Tentative Rulings for June 4, 2025
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

24CECG03765 ***Tatiana Ayon v. San Joaquin Veterinary Hospital, Inc*.**

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

24CECG00136 ***Isaac Munoz v. CVT, LLC*** **is continued to Wednesday, July 23, 2025 at 3:30 p.m. in Department 502.**

23CECG02160 ***Pacific Choice Brands, LLC v. Jesus Peralez, JR*** **is continued to Thursday, June 5, 2025 at 3:30 p.m. in Department 502.**

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Tentative Rulings for Department 502

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(47)

Tentative Ruling

Re: ***Definitive Staffing Solutions, Inc. v. Freedom Pools, Inc.***
Superior Court Case No. 24CECG01195

Hearing Date: June 4, 2025 (Dept. 502)

Motion: Default Prove-Up

Tentative Ruling:

To deny without prejudice.

Explanation:

Plaintiff is reminded that applications for default judgment on declarations pursuant to Code of Civil Procedure section 585, subdivision (d) is the preferred procedure in Fresno County. (See Superior Court of Fresno County Local Rules, rule 2.1.14.) When submitting a matter for default judgment on declarations, the party must comply with California Rules of Court, rule 3.1800, and submit the required material together as a single packet. (*Ibid*.) Default packets should be filed with the Clerk's Office at least ten court days before the hearing. (*Ibid*.)

Failure to Prove Alter Ego

"Under the alter ego doctrine, the corporate veil may be lifted to show the corporate form is a fiction and determine who controls the corporate entity and who is liable for its debts." Lopez v. Escamilla, 79 Cal.App.5th 646, 650, 295 Cal.Rptr.3d 63 (2022). "Courts look to the totality of the circumstances to determine who actually owns or controls the corporate entity and who is using it as a mere shell or conduit for his or her own personal interests." Id. at 650-51. "Factors include the commingling of funds and assets ..., identical equitable ownership ..., use of the same offices and employees, disregard of corporate formalities, identical directors and officers," etc." Id. at 651. "When considering the application of the alter-ego doctrine to a particular situation, it must be remembered that it is an equitable doctrine and, though courts have justified its application through consideration of many factors, their basic motivation is to assure a just and equitable result." Alexander v. Abbey of the Chimes, 104 Cal.App.3d 39, 48, 163 Cal. Rptr. 37 (1980).

Plaintiff makes a legal assertion that John Boyd Stephens is the alter ego to Staffing Solutions, Inc. without proving such claims.

Failure to State a Claim – Breach of Contract

To state a cause of action for breach of contract, the plaintiff must plead (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damage. (*Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 458.) "[T]he complaint must [also] indicate on its face whether

the contract is written, oral, or implied by conduct." (Id. at 458-59 citing Code Civ. Proc., § 430.10, subd. (g).) Although the complaint alleges that the parties entered into the Temporary Staffing Services Agreement, attached as Exhibit A to the complaint, on March 5, 2018, the contract is not signed by either defendant. Facts appearing in exhibits attached to complaint are given precedence over inconsistent allegations in the complaint. (*Dodd v. Citizens Bank* (1990) 222 Cal.App.3d 1624, 1627; *Holland v. Morse Diesel Int'l, Inc.* (2001) 86 Cal.App.4th 1443, 1447.) Nor are there any facts alleged to show that the contract was implied by conduct. James Pinedo's declaration indicating that the written contract was ratified by defendants' conduct does not correct the defect pertaining to the failure to state a cause of action for breach of contract. Accordingly, a cause of action for contract is not sufficiently pled against either defendant.

It is further noted that even if the contract were signed, it appears that the signature on the form would have been on behalf of Freedom Pools, Inc., and not John Boyd Stephens. Despite plaintiff's allegation that these parties are alter egos, no facts are alleged to support this legal conclusion.

Quantum Meruit

" 'Quantum meruit refers to the well-established principle that "the law implies a promise to pay for services performed under circumstances disclosing that they were not gratuitously rendered." [Citation.] To recover in quantum meruit, a party need not prove the existence of a contract [citations], but it must show the circumstances were such that "the services were rendered under some understanding or expectation of both parties that compensation therefor was to be made" [citations].' [Citations.] The requisite elements of quantum meruit are (1) the plaintiff acted pursuant to 'an explicit or implicit request for the services' by the defendant, and (2) the services conferred a benefit on the defendant. [Citation.]" (*Port Medical Wellness, Inc. v. Connecticut General Life Insurance Company* (2018) 24 Cal.App.5th 153, 180, citations omitted.)

