TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, June 24, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN D17 ZOOM ONLINE:
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

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** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. 23CV00413, JPMorgan Chase Bank N.A. v. Quackenbush

Plaintiff JPMorgan Chase Bank, N.A.'s ("Plaintiff" or "Chase") unopposed motion to vacate the dismissal and enter judgment pursuant to Code of Civil Procedure ("C.C.P.") section 664.6 is **GRANTED**. Judgment shall be entered in the amount of $5,152.00 (erroneously stated as $8,707.38 on the Notice of Motion) against Defendant Hannah N. Quackenbush ("Quackenbush") for the outstanding debt. Per Evidence Code sections 452 and 453, Chase's request for judicial notice of the party's Stipulated Agreement is **GRANTED**.

PROCEDURAL HISTORY

Chase brought this action against Quackenbush to collect payment on credit card debt owed on the account number ending in 0049. (Request for Judicial Notice ["RJN"], Exhibit A, ¶¶ 1-2.) The parties entered into a Stipulation Agreement pursuant to C.C.P. § 664.6 (the "Stipulation"), according to which Quackenbush agreed to pay Chase to satisfy the debt owed. (*Ibid*.) Quackenbush agreed to make the following payments: (1) 1 payment of $50.00 on or before the 6th day of October beginning

October, 2023; (2) 1 payment of $193.38 on or before the 14th day of October beginning October, 2023; and (3) 46 payments of $184.00 on or before the 14th day of November beginning November, 2023. (*Id*. at Exhibit A, ¶ 4.) If Quackenbush defaulted on the payments, then Chase could apply to the Court to have the dismissal without prejudice set aside and vacated and to have judgment entered for the Judgment Amount less credit for payment(s) received. (RJN, Exhibit A, ¶ 9.) Quackenbush paid a total of $3,555.38 and then defaulted on the rest of the payments. (Langedyk Decl., ¶¶ 5-6.) Chase now moves for entry of judgment under the Stipulated Agreement. Despite proper and timely service of the moving papers and notice of hearing date, Quackenbush did not oppose the motion.

ANALYSIS

Legal Standard

If parties to a pending litigation agree to sign a written stipulation for settlement of the case, then the court may upon noticed motion enter judgment pursuant to the terms of the settlement. (C.C.P. § 664.6(a).) The court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement if the parties request it. (*Ibid*.) "Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809, 71 Cal.Rptr.2d 265.)

Chase's Motion

Chase moves unopposed to vacate the dismissal and moves to enter judgment per the Stipulation and section 664.6. (Motion, pp. 3-4.) Chase asks the Court to enter judgment in the amount of $5,152.00 (erroneously stated as $8,707.38 on the Notice of Motion), which includes the principal sum remaining on the debt and no costs. (Langedyk Decl., ¶ 7.)

Application

Chase sufficiently demonstrated that the parties entered into a valid written and signed stipulated agreement, under which Quackenbush continues to owe debt after defaulting on payment obligations. Per the motion, the parties' Stipulation, and C.C.P. section 664.6, the Court finds it reasonable to enter judgment in the amount requested against Quackenbush, for the remaining debt owed plus zero costs.

CONCLUSION

Accordingly, the motion is **GRANTED**. Judgment shall be entered in the amount of **$5,152.00** (erroneously stated as $8,707.38 on the Notice of Motion), against Quackenbush for the outstanding debt plus costs. Unless the parties request and appear for oral argument, the Court will sign the proposed order and proposed judgment, which both state the correct amount owed.

2. 24CV00335, Kruppa, Jr. v. Dowell, DVM

APPEARANCES REQUIRED. The Court will allow Plaintiff/Cross-Defendant Richard J. Kruppa Jr. an opportunity to be heard regarding Defendants/Cross-Complainants Peter Dowell, DVM

and Julie Dowell's Motion for Terminating Sanctions prior to issuing a final ruling regarding the Motion, the requests for judicial notice, and objections to evidence.

3. 24CV01822, Rutz v. Hernandez

Plaintiff Keith Rutz ("Plaintiff") moves for attorney's fees in the amount of $165,180.00 pursuant to Civil Code sections 789.3(d) and 1942.5(i). Attorney's fees are **GRANTED** in the reduced amount of $132,144.00.

I. FACTUAL & PROCEDURAL HISTORY

A general summary of the lengthy procedural history in this case is as follows. Plaintiff filed his Complaint on March 11, 2024, asserting 11 causes of action against Defendants Cynthia Hernandez ("Defendant Hernandez") and June King (who was dismissed with prejudice on September 30, 2024, by Plaintiff) for their unlawful lockout of Plaintiff from Defendants' property located at 19170 Railroad Avenue, Sonoma, California (the "Property") on April 10, 2023. Defendant Hernandez, a licensed attorney, represented herself in propria persona. On April 8, 2024, the Court granted Plaintiff's *ex parte* application to order Defendants to show cause ("OSC") regarding a preliminary injunction and temporary restraining order ("TRO") that was set on calendar on April 24, 2024, and required Plaintiff to serve the OSC and TRO on Defendants no later than April 9, 2024, via personal service. (See Order to Show Cause, dated April 8, 2024, by the Hon. Rene Chouteau [Retired].) On April 23, 2024, the Court extended the TRO, now expiring on May 15, 2024, to serve Defendant Hernandez with the May 15, 2024, OSC and TRO. (See Order re Order to Show Cause, signed on April 25, 2024, by the Hon. Oscar Pardo.) On May 15, 2024, the Court granted Plaintiff's unopposed preliminary injunction that enjoined Defendant Hernandez from denying Plaintiff access to the Property for 30 days and from moving, damaging, or disposing of Plaintiff's personal items. (See Order for Preliminary Injunction, signed on May 29, 2024, by the Hon. Kenneth English.) Plaintiff attempted to personally serve Defendant Hernandez several times with various pleadings and motions without success. (McDonell Decl., ¶¶ 10–15, 17–19.)

