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10 MULTIDISCIPLINARY ASSOCIATION
FOR PSYCHEDELIC STUDIES, INC.
11 a.k.a. MAPS, INC.

12 SUPERIOR COURT OF CALIFORNIA
13 FOR THE COUNTY OF MONTEREY

14 CARLA GATLIN and SUSAN
15 YBARRA-TELIAS, Individually and as
Successors-In-Interest of decedent Baylee
16 Ybarra Gatlin,

17 Plaintiffs,

18 v.

19 DO LAB INC.; MULTIDISCIPLINARY
ASSOCIATION FOR PSYCHEDELIC
20 STUDIES, INC. a.k.a. MAPS, INC.; ZENDO
PROJECT, a business entity form unknown;
21 RGX MEIDCAL, a business entity form
unknown; RICHARD GOTTLIEB, an
22 individual; and DOES 1 to 20, inclusive,

23 Defendants.

CASE NO.: 20CV002753

**MULTIDISCIPLINARY ASSOCIATION
FOR PSYCHEDELIC STUDIES, INC.'S
TRIAL BRIEF**

Complaint filed: May 21, 2018
Trial Date: October 31, 2022

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PARTIES

Plaintiff SUSAN YBARRA-TELIAS, the natural mother of Baylee Ybarra Gatlin (“Decedent”) who tragically died after attending the Lighting in a Bottle Festival on May 28, 2017, is represented by Mark Pachowicz and Jennie Hendrickson of Pachowicz/Goldenring. Plaintiff CARLA GATLIN, a parent of the Decedent, is represented by John Howard of Lowthorp, Richards, McMillan, Miller & Templeman. Defendant MULTIDISCIPLINARY ASSOCIATION FOR PSYCHEDELIC STUDIES, INC. a.k.a. MAPS, INC. (hereinafter "MAPS"), is represented Charles S. Custer, Scott Bonzell and by Laura Ryan and Tara Santosuosso of Gordon & Rees, LLP.

MAPS is a non-profit and is uninsured for this claim.

Defendant Do Lab, Inc., the festival organizer and promoter, who settled the claims against it and dismissed its Cross-Complaint, is represented by Casey Nathan of Bremer Whyte Brown & O’Meara LLP. Defendant Richard Gottlieb dba RGX Medical, the Medical Coordinator of the festival who also settled is represented by James Farinaro. Defendants Do Lab, Inc. and Richard Gottlieb dba RGX Medical settled with plaintiffs in return for payment of Four Million Dollars (\$4,000,000) by Do Lab’s insurer.

INTRODUCTION

Plaintiffs allege four causes of action in their operative Third Amended Complaint (“TAC”) for wrongful death (negligence), negligent hiring, and intentional and negligent misrepresentation. As is apparent from a review of the TAC, the overwhelming focus of the

1 allegations is directed at Do Lab and Gottlieb/RGX. MAPS only became a target after Plaintiffs
2 reached a settlement with the other defendants.

3 As a matter of law, however, not one of Plaintiffs' causes of action against MAPS may
4 survive. Plaintiffs' wrongful death and "negligent hiring" claims fail because no duty existed for
5 MAPS' unpaid volunteers to assess Decedent medically or provide medical treatment. Plaintiffs'
6 counsel's sole unmeritorious theory is that the volunteers should have recognized Decedent's
7 medical condition, ignored/overridden the medical providers and called an ambulance for
8 Decedent. They attempt to support this theory with an emergency medicine physician hired after
9 the settlement who counsel hopes this court will allow to create a non-existent duty of lay
10 persons to act in a medical capacity. The potential testimony is the subject of a motion in limine
11 and should be excluded. MAPS again asserts that only this court may establish a duty. Plaintiffs
12 ask this court to identify a duty that has never been recognized by any other court.

13 Plaintiffs' intentional and negligent misrepresentation claims fail because MAPS made
14 no representation to Decedent and no evidence exists of any reliance by Decedent.

