

PROPOSED TENTATIVE

In an order dated November 13, 2024, with regard to codefendant Lafond Vineyard Inc.'s demurrer, the court provided a detailed order, including a discussion of the relevant background, a detailed outline of the legal principles that frame the issue, and the court's analysis of the demurrer. The court sustained Lafond Vineyard Inc.'s demurrer, with leave to amend. The court incorporates the substance of that order into the order here.

Mr. Julien Mathieu has now filed a demurrer to the first amended complaint, raising the same or similar challenges that Lafond Vineyard Inc. raised in its demurrer. Plaintiff filed opposition on November 18, 2024, while Mr. Mathieu filed a reply on November 20, 2024. All briefing has been reviewed.

The same conclusions reached with regard to defendant Lafond Vineyard, Inc., apply to defendant Mr. Mathieu. That is: 1) the court agrees that the social host immunity statutes do not apply when illegal drugs are involved, although the fact cocaine was consumed *alone* is not enough to blunt the impact of the social host immunity statutes when, as here, alcohol was also consumed and apparently provided by Mr. Mathieu, under the authority of *Musgrove v. Silver* (2022) 82 Cal.App.5th 694; 2) plaintiff, as with Lafond Vineyards, Inc., will have to allege that cocaine was a substantial factor in causing the traffic accident involving plaintiff; 3) further, plaintiff will have to articulate a cognizable basis for Mr. Mathieu's direct liability based on Ms. Falk's cocaine use – either he aided and abetted or conspired in Ms. Falk's consumption of the illegal drug use, for there are no allegations that Mr. Mathieu had any knowledge that it was being used; 4) further, vicarious liability is not at issue in the current operative pleading, for there is no allegation that Mr. Mathieu at any time was acting within the scope of his employment; and 5) the court identified problems with Lafond's direct liability theory predicated on a "special relationship" between it and plaintiff or with Ms. Falk, both factually and legally.

The latter point requires further clarification as to Mr. Mathieu. In order to establish Mr. Mathieu's duty of care, plaintiff seems to rely exclusively on the allegation that Mr. Mathieu and Ms. Falk were "boyfriend" and "girlfriend," claiming this alone established a duty of care to control her behavior. But as our high court has explained, a duty of care exists only when defendant either has created a risk of harm to plaintiff himself (in this context with regard to cocaine use, of which there are insufficient allegations) or (if the risk is not of defendant's own making), when there exists a "special relationship" between the third party who harmed plaintiff and the defendant, thus creating a duty to protect plaintiff from the third party tortfeasor (in this case Ms. Falk). (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 214; *Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 225.) The common features of such a "special relationship" include an aspect of dependency in which one party relies to some degree on the other for protection, and control, meaning the other party (in this case Mr. Mathieu) has the ability to control the third

party's actions (i.e., those of Ms. Falk) in order to protect plaintiff. Examples include the relationships between parent-child, common carriers and their passengers, and innkeepers and their guests. (*Brown, supra*, 11 Cal.5th at p. 211; *Regents v. University of California . Superior Court* (2018) 4 Cal.5th 607, 620.) There are no allegations in the operative pleading to show any "special relationship" between Mr. Mathieu and Ms. Falk.

If plaintiff can allege that Mr. Falk's cocaine use was a substantial factor in causing the traffic accident with plaintiff; that Mr. Mathieu either created that risk (e.g., he provided the cocaine as an aider or abettor or conspirator) or had a "special relationship" with Ms. Falk that allowed him to control her actions; plaintiff may be able to state a cause of action that will overcome demurrer, although the court is not making that determination at this time; those issues will have to be decided in the future. What seems clear, however, is that the social host immunity statutes preclude defendant's direct liability if Ms. Falk's alcohol consumption remains the primary focus of this lawsuit.

Nothing offered in plaintiff's opposition, filed on November 18, 2024, changes these conclusions. Notably, plaintiff argues that "Mr. Mathieu was with Ms. Falk while she consumed cocaine and therefore Mr. Mathieu was aware of her inebriated condition" But there is *nothing* in the operative pleading to show that Mr. Mathieu was actively involved in providing or furnishing cocaine to Ms. Falk, and thus affirmatively increased the risk of danger to plaintiff. (See, e.g., *Musgrove, supra*, 82 Cal.App.4th at p. 710 [must be evidence that party furnished or supplied cocaine when alcohol is involved to remove lawsuit from ambit or scope of social host immunity].)

Further, plaintiff continues to rely on *Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, as an alternative basis to show Mr. Mathieu had a duty of care as to plaintiff (even if he did not actively increase the risk by providing cocaine), claiming Mr. Mathieu had a "special relationship" with Ms. Falk (as she was particularly vulnerable and dependent on Mr. Mathieu, who had some control over her welfare), given their status as a boyfriend and girlfriend. (See, e.g., *Brown, supra*, 11 Cal.5th at p. 215 ["Under some circumstances, a defendant may have an affirmative duty to protect the plaintiff from harm at the hands of a third party, even though the risk of harm is not of the defendant's own making," namely when a special relationship exists].) But as noted in the court's November 13, 2024, order, *Koivumaki* involved a situation in which defendant transported a visibly intoxicated person to a hillside cliff and then failed to protect the victim from falling. (*Id.* at p. 894-895.) It was in that situation the appellate court concluded the evidence, if proved, supported a finding that there was a "special relationship" between the defendant and a highly intoxicated plaintiff who was in a particularly vulnerable position and dependent on defendant, who offered to drive him home. (*Ibid.*) *Koivumaki* did not involve and thus did not discuss the standards for a "special relationship" involving control *over a dangerous third party tortfeasor*, such as Ms. Falk. As observed in the court's earlier order, Ms. Falk may

well have been vulnerable; her vulnerability, however, is not the touchstone inquiry when attempting to establish a “special relationship” between her and defendant, for in this situation the inquiry focuses on her dangerous propensity and, most notably, defendant’s ability to control her actions. *Koivumaki* is factually distinguishable (and thus not particularly helpful to plaintiff’s arguments). Plaintiff in opposition has failed to provide any authority for the proposition that a “boyfriend/girlfriend” relationship by itself creates a “special relationship” that would require Mr. Mathieu to control Mr. Falk’s actions to the benefit of plaintiff. In the end, simply put, plaintiff has failed to plead a “special relationship” between the two in order to establish Mr. Mathieu’s duty of care.

The court therefore sustains Mr. Mathieu’s demurrer with leave to amend. The court will give plaintiff 30 days from today’s hearing to file an amended pleading as to both Mr. Mathieu and Lafond Winery, Inc.

The courts orders all parties to appear either in person or by zoom at the hearing.