

Tentative Rulings for June 17, 2026
Department 501

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.*

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

23CECG03559 *Angelica McGrew v. Clovis Unified School District* is continued to Wednesday, July 1, 2026, at 3:30 p.m. in Department 501.

24CECG01765 *G. Simon Bachir v. William Etiz, D.O.* is continued to Wednesday, July 29, 2026, at 3:30 p.m. in Department 501.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(20)

Tentative Ruling

Re: ***Tran v. Ricci***
Superior Court Case No. 22CECG04019

Hearing Date: June 17, 2026 (Dept. 501)

Motion: By Defendant for Summary Judgment, or Alternatively
Summary Adjudication

**If oral argument is timely requested, it will be entertained on
Wednesday, June 24, 2026, at 3:30 p.m. in Department 501.**

Tentative Ruling:

To grant summary judgment. (Code Civ. Proc., § 437c.) Within seven days of service of the order by the clerk moving party shall submit a proposed judgment consistent with the court's summary judgment order.

Explanation:

This is an action seeking specific performance of a contract to purchase real property, and accounting. Plaintiff alleges that on January 27, 2021 she exercised her a contractual option to purchase real property located at 1737-1781 East Shaw Avenue and 4961 North Cedar Avenue in Fresno. This property was owned by the Ricci Family Trust dated July 2, 1976 and amended October 8, 1976. Plaintiff's predecessor in interest held the option to purchase this property based on an option agreement dated August 6, 1973 which provided the option could be exercised between December 31, 2020 and December 31, 2028. The Complaint alleges that plaintiff had this option and exercised it to purchase the property. (Complaint ¶¶ 6, 7.)

The cause of action for specific performance depends on the existence of an enforceable contractual agreement to purchase the property at issue. A complaint for specific performance of a contract must allege the making of a written contract that is sufficiently definite and certain in its terms to be enforced. (*Hennefer v. Butcher* (1986) 182 Cal.App.3d 492, 500-502 [a contract cannot be specifically enforced if its terms are not certain.]) Moreover, the plaintiff must have performed her side of the agreement. (*Cockrill v. Boas* (1931) 213 Cal. 490, 492 [In order to state a cause of action for specific performance, plaintiff must allege his or her performance, offer of performance, or sufficient excuse for nonperformance of the contract terms and conditions to be performed on his or her part].)

The second cause of action is entirely derivative of the first cause of action for breach of contract / specific performance. The second cause of action seeks an accounting of income and benefits received by defendant between 4/26/2022 and consummation of the purchase and sale agreement by court order. (Complaint ¶ 22.) Thus, if plaintiff is not successful on the first cause of action, the second necessarily fails as well.

The motion must be granted because defendant's moving papers show that plaintiff did not have an enforceable option to purchase the property.

The Complaint alleges, "Pursuant to the terms of an Option to Purchase agreement dated August 6, 1913, plaintiff's predecessor in interest held an option to purchase the Subject Real Property which could only be exercised on or after December 31, 2020, and no later than December 31, 2028. On or about December 12, 2012, Plaintiff was granted by written instrument the option to purchase the Subject Real Property." (Complaint ¶ 6.) Plaintiff then alleges that on January 27, 2021, "Plaintiff exercised her option to purchase the Subject Real property ..." (Complaint ¶ 7.) Thus, the action depends on plaintiff having a contractual option to purchase the property. The moving papers show that plaintiff did not have such an option.

The Option to Purchase was a separate written agreement executed in 1973, identified a specific optionee (not plaintiff), and imposed detailed conditions governing exercise of the Option.

The Ricci Family Trust's interest in the property was subject to a long-term ground lease originally entered into in 1958, which was amended in 1973 to extend the lease term through December 31, 2028. On the same date in 1973, Luciano Ricci and Elizabeth Ricci executed a separate written Option to Purchase in favor of the then-lessee. (Cosentino Decl., Exh. 5.) The Optionee identified in the Option was Charles S. Pashayan, President of Ced-Shaw. (Ibid.) Plaintiff Tran acquired a subleasehold interest in the property in 2012 after purchasing leasehold interests at a foreclosure auction. (Cosentino Decl., ¶ 10.) However, the Option to Purchase was never assigned to plaintiff. (Cosentino Decl., ¶ 12.) Plaintiff obtained a "Consent to Assignment of Sublease dated 12/12/2012 (Cosentino Decl., Exh. B), but this document did not assign the Option to Purchase. (Cosentino Decl., ¶¶ 13-17.)

