Tentative Rulings for July 12, 2022
Department 3

To request oral argument, you must notify Judicial Secretary Amy Norton 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 & 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 3 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 meeting number (followed by #):

- Call-in Numbers: 1-833-568-8864 (Toll Free), 1-669-254-5252, 1-669-216-1590, 1-551-285-1373 or 1-646-828-7666
- Meeting Number: 161 692 7358

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 https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php

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.

CVRI2201044	BAADE VS GOLDEN OPPORTUNITY II HOLDINGS, L.P.	MOTION TO STRIKE COMPLAINT ON COMPLAINT FOR BREACH OF CONTRACT/WARRANTY (OVER $25,000) OF EROLINDA BAADE BY PAMA MANAGEMENT, INC.
CVRI2201044	BAADE VS GOLDEN OPPORTUNITY II HOLDINGS, L.P.	DEFENDANT PAMA MANAGEMENT INC'S NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT
CVRI2201044	BAADE VS GOLDEN OPPORTUNITY II HOLDINGS, L.P.	JOINDER OF MOBILE HOME GROUP, II, L.P. TO DEMURRER OF PAMA MANAGEMENT, INC. OF PLAINTIFFS COMPLAINT
CVRI2201044	BAADE VS GOLDEN OPPORTUNITY II HOLDINGS, L.P.	JOINDER TO DEMURRER BY MOBILE HOME GROUP II, L.P.

Tentative Ruling:

The Court overrules the demurrer and denies the motions for joinder.

The Court denies the motion to strike.

The Court orders the Defendants to file an answer within 30 days.

Factual / Procedural Context:

Plaintiffs consist of 28 individuals who currently reside, or formerly resided, at Royal Coach MHP in Cherry Valley, which was owned by Defendant Mobile Home Group II, LP (May 2005 to 2/15/19) and currently owned by Defendants Golden Opportunity II Holdings LP and Golden Opportunity Holdings, Inc. Defendants Pama Management, Inc and Mobile Management Services, Inc. have managed/operated the park. Plaintiffs allege that Defendants have allowed significant problems relating to sewage system spills, hazardous water, inadequate electrical system, gas leaks, poor street and walkway conditions, unmaintained pool, poor lighting, a moldy and unmaintained clubhouse, overgrown trees causing damage, unmaintained park restrooms and showers, overflow of debris, broken laundry machines, pests, etc. On 3/15/22, Plaintiffs filed this action 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 Pama demurs to the 1st, 2nd, 3rd, 5th, 6th, 7th, 8th and 9th causes of action on the grounds that they fail to state facts sufficient and are uncertain. Mainly, they complain that there are no details as to each Plaintiff's claims, dates, or very specific facts. Defendant also moves to strike attorney fees contending that they are not based on contract or statute. It also moves to strike punitive damages specific to negligence and breach of implied warranty as not permitted. It moves to strike punitive damages generally contending that malice, fraud and oppression are not pled such that pleading on information and belief is not sufficient.

Defendant Mobile Home Group II, LP joins the demurrer.

Plaintiffs asserts each claim is properly pled. Plaintiffs assert attorney fees are proper under Civil Code §798.55. They also contend that punitive damages are available for negligence and breach of implied warranty. They argue malice and oppression are pled.

Analysis

I. Demurrer

Demurrers for uncertainty will only be sustained where the defendant cannot reasonably determine what issues must be admitted or denied, or what claims are directed against him. (*Khoury v. Maly's of California, Inc*. (1993) 14 Cal.App.4th 612, 616.) Demurrers for uncertainty are to be overruled when addressed to inconsequential matters, the facts are within the knowledge of the defendant or ascertainable in discovery, or not dispositive of one or more causes of action. (*Id*.)

In this matter, the Court shall overrule the Defendant on this ground. The complaint as a whole does not suffer from uncertainty, and any specific details that can be ascertained as to Plaintiff's specific claims can be determined during discovery.

The Court shall turn to the specific causes of action.

