

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Penelope Poe v. Ethan G. Conrad, et al.

No. 2:25-cv-01118-DJC-AC (E.D. Cal. Jan. 12, 2026) · No. No. 2:25-cv-01118-DJC-AC · Decided January 12, 2026

SUMMARY

The United States District Court for the Eastern District of California grants Plaintiff Penelope Poe’s motion to proceed under a pseudonym. The court grants in part and denies in part Defendant Ethan G. Conrad’s motion to dismiss claims arising from alleged drug-facilitated sexual assaults. The assault, negligent infliction of emotional distress, and Bane Act claims are dismissed with leave to amend, while the battery, sexual battery, intentional infliction of emotional distress, other specified claims, and request for punitive damages survive.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Daniel J. Calabretta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	January 12, 2026
DOCKET	No. 2:25-cv-01118-DJC-AC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved to proceed under a pseudonym, and Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the complaint for failure to state claims upon which relief could be granted.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts factual allegations as true and construes them in the light most favorable to the nonmoving party, but dismissal is proper when the complaint lacks a cognizable legal theory or sufficient facts to support one, or when the allegations do not plausibly establish an entitlement to relief.
PRECEDENTIAL VALUE	unpublished district court order; persuasive only
PARTIES	Penelope Poe v. Ethan G. Conrad, et al.

TOPICS

motions to dismiss

pleadings

civil procedure

battery

civil rights

PRACTICE AREAS

civil procedure

torts

civil rights

remedies

QUESTIONS PRESENTED

1. Whether Plaintiff should be permitted to proceed under a pseudonym based on the alleged sexual assaults and the balance between her need for anonymity, Defendant's potential prejudice, and the public interest.
2. Whether Plaintiff plausibly alleged that Defendant drugged and raped her despite Defendant's arguments that the allegations were contradictory, speculative, and based on the experiences of others.
3. Whether Plaintiff adequately pleaded assault under California law where the complaint did not allege that she reasonably believed she was about to be touched in a harmful or offensive manner.
4. Whether allegations of drug-facilitated sexual contact and allegedly invalid consent plausibly stated claims for battery and sexual battery.
5. Whether Plaintiff adequately pleaded intentional or negligent infliction of emotional distress.
6. Whether Plaintiff adequately pleaded a claim under the Bane Act.
7. Whether Plaintiff's request for punitive damages could be dismissed at the pleading stage.

HOLDINGS

1. A plaintiff alleging repeated sexual assault may proceed anonymously when the need to protect against harassment, retaliation, and public scrutiny outweighs the prejudice to the defendant and the public interest in disclosure. The court granted Plaintiff's motion because the allegations involved highly sensitive sexual-assault claims, Defendant would receive Plaintiff's identity under a protective order, and the balance favored anonymity.
2. At the Rule 12(b)(6) stage, Plaintiff plausibly alleged that Defendant drugged and raped her. Allegations of contemporaneous symptoms, psychological responses, and later corroborating circumstances were not rendered implausible merely because they included Plaintiff's beliefs or information learned from other people.
3. The complaint failed to plausibly state an assault claim because it did not allege that Plaintiff reasonably believed she was about to be touched in a harmful or offensive manner, or that it reasonably appeared Defendant was about to carry out such a threat. The assault claim was dismissed with leave to amend.
4. The complaint plausibly stated a battery claim because the allegation that Defendant drugged Plaintiff before sexual activity created a factual dispute regarding the validity of Plaintiff's apparent consent. Defendant's motion to dismiss the battery claim was denied.
5. The complaint plausibly stated a sexual-battery claim because Plaintiff alleged sexually offensive contact, including rape, to which she did not consent. Defendant's motion to dismiss the sexual-battery claim was denied.

6. The complaint plausibly stated a claim for intentional infliction of emotional distress. Defendant's motion to dismiss that claim was denied.
7. The complaint failed to state a negligent-infliction-of-emotional-distress claim because its allegations concerned intentional conduct rather than negligent conduct. The claim was dismissed with leave to amend.
8. The complaint failed to state a Bane Act claim because it did not adequately identify a constitutional or legal right and did not sufficiently allege interference through threats, intimidation, or coercion. The claim was dismissed with leave to amend.
9. The request for punitive damages was not dismissed at the pleading stage because Plaintiff had plausibly stated several causes of action and alleged malice, oppression, or fraud. The court treated punitive damages as a remedy rather than a separate claim and found dismissal premature.

