

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - December 05, 2019

EVENT DATE: 12/06/2019

EVENT TIME: 11:00:00 AM

DEPT.: C-70

JUDICIAL OFFICER: Randa Trapp

CASE NO.: 37-2018-00002360-CU-PO-CTL

CASE TITLE: MATTHEW CHARVAT VS. SAN DIEGO FAMILY HOUSING LLC [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for New Trial, 10/31/2019

MOTION FOR A NEW TRIAL by defendants San Diego Family Housing LLC and Lincoln Military Property Management LP is GRANTED. (CCP § 657(5))

The \$500,000 awarded to each of the four plaintiffs for past pain and suffering and past emotional distress is excessive.

Plaintiffs moved into a rental home on April 29, 2015 and moved out on April 1, 2016. Evidence was presented that the family reported feeling tired and ill starting about January 25, 2016. Plaintiffs discovered mold on the property on February 12, 2016. The family claimed they experienced illness, pain and suffering and emotional distress allegedly from the presence of mold in their rental. The symptoms apparently resolved at some point after they vacated the premises.

The amount of damages is a fact question, first committed to the discretion of the jury and next to the discretion of the trial judge on a motion for new trial. (*Janice H. v. 696 North Robertson, LLC* (2016) 1 Cal.App.5th 586, 602) The judge is not permitted to substitute her judgment for that of the jury on the question of damages unless it appears from the record the jury verdict was improper. (*Bigboy v. County of San Diego* (1984) 154 Cal.App.3d 397, 406) If a cause of action is otherwise established, it is settled that damages may be given for mental suffering naturally ensuing from the acts complained of. The unitary concept of "pain and suffering" has served as a convenient label under which a plaintiff may recover not only for physical pain but for fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. Admittedly these terms refer to subjective states, representing a detriment which can be translated into monetary loss only with great difficulty. But the detriment, nevertheless, is a genuine one that requires compensation. (*Capelouto v. Kaiser Foundation Hospitals* (1972) 7 Cal.3d 889, 892–893)

The evidence produced at trial as to pain and suffering and/or emotional distress is insufficient to support the amount of the award.

Mrs. Charvat testified that prior to moving into the subject property, she never observed the children having any significant illnesses or sickness. But after they moved in, she felt tired and felt out of it on a daily basis, causing her to be irritable. She had a non-stop runny nose, congestion and frequent night sweats. She was miserable every day. Her relationship with her husband deteriorated because they were always trying to figure out what was wrong and both were always tired. Her children's problems were draining her. She testified "it was like a whole year had just been taken from us. A whole year."

Mr. Charvat did not get sick before moving into the home. He was typically a loud and hyper person and always active. But while occupying the property, he had a constant dry cough and was congested. He was fatigued and exhausted and would fall asleep on the couch when he came home from work. He coughed and spit up brown stuff into the sink. He is allergic to mold. He did not seek past medical expenses.

Anna Charvat, who was five to six years old at the time, could not sleep because she had problems breathing. She had congestion, causing her to be moody and irritable. She was taken to the doctor for coughing and congestion in May 2015. The doctor prescribed antibiotics for an upper respiratory infection. She was taken to the Emergency Room in July 2015 because she was "gasping for air" at night while sleeping and again diagnosed with an upper respiratory infection. She saw an ENT and an allergist and was diagnosed with nasal obstruction/allergic rhinitis.

Benjamin Charvat, who was two to three years old at the time, would hold his ears and scream, "my ears, my head." His breathing at night was loud and also when he was playing with his head down. He would have meltdowns and became difficult to deal with. His breathing issues did not end until 2017 after they left the home.

Three of the four plaintiffs were awarded medical expenses totaling \$4,546.46, yet all four family members were awarded \$500,000 each for past pain/suffering and past emotional distress. The evidence presented does not support such a high amount for what appears to be temporary nasal symptoms, insomnia and irritability, breathing difficulties, tiredness and Mrs. Charvat feeling like she lost a year. Plaintiffs' minimal medical treatment and the temporary nature of the symptoms, diagnosed as common illnesses such as upper respiratory infections, nasal obstruction and/or rhinitis, and resolving after they left the home, does not support an award of \$500,000 for each plaintiff for a combined award of \$2 million in past pain and suffering and emotional distress. (See, *Thompson v. John Strona & Sons* (1970) 5 Cal.App.3d 705)

The court will order a new trial on the issue of damages for past pain and suffering and past emotional distress only. The Motion is denied as to the other grounds raised.