PROPOSED TENTATIVE

On July 9, 2024, plaintiffs James and Linda Torres (plaintiffs) filed a first amended complaint against defendants KCG Property Holdings, LLC (hereafter, KCG Property), Timothy Karmen, Yvette Karman, and Justin Cochrane (dba as 805 Property Management),[1] alleging five causes of action: 1) breach of contract/covenant of quiet enjoyment and warrant of habitability (all defendants but Justin Cochrane); 2) tortious breach of the implied warranty of habitability (all defendants but Justin Cochrane); 3) negligence (all defendants); 4) unfair business practices in violation of Business and Professions Code section 17200, et seq. (UCL) (all defendants); and 5) wrongful eviction/retaliation (defendant KCG Property only). At issue in this action is property located at 407 E. Chapel St., Apt. C, located in Santa Maria (hereafter, the property) (although the first amended complaint erroneously contends the property is located in Santa Barbara[2]). Briefly, defendants began leasing the property to plaintiffs on January 15, 2010, and beginning August 1, 2022, rent was increased to $1,240 a month. According the first amended complaint, defendants "unlawfully regained possession of the [property] on or around August 17, 2022," through an unlawful detainer action, a point discussed and developed later in this order. Plaintiffs contend in the first amended complaint that the property had inadequate weather protection, plumbing, sanitation, contained dampness, mold, vermin, and involved improper maintenance and dilapidation, amongst other conditions, giving rise to breach of the contractual lease and contractual covenant of quiet enjoyment and warranty of habitability; tortious breach of the implied warranty of habitability, negligence, and UCL violation.

Defendants demur to the fifth cause of action only, which advances a wrongful eviction/ retaliation cause of action against KCG Property only. According to the first amended complaint, defendants "took steps towards unlawfully gaining possession of the [property] less than 180 days after Plaintiffs submitted a housing complaint to [the City of Santa Maria's Code Compliance Division (SMCCD)] regarding serious habitability issues" at the property. This cause of action arguably implicates the unlawful detainer complaint filed by defendants against plaintiffs in 2022, although no details are provided in the operative complaint. Plaintiffs contend that although defendants claimed they properly served them with the unlawful detainer complaint, they did not, resulting in a default judgment, after which they were "forced to vacate [the property] on or around August 17, 2022." According to plaintiffs, the unlawful detainer complaint was filed "in retaliation for Plaintiffs asserting their legal right to habitable living conditions. [¶] Plaintiffs were forced to vacate [the property] because of these actions[.] Plaintiffs were forced out of the property on or around August 17, 2022, and suffered damages from the Defendants' retaliatory conduct." Defendants generally demur to this cause of action, contending that judicially noticed documents reveal the cause of action is barred under res judicata principles, as a result of the default judgment secured in the unlawful detainer action.

Defendants have also filed, under separate cover, a motion to strike, asking the court to strike 1) all requests for punitive damages associated with the second cause of action for tortious

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[1] Plaintiffs used the name "Justine" although the name appears to be "Justin". The court will adopt the latter designation.

[2] The case was originally assigned to Judge Colleen Sterne in Santa Barbara. The venue issue came to light at least by September 17, 2024, and in a minute order on this date, Judge Sterne ordered the matter transferred to North County, where it was assigned to this court. No party contests this process or outcome.

breach of implied warranty of habitability; and 2) all requests for attorney's fees, as there is not stated basis for the request. Plaintiffs have filed opposition to each motion. Defendants filed a reply to each opposition on September 30, 2024. All submitted briefing has been examined.

The court will first address defendants' request for judicial notice. It will then outline the relevant legal principles that frame the issues raised by the parties, and then address the merits of the demurrer. The court will then explore defendant's motion to strike, including the relevant legal principles and merits of each challenge. The court will conclude with a summary of its conclusions.

A) Defendants' Request for Judicial Notice

Defendants ask the court to take judicial notice of certain documents in the unlawful detainer case, titled *Tim and Yvette Karman v. James Torres and Linda Torres,* Santa Barbara County Superior Court Case No. 22CV02638, assigned to this court, as follows: 1) Exhibit 1, consisting of the Civil Case Sheet, Civil Case Sheet Addendum, "Plaintiff's Mandatory Cover Sheet and Supplemental Allegations – Unlawful Detainer," including the verification; a "Verification By Landlord Regarding Rental Assistance – Unlaw Detainer"; the unlawful detainer Complaint, in which plaintiffs only request possession and past due rent and holdover damages, including attorney's and costs, filed on July 7, 2022; the 3-day notice to quit and proof of service; a prejudgment claim for right of possession; 2) Exhibit 2, which is the entry of default and clerk's default judgment, filed on July 26, 2022, asking for restitution (possession) of the premises, as well as damages of $38.33 per day starting on July 1, 2022; 3) Exhibit 3, which is the "Judgment – Unlawful Detainer"; 4) Exhibit 4, which is the Writ of Possession issued to secure the premises of the property; 5) a "Substitution of Attorney" filed on August 12, 2022, filed by defendant Linda Torres; 6) Exhibit 6, which is a submission by Linda Torres titled "Application for Ex Parte Order Staying Execution and For Order Shortening Time for Service of Motions of Motion to Set Aside Default Judgment . . . ,"' along with a Memorandum of Points and Authorities with exhibits; 7) Exhibit 7, an order signed by this court on August 16, 2022, denying the ex parte application, denying the motion to set aside the default judgment, denying the motion for new trial, and denying the motion for relief from forfeiture; and 8) Exhibit 8, which is a Writ of Possession concerning the subject property, dated August 18, 2022, along with a Return on the Writ of Possession, signed by the Santa Barbara County Sheriff. As these are all court/government documents, and as plaintiffs do not oppose the request, the request is granted.

