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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHARLES DENNIS et al.,  
Plaintiffs and Appellants,

v.

LIVE NATION WORLDWIDE, INC.,  
et al.,

Defendants and Respondents.

A165809

(Santa Clara County  
Super. Ct. Nos. 115CV280456,  
0115CV282859)

ERIC JOHNSON, SR.,  
Cross-complainant and Appellant,

v.

LIVE NATION WORLDWIDE, INC.,  
Cross-defendant and Respondent.

ROSEANNA M. ROBINSON,  
Individually and as Administrator,  
etc.,

Plaintiff and Appellant,

v.

LIVE NATION WORLDWIDE, INC.,  
et al.,

Defendants and Respondent.

Eric Johnson, Jr., was shot and killed while backstage at a concert produced by Live Nation Worldwide, Inc. (hereafter Live Nation). Johnson’s children, plaintiffs Charles Dennis and his two minor siblings, filed a complaint for wrongful death alleging defendant Live Nation’s negligence caused their father’s death.<sup>1</sup> Plaintiffs later amended their complaint to add as a Doe defendant Jay Wayne Jenkins, who performed at the concert under the stage name “Young Jeezy” and who plaintiffs allege was either the shooter or associated with the shooter. The trial court sustained Jenkins’s demurrer without leave to amend and later granted Live Nation’s motion for summary judgment. On appeal, plaintiffs contend the trial court erred by holding (1) plaintiffs’ claim against Jenkins barred by the statute of limitations and (2) that Live Nation did not owe Johnson a duty of care to protect against criminal acts by third parties. We find no error and affirm the judgment.

### **Background**

On May 11, 2015, plaintiffs filed a complaint against Live Nation and several doe defendants alleging causes of action for negligence, premises liability and wrongful death.<sup>2</sup> The complaint alleges, “On Friday August 22, 2014, 38-year-old Eric Johnson . . . attended the ‘Under the Influence Music

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<sup>1</sup> The two minor plaintiffs are represented by their mother and guardian ad litem Ria Cotton.

<sup>2</sup> As a nominal defendant in the children’s action, Johnson’s father, Eric Johnson, Sr., filed a cross-complaint for damages against Live Nation. Johnson’s mother, Roseanna M. Robinson, filed a separate action on behalf of herself and as the administrator of Johnson’s estate seeking damages from Live Nation and Jenkins. The actions were consolidated and a single judgment was entered. The parents filed timely notices of appeal and have joined in the briefs submitted by the children, but raise no independent issues. We refer to Johnson’s children collectively as plaintiffs and his parents by their names when necessary.

Tour Concert' . . . held at the Shoreline Amphitheatre in Mountain View, California. Live Nation . . . had an exclusive lease agreement to operate, manage and provide security services at the Amphitheatre for the concert. Defendants promoted the concert and selected, hired and invited rap artists Wiz Khalifa, Young Jeezy, Rich Homie Quan, TY\$, Tyga, Mack Wilds, and Sage the Gemini to perform at the concert. [¶] . . . During the concert, [Johnson], who worked in the music industry, made his way backstage to discuss his business arrangements for Young Jeezy to appear at a concert after-party taking place in San Jose, California later that night. [¶] . . . At approximately 11:00 p.m., [Johnson] was backstage and a verbal altercation ensued involving [Johnson] and [an] unknown criminal assailant. Defendants' security personnel failed to prevent, intervene and/or stop the altercation. Sometime, thereafter [Johnson] was shot multiple times in the chest, fatally wounding him. Tragically, [Johnson] did not recover from the gun shot wounds leaving his three children without their father and provider." The complaint alleges further, "Initial media reports related to the incident indicated Young Jeezy, and/or members of his entourage may have been involved in the altercation with [Johnson] immediately prior to the gunshots being fired. Initial media reports also revealed that when police searched Young Jeezy's tour bus they discovered automatic assault weapons, and [police] arrested the rapper along with 5 members of his entourage for unlawful possession of the firearms. Neither the rapper nor any members of his entourage were charged in relation to the shooting." Finally, the complaint alleged, "Defendants knew or should have known that many of the rap artists they selected, invited, and hired to perform are known to attract violent and unruly crowds at their concerts and shows. Defendants knew or should have known that many of the rap artists they selected, hired and

