

PROPOSED TENTATIVE

On April 9, 2026, plaintiff Veronika Mravikova (plaintiff) filed a complaint against defendants AJ Spurs, Milt Guggia, Angela Guggia, Milt Guggia Enterprises Inc., and “Guggia Milt and Angela Family Trust November 9, 2021, a trust” (collectively, defendants), alleging six causes of action, as follows: 1) strict liability (ultrahazardous condition); 2) negligent (premises liability); 3) negligence per se; 4) negligence – res ipsa loquitur; 5) intentional infliction of emotional distress; and 6) negligent infliction of emotional distress. Briefly, on March 24, 2025, plaintiff, while at AJ Spurs in Buellton (defendants own and operate AJ Spurs), fell off an exposed cliff into a ravine located on defendants’ property. According to the complaint, plaintiff fell down “the 3-story cliff leading to the ravine,” and suffered severe and serious injury. The accident resulted from a dangerous condition on the property, and defendants’ failure to warn or provide adequate protections concerning the dangerous conditions. (¶ 28.)

Defendants have filed a demurrer and motion to strike. Defendants demur to the first third, fourth, fifth, and sixth causes of action, claiming insufficient facts have been offered to support any of these causes of action. The second cause of action for negligence/premises liability is not challenged. As for the motion to strike, defendants ask the court to strike all references to punitive damages (along with associate language) as to the first (¶¶ 24 and 28), second (¶¶ 38, 39, and 41), third (¶ 52), fourth (¶ 62), and fifth (¶¶ 71, 74, 76) causes of action, as well as in the Prayer for Relief, paragraph No. 10. Defendants also ask the court to strike the request for attorney’s fees in the prayer for relief, paragraph No. 12, as plaintiff fails to identify the basis for the request (statutory or contractual).

Plaintiff filed opposition to the demurrer on September 21, 2026. Plaintiff argues that each cause of action is sufficiently pleaded, although in the alternative she asks that if the court sustains the demurrer, leave to amend be permitted.

The court will first examine the demurrer. It will then examine the motion to strike. It will conclude with a summary of its conclusions.

A) Demurrer

1) Third and Fourth Causes of Action

Preliminarily, the court sustains the demurrer with leave to amend as to the third and fourth causes of action, which involve, respectively, negligence per se and “negligence – res ipsa loquitur.” “Negligence per se” as outlined in the third cause of action “is a way to establish ordinary negligence by tying the standard of care to a specific “statute, ordinance, or regulation of a public entity.” (Evid. Code, § 669, subd. (a)(1).) “Negligence per se is an evidentiary

doctrine, rather than an independent cause of action. [Citation.] It can be applied generally to establish a breach of due care under any negligence-related cause of action.” (*Epochal Enterprises, Inc v. LF Encinitas Properties, LLC* (2024) 99 Cal.App.5th 44, 58.) The same is true for the fourth cause of action based on “negligence – res ipsa loquitur.” Res ipsa loquitur is also not a theory of recovery, but a judicial doctrine, which, according to Evidence Code section 646, subdivision (b), creates a “presumption affecting the burden of producing evidence.” It does not create a separate cause of action. (See generally *Howe v. Seven Forty Two Co., Inc.* (2010) 189 Cal.App.4th 1155, 1161 [“res ipsa loquitur” is an evidentiary rule for determining whether circumstance evidence of negligence is sufficient].) Both the third and fourth causes of action should be incorporated into the second cause of action for negligence – premises liability, as both are evidentiary vehicles by which negligence is established (rather than freestanding causes of action). Leave to amend for that purpose is granted.

The court turns to the remaining causes of action that have been challenged.

