SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 05-02-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court will call the cases of those who appear in person first. If you appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. You must use the current link.

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. You may make an online reservation to reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Go to the Court's website at www.scscourt.org to make the reservation.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV417103 Motion: Strike	Juan Medina et al vs Sreekanth Thirthala et al	See Tentative Ruling. The Court will prepare the final order. Plaintiff is instructed to submit the final order from the December 21, 2023 minute order within 10 days.
LINE 2	23CV417103 Hearing: Demurrer	Juan Medina et al vs Sreekanth Thirthala et al	See Tentative Ruling. The Court will prepare the final order.
LINE 3	23CV425467 Motion: Quash	Pruneyard Office Investors LLC vs Edward Fields et al	See Tentative Ruling. The Court will prepare the final order.
LINE 4	19CV343789 Motion: Reconsider	Richard Pierce et al vs RAINCROSS FUEL & OIL, INC. et al	See Tentative Ruling. Defendants shall submit the final order.
LINE 5	22CV399554 Motion: to Amend Judgment	Discover Bank vs Dawn Rose	Notice appearing proper and good cause appearing, the unopposed motion is GRANTED. Plaintiff shall submit the final order.
LINE 6	22CV408945 Motion: Withdraw as attorney	Roofline Supply & Delivery, A Division Of SRS Distribution Inc. vs Chad's Roofing, Inc, A Corporation et al	Moving party shall appear at the hearing to update the court on client's status. Tentatively, because notice appears proper and good cause appears, the unopposed motion is GRANTED. Moving party shall submit the final order.

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 7	20CV372737 Motion: Withdraw as attorney	Larry Gilberg et al vs Alexander Mednik et al	Moving party shall appear at the hearing to update the court on client's status. Tentatively, because notice appears proper and good cause appears, the unopposed motion is GRANTED. Moving party shall submit the final order.
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			
LINE 14			
LINE 15			
LINE 16			
LINE 17			

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Calendar Lines 1 and 2
Case Name: *Medina et al. v. Thirthala et al.*
Case No.: 23CV417103

I. Factual Background

Plaintiffs Juan Medina ("Mr. Medina") and Thrudy Medina (collectively, "Plaintiffs") filed their First Amended Complaint ("FAC") against defendants Sreekanth Thirthala ("Thirthala"), Padma Sireesha Garlapati ("Garalapati"), and BT Properties, Inc. ("BAP").[1]

In or around November 2020, Plaintiffs became tenants at 1855 S. Springer Rd., Unit #B, Mountain View, CA ("the Property"). (FAC, ¶ 10.) Thirthala and Garlapati are the owners of the Property. (FAC, ¶ 6.) Mr. Medina is over the age of 80. (*Id.* at ¶ 11.)

On April 8, 2022, Mr. Medina received notice from the senior regional manager of BAP, which stated that the owners of the building intended to relocate to the area and move into Plaintiffs' unit. (FAC, ¶ 12.) The Property owners, and manager, had knowledge that the owners would not actually move into Plaintiffs' unit and the owners had no legal basis for evicting Plaintiffs. (*Id.* at ¶¶ 13, 14.)

Upon eviction, Plaintiffs did not receive any relocation assistance or a rent waiver, as mandated by Civil Code section 1946.2, subdivision (d). (FAC, ¶ 15.) Plaintiffs resided at the Property for over two years and experienced profound stress and anxiety as a direct result of the mandated relocation, which was further exacerbated by Mr. Medina's age and challenging financial circumstances. (*Id.* at ¶ 16.)

On June 1, 2022, instead of returning Mr. Medina's security deposit, he was presented with a statement indicating an outstanding balance owed to the landlord, accompanied by a threat to report the debt negatively to a credit agency if not paid. (FAC, ¶ 17.)

On August 9, 2023, Plaintiffs filed their FAC, asserting the following causes of action against defendants:

1) Wrongful Eviction;
2) Fraud;
3) Intentional Infliction of Severe Emotional Distress;
4) Negligent Infliction of Emotional Distress;
5) Financial Elder Abuse;
6) Negligence; and
7) Security Deposit.

On January 18, 2024, defendants Thirthala and Garlapati (hereinafter, collectively "Defendants") filed a demurrer and motion to strike portions of the FAC. Plaintiffs oppose both motions.

