* (2009) 171 Cal.App.4th 1058, 1064. Failure to follow the provisions of CCP § 474 does not render proceedings void, nor does it deprive the court of jurisdiction. *Crenshaw v. Smith* (1946) 74 Cal.App.2d 255, 264.

II. Demurrer

Williams predicates her demurrer on the improper form of the Doe amendment filed March 18, 2025. Plaintiff filed the amendment on a form neither created by the judicial council, nor adopted for local use. Instead, Plaintiff appears to have altered the form issued by Los Angeles County Superior Court, which within their own court typically results in permissive Doe amendments without an order of the court. This Court has no such form or procedure. Neither party addresses nor provides specific authority on the propriety of such a practice, arguing generally only about the propriety of amendment without court orders. However, Williams, having not yet been named, had not answered, and the amendment is allowed as to *any* defendant that has not yet answered. *Barton v. Khan* (2007) 157 Cal.App.4th 1216, 1221. CCP § 472 allows the addition of parties. *Gross v. Department of Transportation* (1986) 180 Cal.App.3d 1102, 1104. The amendment was Plaintiff’s one allowable amendment as a matter of right. No court order was required.

In the context of the demurrer, it is irrelevant. Williams misapprehends the principle of misjoinder of a party. Misjoinder applies to complaints where the Complaint makes allegations which are insufficient. Williams’s demurrer is predicated on perceived deficiencies in Plaintiff’s amendment under CCP § 474. Misjoinder applies to deficiencies in either the plaintiffs’ unity of interest under CCP § 378, or if there is no common question of law or fact as to the defendants under CCP § 379. Williams does not argue that either of these apply here. A demurrer is not the vehicle for challenges to contentions that the procedure for filing of a complaint did not conform to the laws of this state. Rather, it goes to the defects within the substance of the pleading. The Demurrer is **OVERRULED**.

III. Motion to Dismiss

The issue of right to dismissal of Plaintiff's claims is comprised of two possibilities. First, was Plaintiff sufficiently ignorant of Williams's identity at the time she filed the Complaint? Second, did Plaintiff unreasonably delay after learning Williams's identity, and has Williams suffered prejudice as a result?

A. *Sufficiency of the Complaint Under CCP § 474*

CCP § 474 applies when "at the time of filling the complaint", Plaintiff is actually ignorant of the identity of the Doe defendant, even if such ignorance is the result of Plaintiff's own negligence. *Sobeck & Associates, Inc. v. B & R Investments No. 24* (1989) 215 Cal.App.3d 861, 867. Defendants offer a number of documents related to pre-litigation letters exchanged between Defendants' insurer and Plaintiff's counsel. The letters only name Williams as a cc'd individual, without any indication as to why she was included. This is insufficient as a showing that Plaintiff was aware of Williams's identity at the time the Complaint was filed. The letters do not show Plaintiff's knowledge of Williams's identity.

B. *Laches*

Turning to the laches analysis under *Barrows, supra*, 144 Cal.App.3d at 9-10, the Court is required to determine whether Plaintiff unduly delayed after discovering the identity of the Doe defendant, and whether there was resulting prejudice from that delay.

1. Undue Delay

Williams provides Weiner's interrogatory responses from September 2024, and has highlighted form interrogatories 17.1 and 20.3-20.8, each of which flatly aver that Weiner was not present at the time of the accident. None of this is successful in displaying that Plaintiff was or should have been aware of Williams's significance at that time, which is the relevant factor. Substantially more persuasive than any of the interrogatories that Williams highlights for the Court's review are form interrogatories 12.1-12.7, which explicitly name Williams as the driver at the time of the incident. Therefore, as of September 2024, Plaintiff was clearly sufficiently aware of the identity of Williams and the appropriate theory of liability against her that her time to file the amendment ran from that period.

Plaintiff did not file the First Amendment to the Complaint until March 18, 2025. This means that Plaintiff delayed nearly six months between receiving clear indicators that she had to amend to include Williams, and effectuating the amendment. In an objective review of such delay, it is clearly unreasonable and sufficient to support a finding of laches if Williams can show the required prejudice.

2. Prejudice

Williams argues that she has suffered resulting prejudice from Plaintiff's delay. The prejudice measured is from the point at which Plaintiff reasonably knew of Williams's culpability. While

the motion is framed in the context of the duration from the time of the incident, this is the general prejudice attributable to statute of limitations, and not relevant to the motion. Instead, it must be the prejudice from Plaintiff's undue delay. It is worth noting that the court in *Barrows*, which established the propriety of this evidence-based motion, *denied the motion for lack of prejudice*. *Barrows, supra*, 144 Cal.App.3d at 9-10. This case comes to the same result. Williams conclusionary avers the prejudice from delay, but as the *Barrows* court made abundantly clear, "(i)n order to prevail on the kind of motion involved here, ... a defendant must show specific prejudice", beyond the prejudice associated with statute of limitations. *Id.* at 9. Williams's citation to *Munoz v. Purdy* (1979) 91 Cal.App.3d 942, 946, is inapposite, as that court relied on the failure to timely serve the complaint under the prior version of Code Civ. Proc., § 583.210. It has neither been three years since the filing of the initial complaint, nor has Williams moved under this statute.

Williams also cites to *A.N. v. County of Los Angeles* (2009) 171 Cal.App.4th 1058, 1067. In that case, the court found both undue delay and prejudice in granting the *Barrows* motion. As Williams points out, the defendants at issue were dropped into a "spinning vortex" of litigation, "shortly before the trial". *Id.* at 1069. The complaint alleged "causes of action for negligence, violation of the Unruh Civil Rights Act (Civ.Code, § 51 et seq.), failure to prevent violation of civil rights, violation of constitutional rights, conspiracy to conceal violation of constitutional rights, and violation of 42 U.S.C. section 1985." *Id.* at 1061. The plaintiff had been allegedly attacked while in juvenile custody, and filed his case initially against only the county. *Ibid.* Then, less than three weeks before trial and more than two years later, plaintiff attempted to add several county employees as defendants, who then brought a *Barrows* motion. *Id.* at 1062. That case appears quite distinguishable for precisely this reason. This appears, based on the pleadings and everything provided by the parties, to be a simple auto collision case. Williams was allegedly (and per Weiner's interrogatory response) in the accident. Her motion concedes that she was cc'd on each of the prelitigation letters. She cohabited with Weiner at the time of the interrogatory responses. There is no surprise here that Williams can credibly assert.