B) Demurrer

1) Legal Background

To being with, the parties use the terms "res judicata," claim preclusion, issue preclusion, and collateral estoppel interchangeably, necessitating clarification. Courts have frequently used "res judicata" as an umbrella term encompassing both claim preclusion and issue preclusion, which our high court has described as two separate "aspects" of the overarching doctrine. To be precise, claim preclusion, which is the " ' "primary aspect" ' " of res judicata, acts to bar claims that were, ***or should have been***, advanced in a previous suit involving the same parties. Issue

preclusion, the " ' "secondary aspect" ' " historically called collateral estoppel, describes the bar on relitigating ***issues that were actually argued and decided in the first suit***. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 823–824, emphasis added.) Issue preclusion applies only (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party. (*Samara* v. *Matar* (2018) 5 Cal.5th 322, 327.) It is clear that at no time during the unlawful detainer action were issues of retaliatory or wrongful eviction raised, let alone resolved on the merits. Accordingly, the only form of "res judicata" at issue in this matter is not issue preclusion or collateral estoppel, but claim preclusion, at least based on defendant's arguments – plaintiffs could have raised retaliation or wrongful eviction in the unlawful detainer action, but did not. (See, e.g., *State Compensation Insurance Fud v. ReadyLink Healthcare, Inc*. (2020) 50 Cal.App.5th 422, 458 ["[a]lthough causes of action or defenses that could have been brought in an earlier action may be barred because they are subject to claim preclusion, "a prior judgment generally does not bar a subsequent claim if the matter could not have been raised or litigated in the earlier action"].)

With this in mind, on the merits, the court acknowledges that the law is unclear about application of res judicata principles following a default judgment, and "California cases do not present a clear picture" in this area. (7 Witkin, Cal. Proc. (5th ed. 2008, 2024 Supp.) Judgment, § 448.) That being said, our high court has expressly indicated that "a judgment in unlawful detainer usually has very limited res judicata effect and will not prevent one who is dispossessed from bringing a subsequent action to resolve questions of title [citations], or to adjudicate other legal or equitable claims between the parties. [Citations]." (*Vella v. Hudgins* (1977) 20 Cal.3d 251, 255.) Because an unlawful detainer action generally only resolves matter of possession and rent, res judicata will not limit further litigation between the parties on other matters. (*Id.* at pp. 256-257; see also *Ayala v. Dawson* (2017) 13 Cal.App.5th 1319, 1327 [because "[a]n unlawful detainer action is a summary proceeding ordinarily limited to resolution of the question of possession[,] . . . any judgment arising therefrom generally is given limited res judicata effect"]; see also *Gombiner v. Swartz* (2008) 167 Cal.App.4th 1365, 1371 [preclusive effect of unlawful detainer judgment is narrow].)

Despite the summary nature of unlawful detainer proceedings, our high court has concluded that a renter *may* raise as an affirmative defense a claim that a landlord seeks to evict in retaliation for the tenant's complaint to government authorities. (*Barela v. Superior Court* (1981) 30 Cal.3d 244, 248, italics added.) The *Barela* court concluded, "The defense of 'retaliatory action' has been firmly ensconced in this state's statutory law and judicial decisions for years . . . .' As a landlord has no right to possession when he seeks it for such an invalid reason, a tenant may raise the defense of retaliatory eviction in an unlawful detainer proceeding." (*Ibid.*) And in *Abstract Investment Co. v. Hutchinson* (1962) 204 Cal.App.2d 242, the Court of Appeal unequivocally held that the affirmative defense of unlawful discrimination may be asserted in an unlawful detainer action, stating, "[D]efendant should have been permitted to

produce proof of the allegations of his special defenses of discrimination, which if proven would bar the court from ordering his eviction." (*Id.* at p. 255.) There is no requirement, however, that the tenant ***must*** raise the affirmative defense permitted under *Barela* in an unlawful detainer action if the issue is not otherwise implicated by the unlawful detainer complaint.

The approach taken by California courts when applying res judicata in unlawful detainer settings is broadly consistent with that taken to res judicata in other forms of summary, informal, or specialized adjudications. (*Ayala, supra,* 13 Cal.App.5th at p. 1327.) As a general rule, res judicata will only apply if the party to be bound agreed expressly or impliedly to submit an issue to prior adjudication and had a full and fair opportunity to litigate, under circumstances affording due process protections. (*Ibid.*) The devil, of course, is in the details of the particular unlawful detainer action and the particular judgment obtained.