In October 2024, the Court reconsidered its prior order and denied Plaintiff's motion to quash and overruled Defendant Hernandez's demurrer, ordering her to file an Answer to the Complaint within 20 court days. (See Amended Minute Order, dated and served on October 10, 2024; see Order After Hearing re Motion to Reconsider, Order After Hearing Denying Attorney Fees, and Order After Hearing Overruling Hernandez General Demurrer, all signed on October 22, 2024, by the Hon. Bradford DeMeo.) Defendant Hernandez appealed this Court's October 9th Order, which she later abandoned on December 30, 2024. (See Abandonment of Appeal, filed December 30, 2024.) Plaintiff finally sought Defendant Hernandez's default and attorney's fees on January 10, 2025. On January 17, 2025, the Court entered default of Defendant Hernandez. On June 10, 2025, Plaintiff filed an MPA in support of Default Judgment with supporting evidence in addition to a request for dismissal, dismissing all Doe Defendants without prejudice, dismissing all requests for injunctive relief without prejudice, and dismissing Plaintiff's Tenth Cause of Action for Financial Abuse of an Elder without

prejudice. In response to Plaintiff's proposed Court Judgment, the Court set a civil default hearing for September 24, 2025, and set Plaintiff's attorney's fees motion for the same date. (See Order of Judgment Denied, dated July 10, 2025.)

In the interim, Defendant Hernandez filed an *ex parte* application for an order shortening time on a motion to set aside the default, which the Court granted, and the Court vacated the September 24 hearings. (See Order re Ex Parte Application for Order Shortening Time, signed and filed on September 16, 2025.) Defendant Hernandez filed the motion to set aside on October 1, 2025, which had substantive and procedural deficiencies. On January 23, 2026, the Court set the matter on the February 19, 2026, OSC calendar for Defendant Hernandez's use of improper citations. (See Minute Orders dated January 23, 2026, and served on January 27, 2026.) Defendant Hernandez did not appear on February 19, 2026, at the OSC so the Court continued the OSC to February 26, 2026, and set an additional OSC on April 9, 2026, for Defendant Hernandez's alleged filing of untruthful documents. (See Minute Orders dated February 19, 2026.) On February 26, 2026, the Court denied Defendant Hernandez's motion to set aside default and continued the matter to April 22, 2026, for a civil default hearing. (See Minute Order, dated February 26, 2026, and served on March 3, 2026.) On April 9, 2026, the Court imposed sanctions against Defendant Hernandez for failing to appear the OSC and for improperly signing, or causing to be signed, proof of service documents declaring service by a third party when she had personally served documents. (See Minute Orders dated April 9, 2026 and served on April 15, 2026.) On April 24, 2026, the Court held a civil default hearing where the Court entered judgment in favor of Plaintiff against Defendant Hernandez. (See Minute Orders dated April 22, 2026, and April 24, 2026.) On May 15, 2026, the Court entered default judgment against Defendant Hernandez in the amount of $275,900.00 with attorney fees to be determined by a separate motion. (See Judgment – Entire Action, filed May 15, 2026.) Plaintiff now moves the Court for an award of his attorney's fees for the instant case pursuant to Civil Code sections 789.3(d) and 1942.5(i).

II. DISCUSSION

A. Plaintiff is the Prevailing Party under Civil Codes Sections 789.3(d) and 1942.5(i)

Civil Code section 789.3(d) requires the court to award reasonable attorney's fees to the prevailing party. Similarly, section 1942.5(i) requires the court to award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action. Neither section defines "prevailing party". C.C.P. section 1032(a)(4) defines a prevailing party as "the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant." As reasoned by the court in *Sharif*,

> The courts have repeatedly rejected the contention that the prevailing party definitions in [C.C.P.] section 1032, subdivision (a)(4) "should be automatically applied in cases where the authorizing attorney fees statute does not define prevailing party. [Citations.] [¶] In the absence of legislative direction in the attorney fees statute, the courts have concluded that a rigid definition of prevailing party should not be used. [Citation.] Rather, prevailing party status should be determined by the trial court based on an evaluation of whether a party

> prevailed 'on a practical level,' and the trial court's decision should be affirmed on appeal absent an abuse of discretion." (*Donner Management Co. v. Schaffer* (2006) 142 Cal.App.4th 1296, 1310, 48 Cal.Rptr.3d 534 (*Donner*).) "Among the factors the trial court must consider in determining whether a party prevailed is the extent to which each party has realized its litigation objectives. [Citations.]" (*Zuehlsdorf v. Simi Valley Unified School Dist.* (2007) 148 Cal.App.4th 249, 257, 55 Cal.Rptr.3d 467 (*Zuehlsdorf*.)

