
Hearing Date: 1/8/2025

Department: T

Ashley Sanchez vs Josh Adam Klinghoffer

Motion: Motion to Strike Portions of Plaintiff's First Amended Complaint

Moving Party: Defendant Josh Adam Klinghoffer

Responding Party: Plaintiff Ashley Sanchez

Tentative Ruling: Granted without leave to amend

BACKGROUND

This is a wrongful death case which alleges that a car driven by Defendant Josh Adam Klinghoffer ("Defendant") struck and killed Decedent Israel Sanchez ("Decedent"). Plaintiff Ashley Sanchez ("Plaintiff") filed a complaint seeking punitive damages, alleging that Defendant was distracted by using a device before he struck Decedent with his car.

On October 18, 2024, the Court granted Defendant's motion to strike with 14 days leave to amend, the allegations related to the punitive damages claim.

On October 31, 2024, Plaintiff filed the operative first amended complaint ("FAC").

Defendant now moves to again strike allegations related to the claim for punitive damages which allege that Defendant was using a device during the incident. Plaintiff opposes and Defendant replies.

MOVING PARTY POSITION

Defendant asks the Court to strike the exemplary damages claim and various portions of the FAC, which allege Defendant has a history of using his phone while driving, and being distracted, which evidences a willful disregard for the safety of others.

Defendant argues these facts are insufficient to support a punitive damages claim, and that the fine for violating Vehicle Code section 23123.5 is too low to show a legislative intent to make the mere use of

a cellphone while driving subject to punitive damages.

OPPOSITION

Plaintiff argues that the allegations that Defendant would have seen Decedent if he was not distracted, are sufficient for punitive damages.

REPLY

Defendant argues the FAC still does not contain sufficient facts of aggravating factors and relies on conclusory allegations. Defendant objects to Plaintiff's request for judicial notice.

ANALYSIS

I. Legal Standard

A. Motion to Strike

California law authorizes a party's motion to strike matter from an opposing party's pleading if it is irrelevant, false, or improper. (Code Civ. Proc. §§ 435; 436(a).) Motions may also target pleadings or parts of pleadings which are not filed or drawn in conformity with applicable laws, rules or orders. (Code Civ. Proc. § 436(b).) A motion to strike is used to address defects that appear on the face of a pleading or from judicially noticed matter but that are not grounds for a demurrer. (Pierson v Sharp Memorial Hospital (1989) 216 Cal.App.3d 340, 342; see also City & County of San Francisco v Strahlendorf (1992) 7 Cal.App.4th 1911, 1913 (motion may not be based on a party's declaration or factual representations made by counsel in the motion papers).) In particular, a motion to strike can be used to attack the entire pleading or any part thereof – in other words, a motion may target single words or phrases, unlike demurrers. (Warren v. Atchison, Topeka & Santa Fe Railway Co. (1971) 19 Cal.App.3d 24, 40.) The Code of Civil Procedure also authorizes the Court to act on its own initiative to strike matters, empowering the Court to enter orders striking matter “at any time in its discretion, and upon terms it deems proper.” (Code Civ. Proc. § 436.)

B. Striking Punitive Damages

B. STRIKING PUNITIVE DAMAGES

Punitive damages may be imposed where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. (Civ. Code, § 3294, subd. (a).) “Malice” is conduct intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on with a willful and conscious disregard of the rights or safety of others. (Civ. Code, § 3294, subd. (c)(1).)

“Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff’s rights, a level which decent citizens should not have to tolerate.” [Citation.]” (Lackner v. North (2006) 135 Cal.App.4th 1188, 1210.)

“As amended to include [despicable], the [Civil Code section 3294] plainly indicates that absent an intent to injure the plaintiff, ‘malice’ requires more than a ‘willful and conscious’ disregard of the plaintiffs’ interests. The additional component of ‘despicable conduct’ must be found.” (College Hospital Inc. v. Superior Court (1994) 8 Cal.4th 704, 725.) (emphasis added.) The statute’s reference to despicable conduct represents a “new substantive limitation on punitive damage awards.” (Ibid.) Despicable conduct is “conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people. Such conduct has been described as ‘having the character of outrage frequently associated with crime.’” (Tomaselli v. Transamerica Ins. Co. (1994) 25 Cal.App.4th 1269, 1287.) Further, “[t]here must be evidence that defendant acted with knowledge of the probable dangerous consequences to plaintiff’s interests and deliberately failed to avoid these consequences.” (Flyer’s Body Shop Profit Sharing Plan v. Ticor Title Ins. Co. (1986) 185 Cal.App.3d 1149, 1155.)

