

# Tentative Rulings for July 12, 2022

## Department PS2

To request oral argument you must notify Judicial Secretary Carol Delfosse-Kidd at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.

This court follows California Rules of Court, rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local rule 3316). Tentative Rulings for each law and motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at: <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department PS2 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

**IN LIGHT OF THE CORONAVIRUS PANDEMIC; AND UNTIL FURTHER NOTICE, COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.**

**TELEPHONIC APPEARANCES:** On the day of the hearing, call into one of the below listed phone numbers, and input the Zoom meeting number:

- Call-in Numbers: 1 (669) 254-5252 or 1 (833) 568-8864
- Meeting Number: **160 922 1726**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that **you must call fifteen (15) minutes prior** to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at: [Remote Appearances \(ca.gov\)](https://www.riverside.courts.ca.gov/RemoteAppearances(ca.gov)) Instructions at: [https://www.riverside.courts.ca.gov/PublicNotices/Zoom%20Appearances%20Public%20Access\\_instructions\\_v2.pdf?rev=03-07-2022-01:16:09pm](https://www.riverside.courts.ca.gov/PublicNotices/Zoom%20Appearances%20Public%20Access_instructions_v2.pdf?rev=03-07-2022-01:16:09pm)

**Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1.)**

1.

CVPS2105022	ADAMS vs AGAPE SPRINGS MHC LLC	Hearing re: Demurrer on 2nd Amended Complaint for Breach of Contract/Warranty (Over \$25,000) of ANGELYN ALLEN ADAMS by AGAPE SPRINGS MHC LLC
-------------	-----------------------------------	--

**Tentative Ruling:** Defendant's Demurrer is overruled as to the 2<sup>nd</sup> and 3<sup>rd</sup> causes of action in the Second Amended Complaint.

Notice to be given by Defendant pursuant to Court's ruling on the related Motion to Strike.

Plaintiffs, who are current and former residents of a mobile home park, have brought this action against Defendant Agape Springs, the owner and operator of the park, for its alleged failure and willful refusal to make repairs and proper maintenance of the common areas of the premises. Plaintiffs complain of a long list of alleged substandard conditions existing at the mobile home park which pose a health hazard to Plaintiffs. Plaintiffs are claiming that Defendant's conscious disregard of Plaintiffs' rights and safety and by failing to make repairs and properly maintain the park's premises are breach of the warranty of habitability and constitute violations of the Mobilehome Residency Law ("MRL", Civ. Code, § 798 et seq.)

On May 05, 2022, Plaintiffs filed their Second Amended Complaint (SAC), which is the operative complaint, alleging nine causes of action (COA) for (1) nuisance, (2) breach of contract, (3) breach of the covenant of good faith and fair dealing, (4) negligence, (5) breach of statutes, (6) breach of warranty of habitability, (7) breach of covenant of quiet enjoyment, (8) breach of unfair competition law, and (9) declaratory and injunctive relief. Defendant demurs to the second and third cause of action for breach of contract and breach of the covenant of good faith and fair dealing, respectively, and concurrently moves to strike that portion of the SAC concerning Plaintiffs' claim for punitive damages.

A general demurrer lies where the pleading does not state facts sufficient to constitute a cause of action. (Code Civ. Proc., §430.10(e).) Additionally, any "objections that a complaint is ambiguous or uncertain...must be raised by special demurrer." (*Johnson v. Mead* (1987) 191 Cal.App.3d 156, 160.) In evaluating a demurrer, the court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of University of California* (1990) 51 Cal. 3d 120,125.) The court assumes the truth of all material facts which have been properly pleaded, of facts which may be inferred from those expressly pleaded, and of any material facts of which judicial notice has been requested and may be taken (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 672.) However, a demurrer does not admit contentions, deductions or conclusions of fact or law (*Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 713.) If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318.)