Here, it is properly alleged that plaintiff provided services to Freedom Pools, Inc. ("Freedom") in exchange for compensation for its services. The services conferred a benefit to Freedom since plaintiffs provided temporary staffing to the business. However, no such benefit has been alleged to have been conferred to John Boyd Stephens individually. And thus, a cause of action for quantum meruit is sufficiently stated against Freedom only.

Proof Required for Amount of Damages:

Plaintiff must provide evidence to prove up the amount of its damages, i.e., the $234.603.64 it alleges is owed by defendants. By defaulting, defendants admit liability for the debt or obligation on all well pled causes of action. (*Morehouse v. Wanzo* (1968) 266 Cal.App.2d 846, 853. A default does not, however, admit that the amount prayed for is the proper amount. (*Brown v. Superior Court* (1966) 242 Cal.App.2d 519, 526.) The court is required to enter judgment only for such sum as appears just. (Code Civ. Proc., § 585, subd. (b).) Plaintiff must present evidence proving the amount of damages, including evidence as to any partial payments made by defendants. Without such evidence, the court may refuse to enter judgment in any amount, notwithstanding defendants' default. (*Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560.)

Interest

Plaintiff seeks prejudgment interest in an amount of $45,211.68. However, it is unclear whether a provision in a contract may be enforced against a party who did not sign that contract where the complaint has only pled a cause of action for quantum meruit. Further, the contract also does not technically provide for interest, rather it provides for a late fee provision of 2.25% per month, which it appears plaintiff has equated to an interest rate of approximately 27% per annum.

Attorneys' Fees

In a default judgment, upon request, attorney's fees are awardable if allowed by statute or by agreement of the parties. (Cal. Rules of Court, rule 3.1800(a)(9); Civ. Code, § 1717, subd. (a).) Here, plaintiff seeks a total of $6,750 in attorney's fees. However, it is unclear whether the defect pertaining to the omitted signature precludes plaintiff from being able to enforce the attorney's fees provision contained within the written agreement presented.

In any future application, plaintiff must submit a prove-up brief either: (1) addressing the legal effect of an omission of the defendants' signature to the written agreement; or (2) establishing that it is otherwise entitled to the interest and attorneys' fees under a quantum meruit theory of liability.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 06/02/25.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Bradley DeBorde vs. Jefferey DeBorde***
Superior Court Case No. 24CECG01815

Hearing Date: June 4, 2025 (Dept. 502)

Motion: Default Prove-Up

Tentative Ruling:

To deny without prejudice.

Explanation:

Plaintiff is reminded that applications for default judgment on declarations pursuant to Code of Civil Procedure section 585, subdivision (d) is the preferred procedure in Fresno County. (See Superior Court of Fresno County Local Rules, rule 2.1.14.) When submitting a matter for default judgment on declarations, the party must comply with California Rules of Court, rule 3.1800, and submit the required material together as a single packet. (*Ibid*.) Default packets should be filed with the Clerk's Office at least ten court days before the hearing. (*Ibid*.)

Plaintiffs assert that there was a fraudulent quitclaim deed transferring title from plaintiffs to defendant. A forged document, such as a quitclaim deed, is *void ab initio* and constitutes a nullity; as such it cannot provide the basis for a superior title as against the original grantor. *People v. Schmidt*, 41 Cal. App. 5th 1042, 254 Cal. Rptr. 3d 694 (3d Dist. 2019), review filed, (Dec. 18, 2019) and review denied, (Feb. 19, 2020). The standard of proof in a civil case for fraud is "preponderance of the evidence". *Asadoorian v Kludjian*, 210 Cal 564; 292 P 644 (1930); *Liodas v Sahadi*, 19 Cal 3d 278; 137 CR 635; 562 P.2d 316 (1977).

Plaintiffs have not proven, nor taken any steps to prove that the quitclaim deed was false.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 06/02/25 .
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Anna Rodriguez v. Tiffany Spencer***
Superior Court Case No. 24CECG05315

Hearing Date: June 4, 2025 (Dept. 502)

Motion: By Defendants to Compel Arbitration

Tentative Ruling:

To grant the defendants' motion to compel the plaintiff to arbitrate her claims and to stay the pending court action until the arbitration is resolved.