For example, it seems apparent that simply because an affirmative defense could have been raised in the unlawful detainer context is not alone dispositive of whether a later lawsuit involving that same claim is barred under principles of res judicata. We need look no farther than our high court's decision in *Vella v. Hudgins,* in which the court expressly declined to "assume, given the summary character of this type of action, ***that the mere pleading of a defense without objection by the adverse party [i.e., the landlord] necessarily demonstrates adequate opportunity to litigate the defense***." (*Vella, supra,* 20 Cal.3d at p. 258, emphasis added.) The *Vella* court made it clear that in "return for speedy determination of his right to possession, plaintiff sacrifices the comprehensive finality that characterizes judgments in nonsummary actions." (*Ibid.*) And as noted in *Pelletier v. Alameda Yacht Harbor* (1986) 188 Cal.App.3d 1551, legal and equitable claims – such as questions of title and affirmative defenses – "are not conclusively established unless they were fully and fairly litigated in an adversary proceeding." (*Id.* at p. 1557.)

Other published appellate cases have picked up on this thread. Because unlawful detainer involves only issues of possession and rent, courts exploring the impact of a stipulated judgment in the unlawful detainer context have denied application of res judicata to bar further litigation between the parties when the issue was not mentioned or resolved in the stipulated judgment. (*Landeros v. Pankey* (1995) 39 Cal.App.4th 1167, 1170–1171 [stipulated judgment did not bar subsequent litigation where it was drawn on a court form, did not contain "specific or general language concerning the dispute" raised by the affirmative defense, did not include "comprehensive language typically employed to indicate a settlement of any and all issues in dispute," and ultimately, "gave the landlord less than the relief prayed"]; *Pelletier, supra,* 188 Cal.App.3d at p. 1557 [stipulated judgment did not mention relinquishment of claims arising from a retaliatory eviction and thus that claim "was not fully and fairly litigated in an adversary hearing"]; see also *Moriarty v. Laramar Management Corp.* (2014) 224 Cal.App.4th 125, 138–141 [default judgment in unlawful detainer action where complaint put at issue claims in a subsequent action did not bar the later claims under either aspect of res judicata, stating, "[t]he sole issue in an unlawful detainer action is possession of the premises"].)

By contrast, where the tenant appears in the unlawful detainer action and choses to sign a stipulated settlement "which specifically waived any claims related to his personal property left at the residence, as well as all defenses to the unlawful detainer action," res judicata principles will apply to bar future claims implicated by the settlement. (*Needelman v. De Wolf Reality Co., Inc.* (2015) 239 Cal.App.4th 750, 758–761.) In *Needleman*, for example, the court noted that the tenant "had the opportunity to litigate the unlawful detainer action and all of his claims were based on defenses that could have been raised in this action or were specifically addressed and settled in the stipulated judgment." (*Id.* at p. 761.) The intent to be preclusive, however, should be unambiguous. (*California State Auto Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664–65 ["Most importantly, a stipulated judgment may properly be given collateral estoppel effect, at least when the parties manifest an intent to be collaterally bound by its terms"], citing § 1908, subd. (b); see also *Needelman*, at pp. 758–761.) That is, the parties stipulated judgment must manifest an intent to resolve the issues involving any affirmative defense, and absent that, res judicata will be not bar a future lawsuit.

The burden of establishing preclusion by prior adjudication (res judicata) rests squarely on the party asserting it. (*Vella, supra,* 20 Cal.3d at p. 257; *Nicholson v. Fazeli* (2003) 113 Cal.App.4th 1091, 1100; see *Landeros, supra,* 39 Cal.App.4th at p. 1167.

2) Merits

As noted above, issue preclusion or collateral estoppel principles do not apply here, because the issue of retaliatory or wrongful eviction, as encapsulated in the fifth cause of action, was never actually raised in the complaint, and never actually addressed on the merits, and thus cannot be deemed part of the default judgment. If there exists a res judicata bar, as argued by defendants, it arises from claim preclusion principles to the extent plaintiff had the opportunity to raise the affirmative defense as contemplated by *Bella v. Superior Court*, and progeny, *but did not*. This is in fact the centerpiece of defendants' res judicata argument, for they make it clear in their briefing that because plaintiffs "could have raised the defense of wrongful eviction and retaliation in the unlawful detainer matter, she is barred from asserting such claims in the present action."

After some consideration, and based on review of the existing case law outlined above, the court is not persuaded by defendants' arguments. They would likely prevail if the hearing at issue involved a nonsummary proceeding. But application of the claim preclusion rules in this context is countered by the case law detailed above in Section B(1) of this order. In the end, if merely pleading an affirmative defense by itself is *insufficient* to trigger res judicata per *Vella*; and a stipulated judgment in the unlawful detainer context is insufficient to implicate res judicata where there is no intent to do so, expressly or impliedly, it follows that a default judgment in the unlawful detainer context, otherwise silent on retaliation or wrongful eviction affirmative defense or issues associated with it, with no evidence the parties either expressly or impliedly

intended to resolve the issue, is insufficient to trigger res judicata and more specifically claim preclusion rules.

