

PROPOSED TENTATIVE

On November 8, 2024, plaintiff Joel Mathew Houser (Houser or plaintiff) filed a complaint against defendants Jean Charles Sarri, as trustee of the Sarri Jean Charles Revocable Living Trust (Sarri or defendants), for negligence and premises liability. According to the operative complaint, while in the home of Jean Charles Sarri, Sarri pushed plaintiff “down the stairs.” Plaintiff claims defendant “push[ed]” plaintiff down the stairs, defendant used “physical force” (§ 9), and the push was done “negligently”. (§ 14.) No other facts or circumstances are provided, other than to allege that defendant owed plaintiff a duty of care; breached that duty of care “when they failed to act as a reasonable careful person would have acted in the same situation, causing bodily and emotional injuries to Plaintiff”; and at all times defendant “carelessly and negligently failed to act as a reasonable person would have acted in the same situation thereby causing bodily and emotional injuries.”

Defendants have filed a motion to strike paragraph 33 of the operative pleading associated with the premises liability cause of action, which provides as follows: “The actions of Defendants, and each of them, were willful, malicious, with reckless disregard for the truth for the heal of Plaintiff so as to warrant the imposition of punitive damages.” Also at issue in the motion to strike is Item 3 of the “Prayer for Relief[,]” which asks for “punitive and exemplary damages, according to proof.” Defendants contend that plaintiff has failed to allege sufficient facts to support punitive damages. In opposition, plaintiff disagrees. Defendant filed a reply on March 10, 2025. All briefing has been examined.

Civil Code section 3294 permits a punitive damage award for any “breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice ... for the sake of example and by way of punishing the defendant.” (Civ. Code, § 3294, subd. (a).) Plaintiff is not relying on oppression or fraud, but only malice. “ ‘Malice’ ” is defined as “conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.” (Civ. Code, § 3294, subd. (c)(1), emphasis added.) Plaintiff does not predicate punitive damages on any claim that defendants intended to cause plaintiff an injury. (See, e.g., *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29 [when the plaintiff alleges an intentional wrong, a prayer for exemplary damages may be supported by pleading that the was committed willfully or with a design to injury].) Instead, plaintiff seems to allege a nondeliberate injury based on the alternative definition of malice, meaning plaintiff’s engaged in “despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.”

Punitive damages are available in negligence actions.(See *Rosener v. Sears, Roebuck & Co.* (1980) 110 Cal.App.3d 740, 761.) But that does not mean that negligence or even gross

negligence is enough. (*Simmons v. Southern Pac. Transportation Co.* (1972) 62 Cal.App.3d 341, 368; see also *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 894-895 [something more than the mere commission of a tort is required for punitive damages].) Plaintiff must show that defendant's conduct was despicable, and further, that defendant was aware of the probable dangerous consequences of her conduct, and that she willfully and deliberately failed to avoid those consequences. (*G.D. Searle, supra*, 49 Cal.App.3d at p. 32.) "[T]he statute's reference to 'despicable' conduct seems to represent a new substantive limitation on punitive damage awards. Used in its ordinary sense, the adjective 'despicable' is a powerful term that refers to circumstances that are 'base,' 'vile,' or 'contemptible.' [Citation .] As amended to include this word, the statute plainly indicates that absent an intent to injure the plaintiff, 'malice' requires more than a 'willful and conscious' disregard of the plaintiffs' interests. The additional component of 'despicable conduct' must be found. [Citations.]" (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 714.) It is settled that plaintiff must allege sufficient facts to support all forms of malice advanced in the operative pleading. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166 [not only must there be circumstances of malice in the pleading, but facts must be alleged in the pleading to support the claim]; see *Cyrus v. Haveson* (1976) 65 Cal.App.3d 306, 317 [punitive damage allegation must not be pleaded in conclusory terms]; *Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1276 [plaintiff must claim punitive damages in the statutory language of Civ. Code, § 3294 "plus sufficient facts"]; see generally *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255 [to survive a motion to strike an allegation for punitive damages, the ultimate facts showing entitlement to such relief must be pled by plaintiff].)

