Tentative Rulings for December 5, 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.

CVRI2100419	DOE VS CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS	MOTION TO CONTINUE TRIAL

Tentative Ruling:

The Court orders counsel to appear.

2.

CVRI2200358	SANTILLAN CEJA VS GENERAL MOTORS LLC	MOTION TO COMPEL FURTHER REQUEST FOR PRODUCTION : ANSWER/RESPONSE TO PRODUCTION OF DOCUMENTS BY OMAR SANTILLAN CEJA, LEOVARDO LOPEZ SICAIROS

Tentative Ruling:

The Court grants Plaintiff's request to compel further responses to RFPs No. 16, but denies as to the remaining RFPs. The Court denies Plaintiffs' Request for Monetary Sanctions.

Factual / Procedural Context:

On January 26, 2022, Plaintiffs filed a Complaint against Defendant, alleging (1) breach of express warranty in violation of Song-Beverly Act, and (2) breach of implied warranty in violation of Song-Beverly Act. Plaintiffs allege that, on August 20, 2019, they purchased a 2019 Chevrolet Silverado 1500, manufactured and distributed by Defendant. (Compl. ¶¶ 4, 11, 14.) They allege that the subject vehicle came with defects and nonconformities in transmission, engine and exterior, and that Defendant's authorized repair facility was unable to repair despite numerous attempts. (*Id.* at ¶¶ 15–18.)

On June 14, 2022, Plaintiffs propounded their first set of Requests for Production of Documents ("RFPs") on Defendant. (Davina Decl. ¶ 5, Ex. A.) Plaintiffs contend that Defendant's responses to RFP Nos. 16–41, 45 and 46 remain deficient despite meet and confer efforts, and now move to compel further responses and for sanctions. Defendant opposes, arguing that Plaintiffs failed to meet and confer in good faith, they seek documents that Defendant already produced or agreed to produce upon entry of a protective order, and Defendant properly objected to the other RFPs. In their reply, Plaintiffs argue that they have shown good cause, Defendant's objections are meritless and Defendant did not move for a protective order.

Analysis

A party may file a motion compelling a further response to RFPs if it finds that a response is inadequate, incomplete, or evasive, or an objection in the response is without merit or too general. (CCP § 2031.310(a).) In a motion to compel a further response as to document requests, the moving party must state facts demonstrating good cause justifying the discovery sought by demonstrating relevance and specific facts justifying discovery. (CCP § 2031.310(b)(1); *Kirkland v. Sup. Ct.* (2002) 95 Cal.App.4th 92, 98.) The burden to show good cause for production "is met simply by a fact-specific showing of relevance." (*Tbg Ins. Servs. Corp. v. Sup. Ct.* (2002) 96 Cal.App.4th 443, 448.) Once good cause is established, the responding party has the burden to justify any objections. (*Kirkland*, *supra*, 25 Cal.App.4th at 98.)

Plaintiffs seek further responses to RFP Nos. 16–41, 45, and 46. Plaintiffs contend that the categories of document they are seeking relate to Defendant's general policies and procedures which were in place and followed by Defendant when handling vehicle repurchase or replacement requests and calculating repurchase offers. Plaintiffs also contend that some of the requested

documents will provide relevant evidence regarding Defendant's understanding and interpretations of the Song-Beverly Act, such as the definition of what is deemed a "repair attempt" as it relates to Plaintiffs' request for a vehicle repurchase or replacement.

RFP No. 16 seeks "All of YOUR warranty claims policy and procedure manual(s) from 2020 to the present." Defendant responded with objections in its entirety and stated that no documents will be produced. The motion is granted as to this request.

A plaintiff pursuing an action under the Song-Beverly Act has the burden to prove the nonconformity element, the presentation element, and the failure to repair element. (*Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 152.) More specifically, the elements of a claim for a manufacturer's violation of the Act are: "(1) the vehicle had a nonconformity covered by the express warranty that substantially impaired the use, value or safety of the vehicle (the nonconformity element); (2) the vehicle was presented to an authorized representative of the manufacturer of the vehicle for repair (the presentation element); and (3) the manufacturer or his representative did not repair the nonconformity after a reasonable number of repair attempts (the failure to repair element)." (*Id*. at 153.)