The motion to dismiss under *Barrows* is DENIED.

IV. Conclusion

Based on the foregoing, the demurrer is **OVERRULED**.

The motion to dismiss (the *Barrows* motion) is DENIED.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

3. 24CV01989, 505 SR Ave LLC v. Anderson

Appearances required.

4. 24CV05794, Brown v. Davies

Plaintiff Robert K. Brown (“Plaintiff”) filed the complaint (“Complaint”) against defendant Eileen Davies (“Defendant”), individually and as trustee of the Eileen Edith Davies Trust for causes of action derived from a contract. This matter is on calendar for the motion by Defendant under Code Civ. Proc. (“CCP”) § 473.5 to set aside the default.

Defendant was served by publication service on December 26, 2024. Plaintiff requested a default, which was entered on February 7, 2025. The default judgment was entered on May 7, 2022. Defendant has filed a motion for mandatory relief to set aside the default under CCP § 473.5 on August 7, 2025.

I. Set Aside of Default for Lack of Actual Notice

CCP § 473.5 provides:

- a) When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.
- b) A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date prescribed by subdivision (b) of Section 1005, and it shall be accompanied by an affidavit showing under oath that the party's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action.
- c) Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action.

Code Civ. Proc., § 473.5

“(A) defendant, served by publication of summons, has the right, at any time during the period of one year, upon tendering a proper answer, to apply to the court for an order setting aside the default and to receive such an order as a matter of right, upon such terms and conditions as the court may see fit to impose.” *Hiltbrand v. Hiltbrand* (1933) 218 Cal. 321, 323. However, “(a) defendant seeking vacation of a default judgment entered against him must further show that his lack of actual notice in time to defend the action was not caused by his inexcusable neglect or avoidance of service.” *Tunis v. Barrow* (1986) 184 Cal.App.3d 1069, 1077–1078. “(A) defendant, who has not been served personally, seeks permission, within a year after the rendition of judgment, to answer to the merits of the action; and the burden is upon him to show

that he has not been personally served and that he has a meritorious defense, but the burden is upon plaintiff to show that it is inequitable to permit defendant to answer.” *Brockman v. Wagenbach* (1957) 152 Cal.App.2d 603, 615. However, showing on the merits is a limited analysis, and “hearing on the motion is not the occasion to try the merits of the action.” *Tunis v. Barrow* (1986) 184 Cal.App.3d 1069, 1080. “The court’s inquiry is limited to whether the ... pleading contains a statement of facts sufficient to constitute a meritorious case, and the truth concerning the meritorious defense is not at issue. [Citations.]” *Tunis v. Barrow* (1986) 184 Cal.App.3d 1069, 108, quoting *Ludka v. Memory Magnetics International, supra*, 25 Cal.App.3d 316, 323–324.

Like CCP § 473, the policy that matters should be resolved on their merits also applies to motion to set aside under CCP§ 473.5. *Olvera v. Olvera* (1991) 232 Cal.App.3d 32, 39. Accordingly, concepts like “actual knowledge” are strictly construed. *Ibid*.

II. Analysis

Defendant bears the burden to show lack of actual knowledge, and underlying merit to her defense.

Defendant proffers evidence that she was not made aware of the filing of the case until she received the default in the mail. Plaintiff offers significant evidence of her efforts to serve Defendant, without success. However, what Plaintiff fails to show is any genuine dispute about Defendant’s place of residence in or after October 2024, or that Defendant undertook any affirmative steps in an effort to avoid service. As Defendant points out, while Plaintiff’s process server left voicemails and came to Defendant’s office, there is no evidence they identified themselves as process servers during those interactions. All the evidence shows that Defendant simply did not live at the addresses where service was attempted, and as such there is no indication that Defendant was even aware that the suit had been filed. Even had that been the case, this is not necessarily fatal to the query of whether actual notice existed. See, e.g, *Olvera v. Olvera* (1991) 232 Cal.App.3d 32. Nor does Defendant’s actual receipt of the demand letter mean she was aware of the subsequent action. Regardless, there is not sufficient evidence of awareness in time to appear.

Nor does the Court find inexcusable neglect. Plaintiff argues that Defendant failed to update their address with them after receiving the demand letter, but Defendant responded to the demand letter encouraging Plaintiff to contact her directly regarding the issue. Plaintiff did not do so. None of this particularly displays sufficient neglect to find Defendant’s conduct inexcusable.

Defendant has offered a proposed verified answer to the Complaint disputing particular facts and asserting affirmative defenses to the contract. Plaintiff also contends that Defendant is required to make a showing of merit for set aside to be appropriate. Plaintiff’s citation to *H. A. Pulaski, Inc. v. Abbey Contractor Specialties, Inc.* (1969) 268 Cal.App.2d 883, 890, does not pertain to CCP § 473.5. However, there are cases which apply the same principles to CCP§ 473.5 (or its predecessor). *Brockman v. Wagenbach* (1957) 152 Cal.App.2d 603, 615. With that in mind, it is worth noting that it is not that Plaintiff must prove her case, but rather present sufficient basis for the Court to find the case may come to a different result. Plaintiff argues that Defendant has asserted no meritorious defense in her proposed answer. This is not persuasive. First, Plaintiff

argues that Defendant's contentions regarding her affirmative defenses (novation, unclean hands, and estoppel) are precluded by the statute of frauds or inadequately pled. As to unclean hands, Plaintiff is unpersuasive. The affirmative defense does not appear to be a mere "platitudinal" contentions, as the facts recited therein match the rest of the Answer. Plaintiff makes no genuine argument regarding the merits. Plaintiff's contention regarding statute of frauds fails as well, as the statute is subject to various narrow exceptions, including estoppel by fraud, as is alleged here. See *Smyth v. Berman* (2019) 31 Cal.App.5th 183, 198. Second, as Defendant points out in her reply, the proposed answer contends that Plaintiff has breached the contract himself by violating the "Ninth" provision of the Indemnity Agreement. See, Proposed Answer, ¶ 17. Plaintiff proffers no attack on this particular contention, which goes to the heart of both Plaintiff's causes of action. There is sufficient merit that the Court must set aside the default.

