PARTIES/ATTORNEYS

Plaintiff	Cecilio Lazaro Camacho, Wilifrido Lazaro; Jasmin Norton; Ivan Lazaro; Odalys Lazaro; Estate of Alma Teresa Alcorta Del Lazaro	Nigel Whitehead Ernst Law Group
Defendant	Kendra Lynn Cordova	Eve H. Korff, Esq. Theresa T. Nguyen, Esq. Macdonald & Cody, LLP

TENTATIVE RULING

For all the reasons discussed below, the motion to strike punitive damages is denied.

The complaint in this matter alleges as follows: On September 8, 2024, defendant Kendra Lynn Cordova negligently drove her 2020 Mazda CX-9 SUV northbound on US. Highway 101 southbound, where she collided head-on with the vehicle driven by plaintiff Cecilio Lazaro Camacho. The impact mangled and forced the truck up on the concrete center divider from which plaintiff had to be extricated, causing him severe personal injuries and fatal injuries to his passenger, wife Alma Teresa Alcorta Del Lazaro. On December 9, 2024, plaintiff, along with decedent's family and Estate of Alma Teresa Alcorta Del Lazaro[1], filed the instant complaint using Judicial Council forms with the following causes of action: (1) motor vehicle; and (2) negligence. Plaintiffs seek punitive damages.

Defendant moves to strike the punitive damages from the complaint. Opposition and reply have been filed. All documents have been considered.

Punitive damages may be imposed where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. (Civ. Code § 3294, subd. (a).) "'Malice' means 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."

[1] A probate or trust estate is not a legal entity; it is simply a collection of assets and liabilities. As such, it has no capacity to sue, be sued or defend an action. Any litigation must be maintained by, or against, the executor, administrator or trustee of the estate. (*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1344; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 496; *Portico Mgmt. Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 474—judgment against trust was meaningless and unenforceable.) The court expects the status of this party to be amended appropriately.

(Civ. Code, § 3294, subd. (c)(1).) "'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,' [citation]." (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210.)

The seminal case in this area is *Taylor v. Superior Court* (1979) 24 Cal.3d 890. At the time, section 3294 did not contain the definitions section in subdivision (c). In interpreting the meaning of the word "malice," the *Taylor* court held "the act of operating a motor vehicle while intoxicated may constitute an act of 'malice' under Section 3294 ***if*** performed under circumstances which disclose a conscious disregard of the probable dangerous consequences." (*Taylor* at 890.) In *Taylor*, plaintiff alleged not just the fact defendant caused an accident while driving intoxicated, but also that he was an alcoholic, was "well aware" of his alcoholism, was aware of his tendency, habit, history, and inclination to drive while under the influence of alcohol and was aware of the dangerousness of driving while intoxicated. Defendant had previously caused a serious automobile accident while driving under the influence; had been arrested and convicted for driving on numerous prior occasions; had recovered from a probationary period which followed a drunk driving conviction; and knew one of his conditions was to refrain from drinking for at least six hours after consuming alcohol. (*Id.* at p. 893.) The court concluded that the complaint was sufficient to plead a basis for punitive damages. (*Id.* at p. 900.) The court made it clear that other factual variations may also be sufficient to withstand a demurrer. (*Ibid.*) *Taylor* fell short, however, of holding that punitive damages are always appropriate in cases involving driving while intoxicated. The court noted, "we have concluded that the act of operating a motor vehicle while intoxicated *may* constitute an act of 'malice' under §3294 if performed under circumstances which disclose a conscious disregard of the *probable* dangerous consequences." (*Id.* at 892 [emphasis added].)

Taylor was followed by *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82. In that case the court observed that "since 1974 at the latest, and probably since a much earlier date, the term 'malice' as used in Civil Code section 3294 has been interpreted as including a conscious disregard of the probability that the actor's conduct will result in injury to others." (*Id.* at 88.) It acknowledged that the decision in *Taylor* did not change the law in that regard. "It simply held, contrary to the decision in *Gombos v. Ashe*, *supra*, 158 Cal.App.2d 517, 322 P.2d 933, that driving a vehicle while intoxicated may in appropriate circumstances evidence a conscious disregard of probable injury to others and be sufficient to warrant an award of punitive damages." (*Dawes* at 88.)

The *Dawes* court concluded: "Petitioners alleged a good deal more than [defendant's] decision to drive and his driving in an intoxicated condition. They alleged that "with knowledge that probable serious injury would result to persons in the area," [defendant] 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. They also alleged that immediately after the accident [defendant] and his passenger falsely reported to the police that the passenger was driving rather than [defendant]. If these allegations were proved at trial, the factfinder could reasonably find that defendant acted with "malice"- with a conscious disregard of safety and the probable injury of others as a result of his conduct." (*Dawes* at 88-89.)

The court went on to note: " . . . petitioners pleaded specific facts from which the conscious disregard of probable injury to others may reasonably be inferred. Justice Franson aptly noted the distinction in his article on punitive damages in vehicle accident cases: Allegations of intoxication, excessive speed, driving with defective equipment or the running of a stop signal, without more, do not state a cause of action for punitive damages. [Par.] On the other hand, if the facts show that the defendant intentionally drove his vehicle at a high speed into an intersection crowded with pedestrians, or if he drove at a high speed through a crowded residential area where children were playing in the street, a legitimate inference of actual malice perhaps could arise. This would be particularly true if the defendant had not been drinking, or, if drinking, he was not under the influence to the point where he was incapable of being aware of the situation confronting him. Under these circumstances, it reasonably might be said that the defendant acted in such an outrageous and reprehensible manner that the jury could infer that he knowingly disregarded the substantial certainty of injury to others." (*Dawes* at 90.)