(*Sharif v. Mehusa, Inc.* (2015) 241 Cal.App.4th 185, 192 [holding that plaintiff was entitled to attorney fees award for her Equal Pay Act claim pursuant to Labor Code section 1197.5(g) and defendant prevailed on a practical level and realized its litigation objectives and therefore was entitled to attorney fees under Labor Code section 218.5].)

Here, Defendant Hernandez defaulted and after a hearing, Plaintiff received a default judgment in his favor against Defendant Hernandez in the amount of $275,900.00. Thus, Plaintiff received a net monetary recovery under C.C.P. section 1032(a)(4). Additionally, Plaintiff prevailed on a practical level and realized his litigation objectives because he received monetary relief for being unlawfully locked out of his home by landlord Defendant Hernandez as prayed for in his Complaint. Plaintiff was also successful in his preliminary injunction and TRO against Defendant Hernandez. Therefore, Plaintiff is the prevailing party under the plain statutory definition of prevailing party in C.C.P. section 1032(a)(4) and under the holistic approach considering the practical level of his prevalence and his litigation objectives.

B. The Attorney's Fees are Reasonable.

"In statutory fee-shifting cases, in which the prevailing party is statutorily authorized to recover his or her attorney's fees from the losing party, the lodestar method is the primary method for establishing the amount of recoverable fees." (*Glaviano v. Sacramento City Unified School Dist.* (2018) 22 Cal.App.5th 744, 750–751.) Under the lodestar method, the trial court first determines the reasonable hours spent multiplied by the reasonable hourly rate, which is the prevailing rate for private attorneys in the community conducting non-contingent litigation of the same type. (*Id.* at 751.) Then the court determines whether the lodestar figure should be augmented or diminished, which includes "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) success or failure, (4) the extent to which the nature of the litigation precluded other employment by the attorneys, (5) the contingent nature of the fee award, (6) that an award against the state would ultimately fall upon the taxpayers, (7) that the attorneys in question received public and charitable funding for the purpose of bringing lawsuits of the character here involved, and (8) that the monies awarded would inure not to the individual benefit of the attorneys involved but the organizations by which they are employed." (*Ibid.*; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) However, "[t] here is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation. [Citation.]". (*Krumme v. Mercury Ins. Co.* (2004) 123 Cal.App.4th 924, 947.)

Since Plaintiff is the prevailing party, he is entitled to attorney's fees under Civil Code sections 789.3(d) and 1942.5(i). Plaintiff seeks compensation for 275.3 hours of work at $400 per hour

($110,120.00) with a .50 lodestar enhancement ($55,060.00) totaling $165,180.00. Plaintiff's counsel argues that his hours are reasonable and that he has waived 81 hours of time. He also argues that a .50 lodestar enhancement is reasonable because illegal lockout claims are novel, he drafted hundreds of pages of pleadings, representing Plaintiff in this action kept Legal Aid time and resources from being spent on other matters, he took this case on a contingency basis with a recovery that is substantially lower than market standard, and it is in the public interest of supporting nonprofit legal entities.

Upon review of McDonell's Declaration and Exhibit 1 attached to his declaration, the Court finds the number of hours expended on this case and counsel's rate of $400 per hour for both Counsel McDonell and Counsel Acosta to be reasonable based on counsel's experience, the prevailing wage in the county, and the number of hearings counsel attended and the number of pleadings filed by counsel. The Court agrees with the application of a lodestar enhancement (or multiplier) in the instant case, however at a somewhat lower rate than requested. Plaintiff's counsel was successful in obtaining a $275,900 default judgment for Plaintiff. The Court disagrees that the issues were especially novel but acknowledges that the conduct of Defendant Hernandez throughout the pendency of this trial was unusually challenging and perplexing, particularly given she is also a licensed attorney. Another factor to consider is that Plaintiff ultimately did not proceed to trial as Defendant Hernandez defaulted and the Court subsequently entered default judgment in Plaintiff's favor. The case was onerous and laborious but ultimately concluded with a default judgment in Plaintiff's favor as opposed to a need to complete an adversarial trial. The Court does give weight to Counsel's statement that without Legal Aid of Sonoma County's efforts, Plaintiff's claims would most likely never have been brought at all. The contingency basis of the claim is less persuasive for the application of a multiplier as Legal Aid of Sonoma County is a non-profit organization and as a policy, "does not ask its clients to pay for its services except out of monetary recovery or fee awards, and even then only on a very infrequent basis."

The Court finds counsel's reliance on *Serrano v. Priest* (1977) 20 Cal.3d 25 and *Yes in My Back Yard v. City of Culver City* (2023) 96 Cal.App.5th 1103 to be misplaced. These cases applied C.C.P. section 1021.5, which is the private attorney general fee award, or a discretionary provision that allows a court to award attorney fees to successful parties who enforce an important right affecting the public interest. Here, Plaintiff does not move for attorney's fees under C.C.P. section 1021.5. The Court acknowledges Legal Aid of Sonoma County's hundreds of hours of work in this action and its commitment to ensuring Plaintiff received monetary compensation for his losses. This justifies the $110,120.00 award of attorney's fees. Balancing all of the factors above, the Court believes a 0.20 lodestar enhancement is justified ($22,024.00).