2) *First Cause of Action for “Strict Liability – Ultrahazardous Condition”*

Plaintiff alleges that defendants are strictly liable under an ultrahazardous condition theory because the cliff and ravine was in a dangerous condition, given the fact that there was an exposed “life threatening cliff, approximately 2 stories in height, leading into a ravine.” Specifically, plaintiff contends that defendants failed to maintain the property in safe and adequate condition by eliminating the danger (through fences or otherwise), by failing to warn of the danger (i.e., no warning of life-threatening cliff leading to ravine located on the property”; and the fact defendants had notice of the danger “to have taken measures to protect against these dangerous conditions”

The modern theory of liability for ultrahazardous activity is that certain activities create such a serious risk of danger that it is justifiable to place liability for resultant loss on the person engaging in the activity, regardless of lack of culpability on his part. (*Carmichael v. Café Sevilla of Riverside, Inc.* (2025) 108 Cal.App.5th 292, 298.) Whether an activity is ultrahazardous is ultimately a question of law, to be determined by the court. (*Ibid*; *Edwards v. Post Transportation Co.* (1991) 228 Cal.App.3d 980, 985.) Factors courts consider when determining whether an activity is ultrahazardous after an adequate evidentiary basis has been presented include the “ ‘(a) existence of a high degree of risk of some harm to the person, land or chattels of others; [¶] ‘(b) likelihood that the harm that results from it will be great; [¶] ‘(c) inability to eliminate the risk by the exercise of reasonable care; [¶] ‘(d) extent to which the activity is not a matter of common usage; [¶] ‘(e) inappropriateness of the activity to the place where it is carried on; and [¶] ‘(f) extent to which its value to the community is outweighed by its dangerous attributes.’ ” (*Ibid.*) The doctrine scrutinizes not the accident itself, but the activity which led up to the accident – which in this case presumably is hiking at or near the cliff. (*Pierce v. Pacific*

Ga & Electric Co. (1985) 166 Cal.App.3d 68, 85 [the doctrine is limited to encompass only activities which are neither commonplace nor customary].)

The issue for the court to determine ultimately is whether hiking or walking near a cliff is an ultrahazardous activity. Generally, of course, it is not. Still, can the court make this determination on demurrer? No. In *Travelers Indemnity Co. v. City of Redondo Beach* (1994) 28 Cal.App.4th 1432, the court concluded that whether an activity is ultrahazardous or not cannot be determined by demurrer, because, while ultimately a legal issue to be decided by the court, the interplay of factors and the need for evidence requires a more fulsome record. “We do not believe that would be appropriate at this stage of these proceedings” -- a demurrer -- given the peculiar need for facts. (*Id.* at p. 1444.) This is not an outlier position. As was observed in *SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, while an ultrahazardous determination is ultimately an issue for the court determine, a trial court cannot make that determination given the need to examine the relevant factors with evidence; as a result, “the issue of whether an activity is ultrahazardous cannot be decided on demurrer.” (*Id.* at p. 906; see also *Ahrens v. Superior Court* (1988) 197 Cal.App.3d 1134, 1145-1146, fn. 9 [the issue of ultrahazardous activity may not be determined on a demurrer].) And as one federal district court recently observed in *In re Chiquita Canyon Landfill Litigation*, in summarizing California law on this point, “the case law makes it clear that it is a fact sensitive question,” and the court “notes that nearly all the cases cited by the parties are cases decided at some later factual development,” observing with emphasis that California appellate courts have concluded it was error to sustain the demurrer on the question of ultrahazardous activity. (*In re Chiquita Canyon Landfill Litigation* (C.D. Cal., Feb. 17, 2026, No. 2:23-CV-08380-MEMF-MAR) 2026 WL 561435, at *9; see also *Frye v. Martinez Refining Company LLC* (N.D. Cal., Dec. 16, 2024, No. 24-CV-04506-RFL) 2024 WL 5119227, at *3 [looking at California law and concluding that the determination of whether an activity is an ultrahazardous one is heavily fact-based and not suitable for determination at demurrer stage of the case]; *Grey Fox, LLC v. Plains All American Pipeline, L.P.* (C.D. Cal., Apr. 8, 2019, No. CV 16-3157 PSG (JEMX)) 2019 WL 4196066, at *16 [the court concluded that ultrahazardous liability is more appropriately resolved at summary judgment, where the Court will have sufficient information to assess the issue].)

