Tentative Rulings for March 16, 2022
Department 502

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

19CECG04240 ***Arana v. K. Hovnanian at Valle Del Sol*** **is continued to Tuesday, April 5, 2022 at 3:30 p.m. in Dept. 502**

20CECG02614 ***Irvin v. Hampton-Sharer*** **is continued to Tuesday, April 5, 2022 at 3:30 p.m. in Dept. 502**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

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Tentative Ruling

Re: ***In re: Minor's Compromise of Issac Acevedo-Cervantes***
Superior Court Case No. 21CECG03424

Hearing Date: March 16, 2022 (Dept. 502)

Motion: Petition to Compromise Claim

Tentative Ruling:

To grant and sign the proposed orders. No appearances necessary.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: RTM on 3/14/2022.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Mirijanyan et al. v. Buss et al.***
Superior Court Case No. 21CECG00933

Hearing Date: March 16, 2022 (Dept. 502)

Motion: by defendant to strike portions of the First Amended Complaint

Tentative Ruling:

To deny.

Explanation:

On August 9, 2021, plaintiffs filed a First Amended Complaint (FAC) against defendants regarding an auto collision that occurred on January 25, 2021. Plaintiffs seek compensatory and punitive damages against defendant, Connor Buss. Defendant moves to strike the FAC as to its references to exemplary damages; and to strike the prayer for punitive damages on the basis that such portions are irrelevant, false and improper material, or not drawn or filed in conformity with the laws of this state.

The First Amended Complaint

The FAC alleges the following: that on January 25, 2021, defendant Connor Buss was driving a vehicle on Palm Avenue near the intersection of Alluvial Avenue when Connor crossed over the center median and struck plaintiffs' vehicle head-on; that defendant Zachary Buss is alleged to own the vehicle that Connor Buss drove, and negligently entrusted said vehicle to Connor Buss; that Connor Buss had voluntarily consumed alcohol beverages and/or other substances to the point of intoxication, impairing his physical and mental abilities; that Connor Buss knew he was going to operate a motor vehicle when he started consuming alcohol and/or other substances; that Connor Buss operated the motor vehicle while in an intoxicated state; that immediately prior to the collision, Connor Buss was driving at an estimated speed of 100 miles per hour in a 40 mile-per-hour zone; that the crash occurred around 8:15 p.m. when there were many other vehicles on the roadway; that 10 days prior to the crash, on January 15, 2021, Connor Buss was arrested for driving under the influence and driving on a suspended license; and that Connor Buss was aware of the probable consequences of his conduct, and willfully and deliberately failed to avoid those consequences, acting with a conscious disregard for the safety and rights of others, including plaintiffs.

Motion to Strike

Defendant, Connor Buss, moves to strike references to exemplary damage and the prayer for punitive damages under Civil Code section 3294. Pleadings are to be construed liberally with a view to substantial justice between the parties. (Code Civ. Proc.

§ 452.) The allegations in the complaint are considered in context and presumed to be true. (*Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.)

Civil Code section 3294, subdivision (a) provides:

> In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

With respect to punitive damage allegations, mere legal conclusions of oppression, fraud or malice are insufficient and therefore may be stricken. (*Perkins v. Super. Ct.* (1981) 117 Cal.App.3d 1, 6.) However, if looking to the complaint as a whole, sufficient facts are alleged to support the allegations, then a motion to strike should be denied. (*Ibid*.) Allegations that include conclusions of law or that are considered to be ultimate facts will stand if sufficient facts are alleged to support them. (*Ibid.*) Stated another way, if the facts and circumstances are set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what is called on to answer, such is sufficient to support a claim for punitive damages. (*Lehto v. Underground Const. Co.* (1977) 69 Cal.App.3d 933, 944.)

Malice means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. (Code Civ. Proc., § 3294, subd. (c)(1).) Under the statute, malice does not require actual intent to harm. (*Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1299.) Thus, an allegation that a defendant intended to injure a plaintiff or acted in conscious disregard of his or her safety suffices. (*See G.D. Searle & Co. v. Super. Ct.* (1975) 49 Cal.App.3d 22, 32-33.) Conscious disregard for the safety of another may be sufficient where the defendant is aware of the probable dangerous consequences of his or her conduct and he or she willfully fails to avoid such consequences. (*Pfeifer*, *supra*, 220 Cal.App.4th at p. 1299.) Malice may be proved either expressly through direct evidence or by implication through indirect evidence from which the jury draws inferences. (*Ibid.*)

All parties cite to *Taylor v. Superior Court*, 24 Cal.3d 890, to discuss whether the above facts stated in the FAC sufficiently support a prayer for punitive damages in the context of driving under the influence. The California Supreme Court concluded that the factual allegations of that complaint sufficiently stated facts to support a prayer for punitive damages based on the allegations that: the car was driven by the defendant, which caused serious injuries to plaintiff; that the defendant had, for a substantial period, been an alcoholic and was well aware of the serious nature of his alcoholism and his tendency, habit, history, practice, proclivity, or inclination to drive a motor vehicle while under the influence; and that defendant was aware of the dangerousness of his driving while intoxicated. (*Taylor v. Super. Ct.* (1979) 24 Cal.3d 890, 892-893, 900.)

Though defendant here cites to the above factors as prerequisite to applying *Taylor*'s holding, the California Supreme Court made no such test of factors. Rather, the California Supreme Court concluded:

> One who wilfully consumes alcoholic beverages to the point of intoxication, knowing that he thereafter must operate a motor vehicle, thereby combining sharply impaired physical and mental faculties with a vehicle capable of great force and speed, reasonably may be held to exhibit a conscious disregard of the safety of others. The effect may be lethal whether or not the driver had a prior history of drunk driving incidents. (*Taylor*, *supra*, 24 Cal.3d at p. 897.)

Thus, though defendant argues that 'mere' driving under the influence has never been the basis to seek punitive damages, *Taylor* disagrees. Citing to an Oregon case, the California Supreme Court concurred in the Oregon court's findings that the applicable principle in finding the above was "for the sake of example." Further, the fact it is "common knowledge that the drinking driver is the cause of so many of the more serious automobile accidents is strong evidence in itself to support the need for *all possible means of deterring* persons from driving automobiles after drinking, including exposure to awards of punitive damages in the event of accidents." (*Ibid.* [emphasis original]) In no uncertain terms, *Taylor* concludes "one who voluntarily commences, and thereafter continues, to consume alcoholic beverages to the point of intoxication, knowing from the outset that he must thereafter operate a motor vehicle demonstrates, in the words of Dean Prosser, 'such a conscious and deliberate disregard of the interests of others that his conduct may be called wilful or wanton.'" (*Id.* at p. 899.)

Here, the FAC alleges that defendant voluntarily consumed alcoholic beverages to the point of intoxication, knowing that he would later operate a motor vehicle. The first amended complaint further alleges facts to support impaired physical and mental faculties by alleging that defendant drove an estimated speed of 100 miles per hour in a 40-mile-per-hour zone, while other vehicles were on the roadway. The court finds that the prayer for punitive damages is sufficiently supported by facts to apprise defendants on what they are called to answer.[1] The motion to strike is denied.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
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(Judge's initials) (Date)

[1] *See also Peterson v. Super. Ct.* (1982) 31 Cal.3d 147, 162-163 (briefly discussing the factors of *Dawes v. Superior Court*, but concluding that a prayer of punitive damages on facts that comport with *Taylor* as sufficient).