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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

PETER JUNKER,

Plaintiff,

v.

GIORGIOS VASSILIADES and DOES 1 to 10,

Defendant.

) **Case No.: CGC-07-468393**

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN OPPOSITION TO**
) **DEFENDANT’S MOTION TO STRIKE**
) **FOR INTENTIONAL TORT – BATTERY**
) **AND FOR PUNITIVE DAMAGES**

) **Date: THURSDAY, JAN. 17, 2008**

) **Time: 9:30 a.m.**

) **Dept.: 301**

) **JUDGE: The Honorable Peter J. Busch**

INTRODUCTION

It is a matter of simple hornbook law that a motion to strike must be based on the allegations in the pleadings. Extraneous evidence is not permitted.

The current motion is brought before the court without any merit at all. It appears that Defendant either prepared an ill written and researched brief or knowingly omitted controlling statutory law.

The factual allegations contained in the complaint are simple and are set out as follows. The incident occurred on August 17, 2007. Defendant struck a bicyclist while making an illegal right turn from Market Street onto the Octavia onramp. Defendant then attempted to flee the scene of the incident. Plaintiff attempted to stop Defendant from fleeing the scene any further. However, Defendant intentionally turned his car towards Plaintiff in an

1 effort to knock Plaintiff down and run away from the scene of the incident. As a result of
2 Defendant's actions, Defendant struck a car in front of him, which resulted in the car flipping
3 over and crushing Plaintiff underneath the car.

4 Those are the facts as pleaded by Plaintiff. In the subject motion, nothing contained in
5 Defendant's brief is relevant. Furthermore any additional evidence contained in Defendant's
6 brief is not supported by a declaration.

7 LEGAL AUTHORITY

8 **A. Defendant Motion to Strike Must Be Denied As The Claim For Punitive Damages** 9 **Is Legally Sufficient.**

10
11 Defendant cites Cal. Code of Civ. Proc. §§ 435 and 436 as the legal authority to strike
12 Plaintiff's claim for punitive damages. However, Defendant failed to cite the following
13 statute: Cal. Code of Civ. Proc. § 437. The omitted statute reads in pertinent part as follows:
14 the grounds for a motion to strike shall appear *on the face of the challenged pleading* or from
15 any matter of which the court is required to take judicial notice. [Emphasis added.]

16 In ruling on a motion to strike, the allegations in the complaint are considered in
17 context and presumed to be true. See *Clauson v. Sup.Ct. (Pedus Services, Inc.)* (1998) 67 Cal.
18 App. 4th 1253, 1255. "(J)udges read allegations of a pleading subject to a motion to strike as a
19 whole, all parts in their context, and assume their truth." *Id.* This is a legal concept that an
20 experienced litigator should know. However, within the six pages of Defendant's brief, there
21 is not a single mention of that basic point of law.

22 Here, Defendant has essentially ignored that point of law and describes in great detail,
23 without supporting declarations, his theory of the case. While Plaintiff appreciates the insight
24 to Defendant's theory, it is entirely irrelevant to the current motion.

25 **B. Plaintiff Has Met The Burden To Plead A Claim For Punitive Damages.**

26 A valid punitive damages claim requires that Plaintiff plead both a valid tort cause of
27 action and facts demonstrating that Defendant acted "malice, oppression or fraud." *College*
28 *Hospital, Inc. v. Superior Court* (1998) 157 Cal. App. 3d 159, 166, n9. If Plaintiff pleads an

1 intentional tort, Plaintiff must properly set forth factual allegations which support the claim
2 that the tort was committed “willfully or with a design to injure.” *G.D. Searle & Co. v.*
3 *Superior Court* (1975) 49 Cal. App. 3d 22, 29.

4 Defendant correctly cites Civil Code § 3294 for the proposition that Plaintiff would be
5 entitled to punitive or exemplary damages against Defendant if it is proven by clear and
6 convincing evidence that Defendant acted with malice in the matters relating to the evening of
7 June 17, 2007. Defendants also correctly cite the definitions of “malice” as conduct intended
8 to injury to the Plaintiff.

9 But Defendants incorrectly contend that the complaint does not contain factual allegations
10 that, if proven, would constitute malice on Defendant’s part. The complaint does in fact
11 contain factual allegations that if proven would support a finding that Defendant intentionally
12 directed his car into the path of Plaintiff in hopes of running him down in order to facilitate
13 his plan to flee from the scene of the incident.

14 Defendant then cites as legal authority to support his position the case of *Taylor v.*
15 *Superior Court* (1979) 24 Cal. 3d 890, 899. The case is off-point from the present motion.
16 *Taylor* stands for the legal proposition that the act of operating a motor vehicle while
17 intoxicated may support a finding of punitive damages. That is it.

18 However, in *Pelletti v. Membrila* (1965), 234 Cal. App. 2d 606, 611-612, the Court
19 noted that flight from the scene of an accident may be considered as direct evidence of
20 defendant's indifference to the point of recklessness to the welfare of others. The Court went
21 on further to note that an “aggravated factor of hit-and-run driving, the grossest type of
22 misconduct” is sufficient to support a finding of punitive damages as it shows a “wanton state
23 of mind of the defendant at the time of the accident and specific proof of his willingness to
24 expose others to the probability of injury.” *Id.* at 612-613.

25 This is not matter of whether Plaintiff will prevail on his claim for punitive damages;
26 it is a matter of whether Plaintiff properly pleaded factual allegations that could give rise to a
27 claim for punitive damages. Plaintiff has done exactly what is legally required.

28 **CONCLUSION**