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[1] BAP managed the Property on behalf of the owners. (FAC, ¶ 7.)

II. Procedural Matters

Untimely Motions

A defendant may demur or move to strike within the same period of time they have to answer the complaint – i.e., 30 days after service, unless extended by stipulation or court order. (Code Civ. Proc., § 430.40, subd. (a); Code Civ. Proc., § 435, subd. (b)(1) [motion to strike].)

Here, Plaintiffs filed their FAC with the Court on August 9, 2023. Defendants did not file their demurrer and motion to strike until January 18, 2024, 162 days after service of the FAC. There is nothing in the moving papers to indicate an extension of time to file a demurrer or motion to strike was entered into by stipulation or court order. Thus, both motions are untimely. With that said, the Court has discretion to consider an untimely demurrer or motion to strike. (Code Civ. Proc., § 473, subd. (a)(1) [court may, in furtherance of justice, and on any terms as may be proper, . . . enlarge the time for answer or demurrer]; *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 282 [trial court may exercise this discretion so long as it does not affect the substantial rights of the parties].)

While the Court will proceed with considering the merits of the motions, Defendants are reminded that they must follow all California rules of civil procedure going forward and failure to do so may result in their motions being denied or disregarded.

III. Defendants' Request for Judicial Notice in Support of Both Motions

In support of both of their motions, Defendants request the Court take judicial notice of the following documents:

1) Plaintiffs' Lease Agreement (Ex. A). The request is DENIED. There is no mention of the lease agreement in the FAC. Therefore, the Court does not find that Ex. A is a fact or proposition not reasonably subject to dispute and capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy, as required by Evidence Code section 452, subdivision (h). (*Cf. Marina Tenants Assn. v. Deauville Marina Development Co.* (1986) 181 Cal.App.3d 122, 130 [taking judicial notice of lease where provisions of the lease were alleged in pleading but not attached].)
2) Notice to Vacate Unit (Ex. B). For the same reasons as Ex. A, the request is DENIED.
3) Internet Bill addressed to Thirthala (Ex. C). The request is DENIED. In ruling on a demurrer, the Court treats the allegations as true and declines to turn a demurrer into an evidentiary hearing. Whether or not Defendants' utilities bills shows that Defendants moved back into the Property is not an issue before the Court. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114 ["hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable"].)
4) Deed/Title of Property (Ex. D). The request is DENIED. Defendants seek judicial notice of Ex. D to show that they are the owners of the Property. Plaintiffs do not dispute that Defendants' own the Property. (See FAC, ¶ 6.) Thus, it is unnecessary to take judicial notice of Ex. D. (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not "necessary, helpful, or relevant"].)

5) Water Utility Bill addressed to Thirthala (Ex. E). For the same reason as Ex. C, the request is DENIED.
6) PG&E Bills addressed to Thirthala (Ex. F). For the same reason as Ex. C, the request is DENIED.

IV. Demurrer

a. Legal Standard

In ruling on a demurrer, the court treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, [citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (*Blank*)].) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.)

b. Second Cause of Action – Fraud

Defendants argue Plaintiffs fail to allege facts sufficient to state a cause of action for fraud.

To state a cause of action for fraud, Plaintiffs must allege: 1) a misrepresentation (false representation, concealment, or nondisclosure); 2) knowledge of falsity; 3) intent to defraud; 4) justifiable reliance; and 5) resulting damage. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.)

"In California, fraud must be pled specifically; general and conclusory allegations do not suffice. . . . This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered." (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 184 [internal quotations, citations, and emphasis omitted].)

Defendants make the following arguments in support of their demurrer to the second cause of action: 1) Plaintiffs fail to plead Defendants' misrepresentations with particularity; 2) they fail to sufficiently allege an intent to defraud; and 3) they fail to allege they suffered any damages as a result of justifiable reliance on Defendants' alleged false statements.

i. Defendants' Misrepresentations

Defendants contend Plaintiffs do not allege how Defendants made a false statement or to whom the statements were made. (Demurrer, p. 8:7-8.) Plaintiffs do not substantively address this argument in their opposition. (See e.g., *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410 [failure to oppose creates inference that motion or demurrer is meritorious].)

