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**PARTIES/ATTORNEYS**

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|-----------|--------------------------------------------------------------------------------------|----------------------------------------------------------|
| Plaintiff | Delilah J. Tomelloso                                                                 | Therese Harris Law<br>Offices<br><br>Therese Harris      |
| Defendant | Purnima Sheoran DDS INC. d/b/a<br>Mai Dental Care, Mai Enterprises<br>Properties LLC | Law Offices of Jill A.<br>Wood<br><br>By: Paul A. Carron |

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**TENTATIVE RULING**

For all the reasons discussed below, the motion to strike is granted. The court will allow leave to amend within 30 days.

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.](#))

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According to the complaint, plaintiff Delilah Tomelloso was injured while she was a patient receiving dental treatment at Mai Dental Care when a lighting fixture affixed to the ceiling fell, striking her on her left anterior thigh. Plaintiff sustained serious and permanent injuries to her left thigh, left hip, and lower back, as well as psychological injuries. The complaint alleges causes of action against Purnima Sheoran DDS, Inc. doing business as Mai Denal Care and Mai Ents Properties LLC, the property owner of the building, for: (1) premises liability; (2) negligence; (3) gross negligence; (4) negligent infliction of emotional distress; and (5) negligence per se. In addition, she asserts a claim “[f]or exemplary and punitive damages according to proof.” (Prayer, ¶ 4.)

All defendants move to strike the punitive damages allegation. Opposition and reply have been filed. All papers have been considered.

Where a motion to strike is directed to punitive damages allegations, the court must read the allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. (*Turman v. Turning Point of Cent. California, Inc.* (2010) 191 Cal.App.4th 53, 63; *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) To state a prima facie claim for punitive

damages, a complaint must set forth the elements as stated in the general punitive damage statute, Civil Code Section 3294. (*Turman, supra*, 191 Cal.App.4th at 63; *College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 721.) The statutory elements include allegations that the defendant has been guilty of oppression, fraud or malice. (Civ. Code, § 3294(a).) Malice is defined in section 3294 as conduct intended by the defendant to cause injury to plaintiff, or despicable conduct that is carried on by the defendant with a willful and conscious disregard for the rights or safety of others. (Civ. Code, § 3294(c)(1).) The adjective “despicable” connotes conduct that is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people. (*Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 331; *Lackner v. North* (2006) 135 Cal.App.4th 1188,1210.) Such conduct has been described as having the character of outrage frequently associated with crime which is so extreme it rouses the contempt and outrage of reasonable people (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1287; *American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1050-1051.) Oppression is defined as despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. (Civ. Code, § 3294(c)(2).) Fraud is defined as an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. (Civ. Code, § 3294(c)(3).)

In other words, “[s]omething more than the mere commission of a tort is always required for punitive damages.” (*Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 716.)

Plaintiff has not alleged that defendants intended to cause him injury. The court thus focuses on whether the complaint adequately alleges despicable conduct and finds that it does not. In this case, plaintiff alleges:

- “Defendant MAI ENTS, as the owner of the building, had a non-delegable duty to maintain the premises in a reasonably safe condition and to regularly inspect and maintain all structural components and fixtures, including overhead lighting fixtures.” (Complaint, ¶ 21.)
- “Defendant MAI DENTAL, as the operator of the dental facility and tenant, had a duty to ensure the safety of its patients and to identify and report dangerous conditions to the property owner.” (Complaint, ¶ 22.)
- “Upon information and belief, Defendants’ gross negligence included complete failure to inspect overhead equipment despite the obvious safety hazard; reckless disregard for patient safety; conscious disregard of the probability that the lighting fixture could fall and injure patients; and willful indifference to the consequences of inadequate equipment maintenance.” (Complaint, ¶ 40.)

Although plaintiff labels the fixture a “dangerous condition,” identifies it as an “obvious safety hazard,” and refers to the “probability” that it could fall, these allegations are without factual support. The lack of such allegations distinguishes this case from *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, relied on by plaintiff, where it was alleged that while intoxicated, Dawes ran a stop sign, and was zigzagging in and out of traffic at a speed in excess of 65 miles per hour in a 35 mile per hour zone at the entrance to a popular recreation area on a Sunday afternoon when many pedestrians and bicyclists were in the immediate vicinity, thus making the risk of injury probable. (*Dawes, supra*, at 89.)

Plaintiff also relies on *Penner v. Falk* (1984) 153 Cal. App.3d 858 arguing that the court found sufficient allegations for punitive damages in a premises liability case where plaintiffs alleged that defendants knew of dangerous conditions, had the power to remedy them, but failed to take corrective measures, demonstrating conscious disregard for safety. She points out the court emphasized that knowledge of dangerous conditions combined with the power to remedy those conditions but deliberate failure to act can constitute the type of despicable conduct warranting punitive damages.

The facts in *Penner* are vastly different than those alleged here. *Penner* involves a landlord's duty *to a tenant* to protect against the intentional criminal acts of third parties. Against this background, the court held: “To support an award of punitive damages on the basis of conscious disregard of the safety of others, a plaintiff “must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences. [Citation] Appellant here has met the test of *Silberg, Taylor* and Civil Code section 3294. The pleadings sufficiently allege facts setting forth long existing physical conditions of the premises which portend danger for the tenants. The pleadings also set out that respondents knew of those conditions for up to two years, had power to make changes, but failed to take corrective and curative measures. If proven, these allegations would support an award of punitive damages. We conclude that the motion to strike the punitive damage allegations was therefore improperly granted.” (*Penner, supra*, 153 Cal.App.3d at 867.)

*Nolin v. National Convenience Stores, Inc.* (1979) 95 Cal.App.3d 279<sup>1</sup> is useful. There, the court found substantial evidence supported a jury's punitive damages award against the corporate owner of a service station where the plaintiff slipped and fell in a puddle of motor oil and gasoline. The evidence established that for months both customers and employees had complained about a broken gasoline pump which tended to overflow onto the ground and onto customers. When

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<sup>1</sup> The court is aware *Nolin* was prior to the amendment to §3294 in the late eighties to require “despicable conduct” when proving malice as a result of conscious disregard of the health or safety of others; it appears, however, that on the facts presented, the court of appeal would have found the conduct despicable.

management refused to fix the pump, employees tried to alert the public by posting signs or by making public service announcements. Management feared the loss of business and reputation and ordered the employees to stop their efforts. In addition, the service station sold oil cans and permitted customers to add oil to their cars in the pumping areas. As a consequence, the poorly lit surface was often covered with pools of oil and littered with empty oil cans. Cleanup around the service station was sporadic and haphazard, and employees were not trained to clean the area. (*Id.* at pp. 282-284.) When the service station supervisor was informed of prior accidents he allegedly responded, “ ‘the store didn't have anything to worry about because they had a team of lawyers that would tie it up in court for years.’ ” (*Id.* at p. 283.)

While *Nolan* is not a pleading case, it nevertheless demonstrates the conduct necessary to impose punitive damages on non-intentional conduct. (See also, *Anderson v. Fitness Internat., LLC* (2016) 4 Cal.App.5th 867, 872—trial court struck punitive damages allegations that asserted L.A. Fitness reasonably could have foreseen that a member using the men's shower room would slip and fall on the floor, which was often covered with soapy or oily residue, and L.A. Fitness took no safety precautions to prevent such falls.) Here, however, the allegations simply do not rise to the same level as in *Nolan*, *Penner*, or *Dawes*.

The motion to strike is granted. The court will allow leave to amend within 30 days.