Plaintiffs argue that Defendant's general policies and procedures relied upon by Defendant when handling vehicle repurchase or replacement requests and calculating repurchase offers are relevant to the case at bar because they will likely shed light on whether Defendant has a policy in place that results in "systemic" violations of the Song-Beverly Act. In support of this contention, Plaintiffs cite *Oregel v. Am. Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, which held that, on the issue of the manufacturer's willfulness, "the jury could conclude that [manufacturer's] policy, which requires a part be replaced or adjusted before [manufacturer] deems it a repair attempt but excludes from repair attempts any visit during which a mechanic searches for but is unable to locate the source of the problem, is unreasonable and not a good faith effort to honor its statutory obligations to repurchase defective cars." (*Id*. at 1104–05.)

Based on *Oregel*, the manufacturer's policies are relevant in determining a lack of good faith in handling reasonable repair attempts as it pertains to the specific vehicle that is the subject matter of the action. The Court finds that RFP No. 16 is relevant to the issues at hand. (*See* Compl. ¶ 17.)

RFP No. 17 seeks "YOUR workshop manual(s) for the SUBJECT VEHICLE." Defendant initially responded that shop manuals for various model years and vehicles are equally available to all parties and can be obtained by writing to Helm, Incorporated, Publications Division. During their meet and confer, Defendant further agreed to produce its Service Manual for the 2019 Chevrolet Silverado upon entry of a protective order. (*Id.*) Plaintiffs have not returned the proposed protective order despite Defendant's agreement to produce responsive documents. (Yaraghchian Decl. ¶ 9.) Therefore, Defendant need not provide further response to RFP No. 17.

RFP No. 18 seeks "The operative Franchise Agreement, if any, on the date of sale of the SUBJECT VEHICLE between YOU and the dealership that sold the SUBJECT VEHICLE to Plaintiffs." Defendant initially responded with only objections and stated that no documents will be produced. In its separate statement, however, Defendant states that it has agreed to produce the Standard Provisions of the General Motors Dealer Sales and Service Agreement that Defendant has with each of its authorized dealerships. (Def.'s Separate Statement 4.) Therefore, Defendant need not provide further response to RFP No. 18.

RFP No. 19 seeks "All DOCUMENTS which describe the procedures used by YOU for evaluating and responding to complaints by California consumers regarding vehicles YOU manufactured or distributed since 2020." The motion is denied as to this request.

Plaintiffs have failed to show good cause based on fact-specific showing of relevance in that the procedures by which Defendant evaluates and responds to consumer complaints do not relate to Plaintiffs' establishing their prima face case for violation of the Song-Beverly Act. The procedures

by which Defendant handles consumer complaints do provide information on how Defendant handles warranty claims and repairs of vehicles which are presented to its authorized dealerships for service and repair of covered defects and nonconformities. Also, the request, as framed, is overly broad as it seeks information about how Defendant handles complaints generally, irrespective of the types of complaint and whether they are the types which Plaintiffs complained of (*e.g.*, nonconformities and defects). Plaintiffs may contend that information regarding "other vehicles" are relevant to determine whether Defendant's violation was willful by showing that it had widespread knowledge or prior awareness of certain defects. However, this request, the way it is framed, does not seek to address this issue.

More importantly, Defendant has agreed to produce its Warranty Policy and Procedure Manual and the policies and procedures used to evaluate lemon law claims and repurchase requests upon entry of a protective order. (Davina Decl. ¶ 10, Ex. D.) Plaintiffs have not returned the proposed protective order despite Defendant's agreement to produce responsive documents. (Yaraghchian Decl. ¶ 9.) Therefore, Defendant need not provide further response to RFP No. 19.