In this case, the FAC alleges Plaintiffs received a notice from Scott Bartner, the Senior Regional Manager of BAP, stating the owners of the building intended to relocate to the area and occupy the unit. (FAC, ¶ 12.) The FAC is devoid of any allegations that Thirthala or Garlapati made any representations to Plaintiffs. While the second cause of action states that "DEFENDANTS" made these representations, "in the context of a demurrer, specific allegations control over more general ones." (*Chen v. PayPal, Inc.* (2021) 61 Cal.App.5th 559, 571.) Here, Paragraph 12 of the FAC specifically states that Scott Bartner sent the notice. No

other representations are alleged. Accordingly, Plaintiffs have not sufficiently alleged a false representation or how Defendants made that representation.

The demurrer to the second cause of action may be sustained for failing to allege fraud with the requisite specificity.

ii. Defendants' Remaining Fraud Arguments

Defendants additionally argue that Plaintiffs fail to allege intent to defraud or that they suffered damages as a result of justifiable reliance on Defendants' misrepresentations. The Court finds both of these arguments persuasive.

First, the FAC is devoid of allegations that Thirthala and Garlapati intended to deceive Plaintiffs or that they intended to alter their position to their injury. (See *Gagne v. Bertran* (1954) 43 Cal.2d 481, 488 [representations must be made with the intent to induce the recipient "'to alter his position to his injury or his risk'"].) Similarly, the FAC does not contain specific allegations that Plaintiffs justifiably relied on any of Defendants' representations. (See *Goehring v. Chapman University* (2004) 121 Cal.App.4th 353, 364 ["'Whatever form it takes, the injury or damage must not only be distinctly alleged but its causal connection with the reliance on the representations must be shown.'"].)

Based on the foregoing, the demurrer to the second cause of action is SUSTAINED with 10 days leave to amend.

c. Third Cause of Action – Intentional Infliction of Emotional Distress

Defendants next assert Plaintiffs cannot state a claim for intentional infliction of emotional distress ("IIED").

"The elements of a cause of action for IIED are as follows: (1) defendant engaged in extreme and outrageous conduct (conduct so extreme as to exceed all bounds of decency in a civilized community) with the intent to cause, or with reckless disregard to the probability of causing, emotional distress; and (2) as a result, plaintiff suffered extreme or severe emotional distress. (*Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1273.)

"Liability for IIED does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. Malicious or evil purpose is not essential to liability for IIED." (*Crouch v. Trinity Christian Center of Santa Ana, Inc.* (2019) 39 Cal.App.5th 995, 1007 [internal quotations omitted].) Additionally, "[i]t is not enough that the conduct be intentional and outrageous. It must be conduct directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware." (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903.)

Defendants argue Plaintiff's IIED allegations are conclusory and fail to state which act of Defendants' was outrageous or exceeded all bounds of decency, how they suffered serious emotional distress, or how the emotional distress was proximately caused by Defendants. (Demurrer, p. 11:19-25.)

In opposition, Plaintiffs assert the FAC alleges Defendants knew Plaintiffs were vulnerable due to their advanced age and financial circumstances (FAC, ¶ 16); Defendants did not follow the law and fabricated a ruse to wrongfully terminate their tenancy (*id.* at ¶ 1); and that Defendants acted recklessly in taking advantage of Plaintiffs (*id.* at ¶ 47). Plaintiffs contend these allegations are sufficient to allege IIED. (See Opposition, p. 4:19-24.)

Courts have determined that a tenant may sue his landlord for IIED if the landlord's acts are extreme and outrageous and result in severe mental distress. (*Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 922.) "The modern rule is that there is liability for conduct exceeding all bounds usually tolerated by a decent society, of a nature which is especially calculated to cause, and does cause, mental distress. 'Behavior may be considered outrageous if a defendant (1) abuses a relation or position which gives him power to damage the plaintiff's interest; (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress.'" (*Id.* at p. 921 [internal quotations omitted].) For example, the First District Court of Appeal determined that a landlord acted outrageously when he called the tenant a troublemaker, shouted at her, ordered her to leave the apartment in three days, and threatened her with physical violence. (*Newby v. Alto Riviera Apartments* (1976) 60 Cal.App.3d 288, 297 [superseded by statute on other grounds].)

