UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:23-cv-04275-SVW-SK	Date	November 16, 2023
Title	*Jane Doe v. Tremaine Aldon Neverson et al.*		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz	N/A
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: Order Granting Defendants' Motions to Dismiss Plaintiff's Second Amended Complaint [38, 39]

I. Factual and Procedural Background

On April 25, 2013, Plaintiff Jane Doe ("Plaintiff") attended an event called "Foxwoods Liquid Sundays with Trey Songz" (the "Event") located at the Mashantucket Pequot Tribal Nation's Foxwoods' Resort Casino located on the Mashantucket Pequot Tribal Nation reservation in Connecticut. Second Am. Compl. ("SAC") ¶ 25. Plaintiff had been employed as a business analyst for a liquor distributor in Connecticut for the five years preceding the Event. *Id.* ¶ 26. While at the Event, Plaintiff and some of her friends and work colleagues entered the Bacardi Grey Goose Vodka tent (the "Tent"). *Id.* Defendant Neverson ("Neverson"), a musician who performs under the name "Trey Songz," was in the Tent when Plaintiff entered it. *Id.* Plaintiff and her friends and colleagues posed to take a photo in the Tent. *Id.* While they were doing so, Neverson allegedly "came up behind Plaintiff, ripped back her bathing suit top, grabbed her breasts, and exposed them to everyone in the Tent." *Id.* ¶ 27. Neverson then allegedly chanted the phrase 'Titty in the Open' repeatedly. *Id.* ¶ 28.

Shortly after this incident, Plaintiff alleges that she left her employer and moved out of state

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because she was plagued by anxiety, shame, and embarrassment "wondering which work colleagues saw her exposed breasts." *Id.* ¶ 30.

Plaintiff filed her initial complaint on June 2, 2023. ECF No. 1. She then filed her first amended complaint on July 21, 2023. ECF No. 24. She filed her second amended complaint on September 5, 2023. ECF No. 28. Neverson and Defendant Trey Songz Productions, LLC ("Songz Productions") moved to dismiss Plaintiff's SAC on September 23, 2023 (collectively, the "Songz Defendants"). Defendants Atlantic Recording Corporation and Kevin Lile (collectively, the "Recording Defendants") moved to dismiss Plaintiff's SAC on September 25, 2023. The Court vacated a hearing set for October 30, 2023, and took the matter under submission.

II. Legal Standard for Dismissal of a Complaint

"Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed when a plaintiff's allegations fail to set forth a set of facts which, if true, would entitle the complainant to relief." *Tatung Co. v. Shu Tze Hsu*, No. SA CV 13-1743-DOC (ANx), 2015 U.S. Dist. LEXIS 184935, *12–13 (C.D. Cal. Oct. 22, 2015) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). This plausibility requirement is met "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. A complaint that offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Id.*; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (citing *Iqbal*, 556 U.S. at 678).

In reviewing a Rule 12(b)(6) motion, a court "must accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the nonmoving party." *Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014). Thus, "[w]hile legal conclusions can provide the complaint's framework, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679.

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"When the running of a statute is apparent from the face of the complaint, . . . then the defense may be raised by a motion to dismiss." *Conerly v. Westinghouse Electric Corp.*, 623 F.2d 117, 119 (9th Cir. 1980) (citing *Jablon v. Dean Witter & Co.*, 614 F.2d 677 (9th Cir. 1980)). "A dismissal motion should be granted, only if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled." *Id.* (internal quotations omitted).

III. Discussion

A. Plaintiff's Claims for Sexual Battery and Sexual Assault Against Neverson and Songz Productions Are Time Barred Because She Does Not Allege a Cover Up

Plaintiff's first claim against the Songz Defendants is a claim of sexual battery under Cal. Civ. Code § 1708.5. That statute states that sexual battery occurs when a person "[a]cts with the intent to cause a harmful or offensive contact with an intimate part of another, and a sexually offensive contact with that person directly or indirectly results." Cal. Civ. Code § 1708.5(a)(1). The behavior alleged by Plaintiff plainly meets this definition. Her second claim is for common law sexual assault and is likewise plausible under the facts alleged.