Explanation:

The plaintiff, Anna Rodriguez (Plaintiff), sued the defendants, Wawona Frozen Foods, Inc. (Wawona) and Tiffany Spencer (Spencer) (together, Defendants), for employment-related claims. Defendants now move to compel Plaintiff to submit the claims in her complaint to arbitration based on the arbitration agreement (Agreement) between Plaintiff and Wawona and to stay the proceedings currently before this court pending arbitration. Defendants bring their motion pursuant to the Federal Arbitration Act (FAA) and California Code of Civil Procedure sections 1281.2 and 1281.4 on the grounds that the claims in Plaintiff's lawsuit are subject to arbitration under the Agreement.

Plaintiff opposes the motion on two grounds: (1) Defendants fail to establish the existence of a valid arbitration agreement with her; and (2) the Agreement's arbitration provisions are unconscionable and unenforceable.

Discussion

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc., § 1281.2.) When a motion to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine: (1) whether the agreement exists, and (2) if any defense to its enforcement is raised, whether it is enforceable. The moving party bears the burden of proving the existence of an arbitration agreement by a preponderance of the evidence. The party claiming a defense bears the same burden to prove any fact necessary to the defense. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413-414.)

Existence of Agreement

In compliance with the requirements of Code of Civil Procedure section 1281.2 and California Rules of Court, rule 3.1330, a party may meet the initial burden to establish an arbitration agreement "by attaching a copy of the arbitration agreement purportedly bearing the opposing party's signature." (*Espejo v. Southern California Permanente*

Medical Group (2016) 246 Cal.App.4th 1047, 1060 [defendants not required to establish authenticity of plaintiff's signature on arbitration agreement until challenged by plaintiff in opposition].) Defendants meet their initial burden by producing a copy of the Agreement with Plaintiff's handwritten signature. (Spencer Decl., ex. A.)

Plaintiff patterns her opposition after the opposition in *Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 170 (*Gamboa*), where the appellate court affirmed the trial court's denial of the employer's motion to compel arbitration. The *Gamboa* court found the employer had failed to rebut the employee's reliance on electronic-signature cases to support the claim that her purported handwritten signature was invalid. The court agreed with the cases finding the difference between a handwritten signature and an electronic signature is a "distinction without a legal difference" because both types of signature have the same legal effect and are equally enforceable. (*Id.* at p. 168.)

Defendants rely on *Iyere v. Wise Auto Group* (2021) 87 Cal.App.5th 747 (*Iyere*), which reached a different conclusion on arbitration agreements with handwritten signatures. In *Iyere* each plaintiff signed materially identical declarations stating that on their first day of work they were handed a stack of documents to sign quickly and complete, they did not recall seeing the arbitration agreement and they would not have signed it had they known they were giving up their right to file a lawsuit. (*Id.* at p. 753.) Plaintiff's declaration here is similar to the declarations in *Iyere*. But each of the *Iyere* plaintiffs, unlike Plaintiff, also declared they had never received a copy of the documents they signed.

The Court of Appeal in *Iyere*, in declining to follow *Gamboa,* noted that although the plaintiffs there claimed they had not read the arbitration agreement, they admitted, as Plaintiff admits here (Pltf. Decl., ¶ 6), that they had signed the stack of documents presented to them in a rush. (*Iyere, supra,* 87 Cal.App.5th at pp. 758-759.) "It is hornbook law that failing to read an agreement before signing it does not prevent formation of a contract." (*Id.* at p. 759.) A person cannot evade a contract "by adding, 'and if I had read the contract, I wouldn't've signed it.' " (*Ibid*.)

The appellate court in *Iyere* reversed the trial court's denial of the defendant's motion to compel arbitration, explaining:

> [Plaintiffs'] evidence does not create a factual dispute as to whether plaintiffs signed the agreement. The declarations explicitly acknowledge that plaintiffs signed a "stack of documents" and do not deny that the stack included the agreement. Although plaintiffs state they do not recall signing the agreement, there is no conflict between their having signed a document on which their handwritten signature appears and, two years later, being unable to recall doing so. In the absence of any evidence that their purported signatures were not their own, there was no evidence that plaintiffs did not in fact sign the agreement.