Here, the alleged outrageous conduct is that Plaintiffs were sent a letter informing them that the owners of the Property would be moving in and that they would need to move out. (FAC, ¶ 12.) However, the owners never actually intended to move back into the Property. (*Id.* at ¶ 13.) The Court does not find that these allegations, on their own, are sufficient to rise to extreme and outrageous conduct. (See e.g., *Okorie v. Los Angeles Unified School Dist.* (2017) 14 Cal.App.5th 574, 597 ["the requirements for establishing [extreme and outrageous conduct] are rigorous, and difficult to satisfy"][internal quotations omitted]; *Yurick v. Superior Court* (1989) 209 Cal.App.3d 1116, 1129 [plaintiff failed to allege details or context showing defendant acted in an outrageous or extreme manner].) Accordingly, the demurrer to the third cause of action may be sustained for failing to allege sufficient facts.

As such, the demurrer to the third cause of action is SUSTAINED with 10 days leave to amend.

d. Fourth Cause of Action – Negligent Infliction of Emotional Distress

Defendants finally argue that Plaintiffs cannot state a claim for negligent infliction of emotional distress ("NIED").

The California Supreme Court explains that "'the *negligent* causing of emotional distress is not an independent tort, but the tort of *negligence*. The traditional elements of duty, breach of duty, causation, and damages apply.'" (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1072 [emphasis original].) NIED cases may result where the plaintiff suffers "damages for serious emotional distress . . . as a result of a breach of duty owed [to] the plaintiff that is "assumed by the defendant or imposed on the defendant as a matter of law, or that arises out of a relationship between the two."'" (*Id.* at p. 1073.) A tenant may state a cause of action against a landlord for NEID for tortious interference with property rights, as long as the landlord's acts constitute a tort grounded in negligence. (See *Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1299; *Stoiber*, *supra*, 101 Cal.App.3d at p. 922.)

Defendants first assert that Plaintiffs fail to allege a violation of their tenancy rights once their tenancy became month to month. (Demurrer, p. 13:1-11.) On demurrer, a court is confined to the allegations in the pleading or anything subject to judicial notice. There are no allegations of a month-to-month tenancy in the FAC and the Court has declined to take judicial notice of Defendants' requested documents. Thus, their first argument is unavailing. Defendants next argue that Plaintiffs fail to allege facts showing they suffered emotional distress that was serious in nature and so they have failed to allege causation. (*Id.* at p. 13:12-16.)

In opposition, Plaintiffs argue they alleged in the FAC that Defendants knew Plaintiffs were vulnerable due to their advance age and financial situation (FAC, ¶ 16); that there is a duty of care between a landlord and tenant; Defendants' sent termination notices with false information (FAC, ¶ 1); and Defendants acted recklessly. (Opposition, p. 4:3-8.)

The Court does not find Plaintiffs' allegations to be sufficient. First, there are no allegations in the FAC of the duty owed by Defendants to Plaintiffs.[2] Moreover, the fourth cause of action does not allege how any duty was breached by Defendants. Plaintiffs reference Paragraphs 1 through 20 in their fourth cause of action; however, these paragraphs allege only that BAP sent them a letter notifying them that Defendants' would be moving back to the Property and that they needed to move out. (FAC, ¶ 12.) The fourth cause of action conclusively alleges that Defendants had no legal basis for evicting Plaintiffs. (*Blank*, *supra*, 39 Cal.3d at p. 318 [court treats demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law].) Without more, Plaintiffs have not sufficiently alleged NIED.

Accordingly, the demurrer to the fourth cause of action for failing to allege facts sufficient to constitute a cause of action is SUSTAINED with 10 days leave to amend.

V. Motion to Strike

Defendants move to strike allegations related to punitive damages and their prayer for punitive damages. As discussed above, the Court has sustained Defendants' demurrer in its entirety. Accordingly, the motion to strike is MOOT.

VI. Conclusion and Order

The demurrer is SUSTAINED in its entirety with 10 days leave to amend. The motion to strike is MOOT. The Court shall prepare the final order.