However, Neverson and Songz Productions assert that Plaintiff's claims are time barred by the relevant statute of limitations. The alleged battery took place in April 2013 – more than ten years before Plaintiff filed this lawsuit in June 2023. The parties dispute which statute of limitations the Court should apply to Plaintiff's claim – the statute of limitations of the Mashantucket Pequot Tribal Nation, the statute of limitations of Connecticut, or the statute of limitations of California. Under any of these three options, Plaintiff's complaint is time barred. The Mashantucket Pequot Tribal Nation imposes a statute of limitations of one year on tort claims "arising at the Gaming Enterprise Site," which is defined with a reference to the Foxwoods Resort Casino. 4 M.P.T.L. ch. 1 §§ 3a, 1b.[1] Such a limitation lines up with the Tribal Nation's general one-year statute of limitations on civil actions founded upon a tort. 12 M.P.T.L.

[1] Accessible at https://perma.cc/3HTZ-EX9U.

ch. 1 § 4a(2).[2] Connecticut has a three-year statute of limitations on civil tort cases. Conn. Gen. Stat. § 52-577 (2023).[3] Lastly, California has a ten-year statute of limitations for injuries caused by sexual assault. Cal. Code Civ. Proc. § 340.16(a)(1) (2023) (noting that a civil action for recovery of damages suffered as a result of sexual assault after the plaintiff's eighteenth birthday must be commenced within ten years "from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff"). The Court need not perform a choice of law analysis because any possible option for the relevant statute of limitations would bar Plaintiff's claim.

Were the Court to perform a choice of law analysis, that analysis would favor the application of either the law of the Mashantucket Pequot Tribal Nation or the state of Connecticut. California law specifically states that "[w]hen a cause of action has arisen in another state . . . and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this state, except in favor of one who has been a citizen of this state, and who has held the cause of action from the time it accrued." Cal. Code Civ. Proc. § 361. *See also McCann v. Foster Wheeler LLC*, 225 P.3d 516, 525 (Cal. 2010) ("Section 361 thus creates a general rule that when a cause of action has arisen in another jurisdiction but cannot be maintained against a particular defendant in that jurisdiction because of the lapse of time, the action cannot be maintained against that defendant in a California court."). The statute's exception applies "only where the plaintiff was a California citizen at the time the cause of action accrued, and does not extend to a plaintiff who became a citizen of California after the cause of action accrued but before the lawsuit in question was filed." *Id.* at 525–26. Plaintiff has not alleged that she was a citizen of California at the time of Neverson's alleged assault, and therefore she cannot take advantage of § 361's exception. *See* SAC ¶ 26 ("For the five years preceding the Event, Plaintiff worked as a business analyst for a liquor distributor in Connecticut.").

Plaintiff circumvents these standard features of California law by arguing that her claim is valid

[2] Accessible at https://perma.cc/KA6K-4PNB.
[3] Connecticut allows for an extended statute of limitations for civil sexual assault if the victim was under the age of twenty-one or if the defendant has been convicted of criminal sexual assault for the same injury. Conn. Gen. Stat. §§ 52-577d, 52-577e (2023). No facts have been alleged here which would invoke these longer statutes of limitations.

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under Cal. Code Civ. Proc. § 340.16(e), which states the following:

(1) Notwithstanding any other law, any claim seeking to recover damages suffered as a result of a sexual assault that occurred on or after the plaintiff's 18th birthday that would otherwise be barred before January 1, 2023, solely because the applicable statute of limitations has or had expired, is hereby revived, and a cause of action may proceed if already pending in court on January 1, 2023, or, if not filed by that date, may be commenced between January 1, 2023, and December 31, 2023.

(2) This subdivision revives claims brought by a plaintiff who alleges all of the following:

(A) The plaintiff was sexually assaulted.

(B) One or more entities are legally responsible for damages arising out of the sexual assault.

(C) The entity or entities, including, but not limited to, their officers, directors, representatives, employees, or agents, engaged in a cover up or attempted a cover up of a previous instance or allegations of sexual assault by an alleged perpetrator of such abuse.

(3) Failure to allege a cover up as required by subparagraph (C) of paragraph (2) as to one entity does not affect revival of the plaintiff's claim or claims against any other entity.

(4) For purposes of this subdivision:

(A) "Cover up" means a concerted effort to hide evidence relating to a sexual assault that incentivizes individuals to remain silent or prevents information relating to a sexual assault from becoming public or being disclosed to the plaintiff, including, but not limited to, the use of nondisclosure agreements or confidentiality agreements.

(B) "Entity" means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity.

(C) "Legally responsible" means that the entity or entities are liable under any theory of liability established by statute or common law, including, but not limited to, negligence, intentional torts, and vicarious liability.