Defendants' argument might be more persuasive if the compulsory cross-complaint statute per Code of Civil Procedures section 426.30, subdivision (a) applied to unlawful detainer actions. That is, where a defendant to a lawsuit fails to allege any related cause of action by way of cross-complaint, that defendant "may not thereafter in any other action assert against the plaintiff the related cause of action not pleaded." (*Ibid.*) Such a failure implicates res judicata (claim preclusion) principles. But it is well settled in California that the compulsory cross-complaint statute does not apply in unlawful detainer actions, unless one of two things happens: the tenant (1) files a cross-complaint; or (2) files an answer to any amended complaint the landlord files after the case becomes a regular civil action. (Code Civ. Proc., § 1952.3, subd. (a)(2). The legislative committee comment following Code of Civil Procedure section 1952.3 states that the "limitation of the application of the compulsory cross-complaint statute . . . protect[s] the defendant [tenant] against inadvertent loss of a related cause of action." (Legis. Comm com., 10A West's Ann. Civ. Code (2022 ed.) p. 111.) In other words, *if* a tenant chooses to file a cross-complaint in an unlawful detainer action after surrendering possession, all possible causes of action must be alleged. Otherwise, there is no obligation to do so. (*Duncan v. Kihagi* (2023) 96 Cal.App.5th 703, 710; see also *Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 952; *Tide Water Associated Oil Co. v. Superior Court of Los Angeles County* (1955) 43 Cal.2d 815, 824.) Accordingly, as motives were not at issue in the unlawful detainer complaint, and as plaintiffs in the present civil action were not required to raise a retaliatory/wrongful eviction defense, and because they did not actually raise the issue in the unlawful detainer action, res judicata based on claim preclusion is no bar to the fifth cause of action in this present civil action.

Defendants' claim also might be more persuasive if plaintiff had filed an answer raising the affirmative defense of retaliatory or wrongful eviction, but simply did not show for trial. In this situation, a much stronger argument can be made that res judicata principles (including both claim preclusion and arguably issue preclusion) apply, because plaintiff would have had a real opportunity to litigate the matter after having raised the issue, and should not be permitted to litigate the issue a second time. (See, e.g., *Fairchild v. Bank of America* (1958) 165 Cal.App.2d 477, 482;see *California Livestock Production Credit Assn. v. Sutfin* (1985) 165 Cal.App.3f 136, 143.) In this circumstance, the cause of action would seemingly be barred. But that is not what happened in this matter.

Defendants' reliance on *Freeze v. Salot* (1954) 122 Cal.App.2d 561 is misplaced. It is true, as *Freeze* observed, that a "judgment by default is a complete adjudication of all rights of the parties embraced in the prayer of the complaint." (*Id.* at p. 566.) Salot filed a second amended complaint, in which she claimed that she had executed a deed of trust on real property

in securing a loan; and that a notice of default had been made following plaintiff's failure to pay on the promissory note. The property was ultimately sold to defendant Salot, and the trustee executed a deed of trust in Salot's favor. At the time of the notice of default, however, plaintiff was not in default, and the note had in fact been fully paid. Plaintiff asked the court to set aside the deed from the trustee to Salot, the sale to Salot, and a sale of the property by Salot to Aguilar, and for other general relief. The trial court sustained the demurrer to the operative pleading without leave to amend, based on res judicata principles, as these issues had been raised in a prior unlawful detainer action in which Aguilar was plaintiff and Freeze was the defendant. The appellate court affirmed, concluding as follows: "Having alleged in her complaint in this action that the complaint in the municipal court action [i.e., the unlawful detainer action] contained allegations in support of the rights of Aguilar to the occupancy and possession of the realty by virtue of the foreclosure sale and the conveyance to her, and that Aguilar obtained judgment against her on May 25, 1952, the plea of res judicata is applicable. The issues decided in the municipal court action were identical with the ones presented in this action; the judgment in the municipal court action was a final judgment on the merits; and plaintiff, the party against whom the plea is asserted, was a party to the adjudication of the municipal court." (*Id.* at p. 566.)

