

**Judge Benson – Law & Motion – Wednesday, April 23, 2025 @ 9:00 AM**  
**TENTATIVE RULINGS**  
**\*\*\*\*IF YOU ARE REQUESTING ORAL ARGUMENT, FOR THIS HEARING ONLY**  
**PLEASE CALL 530-532-7125\*\*\***

**1. 18CV04104 Butte County Credit Bureau v. Plata, Christian**

*EVENT: Opposition to Claim of Exemption*

The Court will conduct a hearing.

**2. 23CV02979 Heredia's, Inc. v. Cruz, Francisco**

*EVENT: Plaintiff's Writ of Attachment*

The Petition for Writ of Attachment is denied. It appears Plaintiff will need to open a probate case and have the probate court make a determination as to who the executor/administrator is before amending the Complaint.

**3. 23CV02654 Feng, Zhu v. Xie, John et al.**

*EVENT: Plaintiff's Motion for Leave to Amend Complaint*

Plaintiff's Motion for Leave to Amend is denied for failure to comply with the notice requirements of CCP § 1005.

4-5. 24CV02891 Mendoza, Adan v. General Motors, LLC

*EVENT: (1) Defendant General Motors' Demurrer to Plaintiff's First Amended Complaint  
(2) Defendant General Motors' Motion to Strike Punitive Damages*

DEMURRER

The demurrer is SUSTAINED WITH LEAVE TO AMEND as discussed herein. Plaintiff shall amend within 20 days of this order. If Plaintiff declines amending, Defendant shall file an answer within 20 days thereafter.

*Statute of Limitations*

The FAC fails to adequately plead the discovery rule.

As Plaintiff noted, a demurrer is not sustainable if there is only a possibility that the cause of action is time-barred; the statute of limitations defense must be clearly and affirmatively apparent from the allegations in the pleading. *E-Fab, Inc. v. Accountants, Inc. Services*, (2007) 153 Cal.App.4th 1308, 1315. However, A plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. (Id at p. 1319) [Emphasis Added]

Here, because the FAC alleges that fraud occurred first on the transaction date - 3/30/19 and the complaint was not filed 8/30/24, well over the 3-year period of time, the FAC shows on its face that it would be barred without the benefit of the discovery rule. Thus, Plaintiff must specifically plead the time of discovery.

Paragraph 24 of the FAC alleges Defendant's wrongful conduct was discovered "shortly before filing the complaint." The "shortly before" allegation is too conclusory and not sufficiently specific. At a minimum, Plaintiff will need to amend to allege a reasonably specific time frame when discovery occurred.

Regarding Plaintiffs arguments that concealment, equitable tolling, or attempted repairs may toll the statute as well as failed attempts to repair the vehicle, those arguments stem from the same defect – the FAC is ambiguous as to time. Those arguments are essentially based on the same premise – that Plaintiff was unaware of the concealment until a later point in time. Thus, for any of those theories to be sufficiently plead, they must be premised on reasonably specific time periods.

*The FAC is Sufficiently Specific*

As Plaintiff points out, Courts have differentiated between misrepresentation and concealment when it pertains to pleading requirements, and concealment does not require the same level

of specificity. Here the FAC's allegations are substantially similar to those in (*Dhital v. Nissan N. Am., Inc.* (2022) 84 Cal.App.5th 828). The FAC sufficiently alleges the elements of fraudulent concealment.

Note: Defendant argues for the first time in the reply that damages have not been properly plead. The Court declines considering the belated argument.

#### *The FAC Sufficiently alleges a Transaction Between the Parties*

Consistent with the reasoning in *Dhital, supra* at p. 844, the FAC sufficiently alleges a transactional relationship.

### MOTION TO STRIKE

The Motion is GRANTED WITH LEAVE TO AMEND.

Plaintiff is correct in that the simple fact Plaintiff could recover civil penalties does not automatically preclude punitive damages at the pleading stage, see *Clauson v. Superior Court*, 67 Cal. App. 4th 1253, 1256. However, *Clausen* only stands for the proposition that punitive damages may be derived from common law liability – it does not stand for the proposition that statutory liability which provides for civil penalties can also support punitive damages where there is no independent common law liability.

Defendant is correct that the Song-Beverly Act was not intended to permit punitive damages in addition to civil penalties. In sum, the Song-Beverly Act causes of action do not, by themselves, support punitive damages. Because the Court has sustained the demurrer as to the only common law cause of action (concealment), punitive damages are not available unless the pleading is successfully amended re: concealment.