invited to perform at the concert have themselves been investigated, detained, arrested and/or convicted of committing violent criminal acts. For example, on information and belief plaintiffs state that on March 1, 2012 a brawl erupted at a Young Jeezy concert in Orlando, Florida; on April 5, 2012 one person was shot multiple times while attending a Young Jeezy concert in Toronto, Ontario; on April 6, 2012 another person was shot while attending a Young Jeezy concert. On information and belief Plaintiffs further state on December 22, 2013, one person was shot and killed while attending a Rich Homie Quan concert in Columbus, Ohio and on March 5, 2014 two people were shot and killed at a Rich Homie Quan concert in New Orleans, Louisiana. [¶] . . . Nevertheless, despite the high foreseeability of a violent act occurring at the concert, Defendants failed to employ reasonable security measures to prevent guns from being brought into the Amphitheatre and protect the guests attending the concert from violence. Moreover, defendants failed to notify their guests attending the concert of the propensity and high likelihood of a violent act occurring at the concert. [¶] Defendants failed to employ adequate security measures at the Amphitheatre's entrances or backstage. For example, they did not use metal detectors to screen guests, rap artists or their entourage prior to entering the concert or the backstage area. Defendants also failed to pat search or check the personal belongings and vehicles of persons permitted to enter the backstage area. The cumulative effect of the defendants' failures was the creation of an extremely unsafe environment conducive to a violent shooting.”

In January 2017, plaintiffs filed a first amended complaint substituting Jenkins in place of a Doe defendant under the wrongful death cause of action. The amended complaint adds new allegations that Jenkins “unlawfully killed decedent Eric Johnson Jr. at the Shoreline Amphitheatre on August 22, 2014

when he shot him multiple times, such that [Jenkins] directly and proximately caused death to decedent Eric Johnson.”

Jenkins filed a demurrer arguing, among other things, that the claims alleged against him were barred by the two-year statute of limitations for wrongful death. The trial court sustained the demurrer with leave to amend. The court explained that the new allegations that Jenkins acted with the intent to harm Johnson do not relate back to the negligence claim alleged in the original complaint and that, in any event, Jenkins cannot be substituted for a Doe defendant under Code of Civil Procedure section 474 (section 474) because plaintiffs were at all relevant times aware of his identity and presence at Shoreline on the night of Johnson’s death and knew or reasonably should have known when the original complaint was filed that they had a cause of action against Jenkins for alleged intentional wrongdoing.

In October 2017, plaintiffs filed a second amended complaint. The second amended complaint alleges that at the time they filed their original complaint they were ignorant of the facts giving rise to any causes of action against Jenkins and were unaware of his true relationship to the injuries upon which the action was based. The second amended complaint deletes the allegations that Jenkins intentionally shot Johnson and alleges instead that Jenkins “negligently, carelessly, recklessly, wantonly and unlawfully operated, and supervised the Shoreline Amphitheatre on August 22, 2014 by failing to use due care when he allowed either himself and/or someone in his employ to unlawfully enter the Shoreline Amphitheatre with a firearm which led to the unlawful killing of Decedent Eric Johnson Jr.”

Jenkins filed a demurrer to the second amended complaint, again alleging that all claims against him were barred by the statute of limitations.

In March 2018, after the plaintiffs failed to file an opposition to the demurrer, the trial court sustained the demurer without leave to amend.

Subsequently, Live Nation filed a motion for summary judgment on plaintiffs' second amended complaint on the ground, among others, that it owed no duty to ensure Johnson's safety against "the unprecedented and unforeseeable homicidal acts of an unknown assailant." Live Nation submitted a declaration by the head of security at Shoreline Amphitheater stating that there had been no prior homicides "or similar acts of violence" at Shoreline "including backstage" since at least 2001 when she began working there. Live Nation also submitted deposition testimony by the general manager of Shoreline Amphitheater stating that the reports from other Live Nation venues he reviewed did not contain any reports of weapons at prior shows for the "Under the Influence Tour" or report that any of the artists on the tour had posed any type of danger, and that the Mountain View Police Department did not inform him of any reports of violence at prior shows.

Plaintiffs opposed the motion arguing that Live Nation owed a duty of care to Johnson because the backstage attack and shooting were foreseeable based on the prior incidents alleged in the complaint. Plaintiffs also submitted a declaration by an expert in "public assembly risk management" who critiqued Live Nation's security protocols and concluded that "there was not appropriate and reasonable security at the concert in question" and that as a result of Live Nation's security "failures, weapons were allowed onto the premises."

