

## **PROPOSED TENTATIVE**

The court has detailed the nature of the litigation and previous pretrial motions in an October 8, 2024, order, in which the court granted defendants' demurrer and motion to strike punitive damages from the first amended complaint, with leave to amend. The court directs the parties to that order as background. Plaintiff filed a second amended complaint on November 7, 2024.

Defendants KCG Property Holdings, LLC (KCG), Timothy Karman, Yvette Karman, and Justin Cochrane have filed a motion to strike certain portions of the second amended complaint, along with a request for judicial notice. Specifically, they ask the court to strike all requests for punitive damages against KCG, Timothy Karman, and Yvette Karman, as contained in paragraph 57 (associated with the second cause of action for tortious breach of the implied warranty of habitability), along with the request for punitive damages in Item 4 of the Prayer for Relief. Defendants contend that the second amended complaint contains insufficient facts to support punitive damages against them. Defendants in large part cite to the court's October 8, 2024, order, and they claim the deficiencies identified by the court have not been remedied in plaintiff's newest pleading. (Motion to Strike, P. 8 ["While the Plaintiffs have made [amendments] to their pleading, the deficiencies that were previously outlined by this court still persist in the SAC. . . ."].) They argue that plaintiff should be denied leave to amend. Plaintiffs in opposition (filed on January 7, 2025) argue they have properly pleaded ratification of malice. Specifically, plaintiff contends that in the court's previous order the court recognized that plaintiff properly alleged defendants intended to injure plaintiff; and has provided "further clarification " about the court's "other determination" concerning the deficiencies in the first amended complaint. According to plaintiff, the second amended complaint now pleads specific information about each defendants' involvement to establish malice.

In addressing the issues, the court will examine the nature of defendant's new judicial notice request; recount the pleading standards for punitive damages for both corporate and individual defendants (as was done in the court's previous order); quote the analysis in the court's October 8, 2024, order, as it appears central to both parties' arguments here; and then examine the nature of the new allegations to see if the identified deficiencies have been remedied. The court will finish with a summary of its conclusions.

### *1) Defendant's Judicial Notice Request*

Defendant asks the court to take judicial notice of this court's order issued on October 8, 2024, in which the court sustained defendant's demurrer and granted the motion to strike to the first amended complaint. Although the court need not take judicial notice of the documents in its own case file, as the request is unopposed, it is granted.

### *2) Legal Standards*

Punitive damages are available for causes of action involving breach of the warranty of habitability. (*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].)

### *3) Analysis from Court's Previous Order*

Central to both parties' arguments with regard to the present motion is the court's analysis offered in its October 8, 2024, order with regard to defendant's motion to strike punitive damages in the first amended complaint. Accordingly, the court recounts the relevant analysis from the earlier order in detail, as follows:

"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 seem 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 injure 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.” (Emphasis in original.)

#### 4) *Merits*

As the court made clear in its previous order, as to corporate defendant KMG Properties, plaintiffs failed to plead sufficient facts because it failed to comply with the standards enunciated in *White v. Ultramar, Inc.*, *supra*, 21 Cal.4th 563, as there was no mention of a managing agent, director, or corporate officer who committed fraud, oppression, or malice. Plaintiffs in the second amended complaint allege that Timothy Karman is the sole member of KCG Property, meaning one can reasonably infer that he is the managing agent of KCG Properties. (§ 5 of Second Amended Complaint). Accordingly, the issue becomes whether plaintiffs have sufficiently alleged a factual basis for punitive damages against the individual defendants – Timothy Karman and Yvette Karman – to withstand challenge. If so, the motion to strike should be denied. If not, the motion to strike will be granted.

The court in its previous order originally observed there were two theories advanced by plaintiffs as to these individual defendants – an intent to injure plaintiff *or* a conscious disregard based on despicable conduct – as a basis for punitive damages associated with the second cause of action for tortious breach of the implied warranty of habitability. Plaintiffs in opposition insist that they are relying on the “intent to injure” theory to advance punitive damages as to all individual defendants. (See, e.g., *Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1041, citing *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29 [when the plaintiff alleges an intentional wrong, a prayer for exemplary damages may be supported by pleading that the wrong was committed willfully or with a design to injure’].) In paragraph 57 of the operative pleading, for example, the conduct giving rise to punitive damages was down “with the intent to knowingly take advantage . . . and injure Plaintiffs.” The court as it did in its original order finds that plaintiff is relying on an intent to injure theory to support allegations of punitive damages against the individual defendants (and thus KCG Property). But an allegation of intent to injure must be supported by facts showing each individual defendant intended to injure plaintiff.