The undisputed evidence establishes that Tran never acquired that contractual option to purchase the property. The Ricci Family Trust's records contain no written assignment transferring the Option to plaintiff. (Cosentino Decl., ¶¶ 12-17). The only assignment document Tran has produced addresses a sublease (Cosentino Decl., ¶¶ 13-14, Ex. B), but it does not assign the Option itself.

The opposition fails to establish that plaintiff did possess an option to purchase the property. The court notes here significant defects in the opposition papers that render the opposition entirely ineffectual.

Plaintiff's responsive separate statement is defective. Where plaintiff purports to dispute facts, the response only cites to evidence, without ever "stat[ing] ... the nature of the dispute and describe[ing] the evidence that supports the position that the fact is controverted (Cal. Rules of Court, rule 3.1350(f)(2).) Given plaintiff's failure to file a responsive separate statement, the facts are treated as undisputed.

Additionally, the bulk of plaintiff's opposition evidence is inadmissible because plaintiff Tran's declaration is not signed. (See Code Civ. Proc., § 2015.5 [declaration must be signed under penalty of perjury].) A declaration that does not comply with section

2015.5 is of no evidentiary value. (*Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 605–606, 618; *ViaView, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 217.)

Even if the opposition evidence were admissible, plaintiff still fails to show the existence of a triable issue of material fact. Plaintiff alleges in her Complaint that her purported right to purchase the property arose from the Option to Purchase. (Complaint ¶¶ 6-7.) The Complaint also alleges that the February 12, 2012 escrow instructions constitute a “purchase and sale agreement” (Complaint ¶ 9), but that clearly is not what it is. Similarly, plaintiff in the opposition asserts that she and defendants entered into a written purchase agreement for sale and purchase of the subject property. This document is attached to plaintiff’s unsigned declaration as Exhibit A. Even if the declaration were admissible, Exhibit A is not a purchase contract. Rather, the exhibit consists of escrow instructions. Plaintiff cites to no authority to the effect that escrow instructions constitute a contract to sell. Plaintiff fails to show that she had a contractual option to purchase the property. There is no evidence of a valid contractual agreement that plaintiff can enforce via specific performance.

The opposition argues that defendants should be estopped from arguing that the option is valid because Mr. Cosentino informed plaintiff that the option is valid, and did not act contrary to the agreement to sell the property. Plaintiff presents authorities as follows:

Equitable estoppel precludes a party from asserting rights they otherwise would have had against another when their own conduct renders assertion of those rights inequitable. *Soltero v. Precise Distribution, Inc.*, (2024) 102 Cal.App.5th 887, 893. Doctrine of equitable estoppel is based upon vital principle that person who by his or her language or conduct leads another to do what he or she would not otherwise have done shall not subject such person to loss or injury by disappointing expectations upon which he or she acted. *Santa Clara Valley Water District v. Century Indemnity Company*, (2023) 89 Cal. App. 5th 1016, 1052,

The only admissible evidence is that from plaintiff’s counsel, where evidence is provided that Cosentino stated in an email, “we (buyers and sellers) still have an open contract with first American and money in escrow, so we do not have to sign and new P & S contract for the sale of the property since the option has been exercised and still viable.” (Allison Decl. Exh. F.)

Even if plaintiff showed that defendant should be estopped from denying the existence of the option contract, the moving papers also show that plaintiff did not comply with the conditions precedent for exercising the Option to Purchase. An optionee is bound to the terms of the option contract. (See *Simons v. Young* (1979) 93 Cal.App.3d 170, 182.) The moving papers show:

- Plaintiff failed to follow the required procedure for setting the purchase price. (UMF 11-16.)
- Plaintiff did not comply with the conditions precedent for exercising the Option to Purchase because they failed to deliver a valid Second Notice. (UMF 17-19.)

(41)

Tentative Ruling

Re: ***Davis Hernandez v. Sai Hospitality, LLC, a California Limited Liability Company***
Superior Court Case No. 25CECG04555

Hearing Date: June 17, 2026 (Dept. 501)

Motions: (1) Demurrer to Complaint

(2) Motion to Strike Portions of Plaintiffs' Complaint

If oral argument is timely requested, it will be entertained on Wednesday, June 24, 2026, at 3:30 p.m. in Department 501.

