

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 6

Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: June 11, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

FOR ORAL ARGUMENT: Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
 - (2) Other side by phone or email that you plan to appear at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in-person appearances. If you must appear virtually, you must use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does not provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

https://www.scsccourt.org/general_info/court_reporters.shtml

FOR YOUR NEXT HEARING DATE: Use Court Schedule to reserve a hearing date for your next motion. Court Schedule is an online scheduling tool that can be found on the court's website here:

<https://reservations.scsccourt.org/>

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Date: June 20, 2024

Time: 12-1:00

Place: Microsoft Teams: <https://msteams.link/YGLE>

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	21CV384845	Joshua Staples vs Manish Lachwani et al	Plaintiff Joshua Staples' motion for good faith settlement determination is GRANTED. The \$737,500 HeadSpin agreed to pay in exchange for a dismissal with prejudice is "in the ballpark" of a reasonable settlement in this matter. (<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i> (1985) 38 Cal.3d 488. Moving party to prepare formal order.
2	23CV409690	The People of the State of California et al vs Jose Sanchez et al	Jose Antonio Sanchez's motion to set aside the Court's April ruling denying motion to compel and granting sanctions is DENIED. The Court agrees that Defendant's withdrawal of his motion to compel is irrelevant to the Court's order denying the motion and issuing sanctions. Civil Local Rule 8.D. states: "In case management departments, the moving party may take a scheduled motion off calendar by following the procedure set forth on the civil law and motion section of the court's website at https://www.sccourt.org/ . <i>Any request for relief by the party responding to the motion will remain set for hearing unless continued or withdrawn by that party.</i> " (Emphasis added.) Here, Plaintiffs sought sanctions for Defendant's failure to meet and confer, filing an untimely motion, and refusing to withdraw that motion. Plaintiffs did not withdraw their request for relief. Defendant failed to meet and confer as required under the Code of Civil Procedure and did not withdraw the motion to compel until after Plaintiffs prepared their opposition. Sanctions were appropriately awarded, and Defendant's motion is DENIED. Court to prepare formal order.
3	23CV422098	Hansen Law Firm, P.C. vs Carleen Whittelsey	Off calendar.
4	23CV427271	Weiting Zhan vs Jianing Tang	Defendant's motion to strike first amended complaint is DENIED. Scroll to line 4 for complete ruling. Court to prepare formal order.
5	24CV432540	Cameron Gonzalez vs Chris Stapleton et al	Defendants' demurrer is OVERRULED, and this case is consolidated with Case No. 23CV414589, which is designated the lead case. Scroll to line 5 for complete ruling. Court to prepare formal order.

Calendar Line 4

Case Name: *Weiting Zhan v. Jianing Tang*

Case No.: 23CV427271

Before the Court is defendant Jianing Tang's motion to strike plaintiff Weiting Zhan's first amended complaint ("FAC"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises from Defendant's alleged malicious prosecution of Plaintiff. On March 19, 2021, there was a physical altercation between the parties, who were roommates at the time, and the police were called. (FAC, p. 4.) Defendant then initiated the related criminal case (Case No. C2106178) against Plaintiff. (*Ibid.*) Plaintiff alleges Defendant confessed to providing false information to the police officer to secure rent and a deposit. (*Ibid.*) She further alleges Defendant provided false information to get an emergency protective order, which Defendant then used to breach the terms of the rental lease agreement. (*Ibid.*) On January 4, 2024, the underlying criminal case was dismissed. (*Ibid.*) Plaintiff alleges on May 8, 2023, Defendant applied for California rent relief in her name, without her consent, which contained her personal information. (FAC, p. 6.) She further alleges her private information and her parents' information was shared in a group chat connected to Defendant's email address. (FAC, p. 7.)

On December 4, 2023, Plaintiff filed her Complaint, asserting one cause of action for intentional tort. On January 22, 2024, she filed her FAC, asserting four causes of action for intentional tort.¹ On May 16, 2024, Defendant filed the instant motion to strike, which Plaintiff opposes.