A. 1st Cause of Action – Nuisance

A nuisance is "[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, or unlawful obstructs the free passage or use" of waterways, highways, streets, or public parks or squares. (Civil Code § 3479.) Here, nuisance is pled with descriptions of numerous hazards, including sewage system spills, water, inadequate electrical, gas leaks, trash, pests, etc. (Complaint ¶20.)

A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance of damage inflicted upon individuals may be unequal." (Civil Code § 3480.) The public nuisance doctrine was created to address and protect community interests. (*Citizens for Order Nuisance Abatement v. City of San Diego* (2017) 8 Cal.App.5th 350, 358.) The allegations made in this complaint impacts an entire mobilehome park, and the Court finds it is sufficiently alleged. While for the nuisance per se portion, Defendant contends that Plaintiffs did not plead common areas, Plaintiffs did in fact plead that the sewage overflows into the streets and common areas. (Complaint ¶20(a).) That is sufficient for pleading purposes.

"A private nuisance is a nontrespassory invasion of another's interest in the private use and enjoyment of land." (*Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540, 1550.) The elements are: (1) an interference with the use and enjoyment of his property; (2) an invasion must be substantial, i.e. the plaintiff must suffer substantial actual damage; and (3) the interference must be unreasonable. (*Mendez v. Rancho Valencia Resort Partners, LLC* (2016) 3 Cal.App.5th 248, 262-263.) For it to be substantial and unreasonable standards, both are measured by an objective standard. Here, Plaintiffs have alleged the interference (¶20), the substantial and unreasonable damage. (¶23, 25-27.)

Defendant relies on *Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360 for the proposition that the nuisance was at the outset. *Chee* is distinguishable as it involved a personal injury caused by an off-leash dog who jumped on the plaintiff and caused her to fall. (*Id*. at 1364.) On summary judgment, the court found that the landlord was not generally "liable for a nuisance created by his tenant after the premises are let." (*Id*. at 1373.) Here, Plaintiffs are not alleging a third party is creating the nuisance.

The *Chee* court further stated that exceptions to nonliability includes "where the landlord 'participated in the wrongful act by authorizing or permitting it to be done' or where the landlord failed to conduct a reasonable inspection of the premises before renewing a lease." (*Id*.) Contrary to Defendant's assertion, Plaintiffs have alleged that Defendants allowed these conditions to happen as they knew about the conditions and intentionally failed to repair these issues. (Complaint ¶24-26.) That is sufficient for pleading purposes.

Finally, Defendant argues this is duplicative of the negligence claim and relies on *El Escorial Owners' Association v. DLC Plastering, Inc.* (2007) 154 Cal.App.4th 1337, 1349. But the court there found that the plaintiff had not pled nuisance, but merely restated negligence. "It has also been indicated that liability in nuisance may result from intentional acts, from negligence, or from strict liability as a result of engagement in ultrahazardous activity." (*Tint v. Sanborn* (1989) 211 Cal.App.3d 1225, 1228.) Here, Plaintiffs have pled this as an intentional act—not mere negligence. Thus, it is not duplicative. Even so, duplicative claims are not a basis to sustain a demurrer. (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 889-890.)

B. 2nd Cause of Action – Breach of Contract

Defendant argues that Plaintiffs fail to plead the contracts between any of the specific Plaintiffs and Defendant, or differentiate between homeowners, tenants and third parties, and no dates. Plaintiff asserts it pled that each plaintiff has a written agreement that contains the MRL provisions and have pled the substance of their terms.

The elements for a breach of contract claim are: (1) contract; (2) plaintiff's performance or excuse for nonperformance; (3) breach; and (4) damages. (*Wall Street Network, Ltd. v. N. Y. Times Co.* (2008) 164 Cal.App.4th 1171, 1178.) Contract terms may be alleged in haec verba or generally according to legal intendment. (*Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 198-199.)

Plaintiffs alleged that there are written or implied by law contracts by each Plaintiff, but all have the same provisions to pay rent in exchange for Defendants to maintain the common areas, facilities, etc.; provide a safe, habitable condition; enforce park rules; etc. (Complaint ¶30.) That is sufficient for pleading purposes. The details that Defendants seek can be obtained during discovery

C. 3rd Cause of Action – Breach of Good Faith & Fair Dealing

Defendant argues that as there is no sufficient contract alleged, this claim also fails. It argues that there are no facts showing Defendant affirmatively prevented Plaintiffs from receiving the benefits. It also asserts that there is no tort recovery outside of insurance cases. It contends Plaintiff has pled nothing but breach of contract.