Tentative Ruling:

To sustain the demurrer to the second, third, and fourth causes of action with leave to amend; to overrule the demurrer to the fifth cause of action (Code Civ. Proc., § 430.10); and to deny the motion to strike without prejudice (Code Civ. Proc., § 436). Plaintiff is granted leave of 20 days to file a first amended complaint, which shall run from service by the clerk of the minute order. New language must be set in **boldface** type.

Explanation:

Plaintiffs, David Hernandez, an individual; Librada Mejia Cervantes, individually and as guardian ad litem for Estrella H. Mejia, a minor (Plaintiffs), filed a complaint (Complaint) against defendant Sai Hospitality, LLC, a California limited liability company (Defendant). Plaintiffs allege Defendant failed to control pests, bed bugs in particular, at a Motel 6 owned and operated by Defendant. Plaintiffs allege five causes of action entitled: (1) negligence – premises liability/failure to warn, negligence per se; (2) public nuisance; (3) breach of contract; (4) intentional infliction of emotional distress; and (5) fraudulent concealment. Defendant now demurs to the second through fifth causes of action on the grounds that each cause of action is uncertain and fails to state facts sufficient to constitute a cause of action. Defendant also "moves to strike all references, wherever they appear, which attempt to allege, or establish a foundation for alleging, punitive damages, and/or attorney fees[.]" (Not., p. 2:3-5.)

Meet and Confer

Counsel for Defendant filed and served a declaration stating counsel met and conferred with Plaintiffs' counsel by telephone at least five days before a responsive pleading was due to be filed, but was unable to reach an agreement resolving the matters raised by the demurrer or the motion to strike. This satisfies the requirements of Code of Civil Procedure sections 430.41 (demurrer) and 435.5 (motion to strike) for the moving party to meet and confer in person, by telephone, or by video conference with the opposing party.

Demurrer

In testing a pleading against a demurrer, the alleged facts are deemed true, "however improbable they may be." (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A demurrer tests only the legal sufficiency of the pleading--not the truth of the plaintiff's allegations or the accuracy of the plaintiff's description of the defendant's conduct. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47.)

All of Plaintiffs' causes of action arise from an alleged bed bug infestation at a Motel 6 in Kingsburg owned by Defendant:

Plaintiffs seek damages from Defendants for their wanton failure to properly maintain, control or repair Plaintiffs' rented hotel room at Motel 6 Kingsburg Room number 207 (hereinafter "Subject Room") located at 401 Sierra St. Kingsburg, CA 93631, (hereinafter "Subject Property"). This case involves claims of bed bug infestations in a hotel in violation of Health and Safety Code § 17920.3 and related subsections.

(Comp., ¶ 2.) Defendant demurs to the second through fifth causes of action and contends Plaintiffs' allegations against Defendant sound solely in negligence.

Second Cause of Action for Public Nuisance

Plaintiffs allege their second cause of action for public nuisance arises under Civil Code section 3480, which provides:

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 or damage inflicted upon individuals may be unequal.

Plaintiffs cite *Venuto v. Owens-Corning Fiberglas Corp.* (1971) 22 Cal.App.3d 116, where the court explained the essential difference between a public and a private nuisance as follows: "a private nuisance is a civil wrong based on disturbance of rights *in land* while a public nuisance is not dependent upon a disturbance of *rights in land* but upon an interference with the *rights of the community at large*. [Citation.]" (*Id.* at pp. 123–124, italics added.)

Defendant relies on *Citizens for Odor Nuisance Abatement v. City of San Diego* (2017) 8 Cal.App.5th 350, where the court explained that a public and a private nuisance have little in common:

Public nuisance and private nuisance "have almost nothing in common except the word 'nuisance' itself." (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1103.) Whereas private nuisance is designed to vindicate individual land ownership interests, the public nuisance doctrine has

historically distinct origins and aims at "the protection and redress of community interests." (*Ibid.*)

(*Citizens for Odor Nuisance Abatement v. City of San Diego, supra*, 8 Cal.App.5th at p. 358, original italics.)

In an attempt to fall within the definition of a public nuisance, the Complaint includes the following legal conclusion:

This nuisance has a deleterious effect on the public at large while at the same time specially injuring Plaintiffs, who were exposed to defective and uninhabitable conditions (bed bug infestations). Plaintiffs suffered harm that was different from the type of harm suffered by the public at large in that Plaintiffs have suffered economic harm in addition the physical and emotion[al] injuries caused by the severe bed bugs infestation.