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[2] While the Court may infer a landlord-tenant relationship between Defendants and Plaintiffs (see *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1111-1112 [in reviewing sufficiency of complaint against general demurrer, court treats as true "not only the complaint's material factual allegations, but also facts that may be implied or inferred from those expressly alleged"]), it is still not clear what duty Defendants owed to Plaintiffs in this role, and then subsequently breached.

Calendar Line 3
Case Name: *Pruneyard Office Investors LLC v. Fields, et al*.
Case No.: 23CV425467

I. Background

A. Facts

This is an action for breach of contract, among other things. According to the Complaint, Pruneyard Office Investors LLC ("Plaintiff,") acquired commercial real estate located in Campbell, California ("Subject Building,") from CFEP Pruneyard LLC ("CFEP") in 2019. (Complaint, ¶¶ 10-11.) Prior to the acquisition, Westfield Partner, LLC ("Westfield") entered into a written lease agreement with CFEP ("Agreement,") and Edward Fields, a managing member of Westfield ("Fields" or "Defendant,") executed a written Guaranty of Lease (the "Guaranty") (Complaint, ¶¶ 11-13.) As part of Plaintiff's acquisition, CFEP assigned its "rights, title, and interest," in both the Agreement and Guaranty, to Plaintiff. (Complaint, ¶ 14.) After Plaintiff became the landlord of the Subject Building, Westfield and Fields materially breached the Agreement by failing to pay rent. (Complaint, ¶ 18.)

B. Procedural

Plaintiff filed the original and still-operative complaint on November 1, 2023.
The Complaint states the following causes of action: (1) breach of contract (against Westfield); and (2) breach of guaranty (against Fields).

On November 13, 2023, per an "Affidavit of Due Diligence," Plaintiff's process server attempted to serve Fields with the summons and complaint ("S&C") at his physical address in Los Gatos, but the property appeared "visibly vacant." (Declaration of Bryan S. Silverman in Support of Opposition ("Opp.") to Motion to Quash Service of Summons ("Motion") ("Silverman Decl.,") ¶ 4; Exh. B.) Plaintiff alleges that Defendant Fields was served via "substitute service" on November 29, 2023, and served again, via mail, on December 4, 2023. (Silverman Decl., ¶ 6; Exh. E.) Specifically, on November 29, 2023, Plaintiff personally served the S&C at a UPS Store, where Fields allegedly maintained a mailbox, leaving the S&C with Walter Croce, the UPS manager. (*Ibid*; Declaration of Cedric Severino in Support of Motion ("Severino Decl.,") ¶¶ 4-5.) On that same day, the S&C was mailed to that same address. (Silverman Decl., ¶ 6; Exh. E). On November 30, 2023, the UPS manager allegedly placed the S&C packet in Fields' UPS mailbox. (Silverman Decl., ¶ 7.) On December 4, 2023, the UPS manager mailed a second set of the S&C packet, originally served by the process server, "to the last known home or personal address of the mail receiving service customer, Edward Fields." (Silverman Decl., ¶ 7; Severino Decl. ¶ 8; see also Declaration of Walter Croce attached as Exh. F ("Croce Decl.")

Now before the Court is Defendant Fields' motion to quash service of S&C filed on January 5, 2024. Making a special appearance, Fields filed the instant motion for lack of personal jurisdiction on the ground that he was improperly served with the S&C pursuant to Code of Civil Procedure sections 418.10, subdivision (a)(1), 415.20, and 415.30.

Plaintiff opposed the motion on February 28, 2024. Fields filed a reply on April 25, 2024.

II. Defendant Fields' Motion to Quash Service of Summons

A. Legal Standard

Where a "defendant claims that he has not been served or that the service is legally insufficient, he may seek relief *by making a special appearance* and moving the court for an order quashing the service." (*Riskin v. Towers* (1944) 24 Cal.2d 274, 277, emphasis added.)

Code of Civil Procedure section 418.10, subdivision (a)(1) authorizes a defendant to file a motion to quash service of summons "on the ground of lack of jurisdiction of the court over him or her." (Code Civ. Proc. § 418.10, subd. (a)(1).) "[A] motion to quash under section 418.10, subdivision (a)(1) is a limited procedural tool to contest personal jurisdiction over the defendant where the statutory requirements for service of process are not fulfilled." (*Stancil v. Superior Court* (2021) 11 Cal.5th 381, 390.)

