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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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TYESHINA SYKES, an individual, and JLS, by and through her guardian ad litem TYESHINA SYKES, an individual,

Plaintiffs,

v.

DONALD JAMES SHEA, an individual; KUNKEL TRUCK LINES, INC., a South Dakota Corporation; and DOES 1-30;

Defendants.

CIV. NO. 2:16-02851 WBS GGH

MEMORANDUM AND ORDER RE:
DEFENDANTS' MOTION TO AMEND,
MOTION TO BIFURCATE, AND MOTION
FOR SUMMARY JUDGMENT

DONALD JAMES SHEA, an individual and KUNKEL TRUCK LINES, INC., a South Dakota Corporation,

Counter-Claimants,

v.

TYESHINA SYKES, an individual, and Does 1-10,

Counter-Defendants.

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1 Tyeshina Sykes ("Sykes") initiated this action on
2 behalf of herself and J.S., a minor, against defendants Donald
3 James Shea ("Shea") and Kunkel Trucking, Inc. ("Kunkel") alleging
4 negligence based personal injury claims related to a motor
5 vehicle collision involving a truck driven by Shea and owned by
6 Kunkel. Before the court are: (1) defendants' Motion to Amend
7 Answer (Docket No. 20)¹; (2) defendants' partial Motion for
8 Summary Judgment (Docket No. 22); and (3) defendants' Motion to
9 Bifurcate (Docket No. 21).

10 I. Background

11 On May 11, 2015, Sykes was driving a Toyota Avalon on
12 Highway 5 when her vehicle hit a pothole, causing her lights to
13 go out and engine to stop running. (Decl. of Lauren Horwitz in
14 Supp. of Pls.' Opp'n to Defs.' Partial Mot. for Summ. J.

15 ("Horwitz Decl.") ¶ 2 (Docket No. 28-1).) Sykes' sister and
16 child, J.S., were in the car at the time. (Id.) Sykes parked
17 her vehicle on the side of the road and exited the vehicle.
18 (Id.) Sykes' vehicle was then struck by a truck operated by
19 Shea. (Id.) The complaint alleges that plaintiffs sustained
20 personal injuries after defendants' vehicle struck Sykes' parked
21 vehicle. (Compl. ¶ 20 (Docket No. 1-1).)

22 At the time of the incident, Sykes owned the Toyota
23 Avalon she was driving. (Decl. of J. Stephanie Krmpotic in Supp.
24 of Defs.' Mot. for Partial Summ. J. ("Krmpotic Decl."), Ex. A,
25 Sykes' Interrog. Resp. No 13 (Docket No. 22-2).) During Sykes'

26
27 ¹ Plaintiffs do not oppose defendants' Motion to Amend
28 Answer. Accordingly, the motion is granted and will not be
discussed in this memorandum.

1 deposition, although Sykes claimed she had insurance for the car
2 at the time of the accident, she conceded that she did not know
3 the time period covered through her supposed policy. (Krpmotic
4 Decl., Ex. B, Sykes' Dep. 87.) Additionally, she could not
5 remember when she last paid any premiums for her insurance, and
6 she was uncertain whether she kept a certificate of insurance in
7 her car. (Id.) She also could not remember her insurance
8 limits, how much she paid for the insurance policy, or whether
9 she had any documents indicating that she had insurance. (Id.)
10 Sykes later admitted that she did not have an insurance policy in
11 effect at the time of the collision. (Pls.' Opp'n to Defs.' Mot.
12 to Bifurcate 3 (Docket No. 30).)

13 Sykes assigned a cash deposit of \$35,000 with the
14 Department of Motor Vehicles ("DMV") after the collision. (Id.)
15 On January 21, 2016, Sykes received a letter from the DMV that it
16 had received and accepted her deposit. (Decl. of Tyeshina Sykes
17 in Supp. of Pls.' Opp'n to Defs.' Mot. for Summ. J., Ex. 3
18 (Docket No. 28-2).)

19 On October 31, 2016, plaintiffs commenced this action
20 in the Superior Court of California, County of Sacramento. The
21 complaint identified one cause of action against all defendants
22 for general negligence and alleged loss of income and earning
23 capacity, past and future medical expenses, and general (non-
24 pecuniary) damages for injuries to both plaintiffs. (Compl. ¶¶
25 21-23.) The action was removed to federal court on December 2,
26 2016. (Docket No. 1.)

27 II. Partial Motion for Summary Judgment

28 A partial motion for summary judgment is governed by

1 the same standard as a motion for summary judgment. See Fed. R.
2 Civ. P. 56. Summary judgment is proper "if the movant shows that
3 there is no genuine dispute as to any material fact and the
4 movant is entitled to judgment as a matter of law." Fed. R. Civ.
5 P. 56(a). A material fact is one that could affect the outcome
6 of the suit, and a genuine issue is one that could permit a
7 reasonable jury to enter a verdict in the non-moving party's
8 favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
9 (1986).