(Comp., ¶ 57.)

Plaintiffs fail to allege facts to show how the bed bug infestation at a Motel 6 in Kingsburg "affects at the same time an entire community or neighborhood, or any considerable number of persons[.]" (Civ. Code, § 3480.) Nor do Plaintiffs allege facts to show how their alleged injury was different in kind, rather than different in degree, from the injury (if any) suffered by the general public. Therefore, the facts Plaintiffs allege in the Complaint fail to state a cause of action for public nuisance, and the court sustains the demurrer to the second cause of action.

Third Cause of Action for Breach of Contract

Code of Civil Procedure section 430.10, subdivision (g) provides that a complaint is subject to demurrer unless the complaint indicates on its face whether the contract is written, oral, or implied by conduct. "If the action is based on an alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written instrument must be attached and incorporated by reference." (*Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 459.) "To state a cause of action for breach of contract, it is absolutely essential to plead the terms of the contract either in *haec verba* [verbatim] or according to legal effect." (*Twaite v. Allstate Ins. Co.* (1989) 216 Cal.App.3d 239, 252.)

Defendant demurs to the third cause of action for breach of contract on the ground that Plaintiffs fail to attach a copy of the contract, nor do they state, verbatim, the contract's terms. Although Plaintiffs attach a copy of a receipt, they fail to attach a copy of the contract or plead its terms verbatim. Therefore, the court sustains the demurrer to the third cause of action for breach of contract.

Fourth Cause of Action for Intentional Infliction of Emotional Distress

The elements of a cause of action for intentional infliction of emotional distress are: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's

suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050, quoting *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001, internal quotation marks omitted.) The courts define "outrageous" conduct as conduct that is so extreme that it exceeds all bounds that a civilized community usually tolerates. (*Id.* at pp. 1050-1051.) Furthermore, the conduct must be not only outrageous, but the defendant must also intend to inflict injury or engage in the outrageous conduct with a realization that injury will result. (*Ibid.*) "It is not enough that the conduct be intentional and outrageous. It must be conduct directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware." (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903 (*Christensen.*)

"Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209.) In order for conduct to be outrageous, there must be (1) a specific intent to injure, or (2) a reckless disregard of the substantial certainty of a severe emotional injury. (*Id.* at p. 210 ["Absent an intent to injure, such inaction is not the kind of 'extreme and outrageous conduct' that gives rise to liability under the 'intentional infliction of emotional distress' tort"]; *Christensen, supra*, 54 Cal.3d at p. 903 [conduct must be "substantially certain to cause extreme emotional distress"].) "Generally, conduct will be found to be actionable where the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494, citations and internal quotation marks omitted [affirming trial court's determination on demurrer that phone message left by powerful attorney, Johnnie Cochran, on his son's answering machine during domestic dispute with mother insufficiently outrageous to support mother's claim for intentional infliction of emotional distress].)

Whether conduct is outrageous "is 'usually' a question of fact, [but] many cases have dismissed intentional infliction of emotional distress cases on demurrer, concluding that the facts alleged do not amount to outrageous conduct as a matter of law." (*Barker v. Fox & Associates* (2015) 240 Cal.App.4th 333, 356; *Cochran v. Cochran, supra*, 65 Cal.App.4th 488 [trial court properly determined conduct not outrageous on demurrer].)

In two of the three cases cited by Plaintiffs, the court determined, as a matter of law, that the plaintiff failed to state a cause of action for intentional infliction of emotional distress. (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278 [trial court correctly granted nonsuit on intentional infliction of emotional distress claim]; *Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148 [workers' compensation law preempted aggrieved employee's claim of intentional infliction of emotional distress].)

The third case Plaintiffs cite, *Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, is factually distinguishable. In *Stoiber*, the plaintiff's complaint had many factual allegations about the uninhabitable condition of the subject premises, including an attached copy of a notice to vacate and demolish the subject premises, issued by the Kern County Health Department. The notice listed the following violations, among others:

[H]eavy cockroach infestation, broken interior walls, broken deteriorated flooring on front porch, falling ceiling, deteriorated, overfused electrical

wiring, lack of proper plumbing connection to sewage system in bathroom, sewage under bathroom floor, leaking roof, broken windows, and fire hazard.

(*Id.* at p. 912.)