(*Iyere, supra,* 87 Cal.App.5th at p. 756.)

Here Plaintiff states she was not given time to take the Agreement to counsel for review, but she does not deny that she was given copies of the onboarding documents in accordance with Wawona's usual policies and practices. The court agrees with the rationale of *Iyere* and finds Plaintiff offers no admissible evidence to create a dispute about the authenticity of her handwritten signature. Therefore, the court finds Defendants have met their burden to establish the existence of the Agreement. Plaintiff's allegations that she cannot remember being presented with the Agreement or signing it are relevant only to the question of whether enforcement of the Agreement is barred by the defense of unconscionability.

Procedural Unconscionability

The defense of "unconscionability has both a 'procedural' and a 'substantive' element, the former focusing on 'oppression' or 'surprise' due to unequal bargaining power, the latter on 'overly harsh' or 'one-sided' results." (*Armendariz, supra,* 24 Cal.4th at p. 114, quoting *A & M Produce Co.*, [(1982)] 135 Cal.App.3d 473, internal quotation marks omitted.) To invalidate an arbitration agreement, the court must find both procedural and substantive unconscionability. (*Armendariz*, *supra,* at p. 122.) "The two types of unconscionability need not be present in the same degree, and 'the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.' " (A*anderud v. Superior Court* (2017) 13 Cal.App.5th 880, 895 (A*anderud*) quoting *Armendariz*, *supra*, at p. 114.)

"The party opposing arbitration has the burden of proving unconscionability." (A*anderud, supra,* 13 Cal.App.5th at p. 895 [arbitration agreement presented on take-it-or-leave-it basis is procedurally unconscionable].) A contract can be procedurally unconscionable without being an adhesion contract. (*Harper v. Ultimo* (2003) 113 Cal.App.4th1402. 1409–1410.) "[A]dhesion alone generally indicates only a low degree of procedural unconscionability[.]" (*Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 494.)

Courts frequently enforce employment arbitration agreements that are contracts of adhesion, as long as they are not also substantively unconscionable. As the court explained in *Giuliano v. Inland Empire Personnel, Inc.* (2007) 149 Cal.App.4th 1276:

> Arbitration clauses in employment contracts have been upheld despite claims that the clauses were unconscionable because they were presented as part of an adhesion contract on a take-it-or-leave-it basis. [Citations.] . . . [T]he compulsory nature of a predispute arbitration agreement does not render the agreement unenforceable on grounds of coercion or for lack of voluntariness.

(*Id.* at p. 1292, internal quotation marks omitted.) Plaintiff contends procedural unconscionability is present to a high degree because: (1) the Agreement is an adhesion contract; (2) it does not list any arbitration companies; and (3) it does not provide a link or an attachment to the relevant arbitration rules.

To establish an adhesion contract, Plaintiff states she was not given any meaningful time to review the Agreement. Defendants cite *Aanderud* and two federal cases for the proposition that the 30-day opt-out provision defeats a finding of procedural unconscionability. Defendants fail to mention *Gentry v. Superior Court* (2007) 42 Cal.4th 443 (*Gentry*), where the California Supreme Court considered an opt-out provision and found the arbitration agreement at issue had a degree of procedural unconscionability even though it included a 30-day opt-out provision. (*Id.* at p. 472, fn. 10.)[1] None of Defendants' cited cases on the effect of an opt-out provision mention *Gentry*. Under California law, "an opt-out provision does not insulate an arbitration agreement from a finding of procedural unconscionability." (*Swain v. LaserAway Medical Group, Inc.* (2020) 57 Cal.App.5th 59, 69.)

Plaintiff contends the Agreement was presented to her on a take-it-or-leave-it basis as part of her onboarding when Wawona first hired her in November 2021, but she ignores the opt-out provision entirely. The two-page Agreement consists of 14 paragraphs. The last paragraph—above the bold, all-capitalized warning that the employee is waiving the right to a jury trial—plainly includes a bold, capitalized heading and a short paragraph explaining the right to opt out. Plaintiff does not deny receiving a copy of the Agreement, which she could have read and then exercised her right to opt out, with or without the advice of counsel, within 30 days of signing the Agreement. To the extent Wawona drafted the Agreement and presented it to Plaintiff for her handwritten signature with other documents, it could support a finding of some amount of procedural unconscionability. On the other hand, the two-page Agreement is easy to read, with bold headings and no preprinted fine print. At best, Plaintiff's reliance on an alleged take-it-or leave-it presentation of the Agreement slightly favors a finding of procedural unconscionability.