Defendant's motion to set aside the default is **GRANTED**.

Defendant shall submit a written order to the court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5. 24CV05886, Dietkus v. Bravo Magana

Plaintiffs Alan Dietkus and Kathleen Groves Dietkus (together "Plaintiffs") filed the complaint (the "Complaint") against defendants Rigoberto Bravo Magana ("Defendant") and Does 1-20 originating from a automobile collision. This matter is on calendar for Plaintiffs' motion pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6 to enforce settlement. The Motion is **DENIED**.

I. Underlying Facts

Plaintiffs and Defendants reached a settlement of the case on November 14, 2024, for a monetary payment of \$937,507.63. Defendants sent a release accordingly that month. Plaintiffs undertook efforts to establish a Qualified Settlement Fund for the purpose of allowing them to protect the settlement proceeds. Plaintiffs thereafter made modifications to the proposed written release moving to direct the payment under the settlement to the Qualified Settlement Fund. Defendants have refused to sign, and Plaintiffs have refused to sign the agreement without said provision.

Plaintiffs submitted an ex parte requesting that the Court order enforcement of the agreement that payment be made to the Qualified Settlement Fund on April 22, 2025. The Court denied the motion due to the failure to submit a written and signed settlement agreement as would be required for a motion under CCP § 664.6.

Plaintiff has filed the instant motion to enforce settlement agreement on August 7, 2025. Defendant opposes the motion, and Plaintiff has filed a reply.

II. Governing Law

CCP § 664.6(a) provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case,

or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.” Like proving a contract, in order to have an enforceable agreement under CCP § 664.6, the moving party must show that there was mutual consent to common terms. *Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal.App.4th 724, 732-733. The statute empowers the Court to determine whether there actually was a settlement. *Fiore v. Alvord* (1985) 182 Cal.App.3d 561, 565. To be binding, the terms agreed to must be sufficiently definite for the court to give it exact meaning. *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811.

Where the terms of a settlement are disputed in a CCP § 664.6 motion, the court has the authority to adjudicate those disputes based on declarations or other evidence. *Malouf Bros. v. Dixon* (1991) 230 Cal.App.3d 280, 284. However, the court does not have the authority to modify the terms of the agreement. *Machado v. Myers* (2019) 39 Cal.App.5th 779, 795. Extrinsic evidence is admissible in ruling on a motion under CCP § 664.6. *Corkland v. Boscoe* (1984) 156 Cal.App.3d 989, 992.

Agreements made outside the presence of the court must be both in writing and signed by the parties or their counsel. CCP § 664.6 (a)-(b). Ordering enforcement of an agreement not bearing the signature of a party is error. *Gauss v. GAF Corp.* (2002) 103 Cal.App.4th 1110, 1123. “[T]he purpose of the signed writing requirement in section 664.6 is to facilitate the summary nature of the proceeding by decreasing the likelihood of misunderstandings and minimizing the possibility of conflicting interpretations of the settlement.” *Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 305 (internal quotations omitted).

III. Analysis

Both parties agree that there was a settlement in terms, but neither party provides the Court with evidence of an agreement enforceable under CCP § 664.6. Plaintiffs’ motion fails from the start. Plaintiffs ask the Court to enforce an agreement that the Court has already opined it has no jurisdiction to enter a judgment thereof without evidence of a writing signed by the parties. See Court’s 4/28/2025 Order on Plaintiffs’ Ex Parte Application. Plaintiff’s noticed motion does not cure the defect already identified in the Ex Parte Application. If the agreement is not in writing, any enforcement (asked for by either party) would exceed the Court’s power to enforce under the statute. *Gauss v. GAF Corp.* (2002) 103 Cal.App.4th 1110, 1123. Lack of meeting of the minds over such a provision as the one before the Court is *precisely* the purpose of the writing requirement. *Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 305. There being no evidence of a signed writing, Plaintiffs’ motion cannot be granted.

Therefore, the Motion is **DENIED**.

Defendant shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

6-7. 25CV00830, Ortiz v. Rowan Court Partners, LP

Plaintiff, Vilma Leticia Ortiz (“Plaintiff”), has filed the currently operative second amended complaint (the “SAC”) against defendants Rowana Court Partners, LP (“Rowana”), Burbank Housing Management Corporation (“Burbank”), Ivonne Morales (“Morales”), Jeane Lavarta (“Lavarta”, together with all other defendants, “Defendants”), and Does 1-10 with thirteen causes of action related to alleged property disputes and violations of tenant protection laws.

This matter is on calendar for demurrer to the SAC filed by Defendants for failure to state a cause of action as to the Second, Fifth, Seventh, Eighth, Tenth, Eleventh, and Twelfth causes of action, and the motion to strike particular allegations from the SAC.

I. Governing Law

A. Motions to Strike

A motion to strike lies where a pleading contains “irrelevant, false, or improper matter[s]” or is “not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” CCP § 436(b). However, “falsity,” must be demonstrated by reference to the pleading itself or of judicially noticeable matters, not extraneous facts. *See* CCP § 437. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a “general allegation of intent is sufficient.” *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632.). A motion to strike is properly directed to unauthorized claims for damages, meaning damages which are not allowable as a matter of law. *See, e.g., Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 (motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law). Punitive damages may be stricken where the facts alleged do not rise to the level of “malice, fraud or oppression” required to support a punitive damages award. *See, e.g. Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.