While the court is sympathetic to defendant’s challenge, it is clear under existing precedent that the court cannot make this determination at the demurrer stage. As pleaded it remains possible that the activity at issue is ultrahazardous, and plaintiff should be afforded the opportunity (say, at any summary judgment/adjudication challenge) to present evidence associated with the relevant determination. Consequently, the court overrules the demurrer to the first cause of action.

3) *Fifth Cause of Action for Intentional Infliction of Emotional Distress*

Plaintiff claims defendants had a duty of care to her as an invitee and guest on their property, and that they breached that duty and that the breaches were “intentional and in reckless disregard for the probability that severe injury would result from their failure to carefully adhere to their duties.” According to plaintiff, defendants knew or should have known that there was a probability that injury would result from the failure to adhere to their duties. Defendants conduct “constitutes recklessness, and/or conscious disregard for the safety of human life.” Plaintiff contends that defendants conduct “was extreme and outrageous and beyond all bound of decency in a civilized society such that no reasonable person could be expected to endure it.”

To plead intentional infliction of emotional distress, plaintiff must allege as follows: (1) defendant engaged in extreme and outrageous conduct (conduct so extreme as to exceed all bounds of decency in a civilized community) with the intent to cause, or with reckless disregard to the probability of causing, emotional distress; and (2) as a result, plaintiff suffered extreme or severe emotional distress. (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001.) Additionally, “ ‘[i]t must be conduct directed at the plaintiff, or occur in the presence of the plaintiff of whom the defendant is aware.’ [Citation.] ‘The requirement that the defendant’s conduct be directed primarily at the plaintiff is a factor which distinguishes intentional infliction of emotional distress from the negligent infliction of such injury.’ ” (*Id.* at p. 1002; *Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1273.) “ ‘Conduct, to be ‘ ‘outrageous’ ’ must be so extreme as to exceed all bounds that are usually tolerated in a civilized society.” ’ [Citation.] In order to avoid a demurrer, the plaintiff must allege with ‘great[] specificity’ the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community. [Citation.]” (*Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 160–161.) “Liability for intentional infliction of emotional distress “ ‘does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” [Citation.]’ [Citations.]” (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050.) “It is for the court to determine in the first instance whether the defendant’s conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. [Citations.]” (*Jackson v. Mayweather* 2017) 10 Cal.App.5th 1240, 1265.)

The fatal deficiency in plaintiff’s complaint is her failure to allege that defendants’ conduct was directed primarily at her or occurred in the presence of plaintiff of whom the defendants were aware. (*So v. Shin* (2013) 212 Cal.App.4th 652, 671 [conduct must be directed to the plaintiff, but malicious or evil purpose is not required].) Based on the complaint, all invitees of the property were subject to the same treatment – nothing alleged by plaintiff indicates the conduct was directed at her alone. As our high court has made clear: “It is not enough that the conduct be intentional and outrageous. It must be conduct directed at the plaintiff, or occur in the presence of plaintiff of whom the defendant is aware.” As our high court has explained: “Past decisions of this court have invariably presupposed that the defendant’s misconduct was directed to and was intended to cause severe and extreme emotional distress to

a particular individual, or, when reckless disregard was the theory of recovery, that the defendant directed his conduct at, and in conscious disregard of the threat to, a particular individual.” (*Christenson v. Superior Court* (1991) 54 Cal.3d 868, 903, emphasis added.) Here, plaintiff fails to allege that she was present when the supposed misconduct occurred, that defendant was aware of plaintiff’s presence when the misconduct occurred, and/or that the alleged misconduct was intentionally directed at her. (See, e.g., *Ess v. Eskaton Properties, Inc.* (2002) 97 Cal.App.4th 120, 130-131; see *Light v. Department of Parks & Recreation* (2017) 14 Cal.App.5th 75, 102 [when reckless disregard is alleged, the allegations must show defendant was aware of the plaintiff when acting with conscious disregard].) As a result, the claim as pleaded is steeped in negligence, not one involving intentional infliction of emotional distress.

The court will therefore sustain the demurrer. Unless plaintiff at the hearing can convince the court that it is reasonably possible to overcome this pleading deficiency, the court will sustain the demurrer without leave to amend.