The situation in *Freeze* is different from the situation here. As noted by our own high court in *Vella, supra*, 20 Cal.3d at page 256, in citing *Freeze*, "the traditional rule that a judgment rendered by a court of competent jurisdiction is conclusive as to any issues necessarily determined in that action, the courts have held that subsequent fraud or quiet title suits founded upon allegations of irregularity in a trustee's sale are barred by the prior unlawful detainer judgment." It went on to distinguish *Freeze*, as follows: "Where, however, the claim sought to be asserted in the second action encompasses activities not directly connected with the conduct of the sale, applicability of the res judicata doctrine, either as a complete bar to further proceedings or as a source of collateral estoppel, is much less clear." (*Id.* at p. 256.) The *Vella* court, as relevant for our purposes, agreed "that 'full and fair' litigation of an affirmative defense even one not ordinarily cognizable in unlawful detainer, if it is raised without objection, and if a fair opportunity to litigate is provided will result in a judgment conclusion upon the issues material to that defense. In a summary proceeding such circumstances ***are uncommon*** . . . ." *Freeze*, and other cases such as *Wood v. Herson* (1974) 39 Cal.App.3d 737, represent "uncommon" examples of when parties agreed to "waive speedy resolution of possession in favor of an extensive adjudication of their conflicting claims by a superior court invested with jurisdiction to deal with any issues the disputants agreed to try." *Vella* makes it clear that the "more usual case is accurately characterized by our statement in [*Cheney v. Trauzettel* (1937) 9 Cal.2d 158, 160]: "Matters affecting the validity of the trust deed or primary obligation itself, or other basis defects in the plaintiff's title, are neither properly raised in this summary proceeding for possession, nor are they concluded by the judgment".' The present case here does not involve the "uncommon" situation at issue in *Freeze*, but the more common or usual one identified by *Vella* – the issue of retaliatory or wrongful conviction was not addressed or

concluded by the judgment, but only possession and rent were part of the judgment, meaning the cause of action at issue is not barred by res judicata principles (either claim or issue preclusion). Simply put, the prior unlawful detainer judgment said nothing about plaintiff's relinquishing any claims based on retaliatory or wrongful eviction, and that seems dispositive. (See, e.g., *Landeros, supra,* 39 Cal.App.4th at p. 1171.) Thus, it acts as no bar.

Nothing in defendants' reply alters this conclusion. Its citation to *Zimmerman v. Stotter* (1984) 160 Cal.App.3d 1067, as was its citation to *Freeze v. Salot* in its original filing, is misplaced. In *Zimmerman*, respondent Sotter received a judgment in her favor in an unlawful detainer action against appellant Zimmerman, after a jury trial. Thereafter, Zimmerman filed the instant action against respondent, alleging the eviction was wrongful, malicious and in bad faith, a violation of the Unruh Act, and abuse of process, and in contravention of the rent stabilization ordinance. (*Id.* at p. 1072.) Respondent claimed the action was barred by principles of res judicata (now termed claim preclusion); the trial court agreed it was, and granted summary judgment. The appellate court affirmed in part, concluding initially that under claim preclusion, the issue is whether the same cause of action was involved in both suits, focusing on the primary right at stake. Specifically, it found that res judicata (claim preclusion) applied to bar the Unruh Act violation in the present action because the unlawful detainer judgment conclusively determined the landlord's good faith, as decided by the trier of fact, under the rent stabilization ordinance, and that was dispositive of the alleged Unruh Act violation alleged in the later action. "The conclusiveness of respondent's right to possession for the declared purpose stated in order to comply with the rent stabilization ordinance [i.e., that the purpose per the ordinance was in good faith to recover possession] *was unequivocally determined by a jury and affirmed on appeal in respondent's favor [in the unlawful detainer action]*. Consequently, appellant's request for restitution and her stated cause of action for violations of the Unruh Civil Rights Act [for discrimination], which should have been raised as an affirmative defense to respondent's claim of possession in the earlier unlawful detainer action[3], is barred from additional contestation by the doctrine of res judicata. By the same token, however, appellant's remaining causes of action, for wrongful eviction [fn. omitted], abuse of process, and intentional infliction of emotional distress, which relate to relate to the respondent's action pursuant to the issuance of writ of possession, are not barred from relitigation. It is not the right, but the abuse of that right, which appellant seeks to litigate. Thus, the primary right at stake, while tangentially related, remains distinct from the that of the right of possession adjudicated in the unlawful detainer." (*Id.* at p. 1075.)[4]

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[3] The *Zimmerman* court cited *Abstract, supra,* 204 Cal.App.2d 242 in support of this proposition. In *Abstract,* the court addressed whether a court should receive evidence of a tenant's affirmative defense that his tenancy is being terminated solely because of his race. The court concluded that defendant should be allowed to produce proof of the allegations of his special defenses of discrimination, which if proven would bar the court for ordering his eviction because such action would be violated of federal and state Constitutions. (*Id.* at p. 255.)

[4] The *Zimmerman* court went on to analyze whether the other causes of action could go forward under issue preclusion principles, and whether the trier of fact actually determined on the merits a critical issue relevant to the