KEY QUOTATIONS

“The normal presumption in litigation is that parties must use their real names.” (at 3)

“Given the nature of Plaintiff’s allegations, which involve years of sexual assault by an alleged prominent local figure, the Court finds that Plaintiff’s need for anonymity outweighs the risk of prejudice to Defendant and the public’s interest in knowing her identity.” (at 4)

“A complaint may be dismissed for “failure to state a claim upon which relief can be granted[.]”” (at 6)

“The Court finds that Plaintiff has plausibly alleged that Defendant drugged and raped her.” (at 7)

“Without this allegation, the Court cannot find that there is a plausible cause of action for assault.” (at 9)

“Because the nature of Plaintiff’s consent is contested due to the allegation that she was drugged, the Court finds that there is a plausible claim for battery.” (at 10)

“The Court grants the Motion to Dismiss the first, fourth and ninth causes of action with leave to amend.” (at 14)

FACTUAL BACKGROUND

Plaintiff alleged that, during a years-long romantic relationship, Defendant repeatedly drugged her with cocktails containing a date-rape-type substance and raped her while she was unable to consent. She alleged symptoms including disorientation, memory gaps, extreme fatigue, unconsciousness, weakness, soreness, and feelings of violation. Plaintiff stated that she did not recognize the encounters as nonconsensual at the time and began suspecting wrongdoing in early 2025 after other individuals made similar allegations against Defendant. She asserted claims for assault, battery, sexual battery, negligent and intentional infliction of emotional distress, domestic violence, gender violence, the Ralph Act, the Bane Act, and punitive damages.

PROCEDURAL HISTORY

Plaintiff filed a complaint asserting ten causes of action arising from alleged drug-facilitated sexual assaults and related emotional and civil-rights injuries. The court granted Plaintiff’s motion to proceed under a pseudonym and granted in part and denied in part Defendant’s motion to dismiss. The assault, negligent-infliction-of-

emotional-distress, and Bane Act claims were dismissed with leave to amend; the battery, sexual-battery, intentional-infliction-of-emotional-distress, domestic-violence, gender-violence, Ralph Act, and punitive-damages claims survived.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. Plaintiff was ordered within twenty-one days to file a First Amended Complaint or inform the court that she intended to proceed with the surviving causes of action.

CASES CITED

- Doe v. Kamehameha Schools/Bernice Pauahi Bishop Est., 596 F.3d 1036, 1042 (9th Cir. 2010)
- Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1067-68 (9th Cir. 2000)
- United States v. Doe, 655 F.2d 920, 922 n.1 (9th Cir. 1981)
- M.J.R. v. United States, No. 4:23-cv-05821-YGR, 2023 WL 7563746, at *1 (N.D. Cal. Nov. 14, 2023)
- Doe v. Mt. Diablo Unified Sch. Dist., No. 3:18-cv-02589-SK, 2018 WL 2317804, at *2 (N.D. Cal. May 22, 2018)
- Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008)
- Steinle v. City & Cnty. of San Francisco, 919 F.3d 1154, 1160 (9th Cir. 2019)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- So v. Shin, 212 Cal. App. 4th 652, 668-69 (2013)
- Guzman v. Finch, No. 3:19-cv-00412-MMA-AHG, 2019 WL 3766659, at *3-4 (S.D. Cal. Aug. 9, 2019)
- Carlsen v. Koivumaki, 227 Cal. App. 4th 879, 890 (2014)
- Barbara A. v. John G., 145 Cal. App. 3d 369, 374-75 (1983)
- Sanchez v. CoreCivic, Inc., No. 3:24-cv-01199-L-VET, 2025 WL 1160008, at *3-4 (S.D. Cal. Apr. 21, 2025)
- Hailey v. Cal. Physicians' Serv., 158 Cal. App. 4th 452, 473-74 (2007)
- Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, 593 (1979)
- Christensen v. Superior Court, 54 Cal. 3d 868, 903 (1991)
- Marlene F. v. Affiliated Psychiatric Med. Clinic, Inc., 48 Cal. 3d 583, 588 (1989)
- Allen v. City of Sacramento, 234 Cal. App. 4th 41, 67 (2015)
- Shoyoye v. County of Los Angeles, 203 Cal. App. 4th 947, 959 (2012)