6) Sixth Cause of Action: Negligent Infliction of Emotional Distress

Negligent infliction of emotional distress and negligence are the same causes of action with the same elements, with the former simply a subset of the latter. (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1072 [we have repeatedly recognized that negligent causing of emotional distress is not an independent tort, but the tort of negligence].) Where negligence is adequately pleaded (or in this case unchallenged, as is true for the second cause of action), and where physical injury has been shown, there is no need for a negligent infliction cause of action because plaintiff, if successful, will be entitled to pain and suffering (which includes emotional distress). The sixth cause of action is therefore legally redundant and unnecessary. (See, e.g., *Belen v. Ryan Seacrest Productions, LLC* (2021) 65 Cal.App.5th 1145, 1165 [appellate court struck cause of action for negligent infliction of emotional distress cause of action when negligence cause of action was advanced]; see *Brown v. USA Taekwondo* (2019) 40 Cal.App.5th 1077, 1091, fn. 8 [there is no independent tort of negligent infliction of emotional distress, as the tort is negligence, and recovery of emotional distress is premised on defendant’s negligence that causes physical harm].)

The court will sustain the sixth cause of action without leave to amend.

B) Motion to Strike

The court grants defendant’s motion to strike Item 12 from the Prayer for Relief, requesting attorney’s fees. California follows the American Rule, which provides that each party to a lawsuit must ordinarily pay his or her own attorney’s fees, unless there is statutory or contractual basis for fees. (*Retzloff v. Moulton Parkway Residents’ Assn., No. One* (2017) 14 Cal.App.5th 742, 749.) Plaintiffs fail to identify any statutory or contractual basis for fees in the complaint. The court will grant leave to amend (affording plaintiff an opportunity to either remove the request for attorney’s fees or to identify its basis in the Prayer for Relief).

Generally, plaintiff, to state a prima facie claim for punitive damages in the operative pleading, must “set forth the elements as stated in [Civil Code] section 3294,” as well as “specific factual allegations showing that defendant's conduct was oppressive, fraudulent, or malicious to support a claim for punitive damages.” (*Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193.) Punitive damages may not be pleaded generally. (*Ibid.*) That is, the complaint “must include specific factual allegations showing that defendant’s conduct was . . . malicious to support a claim for punitive damages.” (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.) “Despicable conduct” is conduct that is “ ‘so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by most ordinary decent people.’ ” (*Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 330.) Such conduct has been described as having the character of outrage frequently associated with crime. (*Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1159.) “Conscious disregard” means “ ‘that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.’ ” (*Hoch v. Allied–Signal, Inc.* (1994) 24 Cal.App.4th 48, 61) Put another way, the defendant must “have *actual knowledge* of the risk of harm it is creating and, in the face of that knowledge, fail to take steps it knows will reduce or eliminate the risk of harm.” (*Ehrhardt v. Brunswick, Inc.* (1986) 186 Cal.App.3d 734; *Butte Fire Cases, supra*, 24 Cal.App.5th at p. 1159; italics added.) The mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages. Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate. (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210.) Punitive damage awards have been reversed where the defendant's conduct was merely in bad faith and overzealous or the defendant took action to protect or minimize the injury to the plaintiff. (*Id.* at p. 1212.)

Additionally, “by selecting the term ‘managing agent,’ and placing it in the same category as ‘officer’ and ‘director,’ the Legislature intended to limit the class of employees whose exercise of discretion could result in a corporate employer's liability for punitive damages.” (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 573.) The term is subject to a narrow construction that limits corporate liability for punitive damages to only those employees who “exercise substantial discretionary authority over decisions that ultimately determine corporate policy.” (*Id.* at pp. 576-577.) “Thus, supervisors who have broad discretionary powers and exercise substantial discretionary authority in the corporation could be managing agents.” (*Id.* at p. 577.) To demonstrate that a corporate employee is a “true managing agent,” a plaintiff seeking punitive damages must show that “the employee exercised substantial discretionary authority over significant aspects of a corporation's business.” (*White, supra*, 21 Cal.4th at p. 577.) Decisions that meet this standard concern formal policies that affect a substantial portion of the company—the type of decision “likely to come to the attention of corporate leadership.” (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 715.) A managing agent's discretion is the “sort of broad