Civil Code § 3294 authorizes the recovery of punitive damages in noncontract cases “where the defendant has been guilty of oppression, fraud, or malice...” “Malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. “Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. “Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294. A conscious disregard for the safety of others may constitute malice. *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 28 (“*Searle*”). “When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice.” *Id.* at 29. “The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone.” *Id.* at 32. “Conscious disregard of safety as an appropriate description of the Animus malus which may justify an exemplary damage award when nondeliberate injury is alleged.” *Ibid.* “In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware

of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences.” *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a “general allegation of intent is sufficient.” *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632 (superseded by statute on other grounds).

B. Demurrers Generally

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint’s defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852. At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings “must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts.” *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal. App. 3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 384. Each evidentiary fact that might eventually form part of a party’s proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. “The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree.” *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

C. Warranty of Habitability

“[A] warranty of habitability is implied by law in residential leases.” *Green v. Superior Court* (1974) 10 Cal.3d 616, 637. “The elements of a cause of action for breach of the implied warranty of habitability ‘are the existence of a material defective condition affecting the premises’ habitability, notice to the landlord of the condition within a reasonable time after the tenant’s discovery of the condition, the landlord was given a reasonable time to correct the deficiency, and resulting damages.” *Peviani v. Arbors at California Oaks Property Owner, LLC* (2021) 62 Cal.App.5th 874, 891, quoting *Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1297. “When the alleged defect is in a common area, the landlord’s duty to inspect and maintain the common area removes any excuse by the landlord regarding a lack of knowledge.” *Peviani v. Arbors at California Oaks Property Owner, LLC* (2021) 62 Cal.App.5th 874, 891. “A violation of a statutory housing standard that affects health and safety is a strong indication of a materially defective condition.” *Ibid.*

D. Negligence

“The elements of a cause of action for negligence are: duty; breach of duty; legal cause; and damages.” *Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463. Whether a duty of care is owed is a question for the court and not a jury. *Ballard v. Uribe* (1986) 41 Cal.3d 564, 572. “Legal duties are not discoverable facts of nature, but merely conclusory expressions that, in cases of a particular type, liability should be imposed for damage done.” *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 434.

E. Breach of Contract

“A contract is an agreement to do or not to do a certain thing.” Civ. Code, § 1549. Contracts require capable parties, the consent of those parties, a lawful object, and mutual consideration. Civ. Code § 1550. “The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.” Civ. Code, § 1595. “The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.” Civ. Code, § 1596. “An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” *City of Moorpark v. Moorpark Unified School Dist.* (1991) 54 Cal.3d 921, 930, quoting Restatement 2d Contracts § 24. “To be enforceable, a promise must be definite enough that a court can determine the scope of the duty and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages.” *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 770.

The elements of a cause of action for breach of contract are: “(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.” See *Coles v. Glaser* (2016) 2 Cal.App.5th 384, 391; quoting *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614, 126 Cal.Rptr.3d 174. “It is the general rule that if an instrument is ambiguous the party pleading is required to set forth the meaning of the writing. The meaning attributed to the writing must be one to which it is reasonably acceptable, and where ‘a pleaded instrument is, because of the uncertainty of the language in which it is expressed, susceptible of more than one construction As to its nature or as to the purpose intended by the parties to be attained by it, ... the construction of the party pleading it should be accepted, if such construction be reasonable’ in considering a pleading attacked by general demurrer.” *Connell v. Zaid* (1969) 268 Cal.App.2d 788, 794–795 (internal citations omitted).

A tenant under a lease binds the landlord “to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.” Civ. Code, § 1927. “(A) landlord is bound to refrain from action which interrupts the tenant's beneficial enjoyment.” *Guntert v. City of Stockton* (1976) 55 Cal.App.3d 131, 138. “Breach can take many forms, including actual or constructive eviction.” *Nativi v. Deutsche Bank National Trust Co.* (2014) 223 Cal.App.4th 261, 293. The duty of a landlord under the covenant extends to taking reasonable steps to protect a tenant from other lessees. *Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 593.

A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect. *Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 401-402. In order to plead a contract by its legal effect, plaintiff must allege the substance of its relevant terms, which requires careful analysis of the contract, comprehensiveness in statement, and avoidance of legal conclusions. *McKell v. Washington Mutual Inc.* (2006) 142 Cal.App.4th 1457, 1489; *Construction Protective Services Inc. v. TIG Specialty Insurance Company* (2002) 19 Cal.4th 189, 198-192. “Where a party relies upon a contract in writing, and it affirmatively appears that all the terms of the contract are not set forth in haec verba, nor stated in their legal effect, but that a portion which may be material has been omitted, the complaint is insufficient.” *Gilmore v. Lycoming Fire Ins. Co.* (1880) 55 Cal. 123, 124.

F. Nuisance

Civil Code § 3479 defines nuisance as “(a)nything 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.” “[Nuisance] has meant all things to all people, and has been applied indiscriminately to everything from an alarming advertisement to a cockroach baked in a pie. There is general agreement that it is incapable of any exact or comprehensive definition.” *City of San Diego v. U.S. Gypsum Co.* (1994) 30 Cal.App.4th 575, 585 (“*Gypsum*”); quoting Prosser and Keeton, *Law of Torts* (5th ed. 1984) § 86, p. 616.

“(P)ivate nuisance is a civil wrong based on disturbance of rights in land.” *Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 302. “First, the plaintiff must prove an interference with his use and enjoyment of his property. (*Ibid.*) Second, ‘the invasion of the plaintiff’s interest in the use and enjoyment of the land [must be] *substantial*, i.e., that it cause[s] the plaintiff to suffer ‘substantial actual damage.’ (*Ibid.*) Third, ‘[t]he interference with the protected interest must not only be substantial, but it must also be unreasonable’ [citation], i.e., it must be ‘of such a nature, duration or amount as to constitute unreasonable interference with the use and enjoyment of the land.’ (*Ibid.*, italics omitted.)” *Mendez v. Rancho Valencia Resort Partners, LLC* (2016) 3 Cal.App.5th 248, 262–263, quoting *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 938. However, where a plaintiff does not allege a perceptible injury to their individual property interest distinguishable from the community at large, plaintiff has not pled a cause of action for private nuisance. *Brown v. Petrolane, Inc.* (1980) 102 Cal.App.3d 720, 727.