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Cal. Code Civ. Proc. § 340.16(e). Specifically, Plaintiff argues that § 340.16(e) overrides § 361 because it contains the clause "[n]otwithstanding any other law" and because it is both more recent and more specific than § 361. The Recording Defendants concede that Plaintiff's reading of the 'notwithstanding any other law' language is correct. Defs. Atl. Recording Corp. and Kevin Lyles' Reply in Supp. of Their Mot. to Dismiss Pl.'s Second Am. Compl. ("Atl. Reply") 5. These Defendants and Plaintiff point to *Deirmenjian v. Deutsche Bank, A.G.*, 526 F. Supp. 2d 1068, 1075 n.36 ("The phrase 'notwithstanding any other law,' however, is unambiguous and susceptible of only one meaning."). The Court has also found other caselaw to support this notion. *See Lukianov v. Dewitt*, No. 34-2020-00281132-CU-PO-GDS, 2021 Cal. Super. LEXIS 10027, at *7 (Superior Ct. Cal, Cnty. of Sacramento, Feb. 11, 2021) ("By its own terms Emergency Rule 9 applies notwithstanding any other law, including the borrowing statute."). The Songz Defendants dispute that *Deirmenjian* is on point. Reply Memo. in Supp. of Mot. to Dismiss Second Am. Compl. on Behalf of Defs. Tremaine Aldon Neverson and Trey Songz Productions, LLC. ("Songz Reply") 6. They note that the cited portion of *Deirmenjian* is merely a footnote, and that the case is differentiated by language in the relevant statute that limited its application to current California residents. *Id.* The Court will not decide what appears to be an open question of California law at this time. While the Court notes that reading the statute as Plaintiff suggests undermines California's clear preference to avoid encouraging forum shopping, the Court will presume, *arguendo*, that Plaintiff is correct.

Assuming that § 340.16(e) does override § 361, § 340.16(e) is still not applicable here because Plaintiff has failed to allege the required element of a cover up. As defined in §340.16(e)(4)(A), a cover up "means a concerted effort to hide evidence relating to a sexual assault that incentivizes individuals to remain silent or prevents information relating to a sexual assault from becoming public or being disclosed to the plaintiff, including, but not limited to, the use of nondisclosure agreements or confidentiality agreements." Plaintiff points to the following portion of her complaint as alleging a cover up: "On information and belief, Defendants have known or should have known that DEFENDANT SONGZ has a proclivity for sexually abusing and/or assaulting women. DEFENDANT SONGZ has been publicly accused of sexually abusing and/or assaulting no less than twelve women. A simple internet search lists the various well-known music industry publications, such as Rolling Stone Magazine, that have reported on DEFENDANT SONGZ's acts of abuse towards women." SAC ¶ 2. Nothing about this allegation

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suggests that Defendants attempted to keep information about Neverson's behavior from becoming public; to the contrary, Plaintiff bases her claims on the fact that such information was public knowledge. There is no allegation that evidence was hidden, that nondisclosure agreements were sought, or that confidentiality agreements were reached. Without allegations of a cover up, Plaintiff is limited to the ten-year statute of limitations that governs sexual assault claims under § 340.16(a)(1). Applying that statute of limitations results in Plaintiff's claims being time barred.

B. The Remainder of Plaintiff's Claims are Likewise Time Barred

Plaintiff also alleges claims for negligence and the intentional infliction of emotional distress against the Songz Defendants. She also alleges claims for negligent supervision and negligent infliction of emotional distress against the Recording Defendants. Under all normal circumstances, these claims—which are over ten years old—are time barred. The only way in which these claims could be revived is if they had been revived pursuant to Cal. Code Civ. Proc. § 340.16(e)(5), which revives "any related claims, including but not limited to, wrongful termination and sexual harassment, arising out of the sexual assault that is the basis for a claim pursuant to this subsection." For the reasons stated above, Plaintiff has not alleged facts sufficient to entitle herself to the extended statute of limitations created by § 340.16(e).

Defendants raised numerous additional arguments as to why their motions to dismiss should be granted, such as lack of personal jurisdiction and failure to state a claim pursuant to Rule 12(b)(6). The Court does not consider these arguments at this time.

IV. Conclusion

For the foregoing reasons, Plaintiff's claims are outside the relevant ten-year statute of limitations and therefore time barred. The court DISMISSES Plaintiff's Second Amended Complaint [ECF No. 28].

IT IS SO ORDERED.

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