III. CONCLUSION

The motion is **GRANTED** in the reduced amount of $132,144.00.

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

4-5. 24CV05519, Rooney v. Skare

Defendant First Point Management Group LLC ("FPMG") demurs to the First, Third, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh, and Thirteenth Causes of Action in Plaintiffs Dominique Rooney and Yukiko Culp's ("Plaintiffs") Complaint. Defendant Addison Ranch Apartments LLC ("Addison") filed a Notice of Joinder to the Demurrer. As to both FPMG and Addison, the Demurrer is **SUSTAINED with leave to amend** as to the First, Sixth, Eighth, Ninth, Tenth, Eleventh, and Thirteenth Causes of Action, and **OVERRULED** as to the Second and Fifth Causes of Action.

FPMG's concurrently filed Motion to Strike portions of the Complaint, to which Addison also filed a Notice of Joinder, is **DENIED**.

I. PROCEDURAL HISTORY

On or about September 2, 2022, Plaintiffs moved into Addison Ranch Apartments, which are located at 200 Greenbriar Cir., Petaluma, California, and managed by FPMG. (Complaint, ¶¶ 4-6, 16.) Plaintiffs began to get insect bites across their body in October of 2022, but did not understand the cause of the insect bites. (*Id*. at ¶ 17.) After several months, Plaintiffs discovered bedbugs at their apartment and realized they were the reason for the recurring insect bites. (*Id*. at ¶ 20.) Plaintiffs reported the bedbug infestation to their apartment management, who hired pest control services on their behalf. (*Id*. at ¶ 21.) The pest control inspection revealed that at least four of eight units that were inspected at the apartment complex contained bedbug infestations. (*Id*. at ¶ 22.) Though Plaintiffs' unit was treated by the pest control company, it was unsuccessful, so Plaintiffs began to spread diatomaceous earth around their apartment and taking prescription medication for their bug bites. (*Id*. at ¶¶ 23-25.)

Plaintiffs allege that due to the bedbug infestation and recurring bites, they lost potential earnings, incurred medical and other expenses, suffered from anxiety and trouble sleeping, suffered from constant itching and pain, and sustained physical and emotional scarring as a result of the "unhealthy, unsanitary, and uninhabitable conditions" of the their apartment. (Complaint, ¶¶ 24-31.) Plaintiffs claim that the apartment management failed to inspect that the apartment was free of bedbugs before renting, failed to eradicate or eliminate them regardless of having known they existed at the apartment complex, failed to give notice of bedbugs to the tenants, turned a blind eye to the tenants complaints about the bedbugs, failed to implement any changes to help the conditions, and kept management in place at the apartments instead of replacing or terminating their employment. (*Id*. at ¶¶ 32-48.)

On August 30, 2024, Plaintiffs filed this action against the apartment complex, two individuals who manage the apartments, and FPMG. The Complaint alleges causes of action against all defendants for: (1) Battery; (2) Negligence; (3) Intentional Infliction of Emotional Distress (IIED); (4) Statutory Breach of Warranty of Habitability; (5) Tortious Breach of Implied Warranty of Habitability; (6) Violation of Business & Professions Code § 17200 et seq. ("UCL Claim"); (7) Breach of Covenant of Quiet Enjoyment; (8) Violation of Civil Code section 1942.3; (9) Violation of Civil Code section

1942.4; (10) Negligent Violation of Statutory Duty to Maintain Habitable Conditions; (11) Breach of Contract; (12) Private Nuisance; and (13) Public Nuisance. (Complaint, ¶¶ 49-183.)

FPMG's counsel attempted to meet and confer on the Demurrer as required by phone call multiple times but were unsuccessful in reaching Plaintiffs' counsel. (White Decl., ¶¶ 10-19.) FPMG then filed the Demurrer and the Motion to Strike, to which Defendant Addison filed Notices of Joinder. The Court continued the initial hearing on the motion because Plaintiffs filed untimely oppositions. The Court, in its discretion, decided to consider the late-filed oppositions, but gave FPMG additional time to file supplemental reply briefs to the late-filed oppositions. The Court now considers the motions, the oppositions, and the supplemental briefs filed.

II. DEMURRER

Legal Standard

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. (C.C.P. § 430.30(a).) 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 judicially noticed facts are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) 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, but the distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

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.) The burden of proving that there is a reasonable possibility to cure the defect is squarely on the party that filed the pleading, but if that burden is met and leave to amend is not granted, then that constitutes an abuse of discretion by the trial court. (*Ibid*.)

Demurrer to First Cause of Action for Battery

As cited in the Demurrer, "the essential elements of a cause of action for battery are: (1) defendant touched plaintiff, or caused plaintiff to be touched, with the intent to harm or offend plaintiff; (2) plaintiff did not consent to the touching; (3) plaintiff was harmed or offended by defendant's conduct; and (4) a reasonable person in plaintiff's position would have been offended by the touching." (*So v. Shin* (2013) 212 Cal.App.4th 652, 669.)