RFP Nos. 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32 seek all documents describing policies; procedures; guidelines; instructions; training materials; parameters for establishing the turn-around time to respond to a vehicle repurchase request, determining what constitutes a repair presentation or "non-conformity," a "substantial impairment" of a vehicle's use, value, or safety, and "reasonable number of repair attempts"; scripts and flow charts for handling vehicle repurchase or replaced; for evaluating a customer request for a refund for the vehicle; determining whether a vehicle is eligible for a repurchase pursuant to the Act since 2020.

Here, Defendant initially responded to these requests with only objections and stated that no documents would be produced. During meet and confer, however, Defendant agreed to produce its Warranty Policy and Procedure Manual and the policies and procedures used to evaluate lemon law claims and repurchase requests upon entry of a protective order. (Davina Decl. ¶ 10, Ex. D.) Plaintiffs have not returned the proposed protective order despite Defendant's agreement to produce responsive documents. (Yaraghchian Decl. ¶ 9.) Therefore, Defendant need not provide further responses to these requests.

RFP Nos. 33, 34, 35, 36, 37, 38, and 39 seek all Technical Service Bulletins,[1] Recalls, Field Service Actions, Special Service Messages, OBDII codes, vehicle symptom codes, and vehicle component repair codes for the same year, make, and model as the SUBJECT VEHICLE. The motion is denied as to these requests.

Here, Plaintiffs have not satisfied the requirement of showing good cause. No fact-specific showing of relevance has been made to demonstrate that every technical service bulletin and recall ever issued for the vehicle of the same year, make, and model as the subject vehicle relate to the defects and nonconformities which the subject vehicle suffers from. In an action for violation of the Song-Beverly Act, it is the Plaintiffs' burden to demonstrate that the vehicle has defects and nonconformities which could not be repaired by Defendant and its authorized service facility after reasonable attempts. Plaintiffs should specify and describe the defects for which Plaintiffs have allegedly presented the vehicle, which persisted even after a reasonable number of attempts. As such, these requests, as framed, are not reasonably particularize to guide the responding party as to what categories of documents and codes Plaintiffs are seeking to discover. Each demand must separately designate the documents or other things to be inspected by: (i) specifically describing each item; or (ii) reasonably particularizing each category of item. (CCP § 2031.030(c)(1); *see Calcor Space Facility, Inc. v. Sup. Ct.* (1997) 53 Cal.App.4th 216, 222

[1] Defendant has already produced a list of Technical Service Bulletins applicable to the subject vehicle and copies of the bulletins for any required field actions, including any recalls, for Plaintiffs' vehicle as shown in the Global Warranty History Report. (Davina Decl. ¶10, Ex. D.) Defendant also told Plaintiffs to let them know which TSBs may relate to any concerns Plaintiffs may have experienced so it can conduct a search and produce copies of those bulletins. (*Id.*) It is unclear whether Plaintiffs responded to this request.

[demand to produce everything in its possession which has anything to do with gun mounts was tantamount to a blanket request placing excessive burden on responding party].) Here, Plaintiffs' blanket requests are not particularized to the category of documents that would be relevant to establish Defendant's widespread knowledge of unspecified defects and nonconformities which Plaintiffs' vehicle suffers from and its knowledge of the lack of any fixes for these defects.

The same reasoning also applies to the following requests, for which the motion is denied. **RFP Nos. 40 and 41** seek documents sufficient to show all of Defendant's customer complaint codes and all labor operation codes from 2020 to present. **RFP Nos. 45 and 46** seek documents that evidence complaints by owners of 2020 Chevrolet Silverado 1500 vehicles regarding any of the complaints that the subject vehicle was presented to Defendant or its authorized repair facilities for repair during the warranty period or any of the components that the authorized repair facilities performed repairs on under the warranty.