14 **BACKGROUND**

15 This wrongful death action is brought by Plaintiffs after the Decedent passed following
16 the events occurring on May 27, 2017 at the 2017 Lightning in a Bottle Music Festival, at San
17 Antonio Recreation Area in Monterey County California. After ingesting illegal drugs, including
18 LSD and other substances, Decedent's friends recognized she was having a bad reaction. They
19 took her to the medical tent that Defendant Do Lab, Inc., provided for festival participants.¹ Do
20 Lab, Inc., contracted with Richard Gottlieb dba RGX Medical ("Gottlieb") to act as the Medical
21 Coordinator and operate the medical tent. Do Lab submitted a Medical Plan Gottlieb created that
22 was approved by Monterey County as part of Do Lab's permit application.

23 ¹ Plaintiffs' TAC alleges in paragraph 29 that upon finding her incoherent Decedent's friends first took her to the
RGX Medical tent after which the medical staff directed her to the Zendo tent.

1 MAPS role was to provide “Harm Reduction” for festival goers having bad experiences.
2 MAPS provided volunteers to sit with people as directed by the medical personnel in a tent
3 adjacent to the medical tent, known as the Zendo Project. As agreed by the festival promoter, the
4 Medical Coordinator and the County of Monterey, MAPS/Zendo provided no medical treatment
5 and merely assisted festival attendees who were having bad experiences after taking substances,
6 providing a safe place to rest. The medical personnel testified that the Decedent was assessed in
7 the medical tent. She was found to have normal vital signs and directed to the adjacent Zendo
8 Harm Reduction tent. Multiple witnesses will confirm medical personnel came to the adjacent
9 Zendo tent to check Decedent’s vitals throughout the evening. Plaintiffs’ experts concede this
10 point.

11 Multiple witnesses deposed to date (including both of Plaintiffs’ experts) establish MAPS
12 neither had a duty to provide nor provided any medical treatment to festivalgoers. For example,
13 the testimony of Monterey County employees Fred Claridge and Detective Randall Dyck make
14 clear that Plaintiffs have no viable theory of liability against MAPS. Mr. Claridge testified that:
15 (1) MAPS/Zendo was not the “Medical Coordinator;” (2) MAPS/Zendo had no responsibility to
16 provide any medical services; (3) MAPS/Zendo is not mentioned whatsoever in the medical plan
17 submitted by Defendant Do Lab, Inc, that he reviewed and approved; and (4) when he approved
18 the Gottlieb Medical Plan for the 2017 festival, he had no expectation any employees or
19 volunteers of MAPS or the Zendo Project would provide any medical services at the event.

20 Also, Det. Dyck testified that (1) during the course of his investigation not a single
21 witness indicated that MAPS/Zendo had any responsibility for providing medical treatment to
22 festival attendees; and (2) Zendo employees and volunteers were merely there to assist people
23 with bad psychedelic experiences to give them a safe place to metabolize the drugs they had
 taken. He also testified that witnesses told him that decedent was well cared for by the Zendo

1 volunteers. Based on his investigation, Det. Dyck concluded there was no criminal activity and
2 that the Decedent died as a result of an overdose, taking drugs that she brought with her to the
3 festival and that when she died, she had LSD and methamphetamine in her possession.

4 PROCEDURAL STATUS

5 Plaintiffs initially filed this lawsuit in Los Angeles Superior Court. Upon motion by
6 defendant Do Lab, however, the Court in Los Angeles appropriately transferred the case to
7 Monterey County, the proper forum. Plaintiffs settled and dismissed their claims against Do Lab,
8 Inc. and its Medical Coordinator Richard Gottlieb dba RGX Medical for Four Million Dollars
9 (\$4,000,000).

10 MAPS' filed a Motion for Summary Judgment/Adjudication based on MAPS'
11 contentions that:

- 12 • Plaintiffs' claims for negligence, premises liability and negligent hiring/supervision fail
13 because the undisputed evidence shows that MAPS had no duty to assess or provide
14 medical services to Decedent;
- 15 • Plaintiffs' fraud and misrepresentation claims fail because Plaintiffs have no evidence
16 that MAPS made fraudulent or false statements with the intent to deceive Decedent or
17 that she actually relied on such statements, and;
- 18 • Plaintiffs' punitive damages claim similarly fails because Plaintiffs have no evidence
19 that MAPS acted with the requisite malice, oppression or fraud.