OPINION

Poe
PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 PENELOPE POE, an individual, No. 2:25-cv-01118-DJC-AC 12 Plaintiff, 13 v. ORDER 14
ETHAN G. CONRAD, et al., 15 Defendants. 16 17 18 Pending before the Court is Plaintiff's
Motion to Proceed under Pseudonym and 19 Defendant's Motion to Dismiss. Defendant contends
that Plaintiff's Complaint should 20 be dismissed in its entirety because it fails to plausibly state
claims upon which relief 21 can be granted. For the reasons discussed below, the Court GRANTS
Plaintiff's 22 Motion to Proceed under Pseudonym and GRANTS IN PART AND DENIES IN
PART 23 Defendant's Motion to Dismiss.

24 BACKGROUND

25 Plaintiff Penelope Poe brings this action against Defendant Ethan G. Conrad, a 26 commercial
real-estate developer in Sacramento, California. (Compl. (ECF No. 1) ¶ 3.) 27 Defendant is the
CEO of Ethan Conrad Properties, Inc., which has a commercial real 28 estate portfolio of over 170
retail, office and industrial buildings. (Id.) Plaintiff and 1 Defendant entered into a romantic
relationship where they frequently met at 2 Defendant's residence and other locations. (Id. ¶ 8.)
Over the course of the 3 relationship, Plaintiff and Defendant engaged in sexual encounters, which
Plaintiff 4 believed at the time to be consensual. (Id.) However, Plaintiff now contends that 5
beginning around 2019, she had been raped repeatedly by Defendant over the 6 course of their
years-long relationship. (See id. ¶ 8.) Plaintiff alleges that Defendant 7 would make cocktails for
her during their meetings that contained a "date-rape-type 8 substance", thereby undermining her
ability to consent to sexual activity. (Id. ¶¶ 8–9.) 9 Plaintiff recalls occasions after consuming the
cocktails where she experienced 10 disorientation, memory gaps, extreme fatigue,
unconsciousness, physical weakness, 11 soreness and feelings of being violated. (Id.) Plaintiff "is
informed and believes" that 12 Defendant developed expertise over the years in administering
date-rape style drugs 13 that were responsible for her symptoms. (Id.) When confronted by
Plaintiff, 14 Defendant would explain the symptoms as a result of her "getting too drunk." 15 (Id.
¶ 9.) Plaintiff contends that on certain occasions she had consumed only modest 16 amounts of
alcohol or amounts that she had consumed previously without similar 17 effects. (Id.) 18 At the
time of their relationship, Plaintiff was unable to recognize that these 19 encounters were non-
consensual. (Id.) However, in early 2025, after other individuals 20 came forward with similar
complaints against Defendant, she began to suspect "foul 21 play." (Id. ¶ 8.) Plaintiff reviewed
medical literature online and other individuals' 22 encounters with Defendant. (Id.) She also
experienced flashbacks and nightmares of 23 her experiences with Defendant. (Id. ¶ 9.) Plaintiff
now believes that Defendant's 24 knowledge and use of drugs, along with patterns of
"manipulative behavior" 25 prevented her from discovering the assaults earlier. (See id. ¶¶ 8–9.)
26 Plaintiff brings ten causes of action against Defendant for assault, battery, 27 sexual battery,
negligent infliction of emotional distress, intentional infliction of 28 emotional distress, domestic

violence under Civil Code § 1708.6, gender violence 1 under Civil Code § 52.4(c)(2), the Ralph Act and the Bane Act. Plaintiff also seeks 2 punitive damages pursuant to Civil Code § 3294. Plaintiff filed a Motion to Proceed 3 Under Pseudonym (Mot. Pseud. (ECF No. 2)), which Defendant opposes (Pseud. 4 Opp’n (ECF No. 5)). Additionally, Defendant moves to dismiss Plaintiff’s Complaint in 5 its entirety for failure to state a claim upon which relief can be granted. (Mot. Dismiss 6 (ECF No.13).) The matter is fully briefed (Opp’n (ECF No. 15); Reply (ECF No. 16)) and 7 submitted without oral argument pursuant to Local Rule 230(g).