Plaintiffs rely on the following cases in support of their contention that information regarding similar defects and nonconformities in other vehicles of the same model year are reasonably calculated to lead to admissible evidence: *Donlen v. Ford Motor Co*. (2013) 217 Cal.App.4th 138 (*Donlen*), and *Doppes v. Bentley* (2009) 174 Cal.App.4th 967 (*Doppes*). These two cases, however, did not address the underlying discovery issues like the ones presented in this motion regarding other vehicle information, and hence are not controlling authorities on the issue of discoverability. Notably, the discoverability of similar defects and nonconformities were not issues determined in these cases. Rather, in these cases, evidence of similar defects and nonconformities were discussed in the context of determining evidentiary issues and whether the trial court properly allowed such evidence pertaining to other vehicles to be admitted.

3.

CVRI2200460	BETANCOURT VS GROUP V SAN BERNARDINO, LP	MOTION TO STRIKE ANSWER ON 2ND AMENDED COMPLAINT FOR OTHER PERSONAL INJURY/PROPERTY DAMAGE/WRONGFUL DEATH TORT (OVER $25,000) OF LORENA BETANCOURT BY GROUP V SAN BERNARDINO, LP, PAMA MANAGEMENT, INC.,, PRO MANAGEMENT COMPANY INC.
CVRI2200460	BETANCOURT VS GROUP V SAN BERNARDINO, LP	DEMURRER TO ANSWER ON 2ND AMENDED COMPLAINT FOR OTHER PERSONAL INJURY/PROPERTY DAMAGE/WRONGFUL DEATH TORT (OVER $25,000) OF LORENA BETANCOURT

Tentative Ruling:

The Court sustains the demurrer with 30 days leave to amend as to the 1st, 2nd and 5th causes of action.

The motion to strike is denied.

Factual / Procedural Context:

Plaintiffs Lorena Betancourt, Alexander Betancourt, Samantha Lopez, America Rodriguez, Michelle Arvelo, Raymond Anthony Garcia, Jose Ortez and Dylan Hainult (collectively "Plaintiffs") are tenants of a multi-family residential building in Riverside ("Property"). The property is owned and/or managed by Defendants Group V. San Bernardino and Pama Management, Inc.

("Defendants"), as well as Co-Defendant Pro Management Company, Inc. dba Pro Management Company XIV, Inc.

Plaintiffs allege that the Property is maintained in a substandard, uninhabitable condition. Plaintiffs assert that the Property suffers from rat and cockroach infestations, lack of water pressure, missing smoke detectors, hazardous wiring, mold, water damage and flooding. They contend that the security gate has been damaged for years, which allows drug addicts and homeless people to enter the Property. Plaintiffs assert that they have made complaints to Defendants' managing agents and Defendants have been issued numerous citations from code enforcement, but still refuse to repair the premises. They claim that Defendants threaten and harass Plaintiffs. Plaintiffs allege that Defendants discriminate against families with children and children under the age of 18 are not permitted to be left unsupervised on the Property.

The Complaint was filed on January 31, 2022 and the operative Second Amended Complaint (SAC) was filed on September 14, 2022. Plaintiffs assert five causes of action for: (1) Failure to Provide Habitable Dwelling; (2) Breach of Covenant of Quiet Enjoyment; (3) Nuisance; (4) Negligence; and (5) Housing Discrimination.

Defendants now demur to the first, second and fifth causes of action. Defendant initially demurrer to all causes of action as to Plaintiff Lorena Betancourt, arguing that because she is deceased, she lacks capacity to sue. However, on November 22, 2022, the Court granted Plaintiff's motion to appoint a successor in interest. Defendant thus withdrew the demurrer on this basis, which renders the Request for Judicial Notice moot.

Defendants also move to strike the references to, and prayer for, punitive damages and request for attorney's fees.

Plaintiffs oppose both the demurrer and motion to strike.