“[Nuisance] has meant all things to all people, and has been applied indiscriminately to everything from an alarming advertisement to a cockroach baked in a pie. There is general agreement that it is incapable of any exact or comprehensive definition.” *City of San Diego v. U.S. Gypsum Co.* (1994) 30 Cal.App.4th 575, 585 (“*Gypsum*”); quoting Prosser and Keeton, *Law of Torts* (5th ed. 1984) § 86, p. 616. “A nuisance may be either a negligent or an intentional tort. If the latter, then exemplary damages are recoverable.” *Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 920.

G. The Unfair Competition Law (“UCL”)

Business & Professions Code section 17200, prohibits “any unlawful, unfair or fraudulent” business practices. Bus. & Prof. Code §17200. “Since section 17200 is [written] in the disjunctive, it establishes three separate types of unfair competition” and “prohibits practices that are either ‘unfair’ or ‘unlawful,’ or ‘fraudulent.’” *Pastoria v. Nationwide Ins.* (2003) 112 Cal.App.4th 1490, 1496; see also *CelTech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, (1999) 20 Cal.4th163, 180 (1999).

A party may bring a section 17200 claim only if he or she shows that he or she “suffered injury in fact and has lost money or property as a result of the unfair competition.” Bus. & Prof. Code § 17204. To have standing, a plaintiff must sufficiently allege that (1) he has “lost ‘money or property’ sufficient to constitute an ‘injury in fact’ under Article III of the Constitution” and (2) there is a “causal connection” between the defendant’s alleged UCL violation and the plaintiff’s injury in fact. See, *Rubio v. Capital One Bank* (9th Cir. 2010) 613 F.3d 1195, 1203-1204. The UCL incorporates other laws and treats violations of those laws as unlawful business practices independently actionable under state law. *Chabner v. United Omaha Life Ins. Co.* (9th Cir. 2000) 225 F.3d 1042, 1048. Violation of almost any federal, state, or local law may serve as the “unlawful” basis for a UCL claim. *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839. In addition, a business practice may be “unfair or fraudulent in violation of the UCL even if the practice does not violate any law.” *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 827. Where plaintiff’s UCL claim is entirely derivative of other fatally flawed causes of action, the UCL claim also fails. See, *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 277 [finding plaintiff’s “UCL claim is derivative of [his] defamation cause of action, that is, it is based on the same [allegations] and likewise that cause of action stands or falls with that underlying claim.”]. “A breach of contract may ... form the predicate for Section 17200 claims, *provided it also constitutes conduct that is ‘unlawful, or unfair, or fraudulent.’*” *Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 645 (internal quotations omitted, emphasis original).

“With respect to the *unlawful* prong, virtually any state, federal or local law can serve as the predicate for an action under section 17200.” *People ex rel. Bill Lockyer v. Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508, 515 (internal quotations omitted). “Unlike common law fraud, a UCL fraud claim “can be shown even without allegations of actual deception, reasonable reliance and damage”; what is required to be shown is that members of the public are likely to be deceived.” *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 258 (internal quotations omitted)(“*Collins*”). Fraud claims under the UCL must be stated with “reasonable particularity”. *Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1261; *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619.

H. Defamation

To constitute an action for libel, a plaintiff must show that the defendant made a false and unprivileged publication which causes damage to plaintiff’s reputation. Civ. Code, § 45. In pleading libel, a plaintiff must confer the exact statement which is claimed to be false. *Des Granges v. Crall* (1915) 27 Cal.App. 313, 315.

“Defamation is an invasion of the interest in reputation. The tort involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage.” *Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645. Publication means communication to any third person who understands the defamatory meaning of the statement and the application to whom reference is made. *Vedovi v. Watson & Taylor* (1930) 104 Cal.App. 80, 83. A plaintiff cannot publish the defendant’s statements in order to manufacture the publication requirement; defendant must be responsible for the publication leading to libel claims. *Live Oak Publishing Co. v. Cohagan* (1991) 234 Cal.App.3d 1277, 1284. Only where plaintiff is compelled to re-publish the statements in aid of disproving them is the defendant’s publication not required. *Id.*

In contrast, slander is an allegation of spoken defamatory statements falsely averring any of the following:

- “1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;
4. Imputes to him impotence or a want of chastity; or
5. Which, by natural consequence, causes actual damage.”

Civ. Code, § 46.

II. Evidentiary and Procedural Issues

While Defendants have filed a acknowledgement of receipt of Plaintiff’s opposition, the Court is not in receipt of any opposition, as it was never filed. No opposition being considered, the Court does not consider Defendants’ reply, as nothing submitted therein may be considered to cure defects in the original motion.

III. Motion to Strike

a. UCL Claims

Defendants argue that Plaintiff has failed to state a claim under the UCL, and accordingly the request for restitution must be struck. As the Court provides below, the UCL claim is adequately stated. Therefore, Plaintiff would be entitled to restitution under the UCL. The motion to strike the claim for restitution therefore fails.

b. Attorney’s Fees

Defendants ask that the Plaintiff's request for attorney's fees be stricken because she is not currently represented. This request in effect asks the Court to presume Plaintiff will not be represented at any point in the case. Plaintiff has adequately alleged causes of action which otherwise entitle her to attorney's fees. See, e.g., Civ. Code § 1942.5 (i). Defendants offer no authority allowing the Court to take judicial notice of Plaintiff's represented status, presume what her status will be over the course of the case, or strike attorney's fees to which Plaintiff is statutorily entitled. Striking the prayer for fees is therefore improper.

c. "False and Improper" Allegations

Defendants also argue that the Court should strike matters that the Defendants contend are "false and improper". Defendants *have* sufficiently identified what matters they want the Court to strike in their notice of motion, as required by the Rules of Court. However, they do not incorporate these requests into their argument. The Court presumes that this argument encompasses everything not related to the UCL claim, the request for attorney's fees, and punitive damages. This means that it goes to all of the requests to strike in the notice of motion except ¶¶ 18-19. See Defendants' Notice of Motion and Motion to Strike, pg. 2.

