

Gutierrez v. Ochoa et al.  
Hearing Date:  
Motion: Strike Punitive Damages Allegations

Case No. 24CV06328  
April 30, 2025

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**PARTIES/ATTORNEYS**

Plaintiff	Elisha Jacob Gutierrez	Gary A. Dordick, Esq. Taylor B. Dordick, Esq. Zarif Kazi, Esq.  Dordick Law Corporation
Defendant	Universal Protection Service, LP dba Allied Universal Security Services	Ashley Dorris Egerer Megan J. Stone Daniel P. Park  Snyder Burnett Egerer, LLP
Defendant	David Garcia Ochoa	Kara A. Pape Dane F. Joseph  Tyson & Mendes, LLP

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**TENTATIVE RULING**

For all the reasons discussed below, the court grants defendant Allied's motion to strike to the extent it seeks to strike only those allegations that defendant Ochoa did not have the required license to work as a security guard and only from the paragraphs specified in the notice. The motion is granted with leave to amend, at plaintiff's election, within 20 days of the date the order is signed. Defendant is ordered to submit a proposed order in conformity with this ruling.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara.](#))

According to the first amended complaint, on June 6, 2024, plaintiff Elisha Jacob Gutierrez was walking in a parking lot adjacent to a Smart & Final store located at 1721 S. Broadway in Santa Maria, where defendant Allied Universal Security Services was retained to provide security services. Defendant David Garcia Ochoa was assigned by Allied to provide security services on that date. As plaintiff was walking in the parking lot, Ochoa shot him multiple times, resulting in wounds to plaintiff's abdomen, hand, and head. The FAC alleges the following causes of action: (1) battery against Ochoa; (2) assault against Ochoa; (3) intentional infliction of emotional distress against Ochoa; (4) negligent hiring, supervision and retention against Allied; and (5) general negligence against Allied.

On March 26, 2025, Allied filed a motion to strike specified allegations from plaintiff's complaint on the ground the allegations are false and irrelevant, designed to support punitive damages which are not sought against Allied. Opposition has been filed.

### Legal Standards

A motion to strike can “be used as a scalpel” – to cut out any “irrelevant, false or improper” matters. (Weil & Brown, *Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group June 2024) ¶ 7:177; Code Civ. Proc. § 436(a).) A material allegation in a pleading is one essential to the claim and which could not be stricken from the pleading without leaving it insufficient to that claim. (Code Civ. Proc. § 431.10.) “[I]rrelevant matters” are those which are “not essential to the claim or defense,” those that are “neither pertinent to nor supported by an otherwise sufficient claim or defense,” or those that are conclusory. (*Ibid.*) As with demurrers, the grounds for a motion to strike must appear on the face of the pleading under attack, or from matter which the court may judicially notice. (Code Civ. Proc. § 437.)

The “facts” to be pleaded are those upon which liability depends—i.e., “the facts constituting the cause of action.” These are commonly referred to as “ultimate facts.” (See *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550.) “[T]he complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged.” (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872—at pleading stage, plaintiff need not specify which of defendant's employees committed negligent acts or omissions.)

“Ultimate facts” are those that raise the issues on which the right to recover depends—i.e., the essential elements of the cause of action. All the facts that are material to the cause of action—i.e., the facts that make a difference to the outcome of the case—must be alleged. (*Estes v. Eaton Corp.* (2020) 51 Cal.App.5th 636, 643,

fn. 2; *Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1027—“distinguishing ‘ultimate facts’ from ‘evidentiary facts’ and ‘legal conclusions’ can be difficult”; *Thomas v. Regents of Univ. of Calif.* (2023) 97 Cal.App.5th 587, 610-611.)

By contrast, allegations of unnecessary detail and generalized argument may be objectionable as “evidentiary” pleading and “legal conclusion,” respectively. (Weil & Brown, *Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2025) ¶ 6:124.)

### Request for Judicial Notice

Allied requests the court take judicial notice of the following:

- California Bureau of Security and Investigative Services Licensing Details for David Garcia Ochoa. Department of Consumer Affairs (DCA) License Search as of January 15, 2025; and
- Stipulation and Order Re: Restrictions on Use of Security Guard Registration, filed in the case of *The People of the State of California v. David Garcia-Ochoa* Santa Barbara County Case No. 24CR04249

There is no opposition and the court thus grants the request.

### Motion to Strike

Here, Allied moves to strike allegations that generally fall into two categories: (1) allegations that Ochoa was not licensed to carry out private security services; and (2) allegations regarding Allied’s officers, directors and managing agents, which it argues were designed to support a prayer for punitive damages asserted in against it in the original complaint but was subsequently omitted.