The cause of action here – retaliation or wrongful eviction – is more akin to the causes of action that were ***not*** barred by res judicata (claim preclusion) in *Zimmerman* (such as wrongful eviction, abuse of process, and intentional infliction of emotional distress), rather than the Unruh Act based on discrimination cause of action, that was barred. Initially, *Zimmerman* did not involve a default judgment, but a finding by a jury, making it distinguishable right out of the gate. More significantly, unlike the unlawful detainer action in this matter, which simply involved issues of the landlord's right to possession and rent, the nature of the unlawful detainer action in *Zimmerman* expressly required a finding that the landlord was acting in good faith for the purpose of recovery of possession (as required by the rent stabilization ordinance), an inquiry that ***by its very nature*** required plaintiff to raise as an affirmative defense the issue of discrimination as part of an Unruh Act violation, for the same primary right was involved in both. The retaliation or wrongful eviction defense at issue in the fifth cause of action here is not similarly situated, for it does not involve the same primary right associated with simple possession and rent, the only issues at play in the earlier unlawful detainer action; this means issues of motive or retaliation were not part of the default judgment, and thus the default judgment has not clam preclusive bar as was the case in *Zimmerman*. Viewed in this light, *Zimmerman* is completely consistent with the rules detailed earlier in this order, to the effect that claim preclusion principles will apply when affirmative defenses were or ***should*** have been raised in the unlawful detainer action because the issue in those defenses were raised by the complaint and thus are part of the judgment. The issue of retaliation here was not at issue in the unlawful detainer complaint here, was thus not part of the default judgment, and thus cannot act as bar per claim preclusion principles.[5]

Martin v. General Finance Company (1966) 239 Cal.App.2d 438 is equally inapposite. The *Martin* court observed that a "judgment by default is as conclusive as to the issues tendered by the complaint as if it had been rendered after answer filed an trial had on allegations denied by the answer." "Such a judgment is res judicata as to all issues aptly pleaded in the complaint and defendant is estopped from denying in subsequent action any allegations contained in the former complaint." (*Id*. at p. 443.) These general principles are not in dispute here. It is clear, however, that the issue of retaliation/wrongful eviction was not part of the original complaint and

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present action. (*Zimmerman, supra*, at pp. 1077-1080.) That part of the opinion is clearly irrelevant for our purposes here, for at no point can be said that the merits of the retaliation cause of action were determined on the merits in the earlier unlawful detainer action as part of the default judgment, a necessary predicate for issue preclusion or collateral estoppel.

[5] *Zimmerman* was distinguished *in Pelletier v. Alameda Yacht Harbor, supra,* 188 Cal.App.3d at p. 1557, on this same ground. "Here, the unlawful detainer action was resolved by stipulated judgment which made no mention of a relinquishment by the Pelletiers of claims arising from a retaliatory eviction. The retaliation defense was not fully and fairly litigated in an adversary hearing, and thus was not conclusively established. (Compare *Zimmerman v. Stotter* (1984) 160 Cal.App.3d 1067[] [right to possession not subject to relitigation where *fully litigated and determined by jury* in unlawful detainer proceeding].)" This court distinguishes *Zimmerman* for the very same reason and on the same grounds the *Pelletier* court distinguished *Zimmerman.*

thus was not part of the default judgment. Accordingly, res judicata principles based on claim preclusion are no bar to the retaliatory/wrongful eviction cause of action pleaded in this matter.

Defendants have not met their burden to show the fifth cause of action is barred by principles of res judicata. Accordingly, the court overrules the demurrer.

C) Motion to Strike

At various places in the first amended pleading, plaintiffs ask for attorney's fees: 1) in association with the first cause of action for breach of contract/covenant of quiet enjoyment and warranty of habitability, paragraph 46; 2) in association with the tortious breach of the implied warranty of habitability, paragraph 56; and 3) in the prayer for relief, paragraph, for "attorney's fees pursuant to applicable contacts and/or statutes." Plaintiffs also asks for punitive damages against all defendants in conjunction with the second cause of action for tortious breach of the implied covenant of good faith and fair dealing.

1) Attorney's Fees

Defendants ask the court to strike all references to attorney's fees because, even though plaintiffs predicate the request on contract, the references are "vague, and do not point to any particular lease provision, statute, or law that would entitle plaintiffs to attorney's fees. Motions to strike can be used to reach defects in or objections to pleadings that are not challengeable by demurrer, and can be to strike unauthorized attorney fees claims. (Code Civ. Proc., §§ 435-437.) Plaintiffs contend attorney's fees are authorized by a written lease agreement, which is alleged in paragraph 14 of the first amended complaint (and associated with the first cause of action for breach of contract). Defendants do not challenge either the existence of the written lease agreement, and do not contend the written lease agreement fails to contain an attorney's fee clause, which would in any event benefit both parties. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 610 [the primary purpose of Civ. Code, § 1717 is to ensure mutuality of remedy for attorney fees claims under contractual attorney fee provisions].) In the end, defendants cite to no authority for the proposition that a plaintiff must expressly identify the specific place in the written contract that authorizes attorney fees (even when they are not disputing the existence of such an attorney fee provision in the first instance). As defendants offer no legitimate basis to strike the attorney's fees request, the court denies the motion to strike. Nothing in defendants' reply alters the court's conclusion.