Plaintiff's remaining contentions—Wawona's failure to list any arbitration companies or to provide a link or an attachment to the relevant arbitration rules—do not support a finding of procedural unconscionability. (*Bigler v. Harker School* (2013) 213 Cal.App.4th 727, 737 [absence of arbitration rules of minor significance to court's analysis]; *Lane v. Francis Capital Management, LLC* (2014) 224 Cal.App.4th 676, 693 [arbitration contract that incorporated rules by reference not procedurally unconscionable]; *Peng v. First Republic Bank* (2013) 219 Cal.App.4th 1462, 1472 [failure to attach the AAA rules, standing alone, insufficient to support finding of procedural unconscionability].)

Both procedural and substantive unconscionability must be present in order for a contract to be deemed unconscionable. If the court determines Plaintiff fails to establish procedural unconscionability, it need not consider the issue of substantive unconscionability. (*Ramirez v. Charter Communications, Inc., supra,* 16 Cal.5th at p. 494; *Gentry, supra,* 42 Cal.4th at p. 469-470 [finding of procedural unconscionability does not

[1] The California Supreme Court recognized *Gentry's a*brogation in *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 129, where the Supreme Court noted that in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 360 *Gentry*'s holding regarding class arbitration waivers has been abrogated by United States Supreme Court precedent.

mean contract is unenforceable, but rather that courts will scrutinize substantive terms to ensure they are not manifestly unfair or one-sided].) To the extent the adhesive nature of the Agreement is sufficient to establish some degree of procedural unconscionability, albeit low, the court will consider Plaintiff's claims of substantive unconscionability.

Substantive Unconscionability

Mandatory arbitration clauses in employment contracts are enforceable if they provide essential fairness to the employee. (*Armendariz, supra,* 24 Cal.4th at pp. 90-91; see also *24 Hour Fitness v. Superior Court* (1998) 66 Cal.App.4th 1199, 1212 [arbitration clause in employee handbook was not unconscionable where it provided all parties with substantially same rights and remedies].) In the employment context, an agreement must include the following five minimum requirements designed to provide necessary safeguards to protect unwaivable statutory rights where important public policies are implicated: 1) a neutral arbitrator; 2) adequate discovery; 3) a written, reasoned, opinion from the arbitrator; 4) identical types of relief as available in a judicial forum; and 5) that undue costs of arbitration will not be placed on the employee. (*Armendariz, supra,* 24 Cal.4th at p. 102.)

Plaintiff concedes that the first, third, and fifth *Armendariz* requirements favor Defendants. She contends the second and fourth requirements favor her, making the Agreement substantively unconscionable. On the second requirement of adequate discovery, Plaintiff suggests that although the Agreement provides for "reasonable discovery," there is no mention of the discovery's scope and no explanation of the term "reasonable." But "'adequate' discovery does not mean unfettered discovery and *Armendariz* itself recognizes an arbitration agreement may require " 'something *less than* the full panoply of discovery provided in Code of Civil Procedure section 1283.05.' " (*Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 184, fn. omitted, quoting *Armendariz, supra,* 24 Cal.4th at pp. 105-106, italics in original.) The Agreement here provides in paragraph 4 that it shall be governed by the FAA, which is available for review on the internet or in the Human Resources Office, and the arbitrator shall conduct the arbitration in accordance with the procedures of the California Arbitration Act (CAA) and the California Code of Civil Procedure section 1282 et seq., also available for review. It also provides,"[t]he CAA entitles each party to reasonable discovery to prosecute their case[.]" (Agreement, ¶ 4, (b).) The court finds the second *Armendariz* requirement favors Defendants.

