

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Northeast District, Alhambra Courthouse, Department V

24NNCV00276

JANE DOE vs CARLOS SUAREZ

March 6, 2025

2:41 PM

Judge: Honorable Sarah J. Heidel

Judicial Assistant: R. Rully

Courtroom Assistant: None

CSR: None

ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter:

DEFENDANT CARLOS SUAREZ'S MOTION FOR PLAINTIFF TO POST SECURITY, filed 9/6/24 (3695);

The Court, having taken the matter under submission on 02/04/2025 for Hearing on Motion - Other Plaintiff to Post Security (3695), now rules as follows:

MOVING PARTIES: Defendant Carlos Suarez (aka Charlie Suarez)

RESPONDING PARTY: Plaintiff Jane Doe

The court considered the moving papers, opposition, and reply.

BACKGROUND

This case arises from an allegation of sexual assault. According to the complaint, plaintiff Jane Doe met defendant online and the two arranged to meet for dinner. Following dinner, and after an evening of heavy drinking, plaintiff alleges defendant raped her. After that encounter the two exchanged texts for another month and a half. Plaintiff alleges that during this time she came to believe that defendant had supplied her with alcohol at their first date "with the intention of raping her.

On March 13, 2024, plaintiff filed the complaint against defendant Carlos Suarez (aka Charlie Suarez) (defendant) alleging (1) sexual battery in violation of Civil Code section 1708.5, (2) gender violence in violation of Civil Code section 52.4, (3) Ralphs Civil Rights Act – violation of Civil Code section 51.7, (4) interference with exercise of civil rights – violation of Civil Code section 52.1, (6) invasion of privacy, and (7) intentional infliction of emotional distress.

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On June 4, 2024, the parties appeared in court (remotely) for a hearing on an ex parte application. At the hearing plaintiff confirmed that she had been placed on the list of vexatious litigations by the Judicial Counsel, pursuant to California Code of Civil Procedure Section 391.7. The court issued an Order to Show Cause (OSC) re: dismissal pursuant to California Code of Civil Procedure, Sections 391, et seq regard, and set a hearing for August 13, 2024. Following a hearing, the court issued an order finding that the instant matter, filed March 13, 2024, was initiated before plaintiff was declared a vexatious litigant subject to a prefilng order, which was date April 10, 2024. Accordingly, the court discharged the OSC and denied defendant's request to dismiss this action under Code of Civil Procedure Section 391.7(b).

On September 6, 2024, defendant filed the instant motion seeking an order that plaintiff furnish a security of \$100,000, pursuant to Code of Civil Procedure Sections 391.1-391.4 Plaintiff filed her opposition on January 21, 2025. Defendant filed his reply on January 28, 2025. Later that day, plaintiff filed "objections and supplemental opposition to defendant's motion for plaintiff to post security."

REQUEST FOR JUDICIAL NOTICE

Defendant requests that the court take judicial notice of court documents that are a part of other proceedings involving plaintiff from the California Superior Court, County of Orange; the California Courts of Appeal; the United States District Court, the United Sates Courts of Appeals, and the California Judicial Council, including the following:

- Exhibits A through W which are documents used by Mr. Czodor in Luo v. Czodor, OSC Case No. 30-2023-001327847 ("Luo IV") from which Judge Strickroth issued the Vexatious Litigant Order.
- Exhibits X to DD which include moving and opposition papers considered by Judge Strickroth which include the pertinent orders declaring plaintiff a vexatious litigant found at Exhibits AA, BB, and CC. Exhibit DD is the vexatious litigants list.
- Exhibits EE and FF are minute orders from the instant action.
- Exhibits GG through MM are court documents from LASC Case no. 21STCV44756 Jane Doe v. County of Los Angeles.

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• Exhibit NN is the first amended complaint from the United States District Court qCentral District of California, O.L. v City of El Monte-USDC 2:20-cv-00797

The court takes judicial notice of these documents pursuant to Evidence Code section 452 subdivision (d) paragraphs (1) and (2).

EVIDENTIARY OBJECTIONS

The court sustains the following objections raised by defendant: 1 and 3 The court overrules the following objections raised by plaintiff:

LEGAL STANDARD

“In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation pursuant to subdivision (b) of Section 391.3. The motion for an order requiring the plaintiff to furnish security shall be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that they will prevail in the litigation against the moving defendant.” (Code Civ. Proc., § 391.1(a).)