8 MOTION TO PROCEED UNDER PSEUDONYM

9 I. LEGAL STANDARD

10 “The normal presumption in litigation is that parties must use their real 11 names.” Doe v. Kamehameha Schools/Bernice Pauahi Bishop Est., 596 F.3d 1036, 12 1042 (9th Cir. 2010); see also Fed. R. Civ. P. 10(a) (“The title of the complaint must 13 name all the parties [.]”); Fed. R. Civ. P. 17(a)(1) (“An action must be prosecuted in the 14 name of the real party in interest.”). That said, parties may “proceed anonymously 15 when special circumstances justify secrecy.” See Does I thru XXIII v. Advanced Textile 16 Corp., 214 F.3d 1058, 1067 (9th Cir. 2000) (collecting cases). Parties may “use 17 pseudonyms in the ‘unusual case’ when nondisclosure of the party’s identity ‘is 18 necessary. . .to protect a person from harassment, injury, ridicule or personal 19 embarrassment.’” See id. at 1067–68 (quoting United States v. Doe, 655 F.2d 920, 922 20 n.1 (9th Cir. 1981)). Where these special circumstances exist, a court may permit the 21 party to proceed anonymously “when the party’s need for anonymity outweighs 22 prejudice to the opposing party and the public’s interest in knowing the party’s 23 identity.” Id. at 1068. Courts are to balance the following factors: (1) the severity of 24 the threatened harm, (2) the reasonableness of the anonymous party’s fears, (3) the 25 anonymous party’s vulnerability to such retaliation, (4) the prejudice to the opposing 26 party, and (5) the public interest. Kamehameha Schools, 596 F.3d at 1042 (internal 27 quotation marks and citation omitted). 28 ///

1 II. DISCUSSION

2 Here, Plaintiff alleges that Defendant drugged her and raped her repeatedly 3 over the course of their relationship, and that she fears public harassment, retaliation 4 and scrutiny given the sensitive nature of these allegations. Defendant opposes 5 Plaintiff’s request to proceed under a pseudonym. (Pseud. Opp’n (ECF No. 5).) He 6 contends that he is prejudiced in several ways — including that the merits of Plaintiff’s 7 claims are frivolous, that the asymmetry of allowing her anonymity infringes on 8 traditional notions of due process and fair play, and that litigation efforts will become 9 more difficult. 10 Given the nature of Plaintiff’s allegations, which involve years of sexual assault 11 by an alleged prominent local figure, the Court finds that Plaintiff’s need for anonymity 12 outweighs the risk of prejudice to Defendant and the public’s interest in knowing her 13 identity. “With regard to allegations of sexual assault, several courts have concluded 14 that any prejudice the defendant may face does not favor requiring the plaintiff to 15 disclose her identity, and that the public’s interest in allowing alleged victims of sexual 16 assault to proceed

anonymously outweighs any public interest in the plaintiff's 17 identity.” M.J.R. v. United States, No. 4:23-cv-05821-YGR, 2023 WL 7563746, at *1 18 (N.D. Cal. Nov. 14, 2023) (collecting cases); see also Doe v. Mt. Diablo Unified Sch. 19 Dist., No. 3:18-cv-02589-SK, 2018 WL 2317804, at *2 (N.D. Cal. May 22, 2018) 20 (“[A]llowing sexual assault victims to proceed anonymously serves a strong public 21 interest in protecting their identities so that other victims will not be deterred from 22 reporting such crimes.”). Additionally, the Court finds that Defendant will not be 23 unduly prejudiced because Plaintiff’s counsel will disclose Plaintiff’s true identity to 24 Defendant and the Court under a protective order. (Mot. Pseud. at 4.) 25 //// 26 //// 27 //// 28 ////

1 III. CONCLUSION

2 Thus, the Court finds that good cause exists at this stage in the litigation and 3 GRANTS Plaintiff’s Motion to Proceed Under Pseudonym (ECF No. 2).1