Analysis

Demurrer:

A party may object by demurrer to a complaint on grounds that the pleading does not state facts sufficient to constitute a cause of action. (C.C.P. §430.10(e).) For the purposes of a demurrer, the allegations in the complaint must be accepted as true. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) 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.) In short, the ruling on a demurrer determines a legal issue on the basis of assumed facts, i.e., all those material, issuable facts properly pleaded in the complaint, regardless of whether they ultimately prove to be true." (*State of California ex rel. Bowen v. Bank of America Corp.* (2005) 126 Cal. App. 4th 225, 240.) It is error to sustain a demurrer when the "plaintiff has stated a cause of action under any possible legal theory." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal. 4th 962, 966-967.)

Evidentiary Objections:

Defendants object to all of the attachments to the Opposition on grounds that demurrers must be based on only on facts stated within the complaint, as well as lack of foundation and authentication.

In granting a demurrer, courts must only consider properly pleaded or implied factual allegations as well as judicially noticed matters. (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318.) Extrinsic evidence may not be considered. (*Lane v. I.U.O.E. Stationary Engineers* (1989) 212 Cal. App. 3d 164.) Accordingly, the Court sustains Defendants' objections to Plaintiffs' exhibits.

Failure to Provide a Habitable Dwelling:

A warranty of habitability is implied in all residential rental agreements. (*Green v. Superior Court* (1974) 10 Cal.3d 616, 629.) The implied warranty imposes upon the landlord the obligation to

maintain leased dwellings in habitable condition throughout the term of the lease. (*Peterson v. Superior Court* (1995) 10 Cal.4th 1185, 1204; Civil Code § 1941.) The elements of a breach of implied warranty of habitability claim are: 1) the 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 of the condition; 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.)

The breach of the warranty of habitability is a contract-based claim, which does not apply to a residential property manager, who was not a party to the lease contract. (*Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 913.) While a claim for breach of warranty of habitability sounds in contract, the underlying facts necessary to support the claim may also constitute a tort. (*Hjelm v. Prometheus Real Estate Group, Inc.* (2016) 3 Cal. App. 5th 1155, 1169.) For example, a plaintiff may plead separate causes of action for breach of the statutory warranty of habitability, breach of the implied warranty of habitability, tortious breach of the warranty of habitability, intentional infliction of emotional distress and negligence based on the failure to maintain a habitable dwelling. (Ibid.) However, the *Stoiber* court was clear that the breach of the warranty of habitability is a contract claim for which non-parties to the lease are not liable.

In this case, in their attempt to hold improper Defendants liable for warranty damages, Plaintiffs appear to have combined multiple claims in one cause of action. Plaintiffs assert that, under contract principles, Defendants were required to provide a habitable premise and have failed to do so. (SAC, ¶63.) Also, under statutory law applicable to residential dwellings, Defendants, as lessors of the Property, were required to provide Plaintiffs with a tenantable dwelling and failed to do so. (Id at 64.) Both of these claims apply only to the landlord Defendants.

However, Plaintiffs also allege that under common law and principles of tort liability applicable to Defendants as owners and managers of the Property, Defendants were required to provide a habitable dwelling, which they failed to do. (Id at 65.) They assert that Defendants, who were managers and owners in possession or control of the property had a duty to adequately repair and abate the conditions at the property. (Id at 66.) These are negligence claims. By asserting two separate and distinct causes of action, for which different remedies are available and for which only some parties may be liable, Plaintiffs have rendered the first cause of action uncertain and ambiguous.

Accordingly, the demurrer is sustained. Plaintiffs is however granted leave to amend the first cause of action as either a contract or tort claim.

Breach of Covenant of Quiet Enjoyment:

"In the absence of language to the contrary, every lease contains an implied covenant of quiet enjoyment, whereby the landlord impliedly covenants that the tenant shall have quiet enjoyment and possession of the premises. [Citations.] The covenant of quiet enjoyment 'insulates the tenant against any act or omission on the part of the landlord, or anyone claiming under him, which interferes with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy." (*Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 588, fn. omitted.) "To be actionable, the landlord's act or omission must substantially interfere with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy." (Id., at p. 589.) The covenant is based on the lease agreement and only parties to the lease may be liable. (*Marchese v. Standard Realty & Dev. Co*. (1974) 74 Cal. App. 3d 142, 147.)