"When a defendant argues that service of summons did not bring him or her within the trial court's jurisdiction, the plaintiff has 'the burden of proving the facts that did give the court jurisdiction, that is the facts requisite to an effective service.'" (*American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 387 (*Zara*) [citing *Coulston v. Cooper* (1966) 245 Cal.App.2d 866, 868]; see also *HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1167 ["A plaintiff opposing a motion to quash service of process for lack of personal jurisdiction has the initial burden to demonstrate facts establishing a basis for personal jurisdiction"].) Personal jurisdiction will be deemed lacking where service of the summons and complaint fails to comply with the statutory procedures regarding the manner of service of process. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1444.)

B. Analysis

Fields asserts service of the S&C was improper on two grounds: (1) Plaintiff failed to meet the requirements for substitute service; and (2) Plaintiff failed to meet the requirements for service via mail.

1. Attempt at Personal Service

Fields claims Plaintiff's substitute service of process was improper because "no declaration or other support was provided that the process server first exercised due diligence to personally serve Fields," and "made reasonable efforts to personally serve Defendant Fields before serving him via substituted service . . ." (Severino Decl. ¶ 6.)

"[A] summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served." (Code Civ. Proc., § 415.10.) In lieu of personal service, Code of Civil Procedure section 415.20, subdivision (b) permits substitute service when "a copy of the summons and complaint *cannot with reasonable diligence* be personally delivered to the person to be served." For individual defendants, substitute service is available only after a *good faith attempt* at personal service. (*Id.*, § 415.20, subd. (b); see also *Evartt v. Super. Ct. (Kellet)* (1979) 89 Cal.App.3d 795, 797-801 (*Evartt*) ["[A]s a prerequisite to substitute service reasonable diligence must be exercised to effect personal service."] Requiring "[s]trict compliance with the provision requiring reasonable diligence to accomplish personal service before a secondary means of service is permitted." (*Evartt, supra,* at p. 801.)

Plaintiff contends Fields failed to provide a usable property address for personal service in his Guaranty of Lease.[3] (Opp., pp. 3, 6:9-14.) Plaintiff's registered process server is Luis Arturo Mendez ("Mendez"). (Silverman Decl., ¶ 3; Exh. B.) On November 13, 2023, Mendez attempted to serve Fields at the address listed on the Guaranty: 14810 Clara Street, Los Gatos, CA 95032. (Opp., p.3:20-22; Silverman Decl., ¶ 3; Exh. B.) Mendez described the property at that address as follows: "This is a bad address. The property is visibly vacant. [W]ill hold for further instructions." (Silverman Decl., ¶ 3; Exh. B.) Plaintiff claims Fields did not provide additional addresses in connection with the Guaranty. (*Ibid.*) Plaintiff argues that it made a "diligent attempt" to serve Fields at the address listed on the Guaranty. (Opp., p. 6: 9-14.) Because he was not able to effect personal service, he was entitled to serve by substitute service.

Fields insists Plaintiff's personal service attempt was improper because Mendez's affidavit of due diligence was not filed with a proof of service demonstrating "reasonable efforts were made to first serve Fields personally." (Reply to Opp. ("Reply"), p. 2.) This Court agrees. Because it was not filed as part of the proof of service, there is no way to tell that Plaintiff was entitled to be served by substitute service. Had the affidavit been filed with the Court, it may have been sufficient, but it was not. Plaintiff's attempt to now make the affidavit part of the record is insufficient. The propriety of the service must be plain on its face. How else could one tell if a default judgment should be entered, for example? See *Kremerman v. White* (2021) 71 Cal.App.5th 358, 370 (in determining facial validity of default, court considers only the summons, the affidavit or proof of service, the complaint, the request for entry of default, and a copy of the judgment). In this case, had Fields not responded, Plaintiff would not be entitled to a default judgment based on the proof of service filed here.

Accordingly, service was improper.

2. Attempt at Substitute Service

Even if Plaintiff were entitled to serve Fields by substitute service, that service was also improper.

Fields claims Plaintiff's substitute service was improper because it failed to demonstrate "the address at the CMRA[4] was the only reasonably known for [Fields]." (Severino Decl. ¶ 6.) Fields further alleges, no declaration was provided demonstrating the "CMRA to whom the documents were served deposited them in the Plaintiff's mailbox within 48 hours of being served." (Severino Decl. ¶ 7.)

