

1 Lane E. Webb (SBN 144671)
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2 Shanna M. Van Wagner (SBN 317675)
shanna.vanwagner@manningkass.com
3 **MANNING & KASS**
ELLROD, RAMIREZ, TRESTER LLP
4 225 Broadway, Suite 2000
San Diego, California 92101
5 Telephone: (619) 515-0269
Facsimile: (619) 515-0268

6 Attorneys for Defendants,
7 BRAD MARTINEZ; VICKI MARTINEZ;
GAIL D. CALHOUN, AS TRUSTEE OF THE GAIL D. CALHOUN FAMILY TRUST; and
8 LOTUS PROPERTY SERVICES, INC.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES – ALHAMBRA COURTHOUSE**
11

12 JAMES BURBANK, an individual;
JENNIFER BURBANK, an individual;

13
14 Plaintiffs,

15 vs.

16 BRAD MARTINEZ, an individual; VICKI
MARTINEZ, an individual; GAIL D.
17 CALHOUN, as TRUSTEE of the GAIL D.
CALHOUN FAMILY TRUST; LOTUS
PROPERTY MANAGEMENT, INC.; BRIAN
18 GORDON, an individual; SALLY
GUTIERREZ, an individual; GRACE
19 CHENG, an individual; DOES 1 – 50,
inclusive;

20 Defendants.
21
22
23

CASE NO: 24NNCV06082

Assigned for All Purposes to:
Hon. Sarah J. Heidel .– Dept. V

**DECLARATION OF SHANNA M. VAN
WAGNER IN SUPPORT OF
DEFENDANT LOTUS PROPERTY
SERVICES, INC.’S DEMURRER TO
PLAINTIFFS’ COMPLAINT**

Date: October 28, 2025
Time: 8:30 a.m.
Dept.: V
Reservation No.: 079298850033

Trial Date: None Set
Complaint Filed: November 25, 2024

24 **DECLARATION OF SHANNA M. VAN WAGNER**

25 I, Shanna M. Van Wagner, declare as follows:

26 1. I am an attorney duly admitted to practice before this Court. I am a partner of
27 Manning & Kass, Ellrod, Ramirez, Trester LLP, attorneys of record for Defendant LOTUS
28 PROPERTY SERVICES, INC. I have personal knowledge of the facts set forth herein, and if called

1 as a witness, I could and would competently testify thereto.

2 2. I make this declaration in support of Defendant LOTUS PROPERTY SERVICES,
3 INC.'s Demurrer to Plaintiffs' Complaint pursuant to Code of Civil Procedure § 430.41.

4 3. On July 23, 2025, Defendant's counsel filed a Notice of Inability to Meet and Confer
5 with counsel, which provided a thirty-day extension of time to respond to Plaintiffs' complaint.

6 4. On July 25, 2025, Defendant's counsel sent a meet and confer letter to Plaintiffs'
7 counsel which outlined the intended demurer on the grounds that the Complaint failed to allege any
8 facts sufficient to sustain the causes of action against Defendant. Additionally, this correspondence
9 outlined the intended motion to strike on the grounds that the Complaint fails to allege any ultimate
10 or specific facts to sustain the claim for punitive damages. A true and correct copy of this letter is
11 attached as "Exhibit A."

12 5. On July 31, 2025, a representative from Plaintiffs' counsel informed us that the letter
13 was "under review."

14 6. On August 19, 2025, Defendant's counsel requested a response to whether Plaintiffs
15 would amend their Complaint. To date, Defendant's counsel received no response.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing
17 is true and correct.

18 Executed on this 21st day of August, 2025, at San Diego, California.

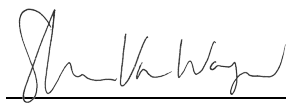
19
20 
21 Shanna M. Van Wagner

EXHIBIT “A”

STEVEN D. MANNING
DENNIS B. KASS
ANTHONY J. ELLROD
EUGENE P. RAMIREZ
FREDRIC W. TRESTER
LAWRENCE D. ESTEN
MILDRED K. O'LENN *
ALFRED M. DE LA CRUZ
MARGUERITE L. JONAK *
MICHAEL L. SMITH
LOUIS W. PAPPAS
EUGENE J. EGAN
R. ADAM ELLISON *
JASON J. MOLNAR *
DAVID V. ROTH
JEANETTE L. DIXON
DAVID R. REEDER *
ANTHONY CANNIZZO
RICHARD G. GARCIA
SHARON S. JEFFREY
KATHLEEN A. HUNT *
D. HIEP TRUONG
JANET D. JOHN *
KENNETH S. KAWABATA
LALO GARCIA
KAREN LIAO
MATTHEW E. KEARL
GRETHCHEN COLLIN
LYNN CARPENTER *
ROBERT E. MURPHY *
JASON J. DOSHI
EMILY EDWARDS
DAVID R. RUIZ
SEAN DOWSING
ANDREA KORNBLAU
CHRISTINE LA VORGNA
MARK WILSON
KIRSTEN BROWN
ROYA FOHRER
KAYLEIGH ANDERSEN