Plaintiffs do not address this cause of action in their Opposition to the Demurrer. However, there are no facts alleged in the SAC showing that the property managers were landlords or parties to any lease agreement that could give rise to the covenant. As such, Plaintiffs have failed to state a cause of action. The demurrer is sustained with leave to amend.

Housing Discrimination:

Under the Fair Employment and Housing Act (FEHA) it is unlawful for the owner of any housing accommodation to discriminate against or harass any person because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information. (Cal. Gov. Code §12955(a).) The essential elements to be proved in an FHA or FEHA housing discrimination suite are: (1) protected group status (race, color, religion, national origin, ancestry, sex, age, disability, medical condition, etc.); proscribed adverse conduct by the landlord (refusal to rent, imposition of more onerous rental terms; intentional discrimination or discriminatory effect; and proof of a causal connection between protected group status and the landlord's adverse rental practice. (See *Department of Fair Employment & Housing v. Superior Court* (2002) 99 Cal.App.4th 896, 902.) A plaintiff suing under FEHA must plead facts in support of each of the requirements of the statute claimed to have been violated. (*Fisher v. San Pedro Peninsula Hosp*. (1989) 214 Cal.App.3d 590, 604.)

The fifth cause of action lists statutory provisions relating to housing discrimination, but does not contain any facts showing that any Plaintiffs were members of any protected group or that they suffered any adverse housing condition based on the protected classification. Although the SAC includes numerous facts demonstrating that the premises was not properly maintained, there are no facts showing that a causal connection between any protected group status and the failure to adequately maintain the premises. As such, Plaintiffs have failed to state a cause of action. The demurrer is sustained with leave to amend.

Motion to Strike:

Although the Court is granting leave to amend, the Court shall address the merits of the motion to strike. Pursuant to Code of Civil Procedure §436(a), the court may "strike out any irrelevant, false, or improper matter inserted in any pleading." Irrelevant and redundant matters may be stricken, however, where a motion to strike that is so broad as to include relevant matters, the motion should be denied in its entirety. (*Triodyne, Inc. v. Superior Court* (1966) 240 Cal. App. 2d. 536, 542.) When ruling on a motion to strike, the allegations of the pleading are assumed to be true and read in their context. (*Clauson v. Superior Court* (1998) 67 Cal. App. 4th 1253, 1255.) A pleading is to be liberally construed. (*CLD Construction v. City of Ramon* (2004) 120 Cal. App. 4th 1141, 1146.) The grounds for the motion must appear on the face of the pleading or from any matter of which the court is required to take judicial notice. (Cal. Civ. Pro. §437.)

Punitive Damages

A motion to strike is the proper procedure to attack punitive damages claims. (Cal. Code Civ. Pro. §§ 435-436; *Truman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.) Plaintiffs may recover exemplary or punitive damages where it is proven that "the defendant has been guilty of oppression, fraud or malice." (Cal. Civ. Code §3294(a).) As defined in the statute, malice is "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." (Cal. Civ. Code § 3294(c)(1).) As used in the statute, despicable conduct is conduct which is "so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people." (*American Airlines, Inc. v. Sheppard Mullin Richter & Hampton* (2002) 96 Cal. App. 4th 1017, 1050.)

Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim." (*Grieves v. Superior Court* (1984) 157 Cal. App. 3d 159, 166.) "[A] conclusory characterization of defendant's conduct as intentional, willful and fraudulent is a 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.) The pleading must contain factual allegations of wrongful motive, intent, or purpose. (*Cyrus v. Haveson* (1976) 65 Cal. App. 3d 306, 317.) The plaintiff must plead specific facts from which it can be inferred that

there was a conscious disregard for injury that was probable rather than merely foreseeable. (*Dawes v. Superior Court* (1980) 111 Cal. App. 3d 82, 89-90.)