Plaintiffs assert that all defendants committed "intentional, deliberate, and reckless" actions like failing to eradicate the bedbug infestations, failing to properly and thoroughly inspect the apartment units, delaying retaining pest control, failing to prevent spread of infestation, failing to

authorize early termination of Plaintiffs' lease agreement, willfully disregarding knowledge of bedbug infestation, and failing to give Plaintiffs notice of those infestations. (Complaint, ¶¶ 49-51.) Plaintiffs claim this caused Plaintiffs to be touched by bedbugs in an "offensive and unconsented contact" with Plaintiffs' person. (*Id*. at ¶¶ 49-56.)

FPMG claims that Plaintiffs' Complaint's conclusory allegations failed to sufficiently establish how or why FPMG deliberately failed to act or intentionally, deliberately, and recklessly failed to act, or willfully disregarded knowledge of an infestation. (Demurrer, 6:16-28, 7:1-17.)

Plaintiff's Opposition argues that sufficient facts are stated to constitute a cause of action for battery citing a Circuit Court case, *Mathias v. Accor Econ. Lodging, Inc.* (7th Cir. 2003) 347 F.3d 672, in which the Circuit Court held that failure to warn guests or to take effective measures to eliminate bedbugs amounted to fraud and probably battery where desk clerks at a Motel 6 were instructed to call bedbugs "tics" on the theory that customers would be less alarmed; and because Motel 6 could not rent out their rooms at the prices it charged if the guests were informed of the risk of getting bedbug bites. (Demurrer Opposition, 6:9-20.) Plaintiff also cites to *Ornelas v. Randolph* (1993) 4 Cal.4th 1095 to argue that a real property owner owes a duty of care to keep the premises safe for entry and use by others if the landowner "willfully or maliciously fails to guard or warn against a dangerous condition, use, structure or activity." (*Id*. at 6:20-27.)

The Reply points out that there are no allegations to support knowledge of the bedbugs prior to Plaintiffs' tenancy of the units or any deliberate decision to hide knowledge of such infestations. (Reply, 2:20-28.)

The Court does not find that the Complaint alleges facts sufficient to support that either FPMG or Addison had prior knowledge of the bedbug infestations before Plaintiffs' tenancy or that they attempted to hide such prior knowledge with deceptive statements per the *Mathias* case.

As such, the Demurrer is **SUSTAINED with leave to amend** as to the First Cause of Action for Battery as to both FPMG and Addison.

Demurrer to Third Cause of Action for IIED

As explained in the Demurrer, a claim for IIED requires: (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. (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1259; Demurrer, 7:20-25.)

Plaintiffs alleges similar facts to support the IIED claim as the battery claim, but state that Defendants acted with the intent to cause serious emotional distress or with reckless disregard of the probability of causing Plaintiffs serious emotional distress. (Complaint, ¶¶ 74-80.)

FPMG argues that Plaintiffs' conclusory allegations failed to state supporting facts for how or why Defendants' alleged conduct was intentional or egregious and in reckless disregard for Plaintiffs. (Demurrer, 8:3-27.) FPMG also argues that Plaintiffs failed to plead facts supporting their severe emotional distress. (Demurrer, 10:2-12.)

Plaintiffs argue that Paragraphs 75 and 76 allege sufficient facts to support that defendants intended to cause serious emotional distress or otherwise acted with reckless disregard of the probability of causing Plaintiffs serious emotional distress. (Opposition, pp. 9-10.)

The Reply reaffirms arguments made in the Demurrer.

At the pleadings stage, conclusory pleadings are permissible and appropriate if they are supported by properly pleaded facts. Here, Plaintiffs support their conclusory allegations with facts as alleged in Paragraphs 75 and 76, which the Court finds sufficient for the pleadings stage.

The Demurrer is **OVERRULED** as to the Third Cause of Action for IIED as to both FPMG and Addison.

Demurrer to Fifth Cause of Action for Tortious Breach of Implied Warranty of Habitability

As FPMG states in the Demurrer, if a claimed breach of implied warranty of habitability is based on breach of promise, then it is contractual; if it is based on a breach of a noncontractual duty it is tortious. (*Fairchild v. Park* (2001) 90 Cal.App.4th 919, 925; Demurrer, 10:17-28.)

Here, Plaintiffs' claim for tortious breach is based on the same allegations as the prior causes of action mentioned above were based. (Complaint, ¶¶ 104-119.) FPMG and Addison demur to the Complaint arguing that Plaintiffs fail to state facts with "reasonable precision and particularity sufficiently specific to acquaint Defendant FPMG with the 'nature, source, and extent' of the factual basis that constitutes claims for Tortious Breach of Implied Warranty of Habitability." (Demurrer, 11:1-27.)

Plaintiffs argue that, as alleged in the Complaint, they attempted to vacate the premises as allowed under Civil Code section 1940(b) due to the bedbug infestation, but Defendants did not allow early termination of the lease. (Opposition, 10:21-28.) As the infestation interfered with Plaintiffs' quiet enjoyment of their apartment and made the apartment uninhabitable, so Plaintiffs argue Defendants breached their noncontractual duties to abide by the implied covenant of quiet enjoyment and habitability. (*Id*. at 11:18-26.)