DANIEL B. HERBERT *
MARK A. HAGOPIAN
JOHN M. HOCHHAUSLER
CHRISTOPHER DATOMI
ROLAND TONG
STEVEN W. DELATEUR
ARI MARKOW
ROBERT A. STERN
JAMES A. MCKENNEY
TRISHA NEWMAN
JONATHAN J. LABRUM *
WILLIAM KELSBERG
CHRISTOPHER KANJO
STEVEN SPILE
ANDREW LEFF
RICHARD GOOR
LANE E. WEBB
JOHN CULVER
NATALYA VASYUK
TIFFANY HENDERSON
EVGENIA JANSEN
ANTOINETTE MARINO *
GLENN JOHNSTON
CHRISTINA TAPIA
S. CHRISTIAN ANDERSON
OLESYA MIKHAYLOVA
SOPHIE O. LAFRANCHI
LISA IVERSEN
LISA MARTINELLI
MAYA SORESEN
NICOLE SANTIAGO
TWIGGY ALVAREZ
YURY A. KOLESNIKOV
NATHALIE C. HACKETT *
JERRIE WEISS
JAMIE BURKE
ROSALYN WILFERT
ANDREW LEE
RICHARD MONTANA
SORAYA CAMPBELL



225 BROADWAY
SUITE 2000
SAN DIEGO, CALIFORNIA 92101
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ManningKass.com

July 25, 2025

ROBIN PASS
KARINA TROST *
KRISTY EGAN
LEE P. PINZOW
EUGENE HANRAHAN
DAVID FLECK
JAMES CHAPIN
ECHO REYNOLDS
KRISTIN WROBEL
ANDRE BRUCE
BRYAN MARTINEZ
SUSANNAH RUTH CONN
MARISA QUNIZI
SHANNA VAN WAGNER
KATHERINE HWANG
SHAUNA FRASER-KIM
KIRK J. EDSON
JOANA COLOMA
JAMES A. HARRIS
GABRIELLA PEDONE
DANIEL KNIERIM
HANNAH ELLENHORN
ANNA KARTOSHKINA
AMANDA WILBUR
ELLARIE HERNANDEZ
VICTORIA TREPANY
ELIKA ZIAEI
ISHA GULATI
RIANE BRIONES
BEAR ALLEN-BLAINE
IAN JONES
ALEXANDER KONETZKI *
PAUL ABELKOP
BAYAN SALEHI
TESLEEM AZEEZ
LUCINA RIOS
KHOULOUD PEARSON
ERICA L. MOBLEY
MADISON FORSANDER
FREDERICK GADSON

SHEILA TEMPLETON
HYELIM CHO
SPENCER GILBERT
WESLINA HUNG
BAILEY SACK
JACOB ELLENHORN
VIEUX TOURE
SHAYAN LORASBI
GERARD MATAR
LARA IKNDOSIAN
ARGHAVAN SHARIFAN
PATRICK BABAJANIAN
NEWRI KIM
MICHAEL LANG
DRAKE HERRING
PAUL KRESGE
MITRA PURPUR
ALICIA FLORES
BARI BLACKLEDGE
CAGIL AREL
BRIAN THOMAS PUGLISE
ELIZABETH POITRAS
NICOLAS HUERTA III
IAN CARSTENS
MARK SIMPLICIANO
CARTER TAYLOR

OF COUNSEL
JOHN D. MARINO *
MICHAEL A. WEISMANTEL
DONALD R. DAY *
MICHAEL BRAVE
CHRISTOPHER BAUER
CHARLES MOLLIS
GEOFFREY PLOWDEN
STEVEN J. RENICK

* Admitted in Multiple
Jurisdictions

VIA E-MAIL

Joseph Kellener
Dignity Law Group, APC
14401 Sylvan St, Ste 102
Van Nuys, CA 91401
info@dignitylawgroup.com

Re: Burbank v. Martinez
Claim No.: I8H5974
Our File No.: 8890-70001
Date of Loss: 11/25/2024

MANDATORY MEET AND CONFER PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 430.41 AND 435.5

Dear Mr. Kellener:

Please allow this correspondence to set forth the basis of Defendant Lotus Property Services, Inc., erroneously named and served as Lotus Property Management, Inc. ("Defendant") anticipated demurrer and motion to strike. It is our goal to avoid unnecessary motion practice, and we are optimistic that we can resolve this matter

A. Legal Authority for Demurrer

Code of Civil Procedure § 430.10 states in the relevant part: "The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in 430.30, to the pleading on any one or more of the following grounds . . . , (e) The pleading does not state facts sufficient to constitute a cause of action" and "(f) The pleading is uncertain."