A motion to strike punitive damages is properly granted where a plaintiff does not state a prima facie claim for punitive damages, including allegations that defendant is guilty of oppression, fraud or malice. (Turman v. Turning Point of Cent. California, Inc. (2010) 191 Cal.App.4th 53, 63.) “Mere negligence, even gross negligence, is not sufficient to justify such an award” for punitive damages. (Kendall Yacht Corp. v. United California Bank (1975) 50 Cal.App.3d 949, 958.) Moreover, conclusory allegations are not sufficient to support a claim for punitive damages. (Brousseau v. Jarrett (1977) 73 Cal.App.3d 864, 872.) Lastly, “[t]he mere allegation an intentional tort was committed is not sufficient to warrant an award of punitive damages. Not only must there be

circumstances of oppression, fraud, or malice, but facts must be alleged in the pleading to support such a claim.” (Grieves v. Superior Court (1984) 157 Cal.App.3d 159, 166.)

Allegations that a defendant exhibited a conscious disregard for the safety of others are sufficient to show malice. (Taylor v. Superior Court (1979) 24 Cal.3d 890, 895-96; see also Dawes v. Superior Court (1980) 111 Cal.App.3d 82, 90.) To properly allege punitive damages in a motor vehicle accident action, a plaintiff needs to "establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences." (Taylor, supra, 24 Cal.3d at 895-96.)

“When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice.” G. D. Searle & Co. v. Superior Court (1975) 49 Cal.App.3d 22, 29. “The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone.” Id. at 32. “Conscious disregard of safety as an appropriate description of the Animus malus which may justify an exemplary damage award when nondeliberate injury is alleged.” Id. “In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.” Taylor v. Superior Court (1979) 24 Cal.3d 890, 895-896 (“Taylor”); see, e.g., Dawes v. Superior Court (1980) 111 Cal.App.3d 82, 89-90 (“Dawes”) (merely pleading that a defendant was intoxicated at the time of the accident was insufficient to show a conscious disregard for safety of others); cf. Sumpter v. Matteson (2008) 158 Cal.App.4th 928, 936 (factual findings that defendant was driving under the influence and knowing the light was red as the defendant sped toward it justified the award of punitive damages.)

“There are, however, few situations in which claims for punitive damages are predicated on ... conscious disregard of the rights or safety of others and in which no intentional torts are alleged.” Central Pathology Service Medical Clinic, Inc. v. Superior Court (1992) 3 Cal.4th 181, 191. “‘(M)alice’ requires more than a ‘willful and conscious’ disregard of the plaintiffs’ interests. The additional component of

‘despicable conduct’ must be found.” *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725. Despicable conduct is conduct “so vile, base miserable, wretched or loathsome that it would be looked down on by ordinary decent people.” *Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 715 (internal quotations omitted). Despicable conduct has been described as eliciting the same type of outrage frequently associated with the commission of crimes. *Id.*

Plaintiff’s allegation that Defendant acted with “willful and conscious disregard” of others, even understood in the light most favorable to Plaintiff’s case, fail to rise to the level of “despicable and willful” conduct. This is insufficient due to the language of Civ. Code § 3294, as amended in 1987. The court in *Lackner v. North* (2006) 135 Cal.App.4th 1188, explained:

The definition of malice has not always included the requirement of willful and despicable conduct. Prior to 1980, Section 3294 did not define malice. It was construed to mean malice in fact, which could be proven directly or by implication (*Taylor v. Superior Court* (1979) 24 Cal.3d 890, 894 (*Taylor*); 6 *Witkin, Summary of Cal. Law* (9th ed. 1988) Torts, § 1335, p. 793) and could be established by conduct that was done only with “a conscious disregard of the safety of others....” (*Taylor, supra*, at 895) Relying on the reasoning in *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, the *Taylor* court recognized that recklessness alone is insufficient to sustain an award of punitive damages because “ [t]he central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone.” *Id.* The court concluded that “[i]n order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.” (*Id.* at 895–896) Applying that test, the Supreme Court directed the trial court to reinstate a claim for punitive damages where it was alleged the defendant was operating a motor vehicle while intoxicated, under circumstances which disclosed a conscious disregard of the probable dangerous consequences.