The court noted originally that plaintiff’s allegations in the first amended complaint seemed predicated on a form of vicarious liability – focusing exclusively on the acts of Justin Cochrane, and then attributing his acts to all other named defendant by simply lumping them together generically or collectively through use of the generic term “defendants.” Punitive damages cannot be predicated on vicarious liability. This possibility was reflected in paragraph 29 of the first amended complaint, which focused exclusively on acts committed by Justin Cochrane, with plaintiff then alleging simply that all other remaining defendants “intentionally

and knowingly/negligently hired [Cochrane and his corporate affiliate] to conduct operations in the capacity of property manager . . . .” The court made it crystal clear that plaintiffs had to predicate punitive damages against the individual defendants not on the acts of Justin Cochrane alone.

Admittedly plaintiff has recounted the contents of paragraph 29 from the first amended complaint into paragraph 31 of the second amended complaint, jot for jot. Further, plaintiffs, *as they did in the first amended complaint*, contend that they “constantly and consistently” complained to the “Defendants,” “and each of them,” about a number of inadequate housing conditions; the “Defendants” (again collectively) had actual and/or constructive notice of the defects; “Defendants were also ordered to make” a number of repairs by March 21, 2022” governmental orders; plaintiffs “complained about the above conditions to Defendants, but the defects were not remedied.” Plaintiffs allege in current paragraph 32 what was alleged in paragraph 30 of the first amended pleading: “Plaintiffs complained about the above conditions to Defendants, but the defects were not remedied. Plaintiffs contacted Defendants via telephone, in writing, e-mail, and in person regarding the deplorable conditions at the Subject Property, to no avail. Defendants repeated failed to address or abate the endemic problems plaguing the Subject Property.”

But, contrary to defendants’ contentions, new paragraph 52 addresses the courts concerns identified in its first order. Plaintiffs allege that they “***repeatedly informed Defendants KCG, Timothy Karman, and Yvette Karman and their agents, including Justin Cochrane, about the defects outlined above.*** Defendants KCG (through its sole member Timothy Karman), Timothy Karman and Yvette Karman received notification about the defects, observed the defects, and were at all times aware of the defective, illegal, non-complying and substandard conditions plaguing the Subject Property. Defendants KCG (through its sole managing agent Timothy Karman), Timothy Karman and Yvette Karman were notified about the defendant conditions directly from the tenant and through notices sent to the corporate headquarters for KCK and the mailing address on file for Timothy Karman and Yvette Karman.” With this knowledge, “KCG, Timothy Karman knowingly and intentionally preyed on and took advantage of Plaintiffs in failing to repair, maintain, and remediate the mold growth . . . .” And in new paragraphs 53 and 54, plaintiffs allege that defendants “KCG, Timothy Karman and Yvette Karman’s express and constructive knowledge of the illegal conditions impacting the Subject Property and Plaintiffs, Defendants KCG, Timothy Karman and Yvette Karman repeatedly failed or delaying making repairs . . . .; . . . repeatedly misrepresented to Plaintiffs that they would make repairs and then failed to do so. Defendants KCG, Timothy Karman and Yvette Karman’s conduct was intentional and designed to extract rent from Plaintiffs in derogation of Plaintiffs’ right under applicable law, save money, increase their cash flow from the operation and management of the Subject Property. . . .”

The court agrees with defendant that plaintiffs could have done a better job of alleging specific communications between the individual defendants and plaintiffs. In its previous order,

the court observed that plaintiff’s generic references to communications were insufficient to cure the vicarious liability thrust of the allegations made, for the reader was “never informed . . . 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?” Plaintiff in the newest pleading has remedied the generic nature of the pleading, however, by disabusing the reader of any vicarious liability foundation as the basis for punitive damages by alleging that *each of the individual defendants* was expressly told on numerous occasions about the defects. The court at no point intended to require that specific evidence of communications was itself a conditional pleading requirement if other allegations were otherwise sufficiently pleaded; it simply noted that more specific details about the communications *if* they had been offered would cure an otherwise generic basis for punitive damages. The first amended pleading contained generic allegations and no specific evidence. The sole basis for seeking punitive damages in the first amended complaint rested on conclusory allegations imputing Justin Cochran’s conduct to defendants. (*Smith, supra*, 10 Cal.App.4th at p. 1042.) That appears no longer the case. Here, by contrast, the allegations are sufficiently definite to establish each defendant’s individual liability, meaning there is no need to cure by pleading any specific communications. At this stage any specific communications between plaintiffs and defendant are evidentiary only, offered to show each individual defendants’ knowledge, to which plaintiff has the burden to produce *at trial*.