Plaintiffs contend that the covenant applies to residential leases, and contends that that they have properly alleged it.

"The covenant of good faith and fair dealing, implied by law in every contract**,** exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made." (*Guz v. Bechtel Nat. Inc*. (2000) 24 Cal.4th 317, 349.) Plaintiffs allege Defendants breached the covenant by failing to provide and maintain the parks' common areas and facilities. (Complaint ¶40.) However, Plaintiff also alleges that Defendants decreased the amenities, leased substandard mobilehomes, and interfered with their ability to sell the mobilehomes. (Complaint ¶40.) That is beyond the breach of contract claim.

D. 5th Cause of Action – Breach of Statutes

Defendant argues that this claim combines the Mobile Home Residency Laws, Mobile Home Parks Act, and titles 22 and 25 of the California Code of Regulations, to which each are inapplicable or are not properly pled.

Claims based on statutory liability must be specifically pled. (*Hawkins v. TACA Internat. Airlines, S.A.* (2014) 223 Cal.App.4th 466, 477.) Plaintiffs instead relies on cases involving negligence per se. "'Negligence per se' is an evidentiary doctrine codified at Evidence Code section 669. Under subdivision (a) of this section, the doctrine creates a presumption of negligence if four elements are established: (1) the defendant violated a statute, ordinance, or regulation of a public

entity; (2) the violation proximately caused death or injury to person or property; (3) the death or injury resulted from an occurrence the nature of which the statute, ordinance, or regulation was designed to prevent; and (4) the person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted." (*Quiroz v. Seventh Avenue Center* (2006) 140 Cal.App.4th 1256, 1285.) Violation of a statute merely creates a rebuttable presumption of negligence. (*Id*. at 1285-1286.)

Irrespective of whether Plaintiffs are pleading this as statutory liability or negligence, the issue is whether Plaintiffs pled the underlying facts to demonstrate liability.

The Mobilehome Residency Law (Civil Code §798 et seq.) " 'regulates relations between the owners and the residents of mobilehome parks.' " (*SC Manufactured Homes, Inc. v. Canyon View Estates, Inc.* (2007) 148 Cal.App.4th 663, 674.) Plaintiffs have cited the following statutes under the Civil Code: §§ 798.55 (eviction protection); 798.56 and 798.58 (termination of tenancy); 798.71(b) and 798.81(a) (listing); 798.40 (billing); 798.23 (complying with park rules and regulations; 798.25 (amending rules and regulations); and 798.26 (entering onto mobilehomes). (Complaint ¶52-58.)

The Mobilehome Parks Act (Health & Safety Code §§ 18200-18700) promoted "uniformity in mobilehome construction and installation standards." (*County of Santa Cruz v. Waterhouse* (2005) 127 Cal.App.4th 1483, 1489.) Plaintiff cites to Health & Safety Code §§18554 and 18871.4 (regarding waste water) and §18670 (electrical wiring to comply with Building Code). Plaintiffs allege a breach of section 16870 by failing to provide adequate wiring and fixtures to accommodate normal demand of electricity, and a breach of section 18854 and 18871.4 by allowing raw sewage from the sewer systems and common facilities to seep to the surface. (Complaint ¶77-78.) The Court finds this is sufficient for pleading purposes. Defendant's issue as to each property's complaints can be dealt in discovery.

E. 6th Cause of Action – Breach of Warranty of Habitability

The elements of breach of warranty of habitability are: (1) existence of a material defective condition affecting the premises' habitability; (2) notice to the landlord of the condition within a reasonable time after the tenant's discovery; (3) the landlord was given a reasonable time to correct the deficiency; and (4) resulting damages. (*Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1297.) Here, material defects are alleged as discussed above. (Complaint ¶20, 103.)

