

**Re: Motion for Summary Judgment**

**Date: December 5, 2017**

HMJ Paso Robles LLC (Plaintiff) brings this unlawful detainer action against TenderLand Renewables, LLC (Defendant) to gain possession of real property at 590 Linne Road, Paso Robles, California (“Property”) after service of a Three Day Notice to Pay Rent or Quit (“Notice”) as well as for back-due rent and damages. Plaintiff now moves for summary judgment on its unlawful detainer claim. Opposition to the motion may be made orally at the hearing or in writing. (CRC 3.1351(b).) No opposition has yet been filed.

Summary judgment is proper when there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc. § 437c(c).) A plaintiff has the burden to show there are no triable issues of fact and there is proof of each element of the cause of action entitling plaintiff to summary judgment. (Code Civ. Proc. §437c(p)(1).)

Plaintiff sets forth material facts supported by a declaration from Julie Galvin (“Galvin”), an employee of Plaintiff’s property manager, Defendant’s Application/Motion that Defendant made to Vacate the Entry of Default and the Declaration of Daniel B. Jones in support of that Application/Motion.<sup>1</sup> Plaintiff establishes that it has a landlord-tenant relationship governed by a commercial written rental agreement with Defendant, that Defendant failed to pay the full amounts of monthly rent due under the terms of the agreement, that Defendant’s tenancy was terminated by service of a three day notice to pay or quit and Defendant continues to occupy the premises. Plaintiff therefore meets its burden establishing a prima facie case that there are no triable issues of material fact and that it is entitled to an unlawful detainer judgment as a matter of law under Code of Civil Procedure section 1161(2) (Code Civ. Proc. §437c(c).) While there is no opposition to date, Defendants may oppose the motion up until the time of the hearing. In its answer Defendant asserts that the Notice overstated the amount due far in excess of the actual amount due rendering the Notice defective and that Plaintiff’s claim is barred by his own willful misconduct, amongst other affirmative defenses.

Plaintiff’s motion requests monetary damages for past due rent and holdover damages in the amount of \$47,359.25. Galvin’s declaration breaks down that total as follows: \$5,435.44 in back-due rent, damages of the rental value per day between September 26, 2017 and December 5, 2017 of \$12,050.83 (calculated at a rate of \$169.73/day), plus damages of future rent for December 5, 2017 through June 1, 2018 in the total amount of

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<sup>1</sup> “The moving and opposing parties are not held to the “separate statement” requirements applicable to summary judgment/summary adjudication determinations in general civil litigation. [See CRC 3.1350(c) & (e), 3.1351.]” (Friedman, Garcia & Hagarty, CAL. PRAC. GUIDE: LANDLORD-TENANT (The Rutter Group 2013) Section 8:489.)

\$29,460.00.<sup>2</sup> Galvin supports and explains calculation of these amounts. A plaintiff in an unlawful detainer action may recover back-due rent and fair rental value. However, rental value damages are capped as of the date of entry of an unlawful detainer judgment and courts may not award future damages in an unlawful detainer action. (*Hudec v. Robertson* (1989) 210 CA3d 1156, 1163; Freidman, et al., CAL. PRAC. GUIDE: LANDLORD-TENANT (The Rutter Group 2017) Section 9:315.) Therefore, Plaintiff is entitled to recover \$169.73/day through the date judgment is entered, but is not entitled to recover future rent in the full amount of \$29,460.00.<sup>3</sup>

Plaintiff further requests that post-judgment interest accrue at the rate of eighteen percent per annum from the date of entry of this Judgment.<sup>4</sup> However, the requested rate of judgment exceeds the rate set for post-judgment interest. Amounts awarded by the unlawful detainer judgment bear interest at the legal rate of 10% from the date of entry until the judgment is satisfied or renewed. (Cal. Const. Art. XV, § 1(2); Code Civ. Proc. § 685.010.)

If Defendant fails to oppose the motion, Plaintiff's motion for summary judgment will be granted, including back-due rent and rental value damages in the amount of \$17,486.27, plus damages in the amount of \$169.73/day from December 5, 2017 through the date that judgment is entered. Post-judgment interest will accrue at the rate of 10% simple interest per annum. Plaintiff's costs and attorney fees will be awarded pursuant to a Memorandum of Costs and Motion for Attorney's Fees to be filed in a timely manner after the entry of judgment

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<sup>2</sup> The Court notes that the claimed total is incorrect, and that adding the amounts of \$5435.44 + 12,050.83 + 29,460.00 = \$46,946.27, not \$47,359.25 as claimed.

<sup>3</sup> The Court also notes that such recovery of future damages would put the judgment over the \$25,000 limit in a limited civil matter.

<sup>4</sup> Page 13, Section 23 of the Lease provides that any amount that is due to Landlord or Tenant and not paid when due shall bear interest from the due date at the rate of 18% per annum or at the maximum rate then allowable by law if less than 18%.