2) Punitive Damages

Defendants' challenge to the punitive damages claims associated with the second cause of action for the tortious breach of the implied warranty habitability is more compelling. No doubt punitive damages are available for this cause of action. (*Penner v. Falk* (1984) 153 Cal.App.3d 858, 867.) Pursuant to Civil Code section 3294, subdivision (a), a plaintiff may recover punitive damages if she proves at trial by clear and convincing evidence that defendants were guilty of oppression, fraud, or malice. For purposes of awarding punitive damages, "malice" means "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. (Civ. Code, § 3294, subd. (c)(1).) Oppression is "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) "Despicable conduct" is conduct that is " ' "so vile, base, contemptible, miserable, wretched, or loathsome that it would be looked down upon and despised by ordinary decent people." ' (*Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 330-331.) Such conduct has been described as having the character of outrage frequently associated with crime. (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1287.)" (*Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1159.)" " 'Something more than the mere commission of a tort is always required for punitive damages. There must be circumstances of aggravation or outrage, such as spite or 'malice,' or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that his conduct may be called [willful] or wanton." [Citation.]' [Citation.]" (*Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 716.)

For a corporate defendant to be liable for punitive damages based on the acts of its employees, plaintiff must show that defendant "authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the. . . authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." (Civ. Code, § 3294, subd. (b).) A managing agent is "more than a mere supervisory employee. The managing agent must be someone who exercises substantial discretionary authority over decisions that ultimately determine corporate policy." (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 573.) That means "a plaintiff seeking punitive damages [must] show that the employee exercised substantial discretionary authority over significant aspects of a corporation's business." (*Id.* at p. 577.)

Plaintiffs are required to plead specific facts to show defendants' conduct was committed with one of the required mental states, i.e., oppression, fraud, or malice. (*Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1041–1042.) And when a corporate defendant is involved, the allegations must show ratification by an officer, director or managing agent –in other words, that an officer, director or managing agent confirmed and accepted the wrongful conduct with knowledge of its outrageous behavior. (See, e.g., *Cruz v. HomeBase* (2000) 83 Cal.App.4th 160, 168.) As noted in *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159,168, when punitive

damages are sought against corporate employer, facts must be alleged to show corporate defendant's "advance knowledge, authorization or ratification." (See also *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29 [pleading must contain facts to support claim of oppression, fraud, or malice].)

Initially, plaintiffs have failed to plead punitive damages liability against *corporate defendant* KCG Property, under the standards enunciated above. The first amended complaint is completely silent about ***any*** managing agent, director, or officer of KCG Property, who either personally acted with malice, oppression, or fraud, or who personally ratified such conduct. Specific facts must be pleaded to support punitive damages liability against such a corporate employer, and that standard clearly and manifestly has not been satisfied. Leave to amend is granted.

Other deficiencies exist. As to defendants Timothy Karman, Yvette Karman, and KCG Property, plaintiffs seems to predicate punitive damages on the fact they hired Justin Cochrane (dba 805 Property Management) as the property manager (although Justin Cochrane is *not* a named defendant to the second cause of action), and Justin Cochrane acted illegally. This point is made clear in paragraph 29 of the first amended pleading, in which plaintiffs contend that these three defendants "intentionally/negligently hired Defendant 805 PM to conduct operations in the capacity of property manager of the [property]. Therefore, Defendants KCG, Timothy Karman, and Yvette Karman are also liable for Defendants' 805 PM's unlawful conduct." Plaintiffs then lump all defendants together throughout the remaining allegations, using the term "defendants" generically to describe the untenable conditions they failed to remedy. In paragraph 17, plaintiffs allege they "constantly and consistently complained to the Defendants, and each of them," without any indication of when or what was said. Plaintiffs allege in paragraph 18 that defendants "failed to repair and abate the defects" of the property; in paragraphs 19 and 20 defendants "continually disregarded their obligations" in light of the February 25, 2022 and March 21, 2022 City of Santa Maria Code Compliance Division Order; in paragraphs 21, 22, 23, 24, 25, and 26, as to each separately enumerated hazard, plaintiffs allege that defendants "have at all times" "intentionally and/or negligently" failed to act to remedy the problems; in paragraph 27. In paragraph 30, plaintiffs alleged they "complained about the conditions to the Defendants, via telephone, in writing, e-mail, and in person about the deplorable conditions, to no avail," through the defects were not remedied. All of these allegations culminate in paragraph 55, in which plaintiffs allege that defendants' conduct was "willful, wanton, intentional, despicable, malicious, and initiated with malice and with the intent to knowingly take advantage of, oppress, and injure Plaintiffs. Defendants at all times acted with a will and conscious disregard of the rights of safety of Plaintiffs and the building's other tenants. Defendants were at all times aware that there was a high probability that their intentional/and or negligent failure to repair and maintain the [property] would injury Plaintiffs and cause them personal injury , emotional distress, and property damage," pursuant to the standards pursuant to *Taylor v. Superior Court* (1979) 24 Cal.3d 890.

The court finds that plaintiffs have articulated two bases for malice as contemplated by Civil Code section 3287, subdivision (a) – intent to injure ***and*** despicable conduct which is carried out in a conscious disregard for the safety of others. "Malice" is defined as conduct intended "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." (Civ. Code, § 3294, subd. (c)(1); *Ghazarian v. Magellan Health, Inc.* (2020) 53 Cal.App.5th 171, 195.) Only one ground is necessary to survive a motion to strike, and in the court's view plaintiff has adequately alleged an intent to injure. And because intent to injure does not require a showing that the allegations involve "despicable conduct," the deficiency claimed in association with the latter does not impact the allegations involving the intent to injure allegations.