The trial court granted the motion, finding that plaintiffs could not establish a duty of care as a matter of law. The court explained, "Defendants have met their initial burden to establish through admissible evidence that the shooting of [Johnson] in the backstage area of the Shoreline

Amphitheatre was not reasonably foreseeable and they therefore owed no duty to prevent the third-party criminal attack on [Johnson].” The trial court then concluded that plaintiffs failed to raise a triable issue of fact as to the reasonable foreseeability of the backstage shooting. The court explained that plaintiffs “present[ed] no evidence of prior similar incidents that would make a shooting in the backstage area foreseeable.” The court also concluded that because the identity of the shooter and how and when he entered the backstage area is unknown, the opinion offered by plaintiffs’ expert is “too speculative to raise a triable issue of material fact as to the reasonable foreseeability of the shooting or to establish that any particular security measure would have prevented the shooting.” Thereafter, the court entered judgment in favor of defendant Live Nation.

Plaintiffs filed a notice of appeal from the judgment and the “judgment of dismissal after an order sustaining a demurrer.”<sup>3</sup>

## **Discussion**

### *1. Jenkins’s Demurrer*

“A demurrer tests the legal sufficiency of the complaint. [Citation.] If a complaint shows on its face (or from matters of which the court must or may take judicial notice [citation] that a cause of action is barred by the statute of limitations, a general demurrer for failure to state a cause of action will be sustained. [Citation.] ‘A trial court’s decision to dismiss a case after sustaining a general demurrer is based predominantly on a question of law. [Citation.] The trial court’s ruling is, therefore, subject to de novo review,

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<sup>3</sup> No judgment of dismissal is included in the record nor is there an entry in the register of actions indicating when any such judgment was entered. Because the appeal is fully briefed and no party has suggested that this portion of the appeal should be dismissed, we deem the June 2019 judgment to incorporate a judgment of dismissal as to Jenkins.

meaning that we independently exercise our judgment about whether the complaint properly states a cause of action.’ ” (*Hawkins v. Pacific Coast Bldg. Products, Inc.* (2004) 124 Cal.App.4th 1497, 1502.)

As a threshold matter, we reject Jenkins’s contention that plaintiffs waived any objection to the demurrer by failing to oppose it and appear at the hearing. *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, cited by plaintiffs, is inapposite. In that case, a parent faced with losing his parental rights failed to ask the court to conduct a bonding study and the court reasoned that “the father waived the issue for purposes of appeal by not asking the juvenile court to order a bonding study.” (*Id.* at p. 1338.) The court’s role in evaluating a demurrer is fundamentally different from its role in determining whether an optional bonding study is appropriate in dependency proceedings. Even if a party fails to appear at the hearing on the demurrer, the trial court must decide the demurrer on the merits. (Cal. Rules of Court, rule 3.1320(f) [“When a demurrer is regularly called for hearing and one of the parties does not appear, the demurrer must be disposed of on the merits at the request of the party appearing unless for good cause the hearing is continued.”].) We are unaware of any authority holding that a plaintiff waives any objection to sustaining a demurrer to its pleading by failing to oppose the demurrer.

Plaintiffs contend the court erred in concluding that their cause of action against Jenkins is barred by the statute of limitations because it did not relate back to the original complaint. “The general rule is that an amended complaint that adds a new defendant does not relate back to the date of filing the original complaint and the statute of limitations is applied as of the date the amended complaint is filed, not the date the original complaint is filed. [Citations.] A recognized exception to the general rule is the substitution under section 474 of a new defendant for a fictitious Doe



defendant named in the original complaint as to whom a cause of action was stated in the original complaint. [Citations.] If the requirements of section 474 are satisfied, the amended complaint substituting a new defendant for a fictitious Doe defendant filed after the statute of limitations has expired is deemed filed as of the date the original complaint was filed.”<sup>4</sup> (*Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 176.)

“A plaintiff can avail him or herself of section 474 if the plaintiff is ignorant of facts that give rise to a cause of action against a person who is otherwise known to the plaintiff. ‘In keeping with th[e] liberal interpretation of section 474, it is now well established that even though the plaintiff knows of the existence of the defendant sued by a fictitious name, and even though the plaintiff knows the defendant’s actual identity (that is, his name), the plaintiff is “ignorant” within the meaning of the statute if he lacks knowledge of that person’s connection with the case or with his injuries.’ [Citation.] As put by another court: “The phrase “ignorant of the name of a defendant” is broadly interpreted to mean not only ignorant of the defendant’s identity, but also ignorant of the facts giving rise to a cause of action against that defendant.’” (*McOwen v. Grossman* (2007) 153 Cal.App.4th 937, 942–943.)