In the Reply, FPMG argues that Plaintiff misrepresents that for months Plaintiffs complained of bedbugs without help from FPMG when there were prompt remedial efforts after reporting, such as obtaining pest control. (Reply, 3:14-19.)

Under the *Fairchild* matter, Plaintiffs' claim is based on a breach of a noncontractual, implied duty of warranty, so the claim is tortious in nature rather than contractual. The Court finds that Plaintiffs allege facts sufficient in the Complaint to state a claim for tortious breach of implied warranty of habitability for the pleadings stage.

The demurrer is **OVERRULED** as to the Fifth Cause of Action for Tortious Breach of Implied Warranty of Habitability as to FPMG and Addison.

Demurrer to Sixth Cause of Action – UCL Claim

A UCL Claim requires the following to be alleged in the complaint: (1) an "unlawful" business act or practice; (2) an "unfair" business act or practice; (3) a "fraudulent" business act or practice; (4) "unfair, deceptive, untrue or misleading advertising"; or (5) any act prohibited by the False Advertising Law. (Bus. & Prof. Code § 17500 et seq.; Demurrer, 12:3-7.)

Plaintiffs allege that defendants collected more money from Plaintiffs than required and engaged in unlawful, unfair, and fraudulent business acts and practices. (Complaint, ¶¶ 120-130.)

FPMG argues that the claim is uncertain, ambiguous, and unintelligible as to what acts were committed that are considered unlawful, unfair, or fraudulent and as to how FPMG demanded too much money. (Demurrer, pp. 12-13.)

Both the Opposition and Reply did not address this claim. The demurrer is **SUSTAINED with leave to amend** as to the Sixth Cause of Action for UCL Claim as to both FPMG and Addison.

Demurrer to Eighth and Ninth Cause of Actions for Violation of Civil Code

Plaintiffs claim a violation of California Civil Code section 1942.3, which provides a presumption, on a showing in an unlawful detainer action of the same four conditions that would give rise to relief under section 1942.4, that a landlord has breached the habitability requirements in section 1941. (Demurrer, 14:3-21.) Section 1942.4 prevents a landlord from collecting or demanding rent if before the collection or demand, all four of these conditions existed:

> "(1) The dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1 or violates Section 17920.10 of the Health and Safety Code, or is deemed and declared substandard as set forth in Section 17920.3 of the Health and Safety Code; (2) A public officer or employee who is responsible for the enforcement of any housing law, after inspecting the premises, has notified the landlord or the landlord's agent in writing of his or her obligations to abate the nuisance or repair the substandard conditions. (3) The conditions have existed and have not been abated 35 days beyond the date of service of the notice specified in paragraph (2) and the delay is without good cause. (4) The conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2."

(Demurrer, 14:26-28, 15:1-9.) FPMG demurs to the Eighth and Ninth Causes of Action for violations of the above Civil Codes arguing that they are uncertain, ambiguous, or unintelligible as this is not an unlawful detainer action and because Plaintiffs failed to allege any public officer or employee responsible for housing law ever inspected the apartment or issued a written notice to the landlord here and because remedial measures were taken to treat the infestations via pest control. (Demurrer, pp. 14-15.)

The Opposition fails to address the arguments made in the Demurrer but argues the two causes are sufficiently pleaded in the Complaint and that Defendants failed to treat the bedbug infestations regardless of Plaintiffs' incessant complaints about them for months. (Opposition, 12:6-27.)

The Reply reaffirms the arguments made in the Demurrer. (Reply, 3:20-24.)

The demurrer is **SUSTAINED with leave to amend** as to this cause as to both FPMG and Addison.

Demurrer to Tenth Cause of Action for Negligent Violation of Statutory Duty to Maintain Habitable Conditions

Plaintiffs' Complaint alleges a Tenth Cause of Action for "Negligent Violation of Statutory Duty to Maintain Habitable Conditions," which the Demurrer argues does not exist as a separate cause of action. (Complaint, ¶¶ 159-163; Demurrer, 16:4-22.)

The Opposition does not argue such a separate cause of action for negligent violation exists outside of an ordinary cause of action for negligence, but instead argues defendants were generally negligent. (Opposition, 13:7-17.)

The Reply reaffirms the arguments in the Demurrer. (Reply, 3:27-28, 4:1-3.)

The demurrer is **SUSTAINED with leave to amend** as to this cause as to both FPMG and Addison.

Demurrer to Eleventh Cause of Action for Breach of Contract

A breach of contract claim requires: (1) the existence of a contract; (2) a plaintiff's performance or excuse for non-performance; (3) a defendant's breach; and (4) damages to the plaintiff. (*Acoustics, Inc. v. Trepte Construction Co.* (1971) 14 Cal.App.3d 887, 913; Demurrer, 16:24-28, 17:1-5.)

Plaintiffs' breach of contract is based on a leasing agreement for the apartment, which Plaintiffs failed to attach to the Complaint. (Complaint, ¶¶ 164-169; Demurrer, 16:24-28, 17:1-5.)

The demurrer is **SUSTAINED with leave to amend** as to this cause as to both FPMG and Addison.