20 This court denied MAPS motion, however, MAPS is confident that when the court hears
21 the evidence a motion for directed verdict will be granted.

22 LEGAL CONTENTIONS

23 **A. Duty**

1 Under California law, a party has no duty of care to a third party where the party's
2 conduct did not make the third party's position worse, and the party does not have a "special
3 relationship" with the third party. *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 217-219.
4 The law imposes a general duty of care on a defendant only when it is the defendant who has
5 "created a risk" of harm to the plaintiff, including when "the defendant is responsible for
6 making the plaintiff's position worse." *Brown, supra*, 11 Cal.5th at 217-219, citing *Lugtu v.*
7 *California Highway Patrol* (2001) 26 Cal.4th 703, 716. "The law does not impose the same duty
8 on a defendant who did not contribute to the risk that the plaintiff would suffer the harm
9 alleged." *Id.* "Generally, the 'person who has not created a peril is not liable in tort merely for
10 failure to take affirmative action to assist or protect another' from that peril." *Brown*, 11 Cal.5th
11 at 213 (internal citation omitted.)

11 Plaintiffs offered two liability experts, Dr. Ryan O'Connor and Joseph Pred. Both
12 confirmed that MAPS volunteers were not expected to provide medical assessment or treatment
13 to Decedent.

14 **Testimony of plaintiffs' expert Dr. Ryan O'Connor**

15 Q. Did MAPS provide any medical assessment in connection with
16 what was going on in the Zendo tent?

17 A. To my knowledge, MAPS doesn't have any medical training,
they're not medical providers.

18 [Exhibit A, p.44:21-24.]

19 **Testimony of plaintiffs' expert Joseph Pred**

20 Q Okay. And so you see here it refreshes your memory that, at least
21 on the part of the County of Monterey, they had no expectation that
employees or volunteers of MAPS or anyone connected with the
Zendo Project would provide any medical services, correct?

22 A. Correct. That matches my understanding."
23

1 [Exhibit B, p.16:2-7.]

2 **Monterey County employee Fred Claridge confirmed that:**

- 3 1. MAPS/Zendo was not the “Medical Coordinator;”
- 4 2. MAPS/Zendo had no responsibility to provide any medical services;
- 5 3. MAPS/Zendo is not mentioned whatsoever in medical plan submitted
6 by Defendant Do Lab, Inc, that Mr. Claridge reviewed and approved;
7 and
- 8 4. When Mr. Claridge approved the Gottlieb Medical Plan for the 2017
9 LiB festival, he had no expectation any employees or volunteers of
10 MAPS or the Zendo Project would provide any medical services at the
11 event.

9 [Exhibit C, pp.79-81.]

10 Plaintiffs’ entire case rests on the belief this court will recognize a duty on the
11 MAPS/Zendo volunteers, as lay people, to ignore the medical professionals and call an
12 ambulance themselves. This court should reject this novel theory that is unsupported by any
13 statute or case law. Absent any legal duty, Plaintiffs’ negligence and negligent hiring/supervision
14 claims fail. Here, as a matter of law MAPS had no legal duty to provide or summon medical
15 care because MAPS had neither performed an act that increased the risk of injury to the
16 Decedent nor was it in a relationship to the Decedent that created an affirmative duty to protect
17 her.

18 Although Plaintiffs have contended that MAPS put Decedent in a worse position by
19 providing peer support services to her, Plaintiffs are using the wrong standard. In assessing
20 whether a voluntary rescuer has placed the imperiled person in a worse position, the relevant test
21 is “not whether the risk was increased over what it would have been if the defendant had not
22 been negligent,” but rather whether “the risk was increased over what it would have been had the
23 defendant not engaged in the undertaking at all.” *McHenry v. Asylum Ent. Delaware, LLC* (2020)
46 Cal.App.5th 469, 486–87 (internal citations omitted.) Thus, even if MAPS somehow was

1 negligent in not providing medical care or summoning medical help beyond that provided by the
2 RGX medical personnel, those alleged omissions did not put Decedent in a worse position
3 vis-à-vis the alternative of being assessed by the RGX medical staff and then being sent back out
4 to the festival rather than the Zendo side of the tent.