F. 7th Cause of Action – Breach of the Covenant of Quiet Enjoyment

Unless stated otherwise, every lease contains an implied covenant of quiet enjoyment where the landlord covenants that the tenant shall have quiet enjoyment and possession of the premises. (*Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 588.) It protects the tenant from any act or omission on the part of the landlord which interferes with a tenant's rights to use and enjoy the premises for the purposes contemplated by the tenancy. (*Id*.) It requires a substantial interference to the tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy. (*Id*. at 589.)

Defendant relies on *Clark v. Spiegel* (1971) 22 Cal.App.3d 74, 80, where the court required an eviction. However, more recent cases, including *Andrews*, have not required a surrendering of the property, but allowed to the tenant to remain in possession and sue for breach of contract and injunctive relief. (*Andrews,* supra, 125 Cal.App.4th at 590; see also *Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 897.) The Court finds for pleading purposes, the complaint is sufficient on this ground.

G. 8th Cause of Action – Breach of Unfair Competition Law

Business & Professions Code §17200 prohibits any business act or practice that is unlawful, unfair, or fraudulent. A cause of action for violating this statute "borrows" actionable conduct and

makes it independently actionable under the unfair competition law. (*Smith v. State Farm* (2001) 93 Cal.App.4th 700, 718.) "The unfair competition statute is not confined to anticompetitive business practices, but is also directed toward the public's right to protection from fraud, deceit, and unlawful conduct." (*Hewlett v. Squaw Valley Ski Corp*. (1997) 54 Cal.App.4th 499, 519.) Intent is not required as it is a strict liability statute. (*Id*. at 520.) As Plaintiffs have pled underlying claims, a UCL claim is sufficient.

Under Proposition 64 (codified in Business & Professions Code §§17204, 17535), individuals do not have standing unless they have suffered an injury in fact and has lost money or property as a result of such unfair competition. In *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 322, the Court stated that a party "must (1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., economic injury, and (2) show that the economic injury was the result of, i.e., caused by the unfair business practice or false advertising that is the gravamen of the claim." The Court discussed examples of economic injury: (1) a plaintiff surrenders in a transaction more or acquire in a transaction less than he otherwise would have; (2) have a present or future property interest diminished; (3) be deprived of money or property to which he has a cognizable claim; or (4) be required to enter into a transaction, costing money or property, that would otherwise have been necessary. (*Id*. at 323.) In *Kwikset*, a consumer filed a representative action that the defendant falsely marketed its locksets as made in the U.S.A. when in fact, they had foreign components. (*Id*. at 317.) "A consumer who relies on a product label and challenges a misrepresentation contained therein can satisfy the standing requirement of section 17204 by alleging, as plaintiffs have here, that he or she would not have bought the product but for the misrepresentation." (*Id*. at 330 (finding it supported both economic injury and causation).) Accordingly, the consumer had standing.

Plaintiffs allege that they lost money via overcharges and overpayments. (Complaint ¶112.) That is sufficient for pleading purposes.

H. 9th Cause of Action – Declaratory & Injunctive Relief

Defendant contends injunctive relief fails because there is no basis that the public is harmed. It argues declaratory relief is improper as to past wrongs and Plaintiffs are seeking relief as to past rent. Plaintiffs contend that they have properly pled declaratory relief.

While Plaintiffs have combined the two, "injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted." (*Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168; accord *City of South Pasadena v. Department of Transportation* (1994) 29 Cal.App.4th 1280, 1293 ("Injunctive relief is a remedy, not a cause of action."), *Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 734 (same).) Thus, the claim is really for declaratory relief.

"A complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the parties under a written instrument or with respect to property and requests that the rights and duties of the parties be adjudged by the court." (*Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 947.) Declaratory relief operates prospectively, serving to set controversies at rest…where there is an accrued cause of action for an actual breach of contract or other wrongful act, declaratory relief may be denied. (*Osseous Technologies of America v. Discovery Ortho Partners* (2010) 191 Cal. App. 4th 357, 366.)

The complaint here does not necessarily exist as to past rent, but current and future rent based on the fact of the untenable conditions of the park. Plaintiffs are seeking a declaration as to the continuing obligations under the tenancies. (Complaint ¶119.) This is sufficient and the court overrules the demurrer.