Defendants argue that a negligent failure to repair a dangerous condition on property does not constitute malice, even if the conduct is described as willful or reckless. (See *McDonell v. American Trust Co.* (1955) 130 Cal. App. 2d 296, 300 [failure to repair defective condition of roof after several complaints insufficient for claim of punitive damages.]) However, the allegations contained in the SAC are significantly more extreme and outrageous than a single failure to repair. Plaintiffs allege that Defendants generally maintained the premises in an uninhabitable, substandard and dangerous condition, Plaintiffs allege that Defendants failed to repair or remedy numerous health and safety violations, including, cockroach, rodent and bedbug infestations, broken windows, windows without locks, inoperable air conditioners, moldy walls, electrical outlets that do not work, missing smoke detectors, low water pressure, lack of hot water, defective plumbing, defective toilets, deteriorated cabinets in the kitchen and bathroom, cracks in the walls and ceiling and deteriorated flooring, dangerous walkways and landings, lack of security, broken and non-operational security gates. (SAC ¶ ¶ 31, 32.) Plaintiffs assert that Defendants were given actual and constructive notice of these conditions, but failed to make timely repairs. These allegations are sufficient to establish a claim for punitive damages.

"Whether the corporation will be liable for punitive damages depends, not on the nature of the consequences, but rather on whether the malicious employee belongs to the leadership group of officers, directors, and managing agents." (*Cruz v. Homebase* (2000) 83 Cal. App. 4th 160, 168.) A corporation may be liable if the conduct was authorized or ratified by an officer, director or managing agent. (*Ebaugh v. Rabkin* (1972) 22 Cal.App.3d 891, 895; *Grieves v. Superior Court* (1984) 157 Cal. App. 3d 159, 167.) Managing agent requires more than a supervisory position and applies only to those employees who exercise substantial discretionary authority over decisions that ultimately determine corporate policy. (*White v. Ultramar* (1999) 21 Cal. 4th 563, 573.)

Plaintiffs assert that Swaranjit S. Nijjar is the Chief Executive Officer, Secretary and Sole Director of Group V San Bernardino, and his sister, Daljit Kler was the CEO, Secretary and CFO, and later the sole director, of Pama. (SAC, ¶11 and 16.) Plaintiff alleges that all on-site managers report to Kler, who is involved in the day-to-day management of the Property and aware of all complaints made by tenants. (Id.) These allegations are sufficient to show ratification.

Because Plaintiffs have stated sufficient facts showing malice in this Complaint, which presumably will be re-alleged in the amended complaint, the Court finds that the allegations demonstrate that the actions were perpetrated or ratified by Defendants' managing agents. This is sufficiently pled for punitive damages, and the motion to strike is denied.

Attorney Fees

Defendants also move to strike the request for attorney's fees. California follows the traditional "American rule" that each party to litigation ordinarily pays its own attorney fees. (*Musaelian v. Adams* (2009) 45 Cal.4th 512, 516.) Attorney's fees are recoverable as costs only when authorized by contract, statute, or law. (Code Civ. Pro. §1033.5(a)(10)(A)-(C).)

Plaintiffs seek attorney's fees based on FEHA and 42 U.S.C. §3613 pursuant to the fifth cause of action. Because the demurrer to this cause of action was sustained, the fee request is moot.

Plaintiff also requests fees under Civil Code §1942.4, which prohibits a landlord from collecting rent where the premises does not comply with Health & Safety Code requirements. (Civ. Code §1942.4(a)(1).) The statute provides that the prevailing party shall be entitled to recovery of reasonable attorney's fees and costs of the suit in an amount fixed by the court. (Civ. Code §1942.4(b)(2).) Because Plaintiffs have alleged violations of the Health & Safety Code, the motion to strike reference to attorney fees is denied.