authority that justifies punishing an entire company for an otherwise isolated act of oppression, fraud, or malice.” (*Ibid.*) Our high court has explained that a “managing agent” must “be more than a mere supervisory employee. (*White, supra*, at p. 573.) Classification as a managing agent does “not depend on employees’ managerial level, but on the extent to which they exercise substantial discretionary authority over decisions that ultimately determine corporate policy. Thus, supervisors who have broad discretionary powers and exercise substantial discretionary authority in the corporation could be managing agents. Conversely, supervisors who have no discretionary authority over decisions that ultimately determine corporate policy would not be considered managing agents even though they may have the ability to hire or fire other employees.” (*Id.* at pp. 576-577.) Accordingly, “a plaintiff seeking punitive damages would have to show that the employee exercised substantial discretionary authority over significant aspects of a corporation’s business.” (*Id.* at p. 577.)

The court will assume that all of the challenged paragraphs are advanced for purposes of establishing a *prima facie* basis for punitive damages. With that in mind, the court grants defendant’s motion to strike all challenged paragraphs (as well as the Prayer for Relief) associated with the request for punitive damages, for two reasons. First, plaintiff has failed to allege specific facts supporting malice, oppression or fraud as to any individually named defendant. The punitive damages claims are perfunctorily and conclusorily raised, steeped exclusively in the statutory language of civil Code section 3294, subdivision (a), without any specific facts. More must be alleged.

Second, at least some defendants appear to be corporate employers. While there is no requirement that a managing agent or officer be expressly identified by name in the complaint, there is a requirement, when a managing agent is at issue, to allege facts that show the person exercised substantive discretionary authority over significant aspects of a corporation’s business, supported with specific facts. (*White, supra*, at pp. 576-577; see *Major Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1221.) That clearly has not been done – at least with specific facts. (See *Grieves v. Superior Court, supra*, 157 Cal.App.3d at p. 168 [when punitive damages sought against corporate employer, facts must be alleged to advance knowledge, authorization or ratification]; see also *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29 [pleading must contain facts to support claim of oppression, fraud or malice].) It is not enough for plaintiff to recount the statutory language (by simply parroting the *White* standard) – there must be foundational facts offered to support the allegation. (See, e.g., *Davis v. Kiewit Pacific Co.* (2013) 220 Cal.App.4th 359, 369.) Plaintiff must allege more facts to show the job description, the job duties, and the responsibilities and nature and extent of the managing agent (and why he or she was a managing agent).

The court grants the motion to strike all requests for punitive damages, with leave to amend (assuming there are causes of action that can support the claims after demurrer).

Summary:

The court sustains the demurrer to the third and fourth causes of action as they are not separate causes of actions but evidentiary doctrines that can be pleaded in conjunction with the second cause of action for negligence based on premises liability. Leave to amend is granted.

The court overrules the demurrer to the first cause of action because case law has made it clear that ultrahazardous activity determinations cannot be made at the demurrer stage. While the court is sympathetic to defendant's challenge, it must await a more robust and fulsome evidentiary record as developed through summary adjudication before a ruling can be made.

The court sustains the demurrer to the fifth cause of action for intentional infliction of emotional distress because the complaint fails to show plaintiff has directed any misconduct at the plaintiff *in particular*. Unless plaintiff can convince the court that a reasonable possibility exists to overcome this deficiency, leave to amend will be denied.

The court sustains the demurrer to the sixth cause of action without leave to amend, as the cause of action is redundant in light of the second cause of action for negligence.

The court grants the motion to strike the request for attorney's fees and all punitive damages allegations, with leave to amend (assuming there are causes of action that can support punitive damages after the demurrer has been sustained).

Plaintiff has 30 days from today's hearing to file a first amended complaint.

There is CMC scheduled for today.