COA No. 2 (Breach of contract) - The elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff. (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 402.) As one method of pleading the existence of a contract, "[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." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 993.) Accordingly, a plaintiff may plead the legal effect of the contract rather than its precise language, as long as the allegations are sufficient to establish a prima facie right to relief. (*Construction protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 199 [contract satisfactorily alleged that the insurance policy obligated defendant to defend and indemnify plaintiff against suits seeking damages and that, under the terms of the policy, a third party's claim of setoff fell within the scope of the contractual obligation].)

Here, Plaintiffs have alleged facts sufficient to state a cause of action for breach of contract.

Plaintiffs allege in their SAC as follows:

*Although the form of contract for each Plaintiff varies, the essential common provisions are that Plaintiffs agreed to pay rent in exchange for Defendants' promise to (1) provide and maintain the Park's common areas, facilities, services and physical improvements in good working order and condition; (2) provide a space, mobilehome and/or dwelling in the Park in a safe, habitable condition; (3) enforce Park rules and regulations consistent with the requirements of Cal. Civ. Code §§ 798.23 and 799.20(e); (4) deal with Plaintiffs in good faith; and (5) preserve Plaintiffs' quiet enjoyment of their premises. (SAC, ¶ 21.)*

Based on these allegations, Plaintiffs have alleged the legal effect of the essential terms of the contracts central to their claims against Defendant for the alleged breach of its duties as specified in the contract and the provisions of applicable statutes, especially the provisions of the MRL. "[A]ll applicable laws in existence when an agreement is made, which laws the parties are presumed to know and to have had in mind, necessarily enter into the contract and form a part of it." (*Mckell v. Washington Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1489.)

COA No. 3 (Breach of covenant of good faith and fair dealing) - Under California law, every contract includes an implied covenant of good faith and fair dealing in the performance and enforcement of the contract. (*Acree v. General Motors Acceptance Corp.* (2001) 92 Cal.App.4th 385, 393.) In order to establish a breach of covenant of good faith and fair dealing, a plaintiff must show: (1) the parties entered into a contract; (2) the plaintiff fulfilled his obligations under the contract; (3) any conditions precedent to the defendant's performance occurred; (4) the defendant unfairly interfered with the plaintiff's rights to receive the benefits of the contract; and (5) the plaintiff was harmed by the defendant's conduct. (*Rosenfeld v. JPMorgan Chase Bank, N.A.* (N.D. Cal. 2010) 732 F.Supp.2d 952, 968, citing Judicial Council of California Civil Jury Instruction 325.)

Here, Plaintiffs have alleged the existence of a contract between Plaintiffs and Defendant, pursuant to which Defendants were obligated to properly maintain the mobile home park, including its common areas and facilities, in good working order and to comply with the various applicable statutes. Plaintiffs have sufficiently alleged that Defendants interfered with Plaintiffs' rights to these benefits under their contracts by willfully refusing to maintain the park and to make needed repairs.

2.

CVPS2105022	ADAMS vs AGAPE SPRINGS MHC LLC	Motion to Strike Portions of Second Amended Complaint
-------------	-----------------------------------	---

**Tentative Ruling:** Defendant's Motion to Strike portions of Second Amended Complaint granted as follows:

- (1) Paragraph 40, page 13, line 28 to page 14, line 9;
- (2) Paragraph 87, page 20, line 26 to page 21, line 7.

Plaintiff granted leave to file an amended complaint within 10 days of this order becoming final.

Prevailing party (Defendant) to provide notice of court's final ruling on Demurrer and Motion to Strike pursuant to CCP 1019.5

Punitive damages are authorized by statute in an action for breach of an obligation not arising from contract, where the tortious event involves an additional component of "oppression, fraud, or malice" which must be pleaded and proven with "clear and convincing evidence." (Code Civ. Proc., § 3294, subd. (a).) To state a claim for punitive damages under Civil Code Section 3294, plaintiff must plead facts supporting a showing of malice, oppression or fraud as defined by Civ. Code §3294(c):

(1) "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.

(2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.