#### 1. Allegations that Ochoa Was Not Licensed to Carry Out Private Security Services

Allied seeks an order striking allegations that Ochoa was not licensed to carry out private security services because they are false. For context, the fourth cause of action is for negligent hiring, supervision and retention and generally alleges that Allied knew, or through the exercise of reasonable care should have known, that Ochoa was unfit to work as a private security guard due to not having the required licenses for a security guard in the State of California and/or not having a permit to carry a firearm, which would have been discovered through proper investigation, training or monitoring. (FAC, ¶ 47-48.) To establish this cause of action, plaintiff must allege the following:

- (1.) That defendant Allied hired defendant Ochoa;

- (2.) That defendant Ochoa was or became unfit or incompetent to perform the work for which he was hired;
- (3.) That defendant Allied knew or should have known that defendant Ochoa was or became unfit or incompetent and that this unfitness or incompetence created a particular risk to others;
- (4.) That defendant Ochoa's unfitness or incompetence harmed plaintiff; and
- (5.) That defendant Allied's negligence in hiring/ supervising/ or retaining defendant Ochoa was a substantial factor in causing plaintiff's harm.

(CACI 426.)

The allegations that Ochoa did not have the required license to work as a security guard or to carry a firearm support the ultimate fact that Ochoa was unfit or incompetent. Allied argues that allegations alleging Ochoa was not licensed to carry out private security services must be stricken because the judicially noticeable documents show that he was licensed between July 28, 2023, and October 11, 2024, when his license was suspended pending resolution of *People v. Garcia-Ochoa*, Case No. 24CR04249 (RJN, Exh. 1), a fact which plaintiff seemingly concedes by his lack of opposition to the request for judicial notice. The alleged shooting occurred on June 6, 2024, which falls within this time period.

The allegations that Ochoa was not licensed to carry out private security services are paired with the allegation that he lacked the required licensure to carry firearms. A registered security guard is prohibited from “[c]arry[ing] or us[ing] a firearm unless they possess a valid and current firearms permit that is associated with a valid and current security guard registration issued pursuant to this chapter.” (Bus. & Prof. Code, § 7583.3, subd. (c); see also § 7583.22.) Plaintiff correctly points out that even if the court were to rely on the judicially noticeable matters in support of a finding that Ochoa had the proper guard card at the time of the shooting, the motion to strike remains too broad because there is no reason to strike allegations that he was not licensed to carry a firearm.<sup>1</sup> The court concludes that Allied's requests to strike entire paragraphs that include the allegation that defendant Ochoa was not licensed to carry a firearm are overbroad. This permeates almost every paragraph requested to be stricken (e.g., ¶¶ 13-15; 46-47), as well as the requests to strike portions of paragraphs 48 and 52.

The court thus grants the motion to strike to the extent it seeks to strike allegations that Ochoa did not have the required license to work as a security guard only from the paragraphs specified in the notice, as listed in the preceding paragraph.

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<sup>1</sup> Allied argues these allegations are irrelevant because the complaint does not allege that Ochoa was hired as an armed guard, was authorized to carry a firearm, or that Allied had any knowledge that he possessed a firearm. Any perceived gaps can be cured in an amended pleading.

## 2. Allegations Regarding Allied's Officers, Directors, and Managing Agents

Allied argues that allegations involving its officers, directors, and managing agents were in service of the punitive damages alleged in this original complaint but omitted from the first amended complaint. Plaintiff argues that these allegations establish that Allied's own officers and managing agents, including CEO Steve Jones, failed to investigate or act despite knowledge of Ochoa's unfitness and that Allied ratified and condoned Ochoa's and the DOES' conduct by permitting them to continue serving in an unlawful capacity.

CACI 426 specifies that an element of this claim is that defendant Allied knew or should have known that defendant Ochoa was or became unfit or incompetent, and while these particular facts may have been unnecessary in the sense that no authority has been presented that officers, directors, and managing agents had to be aware, they otherwise support the legal conclusion. The court denies the request to strike these allegations.

## 3. Conclusion

The court grants the motion to strike to the extent it seeks to strike allegations that Ochoa did not have the required license to work as a security guard only from the paragraphs specified in the notice. Otherwise, it is denied as overbroad. The motion is granted with leave to amend, at plaintiff's election, within 20 days of the date the order is signed. Defendant is ordered to submit a proposed order in conformity with this ruling.