TENTATIVE RULINGS
Judge SHEILA RECIO, Dept. W8

Law & Motion is heard on Fridays at 9:30 a.m.

CIVIL COURT REPORTERS: Department W8 does not provide the services of an official court reporter for law and motion hearings. Please see the court's website at http://www.occourts.org/directory/cris/availability.html for rules and procedures for court reporters obtained by the parties.

POSTING TENTATIVES: Department W8 endeavors to post tentative rulings for law and motion hearings by 5 p.m. on Thursdays. Do NOT call the Department for a tentative ruling if none is posted. **The court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

SUBMITTING ON THE TENTATIVE: If ALL sides intend to submit on the tentative ruling, please advise the Department's clerk or courtroom attendant by calling **(657) 622-5908**. If so advised, the tentative ruling shall become the court's final ruling and the prevailing party shall file and serve a Notice of Ruling and if appropriate, prepare a Proposed Order pursuant to Rule 3.1312 of the California Rules of Court. **Please do not call the Department unless ALL parties submit on the tentative ruling.**

NO APPEARANCES: If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court will determine if the matter is taken off calendar, the tentative ruling becomes the final ruling, or a different order is issued at the hearing. (See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

REMOTE APPEARANCES: Department W8 conducts non-evidentiary proceedings, including law and motion via Zoom through the court's online check-in process available through the court's website at https://www.occourts.org/general-information/covid-19-response/civil-covid-19-response/civil-remote-hearings. All counsel and self-represented parties appearing for such hearings **must check-in at least 5 minutes before** the 9:30 a.m. hearing on Friday.

The court encourages the parties and attorneys to take advantage of remote appearances for non-evidentiary hearings to reduce travel time, parking costs, and potential hearing delays. However, keep in mind that potential technological or audibility issues could arise when using remote

technology, which may require a delay of or halt the proceedings. To help avoid such, please log in and test your equipment in advance of the hearing. Also, if technological or audibility issues arise during the proceeding, please call **(657) 622-5908.**

All remote video participants shall comply with the court's **"Guidelines for Remote appearances"**, found at https://www.occourts.org/system/files/guidelinesforremoteproceedings.pdf .

IN-PERSON: Parties preferring to appear in-person for a law and motion hearing may do so, consistent with Section 367.75 of the Code of Civil Procedure and Orange County Local Rule 375.

PUBLIC ACCESS: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

April 26, 2024

#	Case Name	
1	Parvizshahi vs. General Motors, LLC	1. Demurrer (re Complaint) 2. Motion to Strike **OFF-CALENDAR.** On 11/17/23, Defendant GENERAL MOTORS LLC filed a demurrer and a motion to strike directed at the original Complaint. More recently, on 4/15/24, Plaintiff EBRAHIM ABE PARVIZSHAHI filed a First Amended Complaint (FAC) and an Opposition Brief for the motion to strike. (ROAs 50, 52.) The filing of the FAC rendered the demurrer and motion to strike MOOT. As such, on 4/17/24, Defendant appropriately withdrew its previously filed demurrer and motion. (See, e.g., *State Comp. Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1131 ["Because there is but one complaint in a civil action [citation], the filing of an amended complaint moots a motion directed to a prior complaint."]; *JKC3H8 v. Colton* (2013) 221 Cal.App.4th 468, 477 ["the filing of an amended