The fourth *Armendariz* requirement prevents an employer from shifting the cost of arbitration to the employee, where the employee would not bear the expense if the case were determined in court. (*Armendariz, supra,* 24 Cal.4th at pp. 110-11.) The Agreement provides "Employer shall pay for the arbitration, including the arbitrator's fees." (Agreement, ¶ 7.) The additional provision that "each party shall be responsible for compensating their own attorneys and witnesses, unless the arbitrator orders otherwise," show further compliance with the fourth *Armendariz* requirement. This provision restates the baseline American rule that each party must ordinarily pay the party's own attorney fees. (*Trope v. Katz* (1995) 11 Cal.4th 274, 278.) The court finds the Agreement satisfies all of the *Armendariz* requirements and is not substantively unconscionable.

Evidentiary Objections.

The court overrules all of Plaintiff's evidentiary objections.

Conclusion

Defendants meet their burden to demonstrate the existence of a valid arbitration agreement covering the claims of Plaintiff's complaint. Plaintiff fails to meet her burden to show the Agreement is unconscionable. Therefore, the court grants Defendants' motion to compel arbitration and to stay the pending court action until the arbitration is resolved.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 06/02/25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Jason Rubottom v. Julee May.***
Superior Court Case No. 21CECG01815

Hearing Date: June 4, 2025 (Dept. 502)

Motion: Defendants' Demurrer to and Motion to Strike the Third Amended Complaint

Tentative Ruling:

To sustain the demurrer to the first, third and fourth causes of action, without leave to amend. (Code Civ. Proc., § 430.10, subd. (e).) To grant the motion to strike, without leave to amend.

Explanation:

Defendants Courtyard Management, LLC and Julee May (collectively "defendants") generally demur to the first cause of action, for battery, the third cause of action, for intentional infliction of emotional distress, and the fourth cause of action, for fraudulent concealment. For each cause of action, defendants allege that the complaint fails to state facts to support the cause of action.

The Third Amended Complaint ("TAC") alleges defendants knew of the bed bug infestation in the hotel and the room assigned to plaintiff specifically and allowed plaintiff to stay in the room despite this knowledge. (TAC, ¶¶ 25-29.) The defendants' prior knowledge is the basis of their intentionality in his causes of action for battery (TAC, ¶¶ 52-53), intentional infliction of emotional distress (TAC, ¶¶ 91, 94), and fraudulent concealment (TAC, ¶¶ 104-106). In support of the conclusion that defendants knew of the infestation prior to plaintiff staying in his assigned room, plaintiff alleges two website reviews mention experiences with bedbugs. (TAC, ¶ 24.) There is no additional information as to the date of the reviews or proximity in time to plaintiff's stay. Plaintiff did not notify the hotel of the alleged bedbug infestation until several days after the conclusion of his stay. (TAC, ¶ 20.) As such, plaintiff's repeated conclusions that the defendants were aware of the bedbug infestation in the hotel at the time of plaintiff's stay and in his specific room are unsupported by the factual allegations of the complaint.

The deficiency in pleading defendants' knowledge of the infestation has been the subject of prior demurrers to the First and Second Amended Complaints. The deficiencies remain. The additional allegations pled to support the first cause of action in paragraphs 48 through 51 are a restatement of the allegations found in paragraphs 40 and 41. Similarly, the new allegations in paragraph 88 to support the third cause of action are a restatement of paragraph 41. The other new allegations in paragraphs 86 and 87 to support the third cause of action are merely conclusions of plaintiff having suffered severe emotional distress and defendants' conduct being extreme and outrageous without factual allegations to support these conclusions. The new allegations of paragraph 111 in support of the fourth cause of action allege defendants were notified

of the infestation by plaintiff and other guests and refused to remedy the condition. These allegations are not supported by the initially pled allegations that plaintiff did not notify the hotel of the presence of bedbugs until after his stay concluded and references to online reviews without context to support how they would put defendants on notice of the infestation at the time of plaintiff's stay. (TAC, ¶¶ 20, 24.)

Accordingly, the court intends to sustain the demurrer to the first, third and fourth causes of action of the Third Amended Complaint. For similar reasons, plaintiff's requests for punitive damages and attorneys' fees are also unsupported, and thus subject to defendants' motion to strike. (Code Civ. Proc., §§ 435, 436; *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63.)

Plaintiff has not demonstrated that there are additional facts to support the conclusion that defendants had prior knowledge of the infestation and rented the room to plaintiff despite this knowledge. Leave to amend will not be granted.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 06/02/25.
(Judge's initials) (Date)