4 MOTION TO DISMISS

5 I. LEGAL STANDARD

6 A party may move to dismiss for “failure to state a claim upon which relief can 7 be granted[.]” Fed. R. Civ. P. 12(b)(6). The motion may be granted only if the 8 complaint lacks a “cognizable legal theory or sufficient facts to support a cognizable 9 legal theory.” Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 10 2008). While the court assumes all factual allegations are true and construes “them in 11 the light most favorable to the nonmoving party,” Steinle v. City & Cnty. of San 12 Francisco, 919 F.3d 1154, 1160 (9th Cir. 2019), if the complaint's allegations do not 13 “plausibly give rise to an entitlement to relief” the motion must be granted, Ashcroft v. 14 Iqbal, 556 U.S. 662, 679 (2009). 15 A complaint need contain only a “short and plain statement of the claim 16 showing that the pleader is entitled to relief[.]” Fed. R. Civ. P. 8(a) (2), not “detailed 17 factual allegations,” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). This rule 18 demands more than unadorned accusations; “sufficient factual matter” must make the 19 claim at least plausible. Iqbal, 556 U.S. at 678. In the same vein, conclusory or 20 formulaic recitations of elements do not alone suffice. Id. “A claim has facial 21 plausibility when the plaintiff pleads factual content that allows the court to draw the 22 reasonable inference that the defendant is liable for the misconduct alleged.” Id. This 23 evaluation of plausibility is a context-specific task drawing on “judicial experience and 24 common sense.” Id. at 679. 25 1 Defendant requests that this Court take judicial notice of several documents in considering the Motion 26 to Proceed Under Pseudonym: a complaint filed by Plaintiff’s counsel in a state court case, a declaration from the above-mentioned state court case, an additional complaint filed by Plaintiff’s counsel in 27 another state court case, and two news articles discussing the civil suits alleging assault against Defendant. (ECF No. 6.) Because the Court need not rely on the documents in this instance, the Court 28 DENIES Defendant’s request.

1 II. DISCUSSION

2 Defendant provides specific arguments challenging the first, second, third, 3 fourth, fifth, ninth and tenth causes of action. The Court addresses the arguments 4 specific to these claims below.

Defendant also generally challenges the plausibility of 5 Plaintiff's allegations that Defendant drugged and raped her as being contradictory, 6 speculative and rooted in the experiences of others. (Mot. Dismiss at 9–13.) Plaintiff 7 contends that the allegations sufficiently detail claims of sexual abuse because they 8 involve a pattern of factual assertions supported by contemporaneous symptoms, 9 psychological responses, and later corroboration. (Opp'n at 8–11.) The Court rejects 10 Defendant's arguments and finds Plaintiff's allegations plausible at this stage in the 11 litigation. 12 First, the Complaint does not appear to be contradictory. Plaintiff is not 13 presenting conflicting facts about her consent — rather, she is stating that any consent 14 to sexual activity that she may have given was invalidated by Defendant allegedly 15 drugging her without her knowledge. (See Compl. ¶ 8, 20; Opp'n at 6.) Second, 16 while Plaintiff's allegations include her beliefs about what happened to her, they are 17 not wholly speculative. Plaintiff's contention is that she did not understand the 18 wrongfulness of the harm at the time and now alleges what she believed happened to 19 her. (Opp'n at 7.) Plaintiff also alleges experiencing disorientation, memory gaps, 20 extreme fatigue, unconsciousness, physical soreness and feelings of being violated 21 after drinking cocktails made by Defendant. (Compl. ¶ 8.) Lastly, Plaintiff does not 22 solely base her claims on the experiences of others. Instead, Plaintiff claims that 23 seeing what happened to other people triggered memories of her own experiences. 24 (See Opp'n at 8–9.) To the extent that Defendant objects to the truthfulness of 25 Plaintiff's allegations, the Court must accept all allegations in the Complaint as true at 26 this stage of the proceedings. The Court finds that Plaintiff has plausibly alleged that 27 Defendant drugged and raped her. Accordingly, the Court declines to dismiss any of 28 Plaintiff's causes of actions on these grounds. The Court now turns to the more 1 specific arguments made by Defendant with respect to various causes of action in the 2 Complaint. 3 A. First and Second Causes of Action: Assault and Battery 4 1. First Cause of Action: Assault 5 In addition to the catchall argument that Plaintiff has failed to allege that 6 Defendant drugged and raped her, Defendant specifically contends that Plaintiff fails 7 to allege any facts to support a claim for assault because her allegations are largely 8 speculative. (Mot. Dismiss at 14–15.) Defendant also contends that assault is not the 9 proper tort to be alleging for the theory which Plaintiff expresses. (Id.) Plaintiff does 10 not address all of Defendant's arguments and instead argues that the allegations are 11 not speculative. (Opp'n at 11.) To plead assault under California law, a plaintiff must 12 establish that 13