Thirteenth Cause of Action for Public Nuisance

The Demurrer states that, "private citizens may maintain an action for a public nuisance only if it is "specially injurious" to them—i.e., an injury *different in kind*, not merely degree, from that inflicted on the general public." (Code Civ. Proc., § 3493; Demurrer, 17:10-26; *Birke v. Oakwood Worldwide* (2009) 169 CA4th 1540, 1547-1548; Rest.2d Torts § 821C, comm. B.)

The Demurrer argues that Plaintiffs' Complaint fails to allege facts supporting that the general public suffered any type of harm from the bedbug infestation in a few of the apartment units or that Plaintiffs suffered harm that was different in kind to that suffered by the general public. (Demurrer, 17:10-26.)

In the Opposition, Plaintiffs liken their exposure to bedbug infestations as a single outbreak of smallpox, which the Restatement Second of Torts provides was enough to constitute a public nuisance because of the possibility of an epidemic. (Opposition, 14:13-28, 15:1-14.)

The Reply reaffirms the arguments made in the Demurrer. (Reply, 4:10-12.)

The Court does not find that Plaintiffs apartment unit's bedbug infestation (and the infestations in the three other apartments in the building) can be likened to a single outbreak of smallpox because there is not the same possibility of an epidemic resulting from a bedbug infestation as there is with smallpox. The Court does not find that Plaintiffs have stated facts sufficient to state a claim for public nuisance.

The demurrer is **SUSTAINED with leave to amend** as to this claim.

III. MOTION TO STRIKE

Legal Standard

Motion to Strike

The Court may strike a pleading that 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." (C.C.P. §§ 435, 436(b).)

Punitive Damages

When a plaintiff claims a breach of an obligation against a defendant, not arising from any contract, punitive damages may be recovered in addition to actual damages when it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice against the plaintiff. (Cal. Civ. Code § 3294.) The code describes "malice" as conduct that the defendant intended 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." (*Id*. at § 3294(c)(1.)) "Oppression" is

defined as "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (*Id.* at § 3294(c)(2).) Finally, "fraud" is defined as the "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." (*Id*. at § 3294(c)(3).)

Defendants' Motion to Strike

The Motion to Strike argues that any references in the Complaint to statutory and treble damages, retroactive rent abatement, compensatory damages, general and special damages, and punitive and exemplary damages should be struck from the Complaint in ¶¶ 56, 73, 80, 102, 118, 119, 138, 144, 158, and in the Prayer for Relief ¶¶ 3, 8-9, 11-13. (Notice of Motion, pp. 2-3.)

The Motion argues that Plaintiffs failed to allege facts sufficient to support any malice, oppression, or fraud, and the other requests for damages fail because Plaintiff did not plead facts sufficient to state the causes of actions under which those damages are claimed. (Motion to Strike, pp. 8-13.)

Opposition

Plaintiffs' Opposition argues that punitive and exemplary damages as claimed comply with Civil Code section 3294(b) but does not otherwise make any arguments to support the other damages that are argued against in the Motion to Strike. (Opposition, pp. 7-13.)

Reply

The Reply reaffirms the arguments made in the Motion to Strike and points out that the Opposition only addressed punitive damages. (Reply, pp. 2-4.)

Application

The concurrently filed Demurrer has been largely sustained with leave to amend as to most of the causes of action that contain language regarding the damages with which the Motion to Strike takes issue. Plaintiffs may amend those paragraphs in the Complaint to further support those damages, so the Motion to Strike is **DENIED** as a result.

IV. CONCLUSION

As to both FPMG and Addison, the Demurrer is **SUSTAINED with leave to amend** as to the First, Sixth, Eighth, Ninth, Tenth, Eleventh, and Thirteenth Causes of Action, and **OVERRULED** as to the Second and Fifth Causes of Action.

The concurrently filed Motion to Strike is **DENIED**.

Defendants shall submit a written order on their motions to the Court consistent with this

tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

6. 25CV03322, Zephir v. Sonoma Specialty Hospital, LLC

Defendant Sonoma Specialty Hospital, LLC ("Defendant") moves to compel this matter to arbitration, dismiss the class claims, and stay the action pending completion of arbitration pursuant to the voluntary written Arbitration Agreement ("Agreement"), the Federal Arbitration Act ("FAA"), and California Code of Civil Procedure ("C.C.P.") section 1281 et seq. The motion is **GRANTED**. Defendant's objections to evidence are addressed below.

I. PROCEDURAL HISTORY

Plaintiff Simonne Zephir ("Plaintiff") filed her Complaint against Defendant, her former employer, on behalf of herself and aggrieved employees alleging various Labor Code violations. (Motion, 3:3-8.) Plaintiff signed a voluntary, stand-alone Arbitration Agreement on or about August 17, 2023, electronically as part of her onboarding process. (*Id*. at 3:15-19.) Human Resources was available to ask questions regarding the Agreement prior to signing it and the electronically signed Agreement was sent to the same email address belonging to Plaintiff that was on her application. (*Id*. at 3:18-26.) In addition to signing the Agreement, she also signed other onboarding documents in person including: (1) Statement of Confidentiality and Security; (2) HIPAA policy; (3) California Meal Break Waiver; and (4) Dress Code Policy. (Motion, 3:20-26.) The Motion states that Plaintiff did not ask questions about the Agreement or any other document before signing. (Gerrans Decl., ¶¶ 4-5.)

