

# VERDICTS & SETTLEMENTS

FRIDAY, NOVEMBER 21, 2014

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## REAL PROPERTY LANDLORD AND TENANT

Water Damage, Mold

**VERDICT: \$1,388,488**

CASE/NUMBER: *Manuel Medina v. Lillian Penton, Leanne Morris* / 34-2011-00110427.

COURT/DATE: Sacramento Superior / Oct. 10, 2014.

JUDGE: Hon. Richard K. Sueyoshi

### ATTORNEYS:

Plaintiff — **Cheryl D. Bossio (Bossio Law, Sausalito)**.

Defendant — Elizabeth W. Lawley, Robert Rucci (Borton Petrini LLP, Rancho Cordova); Victoria L. Ersoff (Wood, Smith, Henning & Berman LLP, Los Angeles).

### FACTS:

Plaintiff Manuel Medina, 31, rented a single-family residence for his family from defendant landlords Lillian Penton and Leanne Morris. Plaintiff rented the residence for nine months from August 2009 through May 2010.

The court granted defendants' Motions for Nonsuit as to plaintiff's claim relating to dust mites, trespass to chattel, damages related to personal property, breach of contract, and fraud-based causes of action for negligent misrepresentation and fraud/intentional deceit. The only cause of action remaining for the jury to consider was negligence.

### PLAINTIFF'S CONTENTIONS:

Plaintiff claimed the rental home had a history of plumbing leaks and flooding. The water damaged building materials were never properly remediated by the homeowners before the Medina family rented the home. Unbeknownst to the tenants, the house had high levels of indoor contamination as a result of the pre-existing water damage, including high levels of toxic black mold.

Plaintiff had a pre-existing lung disorder called primary ciliary dyskinesia. Prior to moving into the rental residence, plaintiff had worked full time as a construction worker since he was 16 years old. After moving out of the residence in 2010, plaintiff's treating physicians determined that he was unable to return to full time work or his former occupation in construction. Plaintiff claimed his health had deteriorated significantly due to exposure to the environmental contaminants in his rental home.

### DEFENDANTS' CONTENTIONS:

Defendants contended that the property was fit for occupancy, and that they took all reasonable actions to address plaintiff's maintenance requests, all of which defense claimed were unrelated to the presence of mold or moisture. Defendants claimed the collection methods for the air, tape, of bulk samples that served as the basis for plaintiff's claim were flawed and resulted in erroneous and wildly inflated lab results. Nonetheless, upon being informed of these results, defendants promptly and fully remediated the property.

Defendants disputed plaintiff's claims of damage and contended there was

no evidence that plaintiff had suffered bodily injuries as a result of living in the residence or from exposure to mold or other contaminants. Defendants disputed that plaintiff's pre-existing conditioned was worsened by the condition of the residence, contending that plaintiff's health issues were part and parcel of the ebb and flow of plaintiff's genetic condition. Moreover, plaintiff had been unemployed for several years before moving into the residence.

### JURY TRIAL:

Length, seven weeks; Poll, 9-3; Deliberation, three days.

### SETTLEMENT DISCUSSIONS:

Defense offered to negotiate for up to \$300,000. The parties attended two judicially supervised settlement conferences ordered by the court. No offers were made by the defense at either mandatory settlement conference. Defendants made a CCP 998 offer for \$15,001. Plaintiff made a CCP 998 demand for \$600,000.

### RESULT:

Plaintiff's verdict for \$1,388,488. The jury awarded plaintiff damages for pain and suffering, lost past and future wages and past medical expenses that had escalated to \$245,000 by the time of trial. The jury did not award punitive damages.

### OTHER INFORMATION:

A third defendant settled out of the case prior to trial.

FILING DATE: Sept. 8, 2011.