10 In deciding a summary judgment motion, the court must
11 view the evidence in the light most favorable to the party
12 opposing the motion and draw all justifiable inferences in its
13 favor. Matsushita, 475 U.S. at 587. "Credibility
14 determinations, the weighing of the evidence, and the drawing of
15 legitimate inferences from the facts are jury functions, not
16 those of a judge . . . ruling on a motion for summary judgment."
17 Anderson, 477 U.S. at 255.

18 Defendants move for partial summary judgment pursuant
19 to Federal Rule of Civil Procedure Rule 56(a) on Sykes' claim for
20 non-economic damages. Defendants argue that because Sykes' claim
21 arises out of the operation or use of a motor vehicle which Sykes
22 owned, and the vehicle was not insured as required by California
23 Civil Code § 3333.4(a)(2), she is barred from receiving non-
24 economic damages. In the alternative, defendants argue Sykes
25 should not be able to recover non-economic damages because Sykes
26 was the operator of a vehicle involved in an accident and she
27 cannot establish her financial responsibility pursuant to
28 California Civil Code § 3333.4(a)(3).

1 In relevant part, California Civil Code § 3333.4
2 states:

3 (a) In any action to recover damages arising out of
4 the operation or use of a motor vehicle, a person
5 shall not recover non-economic losses to
6 compensate for pain, suffering, inconvenience,
7 physical impairment, disfigurement, and other
8 nonpecuniary damages if any of the following
9 applies:

10 (2) The injured person was the owner of a vehicle
11 involved in the accident and the vehicle was
12 not insured as required by the financial
13 responsibility laws of this state.

14 (3) The injured person was the operator of a
15 vehicle involved in the accident and the
16 operator can not establish his or her
17 financial responsibility as required by the
18 financial responsibility laws of this state.

19 Cal. Civ. Code § 3333.4(a)(2)-(3).

20 A. Operation and Use of Vehicle

21 Although Sykes was not in her vehicle when the accident
22 occurred, she was nevertheless required to possess automobile
23 insurance or otherwise establish her financial responsibility in
24 order to comply with Civil Code § 3333.4(a). See Harris v.
25 Lammers, 84 Cal. App. 4th 1072 (1st Dist. 2000) (holding that §
26 3333.4(a) applied to case in which plaintiff was struck in
27 parking lot while standing outside her vehicle because action was
28 one "arising out of the use of a motor vehicle.") The Harris
court determined that although plaintiff was not in her vehicle
when she was injured, she was still obligated to possess
automobile insurance in order to recover non-economic damages.

Plaintiff seeks to distinguish Harris on the ground
that plaintiff in that case had been handing supplies to her
children seated inside the car, and it was the act of loading the
vehicle that constituted use of the car. However, the Harris

1 court explained that plaintiff had used her "car to transport her
2 children and supplies and the accident arose out of and flowed
3 from that use. Plaintiff was in the parking lot where the
4 accident occurred precisely because she was using the car to
5 transport her children and supplies." Id. at 1077. Accordingly,
6 the fact that Sykes was not loading or unloading her car is
7 irrelevant. Sykes had been using her car to transport her child
8 and herself. As in Harris, Sykes had driven her uninsured
9 vehicle to the location where the accident occurred, and thus was
10 on the side of the highway precisely because she was using the
11 car for transportation. Accordingly, plaintiff's attempt to
12 differentiate Harris on this ground fails. The fact that Sykes
13 was not physically in contact with the car does not mean that she
14 was not using it.

15 Plaintiff further attempts to distinguish Harris by
16 arguing that Sykes had left her car for approximately fifteen to
17 twenty minutes before the accident occurred, and thus too much
18 time had elapsed for Sykes' actions to constitute use of the car.
19 However, in Harris length of time was not discussed, and there is
20 no case law indicating that fifteen minutes is too great a period
21 of time. Sykes may have been outside of her parked vehicle for
22 twenty minutes before she was struck by it after defendants'
23 vehicle collided with her vehicle, but that fact is not
24 sufficient to distinguish the case at hand from Harris.

25 Accordingly, Sykes' claim is one that arises out of the
26 operation of a motor vehicle. Therefore, § 3333.4 applies, which
27 bars Sykes from asserting a claim for non-economic damages if she
28 lacked insurance at the time of the incident or cannot otherwise

1 establish her financial responsibility pursuant to §
2 3333.4(a)(3).

