SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: September 3, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

FOR ORAL ARGUMENT: Before 4:00 PM 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 at the hearing to contest the ruling

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in-person appearances. If you must appear virtually, you must use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

https://www.scscourt.org/general_info/court_reporters.shtml

FOR YOUR NEXT HEARING DATE: Use Court Schedule to reserve a hearing date for your next motion. Court Schedule is an online scheduling tool that can be found on the court's website here:

https://reservations.scscourt.org/

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	21CV375334	David Duff et al vs Earth Bound Homes, Inc. et al	Western Surety Company's motion to discharge, dismiss, and for a restraining order is GRANTED. A notice of motion with this hearing date and time was served on all interested parties by electronic and United States mail on July 25, 2024. No party opposed the motion. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion, since the moving party has no interest in the $15,000. Moving party to prepare formal order.
2	22CV401180	Wesco Insurance Company vs Advance Staffing Inc.	Plaintiff Wesco Insurance Company's motion for entry of judgment pursuant to the parties' settlement agreement and Code of Civil Procedure section 664.6 is GRANTED. Moving party to promptly prepare form of judgment.
3	23CV412655	Anh Phan et al vs Kim Mai	Plaintiff's demurrer to Defendant's answer is SUSTAINED, IN PART. Scroll to line 3 for complete ruling. Court to prepare formal order.
4	23CV425677	Angel Alas vs Javier Villalobos	Defendant's motion for judgment on the pleadings is GRANTED WITHOUT LEAVE TO AMEND. Scroll to line 4 for complete ruling. Court to prepare formal order.
5	24CV441797	MIGUEL RUVALCABA et al vs FORD MOTOR COMPANY et al	Moving party was dismissed without prejudice on August 20, 2024. This motion is therefore moot.

Calendar Line 3
Case Name: *Anh Phan, et al., v. Kim Mai*
Case No.: 23CV412655

Before the Court is plaintiffs Anh Tuan Phan's, Linda Phan's, and the Estate of Hanh Thi Ly's (collectively, "Plaintiffs") demurrer to defendant Kim Mai's ("Mai") answer ("Answer"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Background

According to the FAC, on February 10, 2023, at approximately 5:39 a.m., Mai struck Ly as she was crossing Merrill Avenue with an assistive device. (FAC, p. 6.) Instead of stopping to check on her or calling emergency services, Mai fled the scene. (*Ibid*.) Emergency services were only contacted when another driver came upon Ly's body, and she was pronounced dead at 6:05 a.m. (*Ibid*.) After fleeing the scene of the incident, Mai filed a false report claiming that the damage to her vehicle was caused by a shopping cart. (*Ibid*.)

Plaintiffs initiated this action on March 6, 2023 and filed the FAC on January 22, 2024, asserting (1) motor vehicle negligence, (2) general negligence, (3) general negligence (survival action), and (4) intentional tort. On May 15, 2024, the Court issued its order denying Mai's motion to strike. On July 3, 2024, Mai filed her answer to Plaintiffs' FAC. On July 15, 2024, Plaintiffs filed the instant motion which Mai opposes.

II. Legal Standard for Demurrer

Section 430.30 of the Code of Civil Procedure allows a plaintiff to demur to a defendant's answer. (Code Civ. Proc., § 430.30 ["When any ground for objection to a[n] … answer appears on the face thereof, or from any manner of which the court is required to or may take judicial notice, the objection on that ground may be taken by a demurrer to the pleading."].) A party against whom an answer has been filed may demur to that answer on any one or more of the following grounds: (a) the answer does not state facts sufficient to constitute a defense; (b) the answer is uncertain; and (c) where the answer pleads a contract, it cannot be ascertained from the answer whether the contract was written or oral. (Code Civ. Proc., § 430.20.)

The demurrer may be to the whole answer or to any one or more of the several defenses set up in the answer. (Code Civ. Proc., § 430.50 subd. (b).) The plaintiff may not, however, demur to part of

a defense and, to determine the sufficiency of a defense, it must be considered as a whole. (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 733 (*South Shore Land Co.*).) Each defense must be considered separately without regard to any other defense, and one defense does not become insufficient because it is inconsistent with any other parts of the answer. (*Ibid*.) The critical inquiry when a plaintiff demurs to an answer is whether the answer raises a defense to plaintiff's stated cause of action. (*Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 880.) Affirmative defenses presented in an answer must plead ultimate facts to the same extent as required in a complaint. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384 (*FPI Development*).) Thus, for any "new matter" for which a defendant has the burden of proving at trial, the defendant must plead supporting facts. (*California Academy of Sciences v. County of Fresno* (1987) 192 Cal.App.3d 1436, 1442.) Affirmative defenses consisting of legal conclusions will not survive demurrer nor motion for judgment on the pleadings. (*Westly v. Board of Administration* (2003) 105 Cal.App.4th 1095, 1117 (*Westly*).)