There is no dispute that plaintiffs were aware of Jenkins’s name at the time the complaint was filed. The facts alleged in the original complaint also establish that plaintiffs had “ ‘knowledge of sufficient facts to cause a reasonable person to believe liability is probable.’ ” (*McOwen v. Grossman*,

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<sup>4</sup> Section 474 provides in relevant part: “When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, or the affidavit if the action is commenced by affidavit, and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly.”

*supra*, 153 Cal.App.4th at p. 943.) The complaint alleges that Johnson was backstage to speak with Jenkins when he was shot, that media reports after the incident indicated Jenkins and/or members of his entourage may have been involved in the shooting and that the police recovered automatic assault weapons from Jenkins’s tour bus. As the trial court noted, Robinson’s complaint, filed just two months after plaintiffs’ complaint, named Jenkins as a defendant and alleged that Johnson was “shot and killed by one or more members of a group of people including, but not limited to Jenkins” and others. Her complaint also alleges that Jenkins negligently hired and supervised the members of his entourage and that his negligence was a substantial factor in causing Johnson’s death. Plaintiffs suggest that the allegations in the Robinson complaint should not be held against them, but fail to explain why. Nothing in the record suggests that Robinson was privy to facts unknown to plaintiffs at that time. Accordingly, the trial court correctly determined that plaintiffs could not substitute Jenkins as a Doe defendant and that therefore, plaintiffs’ claims against Jenkins were barred by the statute of limitations.<sup>5</sup>

## 2. *Live Nation’s Motion for Summary Judgment*

A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853.) If a defendant satisfies this initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*,

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<sup>5</sup> Robinson voluntarily dismissed Jenkins as a defendant in her action in March 2019 before the court ruled on his motion for summary judgment.

*supra*, at p. 849.) We review a grant of summary judgment de novo. (*Dix v. Live Nation Entertainment, Inc.* (2020) 56 Cal.App.5th 590, 604 (*Dix*).

“To state a cause of action for negligence, a plaintiff must establish the defendant owed a legal duty of care.” (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 209.) In determining whether “a defendant has a legal duty to take action to protect the plaintiff from injuries caused by a third party” courts employ a “two-step inquiry. First, the court must determine whether there exists a special relationship between the parties or some other set of circumstances giving rise to an affirmative duty to protect. Second, if so, the court must consult the factors described in *Rowland [v. Christian]* (1968) 69 Cal.2d 108 (*Rowland*)] to determine whether relevant policy considerations counsel limiting that duty.” (*Brown, supra*, 11 Cal.5th at p. 209.)<sup>6</sup>

In *Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 620–621, the court explained, “Relationships that have been recognized as ‘special’ share a few common features. Generally, the relationship has an aspect of dependency in which one party relies to some degree on the other for protection. [Citations.] . . . ¶] The corollary of dependence in a special relationship is control. Whereas one party is dependent, the other has superior control over the means of protection. ‘[A] typical setting for the recognition of a special relationship is where “the plaintiff is particularly vulnerable and dependent upon the defendant who, correspondingly, has

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<sup>6</sup> The *Rowland* factors include “the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.” (*Rowland, supra*, 69 Cal.2d at p. 113.)

some control over the plaintiff's welfare.” ’ (Accord, *Brown v. USA Taekwondo, supra*, 11 Cal.5th at p. 220 [a special relationship “extends a right of recovery to individuals in relationships involving dependence or control, and who by virtue of those relationships have reason to expect the defendant’s protection”].) Special relationships also feature “defined boundaries” that “create a duty of care owed to a limited community, not the public at large.” (*Regents, supra*, 4 Cal.5th at p. 621.) Examples of special relationships that create an affirmative duty to protect include “[r]elationships between parents and children, colleges and students, employers and employees, common carriers and passengers, and innkeepers and guests.” (*Brown, supra*, 11 Cal.5th at p. 216.)