A vexatious litigant is “a person who has, while acting in propria persona, initiated or prosecuted numerous meritless litigations, relitigated or attempted to relitigate matters previously determined against him or her, repeatedly pursued unmeritorious or frivolous tactics in litigation, or who has previously been declared a vexatious litigant in a related action.” (Shalant v. Girardi (2011) 51 Cal.4th 1164, 1169-70; CCP § 391(b).)

“At the hearing upon the motion the court shall consider any evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion.” (Code Civ. Proc., § 391.2.) “If, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.” (Code Civ. Proc., § 391.3(b).)

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DISCUSSION

Defendant seeks an order requiring plaintiff to furnish security of at least \$100,000.00 in the instant action or in such other amount as the court finds reasonable pursuant to Code of Civil Procedure sections 391.1, 391.2, 391.3, and 391.4. To determine whether plaintiff is required to furnish security, “the court shall consider any evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion.” (Code Civ. Proc., § 391.2.) To that end, the court may weigh the evidence presented on the motion in determining whether the vexatious litigant has a reasonable probability of success on her claim. (Moran v. Murtaugh Miller Meyer & Nelson, LLP (2007) 40 Cal.4th 780, 784-86.)

A. Vexatious Litigant

On April 10, 2024, plaintiff was declared a vexatious litigant in Luo v. Czodor, case no. 30-2023-01327847. Plaintiff does not dispute that she is a vexatious litigant.

B. Reasonable Probability of Prevailing on Claim

“When considering a motion to declare a litigant vexatious under section 391.1, the trial court performs an evaluative function. The court must weigh the evidence to decide both whether the party is vexatious based on the statutory criteria and whether he or she has a reasonable probability of prevailing. (Moran v. Murtaugh Miller Meyer & Nelson, LLP (2007) 40 Cal.4th 780, 786.) Accordingly, the court does not assume the truth of a litigant's factual allegations and it may receive and weigh evidence before deciding whether the litigant has a reasonable chance of prevailing. (Id. at 785, fn. 7; Golin v. Allenby (2010) 190 Cal. App. 4th 616, 635 (as modified on denial of reh’g).) The burden is on the motion is on the moving party. (Id. at 640.)

Defendant argues that plaintiff does not have a reasonable probability of prevailing on based on the written statements she made contemporaneous to the alleged incident, plaintiff’s statements to law enforcement officers, and her plaintiff’s conduct in other litigation. Defendant also offers his own sworn statement.

C. The Parties’ Evidence

1. Defendant’s Declaration

In his declaration, defendant denies that he sexually assaulted plaintiff. (Suarez Decl. ¶3). He sates that he and plaintiff had consensual sex on or about April 6, 2019 and that after their initial

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encounter, he and plaintiff exchanged WeChat messages in which plaintiff “enthusiastically endorsed more sexual conduct.” (Id. ¶4). According to Suarez, plaintiff did not report the alleged rape until after he refused to have sex with her again on May 21, 2019 and accused him of cheating. (Id. ¶¶ 5, 12 Exh. A at 72, 76 (Plaintiff accused defendant of pursuing other women while he was talking to her)).

2. WeChat Messages

The parties exchanged messages via WeChat between April 6 and May 3, 2019. Defendant argues that the messages support his position that their April 6 sexual encounter was consensual. On April 6, defendant wrote to plaintiff expressing interest in meeting up again.

The two exchanged the following messages:

WC 34 Suarez “We can always meet during the week or when I return from a work trip.

You can come to Arcadia to have dinner with me”

WC 35 DOE “K”

WC 36 Suarez “Which works for you”

WC 37 DOE “Let me know ahead of time and I will make arrangement”

WC 38 Suarez “Okay”

WC 39 Suarez “Goodnight. Kiss me in your dreams again.”

WC 40 DOE 3 kisses emoji

On April 30, 2019, plaintiff suggested that she join defendant on a work trip.

Suarez “Yes it was a work trip”

WC 65 Suarez “I usually go alone”

WC 66 DOE “Then no one would know if u took someone with u”

WC 67 Suarez “And?”

WC 68 DOE “A lot of possibilities...”

WC 69 Suarez “For what?”

WC 70 DOE “Anything u can think of.”

WC 71 Suarez “Like you wanting to come with me?”

WC 72 DOE “I could, depending on my schedule”

May 1, 2019, Jane Doe sent defendant a message indicating that she was interested in a sexual encounter with defendant.