Here, the gist of the Complaint is that Defendant negligently maintained the Kingsburg Motel 6 by using improper pest-control procedures. (Comp., ¶ 3.) The factor that distinguishes intentional infliction of emotional distress from negligent infliction of emotional distress is the specific intent to harm the plaintiff or the reckless disregard of a substantial certainty of severe injury. (*Christensen, supra*, 54 Cal.3d at p. 904.) Here, as in *Christensen*, Plaintiff's Complaint lacks an essential allegation:

Plaintiffs here have not alleged that the conduct of any of the defendants was directed primarily at them, was calculated to cause them severe emotional distress, or was done with knowledge of their presence and of a substantial certainty that they would suffer severe emotional injury.

(*Christensen, supra*, 54 Cal.3d at p. 906.)

In the case at bench, Plaintiffs plead conclusions, but they fail to plead *facts* to show that Defendant specifically intended to harm Plaintiffs. Nor do Plaintiffs plead sufficient facts to show that Defendant's pest control practices were outrageous or created a substantial certainty of severe injury to them. Therefore, the court sustains the demurrer to the fourth cause of action for intentional infliction of emotional distress.

Fifth Cause of Action for Fraudulent Concealment

Defendant demurs to the fraud cause of action, contending Plaintiffs fail to plead the heightened standard for fraud. Defendant cites *Jones v. ConocoPhillips Co.* (2011) 198 Cal.App.4th 1187, where the court discussed the elements of a fraud cause of action as follows:

"[T]he elements of a cause of action for fraud based on concealment are: ' (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.' ' " (*Kaldenbach v. Mutual of Omaha Life Ins. Co.* (2009) 178 Cal.App.4th 830, 850.)

(*Id.* at p. 1198.) Defendant cites *Linear Technology v. Applied Materials, Inc.* (2007), 152 Cal.App.4th 115, 132 (*Linear Technology*), for the rule that concealment is a species of fraud which "must be pleaded with specificity."

Plaintiffs cite *Los Angeles Memorial Coliseum Com. v. Insomniac, Inc.* (2015) 233 Cal.App.4th 803, where court discussed the element of duty required to plead fraud based on nondisclosure or concealment:

To maintain a cause of action for fraud through nondisclosure or concealment of facts, there must be allegations demonstrating that the defendant was under a legal duty to disclose those facts. [Citation.] “ There are “four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts. [Citation.]” ’ (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336, quoting *Heliotis v. Schuman* (1986) 181 Cal.App.3d 646, 651.) Where ... there is no fiduciary relationship, the duty to disclose generally presupposes a relationship grounded in ‘some sort of *transaction* between the parties. [Citations.] Thus, a duty to disclose may arise from the relationship between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement. [Citation.]’ (*LiMandri*, at p. 337, 60 Cal.Rptr.2d 539, fn. omitted.)” [Citation.]

(*Id.* at p. 831, original italics.) Plaintiffs allege facts to impose a duty to disclose by pleading the transactional relationship of innkeeper-guest.

Relying on *Linear Technology*, Defendant contends Plaintiffs fail to plead facts to show Defendant intentionally concealed or suppressed a fact with intent to defraud Plaintiffs.

“[M]ere conclusory allegations that the omissions were intentional and for the purpose of defrauding and deceiving plaintiffs and bringing about the purchase ... and that plaintiffs relied on the omissions in making such purchase are insufficient [to show fraud by concealment].”

(*Linear Technology, supra*, 152 Cal.App.4th at p. 132, quoting *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 347.) But the court in *Linear Technology* stated the Plaintiff “did not assert concealment of material facts known or accessible only to defendants[.]” (*Linear Technology, supra*, 152 Cal.App.4th at p. 132.) Here, Plaintiffs allege Defendant, acting through its employees and agents, was aware of the existence of bed bugs at the Subject Room and the Subject Property, but Defendant intentionally failed to disclose the known bed bug infestations to Plaintiffs, a fact Plaintiffs did not know and could not have discovered. (Comp., ¶¶ 96, 97, 98.)

Accepting Plaintiffs' allegations as true, as the court must on demurrer, the court finds Plaintiffs plead the necessary elements of fraud by concealment: (1) Defendant concealed or suppressed the alleged bed bug infestation; (2) Defendant had a duty of disclosure based on the innkeeper-guest transactional relationship; (3) Defendant intentionally concealed the infestation with the intent to defraud Plaintiffs; (4) Plaintiffs

were unaware of the infestation and would not have rented the Subject Room had they known of the concealed infestation; and (5) Plaintiffs sustained damage, including emotional and physical injuries. Therefore, the court overrules the demurrer to the fifth cause of action for fraudulent concealment.