Dawes was cited by the Supreme Court, and not disapproved, in *Peterson v. Superior Court* (1982) 31 Cal.3d 147. There it was alleged that the defendant drove 100 mph while intoxicated. The passenger objected. The defendant stopped, consumed more alcohol, and drove again at a speed well in excess of 75 mph. The Supreme Court held those allegations were sufficient to support an award of punitive damages.

In sum, to plead punitive damages, one must show "probability" of injury to others. (*Taylor*—"risk of injury to others from ordinary driving while intoxicated is certainly foreseeable, but it is not necessarily probable.") The cases have shown this can be accomplished in different ways. The *Taylor* court found sufficient probability of injury in the pleading of intoxication, the manner of driving, *and* the defendant's prior history of driving under the influence arrests, conditions of probation in which he was advised of the dangers of intoxication and barred from driving after imbibing alcoholic beverages. In *Dawes*, the aggravating factors included driving at excessive speeds (65 mph in a 35-mph zone) through an area likely to be populated by pedestrians and bicyclists at the time of the accident; failure to obey a stop sign in that same area; and subsequent attempt to deceive the police as to who was driving. In *Peterson,* the court again focused on the intoxication, the excessive speed, and the continued consumption of alcohol before resuming driving at unsafe

speeds. Thus, whether one focuses upon either *Taylor* or *Dawes*, there must be pleaded, "specific facts from which the conscious disregard of probable injury to others may reasonably be inferred." (*Dawes* at p. 90.)[2]

Here, plaintiff has not alleged that defendant intended to cause him injury. Thus, the court will analyze whether the conduct alleged qualifies as despicable conduct. (*College Hospital, Inc., supra,* 8 Cal.4th at 725.) "Despicable 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.)" (*Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1159.) Alternatively, plaintiff asserts the conduct may qualify as oppression. "Oppression" means that [name of defendant]'s conduct was despicable and subjected [name of plaintiff] to cruel and unjust hardship in knowing disregard of [his/her/nonbinary pronoun] rights. (CACI 3940.)

The court is satisfied that driving the wrong way on Highway 101 adequately alleges circumstances that disclose sufficient facts from which a conscious disregard of the probable dangerous consequences of intoxicated driving may be inferred. Like in *Dawes* where the facts allowed an inference that injury was likely to result from driving intoxicated at excessive speeds through a pedestrian area and failing to obey traffic laws, driving against the flow of traffic on a freeway while intoxicated likewise permits an inference of the probable risk of a head-on collision.

In *Lackner v. North* (2006) 135 Cal.App.4th 1188, the court grappled with whether the evidence raised a triable issue of fact as to whether North acted with malice or oppression under Civil Code section 3294. In that case, defendant snowboarder collided with plaintiff skier who was standing on a flat area of the slope. The court concluded that no reasonable juror could find his conduct was despicable. After reviewing the definition of despicable, the court observed "cases involving unintentional torts are far fewer [than those alleging intentional torts] and the courts have had to consider various factors in determining whether the defendant's conduct was despicable . . . Plaintiff has not cited any cases involving a collision where the court found the defendant's conduct was despicable, and we have

[2] Both *Taylor* and *Dawes* were decided prior to 1987, at which time the Legislature added the requirement to Civil Code Section 3294 that conduct be "despicable" to support imposition of punitive damages under the malice standard. "By adding the word "willful" to the "conscious-disregard" prong of malice, the Legislature has arguably conformed the literal words of the statute to existing case law formulations. (See *Taylor v. Superior Court, supra*, 24 Cal.3d 890, 895-896 [malice involves awareness of dangerous consequences and a willful and deliberate failure to avoid them].) However, the 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." (4 Oxford English Dict. (2d ed. 1989) p. 529.) 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. (Accord, BAJI No. 14.72.1 (1992 re-rev.); *Mock v. Michigan Millers Mutual Ins. Co*. (1992) 4 Cal.App.4th 306, 331 [5 Cal.Rptr.2d 594].)" (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.) There has been no subsequent decision holding that drinking and driving, without exacerbating circumstances that make injury probable, gives rise to a claim for punitive damages.

found no California cases on point," distinguishing *Taylor*. (*Lackner, supra,* at 1212.) In the end, it found that the conduct of the snowboarder who struck the skier while she was standing in flat rest area on the slope was not "despicable" so as to support punitive damages claim because even if the snowboarder was reckless in traveling at a high speed in a rest area, he did not hit the skier intentionally, and he was not out of control until he saw skier and attempted to avoid her.

This case is distinguishable, even though the underlying tort is an unintentional tort. Driving the wrong way on the freeway seems to qualify as despicable, as it is quite literally a crime. (See Veh. Code, § 21651, subd. (b)—mandating that vehicles must travel to the right of any dividing barrier or section separating opposing lanes of traffic, violation of which is a misdemeanor.) Moreover, as noted above, *Lacker v. North* involved a collision between persons using the slope in the designated manner. Here, a collision was virtually guaranteed as defendant used the wrong roadway. Although the underlying tort is an unintentional one, the alleged circumstances support the punitive damages allegations.

Moreover, the facts support the allegation that defendant acted with a willful and conscious disregard of the rights or safety of others. Clearly, drivers are expected to understand and adhere to traffic laws, which exist for their safety and the safety of other drivers. Moreover, defendant is alleged, through her employment as a bartender, to have been educated and trained about the dangers associated with drinking and driving. These allegations are sufficient.

The motion to strike is denied.

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.)