In 1980, the Legislature amended section 3294 by adding the definition of malice stated in *Taylor*. (Stats.1980, ch. 1242, § 1, pp. 4217–4218; *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 713) The definition was amended in 1987. As amended. malice. based upon a

conscious disregard of the plaintiff's rights, requires proof that the defendant's conduct is "despicable" and "willful." (Stats.1987, ch. 1498, § 5.) The statute's reference to "despicable conduct" represents "a new substantive limitation on punitive damage awards." (College Hospital, supra, 8 Cal.4th at 725) Lackner v. North (2006) 135 Cal.App.4th 1188, 1210–1211.

In order to allege despicable conduct, Plaintiff must allege conduct which elicits the same type of outrage as the commission of crimes. Scott v. Phoenix Schools, Inc. (2009) 175 Cal.App.4th 702, 715. Even before the amendment of Civil Code § 3294, courts have elucidated that "(t)he central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone." G. D. Searle & Co. v. Superior Court (1975) 49 Cal.App.3d 22, 32.

C. Vehicle Code § 23123.5

Our Legislature addressed the issue of texting and driving when it passed Vehicle Code section 23123.5. Vehicle Code section 23123.5 states in relevant part, "A person shall not drive a motor vehicle while holding and operating a handheld wireless telephone or an electronic wireless communications device unless the wireless telephone or electronic wireless communications device is specifically designed and configured to allow voice-operated and hands-free operation, and it is used in that manner while driving." (Veh. Code, § 23123.5(a).) The statute further states that "[a] violation of this section is an infraction punishable by a base fine of twenty dollars (\$20) for a first offense and fifty dollars (\$50) for each subsequent offense." (Veh. Code § 23123.5(d).) The text of Section 23123.5 does not suggest in any way that the Legislature deemed using a mobile device while driving, by itself, to be "despicable" conduct. Further, if the Legislature had deemed this conduct to be despicable, the Court's view is that the initial fine would likely be more than \$20 and much more than \$50 for subsequent offenses.

II. Judicial Notice

The Court denies Plaintiff's request for judicial notice of the proposition that "distracted driving is a known danger that may result in death," and

her exhibits 2 through 5.

III. Discussion

Here, the FAC asserts negligence and alleges that Defendant was “more focused on his personal business than on acting as a responsible driver.” (FAC ¶ 36). Plaintiff seeks punitive damages alleging Defendant was aware of the danger of distracted driving, and had a history being distracted with a device while driving. (See FAC ¶¶ 48-50 [alleging that Defendant did a radio interview in July 2021 on his phone while he was actively driving a motor vehicle].) Plaintiff alleges that video of the incident shows that Defendant was using a device and did not brake or slow until after he struck Decedent. (Id. ¶ 52-52.) The FAC alleges Defendant was using a device in violation of Vehicle Code section 23123.5. (Id. ¶ 58.)

The facts here are unlike those in *Dawes v. Superior Court*, which involved an intoxicated driver but also included allegations that the driver knew he was intoxicated, drove 65 miles per hour in a 35 mile per hour zone, was zigzagging out of traffic, and knew that probable serious injury could result. (*Dawes*, supra, 111 Cal.App.3d at 86, 91.) In contrast, here, the allegation that Defendant was interviewed once while driving on his phone in 2021 and conclusory allegations that he has a history of distracted driving do not rise to the requisite level of despicable conduct to support a claim for punitive damages.

This was a tragic event with heartbreaking consequences. However, the allegations in the FAC fail to “establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.” (*Taylor*, supra, 24 Cal.3d at 895–96.) At most, these allegations support a finding of negligence or gross negligence or perhaps even recklessness. However, as discussed above, recklessness alone is insufficient to support a punitive damages claim. Plaintiff must also allege ultimate facts that evidence “despicable” conduct “with a willful and conscious disregard of the rights or safety of others.” Civ. Code § 3294. Under the facts alleged herein, and given the penalties set forth by the Legislature in Vehicle Code § 23123.5, the Court finds that the act of texting while driving, even with a demonstrated history of prior violations of unlawful cellphone use, without more, cannot provide the requisite support for a claim for punitive damages.

... require support for a claim for punitive damages.

RULING

Defendant Josh Adam Klinghoffer's Motion to Strike Portions of Plaintiff's First Amended Complaint is GRANTED. Absent a showing by Plaintiff as to how the complaint might be amended to support a claim for punitive damages, the motion is granted without leave to amend.