Because Plaintiff was unable to complete personal service on Fields, Plaintiff must show that there was effective substitute service of Fields. Fields contends, in both his motion and reply, that Plaintiff failed to demonstrate the address at the CMRA was the only address reasonably known to Plaintiff. (Motion, p. 5; Reply, p. 2.) In support, Fields asserts the

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[3] In the written Guaranty of Lease, Fields provided the following physical address in the "Address of Guarantor" section: 14810 Clara Street, Los Gatos, CA 95032. (See Silverman Decl., ¶ 2; Exh. A.)

[4] Commercial Mail Receiving Agency.

statement of information ("SOF,") upon which Plaintiff relies, lists an additional business address: 1999 S. Bascom Ave., #1020 Campell, CA 95008. (Reply, p. 2; Silverman Decl., ¶ 4; Exh. D.) He further alleges Plaintiff did not provide a declaration to demonstrate Croce, to whom the documents were served, "deposited them in the Plaintiff's mailbox within 48 hours of being served." (Motion, pp. 5-6; Reply, p. 2. Severino Decl. ¶ 7:23-27.)

Substitute service is a means of service available as set forth in Code of Civil Procedure, section 415.20, subdivision (b):

> [I]f a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served [ ] *a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business,* or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left.

(Code Civ. Proc., § 415.20, subd. (b) [substitute service for individuals], emphasis added.)

Finally, "[n]otwithstanding [Code of Civil Procedure section 415.20,] subdivision (b), if *the only address reasonably known for the person to be served is a private mailbox obtained through a commercial mail receiving agency, service of process may be effected on the first delivery attempt* by leaving a copy of the summons and complaint with the commercial mail receiving agency in the manner described in subdivision (d) of Section 17538.5 of the Business and Professions Code." (Code Civ. Proc., § 415.20, subd. (c), emphasis added.)

Once Plaintiff discovered that the address Fields provided on the Guaranty was a "bad address," Plaintiff attempted to serve Fields at the address provided in the SOF filed with the California Secretary of State ("CSS") (Silverman Decl., ¶ 4, Ex. C; Opp., p. 6:15-22.) The address - 1821 South Bascom Avenue #383, Campbell, CA 95008 - was linked to Fields' private mailbox at a UPS Store. (Silverman Decl., ¶ 4, Ex. C; Opp., p. 6:25-28.) As Fields correctly notes in its reply, this is not the *only* address listed on the SOF. (See Exh. D.) Despite this fact, the UPS Store Owner, Walter Croce ("Croce,") was served with the S&C by Plaintiff's two registered process servers on November 29, 2023. (Exhs. E-F, Croce Decl., ¶ 2.) The next day, Croce attempted to serve Fields by depositing the S&C into Fields' private mailbox (Croce Decl., ¶ 3; Exh. F.) On December 4, 2023, Croce mailed a second set of the S&C packet to - 1999 S. Bascom Ave., # 1020 Campbell, CA 95008, the alternative business address listed in the SOF. (Silverman Decl., ¶ 7, Croce Decl., ¶ 4, Exhs. A, C.)

Plaintiff insists service at the "private mailbox" address was proper because it was *the only known address* for Fields, in particular. (See Exh. C.) But, Code of Civil Procedure section 415.20, subdivision (b), permits substitute service on a "person's . . . usual place of business." Thus, given that the additional address listed in the SOF was a business street address linked to Westfield, and Plaintiff concedes Fields is a managing member of Westfield, (Complaint, ¶ 3), substitute service at the CMRA is improper. The Court agrees with Fields

that the address linked to the private mailbox is *not* the only address reasonably known for service per the SOF.

In *Kremerman v. White* (2021) 71 Cal.App.5th 358, the Court of Appeal held the trial court abused its discretion in denying a tenant's motion to vacate a void default judgment because the landlord's substituted service was invalid, among other facial defects. (*Id.*, p. 374.) Specifically, in this case, the serving party was aware of alternative addresses besides a private mailbox held by a CMRA. (*Id.,* p. 373 ["it is undisputed that Kremerman was aware that White had another address, i.e., the address to her Woodland Hills home, as he included her home address on the security deposit itemization form"].) Thus, the landlord's service of process to a private mailbox did not comply with Code of Civil Procedure section 415.20, subdivision (c). (*Id.,* p. 374.) Similarly, here, upon its review of the SOF, Plaintiff was apprised of the additional business address associated with Fields. (See Exh. C.) Consequently, Plaintiff has failed to demonstrate that Fields' private mailbox was the only address "reasonably known" for service.