Again, Defendants misapprehend the scope of a motion to strike. Motions to strike are constrained to the face of the pleadings and matters judicially noticeable. Falsity, therefore, is constrained to those matters which are false based on this material capable of consideration. See, CCP § 437. Defendants cannot strike those allegations which they merely disagree with, or paint them in a bad light. Defendants argue that this might "mislead the trier of fact", citing *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528. This case says nothing of the sort, and in fact quite clearly repudiates Defendants position. "[M]atter that is essential to a cause of action should not be struck and it is error to do so." *Ibid*. Plaintiff's causes of action include defamation, nuisance, UCL claims, breach of implied warranty of habitability. Facially, Defendants seek to strike material allegations to these causes of action. Accordingly, striking these provisions is expressly *disallowed* by Defendants' cited case. The purpose of a motion to strike is not an opportunity for Defendants to have a "line item veto" to Plaintiff's complaint. *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683. Given that Defendants have failed to display falsity based on the material capable of consideration, the contention does not merit further consideration.

As to the argument that Plaintiff has made conclusory allegations of intent, Defendant again misapprehend matters properly struck. Defendants cite to a case, *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, with vague statements regarding conclusory allegations, but without direct application to the actual specific contention they advance. With respect to intent, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632. This is a truism of pleading practices by necessity. Defendants' position would otherwise require plaintiffs to entirely forego claims reliant on intent, or aver speculative facts without basis to do so. That is not the state of the law. Intent is adequately alleged and the motion to strike cannot be sustained on this basis.

d. Punitive Damages

Defendants contend that Plaintiff has not pled facts sufficient to constitute a basis for punitive damages. As the Court has already addressed, Plaintiff has adequately pled the required intent in an appropriate manner, and the remaining query is whether Plaintiff has alleged sufficiently severe facts to constitute conduct punishable by punitive damages.

As an initial matter, the Court notes that the cause of action for violations of Cal. Civ. Code § 1942.5 has punitive damages as a statutory remedy applicable to retaliation claims if Plaintiff can meet the pleading standard of “fraud, oppression or malice”. When dealing with malice, Plaintiff’s allegations regarding the intentional nature of the conduct is only part of the analysis, and the question becomes whether the conduct was performed with intent to cause injury. Given that Plaintiff has alleged the intent to cause injury, and the conduct alleged in retaliation includes retaliatory eviction, Plaintiff has alleged intentional conduct with the intent to cause injury. See, e.g., *Rich v. Schwab* (1998) 63 Cal.App.4th 803, 811.

However, Defendants move to strike Plaintiff’s generalized request for punitive damages as well. Even when dealing with other forms of exemplary damages, Defendants misapprehend the standard. Landlords can be held liable for putative damages for nuisance claims, depending upon the intent. *Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 911. Knowledge of uninhabitable conditions while refusing to make the required corrections can be intentional conduct as required for punitive damages. *Ibid.* Defendants’ cited case, *McDonnell v. American Trust Co.* (1955) 130 Cal.App.2d 296, 300, appears less applicable than more modern and comparable jurisprudence. Unlike in *McDonnell*, Plaintiff does not just allege a single defect derived from a failure to repair, but continued conduct. Defendant’s contention regarding the limited nature of punitive damages appears to presume the successes of their contentions regarding striking allegations of intent. Punitive damages, due to their function as a punishment and deterrent as opposed to compensation, inherently turn on issues of intent, whether associated to reckless or intentional harm. When dealing with recklessness, the conduct alleged is held to a higher standard, as such conduct is not per se “intentional”. That is not the nature of Plaintiff’s allegations here, and therefore the SAC need only allege intentional conduct with the intent to cause injury. Plaintiff alleges intentional maintenance of a nuisance. This is sufficient.

The motion to strike is DENIED.

IV. Demurrer

A. Allegations as to Time

Defendants argue that the SAC is materially deficient because it lacks allegations as to the specific dates and times incidents occurred, citing *Corum v. Hartford Acc. & Indem. Co.* (1945) 67 Cal.App.2d 891, 894. This contention fails for two reasons. First, Plaintiff has filed a general demurrer, contending that Plaintiff has failed to state facts sufficient to state causes of action as to the second, fifth, seventh, eighth, tenth, eleventh, and thirteenth causes of action. Cal. Rule of Court, Rule 3.1320 (a); see also, CCP § 430.80 (elucidating non-waivable forms of general demurrer); CCP § 430.41. Defendants’ own case makes abundantly clear that any such argument is a *special* demurrer. *Corum v. Hartford Acc. & Indem. Co.* (1945) 67 Cal.App.2d 891, 894; see also *Johnson v. Mead* (1987) 191 Cal.App.3d 156, 160 (demurrer based on ambiguities must be

raised by special demurrer, not general demurrer). The special demurrer to the entire SAC is not included in the notice of motion, has not been properly placed before the Court.

Second, the SAC, from pg.4:6-5:14, provides a litany of dates associated to numerous factual allegations. Even if the special demurrer were properly before the Court, Plaintiff's complaint is not sufficiently ambiguous in this regard that Defendants cannot make the necessary determinations to appropriately answer. See, e.g., *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.

B. Intentional Breach of the Implied Warranty of Habitability

Defendants argue that Plaintiff's cause of action for intentional breach of the implied warranty of habitability is not sufficiently pled. Distinguishing the Second cause of action from the First, Plaintiff makes one additional factual allegation, that Defendants "intentionally" failed to replace her smoke detector despite repeated requests. SAC, pg. 8:1-9. For their part, Defendants are correct that the intentionality of such a claim is irrelevant to its merits, and it does not itself comprise a separate cause of action as a result. However, this doesn't truly describe a deficiency in the cause of action, as Defendants also fail to show that such a claim creates a defect that otherwise is not present when examining the elements of the claim.