II. Motion to Strike

A. Attorney Fees

Fees are permitted by contract, statute or law. (CCP §1033.5(a)(10.) The only mention in the complaint for attorney fees is in the prayer, ¶10, which seeks attorney fees pursuant to the MRL and express contracts. The complaint does not mention which portion of the MRL permits fees. In opposition, Plaintiffs cite to Civil Code §798.55. Nothing in Civil Code §798.55 references fees. The other mention is contracts. Plaintiffs have properly asserted a breach of contract claim. Whether or not those contracts actually contain an attorney fees provision is not before this court. The allegations are presumed true for purposes of a motion to strike. (*Clausen v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.)

Thus, the Court denies the motion to strike attorney fees.

B. Punitive Damages

In order to plead punitive damages, a plaintiff must plead allegations of fraud, malice, or oppression with sufficient particularity. (*Hilliard v. AH Robbins Co*. (1983) 148 Cal.App.3d 374, 392.) Generally, claims for punitive damages must be pleaded with particularity as to the facts constituting the alleged egregious conduct. (*G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29.) However, the court may read the complaint as a whole so that conclusory allegations may be sufficient when read in context with the facts alleged as to the defendant's wrongful conduct. (*Perkins v. Superior Court (General Tel. Directory Co.)* (1981) 117 Cal.App.3d 1, 6-7.)

The prayer seeks punitive damages related to the 1st (nuisance), 4th (negligence), 5th (breach of statutes) and 6th (breach of warranty of habitability) causes of action. First, Defendant asserts punitive damages are not available for negligence. As a general rule, "mere negligence, even gross negligence is not sufficient to justify an award of punitive damages." (*Ebaugh v. Rabkin* (1972) 22 Cal.App.3d 891, 894.) Plaintiffs are relying on is malice, which is currently defined in the statute as "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***." (Civil Code §3294(c)(1).)

In *G.D. Searle & Co v. Superior Court* (1975) 49 Cal.App.3d 22, 32-33, the court suggested that conscious disregard of safety may justify punitive damages when nondeliberate injury is alleged. (finding no support for punitive damages for products liability claim against manufacturer where there were no allegations of conscious disregard.) Thereafter, in *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896, relying on *Searle*, the California Supreme Court ruled that conscious disregard of safety may constitute malice if the plaintiff establishes that "the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences." As stated in *College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725, the court stated that for malice, there is more than just a requirement of a willful and conscious disregard, but must include a despicable conduct. The court stated despicable was "base, vile, or contemptible." (*Id*.)

Contrary to Defendant's assertion, Plaintiffs have sufficiently pled malice rather than lack of due care. Plaintiffs have alleged sewage system leaks, water issues, power problems, gas leaks, etc. which cause health and safety issues. (Complaint ¶20.) Plaintiffs specifically allege that Defendants knew about the issues but chose to ignore those conditions and subsequently harass them. (Complaint ¶25-26.) This is sufficient for pleading purposes.

Defendant also argues that the breach of implied warranty of habitability is a contractual claim and therefore cannot support punitive damages. Defendant's premise is mistaken. A tenant may maintain a tort action for breach of the implied warranty of habitability. (*Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 916-917; accord *Erlach v. Sierra Asset Servicing, LLC* (2014) 226

Cal.App.4th 1281, 1298.) A tortious breach of the warranty of habitability may support punitive damages. (*Smith v. David* (1981) 120 Cal.App.3d 101, 112 n.3.)

Defendant also asserts that punitive damages may not be pled based on information and belief based on *Woodring v. Basso* (1961) 195 Cal.App.2d 459, 464-465. Defendant misreads *Woodring,* as the information and belief was based on fraud. Fraud claims cannot be based on information and belief unless there is statement of facts for that belief. (See *Dowling v. Spring Valley Water Co*. (1917) 174 Cal. 218, 221; *Findley v. Garrett* (1952) 109 Cal.App.2d 166, 177.) Plaintiffs are not relying on fraud, but rather malice and oppression. As discussed above, Plaintiffs have sufficiently alleged malice for pleading purposes.

As such, the Court denies the motion to strike references to punitive damages.