II. Legal Standard for a Motion to Strike

Under section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v.*

¹ While the causes of action are not specified in the attached forms, it appears Plaintiff asserts claims for (1) malicious prosecution, (2) false issuance of an emergency protective order, (3) identity theft, and (4) unlawful sharing of personal information. (FAC, p. 8:20-21.)

Strahlendorf (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assuming the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63 (*Turman*), citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) “Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic evidence showing that the allegations are ‘false’ or ‘sham.’” (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2020) 7.169.)

Defendant moves to strike the FAC because Plaintiff filed it after the answer was filed and she contends the FAC is a sham pleading to address a defense raised in the answer.

III. Analysis

A. A general denial was proper.

On January 19, 2024, Defendant filed a general denial. Plaintiff contends the general denial was not proper because the case is unlimited. Code of Civil Procedure section 431.30, subdivision (d), states if a complaint is not verified or it is a limited case, then a general denial is sufficient, but such general denial only puts material allegations of the complaint in issue. (Code Civ. Proc., § 431.30, subd. (d).) While this case is unlimited, the Complaint and the FAC are unverified, thus, the general denial is proper.

B. The FAC is not a sham pleading.

Defendant contends the FAC is a sham pleading because Plaintiff attempts to plead around the statute of limitations defense raised in her answer.

Generally, after an amended pleading is filed, the original pleading is superseded. (*Vallejo Development Co. v. Beck Development Co.* (1994) 24 Cal.App.4th 929, 946.) Courts will assume the truth of the factual allegations in the amended pleading for purposes of demurrer. (*Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 383 (*Owens*).) However, under the sham pleading doctrine, “admissions in an original complaint... remain within the court’s cognizance and the alteration of such statements by amendment designed to conceal fundamental vulnerabilities in a plaintiff’s case will not be accepted.” (*Lockton v. O’Rourke* (2010) 184 Cal.App.4th 1051, 1061.) The purpose of the doctrine is to “enable the courts to prevent an abuse of process.” (*Hanh v. Mirda* (2007) 147

Cal.App.4th 740, 751.) “[W]here a party files an amended complaint and seeks to avoid the defects of a prior complaint either by omitting the facts that rendered the complaint defective or by pleading facts inconsistent with the allegations of prior pleadings,” the court may examine the prior complaint to ascertain whether the amended pleading is merely a sham. (*Owen, supra*, 198 Cal.App.3d at p. 383.)

“In these circumstances, the policy against sham pleading permits the court to take judicial notice of the prior pleadings and requires that the pleader explain the inconsistency. If he fails to do so, the court may disregard the inconsistent allegations and read into the amended complaint the allegations of the superseded complaint.” (*Ibid.*) A pleading cannot be summarily dismissed if the sham pleading doctrine applies as the pleader must be given the opportunity to provide an explanation for the incompatible pleadings. (See *Owens, supra*, 198 Cal.App.3d at 384 [pleader must be given opportunity to explain inconsistency]; see also *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 425-426 [sham pleading doctrine is inapplicable where pleader offers plausible explanation for amendment].)

In the FAC, Plaintiff added three causes of action for intentional tort and the following paragraph:

Statutes of Limitation: The civil case was filed on 12/04/2023, and the criminal case C2106178 was dismissed on 01/04/2024, one month ahead of the criminal case dismissal. This does not violate the two-year limitation for a malicious prosecution lawsuit.

(FAC, p. 4.)

In amending her pleading, Plaintiff did not omit facts which rendered the Complaint defective or plead allegations that are inconsistent with the Complaint. (See *Owen, supra*, 198 Cal.App.3d at p. 383.) Moreover, the amendment includes events that did not occur until after the Complaint was filed, i.e., the dismissal of the criminal case. Therefore, the sham pleading doctrine is not applicable here.