Plaintiff has failed to allege sufficient facts to show that defendant engaged in "vile or despicable" conduct in association with the injury. " 'Despicable conduct' is defined [in the jury instruction] as 'conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people.' Such conduct has been described as '[having] the character of outrage frequently associated with crime.' " (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1287.) All we are told is that the lawsuit arises from the fact defendant "pushed" plaintiff "down the stairs" on November 10, 2022, that "physical force" was used, and that the push was done "negligently." (§ 14.) Plaintiff fails to provide context and does not detail any attendant circumstances. Plaintiff then tacks onto these threadbare allegations the conclusory statement that defendant's conduct was "willful, malicious, with reckless disregards for the health of Plaintiff" Such inconsequential conduct is a far cry from the conduct at issue in *Angie v. Superior Court* (1995) 37 Cal.App.4th 1217, 1221-1229, in which the court of appeal concluded that a jury could find as vile, base, or contemptible that a 48-year old medical doctor intentional violated numerous criminal statutes when he engaged in sexual intercourse and orally copulated a minor female, provided her with drugs and alcohol, and paid her to procure illegal substances for him, knowing her dysfunctional family background made her particularly vulnerable. Punitive damages for "despicable conduct" was also appropriate in a tort suit by a cancer victim against a boiler

manufacturer that “fully understood that asbestos dust endangered workers, but it did not issue warnings to customers” until much later, “notwithstanding its awareness that they used the products in ways that generated considerable asbestos dust.” (*Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1280, 1300–1301.) Nothing remotely similar is pleaded in the operative pleading here.

Nor are the threadbare factual allegations sufficient to support a claim that defendant was aware of the probable dangerous consequences of her conduct, and that she willfully and deliberately failed to avoid those consequences, even when reading the complaint as a whole, as urged by plaintiff. (*Today’s IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193 [plaintiff must include “specific factual allegations” showing defendant’s conduct was malicious].) While pleading in terms of the statute is acceptable, there must be facts to support the statutory allegations – that is, facts to show that plaintiff was aware of the probable consequences of her conduct (i.e., pushing defendant where she did would lead to plaintiff’s falling and/or injury), and that she intentionally and deliberately failed to avoid that consequence. No such facts have been alleged here. The mere allegation that a tort was committed is insufficient to justify punitive damages; here, throughout the pleading plaintiff predicates defendant’s conduct as negligent, with only one single reference to a heightened standard in paragraph 33, which is conclusory and perfunctorily made. This is not enough. (*Grieves, supra*, 157 Cal.App.3d at p. 167 [even if we interpret defendant’s alleged “knowledge” as describing a state of mind from which a conscious disregard of petitioner’s rights might be inferred—“a state of mind which would sustain an award of punitive damages,” court cannot ignore the recurring theme underlying petitioners’ claim, i.e., that real parties’ conduct was, at most, negligent].)

Defendant in opposition relies on *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, which reversed via a writ of mandate the trial court’s order striking punitive damages from the complaint. In *Perkins*, plaintiff filed a complaint against General Telephone and Electronics Corporation (GTE) and General Telephone Company of California (Telephone Co.) based on claims that defendants erroneously listed his business number (a law office) as that of Pep Boys, a chain of auto stores, in a “Neighborhood Phone Book.” Plaintiff routinely received calls from Pep Boys’ putative customers, and complained to defendants about the error; despite the complaints, and despite defendants’ knowledge of the error, defendants continued to distribute the phone book without change, based on alleged anticipated profits from the endeavor. Additionally, after plaintiff complained, plaintiff alleged in the operative pleading that defendants in retaliation caused his personal residence telephone “to be terminated,” not from any need for repair but “by order of the defendants’ business office.” Plaintiff alleged this termination was wrongful and intentional, and was committed with oppression, malice, or fraud.

The *Perkins* appellate court concluded as follows based on allegations in the operative pleading: The word retaliation “in paragraph ten of the complaint describes defendants’ motive for shutting off petitioner’s home phone service, a motive which, if proven, would sustain a

finding of malice. The allegation that defendants were guilty of “oppression, fraud, and malice” simply pleaded a claim for punitive damages in the language of the statute authorizing such damages. (Civ. Code, § 3294.) Pleading in the language of the statute is not objectionable when sufficient facts are alleged to support the allegation. [Citation]. [¶] Petitioner's complaint provided notice to real party and the other defendants of petitioner's precise claims against them and adequately pleaded . . . punitive damages. [The trial court] abused its discretion in granting the motion to strike.” (*Id.* at pp. 6-7.)

Perkins does not support defendants’ position here. In *Perkins*, the statutory language was coupled with sufficient underlying facts, which, when read in context, supported a finding of malice. Nothing similar here has been pleaded. This case is more akin to *Grieves, supra*, 157 Cal.App.3d 503, 168, in which the court concluded that plaintiff failed to plead sufficient facts to support the statutory language. The court cannot see how a push, even when committed with physical force but done negligently, constitutes a sufficient factual basis for malice per Civil Code section 3294.

The court grants defendant’s motion to strike, with leave to amend. Plaintiff has 30 days from today’s hearing to submit an amended pleading.