		complaint renders moot a demurrer to the original complaint"].)
2	Grabowiec vs. Liu	<u>1. Demurrer (re Complaint)</u> <u>2. Motion to Strike</u> ***Re Request for Judicial Notice**:* The court **GRANTS** Defendants WEI LIU, CHARLES LEE, and AARON WANG's (hereinafter, collectively "Defendants") unopposed Request for Judicial Notice (re certain court filings). (Evid. Code, § 452, subd. (d).) ***1. Demurrer*** The court **SUSTAINS** the general demurrer of Defendants to the fourth cause of action in the Complaint filed by Plaintiffs BOGDON GRABOWIEC, KATARZYNA GRABOWIEC, and WIKTORIA GRABOWIEC (hereinafter, collectively "Plaintiffs"). To the extent Plaintiffs can properly amend the IIED claim, the court **GRANTS twenty (20) days leave to amend**. The fourth cause of action for intentional infliction of emotional distress (IIED) alleges the following: Pursuant to a written lease agreement, Plaintiffs moved into certain property in Irvine beginning in or about July of 2012. Beginning in or about November of 2018 through December of 2022, Plaintiffs repeatedly discovered mold in numerous areas of the property and reported each finding to Defendants each time. Defendants repeatedly refused to remediate the mold. Defendants also failed to repair or remediate numerous plumbing problems and water leaks in numerous areas of the Property. Plaintiffs began suffering numerous adverse health symptoms in or about March of 2018, including cognitive impairment, sinus infections, bronchitis, nose bleeds, joint pain, etc. In or about December of 2022, Plaintiffs began to suspect that these ailments may be caused, or contributed to, by exposure to contaminants and/or toxins, including mold, at the property. Plaintiffs then moved out. To state an IIED cause of action, a plaintiff must allege (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, 1050-51.)

"A defendant's conduct is 'outrageous' when it is so 'extreme as to exceed all bounds of that usually tolerated in a civilized community.' And the defendant's conduct must be 'intended to inflict injury or engaged in with the realization that injury will result.'" (*Hughes,* 46 Cal.4th at 1050-51.) Further, that conduct must be directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware. (*Potter v. Firestone Tire & Rubber Co*. (1993) 6 Cal.4th 965, 1002 [re groundwater contamination].) "The law intervenes only where the distress inflicted is so severe that no reasonable [person] could be expected to endure it. The intensity and duration of the distress are factors to be considered in determining the severity." (*Fletcher v. Western Life Ins. Co*. (1970) 10 Cal.App.3d 376, 397.) "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.)

Here, Defendants first contend that the Complaint fails to plead outrageous, intentional, or malicious conduct because it does not allege defendants' "knowing, intentional, and willful" failure to correct defective conditions of the premises.

A landlord's deliberate refusal, over a prolonged period of time and in the face of requests by a tenant, to repair rental property *may* become sufficiently outrageous to come within the IIED tort. (See *Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1061-1062, 1069 [the refusal to repair *toxic* mold after repeated notification, resulting in "severe physical injury and discomfort" and the inability to occupy premises for business use was sufficiently outrageous]; see also *Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 920 [question of outrageousness of landlord's conduct is a matter for the jury when the plaintiff alleged the landlord knew about "leaking sewage, deteriorated flooring, falling ceiling, leaking roof, broken

windows, and other unsafe and dangerous conditions"]; *Smith v. David* (1981) 120 Cal.App.3d 101, 105-107 [landlord's refusal to repair numerous housing code violations was outrageous when expert testimony demonstrated the violations presented a risk to the health and safety of the occupants].)

Here, however, Plaintiffs' own allegations are that they themselves did not suspect their ailments may have been caused by contaminants/toxins until December of 2022, which is also when Plaintiffs last reported problems to Defendants and Plaintiffs moved out of the premises. As such, and given the lack of sufficient factual allegations in the Complaint regarding the condition of the property (other than the existence of "mold in numerous areas" and "numerous plumbing problems and water leaks", it's not apparent how Defendants' alleged refusal to remediate before then was sufficiently outrageous to support an IIED claim. Nor is it apparent how Defendants' alleged refusal to remediate was the actual and proximate cause of any emotional distress. (See *Michaelian v. State Comp. Ins. Fund* (1996) 50 Cal.App.4th 1093, 1114 [for an IIED claim, "[t]he complaint must plead specific facts that establish severe emotional distress resulting from defendant's conduct.")

Further, the Complaint merely concludes the existence of emotional distress without alleging facts showing any plaintiff suffered severe or extreme emotional distress. As Defendants note, the Complaint appears to rely on boilerplate and conclusory contentions. "Bare conclusions devoid of any supporting facts, however, are insufficient to withstand demurrer." (*Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 481.)