C. Plaintiff’s FAC was filed after Defendant’s general denial.

Code of Civil Procedure section 472, subdivision (a), provides: “A party may amend its pleading once without leave of the court at any *time before the answer*, demurrer, or motion to strike is

filed, or after a demurrer or motion to strike is filed *but before the demurrer or motion to strike is heard* if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike...” (Code Civ. Proc., § 472, subd. (a) [emphasis added].)

Plaintiff filed her FAC after Defendant filed her answer and there was no demurrer or motion to strike before the Court at the time, thus Plaintiff was required to seek leave of court before filing her FAC. Her failure to seek leave means the FAC is improper and could be stricken. However, Defendant brought this motion to “create an orderly process that conforms to the law so that she can file the appropriate motions to get this case dismissed.” (MPA, p. 3:23-25.) The Court thus exercises its discretion and declines to strike the FAC. Given that leave to file an amended complaint is liberally granted, it would promote the interests of judicial economy and justice—not just for the Court, but also for the parties, for the Court to deny this motion, and skip the inevitable motion for leave to file the FAC. This route does not prevent Defendant from filing a motion for judgment on the pleadings or other motion to assert her statute of limitation arguments and any other arguments regarding the FAC.

The motion to strike is accordingly DENIED.

Calendar Line 5

Case Name: *Cameron Gonzales, by and through his Guardian ad Litem, April Brookshire v. Live Nation Entertainment, Inc. et.al.*

Case No.: 24CV432540

Before the Court is Defendants Live Nation Entertainment Inc., Live Nation Worldwide Inc., Red Light Management LLC., and Chris Stapleton’s demurrer to Plaintiff’s first and second causes of action. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises from the tragic untimely death of Mr. Juan Gonzales (“Decedent”) while attending a Chris Stapleton concert. According to the complaint, on June 18, 2022, at about 10:40 p.m., Decedent was lawfully at the Shoreline Amphitheater and while speaking to a Defendants’ employee was struck in the head by Logan Winterton causing serious injury and ultimately death. (Complaint ¶ 16.) Mr. Winterton and several other concert attendees wore a red and white Death’s Head insignia signifying their Hells Angels membership.

Approximately one hour prior to Decedent’s fatal attack, Mr. Winterton and other members of the Hells Angels violently attacked and strangled an off-duty police officer on the Amphitheater’s premises. This attack was witnessed by or was made known to Defendants’ staff. Nevertheless, Mr. Winterton and his group were permitted to roam freely on the premises after the attack on the officer committing more violence, assaulting, and threatening other patrons. (Complaint ¶¶ 19, 20, 34.)

Plaintiff initiated this action on March 6, 2024, by and through his Guardian ad Litem, alleging causes of action for (1) negligence, (2) premises liability, and (3) assault and battery.

II. Legal Standard

“The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain.” (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by “[t]he party against whom a complaint [] has been filed” to object to the legal sufficiency of the pleading as a whole, or to any “cause of action” stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer “as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children’s Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice and evidentiary facts found in exhibits attached to a complaint. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751; *Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

“Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given.” (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The burden is on the plaintiff to show in what manner plaintiff can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Id.*)

III. Request for Judicial Notice

Defendants request judicial notice of certain court records in this action and in the Santa Clara Superior Court Case No. 23CV414589, titled *Priscilla Gonzales et.al. v. Live Nation Entertainment, Inc. et.al.* (“Priscilla Gonzales Action”).

These documents may be judicially noticed pursuant to Evid. Code § 452(d), which permits judicial notice of the records in the pending action, or in any other action pending in the same court or any other court of record in the United States. However, “although the existence of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable.” (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113; see also *Arce v. Kaiser Found. Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482-484.) The Court can only

take judicial notice of the truth of facts asserted in orders, findings of fact and conclusions of law, and judgment. (*Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879.)

Accordingly, Defendants' request for judicial notice is GRANTED, IN PART.