This case seems governed by *Penner v. Falk* (1984) 153 Cal.App.3d 858, in which plaintiff alleged, *inter alia*, a breach of the warranty of habitability. The trial court granted a motion to strike all punitive damages allegations associated with that cause of action, without leave to amend. The *Penner* appellate court reversed. “To support an award of punitive damages . . . , a plaintiff ‘must establish that the defendant was *aware* of the probable dangerous consequences of his conduct, and that he *willfully and deliberately failed* to avoid those consequences.’ [Citation.] [¶] Appellate here has met [this] test . . . . The pleadings sufficiently allege facts setting forth long existing physical conditions of the premises which portend dangers for the tenants. The pleadings also set out that respondents knew of those conditions for up to two year, and power to make changes, but failed to take correct and curative measures. ***If proven***, these allegations would support an award of punitive damages. We conclude that the motion to strike the punitive damages allegations was therefore improperly granted.” (*Id.* at p. 867, emphasis added.) The same rationale applies here.<sup>1</sup> The allegations here

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<sup>1</sup> More specifically, in *Penner*, the plaintiff never identified in the operative pleading any specific communication between defendant and plaintiffs. Plaintiff alleged simply that notwithstanding defendants’ awareness of the problems, “tenants had requested that defendants repair, place or replace a door and gate for the entrances to said premises and defendants refused and/or failed to do so”; “tenants had complained to defendants



indicate that the individual defendants were aware of the defects, and intentionally failed to act in order to harm the plaintiffs. *If proven*, they would support punitive damages, as was the case in *Penner*.

Nothing in defendant's reply counters these conclusions. The critical allegations here that were not present in the first amended complaint are (as noted above) detailed in new paragraph 52, to the effect that plaintiffs "repeatedly informed Defendants KCG, Timothy Karman, Yvette Karman, and their agents, including Justine Cochrane, about the defects outlined above. Defendants KCG (through its sole member Timothy Karman), Timothy Karman and Yvette Karman received notification about the defects, observed the defects, and were at all times aware of the defective, illegal, noncomplying, and substandard conditions plaguing the Subject Property.[Defendants] were notified about the defective conditions directly from the tenant and through notices sent to the corporate headquarters . . . ." Despite this knowledge, as indicated in paragraphs 53 and 54, "KCG, Timothy Karman and Yvette Karman knowingly and intentionally preyed on and took advantage of Plaintiffs," and further, despite this knowledge "repeatedly misrepresented to Plaintiffs" that they would make repair, and did so with an intent and design to extract rent from plaintiff. These allegations are similar to the allegations in *Penner*, which survived a motion to strike. The same result should follow here.

The court denies defendant's motion to strike.

**Summary:**

- The court grants defendants' request for judicial notice.
- The court denies defendant's motion to strike all references to punitive damages. Plaintiff has cured the pleading deficiencies identified in the first amended complaint.
- Defendant has 20 days from today's date to file an answer.

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that unauthorized persons were often in the building and defendants failed or refused to exclude said persons or prevent their access, repeated acts of burglary and auto vandalism had occurred in the in the apartment units and the parking area . . . and tenants notified defendants of said events and requested that the security facilities be installed, repaired, or replaced . . . "; and "tenants of said building had warned and complained to defendants that unless repairs or replacements to the security measures were made, someone would become the victim of criminal attack on the premises, and defendants failed to and/or refused to make said repairs." There were "express tenant requests for and the obvious need to repair, change, and/or take corrective measures with regard to the inadequate security conditions of the premises . . . ." (153 Cal.App.3d at p. 863.) The nature of these allegations are similar to the allegations advanced in the second amended complaint here. The same result should follow.