Here, the record does not support the existence of a special relationship between Live Nation and the artists and their guests. The dependence of the artists and their backstage guests on Live Nation for security in the backstage area and Live Nation’s corresponding control over the security of the backstage area was limited. Plaintiffs’ undisputed facts describe the backstage area as a “secured area” that includes “patio style dining, basketball court, ping-pong tables, private dressing rooms and several other amenities provides for [the crew and performers’] comfort.” The backstage area is accessed from outside the amphitheater through a single gate and a backstage pass is required for entry. The undisputed evidence establishes that two hours before the show, Live Nation performed a security sweep of the venue for various suspicious items, including weapons. Plaintiff’s undisputed facts establish that artists and guests entering the backstage area were not subject to search and vehicles entering the backstage area were subject only to an undercarriage search. Thereafter, senior security personnel patrolled the backstage area periodically throughout the show. Importantly,

however, the record also establishes that the artists have their own security protocols which Live Nation reviews and incorporates prior to an event. In this instance, the headliner requested that the backstage area be cleared of any police presence for his performance unless specifically requested by his security to respond to a situation. He also detailed the number and location of security guards to be stationed backstage. Finally, the headliner indicated that his production team, rather than the venue, would be responsible for issuing backstage passes. Plaintiffs' undisputed facts state further that entrance to the backstage of the amphitheater would require "an all-access pass given by the tour. Only few employees of Live Nation would be in that area with everything else belonging to the tour." Given this evidence, the artists and their guests would not reasonably anticipate that Live Nation would be providing protection from criminal activity by and between the artists and their guests.

*Dix, supra*, 56 Cal.App.5th at page 608, cited by plaintiffs, is distinguishable. In that case, the court found that Live Nation as the operator of a music festival had a special relationship with the festival's 65,000 attendees. The court reasoned, "Once they passed through security and entered the large enclosed grounds for the 11-hour festival, the festival attendees were dependent on Live Nation. In the event of a medical emergency, Live Nation controlled not only if and when attendees would receive medical care, but also the nature and extent of the care. Attendees could not summon their own medical care. Attendees also depended on Live Nation to provide adequate security." (*Ibid.*) In this case, however, the record establishes that Johnson was not a concert attendee. According to plaintiffs, he went to the concert to pick up Jenkins to bring him to the event in San Jose. Although it is unclear how Johnson gained access to the backstage area,

plaintiffs' undisputed facts indicate that a pass approved by someone associated with the artists would have been required to enter the backstage area. While concert attendees may be dependent on Live Nation to provide adequate security, as the above evidence demonstrated, the same is not necessarily true of the artists and their guests while in the backstage area.

In any event, even assuming that Live Nation, as the concert promoter and leaseholder of the amphitheater, had a special relationship with the artists and their guests, its duty to take reasonable steps to secure the venue against foreseeable criminal acts of third parties did not include the actions alleged in plaintiffs' complaint. (See *Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213 [finding affirmative duty based on special relationship between landlord and tenants and then analyzing *Rowland* factors to determine "duty's existence and scope"]; *Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 244 [finding special relationship between business proprietor and its tenants, patrons, and invitees imposed general duty on proprietor to take "reasonable steps to secure common areas against foreseeable criminal acts of third parties" and then analyzing *Rowland* factors to determine scope of duty].)

In *Dix, supra*, 56 Cal.App.5th at pages 602, 608, the court reasoned that the negligence alleged in the complaint in that case—that is, Live Nation's failure "to provide an adequate number of properly trained and equipped medical services sufficient to maintain safety; to properly train its security to handle incidents [involving drug overdose] . . . ; to ensure that proper timely medical care would be provided to its attendees under the circumstances; to maintain adequate medical facilities for the attendees during the event; [and] to act reasonabl[y] under the circumstances once medical assistance has begun" came within the scope of Live Nation's duty

to protect because the actions were consistent with foreseeable injury. The court explained, “Based on its prior experience with producing similar festivals, Live Nation knew that a ‘major risk’ of conducting an electronic music festival was that attendees would ‘consume illegal substances’ and suffer ‘negative effects,’ including ‘overdose[s].’ Recognizing the ‘high degree’ of foreseeability of illegal drug use and medical emergencies, Live Nation ‘retained security and medical vendors and coordinated with local public agencies to use reasonable measures to implement security and medical plans for the safety of attendees.’ Rather than arguing the burdens were too high, Live Nation assumed the burdens of detecting unlawful drugs and providing medical care to attendees. Under these circumstances, because of the special relationship between Live Nation and Hard Fest attendees, Live Nation owed a duty of reasonable care to [plaintiff] and the other [festival] attendees.” (*Ibid.*)