Finally, citing, inter alia, *Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal.3d 773, 778, Plaintiff argues that substantial compliance with the statutory provisions for service of process is sufficient. (Opp., p. 5:20-26.) Fields counters that strict compliance with statutory provisions governing service of process is required for substitute service. (Motion, p. 6:25-28:7:1-13.) The language from the Supreme Court's decision in *Pasadena Medi-Center* that Plaintiff relies on was questioned by the Sixth District Court of Appeal in *Bishop v. Silva* (1991) 234 Cal.App.3d 1317, 1323 (*Silva*), which explained that after amendments to the relevant statutes, "the Legislature unequivocally signaled that the service statutes are no longer to be 'liberally construed.' In fact, as quoted above, the Law Revision Commission stated that the excuses for noncompliance are to be 'strictly construed.'" Here, under the Sixth District's "strict compliance" approach to service statutes, the Court concludes Plaintiff failed to perfect substitute service as to Fields.

3. Service by Mail

In the motion, Fields contended "service via mail" has not been effectively made because Plaintiff failed to provide a receipt of summons to him. (Motion, p. 6:16-22; Severino Decl. ¶ 8.) Specifically, Fields claimed Plaintiff attempted to serve Fields at another physical address via mail, but there are no allegations that a "return receipt form" was provided nor received back. (Severino Decl., ¶ 9.) But, Plaintiff did not assert, in opposition, that it attempted service by mail in lieu of personal service. Rather, Plaintiff is solely arguing that substituted service was proper pursuant to Business & Professional Code section 17538.5, subd. (d)(1).) Consequently, the Court need not address Fields' contention.

III. Conclusion

Fields' motion to quash service of summons and complaint is GRANTED.

The Court will prepare the final order.

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Calendar line 4
Case Name: Richard Pierce et al vs Raincross Fuel & Oil, et al.
Case No.: 19CV343789

Plaintiff Richard Pierce moves for reconsideration of the Court's order granting Corporate Air Techonology's (CAT's) and Steve Frost's (collectively Defendants') motion for summary judgment.

A motion for reconsideration must be based on "new or different facts, circumstances, or law." CCP section 1008(a). Plaintiff's request is based on his having substituted in as his own lawyer on October 27, 2023, the fact that the case is complicated and Plaintiff is not skilled in legal matters, and Plaintiff's failure to advise his new attorney of the date for the hearing on the motion for summary judgment. See Motion pp3-4. Plaintiff's decision to represent himself, despite the complexity of the case and his ignorance of legal matters, and his failure to advise his counsel of the pending motion do not constitute new facts, new law, or new circumstances. Moreover, Plaintiff's self-representation is not a basis for reconsideration. To the contrary, the law is clear that "[self-represented] litigants are held to the same standards as attorneys." (*Kobayashi v. Super. Ct. (Han) (*2009) 175 Cal.App.4th 536, 543; see also *McClain v. Kissler* (2019) 39 Cal.App.5th 399, 428, fn. 18 (stating that "clients who represent themselves are held to the same standard of excusable neglect as litigants who are represented by counsel"); see also *Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1413 (stating that "when a litigant accepts the risks of proceeding without counsel, he or she is stuck with the outcome, and has no greater opportunity to cast off an unfavorable judgment than he or she would if represented by counsel"); see also *A.G. v. C.S.* (2016) 246 Cal.App.4th 1269, 1288 (stating that "the in propria persona litigant is held to the same restrictive rules of procedure as an attorney").

While not controlling, the facts included in Plaintiff's motion would not change the result of the summary judgment motion in any event. The declaration of his expert Wayne Sand was included in Defendants' exhibits and the article from "Kathryn's Report" is inadmissible hearsay.

Because Plaintiff cannot meet his burden under CCP section 1008(a), the motion for reconsideration is DENIED. Defendants shall submit the final order.

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