2. Motion to Strike

The court **GRANTS** Defendants' motion to strike certain portions of the Complaint concerning both attorney fees and punitive damages. Should plaintiffs desire to file an amended complaint that addresses the issues in this ruling, the court **GRANTS twenty (20) days leave to amend**.

Attorney Fees

The Complaint alleges Plaintiffs are entitled to attorney fees by statute or an agreement. (Compl. ¶ BC-5.)

First, the Complaint does not allege a statutory violation that entitles plaintiffs to attorneys' fees. And there does not appear to be any.

Second, while an agreement with an attorneys fee provision is attached to the Complaint, at least two problems exist: (1) Defendants Charles Lee and Aaron Wang do not appear to be parties to that agreement and (2) it appears undisputed that Plaintiffs did not comply the attorneys' fee provision requiring an attempt to resolve the matter through mediation before commencing an action.

Paragraph 39A of the Residential Lease or Month-to-Month Rental Agreement attached as Exhibit A to the Complaint states, in pertinent part,

> "If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action."

Here, the Complaint does not contain any allegations regarding plaintiffs' attempt to resolve the matter through mediation.

The court notes that Plaintiffs failed to address the motion to strike attorneys fees in their opposition brief, which creates an inference that the motion to strike attorneys fees is meritorious.

As such, the unopposed motion to strike attorneys fee allegations is GRANTED.

		Punitive Damages A complaint including a request for punitive damages must include allegations showing that the plaintiff is entitled to an award of punitive damages. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) A claim for punitive damages cannot be pleaded generally and allegations that a defendant acted "with oppression, fraud and malice" toward plaintiff are insufficient legal conclusions to show that the plaintiff is entitled to an award of punitive damages. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.) Specific factual allegations are required to support a claim for punitive damages. (*Id.*) Here, the Complaint contains causes of action for (1) general negligence, (2) premises liability, (3) breach of contract, and (4) IIED. Given that the demurrer to the IIED cause of action is sustained, there are no remaining causes of action that can support a claim for punitive damages. As such, the motion to strike punitive damages allegations is also GRANTED. Defendants to give notice.
4	Yang and Song Associates, LLC vs. Xu	Motion to Dismiss (Overturn) Settlement Agreement The court **DENIES** Defendant XIAOHU XU's "Motion to Dismiss (Overturn) Settlement Agreement". This matter involves a written agreement of the parties – a settlement resulting in a stipulated judgment, where both parties were represented by counsel. Defendant does not request relief from carelessness or inadvertence with claims to be resolved in a trial on the merits. Rather, Defendant requests the court set aside Defendant's own agreement to settle this litigation, an agreement made while Defendant was represented by counsel and after protracted negotiation. There is no evidence proffered that the settlement agreement was illegal, coerced, or a

		product of any fraud that would warrant setting aside the settlement agreement, which appears to have been negotiated between the parties through counsel. Defendant does not present any evidence that Yang did not have authority to sign on behalf of Plaintiff YANG & SONG ASSOCIATES, LLC. Defendant also does not deny that Yang is the current CEO and manager of Yang & Song Associates, LLC. In fact, the Company Agreement between Defendant and Plaintiff attached as Exhibit B to the motion, and relied upon by Defendant, shows Yang as the signatory on behalf of Yang & Song Associates from the outset of the dealings between Plaintiff and Defendant. Defendant proffers no evidence that Yang misrepresented his identity or that Yang intentionally delayed litigation in this matter to strong-arm Defendant into financial desperation or otherwise gain a litigation advantage. Further, Defendant does not deny signing the settlement agreement on 1/31/23 or making a partial payment pursuant to the settlement agreement. As there is no evidence of wrongdoing or any other sufficient grounds to set aside or invalidate the settlement agreement, the motion is DENIED. Plaintiff to give notice.
5	First Team Real Estate - Orange County vs. Lewandowski	<u>Motion for Leave to File Amended Cross-Complaint</u> **DENIED as MOOT**. Trial commenced in January and concluded in February of 2024.
6	Butler vs. 24 Hr Fitness	<u>Motion for Leave to File Amended Complaint</u> The court **DENIES without prejudice** Plaintiff THADIUS BUTLER's Motion for Leave to File Amended Complaint. Having already filed an Amended Complaint, Plaintiff must seek leave to file another amended complaint. Plaintiff however failed to comply with the requirements for a motion for leave to amend. Under Rule 3.1324(a) of the California Rules of Court, a motion to amend a pleading <u>shall</u> (1) include a copy of the proposed amendment or