Here, however, the acts the failure to perform which allegedly constituted negligence are both burdensome and inconsistent with foreseeable injury. The complaint alleges that Live Nation’s negligence “includes, but is not limited to: [¶] a. Failing to have an adequate security presence backstage at Shoreline Amphitheatre[;] [¶] b. Failing to perform thorough searches of all guests, performers, and the members of the rappers’ entourages[;] [¶] c. Failing to search tour buses and vehicles associated with each rapper[;] [¶] d. Failing to place metal detectors at all entrances to the venue (including backstage)[;] [¶] e. Failing to have any police officers backstage[;] [¶] f. Failing to maintain a list of all persons who had access to the backstage area[;] [¶] g. Failing to properly supervise themselves, the performers, their guests, employees and agents[;] [¶] h. Failing to ensure no one entered the premises or backstage unlawfully possessing a firearm[;]

[¶] i. Permitting themselves, performers, their guests, employees and agents to engage in the consumption of alcohol and ingest mind altering substances which cloud[] judgment, lowers inhibitions, and causes persons to become aggressive and/or violent[;] [¶] j. Failing to properly monitor themselves, performers, their guests, employees and agents during and after they engaged in the consumption of alcohol and ingest[ed] mind altering substances which cloud[] judgment, lowers inhibitions, and causes persons to become aggressive and/or violent so that they do not engage in criminal and/or unlawful behavior.” As the trial court observed, no reasonably foreseeable risk warranted imposition of these burdensome actions. (See *Morris v. De La Torre* (2005) 36 Cal.4th 260, 270–271 [“ ‘[A]s a general matter, imposition of a high burden requires heightened foreseeability, but a minimal burden may be imposed upon a showing of a lesser degree of foreseeability.’ ”]; *Doe v. Roman Catholic Archbishop of Los Angeles* (2021) 70 Cal.App.5th 657, 678, fn. 8 [“case-specific foreseeability considerations may affect the reasonableness of measures a plaintiff alleges a defendant must take to satisfy its duty of care”].)

In *Regents, supra*, 4 Cal.5th at page 629, the court observed that “ ‘[t]he most important’ ” of the *Rowland* factors “ ‘is whether the injury in question was foreseeable.’ ” The court advised, “In examining foreseeability, ‘the court’s task . . . “is not to decide whether a particular plaintiff’s injury was reasonably foreseeable in light of a particular defendant’s conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed . . . .” ’ ” (*Ibid.*) In that case, “[p]hrased at the appropriate level of generality,” the question was not whether the University could predict a particular attack but “whether a reasonable university could



foresee that its negligent failure to control a potentially violent student, or to warn students who were foreseeable targets of his ire, could result in harm to one of those students.” (*Ibid.*) Ultimately, the court concluded that violent classroom attacks by college student with mental health issues is a foreseeable occurrence for which colleges have a duty to take reasonable actions. (*Id.* at p. 630.)

In contrast, in this case, a violent attack by and between artists and their guests in the backstage area of a performance is not a foreseeable occurrence against which Live Nation should have provided preventative measures of the nature plaintiffs suggest. The record established that based on reports from prior stops on the Under the Influence Tour, Live Nation’s security team anticipated a difficult crowd. The reports showed fights had occurred in some crowds and indicated the crowds in general had not respected physical barriers. The reports did not, however, indicate that any of the artists or their entourages engaged in or posed any danger of violence during the tour. The Head of Security also indicated that in her more than 10 years at the amphitheater, there had not been any violent incidents backstage. The prior incidents alleged in the complaint also relate to violence by and between concert attendees, not by and between artists and their backstage guests. Because it was not reasonably foreseeable that violence would occur in the backstage area, any duty that might arise based on the relationship between Live Nation and Johnson, did not require the burdensome measures alleged in the complaint. (See *Delgado v. Trax Bar & Grill, supra*, 36 Cal.4th at p. 244 [duty owed as a result of special relationship between bar proprietor and patron did not include duty to provide a guard or take other burdensome measures absent “heightened foreseeability” of risk].)

None of the remaining *Rowland* factors support the expansion of Live Nation's duty to encompass protecting backstage guests from unforeseeable injury inflicted by other artists or their guests.

**Disposition**

The judgment is affirmed. Defendants shall recover their costs on appeal.

POLLAK, J.\*

WE CONCUR:

STREETER, Acting P. J.  
BROWN, J.

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\* Retired Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.