"The determination of whether an answer states a defense is governed by the same principles which are applicable in determining if a complaint states a cause of action." (*South Shore Land Co., supra,* 226 Cal.App.2d at p. 732.) "[T]he demurrer to the answer admits all issuable facts pleaded therein and eliminates all allegations of the complaint denied by the answer." (*Id*. at p. 733.) Unlike a demurrer to a complaint, "the defect in question need not appear on the face of the answer" as "[t]he determination of the sufficiency of the answer requires an examination of the complaint because its adequacy is with reference to the complaint it purports to answer." (*Ibid.*)

III. Analysis

Plaintiffs demur to affirmative defenses 1, 3-4, and 6-11 in the Answer on the ground they fail to state facts sufficient to constitute a defense:

(1) First Affirmative Defense-Statute of Limitations,

(2) Third Affirmative Defense-Failure to State a Cause of Action,

(3) Fourth Affirmative Defense-Assumption of Risk,

(4) Sixth Affirmative Defense-Failure to Mitigate,

(5) Seventh Affirmative Defense-Negligent Maintenance,

(6) Eighth Affirmative Defense-Unclean Hands,

(7) Ninth Affirmative Defense-Settlement and Extinguishment,

(8) Tenth Affirmative Defense-Accord and Satisfaction, and

(9) Eleventh Affirmative Defense-Estoppel.

A. First Affirmative Defense: Statute of Limitations

The Answer alleges "the causes of action purported to be stated in Plaintiffs' Complaint are barred in their entirety by the provisions of 335.1 of the Code of Civil Procedure." (Answer, p.1:28-2.)

Code of Civil Procedure section 458, provides:

> In pleading the statute of limitations, it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of Section ____ (giving the number of the section and subdivision thereof, if it is so divided, relied upon) of The Code of Civil Procedure.

(Code Civ. Proc., § 458.)

Although Mai identifies the statute under which Plaintiffs' FAC is purportedly time-barred, the Court can refer to the FAC itself in assessing the sufficiency of the Answer. (See *South Shore Land Co.*, *supra*, 226 Cal.App.2d at p. 733.) Code of Civil Procedure section 335.1, provides, "[w]ithin two years: an action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another." (Code Civ. Proc., § 335.1.) Plaintiffs allege the events took place on February 10, 2023, and they initiated their action on March 6, 2023, which is clearly within the statute of limitations. Mai fails to offer any response to this argument, effectively conceding this point. (See *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 566 [failure to address a point operates as a concession].)

While Mai requests leave to amend her Answer, the Court does not see how she can successfully amend this affirmative defense. Thus, Plaintiffs' demurrer to the first affirmative defense is SUSTAINED WITHOUT LEAVE TO AMEND.

B. Third Affirmative Defense: Failure to State a Cause of Action

The Answer states, "the complaint and each and every cause of action thereof, fail to state facts sufficient to constitute a cause of action as to this answering defendant. Specifically, Plaintiffs fail to state facts supporting their claim of "willful and knowing disregard" contentions asserted in their cause of action for Intentional Infliction of Emotional Distress." (Answer, p.2:12-15.)

An affirmative defense based on the failure to state a cause of action does not require facts to be alleged in support because it denies the material allegations of the complaint in affirmative form rather than raising any new matters. (See Code Civ. Proc., § 431.30, subd. (b)(1); see also *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 239 ["'New matter' is something relied on by a defendant which is not put in issue by the plaintiff, and including any issue on which defendant bears the burden of proof which must be specially pleaded in the answer"].) The demurrer to this affirmative defense is based on the failure to state facts sufficient to constitute a defense, however, no additional facts are required to sufficiently state this defense. (See Code Civ. Proc., § 430.20, subd. (a).) While alleging such an affirmative defense may be duplicative and unnecessary, Mai sufficiently alleges it. Thus, Plaintiffs' demurrer to the third affirmative defense is OVERRULED.

C. Remaining Affirmative Defenses

Plaintiff argues the Answer fails to allege any facts in support of the remaining affirmative defenses and the Court agrees. For example, the fourth affirmative defense (assumption of risk) and the seventh affirmative defense (negligent maintenance) are boilerplate and do not allege any facts involved *in this case*. Similarly, the sixth affirmative defense simply alleges, "[t]his answering defendant is informed and believes and thereon alleges that plaintiff could've mitigated his alleged injuries, damages, or losses, if any, by the exercise of reasonable efforts…" (Answer, p.3:12-15.) Likewise, the eighth affirmative defense (unclean hands) alleges, "[t]his answering defendant is informed and believes and thereon alleges that plaintiff is barred from recovery by the equitable doctrine of unclean hands" and the eleventh affirmative defense (estoppel) alleges, "[t]his answering defendant is informed and believes and thereon alleges that plaintiff is barred from recovery by the equitable doctrine of estoppel." (Answer, p. 3:26-27, 4:9-11.) The remaining affirmative defenses are devoid of any facts and consist solely of legal conclusions, which are insufficient to support

affirmative defenses. (*FPI Development, supra,* 231 Cal.App.3d at 384 [affirmative defenses must not be pled as "terse legal conclusions," but "rather…as facts 'averred as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint'."].)