		amended pleading, which must be serially numbered to differentiate it from previous pleadings or amendments; (2) state what allegations in the previous pleading are proposed to be deleted, if any, and where, by page, paragraph and line number, the deleted allegations are located; and (3) state what allegations are proposed to be added to the previous pleading, if any, and where, by page, paragraph, and line number, the additional allegations are located. Under Rule 3.1324(b) of the California Rules of Court, a separate declaration must accompany the motion and must specify (1) the effect of the amendment; (2) why the amendment is necessary and proper; (3) when the facts giving rise to the amended allegations were discovered; and (4) the reasons why the request for amendment was not made earlier. The court finds that Plaintiff has not complied with the procedural requirements of Rule 3.1324(a). Notably, Plaintiff has not included a copy of the proposed amended pleading and did not include a declaration that complies with Rule 3.1324(b). Under Civil Code section 473(a)(1), the court may, nonetheless, "in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect…" Other amendments, on the other hand, require "notice to the adverse party." The amendments that Plaintiff wishes to make appear to correct mistakes—including a missing page 3 of 3, correcting the name of Defendant to 24 Hour Fitness, LLC, and to change punitive damages to negligence. While the court has the discretion to allow for these amendments sua sponte, as these all appear to be "mistakes" rather than substantive changes to claims, unfortunately, without a copy of the proposed amendment, the court cannot determine the extent or nature of the actual changes Plaintiff wishes to make. The motion is denied without prejudice to Plaintiff's refiling a motion that complies with CRC 3.1324(a).

		Plaintiff to give notice.
7	Pritikin vs. LG Electronics, USA, Inc.	<u>Motion for Leave to File First Amended Complaint</u> The court **GRANTS** Plaintiff DAVID PRITIKIN's unopposed Motion for Order Allowing Amendment to Complaint. The court finds Plaintiff's motion complies with Rule 3.1324 of the California Rules of Court, as it includes a copy of the proposed First Amended Complaint and Plaintiff specifies the proposed revisions. In addition, the moving papers, including the Faulk Declaration, specifies the effect of the amendment, why the amendment is necessary and proper, when the facts giving rise to the amended allegations were discovered, and the reasons why the request for amendment was not made earlier. (Kevin Faulk Decl. ¶ 2, Exh. A; Moving Papers at 2:5-2:17, 2:28-3:6.) Plaintiff's proposed amendments do not appear to introduce new and substantially different issues, nor do they change the alleged facts or legal theories. The court also notes that the scheduled trial is ten months away and Defendant LG ELECTRONICS, USA, INC did not file an opposition or otherwise argue any prejudice in granting the motion. Plaintiff to give notice and file and serve the proposed First Amended Complaint within 10 calendar days of the hearing.
8	Shoar vs. County of Orange	<u>Motion to Compel (*Pitchess* Motion)</u> <u>Motion to Compel (Deposition)</u> ***No tentatives, but note the following:*** ***1. Pitchess Motion*** The court is prepared to proceed with an in-camera hearing.

		2. Motion to Compel (Deposition) The motion was continued from 3/29/24 at Plaintiffs' attorney's request. As such, see the court's tentative ruling issued 3/29/24. (See 3/29/24 Minute Order [ROA 309].)