

**Judge Mosbarger – Law & Motion – Wednesday, August 16, 2023 @ 9:00 AM
TENTATIVE RULINGS**

1-2. 16CV03116 AMBROSE, LYNDA ET AL V. OROVILLE HOSPITAL ET AL

*EVENTS: (1) Defendants’ Motion to Strike Portions of Plaintiffs’ Complaint for Damages
(2) Defendants’ Motion for Judgment on the Pleadings*

Based on *Code of Civil Procedure* §425.13, and following the Court of Appeal’s Writ of Mandate dated January 26, 2022 that removed the elder abuse cause of action from Plaintiffs’ Complaint, Defendants’ Motion to Strike Portions of Plaintiffs’ Complaint for Damages is GRANTED. The Court strikes from the Complaint the following language at Page 16, Line 16 which states as follows: “For punitive damages pursuant to Cal. Civ. Code §3294.” However, as the Court is permitting the untimely Motion to Strike by Defendants based upon the changed circumstances in this action [See *Code of Civil Procedure* §435(b)(1): “Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof.”], the Court likewise shall afford the Plaintiffs an opportunity to proceed under *Code of Civil Procedure* §425.13 by granting a waiver of the time requirement therein. See, *Goodstein v. Superior Court* (1996) 42 Cal.App.4th 1635. Such a finding is supported by the facts and procedural history of this action. Specifically, the Court finds that Plaintiffs were not faced with a situation in which *Code of Civil Procedure* §425.13 applies until the Court of Appeal’s actions on January 26, 2022 and the instant Motion to Strike, which as the parties acknowledge, is well beyond the time requirements found in *Code of Civil Procedure* §425.13(a) [“The court shall not grant a motion allowing the filing of an amended pleading that includes a claim for punitive damages if the motion for such an order is not filed within two years after the complaint or initial pleading is filed or not less than nine months before the date the matter is first set for trial, whichever is earlier.”] Therefore, although Plaintiffs moved with reasonable speed, and through no fault of their own, were placed in a position where compliance with the time requirements was impossible, the Court shall waive the time requirement of *Code of Civil Procedure* §425.13 and permit the Plaintiffs to file, within 60 days of this ruling, a Motion to Amend the Complaint to allege punitive damages, if they wish to do so.

It is well settled that a Motion for Judgment on the Pleadings “tests only the legal sufficiency of the pleading.” *Code of Civil Procedure* §438; *Quelimane Co. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 47. All properly pleaded allegations in the complaint must be taken as true and “must be liberally construed, with a view to substantial justice between the parties.” *Code of Civil Procedure* §452; *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 272. Therefore, the Court’s determination is strictly one of law. *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 603. The Court does not consider whether any of the pleaded elements have been established, only whether the cause of action has been properly plead. The Court concludes that there exists a separate cause of action for willful misconduct that goes beyond a claim of negligence. See, e.g., *Palazzi v. Air Cargo Terminals, Inc.* (1966) 244 Cal.App.2d 190; *Snider v. Whitson* (1960) 184 Cal.App.2d 211; *Seimon v. Southern Pac. Transportation Co.* (1977) 67 Cal.App.3d 600; *Donnelly v. Southern Pac. Co.*

(1941) 18 Cal.2d 863, 869; *Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879; and *Berkley v. Dowds* (2007) 152 Cal.App.4th 518. The Court finds that Plaintiffs have sufficiently plead the elements necessary to support a cause of action for willful misconduct [See Complaint at ¶¶1, 12, 13, 14, 15, 17, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 53, 54, 60, 61, 62, 63, 64] and therefore the Defendants' Motion for Judgment on the Pleadings is DENIED. Counsel for the Plaintiffs shall submit a form of order consistent with this ruling within two weeks.

The Case Management Conference on August 30, 2023 is continued to November 29, 2023 at 10:30 a.m.

3. 19MH00301 CHICO POLICE DEPARTMENT V. THOMAS, DAVID CHARLES

EVENT: Request for Return of Firearms

The Court will hear from counsel.

4. 22CV00787 QUINLAN, WILL ET AL V. HARLEY-DAVIDSON MOTOR COMPANY, INC.

EVENT: Plaintiff's Motion for Attorney's Fees, Costs, and Expenses

The Court makes the following order regarding the award of fees:

- (1) The fees requested for work performed by Michael Rosenstein total \$5,040, billed at a rate of \$700/hr, which the Court finds to be excessive. This amount is reduced using a rate of \$400/hr for a total awarded of \$2,880.
- (2) The fees requested for work performed by Brian Shippen-Murray totals \$23,100, billed at a rate of \$550/hr, which the Court finds to be excessive. This amount is reduced using a rate of \$350/hr for a total awarded of \$12,600.
- (3) The Court finds that the specific entries objected to by the Defendant as excessive (the hours of Mr. Rosenstein totaling 2.0, and the hours of Mr. Shippen-Murray totaling 6.4), are sufficiently supported and reasonable. As such, the Court declines to reduce the fee award on this basis.
- (4) The Court finds that a multiplier is not warranted in this action and declines to reduce or increase the requested fees on this basis.
- (5) There is no objection to the requested costs totaling \$864.37, and the Court therefore awards the total amount requested by Plaintiffs.

The total sum awarded is \$16,344.37 (\$15,480 + \$864.37). Counsel for the Plaintiffs shall submit a revised form of order consistent with this ruling within two weeks.

5. **22CV02443 ANDERSON, LASEANDA R V. COMMUNITY LIVING OPTIONS, INC.**

EVENT: Review Hearing

The Court sets this matter for a further Review Hearing on October 18, 2023 at 10:30 a.m. Counsel are directed to file a Status Report on or before October 11, 2023.

6. **23CV01348 IN RE: THURMAN, RACHELLE**

EVENT: Petition for Change of Name

The Court has not yet received proof of service on the father as required by Code of Civil Procedure §1277(a). The Court will hear from the Petitioner.