(1) defendant acted with intent to cause harmful or

14 offensive contact, or threatened to touch a plaintiff in a 15 harmful or offensive manner; (2) plaintiff reasonably believed she was about to be touched in a harmful or 16 offensive manner or it reasonably appeared to plaintiff that defendant was about to carry out the threat; (3) plaintiff did 17 not consent to defendant's conduct; (4) plaintiff was 18 harmed; and (5) defendant's conduct was a substantial factor in causing plaintiff's harm. 19 20 *So v. Shin*, 212 Cal. App. 4th 652, 668–69 (2013) (citations omitted). Where consent is 21 fraudulently obtained, it is invalid, and the act consented to may therefore be 22 actionable. 5 Witkin, Summary 11th Torts Ch. IX, § 487 (2025).

23 Here, Plaintiff alleges that Defendant raped her, which would establish that 24 Defendant touched her in a harmful or offensive manner. Plaintiff also states that she 25 did not consent to the conduct because she believed that Defendant provided her 26 cocktails with date rape drugs. But the Complaint fails to allege that Plaintiff 27 reasonably believed that she was about to be touched in a harmful or offensive 28 manner. Without this allegation, the Court cannot find that there is a plausible cause 1 of action for assault. See *Guzman v. Finch*, No. 3:19-cv-00412-MMA-AHG, 2019 WL 2 3766659, at *3–4 (S.D. Cal. Aug. 9, 2019) (dismissing a claim for assault under 3 California law where plaintiff did not allege facts to show that it reasonably appeared 4 to her that defendant was about to rape her or yank her arm). Accordingly, 5 Defendant’s Motion to Dismiss the cause of action for assault is GRANTED with leave 6 to amend. 7 2. Second Cause of Action: Battery 8 Plaintiff also brings a cause of action against Defendant for battery. Defendant 9 contends that because Plaintiff, at the time she had provided consent and had no 10 basis to believe she was engaging in non-consensual sexual activity, cannot claim that 11 she did not consent. To state a claim for battery, Plaintiff must allege: (1) the 12 defendant touched the plaintiff, or caused the plaintiff to be touched, with the intent 13 to harm or offend the plaintiff; (2) the plaintiff did not consent to the touching; (3) the 14 plaintiff was harmed or offended by the defendant’s conduct; and (4) a reasonable 15 person in the plaintiff’s position would have been offended by the touching. *Carlsen 16 v. Koivumaki*, 227 Cal. App. 4th 879, 890 (2014) (citation omitted). 17 In *Barbara A. v. John G.*, the California Court of Appeal held that the plaintiff, 18 who had consented to sexual intercourse with the defendant after he knowingly and 19 fraudulently represented that he was sterile, could still bring a battery claim against 20 him. 145 Cal. App. 3d 369, 374–75 (1983). As the court reasoned, although consent 21 generally vitiates the wrong, the fact that the plaintiff alleged that her consent was 22 fraudulently induced rendered her consent invalid. *Id.* at 375. Here, the Complaint 23 states that Plaintiff believed she had engaged in consensual sexual activity with 24 Defendant. (Compl. ¶ 8.) But she also contends that her consent was invalid because 25 she believes that Defendant had been drugging her prior to engaging in sexual 26 activity. (*Id.*) Because the nature of Plaintiff’s consent is contested due to the 27 allegation that she was drugged, the Court finds that there is a plausible claim for 28 1 battery. Thus, Defendant’s Motion to Dismiss Plaintiff’s cause of action for battery is 2 DENIED. 3 A. Third Cause of Action: Sexual Battery 4 Defendant also seeks to dismiss Plaintiff’s third cause of action for sexual 5 battery. Defendant argues that Plaintiff’s claim is speculative and fails to identify any 6 instance of non-consent. (Mot. Dismiss at 15–16.) Plaintiff again contends that the 7 allegations are not speculative. (Opp’n at 11.) 8 California Civil Code § 1708.5(a) outlines several ways in which a sexual battery 9 may occur: (1) where a person acts with the intent to cause a harmful or offensive 10 contact with an intimate part of another, and a sexually offensive contact with that 11 person directly or indirectly results; (2) acts with intent to cause a harmful or offensive 12 contact with another by use of the person’s intimate part, and a sexually offensive 13 contact with that person directly or indirectly results; (3) acts to cause an imminent 14