Defendants' general assertion that the breach of warranty of habitability is a contractually derived condition, and therefore requires the pleadings specific to a contract, is not a contention supported by any authority provided. While at common law, such habitability considerations may have been inherent to the contractual intents of the parties, such basic amenities have long since been consigned to statutory requirements on landlords when leasing properties for human habitation. See Civ. Code § 1941. Plaintiff alleges that she has a tenancy with Defendants. This is sufficient to state the standing requirement for the elements of the claim.

Premises for rent are subject to various requirements to meet the requirements of California law. Plaintiff particularly alleges in her Second cause of action that Defendants have continued to leave the property without adequate smoke detectors in violation of Health and Safety Code § 13113.7. This specifically alleged statutory violation appears to be sufficient to state a cause of action for the breach of the warranty of habitability. *Peviani v. Arbors at California Oaks Property Owner, LLC* (2021) 62 Cal.App.5th 874, 891. Plaintiff alleges that Defendants "intentionally" failed to provide the required smoke detectors despite numerous requests. Regardless of motivation, violation of Health and Safety code sections comprises a viable cause of action for breach of habitability, without requiring the Court to presume what general allegations the cause of action may rely upon duplicative facts from the First cause of action.

The Demurrer to the Second cause of action is OVERRULED.

C. Violation of Statutory Duties under Civ. Code § 1941.1

Defendants demur to Plaintiff's Fifth cause of action. The SAC "realleges" the prior allegations of fact. SAC, pg. 10:7-8 Plaintiff's pleading in this section contains specific reference to the

alleged failure to allow Plaintiff a reasonable modification of her living space in violation of Cal. Code Regs., tit. 2, § 12176.

Defendants raise that this is not a violation of the provisions of Civ. Code § 1941.1 specifically, and therefore Plaintiff has not adequately pled this cause of action. Moreover, as Defendants opine, Civ. Code § 1941.1 is not itself a cause of action, but a recital of statutory standards applicable to breaches of warranty of habitability. While it is not a preclusive list for that standard, the Plaintiff had already asserted two causes of action on that theory, and given the label applied, the allegation of violation of discrimination regulations is not an adequately alleged theory for violation of the statute cited. Plaintiff has not adequately stated a cause of action for Violations of Civ. Code § 1941.1 as a result. Plaintiff's factual allegations in this regard are alleged without being asserted under a viable cause of action.

The Demurrer to the Fifth cause of action is SUSTAINED with leave to amend.

D. Unfair Competition Law

To plead a cause of action for violation of the UCL, Plaintiff need only plead standing (including injury in fact), and conduct which is unfair, unlawful, or fraudulent. While Defendants contend that Plaintiff has not pled injury in fact, This cause of action specifically pleads for disgorgement of the rent from Plaintiff. See SAC, pg. 14:5-12. Drawing reasonable inference therefrom, Plaintiff must have paid actual funds to be entitled to disgorgement thereon. All that is required is that Plaintiff show she paid more than she otherwise would have absent the UCL violation. *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 327. Plaintiff's pleading adequately shows these elements.

To the other element, Plaintiff has pled various statutory violations and a regulation on the face of the SAC, which is sufficient to state a claim of "unlawful" activity. Accordingly, the cause of action is adequately pled.

Therefore, as to the Tenth cause of action, Demurrer is OVERRULED.

E. Nuisance (Negligent and Intentional)

Defendants demur to Plaintiff's causes of action for both negligent and intentional nuisance. Defendant avers that Plaintiff's Nuisance claim is repetitious of her negligence claims, and therefore demurrer is appropriate. This is a myopic interpretation of the cases on which Defendants rely and misapprehends the stage at which these determinations occurred. Plaintiffs are generally entitled to plead alternative theories predicated on the same facts. *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1256. The constraint thereon is if a plaintiff has pled a single primary right, Plaintiff's remedies should be constrained to their election of remedy post-verdict. *Ibid.* Defendants cases, when thoroughly read, do not assist their position. See *El Escorial Owners' Assn. v. DLC Plastering, Inc.* (2007) 154 Cal.App.4th 1337, 1343 (damages restricted post-verdict); *Van Zyl v. Spiegelberg* (1969) 2 Cal.App.3d 367, 376 (question of which theory liability should apply should be left to the jury as the finder of fact). That the Nuisance claim and the negligence claim flow from the same primary right is not preclusive.

As to the Seventh cause of action, the Demurrer is OVERRULED.

Issues of intent, as addressed above, are not legally relevant to the elements of the nuisance cause of action itself. Again, intentionality is a relevant consideration when determining whether punitive damages are appropriate. *Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 920. However, in the Eighth cause of action, Plaintiff asserts no new material facts which may comprise a cause of action for Nuisance separate and apart from the factual allegations asserted in the Seventh cause of action. This cannot be held to stand alone as a separate and assertable cause action.

As to the Eighth cause of action, the Demurrer is SUSTAINED with leave to amend.

F. Defamation

Plaintiff makes reference to both libel and slander in different forms. Plaintiff avers that the statements were published because they were “made in public to other tenants”. SAC, pg. 16:8-9. She also makes reference to Civil Code § 46. SAC, pg. 15:20-21. Plaintiff’s allegations cannot meet the standard for slander because she has alleged none of the qualifying categories of Civil Code § 46. Additionally, Plaintiff’s SAC avers that each of the alleged false statements were in a letter, and therefore were not “orally uttered”. Civ. Code § 46; SAC, pg. 15:25-27, pg. 16:3-7, pg. 20. Accordingly, the cause of action for defamation is not a viable claim under the theory of slander.

Nor does Plaintiff sufficiently plead libel. Plaintiff alleges statements (see SAC, Exhibits) and falsity, but fails to allege publication of a writing, averring such matters in conclusory terms, or in a manner which isn’t consistent with written defamation. Accordingly, Plaintiff has not pled the elements for libel.

The Demurrer to the Thirteenth cause of action is SUSTAINED with leave to amend.