Plaintiff shall amend within 20 days of this order.

Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

#### **6-7. 24CV04513 Ayers-Anderson, Penny et al v. Serger, John et al.**

*EVENT: (1) Defendants Board of Trustees of the California State University, Which is the State of California Acting in its Higher Education Capacity and Officer John Serger's Demurrer to Plaintiff's Original Complaint*

*(2) Defendants Board of Trustees of the California State University, Which is the State of California Acting in its Higher Education Capacity and Officer John Serger's Motion to Strike Portions of Plaintiff's Original Complaint*

Preliminarily, Defendants ask us to take judicial notice of the declaration of Captain Christopher Shippen. That request is denied. Captain Shippen's declaration is clearly extrinsic evidence which cannot be considered on demurrer.

Defendants also ask us to take judicial notice of the CSU pursuit policy. The Court will take judicial notice of its existence.

## DEMURRER

### 1. Officer Serger

The demurrer to the survival cause of action is sustained without leave to amend as to Officer Serger.

*VC §17004 Provides Officer Serger with Complete Immunity Both For His Conduct During the Vehicle Chase and His Subsequent Conduct*

VC §17004. Authorized emergency vehicles

A public employee is not liable for civil damages on account of personal injury to or death of any person or damage to property resulting from the operation, in the line of duty, of an authorized emergency vehicle while responding to an emergency call or when in the immediate pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm or other emergency call.

On its face, this statute immunizes Officer Serger from any individual liability stemming from his pursuit of the vehicle.

The question then becomes whether 17004 applies after the officer leaves his vehicle and continues a pursuit on foot. Neither side cites a case on the issue. All of the cases cited involved accidents which occurred while the officers were pursuing other vehicles while in their vehicle.

The Court is finding no published decision on point. The plain language of the statute is not limited to operating a vehicle. Rather it includes "immediate pursuit". The word "pursuit" is not limited to vehicles. Consequently, the reasonable interpretation is that "pursuit" would include pursuit by foot.

Reading the statute as a whole, the word "immediate" appears to be in relation to the previous clause which describes vehicle pursuits. Thus, "immediate pursuit" would mean a pursuit that is in close proximity of time to the vehicle pursuit. Under the facts of this case, Officer's Serger's decision to pursue the suspect on foot appears to be in close proximity of time to the vehicle pursuit.

Although we are required to make all reasonable inferences at this stage in favor of plaintiff and not defendant, the only reasonable inference based on the alleged facts is that the pursuit was close in time. Therefore, the Court cannot conceive of how the pleading could be amended to avoid VC § 17004 immunity.

## 2. Defendant California State University

The demurrer is overruled as to both the Vicarious Liability and Survival Causes of Action.

### A. *The FAC States Sufficient Facts Demonstrating the Responders Acted Affirmatively*

*Lugtu v. California Highway Patrol* (2001) 26 Cal.4<sup>th</sup> 703, 716:

It is true that the duty plaintiffs rely upon is said to be restricted to instances of misfeasance, not nonfeasance. As this court explained in *Weirum v. RKO General, Inc.* (1975) 15 Cal. 3d 40, 49 [123 Cal. Rptr. 468, 539 P.2d36], however, "[m]isfeasance exists when the defendant is responsible for making the plaintiff's position worse, i.e., defendant has created a risk."

[Emphasis Added]

Paragraph 34 of the FAC alleges two witnesses wanted to enter the residence to extract decedent but were prevented from doing so. That allegation sufficiently alleges an affirmative act by the responders which arguably made Decedent's position worse. To be clear, the Court is not commenting one way or the other as to whether the responders were justified in preventing persons from entering the residence – that is a separate matter. Rather, the Court simply finds that the allegation is sufficient to trigger a general duty. Because the FAC has sufficiently alleged affirmative conduct which may have made decedent's position worse, Plaintiff is not required to allege a special relationship under this specific theory.

However, concerning Plaintiff's theory that responders were negligent themselves by failing to enter the residence to timely extract decedent, that theory does require special relationship allegations, as the theory is premised on a failure to act. The Court finds the FAC fails to allege a special relationship between the Defendants and the Decedent.