Leave to Amend

It is the opposing party's responsibility to request leave to amend, and to show how the pleading can be amended to cure its defects. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "[T]he plaintiff bears the burden of proving an amendment would cure the defect." (*Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1251.) To meet this burden, "[t]he plaintiff must identify some legal theory or state facts that can be added by amendment to change the legal effect of his or her pleading." (*Ibid.*; accord, *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 520, fn. 16.)

It is an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility the defect can be cured by amendment. Plaintiffs have the burden to demonstrate how the Complaint might be amended. Here, Plaintiffs oppose the demurrer and request leave to amend their factual allegations. Given the court's liberal policy of amendment, Plaintiff's opposition, and the challenged pleading is Plaintiffs' original Complaint, the court grants leave to amend the second, third, and fourth causes of action.

Motion to Strike

Defendant also moves under Code of Civil Procedure sections 435 and 436 to strike specified allegations in the Complaint relating to punitive damages and attorney fees. Code of Civil Procedure section 436 provides:

The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: [¶] (a) Strike out any irrelevant, false, or improper matter inserted in any pleading, [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.

Specifically, Defendant moves to strike:

[A]ll references, wherever they appear, which attempt to allege, or establish a foundation for alleging, punitive damages, and/or attorney fees including the following portions of Plaintiffs' Complaint:

1. Page 2, ¶ 4, lines 19-20, "...intentionally concealed the bed bug infestation from Plaintiffs in order to induce them into renting the Subject Room."
2. Page 3, ¶ 14, lines 6-7, "...even with the knowledge of uninhabitable conditions specifically the severe bedbug infestations..."

3. Page 5, ¶ 25, line 21, "...Defendants failed to disclose the material facts or warn Plaintiffs of the presence of these filthy infestations..."
4. Page 7, ¶ 33, lines 9-11, "Defendants knowingly rented out bed bug infested Subject Room to the Plaintiffs without notifying Plaintiffs of the dangerous uninhabitable condition, including but not limited to bed bugs infestation that existed at the Subject Room they stayed in."
5. Page 7, ¶ 36, line 18, "Defendants' intentional and willful failure and refusal to maintain the Subject Property..."
6. Page 7, ¶ 36, lines 21, "...knowledge by the Defendants of these dangerous uninhabitable condition,"
7. Page 7, ¶ 37, lines 24-25, "...Defendant's gross failure to regularly inspect and maintain the Subject Property and Subject Room..."
8. Page 8, ¶ 42 lines 15-17, "... proximately caused by the intentional, malicious, willful and reckless conduct, and breach of duty of the Defendants."
9. Page 8, ¶ 43.
10. Page 11, ¶ 58, lines 8-9, "...Defendants knowingly, intentionally and willfully failed to correct the uninhabitable conditions, rendering the Subject Property a nuisance."
11. Page 11, ¶60, line 18, "...thereby abusing the special relationship between innkeepers and guests..."
12. Page 11, ¶ 63, lines 25-26, "As a direct and proximate result of Defendants' knowing, intentional and willful failure to abate the nuisance (bedbug infestation)."
13. Page 12, ¶ 64.
14. Page 12, ¶ 65.
15. Page 13, ¶ 68.
16. Page 13, ¶ 69.
17. Page 15, ¶ 80.
18. Page 15, ¶ 82.
19. Page 15, ¶ 83.
20. Page 15, ¶ 85.

21. Page 16, ¶ 86.

22. Page 16, ¶ 89

23. Page 16, ¶ 91.

24. Page 16, ¶ 92.

25. Page 17, ¶ 96.

26. Page 17, ¶ 97.

27. Page 17, ¶ 99.

28. Page 17, ¶ 102.

29. Page 17, ¶ 103.

30. Page 18, ¶ 104.

31. Prayer, page 18, line 3, "For the costs of this suit herein including but not limited to Attorneys' fees[.]"

32. Prayer, page 18, line 5, "For punitive damages in an amount to be determined at trial[.]"

(Mot., pp. 2:6-3:23.)

Punitive Damages

To state a prima facie claim for punitive damages, Plaintiffs must allege the elements set forth in Civil Code section 3294, which provides in part:

In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

(Civ. Code, § 3294, subd. (a).)

