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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA

6 JESSICA ALLEN,  
7 Plaintiff,

8 v.

9 BAYSHORE MALL, et al.,  
10 Defendants.

Case No. 12-cv-02368-JST

**ORDER DENYING MOTION FOR  
PARTIAL SUMMARY JUDGMENT OR,  
IN THE ALTERNATIVE, MOTION FOR  
SUMMARY ADJUDICATION ON THE  
ISSUE OF PUNITIVE DAMAGES**

Re: Dkt. No. 86

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13 Now before the Court is Defendants' Motion for Partial Summary Judgment or, in the  
14 Alternative, Motion for Summary Adjudication on the issue of punitive damages. ECF No. 86.

15 Plaintiff here was injured by a falling ceiling tile that became dislodged during an  
16 earthquake while she was visiting Defendants' mall. She alleges that Defendants were aware that  
17 the ceiling was maintained in a negligent condition such that it was likely that tiles would separate  
18 during an earthquake; that Defendants were aware of that risk for a decade-and-a-half prior to her  
19 injury; and that Defendants did nothing to repair the ceiling or otherwise mitigate the risk of  
20 injury. She brings California common law claims for negligence and premises liability. She  
21 further seeks punitive damages on the grounds that Defendants are guilty of "malice" pursuant to  
22 California Civil Code section 3294.

23 Under California law, punitive damages are not ordinarily available in connection with a  
24 tort such as negligence; the plaintiff must allege willful conduct. "Something more than the mere  
25 commission of a tort is always required for punitive damages." Taylor v. Superior Court, 24 Cal.  
26 3d 890, 894, 598 P.2d 854 (1979) (quoting Prosser, Law of Torts (4th ed. 1971) § 2, at pp. 9-10).  
27 However, the law in California is also clear that a defendant's "conscious disregard of the safety  
28 of others" can supply the necessary "something more" that would support a finding of malice.

1 Taylor, 24 Cal. 3d at 894-95. “In order to justify an award of punitive damages on this basis, the  
2 plaintiff must establish that the defendant was aware of the probable dangerous consequences of  
3 his conduct, and that he wilfully and deliberately failed to avoid those consequences.” Id. at 895-  
4 96.

5 One California appellate division has summarized the kind of evidence that permits a jury  
6 to find conscious indifference to the safety of others:

7 In Nolin [v. National Convenience Stores, Inc. 95 Cal. App. 3d 279  
8 (1979)], defendant operated a convenience store which included  
9 self-service gasoline pumps. Defendant was repeatedly advised by  
10 his employees over a four to five month period of a malfunction in  
11 the nozzle of one pump which caused the pump to overflow when in  
12 use, spilling gasoline on the ground. Store employees testified that  
13 they had repeatedly requested repair; one ineffective attempt to  
14 repair was made; defendant was advised of two separate incidents of  
15 people slipping and falling in the pump area prior to the plaintiff’s  
16 fall. Defendant required the store manager to remove warning signs  
17 placed at the pumps and to stop advising patrons of hazards in the  
18 pump area over a loudspeaker[;]

19 [In] Hasson v. Ford Motor Co. (1982) 32 Cal. 3d 388 (1982) . . . ,  
20 the Ford manager testified that Ford (a) knew of the fluid boil  
21 problem, (b) failed to warn in order to protect reputation of the  
22 Continental, (c) knew there would be no brakes whatever if boil  
23 occurred, and (d) consciously disregarded that danger in not putting  
24 in dual master cylinders; [and]

25 [In] Grimshaw v. Ford Motor Co. 119 Cal. App. 3d 757 (1981) . . . ,  
26 evidence was presented that Ford, as a result of crash tests, knew  
27 that the Pinto's fuel tank and rear structure would expose consumers  
28 to serious injury or death at low speed collisions; that Ford could  
have corrected the hazardous design defects at minimal cost but  
(balanced) human lives and limbs against corporate profits (and did  
not). Ford's institutional mentality was shown to be one of callous  
indifference to public safety.

29 Woolstrum v. Mailloux, 141 Cal. App. 3d Supp. 1, 5-6 (App. Dep't Super Ct. 1983).

30 The present case is very much in line with the foregoing authorities. If Plaintiff’s evidence  
31 is believed, the jury could find that the premises suffered through an earthquake in 1994, and that

1 Defendants<sup>1</sup> hired an engineering firm in early 1995 to conduct an inspection. The engineering  
2 report concluded:

3 Ceiling throughout the mall experienced minor motion which  
4 dislodged some acoustical tile as well as some decorative metal  
5 soffits. These need to be thoroughly inspected for identification and  
6 removal of falling hazards . . . . Of greater potential importance,  
7 General Growth is advised that in a more severe ground motion  
8 event, major portions of the ceiling are likely to be affected, and that  
9 falling hazards are like [sic] to be widespread.

10 The engineering report further concluded that this condition “can potentially present [a] threat[] to  
11 occupant safety.”

12 15 years later, Plaintiff was injured when an earthquake struck when she was visiting the  
13 premises in 2010.

14 In 2010, after Plaintiff’s injury, Defendants hired an engineering firm to assess the damage  
15 to the property. The firm concluded that “during an inspection of the roof support structures  
16 situated above the suspended ceiling in the mall-way section of the building, it was observed that  
17 the suspended ceiling system in the southern three quarters of the mall-way was not properly  
18 braced for seismic events.”

19 Based on this evidence, the jury could conclude that Defendants received the 1995 report,  
20 that the premises were in a hazardous condition, that Defendants were aware of the hazard and of  
21 the risk that occupants might be injured, and that Defendants took no steps to eliminate or mitigate  
22 the hazard. This would be sufficient to show a conscious disregard of the safety of others that  
23 would support the “malice” element of section 3294.<sup>2</sup>

24 The Court finds that Plaintiff has presented sufficient evidence from which a reasonable  
25 jury could find, by a clear and convincing standard, that Defendants are guilty of malice as set

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27 <sup>1</sup> Defendants contend that they were each in different positions vis-à-vis their ownership or control  
28 of the property. Individual defendants’ ownership or control is also a disputed issue of fact that  
must be resolved by the jury, so on this motion the Court refers to “Defendants” as a group for  
ease of reference.

<sup>2</sup> Of course, the jury might also conclude that the premises were not hazardous or that Defendants  
were not sufficiently aware of any hazard. But the Court cannot conclude now, as a matter of law,  
that any reasonable jury would be required to reach that conclusion.

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forth in California Civil Code section 3294. Accordingly, Defendants' motion for summary judgment is DENIED.

**IT IS SO ORDERED.**

Dated: April 16, 2014



JON S. TIGAR  
United States District Judge