5 **B. California’s Good Samaritan Rule**

6 Additionally, California’s Good Samaritan rule bars all of Plaintiffs’ claims. That statute
7 provides that “a person cannot be liable for any civil damages that result from his providing of
8 emergency care, if the person acted in good faith, and not for compensation, and provided either
9 medical or nonmedical care, and the care was provided at the scene of an emergency.” MAPS is
10 a non-profit that was not compensated for offering harm reduction services at LiB and the peers
11 who staffed the Zendo tent were unpaid volunteers.

12 **C. Plaintiffs Have No Evidence MAPS Made a “Representation” to Decedent
13 that Supports Fraud/Misrepresentation Claims**

14 In addressing this issue at the hearing of MAPS’ motion for summary adjudication, this
15 court determined that MAPS did not meet its burden of establishing it made no representation to
16 Decedent. MAPS offered that it was unable to prove a negative. In any event, we now are at
17 trial and Plaintiffs should be required by the Court to make an offer of proof of evidence of any
18 representation before proceeding with voir dire. Otherwise, significant time will be wasted and
19 the jury confused.

20 At the hearing of MAPS’ motion for summary adjudication, this Court asked for
21 Plaintiffs’ counsel for an offer of proof of evidence of a representation from MAPS to Decedent.
22 None was offered. Before days of trial are wasted, that offer should be made and the proposed
23 evidence detailed in a brief before trial.²

² Plaintiffs’ counsel’s statements should not be accepted at face value, rather citation to evidence required. At the hearing on MAPS MSJ, in addressing questions from this Court on the issue of whether Decedent was assessed in the RGX medical tent, plaintiff counsel Jeannie Hendrickson stated to this Court: “[Decedent] was never in the medical tent, your Honor.” (Exhibit D, p.24:5-6.) She also represented to this Court: “Nobody said they assessed her.” (Id. at p.24:9-10.) She further represented: “[Decedent] was not assessed by RGX. They have just walked her

1 Plaintiffs also cannot prove the required reliance element. Plaintiffs allege in their TAC
2 and the testimony confirms that Decedent’s friends found her incoherent and took her to the
3 medical tent. After assessing her and confirming she was incoherent medical personnel directed
4 her to the Zendo tent for harm reduction. Thus, no evidence supports allegations she consciously
5 made a decision to enter the medical tent or to seek harm reduction in the Zendo tent. Thus, as a
6 matter of law she did not rely on anything, much less a representation from anyone to seek
7 medical treatment. She certainly did not rely on any representation to enter the harm reduction
8 tent. Before proceeding on any fraud or misrepresentation claim, Plaintiffs should be required to
9 satisfy this Court with an offer of proof of evidence of reliance.

10 **D. Punitive Damages Claim**

11 Even where a party may be entitled to compensatory damages, it does not necessarily
12 follow that it is entitled to punitive damages. *Arcadia, California, Ltd. v. Herbert* (1960) 54
13 Cal.2d 328, 337; *Mock v. Michigan Mut. Ins. Co.* (1992) 4 Cal.App.4th 306, 328 (“Something
14 more than the mere commission of a tort is always required for punitive damages.”). As such, a
15 “conclusory characterization of defendant’s conduct as intentional, willful and fraudulent is a
16 patently insufficient statement of ‘oppression, fraud, or malice’ . . . within the meaning of Civil
17 Code section 3294.” *Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872; *G. D. Searle & Co. v.*
18 *Superior Court* (1975) 49 Cal.App.3d 22, 29. Rather, specific, objective, factual allegations are
19 required to support a prayer for punitive damages. *Grieves v. Superior Court* (1984) 157
20 Cal.App.3d 159, 166.

21 _____
22 to Zendo. They saw her by looking with their eyes. But there is no assessment. And there is no factual evidence of
23 any assessment.” (Id. at p.26:9-13.)

