

DEPARTMENT 58 LAW AND MOTION RULINGS

Effective 2-1-16, Judge Treu is assigned to Dept. 59, Family Law.

Case Number: 20STCV33384 **Hearing Date:** January 18, 2022 **Dept:** 58

JUDGE JOHN P. DOYLE

DEPARTMENT 58

Hearing Date: January 12, 2022

Case Name: French v. Providence St. John's Health Center, et al.

Case No.: 20STCV33384

Matter: Motion for Leave to File Second Amended Complaint

Moving Party: Plaintiff Shelby French

Responding Party: (1) Defendant Doug Alcorn
(2) Defendant Providence St. John's Health Center

Tentative Ruling: **The Motion is granted.**

This is an employment action.

Plaintiff Shelby French seeks leave to file a second amended complaint ("SAC") adding a request for punitive damages. Plaintiff argues she can establish a prima facie case of punitive damages because she has evidence that Defendant Doug Alcorn harassed various employees for years and that Defendant Providence St. John's Health Center knew about this and in fact "nurtured" such behavior.

The Court may, in the furtherance of justice, and upon any terms as may be proper, allow a party to amend any pleading. (Code Civ. Proc. §§ 473, 576.) In general, California courts liberally exercise discretion to permit amendment of pleadings in light of a strong policy favoring resolution of all disputes between parties in the same action. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; *Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530; *Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 296 [“[T]here is a strong policy in favor of liberal allowance of amendments.”].) Pursuant to this policy, requests for leave to amend generally will be granted unless the party seeking to amend has been dilatory in bringing the proposed amendment before the Court, and the delay in seeking leave to amend will cause prejudice to the opposing party if leave to amend is granted. (*Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 490; *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-565.) The decision on a motion for leave is directed to the sound discretion of the trial court. (See generally Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶¶ 6:637 et seq.)

(a) Defendant Alcorn

Defendant Alcorn argues the Motion should be denied because (1) Plaintiff previously withdrew her claim for punitive damages and (2) the evidence currently presented by Plaintiff merely relates to other employees and/or is mischaracterized.

Given the August 2022 trial date in this matter, the Court cannot find any resulting prejudice to Defendant if the amendment were allowed.

Further, the proposed SAC sufficiently describes an incident in which Defendant, while raising two fingers to Plaintiff’s face, threatened to poke Plaintiff’s eyes out in order to deter her from touching his equipment. Defendant’s arguments relating to this incident merely raise factual issues.

Finally, Alcorn has not cited any law that Plaintiff cannot reassert a claim for punitive damages after having amended her initial Complaint to remove the claim.

In sum, the Court will allow Plaintiff to assert a punitive damages claim against Alcorn.

(b) Defendant Providence St. John's Health Center

Defendant Providence St. John's Health Center is a religious corporation. "No claim for punitive or exemplary damages against a religious corporation or religious corporation sole shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive or exemplary damages to be filed. The court may allow the filing of an amended pleading claiming punitive or exemplary damages on a motion by the party seeking the amended pleading and upon a finding, on the basis of the supporting and opposing affidavits presented, that the plaintiff has established evidence which substantiates that plaintiff will meet the clear and convincing standard of proof under Section 3294 of the Civil Code." (Code Civ. Proc. § 425.14.)

"[P]laintiff [must] demonstrate the existence of sufficient evidence to establish a prima facie case for punitive damages, having in mind the higher clear and convincing standard of proof. . . . [I]t is only necessary that plaintiff provide 'a sufficient prima facie showing of facts to sustain a favorable decision if the evidence submitted is credited.' [] The trial court is not required to make any factual determination or to become involved in any weighing process beyond that necessarily involved in deciding whether a prima facie case for punitive damages exists. Once the court concludes that such a case can be presented at trial it must permit the proposed amended pleading to be filed. If it concludes that no such case exists, then it properly rejects the proposed pleading amendment. In making this judgment, the trial court's consideration of the defendant's opposing affidavits does not permit a weighing of them against the plaintiff's supporting evidence, but only a determination that they do not, *as a matter of law*, defeat that evidence." (*Rowe v. Superior Ct.* (1993) 15 Cal.App.4th 1711, 1723.)

The standard imposed on a plaintiff under Code Civ. Proc. § 425.14 is very similar to that imposed on a plaintiff who must oppose a motion for summary judgment on the issue of punitive damages. (*Id.* at p. 1724.)

Punitive damages are available when the plaintiff establishes oppression, fraud, or malice by clear and convincing evidence. (Civ. Code § 3294(a).) Malice means "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code § 3294(c)(1).) In this context, despicable conduct is conduct considered "so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people." (*Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 715, internal quotation marks omitted.) Oppression means "despicable conduct that subjects

a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code § 3294(c) (2).) Fraud means "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (*Id.* § 3294(c)(3).)

Under Civ. Code § 3294, a corporate entity can only be liable for punitive damages when its managing agent, officer, or director (1) directly commits malice, oppression, or fraud, (2) ratifies such misconduct by an employee, or (3) hires an employee committing such misconduct with advance knowledge of the employee's unfitness and with a conscious disregard for the safety of others.

Without weighing the evidence, the Court believes Plaintiff has established a prima facie case of punitive damages while keeping in mind that the evidence should approach the "clear and convincing" standard. Plaintiff points to evidence that nurse Laxamana reported consistent inappropriate remarks by Alcorn. This complaint occurred on the same day Defendant issued a final warning to Alcorn regarding the incident relating to Plaintiff. Despite this "final" warning, there was apparently no real investigation into Laxamana's complaint. Moreover, one of Defendant's corporate officers, chief human resources officer Morton-Rowe, was aware that it was not apparent any investigation was done. Thereafter, an incident occurred with respect to nurse Watson, but instead of first terminating Alcorn, Defendant *reissued* a final warning (Defendant's Opposition at p. 9), before allowing yet another incident to occur.

In sum, the Motion is granted.