apprehension of the conduct described in paragraph (1) or (2), and a sexually 15 offensive contact with that person directly or indirectly results. 16 For largely the same reasons discussed above, supra II.A.2, Plaintiff has 17 plausibly stated a claim for sexual battery. Particularly, Plaintiff alleges that Defendant 18 raped her, (Compl. ¶ 8), which is sexually offensive contact to which she did not 19 consent. See *Sanchez v. CoreCivic, Inc.*, No. 3:24-cv-01199-L-VET, 2025 WL 1160008, 20 at *3–4 (S.D. Cal. Apr. 21, 2025) (denying a motion to dismiss a sexual battery claim 21 where the plaintiff alleged that the defendant “invaded Plaintiff’s body/person by 22 touching her private areas without Plaintiff’s consent.”). Thus, Defendant’s Motion to 23 Dismiss Plaintiff’s cause of action for sexual battery is DENIED. 24 B. Fourth and Fifth Causes of Action: Negligent Infliction of Emotional 25 Distress and Intentional Infliction of Emotional Distress 26 Defendant also seeks to dismiss the fourth and fifth causes of action for 27 negligent and intentional infliction of emotional distress, respectively. Defendant 28 contends that the intentional infliction claim fails because Plaintiff has failed to allege a 1 causal connection between Defendant and her alleged emotional distress. (Mot.

2 Dismiss 16–17.) Plaintiff argues that her allegations of enduring psychological trauma, 3 emotional instability and allegations that Defendant acted with malice, fraud or 4 oppression are sufficient to state a claim for intentional infliction of emotional distress. 5 (Opp’n at 12.) 6 1. Fifth Cause of Action: Intentional Infliction of Emotional Distress 7 To state a claim for intentional infliction of emotional distress under California 8 law, a plaintiff must plead (1) extreme and outrageous conduct by the defendant with 9 the intention of causing, or reckless disregard of the probability of causing, emotional 10 distress; (2) the plaintiff’s suffering severe or extreme emotional distress; (3) and actual 11 and proximate causation of the emotional distress by the defendant’s outrageous 12 conduct. *Hailey v. Cal. Physicians’ Serv.*, 158 Cal. App. 4th 452, 473–74 (2007) (citing 13 *Cervantez v. J.C. Penney Co.*, 24 Cal.3d 579, 593 (1979), overturned on other grounds 14 by legislative action, Cal. Penal Code § 243). Outrageous conduct must be “directed 15 at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware.” 16 *Christensen v. Superior Court*, 54 Cal. 3d 868, 903 (1991). 17 Although not extensive, the Court finds that the Complaint plausibly ties the 18 alleged conduct to the severe emotional distress experienced by Plaintiff. In 19 particular, the Complaint alleges that “[Defendant’s] conduct caused Plaintiff to suffer 20 serious emotional distress due to Defendant’s intentional conduct,” and that 21 Defendant’s “ongoing lies caused Plaintiff to live with a great deal of uncertainty.” 22 (Compl. ¶ 41.) Moreover, Plaintiff has alleged Defendant’s extreme and outrageous 23 conduct in describing being drugged and raped and that she experienced “extreme 24 emotional distress” as a result. Thus, the Court DENIES dismissal of Plaintiff’s cause of 25 action for intentional infliction of emotional distress. 26 2. Fourth Cause of Action: Negligent Infliction of Emotional Distress 27 As for negligent infliction of emotional distress, Defendant contends that 28 Plaintiff’s claims are not rooted in Defendant’s negligent acts. (Mot. Dismiss at 17.) 1 Plaintiff does not directly respond to Defendant’s arguments. The Court finds that the 2 Complaint involves allegations pertaining to