The opposition states:

"It is reasonable to assume that Decedent—who was seen peering out of the second-story window—came to reasonably rely on the presence of the responders that had amassed in her yard, which gave rise to a duty of care."

The FAC does not allege decedent reasonably relied on the presence of the responders for her protection.

However, the vicarious liability cause of action is framed broadly. As it appears to allege vicarious liability against CSU for both Officer Serger's conduct as well as the responders'

conduct, the demurrer must be overruled based on the Court's finding that the FAC adequately alleges a duty as it pertains to the responders allegedly preventing others from extracting Decedent. If there are sufficient facts pled or that can be inferred reasonably to state a cause of action under any theory, the demurrer must be overruled. (*Lin v. Coronado* (2014) 232 Cal.App.4th 696, 700) Therefore, demurrer is overruled as to both of the aforementioned causes of action.

Despite the demurrer being overruled as to CSU's vicarious liability, in the interests of judicial economy the Court will address the FAC's vicarious liability theories as it pertains to Officer Serger.

**B. *Vicarious Liability for the Vehicle Chase***

Paragraph 60a of the FAC alleges defendants failed to conduct the pursuit in a safe manner, that it was a high-speed pursuit during heavy rain, at night, and in a residential area. None of the allegations allege sufficient facts demonstrating a hazard created by the officer. Neither the suspect's DUI condition, the rain, the nighttime conditions, nor the residential conditions were created by the officer. The only matter "created" by the officer was his decision to pursue the driver.

The Court finds that that decision, in and of itself cannot impose a duty on Defendants and is clearly protected by Gov. Code § 820.2 immunity. Pursuant to Gov. Code § 815.2, CSU would also be immune for the officer's decision to engage in a vehicle pursuit. On the Court's motion, the vicarious liability theory as it pertains to the vehicle pursuit is stricken with leave to amend.

**C. *Vicarious Liability for Acts of Officer Serger After the Vehicle Pursuit***

Government Code section 820.2 Immunizes Officer Serger, and therefore CSU, for his decision to search for the suspect and rescue the passenger. Officer Serger's decision to search for the suspect and then later rescue the other passenger of the vehicle are clearly discretionary decisions. That cannot be construed any other way. Although Plaintiff references cases stating that negligent acts occurring after discretion is exercised may be actionable, Plaintiff is not alleging that the acts of searching for the suspect and helping the passenger out of the vehicle were performed negligently such that those acts in isolation caused decedent's injuries. (Note: The FAC does not allege that Officer Serger was preventing good samaritans from rescuing decedent)

*McCorkle v. City of Los Angeles* (1969) 70 Cal.2d 252, 261:

However, classification of the act of a public employee as "discretionary" will not produce immunity under section 820.2 if the injury to another results, not from the employee's exercise of "discretion vested in him" to undertake the act, but from his negligence in performing it after having made the discretionary decision to do so.

[Emphasis Added]

The only causal relationship here is the discretionary acts and decedent's harm. On the Court's motion, the vicarious liability theory as it pertains to Officer Serger's post vehicle pursuit conduct is stricken with leave to amend.

Plaintiff shall amend, if she so chooses, within 20 days of notice of this order.

#### MOTION TO STRIKE

CSU' and Officer Serger' motion to strike punitive damages is GRANTED IN ITS ENTIRETY WITHOUT LEAVE TO AMEND. In light of the Court's finding that Officer Serger is completely immune from liability, the punitive damages claim necessarily fails as to him. Further, Gov. Code § 818 shields CSU from exemplary damages.

Defendants shall prepare and submit a form of order consistent with this ruling within 2 weeks. In the event Plaintiff elects not to amend, Defendant CSU shall file an answer within 20 days after the time to amend has expired.

#### **8. 25CV00404 In re: Calhoun, HayBrean**

*EVENT: Change of name (minor) (Continued from 4/2/25)*

The Court will hear from Petitioner. If there are no appearances, the Petition will be dismissed without prejudice.

#### **9. 25CV00613 In re: Barker, Gay Allison McBride**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

**10. 25CV00667 In re: Freitas, Paul Anthony**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

**11. 25CV00813 L&W Supply Corporation v. Plaster Group, Inc.**

*EVENT: Motion for Order Changing the Filing Date of This Action (First Paper) to February 11, 2025*

Motion for Order Changing the Filing Date of This Action (First Paper) to February 11, 2025 is GRANTED. The Court will sign the proposed order.