While Mai argues discovery will determine the validity of the defenses, affirmative defenses must "be alleged with as much factual detail as the allegations of a complaint." (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 813.) Mai fails to do that here, and as a result, her Answer cannot survive demurrer. (*Westly, supra,* 105 Cal.App.4th at p. 1117.) Thus, Plaintiffs' demurrer to the fourth (assumption of risk), sixth (failure to mitigate), seventh (negligent maintenance), eighth (unclean hands), ninth (settlement and extinguishment), tenth (accord and satisfaction), and eleventh (estoppel) affirmative defenses is SUSTAINED with 20 days leave to amend.

Calendar Line 4
Case Name: Angel Alas vs Javier Villalobos
Case No.: 23CV425677

Before the Court is Defendant Javier Villalobos' motion for judgment on the pleadings as to Plaintiff Angel Alas' complaint.

I. Background

It appears from the complaint that Plaintiff leased property from Defendant to run a business, and Defendant evicted Plaintiff as part of a plan to sell the property. Plaintiff's lengthy complaint recounts various times when Defendant and his wife were allegedly rude and abusive, including a time when they demanded a two year lease be signed and that Plaintiff clean up the property by disposing of TVs and other items. Plaintiff filed this lawsuit on November 13, 2023 identifying claims for breach of contract and property damage in the caption. Plaintiff's complaint does not separately allege the elements of these claims or include a prayer for relief.

Plaintiff is self-represented. Although a judge should ensure that self-represented litigants are not being misled or unfairly treated (see *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284), self-represented litigants are entitled to no greater consideration than other litigants with respect to the Code of Civil Procedure. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444; *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543 (self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure); see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) "[W]e cannot disregard the applicable principles of law and accord defendant any special treatment because he instead elected to proceed in propria persona. [Citations.]" (*Stein v. Hassen* (1973) 34 Cal. App. 3d 294, 303.) "A litigant has a right to act as his own attorney [citation] 'but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts.'" (*Lombardi v. Citizens Nat'l Trust & Sav. Bank* (1955) 137 Cal.App.2d 206, 208-209.)

II. Legal Standard and Analysis

A motion for judgment on the pleadings is the functional equivalent of a general demurrer. (*Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 548; *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999; *Shea Homes Limited Partnership v. County of*

Alameda (2003) 110 Cal.App.4th 1246, 1254 (*Shea*).) A defendant can move for judgment on the pleadings on the grounds that (1) the court has no jurisdiction of the subject of the cause of action alleged in the complaint and/or (2) the complaint does not state sufficient facts to constitute a cause of action. (Code Civ. Proc., § 438, subd. (c)(1)(B)(i)-(ii).) "The grounds for the motion must appear on the face of the complaint, and in any matters subject to judicial notice. [Citation.] The court accepts as true all material factual allegations, giving them a liberal construction, but it does not consider conclusions of fact or law, opinions, speculation, or allegations contrary to law or judicially noticed facts. [Citations.]" (*Shea, supra,* 110 Cal.App.4th at p. 1254; *Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.) The general rule is that statutory causes of action, which includes alleged violations of the Song-Beverly Act, must be pleaded with particularity. (See *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780, 795; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.)

Here, Plaintiff fails to allege any contract between himself and Defendant that could have been breached. Plaintiff's allegations seem to assert that the parties had a month-to-month lease, and that at some point Defendant demanded Plaintiff sign a two-year lease that Plaintiff refused to sign. The month-to-month contract (if there was one) was terminated in the context of the unlawful detainer action. And Plaintiff refused to sign a new lease. Without a contract, there can be no breach of contract claim.

Next, there is no cause of action for "property damage". To the extent this claim relates to the TVs and other items Plaintiff claims he was forced to discard, that could potentially be a form of damage, but it is unclear what claim Plaintiff is asserting or what damage Plaintiff is claiming.

Finally, Plaintiff failed to oppose this motion despite being served with the motion by U.S. mail on July 23, 2024. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) This also means that Plaintiff failed to explain how, if at all, the complaint could be amended to overcome these issues.

Accordingly, Defendant's motion for judgment on the pleadings is GRANTED WITHOUT LEAVE TO AMEND.