IV. Analysis

A. Negligence & Premises Liability

To establish negligence, one must prove (1) legal duty, (2) breach of the legal duty, (3) causation, and (4) damages. (*County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 318.) Premise liability is a form of negligence wherein the owner of the premises is under a duty to exercise reasonable care in the management of such premises to avoid exposing persons to an unreasonable risk of harm. To prove a claim for premise liability, a plaintiff must establish that (a) the defendant was the owner, occupier, or lessor of the premises, (b) the defendant was negligent in the use, maintenance, or management of the premises, and (c) that the negligence was the cause of injury, damage, loss, or harm to the plaintiff. (Civ. Code, §1714, subd. (a); *Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619.)

Defendants contend the complaint is uncertain and fails to state proper claims for negligence and premises liability because (1) the duty of care Plaintiff claims is owed is vague, (2) Defendants did not have a duty to disallow entry of Hells Angels members into the Amphitheater simply because of their appearance and insignia, (3) Hells Angels members would likely have a claim based on the First or Fourteenth Amendments if Defendants were to refuse their entry, and (4) the "One Action Rule" bars this complaint since Plaintiff is a named nominal defendant in the pending Prescilla Gonzales wrongful death action.

1. Uncertainty

A demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the pleading but is directed at the uncertainty existing in the allegations made. (*People v. Lim* (1941) 18 Cal.2d 872, 883.) Such demurrers are strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (See, *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616). Therefore, Defendants attacking a pleading on "uncertainty" grounds must specify how and why the pleading is uncertain, and where

that uncertainty can be found in the challenged pleading. (*Fenton v. Groveland Community Services Dept.* (1982) 135 Cal.App.3d 797, 809 (disapproved on other grounds in *Katzberg v. Regents of the University of California* (2002) 29 Cal.4th 300.)

Here, Defendants claim Plaintiff's allegations of duty are vague without specifying how, why, and where that uncertainty can be found in the complaint. The Court also finds the facts alleged are sufficient to apprise Defendants regarding their duty. Indeed, Defendants acknowledge they owe a duty of care under general negligence principles but challenge the scope of it and whether it extends to prohibiting entrance of certain individuals into the venue. (Motion p. 19, lines 20-25.)

Defendants' demurrer on the ground of uncertainty is accordingly OVERRULED.

2. Failure to State a Claim

Defendants argue the complaint extends their general duty of care to include preventing Hells Angels' entry based on their clothing; thus, exposing Defendants to potential claims for violating the Hells Angels' constitutional rights. First, the Court declines to speculate regarding potential constitutional arguments the Hells Angels members might make.

Next, the existence and scope of duty, including foreseeability associated with the scope of duty, is a question of law for the court to determine. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1146; *Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 1004.) A special relationship exists between the owner/possessor/controller of a property and the customers/tenants/patrons thereon, placing a duty on the owner/possessor/controller to take reasonable precautions to protect patrons against foreseeable crimes and/or from wrongful acts of a third party where it has reasonable cause to anticipate the conduct and the probability of injury resulting from it. (*Yanase v. Auto Club of So. Cal.* (1989) 212 Cal.App.3d 468, 474-75; *Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1382, fn. 1; *Tan v. Arnel Management Co.* (2009) 170 Cal.App.4th 1087, 1097.)

Here, the complaint alleges: (1) Defendants owed a duty of reasonable care to the patrons based on their ownership/control/management/ maintenance of the premises, (2) Defendants had a duty to maintain the premises in a reasonably safe condition and to protect guests/invitees from dangerous individuals, and (3) Defendants had a duty to manage, supervise, inspect, operate and provide adequate security for the safety of all the patrons. (Complaint¶¶ 28, 29.) Plaintiff does not

allege Defendants had a duty to prohibit entry of Hells Angels members. Instead, Plaintiff alleges that the presence of the group, their strangulation of an off-duty officer, and continued physical and verbal assaults on the patrons created a dangerous condition on the premises for which Defendants failed to implement a system of inspection to discover and failed to take remedial measures to protect the safety of the patrons. (Complaint ¶¶ 19, 33, 34.) Plaintiff's allegation that Defendants knew or should have known the risk posed by allowing attendance of the Hells Angels is directed toward the breach of Defendants' duty and not toward the scope of their duty.