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WC 83 DOE "I miss u. I want u. I'm wet all night." (7:54 am)

WC 84 Suarez "Morning. You wake up so early?" (11:06)

WC 85 DOE "I went back to sleep"

WC 86 Suarez "Oh Haha I was like what the"

WC 87 Suarez "I want you too"

WC 88 Suarez "I want to feel your..."

WC 89 DOE "When?"

WC 90 Suarez "Tomorrow?"

May 2, 2019, the parties discussed the arrangements for their meet up.

WC 167 [misnumbered] Suarez "I wanted to f--- you tonight"

WC 167 DOE "No, u didn't. You made other plans"

WC 168 Suarez "After"

WC 169 Suarez "I was done"

WC 170 Suarez "It seems like all you care about is yourself because all you send me is things to make you orgasm better"

WC 172 DOE "I can do whatever u want me to"

WC 173 Suarez "Is there anything you won't try?"

WC 174 DOE "What do you want me to try"

WC 175 Suarez "I'm just curious"

WC 176 Suarez "If there is anything you won't try"

WC 177 DOE "Nope"

3. Plaintiff's Declaration

Plaintiff offers her own declaration. She states that "[p]rior to April 2019, [her] understanding of sexual assault was based solely on media portrayals, which depicted rapes as being committed by strangers and resulting in visible injuries." (J.D. Decl. ¶3). According to plaintiff, defendant contacted her after dinner on April 5/6, 2019 and the two agreed to a drink. She says that she suggested meeting at a location that was not her home. They shared a bottle of wine and Japanese whiskey. According to plaintiff, she was losing consciousness when defendant took her to a motel. She states that she did not consent to sex and was not conscious during sex. She explains that defendant made a comment about the tightness of her vagina and how "he had to stretch it out." (Id. ¶8, Exh. 3). She states that her vagina was tight because she was not aroused during intercourse. (Id. ¶8). Plaintiff states that when she woke up on April 6, she did not realize that she had been raped. She states that she "continued communication with [defendant] in the hope of seeking clarity of the events." (Id. ¶ 11). She says that her "post-rape communication

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was a strategic effort to elicit information from [defendant] . . . to try to get [defendant] to discuss [her] vagina.” (Id. ¶ 11). She also states that “As the days dragged on, Suarez’s continuing on the hunt of other women assisted me in beginning to piece together the events before and after the night I was taken to the motel. When it finally clicked, I then struggled and made the realization that the incident was premeditated date rape.” (Id. ¶13).

4. Plaintiff’s statements and allegations in other litigation

The court took judicial notice of various pleadings in other cases initiated by plaintiff. The pertinent allegations are below.

a. O.L. v. City of El Monte et al, 2:20-CV-00797-RGK-JDE

On February 20, 2020, plaintiff filed a complaint against various public entities for failing to investigate her allegations of rape against defendant. In the complaint she describes the alleged rape on April 6, 2019 stating that she woke up next to defendant “still drunk and confused about what had happened. Defendant inserted his penis into Plaintiff’s vagina but she didn’t know what to say or what to do. . . She didn’t resist because she’s afraid of any confrontation and escalated situation. She remained silent and went along with what the offender wanted because she reasonably believed that [defendant] would commit violence against her if the situation was escalated.” (RJN Vol. 3, Exh. NN at 107 ¶40).

b. Jane Doe v. Newsom et al, 2:20-cv-04525-JAK

On May 20, 2020, plaintiff filed a case titled Jane Doe v. Newsom et al, 2:20-cv-04525- JAK. In the Newsom case, plaintiff alleged that in 2013 she met a police officer named Edward Weamer. The two exchanged texts prior to meeting and plaintiff alleges that she told Weamer that she did not want to rush into sex. Plaintiff alleges that once she “met Weamer in person, he didn’t keep his words and forced himself on top of Plaintiff around ten times between 2013 and 2014.” (RJN Vol. 1, Exh Q)

c. Jane Doe v. Paul Wang, 1:20-cv-02765-RMR-MEH

On July 28, 2021, defendant filed a third amended complaint in a case called Jane Doe v. Paul Wang, 1:20-cv-02765-RMR-MEH. In the complaint, plaintiff alleged that she and defendant were in a romantic relationship in 2012-2013 when a mutual acquaintance, Mr. Chen, sexually assaulted her. (RJN 1, Exh. T at 2).