To determine the viability of a claim for punitive damages, Civil Code section 3294 expressly defines the terms "malice, oppression, and conduct." The statute defines "fraud" as "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c)(3).) Plaintiffs must allege specific factual allegations to show Defendant's conduct was oppressive, fraudulent, or malicious to support a claim for punitive damages.

(*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872 [punitive damages may not be pleaded generally].) General allegations that a defendant's conduct was "intentional, willful, or fraudulent" are insufficient to withstand a motion to strike without factual support. (*Ibid.*)

Plaintiff cite *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, where the appellate court held the trial court abused its discretion in granting a motion to strike the phrases "wrongfully and intentionally," "oppression, fraud, and malice," and the word "retaliation," from the complaint. The appellate court explained the trial court must evaluate the complaint as a whole to determine if it appraises the defendant of the basis upon which the plaintiff is seeking relief:

[I]t has long been recognized that "(t)he distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. (Citations.) For example, the courts have permitted allegations which obviously included conclusions of law and have termed them 'ultimate facts' or 'conclusions of facts.' " [Citation.] What is important is that the complaint as a whole contain sufficient facts to apprise the defendant of the basis upon which the plaintiff is seeking relief. [Citations.] The stricken language must be read not in isolation, but in the context of the facts alleged in the rest of petitioner's complaint. Taken in context, the words "wrongfully and intentionally" [may] describe a knowing and deliberate state of mind from which a conscious, disregard of petitioner's rights might be inferred—a state of mind which would sustain an award of punitive damages. [Citation.]

(*Id.* at p. 6.)

Here, Plaintiffs allege Defendant, and its employees, managers, and managing agents, intentionally concealed the bed bug infestation from Plaintiffs in order to induce them into renting the Subject Room, even though Defendant knew of the uninhabitable severe bedbug infestations; and Defendant failed to disclose the material facts or warn Plaintiffs of the presence of these "filthy infestations" that existed at the Subject Room. (E.g., Comp., ¶ 4.) Plaintiffs alternatively allege Defendant's managing agents ratified the intentional conduct of the employees. (E.g., Comp., ¶ 103.)¹

Although Defendant contends Plaintiffs' claims are "unsubstantiated" and "unsupported," Plaintiffs are not required to prove their case for punitive damages to defeat a motion to strike. The court finds Plaintiffs' allegations, if "proven by clear and convincing evidence" (Civ. Code, § 3294, subd. (a)), are sufficient to support a claim of punitive damages based on fraud by concealment.

¹ Defendant cites no authority requiring Plaintiffs to state the names of Defendant's employees, managers, and managing agents at the pleading stage.

(34)

Tentative Ruling

Re: **DeLeon v. Fresno Community Hospital and Medical Center, et al.**

Superior Court Case No. 24CECG00946

Hearing Date: June 17, 2026 (Dept. 501)

Motion: by Defendant Raul Calderon, M.D. for Summary Judgment

**If oral argument is timely requested, it will be entertained on
Wednesday, June 24, 2026, at 3:30 p.m. in Department 501.**

Tentative Ruling:

To grant defendant Raul Calderon, M.D.'s motion for summary judgment as to the entire complaint. (Code Civ. Proc. § 437c.) Defendant shall submit a judgment consistent with the terms of this order within 10 days of service of the order.

Explanation:

As the moving party, Defendant bears the initial burden of proof to show that plaintiff cannot establish one or more elements of her cause of action or to show that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Only after the moving party has carried this burden of proof does the burden of proof shift to the other party to show that a triable issue of one or more material facts exists – and this must be shown via specific facts and not mere allegations. (*Id.*)

Where the moving party produces competent expert opinion declarations showing that there is no triable issue of fact on an essential element of the opposing party's claim (e.g. that a medical defendant's treatment fell within the applicable standard of care), the opposing party's burden is to produce competent expert opinion declarations to the contrary. (*Ochoa v. Pacific Gas & Elec. Co.* (1998) 61 Cal.App.4th 1480, 1487.)

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exist are to be resolved in favor of the party opposing summary judgment. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.)

Lastly, "[f]ailure to file opposition including a separate statement of disputed material facts by not less than [20] days prior to the motion 'may constitute a sufficient ground, in the court's discretion, for granting the motion.'" (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257, quoting Code of Civil Procedure § 437c(c).)