DALLAS
901 Main Street, Ste 6530
Dallas, TX 75202
(214) 953-7669

LOS ANGELES
801 S. Figueroa St, 15th Floor
Los Angeles, CA 90017
(213) 624-6900

NEW YORK
100 Wall Street, Ste 700
New York, NY 10005
(212) 858-7769

ORANGE COUNTY
695 Town Center Dr., Ste 400
Costa Mesa, CA 92626
(949) 440-6690

PHOENIX
2700 N. Central Ave., Ste 870
Phoenix, AZ 85004
(602) 313-5469

SAN FRANCISCO
101 Montgomery Street, Suite
2550
San Francisco, CA 94104
(415) 217-6990

A special demurrer attacks a pleading for uncertainty, while a general demurrer points out substantive pleading defects such as failure to state a cause of action or affirmative defenses (e.g., statute of limitations or waiver). (*Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 384 fn. 8.)

A demurrer tests the legal sufficiency of the pleadings. (Comm. on Children's Television, Inc. v. Gen. Foods Corp. (1983) 35 Cal.3d 197, 213.) A demurrer is proper when "the pleading does not state facts sufficient to constitute a cause of action." (Cal. Code Civ. Proc. § 430.10(e).) A demurrer is also proper when the pleading is uncertain, which the code describes as ambiguous and unintelligible. (Cal. Code Civ. Proc. § 430.10(f).)

A pleading, on its face, must contain sufficiently plead facts to support a cause of action, and the legal and factual conclusions of a pleader must be disregarded. (See *Gruenberg v. Aetna Ins. Co.*, (1973) 9 Cal.3d 566, 572; *Otworth v. Southern Pac. Transportation Co.*, (1985) 166 Cal.App.3d 452 [demurrer sustained when complaint failed to allege essential facts for any of the causes of action]; *Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537 [a "pleading must allege facts and not conclusions," and "the essential facts upon which a determination of the controversy depends should be stated with clearness and precision so that nothing is left to surmise"].) Furthermore, a material defect in a pleading cannot be overlooked. (See *Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331-32.)

A demurrer for uncertainty will only be sustained where the complaint is so poorly pled that a defendant cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.

B. Deficiencies in the Complaint as Grounds for Demurrer

It appears that all causes of action are alleged against Defendant. The complaint does not specify. As the property manager for a period of approximately two months, these causes of action are not properly alleged against Defendant.

Even assuming that everything in the complaint is true (which all Defendants dispute), there is insufficient facts to maintain the tortious breach of warranty of habitability; breach of the covenant of quiet enjoyment; nuisance; business & professions Code section 17200 et seq; negligence; breach of contract; and declaratory relief causes of action against Defendant.

Put another way, Plaintiffs' complaint fails to state facts sufficient to constitute any cause of action against Defendant. (CCP § 430.10(e).) Allegations surrounding the actions of the Defendant do not begin until paragraph 30 of the complaint, where it states that Plaintiffs were informed that the Defendant would be managing the property effective September 5, 2024. (See Complaint, ¶130.) The management of the property ceased on November 30, 2024.

There are no facts indicating that Defendant's actions were negligent, or caused any breach of the warranty of habitability or quiet enjoyment. Furthermore, as the property manager, it is entirely unclear how the "business & professions code section 17200 et seq" and "declaratory relief" causes of action can apply to Defendant. Indeed, the declaratory

relief cause of action refers to an addendum in the lease agreement that does not even exist.

C. Grounds for Motion to Strike

Cross-Defendants' claims for punitive damages fail as a matter of law. California Civil Code section 3294(a) allows for the recovery of punitive damages only where plaintiffs establish by clear and convincing evidence that a defendant acted with malice, oppression, or fraud in connection with tortious conduct at issue. At the pleading state, plaintiffs must demonstrate specific facts demonstrating clear circumstances of malice, oppression, or fraud in order to be entitled to this relief. (*Grieves v. Sup. Court* (1984) 157 Cal.App.3d 159, 166-167; see also *Cyrus v. Haveson* (1976) 65 Cal.App.3d 306, 316-317 (to support a punitive damage claim, a complaint must allege ultimate facts of a defendant's conduct.) When a complaint fails to include sufficient specific factual allegations to support a claim for punitive damages, a motion to strike such claims should be granted. (*Id.* at 159; see also *Henderson v. Security National Bank* (1977) 72 Cal.App.3d 764, 771 (stating that punitive damages should only be allowed in the "clearest of cases.") A "conclusory characterization of defendant's conduct as intentional, willful and fraudulent is a patently insufficient statement of 'oppression, fraud, malice, express or implied,' within the meaning of section 3294." (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

Here, the complaint fails to assert any specific facts showing such punitive behavior on behalf of Defendant. It lacks any specific factual assertions showing that Defendant acted with oppression, fraud, or malice. Indeed, there are only a few sentences in the entire complaint that even mention Defendant at all.