Defendant now moves to compel arbitration pursuant to that signed Agreement, to dismiss the accompanying class action claims, and to stay the action pending the arbitration. Plaintiff filed an Opposition. Defendant submitted a Reply and objections to Plaintiff's evidence. The parties' arguments and objections are addressed below.

II. EVIDENTIARY OBJECTIONS

Defendant's objection to the Declaration of Pike, Paragraph 2, is **OVERRULED**.

III. ANALYSIS

The FAA

The FAA applies to any "contract evidencing a transaction involving commerce" which contains an arbitration clause. (9 U.S.C. § 2.) The FAA favors the enforcement of arbitration agreements affecting interstate commerce. (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 380.) When it applies, the FAA preempts state laws that purport to create alternative grounds for confirming or vacating arbitration awards. (*C.T. Shipping, Ltd. v. DMI (USA) Ltd.* (S.D.N.Y. 1991) 774 F.Supp. 146, 148-149.)

The Agreement specifically states that the FAA governs the interpretation and enforcement of the binding arbitration provision. (Gerrans Decl., Exhibit C, p. 3.) So, it is covered by the FAA.

Arbitration in California

Generally, California has a strong public policy in favor of arbitration; any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration. (*Howard v. Goldbloom* (2018) 30 Cal.App.5th 659, 663.) C.C.P. section 1280 et seq. governs arbitration in California. Sections 1281.2 and 1281.4 allow a party to move to compel arbitration per an arbitration agreement, and to stay legal proceedings pending the arbitration's conclusion.

The Agreement also expressly references being subject to California law. (Gerrans Decl., Exhibit C, p. 3.) So, the provisions are subject to California arbitration law.

Assent to Arbitration

Generally, "one who signs an instrument which on its face is a contract is deemed to assent to all its terms…a party cannot avoid the terms of a contract on the ground that he or she failed to read it before signing." (*Marin Storage & Trucking, Inc. v. Benco Contracting & Eng'g, Inc.* (2001) 89 Cal.App.4th 1042, 1049.)

Defendant argues that the Agreement was entered into with consent and voluntarily by Plaintiff, who signed via electronic signature which cannot be disputed that it was entered by Plaintiff because it is the same as those other pages she signed during onboarding. (Motion, 5:14-24.)

Plaintiff argues there is not adequate evidentiary foundation to establish the authenticity of the Agreement. (Opposition, 2:20-28, 3:1-14.)

The Reply argues that the Opposition fails to dispute the authenticity of the Agreement, which was established by Defendant by the preponderance of evidence submitted including the actual Agreement and the declaration of Whitney Gerrans (Human Resources representative). (Reply, 3:23-28, 4:1-25.)

The Court finds that Defendant has produced a signed, written Arbitration Agreement and sufficiently authenticated it for the purposes of this Motion.

Enforceability

Defendant argues that the Agreement is valid and enforceable because of California and Federal law favoring arbitration. Defendants also argue that the Agreement is not substantively unconscionable because it was voluntary, allowed for modification only when both parties agreed to it, provides for severability of provisions that cannot be enforced by law, provides for costs to be borne by the employer, provides the arbitrator to exercise powers specifically enumerated under California and Federal law, and binds both parties to arbitration mutually. (Motion, 7:9-28.) Defendant also

argues that it is not procedurally unconscionable because Plaintiff was allowed to ask questions if she had any about the Agreement, it was not required on a "take or leave it" basis as a condition of employment, and it was not embedded in any one document so there was time for review and reflection. (*Id*. at 8:7-26.)

Plaintiff argues that the Agreement is unconscionable because it is a contract of adhesion presented as required as part of the offer of employment. (Opposition, 4:4-27.) Plaintiff also argues that the Agreement was presented under oppressive circumstances as part of onboarding. (*Id*. at pp. 5-6.) Plaintiff also claims that the Agreement was non-mutual, overbroad, and indefinite. (*Id*. at pp. 6-10.)

In the Reply, Defendant re-emphasizes that the Agreement was not a condition of employment, that it was not buried in so many pages that Plaintiff could ignore or miss it, that Plaintiff had time to review the Agreement and ask questions about it, and that Plaintiff was not pressured to sign it. (Reply, pp. 4-6.)

The Court does not find that, based on the above arguments, the Agreement was either procedurally or substantively unconscionable. It was a voluntary, stand-alone Arbitration Agreement which Plaintiff had the opportunity to ask about and was not pressured into signing. It also clearly describes exactly which types of claims are subject to the Agreement and which claims are expressly excluded. Thus, the Court finds that the Agreement is valid and enforceable.

Application

As Defendant has produced a valid and enforceable signed Arbitration Agreement and California and Federal law have a policy of encouraging arbitration generally, the Court will grant this motion/petition.

IV. CONCLUSION

Based on the foregoing, the Court **GRANTS** the motion/petition to compel arbitration of the Plaintiff's individual claims, dismiss the class action claims, and stay proceedings pending the arbitration. Defendant shall submit a proposed order on this motion consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).