alleged intentional behavior by 3 Defendant rather than any negligent behavior. See *Marlene F. v. Affiliated Psychiatric 4 Med. Clinic, Inc.*, 48 Cal. 3d 583, 588 (1989) (explaining that a plaintiff must fulfill the 5 requirements of an ordinary negligence claim to state a claim for NIED). Thus, 6 Defendant's Motion to Dismiss the negligent infliction of emotional distress cause of 7 action is GRANTED with leave to amend. 8 C. Ninth Cause of Action: Bane Act 9 Defendant also contends that Plaintiff failed to assert a claim under the Bane 10 Act because she does not state that a constitutional violation occurred and instead 11 alleges an intentional, personal tort. (MTD at 16; Reply at 13–14.) Plaintiff does not 12 directly respond to Defendant's argument about the Bane Act. 13 The Tom Bane Civil Rights Act prohibits "threat[s], intimidation or coercion" 14 designed to prevent a person's exercise or enjoyment of their constitutional or 15 statutory rights. Cal. Civ. Code § 52.1. "A plaintiff must show (1) intentional 16 interference or attempted interference with a state or federal constitutional or legal 17 right, and (2) the interference or attempted interference was by threats, intimidation or 18 coercion." *Allen v. City of Sacramento*, 234 Cal. App. 4th 41, 67 (2015). "[T]he statute 19 was intended to address only egregious interferences with constitutional rights, not 20 just any tort[] [t]he act of interference with a constitutional right must itself be 21 deliberate or spiteful." *Shoyoye v. County of Los Angeles*, 203 Cal. App. 4th 947, 959 22 (2012). Absent argument from Plaintiff opposing dismissal and based on the limited 23 discussion of which rights were violated, Defendant's Motion to Dismiss the cause of 24 action under the Bane Act is GRANTED with leave to amend. 25 D. Tenth Cause of Action: Punitive Damages 26 In the Complaint, Plaintiff also includes a tenth claim under California Civil 27 Code § 3294 and seeks punitive damages. Defendant argues that this claim is 28 1 | improper as a request for punitive damages is a request for a particular remedy. (Mot. 2 | at 17.) Plaintiff contends that punitive damages are appropriate. (Opp'n at 12.) 3 Under Civil Code § 3294(a), "[i]n an action for the breach of an obligation not 4 | arising from contract, where it is proven by clear and convincing evidence that the 5 | defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to 6 | the actual damages, may recover damages for the sake of example and by way of 7 | punishing the defendant." Here, the Complaint broadly states that "Plaintiff is entitled 8 | to punitive damages. . because Defendant acted with malice, oppression, and/or 9 | fraud." (Compl. 466.) Because the Court has found that Plaintiff has plausibly stated 10 | several causes of action, it is premature at this stage to dismiss the request for punitive 11 | damages. Thus, Defendant's Motion to Dismiss is DENIED as to punitive damages. 12 Ill. CONCLUSION 13 For the reasons discussed above the Court GRANTS IN PART AND DENIES IN 14 | PART Defendant's Motion to Dismiss (ECF No. 13). The Court GRANTS the Motion to 15 | Dismiss the first, fourth and ninth causes of action with leave to amend. The Court 16 | DENIES the Motion to Dismiss as to Plaintiff's second, third, fifth, sixth, seventh and 17 | eighth causes of action and to Plaintiff's request for punitive damages. Plaintiff is 18 | ORDERED to either file a First Amended Complaint or inform the Court of her 19 | intention to proceed with surviving causes of action within twenty-one days of this 20 | Order. 21 99 IT IS SO ORDERED. 23 | Dated: _January 12, 2026 Donel J

bnetto Hon. Daniel alabretta

24 UNITED STATES DISTRICT JUDGE

25 26 27 | DJC6 - Poe25ev01118.mtd 28 19 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21
22 23 24 25 26 27 28