Based on the foregoing, Defendants' demurrer on the grounds that Plaintiff fails to state a viable claim for negligence and premises liability is OVERRULED.

B. "One Action Rule"

Wrongful death actions are considered to be "joint, single and indivisible." (*Valdez v. Smith* (1985) 166 Cal.App.3d 723, 726; *Smith v. Premier Alliance Ins. Co.* (1995) 41 Cal.App.4th 691, 697, fn. 8; *Ruttenberg v. Ruttenberg*, (1997) 53 Cal.App.4th 801, 807.) This means that all heirs should join or be joined in the action and that a single verdict should be rendered for all recoverable damages; only one action for wrongful death may be brought whether it is instituted by all or only one of the heirs, or by the personal representative of the decedent as statutory trustee for the heirs; and there cannot be a series of suits by heirs against the tortfeasor for their individual damages. (*Cross v. Pacific Gas & Elec. Co.* (1964) 60 Cal.2d 690, 694.) The wrongful death statute provides for the compulsory joinder rather than joint causes of action. (*Id.* at p. 692.; See also, *Gonzales v. Southern Cal. Edison Co.* (1999) 77 Cal. App. 4th 485, 489.)

Here, according to their reply, Defendants' only challenge to the complaint is its violation of the "One Action Rule". (Reply, 10:7-14.) Defendants contend Plaintiff cannot file a new complaint since he has been named as a nominal defendant in the Priscilla Gonzales Action. Plaintiff argues that while he was named as a nominal defendant in the amended complaint, service of the process was not effectuated, he has not appeared in the Priscilla Gonzales Action, and he is therefore not a party to that Action.

Plaintiff cites *Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801(*Rutenberg*), for the proposition that a party named in a complaint is not joined until served with process. The *Ruttenberg* court held that merely naming the decedent's daughter as a nominal defendant in the wrongful death action was not the equivalent of "joining" her in that lawsuit for purposes of Code of Civil Procedure section 377.60. The court concluded that as an omitted heir, the daughter may bring a successive suit against the same alleged defendant-tortfeasors as the underlying wrongful death actions. (*Id.* at 807.) Defendants do not address this point.

Accordingly, Defendants' demurrer on the ground that Plaintiff's complaint is barred by the "One Action Rule" is OVERRULED.

IV. Consolidation with Case No. 23CV414589

"Code of Civil Procedure section 1048 grants discretion to the trial courts to consolidate actions involving common questions of law or fact." (*Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978.) Section 1048(a) provides: "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." "Consolidation is not a matter of right; it rests solely within the sound discretion of the trial judge." (*Fisher v. Nash Bldg. Co.* (1952) 113 Cal.App.2d 397, 402.) There are two types of consolidation under §1048: "a consolidation for purposes of trial only, where the two actions remain otherwise separate; and a complete consolidation or consolidation for all purposes, where the two actions are merged into a single proceeding under one case number and result in only one verdict or set of findings and one judgment." (*Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1147; *Sanchez v. Superior Court* (1988) 203 Cal.App.3d 1391, 1396.)

Here, the common origin of all claims in the two actions is the untimely death of Mr. Gonzales while attending a concert at the Shoreline Amphitheater. Merging the two actions and proceeding under a single case number addresses the "One Rule Action", will serve judicial economy, and generally streamline the cases for both pre-trial and trial.

The Court therefore exercises its authority under Code of Civil Procedure section 1048(a) and orders the complete consolidation of these two actions into a single case number. Case No. 23CV414589 is the first filed case and will therefore be designated the lead case for all future filings. (Cal. Rules of Court, Rule 3.350(b).)