G. Breach of Contract

Despite the Court’s finding that the Plaintiff’s failure to plead the terms of the contract are not preclusive of her cause of action for breach of the warranty of habitability, this conclusion does not extend to Plaintiff’s express breach of contract cause of action. Plaintiff is required to plead all material terms of a contract. *Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 401-402. Plaintiff avers a lease contract in general terms. There is no delineation the material express contractual term, its breach, or that Plaintiff has fulfilled any conditions precedent. Accordingly, the cause of action for breach of contract is not adequately pled.

The Demurrer to the Eleventh cause of action is SUSTAINED with leave to amend.

H. Punitive Damages

Demurrers do not go to damages, but causes of action. Defendants' assertion of this matter at demurrer is improper. *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1561. The Court has already ruled on the merits of Defendants' contention that punitive damages were not adequately alleged.

V. Leave to Amend

The Court notes that the demurrer to each cause of action above have been sustained with leave to amend. While Defendants argue that Plaintiff cannot amend the Complaint, the jurisprudence in California overwhelmingly supports leave to amend absent some affirmative indication that Plaintiff cannot cure the defects. It does not appear appropriate to hypothesize what Plaintiff may or may not allege in amending. Leave to amend appears necessary at this early juncture.

The Court is, however, cognizant in coming to this conclusion that Plaintiff has had two amended complaints so far, though none yet tested by demurrer. This continues to be relevant as the Court may examine any leave to amend going forward.

VI. Conclusion

Based on the foregoing, the Demurrer is **SUSTAINED with leave to amend as to the Fifth, Eighth, Eleventh and Thirteenth causes of action.** The demurrer is **OVERRULED as to the Second, Seventh and Tenth causes of action.**

The motion to strike is **DENIED.**

Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

8. 25CV02461, Cordero v. Alley

Plaintiff Nicholas Cordero ("Plaintiff") filed the complaint in this action for partition (the "Complaint") against defendant Denis Michelle Alley ("Defendant") and Does 1-10, related to the property commonly known as 1503 Tammy Way, Santa Rosa, California (the "Property").

This matter is on calendar for the motion of Defendant to have the Property appraised under Cal. Code Civ. Proc. ("CCP") § 874.316. **The motion is GRANTED as outlined in the Amended Proposed Order.**

I. Governing Law

"A co-owner of real or personal property may bring an action for partition." [Citation.] "The primary purpose of a partition suit is...to partition the property, that is, to sever the unity of possession." *LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493; see also *14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1404-1405 ["partition" is "the procedure for segregating and terminating common interests in the same parcel of property."]. "[A]lthough the action of partition is of statutory origin in this state, it is

nonetheless an equitable proceeding.” *Elbert, Ltd. v. Fed. Income Properties* (1953) 120 Cal.App.2d 194, 200; see also, CCP §872.140; *Cummings v. Dessel* (2017) 13 Cal.App.5th 589, 596–597 [Partition is a statutorily-prescribed equitable proceeding that is favored by the law.]. “The original purpose of partition was to permit cotenants to avoid the inconvenience and dissension arising from sharing joint possession of land” and “[a]n additional reason to favor partition is the policy of facilitating transmission of title, thereby avoiding unreasonable restraints on the use and enjoyment of property.” *LEG Investments, supra*, 183 Cal.App.4th at 493.

In a partition action, “the court shall determine the fair market value of the property by ordering an appraisal pursuant to subdivision (d)”. CCP, § 874.316 (a). Alternatively, as exceptions to that rule, the court may find the cost of the appraisal outweighs its evidentiary value, and order an evidentiary hearing, or the parties may stipulate to either the value or alternate method of valuation. CCP § 874.316(b-c). When the court orders an appraisal, “the court shall appoint a disinterested real estate appraiser licensed in the State of California to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.” CCP § 874.316(d). The Court then sends notice to each party regarding the appraisal within 10 days. CCP § 874.316(e). A hearing follows “not sooner than 30 days” after the notice is provided, “whether or not an objection to the appraisal is filed”, after which the Court determines the fair market value. CCP § 874.316(f).

II. Analysis

Defendant requests that the Court appoint an appraiser under CCP § 874.316(d) so he may exercise his right to buyout under CCP § 874.317. Plaintiff has filed a non-opposition to the substance of the request for appraisal, but points out that in the proposed order Defendant asks for several remedies not granted by the statute at issue. Plaintiff has since filed an amended proposed order removing these sections.

First, Defendant makes various contentions related to his prior default, which was actually vacated by stipulation of the parties before the instant motion was ever filed. See Stipulation and Order, filed 7/25/2025. The Court need not determine the propriety of a defaulted defendant moving under CCP § 874.316 as a result. Defendant may file the required motion once the required procedural steps have occurred.

Second, to Defendant’s request pursuant to CCP § 874.317, no appraisal has yet occurred, as Defendant has just requested it. In this regard, Defendant’s requests are premature, as CCP § 874.317 requires the Court to send the notice of appraisal amount before Defendant may send notice of his intent to exercise the right to Cotenant buyout of interests. See CCP § 874.317(a-b). Given that the appraisals are required unless certain exceptions are met, the Court will send the notice as required by the statute at the time the appraisal is completed.

Third, as to the Defendant’s other requests that appear only in their order and not in the memorandum, Defendant provides no authority or support for these requests, and accordingly Plaintiff is correct that they are not properly included in the Order.

Based on the foregoing, the Motion is **GRANTED**. The Court will issue an order appointing a disinterested appraiser under CCP § 874.316. After the appraisal is filed, the Court will send the required notices and set the matter for hearing no sooner than 30 days thereafter.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Thereafter, the Court will sign the Amended Proposed Order.

9. SCV-270984, Suchard v. Sonoma Academy

Pursuant to the parties signed Stipulation the Court's execution of the accompanying Order, the Plaintiffs shall pay Defendant the amount of \$1,133.50 for its costs on appeal within 30 days of the execution of the Order. It is further ordered that Plaintiffs' Motion to Strike, or in the Alternative, to Tax Costs currently set for hearing on November 12, 2025, is now vacated. Defendant will also withdraw if Memorandum of Costs and Memorandum of Costs on Appeal for all costs in excess of \$1,133.50.

****This is the end of the Tentative Rulings.****