(3) "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.

Punitive damages claim requires plaintiff to plead an underlying tort, as it may be awarded only for "breach of an obligation not arising from contract." (Civ. Code, § 3294(a).) " 'In the absence of an independent tort, punitive damages may not be awarded for breach of contract even where the defendant's conduct in breaching the contract was willful, fraudulent, or malicious. [Citation.]' " (*Cates Const., Inc. v. Talbot Partners* (1999) 21 Cal.4th 28, 61, internal quotation.) (*Brewer v. Premier Golf Properties, LP* (2008) 168 Cal.App.4th 1243, 1252 [punitive damages are not recoverable when liability is premised solely on violation of the Labor Code regulating wage and hour laws].) "Because punitive damages are imposed 'for the sake of example and by way of punishing the defendant' (§3294, subd. (a)), they are typically awarded for intentional torts such as assault and battery, false imprisonment, intentional infliction of emotional distress, defamation," etc. (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1211.) When punitive damages are supported by a nonintentional tort, the defendant's conduct would be focused on the "conscious disregard of the right or safety of others." (*Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1299.) "Inasmuch as Civil Code section 3294 requires as a prerequisite to the recovery of punitive damages that the defendant 'has been guilty of oppression, fraud, or malice,' the cases have uniformly recognized that proof of negligence, even gross negligence, or recklessness is insufficient to warrant an award of punitive damages." [Citations.] (*Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, 87.)

Here, Plaintiffs have failed to allege facts demonstrating that Defendant has engaged in conduct constituting either malice, oppression, or fraud. Plaintiffs' claim for punitive damages is not supported by factual allegations of any specific conduct. Rather, the SAC contains only conclusory allegations stating that Defendant ignored the substandard conditions, and by doing so, willfully, consciously disregarded Plaintiffs' rights and safety, and, with advanced knowledge, failed to train and direct their employees to protect the residents from harm. (SAC, ¶¶ 17, 18.) Plaintiffs only allege in a conclusory manner, without specific facts, that Defendant had the financial ability to abate and remedy the problems, but out of greed, deliberately chose to let Plaintiffs suffer, and that Defendant harassed Plaintiffs who complained about the problems. "To support punitive damages, the complaint...must allege ultimate facts of the defendant's oppression, fraud, or malice." (*Cyrus v. Haveson* (1976) 65 Cal.App.3d 306, 316-317.) Conclusory characterization of defendant's conduct as "intentional, willful and fraudulent is patently insufficient statement of 'oppression, fraud, or malice, express or implied,' within the meaning of section 3294." (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

In order to allege a malicious conduct, it must be shown that Defendant acted not just with willful and conscious disregard for safety of others but also engaged in a despicable conduct. No specific facts are alleged which amounts to a despicable conduct that is base, vile, and contemptible.

3.

CVPS2105212	ROBERT PRESTON BEACH-BARROW IN AND THROUGH HIS SUCCESSOR-IN-INTEREST, DUANE BEACH-BARROW vs CALIFORNIA NURSING, AND REHABILITATION CENTER	Hearing re: Motion to be Relieved as Counsel for ROBERT PRESTON BEACH-BARROW IN AND THROUGH HIS SUCCESSOR-IN-INTEREST, DUANE BEACH-BARROW
-------------	---	---

**Tentative Ruling:** Defendants' California Nursing and Rehabilitation Center, dba CNRC, LLC, and Brius Management Co. Motion to be Relieved as Counsel is granted.

Law firm of PLEISS, SITAR, MCGRATH, HUNTER & HALLACK to serve notice to all parties pursuant to CCP 1019.5

The Court's order will not be effective until proof of service of the signed order has been filed with the court.

4.

CVPS2106542	KEY GOLF MANAGEMENT, LLC vs CBGM, LLC	Hearing on Right to Attach Order
-------------	---------------------------------------	----------------------------------

**Tentative Ruling:** No tentative ruling. A hearing is required and will be conducted.