3 B. Insurance and Financial Responsibility

4 The California Vehicle Code sets forth four methods by
5 which one may establish compliance with the financial
6 responsibility laws. Three of the methods require the person
7 have insurance or a bond at the time of the accident. (See Cal.
8 Veh. Code § 16054.) The fourth method provides that financial
9 responsibility may be established by depositing cash with the
10 DMV. (See Cal. Veh. Code § 16054.2)²

11 It is undisputed that, at the time of the accident,
12 Sykes had no form of financial responsibility in effect. Sykes
13 concedes that she did not possess insurance at the time, and she
14 did not deposit money with the DMV until after the accident.
15 (Pls.' Opp'n to Defs.' Mot. to Bifurcate 3.) However, Sykes
16 argues that her post-accident cash deposits with the DMV make her
17 "financially responsible" and thus eligible to recover non-
18 economic damages. (Pls.' Opp'n to Defs.' Mot. for Summ. J. 10
19 (Docket No. 28).)

20 The "requirement of financial responsibility"
21 referenced in § 3333.4 "is found in Vehicle Code section 16020,
22 and defined by Vehicle Code section 16021." Goodson v. Perfect
23 Fit Enterprises, Inc., 67 Cal. App. 4th 508, 512 (2d Dist. 1998).
24 Section 16020 provides that "all drivers and all owners of a

25 ² Section 16054.2(a) states that "evidence may also be
26 established by any of the following: By depositing with the
27 department cash in the amount specified in Section 16056."
28 Section 16056(a) requires that the deposited amount be at least
\$35,000.00.

1 motor vehicle shall at all times be able to establish financial
2 responsibility pursuant to Section 16021, and shall at all times
3 carry in the vehicle evidence of the form of financial
4 responsibility in effect for the vehicle." Among the forms of
5 financial responsibility that must be "in effect" at "all times"
6 is any cash deposit with the DMV. See Cal. Veh. Code § 16021(d);
7 see also Figueroa v. United States, Civ. No. 15-555 JFW ASX, 2015
8 WL 11438605, at *3 (C.D. Cal. Dec. 9, 2015) (rejecting
9 plaintiffs' contention that their cash deposits with the DMV two
10 years after the accident made them financially responsible).
11 Accordingly, the financial responsibility referenced in § 3333.4
12 is "a responsibility concurrent with vehicle ownership or
13 operation." Goodson, 67 Cal. App. 4th at 515; see Ruttenberg v.
14 Dep't of Motor Vehicles, 194 Cal. App. 3d 1277, 1285 (1st Dist.
15 1987) ("The financial responsibility law is intended to provide a
16 guarantee that every driver will be financially responsible
17 before he begins driving.").

18 Sykes argues that the cash deposit does not need to be
19 in effect at the time of the accident. She contends that the
20 cash-deposit statute does not include a timing requirement like
21 the other methods set forth in the Vehicle Code, thereby
22 indicating that the California Legislature intended there to be a
23 difference in meaning. However, California courts have
24 determined that:

25 The Legislature declared that drivers of
26 automobiles in the state shall be
27 financially capable of providing monetary
28 protection to those suffering injury to
their person or property by reason of the
use of such vehicle regardless of fault of
the drivers and such capability shall be

1 deemed as a concurrent responsibility of
2 such motor vehicle operation.

3 (Id.) (citations omitted). The Ruttenberg court
4 further clarified that "the intent of the Legislature in passing
5 the act is unambiguous." (Id.) Accordingly, plaintiff's
6 contention that the cash deposit does not need to be made prior
7 to the collision is unpersuasive.

8 Because Sykes was not insured as required by the
9 California financial responsibility laws at the time of the
10 collision and her deposits with the DMV after the accident do not
11 render her "financially responsible," she cannot establish that
12 she was compliant with section § 3333.4 at the time of the
13 accident. Accordingly, she is precluded from recovering non-
14 economic damages and the court must grant defendants' partial
15 motion for summary judgment.

16 III. Motion to Bifurcate

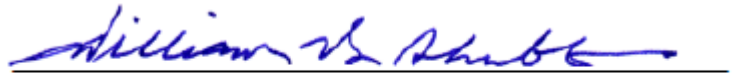
17 Defendants submitted this motion only in the event that
18 their partial motion for summary judgment was denied. Because
19 the court will grant defendants' partial motion for summary
20 judgment, their motion to bifurcate is now moot.

21 IT IS THEREFORE ORDERED that defendants' partial motion
22 for summary judgment be, and the same hereby is, GRANTED.
23 Plaintiff Tyeshina Sykes may not recover damages for non-economic
24 losses to compensate for her pain, suffering, inconvenience,
25 physical impairment, disfigurement, or other nonpecuniary damages
26 in this action;

27 IT IS FURTHER ORDERED that defendants' motion to
28 bifurcate be, and the same hereby is, DENIED as moot; and

1 IT IS FURTHER ORDERED that defendants' motion to amend
2 answer be, and the same hereby is, GRANTED.

3 Dated: October 31, 2017



4 **WILLIAM B. SHUBB**
5 **UNITED STATES DISTRICT JUDGE**
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