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d. Doe v. Weamer, Case No. C20-00827

On May 7, 2020, plaintiff filed a complaint in the case of Doe v. Weamer, Case No. C20- 00827. In Weamer, plaintiff alleged that in 2013 plaintiff met defendant via an online app. "Before Plaintiff met Defendant in person, she made a clear statement via text messages that she didn't want to rush sex and insisted to stick to her traditional culture." Plaintiff alleged that defendant took her back to his house and raped her. She alleged that she "was unclear if forcible sex by a date (non a stranger) was a normal thing. She was uncomfortable, but not alarmed. She neither reported to authority nor stopped contact with Defendant." (RJN Volume 1, Exh. J at 92.)

C. Defendant has established that plaintiff does not have a reasonable probability of prevailing

At the heart of this matter is whether defendant raped plaintiff on April 6, 2019. To prevail, plaintiff would have to prove by a preponderance of the evidence that the sexual encounter was not consensual. Plaintiff offered a declaration that she was unconscious and did not consent to sex with defendant. Defendant offered a declaration that she was awake and willingly participated. All of the other evidence offered by the parties casts significant doubt on plaintiff's credibility.

First, defendant offered the WeChat messages in which the parties exchange sexually explicit messages. Plaintiff argues that the April 6-May 21 messages do not establish that the April 6, 2019 encounter was consensual. While this is technically true, the messages do tend to support an inference that plaintiff was interested in pursuing additional sexual encounter with defendant and tend to undermine her claim that defendant raped her. Plaintiff states that she only communicated with defendant in order to draw him out and get him to reveal more details about the April 6 incident. The court has reviewed the extensive and explicit WeChat messages and does not find support for plaintiff's explanation.

Additionally, plaintiff argues that the fact that she did not immediately report the assault does not mean it was consensual. This is also true. However, in her declaration, plaintiff states she did not immediately realize that she had been raped and that "[p]rior to April 2019, [her] understanding of sexual assault was based solely on media portrayals, which depicted rapes as being committed by strangers and resulting in visible injuries." These statements are flatly contradicted by allegations that plaintiff made in Doe v. Weamer, Case No. C20-00827 and Jane Doe v. Newsom et al, 2:20-cv-04525-JAK, in which plaintiff alleges she was the victim of two different date rapes in 2013. In Weamer, plaintiff alleged that she was "unclear if forcible sex by a date (non a stranger) was a normal thing," an allegation similar to the one plaintiff made in this case. In Jane Doe v. Paul Wang plaintiff alleged she was raped by another acquaintance. Plaintiff's allegations

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in these cases directly contradict the statement in her declaration that in 2019 she was unfamiliar with the concept of date rape and believed rape could only be committed by strangers.

Plaintiff's allegations in the O.L. v. City of El Monte et al, 2:20-CV-00797-RGK-JDE case also contradict the allegations and statements she made in this case. Plaintiff brought that action against law enforcement after they failed to investigate the alleged assault by the defendant in this case. Plaintiff alleged that morning after her encounter with defendant she woke up and defendant penetrated her against her will but she did not protest "because she's afraid of any confrontation and escalated situation. She remained silent and went along with what the offender wanted because she reasonably believed that [defendant] would commit violence against her if the situation was escalated." In the declaration plaintiff filed in this case, plaintiff did not state that she was afraid or concerned about violence. She stated that she did not even realize that an assault had occurred.

In sum, having evaluated the evidence, the court finds that plaintiff has made numerous inconsistent and implausible statements that pertain to matters which are at the heart of this action. Based on those conflicting statements and allegations the court finds that plaintiff is not credible and, on that basis, does not have a reasonable probability of prevailing in this action.

Counsel for defendant requested a security of \$100,000, which he estimates constitute the amount of reasonable expenses based on plaintiff's litigation tactics and conduct. (Schloss Decl. ¶¶4-9). Accordingly, pursuant to Code of Civil Procedure 391.3, plaintiff is ordered to furnish a security in the amount of \$100,000 to be posted by April 6, 2025. Proceedings are ordered stayed pending the posting of the security. The automatic stay shall remain effective until 10 days after the motion is denied or 10 days after the security is furnished.

Based on the foregoing, the court GRANTS the motion for plaintiff to post security. Plaintiff is ordered to furnish security in the amount of \$100,000 by April 6, 2025.

Defendant is ordered to give notice of this ruling.

The Clerk shall give notice.

Certificate of Mailing is attached.

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