21 She made these statements to the Court despite the fact, Michelle Prado (an RN working in the medical tent),
22 testified that Decedent was in the medical tent and she participated in the assessment by taking Decedent’s blood
23 pressure. (Exhibit E at p.24:2-18.) Pursuant to California Rules of Professional Conduct Rule 3.3(a)(1), a “lawyer
shall not: (1) knowingly make a false statement of fact or law to a tribunal...”

1 Because punitive damages are disfavored, entitlement to punitive damages is not easy to
2 prove or plead. In the context of a motion for summary adjudication on the issue of punitive
3 damages, courts are required to consider the more stringent burden of proof which applies to
4 punitive damage claims – the clear and convincing evidence standard. *Basich v. Allstate*
5 *Insurance Company* (2001) 87 Cal.App.4th 1112, 1118-21.

6 Here to recover punitive damages, Plaintiffs must demonstrate that MAPS intended to
7 deliberately injure the Decedent in conscious disregard of her rights by failing to summon
8 medical care apart from RGX’s medical staff. *Flyer’s Body Shop Profit Sharing Plan v. Ticor*
9 *Title Ins. Co.* (1986) 185 Cal.App.3d 1149, 1154. Moreover, Plaintiffs can only seek punitive
10 damages against MAPS based on its imputed liability for the conduct of its employees and
11 agents. Thus, in addition to a showing of malice, oppression or fraud, Plaintiffs must also prove
12 facts establishing that MAPS directed, authorized or later ratified any alleged conduct of its
13 employees. Cal. Civ. Code § 3294 (b); *Chodos v. Insurance Company of North America* (1989)
14 126 Cal.App.3d 86, 102.

15 It is undisputed that Plaintiffs cannot satisfy its heightened evidentiary burden to recover
16 punitive damages from MAPS. Here, the only “facts” alleged in the TAC in support of Plaintiffs’
17 claim for punitive damages consist of unfounded allegations that MAPS did nothing when
18 Decedent’s health deteriorated. These allegations are refuted by all of the first-hand witnesses
19 who testified that from the time Decedent arrived at the Zendo until roughly 1:00 a.m., she was
20 attended to by RGX medical staff and further, she appeared to be resting comfortably and/or
21 exhibited symptoms consistent with someone under the influence of LSD. Nor do Plaintiffs have
22 any evidence that establishes a managing agent of MAPS either authorized or ratified any alleged
23 improper and outrageous conduct which would support an award of punitive damages. Given
that Plaintiffs have no credible evidence to warrant the imposition of punitive damages against

1 MAPS, Plaintiffs' claim for punitive damages should be summarily dismissed. *Catalano v. Sup.*
2 *Ct.* (2000) 82 Cal.App.4th 91, 92.

3 Moreover, as explained above, the fraud claim fails for lack of evidence establishing any
4 of the required elements. Thus, the alleged fraud does not support assessing punitive damages.

5 Dated: October 17, 2022

6 By: _____
7 Charles S. Custer
8 Attorneys for Defendant
9 MULTIDISCIPLINARY
10 ASSOCIATION
11 FOR PSYCHEDELIC STUDIES, INC.
12 a.k.a. MAPS, INC.
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1 **PROOF OF SERVICE**

2 *Gatlin, Carla, et al. v. Do Lab Inc., et al.*
3 Monterey County Superior Court Case No. 20CV002753

4 I am a resident of the State of California, over the age of eighteen years, and not a party
5 to the within action. My business address is: Gordon Rees Scully Mansukhani, LLP, 275 Battery
6 Street, Suite 2000, San Francisco, CA 94111. On the date below, I served the within documents:

7 **MAPS MANDATORY SETTLEMENT CONFERENCE STATEMENT**

- 8 by transmitting VIA ELECTRONIC MAIL the document(s) listed above to the email
9 address(es) set forth below on this date before 5:00 p.m. (*Per agreement of the*
10 *parties.*)
- 11 by placing the document(s) listed above in a sealed envelope with postage thereon
12 fully prepaid, in United States mail in the State of California at San Francisco,
13 addressed as set forth below.

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Medical

I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 12, 2022 at San Francisco, California.



Terry Johnson