Even with this, however, the allegations as pleaded are too tenuous to survive defendants' motion to strike. Initially, while tortious liability can rest on a vicarious liability theory, as alleged in paragraph 29, punitive damages cannot. Civil Code section 3294, subdivision (a) provides that punitive damages may be awarded only upon a showing that the defendant personally committed oppression, fraud, or malice. (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1126.) Plaintiffs have to make it clear that punitive damages sought against the individual defendants is not predicated exclusively on the acts of Justin Cochrane alone. The problem is compounded because plaintiffs fail to describe the relationship between Justin Cochrane, hired as a property manager, and the other defendants.

Further, plaintiffs' factual allegations are too meagre to support any claim that ***each*** defendant harbored malice. (*Grieves, supra,* 157 Cal.App.3d at p. 167 [not only must there be circumstances of oppression, fraud, or malice, but facts must be alleged in the pleading to support such a claim].) While courts are required to read the pleading as a whole and not in isolation (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255; *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6), there are ***insufficient*** facts to support the conclusion that Timothy Karman, Yvette Karman, or KCG Properties, individually intended to injure plaintiff (or acted with conscious disregard for that matter) when failing to maintain the property. A tortious breach of the implied warranty of habitability (Civ. Code, § 1941, et seq.) allows a defendant to bring a negligence cause of action if the landlord breached its duty to exercise reasonable care in maintaining a rental dwelling, and failed to correct any defects that would render the dwelling uninhabitable. (*Peterson v. Superior Court* (1995) 10 Cal.4th 1185, 1205-1206*; Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 918-919 [a tenant may state a cause of action in tort against the landlord for damages resulting from breach of the implied warranty of habitability]; CACI 4320.) But there must be facts pleaded in the operative pleading that show more than tortious negligence. It is not enough to list the tortious breaches and then allege, perfunctorily and conclusorily, that punitive damages are appropriate because defendants acted with an intent to injure or in conscious disregard of plaintiffs' safety. (*Medo v. Superior Court* (1988) 205 Cal.App.3d 64, 68 ["Punitive damages . . . must be tied to oppression, fraud or malice in the conduct which gave rise to liability in the case"]; *Notrica v. State Comp. Ins. Fund*

(1999) 70 Cal.App.4th 911, 947.) There must be a factual predicate that allows one to reasonably infer that ***each defendant personally harbored malice*** towards plaintiffs above and beyond mere negligent misconduct associated with the cause of action itself.

For example, as a useful yardstick, the more knowledge *individual* defendants have of the problems with the property, coupled with the fact the property remains in disrepair with knowledge of the problems, with the power of repair, and the longer the defects persist, the more one can reasonably infer that each defendant personally harbored malice, a necessary pleading predicate for punitive damages. Yet there are no specific facts offered in the operative pleading to support an inference that ***each defendant*** separately harbored malice other than conclusory allegations, a point exacerbated by the vicarious allegations in paragraph 29, noted above. (See, e.g., *Penner, supra,* 153 Cal.App.3d at p. 867 [for purposes of punitive damages in the context of a tortious breach of the implied warranty of habitability, the pleadings must set out facts that showed defendants subjectively knew of the longstanding conditions of the premises which portend danger for the tenants, which existed for two years, had the power to make changes, but decided not to take the corrective or curative measures]; see also *Smith v. David* (1981) 120 Cal.App.3d 101, 112, fn. 2 [appellants also pleaded facts in the fourth cause of action showing a tortious breach of the warranty of habitability based on respondent's alleged intentional, malicious and outrageous conduct, supporting punitive damages].) Plaintiffs claim they "contacted the Defendants via telephone, in writing, email, and in person [about the problems], . . . to no avail." Yet we are not told what was said, which defendants were contacted, when they were contacted, or how often they were contacted, critical factors in establishing malice for each particular defendant. Additionally, plaintiffs contend that "defendants" were put on notice of the defects in a February 25, 2022, and March 21, 2022, City of Santa Maria Code Compliance Division Orders, but we are not told in the operative pleading which defendants were given notice of these violations – was it all of them, only some of them, and what happened with the orders? The allegations as pleaded must distinguish the predicate establishing punitive damages from the predicate establishing a tortious breach of the implied warranty of habitability in order to survive a motion to strike. Plaintiffs must do more than allege a cause of action and tack onto it a clause that mimics the statutory language in Civil Code section 3294. Simply put, more facts must be pleaded.

The court grants the motion to strike the request for punitive damages associated with the second cause of action, with leave to amend.

Summary:

- The court grants defendants' request for judicial notice.
- The court overrules defendants' demurrer to the fifth cause of action based on principles of res judicata (and more specifically, claim preclusion principles)
- The court denies the motion to strike plaintiffs' request for attorney's fees, but grants the motion to strike all references to punitive damages associated with the

second cause of action for tortious breach of the implied warranty of habitability, with leave to amend.

- Plaintiffs have 30 days from today's date to file a second amended pleading.