

CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA

DEPARTMENT: 12

HEARING DATE: 11/02/18

8. TIME: 9:00 CASE#: MSC17-02479

CASE NAME: PARADISE VS. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

HEARING ON MOTION FOR COMPLIANCE WITH DEPOSITION SUBPOENA

FILED BY MALAYSIA PARADISE

*** TENTATIVE RULING: ***

This case involves an alleged assault by one student on another, which was investigated by the Hercules Police Department. Plaintiff seeks an order that HPD respond to a subpoena as to the records and fruits of its investigation. Neither the other parties nor HPD have filed any opposition to the motion to compel compliance, which is **granted**.

9. TIME: 9:00 CASE#: MSC18-01262

CASE NAME: MALLON VS. TSAKOS

HEARING ON MOTION TO STRIKE PORTIONS OF PLAINTIFF'S COMPLAINT

FILED BY TASO TSAKOS, ROBIN TSAKOS

*** TENTATIVE RULING: ***

This is a dog-bite case. Defendants move to strike plaintiffs' allegations and prayer seeking punitive damages. The motion is **denied**. Defendants must answer the complaint by November 16, 2018.

Plaintiffs assert "punitive damages" as their sixth cause of action, which is technically incorrect. Punitive damages are a form of relief available for certain causes of action; they are not a cause of action in themselves. *E.g., Hiliard v. A.H. Robins Co.* (1983) 148 Cal.App.3d 374, 391. Accordingly, defendants properly proceed by a motion to strike rather than a demurrer.

This motion raises questions as to both the level of alleged conduct that is substantively required to support recovery of punitive damages, and what level of specificity is required in a pleading seeking punitive damages.

On the latter point, defendants overstate the law in arguing that a plaintiff must allege specific facts in his complaint. It is insufficient, and hence vulnerable to a motion to strike, merely to mouth such legal conclusions as "willful, malicious, oppressive, and despicable, and ... undertaken in conscious disregard of Plaintiffs' safety and rights" (Complaint ¶ 45). See, *e.g., Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1041; *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29. But the cases generally recognize that it is sufficient to allege "ultimate facts" rather than point-by-point factual details. See, *e.g., Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255; *Blegen v. Superior Court* (1981) 125 Cal.App.3d 959, 963. Moreover, the Court must look to the pleading as a whole rather than focusing only on individual allegations. *Clauson*, 67 Cal.App.4th at 1255.

Aside from the legal conclusions found in the so-called sixth cause of action, plaintiffs support their prayer for punitive damages with allegations found throughout the complaint. There is no suggestion here of any intentional tort or misconduct – that defendants actually intended that their dog would bite plaintiffs (or anyone else). They allege instead that defendants consciously ignored a known danger:

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20. ...The animal control officer responding to the Dog Attack told Maura that Defendants had admitted Zeus was "aggressive." Zeus had bitten and/or attacked a person on at least one prior occasion.

21. Plaintiffs are informed and believe and on that basis allege that Defendants, and each of them, knew or were aware that Zeus had bitten and/or attacked a person on at least one prior occasion and that Defendants had knowledge of Zeus' vicious propensities.

....

32. Zeus had bitten and/or attacked a person on at least one prior occasion and Defendants, and each of them, therefore knew or should have known of Zeus' vicious propensities.

....

44. Defendants ... were fully aware of Zeus' violent propensities....

The Court is not ruling now that proof of these allegations at trial will necessarily be sufficient to justify punitive damages. Defendants correctly point out that since the 1987 amendment to Civil Code § 3294, it has been necessary to prove not only willful and conscious disregard of others' rights, but "despicable" conduct. "The adjective "despicable" connotes conduct that is '... so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people.'" *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210, quoting *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 331 (itself quoting BAJI). In *Lackner*, for example, the court held that it was insufficient to show that the defendant had "created a probability of danger, but he proceeded with his conduct nevertheless". 135 Cal.App.4th at 1210.

Thus, supporting punitive damages at trial will likely take stronger facts than knowledge of one or two prior attacks by Zeus, though that may depend on the seriousness of the prior attacks. In the Court's view, however, this is not a decision to be made at the pleading stage. Proof of the above-quoted allegations may turn out to be insufficient for punitive damages – but it may also turn out to be sufficient, depending on what the proof is. Hence, the Court denies the present pleadings motion.

10. TIME: 9:00 CASE#: MSC18-01382

CASE NAME: CASSARA VS. HAUS

HEARING ON PETITION TO COMPEL BINDING ARBITRATION IN LIEU OF ANSWER

FILED BY ROBERT CAIN

*** TENTATIVE RULING: ***

Defendant Cain moves to compel arbitration of the claims made against him by plaintiffs (the Cassaras). The motion is **granted**, to the extent of compelling arbitration of that portion of this case. However, the Court is not yet ruling on whether the arbitration should be stayed pending litigation in this action of plaintiff's claims against the broker defendants. The parties should be prepared to discuss that topic at the CMC scheduled for November 28.