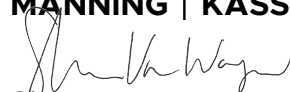
The Complaint does not include ultimate facts needed to support instances of malice, oppression, or fraud. Instead, the Complaint contains generic allegations that purportedly apply to Defendant (and all Defendants) without further specificity as to who did what and when. As established in the *Grieves* decision, "at the pleading state, plaintiffs must demonstrate specific facts demonstrating clear circumstances of malice, oppression, or fraud, in order to be entitled to this relief." *Grieves, supra*, 157 Cal.App.3d at 166-167.

Therefore, the Complaint falls short of the necessarily high standard for punitive damages. Defendant will seek removal of the request for punitive damages via a motion to strike.

D. Conclusion

Please advise if you are willing to amend the Complaint in light of the above considerations. If we do not hear from your office, then we will proceed with filing the demurrer and motion to strike on behalf of Defendant. Should you wish to discuss this further, please do not hesitate to contact our office with any questions.

Very truly yours,
MANNING | KASS


Shanna Van Wagner, Esq.
Partner

cc: Lane E. Webb (via email) Cathleen Tinsay (via email)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 225 Broadway, Suite 2000, San Diego, CA 92101.

On **August 21, 2025**, I served the foregoing document(s) described as **DEFENDANT LOTUS PROPERTY SERVICES, INC.'S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFFS' COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SHANNA M. VAN WAGNER IN SUPPORT OF DEFENDANT LOTUS PROPERTY SERVICES, INC.'S DEMURRER TO PLAINTIFFS' COMPLAINT; and [PROPOSED] ORDER GRANTING DEFENDANT LOTUS PROPERTY SERVICES, INC.'S DEMURRER TO PLAINTIFFS' COMPLAINT** on the interested parties by electronic service addressed as follows:

Joseph Kellener
David R. Greene
Dignity Law Group, APC
14401 Sylvan St, Ste 102
Van Nuys, CA 91401
Tel: (323) 212 5365
Email: info@dignitylawgroup.com

Counsel for Plaintiffs James Burbank and Jennifer Burbank

- ☐ **BY MAIL:** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, I deposited such envelope in the mail at San Diego, California.
- ☒ **BY E-MAIL:** I caused all of the pages of the above-entitled document to be sent to the recipient(s) noted via email at the respective email address(es) indicated above.
- ☐ **BY FEDERAL EXPRESS/OVERNIGHT MAIL:** I caused the above-described document to be served on the interested parties noted as follows by Federal Express/Overnight Mail.
- ☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the office(s) of the addressee via messenger.
- ☐ **BY ELECTRONIC TRANSFER** via electronic filing service provider and pursuant to *California Rules of Court*, Rule 2.251, sent by e-Service through e-Filing Portal at the time the documents were electronically filed. The service was made on the email addresses listed with the court.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **August 21, 2025**, at San Diego, California.

Deanna Canepa
Deanna Canepa



Make a Reservation

JENNIFER BURBANK, et al. vs BRAD MARTINEZ, et al.
Case Number: 24NNCV06082 Case Type: Civil Unlimited Category: Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
Date Filed: 2024-11-25 Location: Alhambra Courthouse - Department V

Reservation	
Case Name: JENNIFER BURBANK, et al. vs BRAD MARTINEZ, et al.	Case Number: 24NNCV06082
Type: Demurrer - with Motion to Strike (CCP 430.10)	Status: RESERVED
Filing Party: Lotus Property Management, Inc (Defendant)	Location: Alhambra Courthouse - Department V
Date/Time: 10/28/2025 8:30 AM	Number of Motions: 1
Reservation ID: 079298850033	Confirmation Code: CR-XJCT43UXSZYTOJTJI

Fees			
Description	Fee	Qty	Amount
Demurrer - with Motion to Strike (CCP 430.10)	0.00	1	0.00
TOTAL			\$0.00

Payment	
Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: n/a	

Print Receipt

Reserve Another Hearing

View My Reservations