

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 12/02/2011

TIME: 10:30:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Steven R. Denton

CLERK: Kelly Breckenridge

REPORTER/ERM: Katie Langgle

BAILIFF/COURT ATTENDANT: M. Micone

CASE NO: **37-2010-00092450-CU-PO-CTL** CASE INIT.DATE: 05/20/2010

CASE TITLE: **Dorman vs. La Jolla Church**

CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: John Dorman, Joel Gamboa

CAUSAL DOCUMENT/DATE FILED: Motion - Other To allege punitive damages, 11/07/2011

APPEARANCES

Devin M Storey, counsel, present for Plaintiff(s).

Rocky K Copley, counsel, present for Defendant(s).

James M McCabe, counsel, present for Defendant(s).

The Court hears oral argument and MODIFIES the tentative ruling as follows:

Plaintiffs JOHN DORMAN and JOEL GAMBOA'S motion to amend complaint to allege punitive damages is GRANTED. Additionally, to avoid any prejudice, the current dates are extended as follows: trial on April 20, 2012; trial readiness conference on March 29, 2012; and motion and discovery cut-off on March 22, 2012.

Defendants argue that the addition of a punitive damages claim is prejudicial. However, they admit that the facts underlying a punitive damages claim were alleged in the original complaint. Furthermore, in April of 2011, Defendants were informed that Plaintiffs contemplated such an addition. Motions to amend may be "appropriately granted as late as the first day of trial or even during trial if the defendant is alerted to the charges by the factual allegations, no matter how framed and the defendant will not be prejudiced." *Honig v. Financial Corp. of America* (1992) 6. Cal. App. 4th 960, 965 (internal citations omitted). Therefore, the addition of a punitive damages claim is not a prejudicial surprise to Defendants. Additionally, Plaintiffs were not tardy in bringing this motion. It was reasonable to receive and review documents produced by order of this Court prior to seeking leave to amend.

Any costs that will be incurred by Defendants to defend against the punitive damages claim would have been incurred even if the claim had been added earlier or included with the original complaint. Such costs do not get transmuted into "prejudice" simply because they arise at a later date. See *Hirsa v. Superior Court* (1981) 118 Cal. App. 3d 486, 490. This is especially true where the underlying facts for a punitive damages claim were pled in the original complaint and Plaintiffs' intent to add such a claim was earlier communicated to Defendants.

Arguments regarding the insufficiency of evidence to support a claim under California Civil Code section 3294 are premature here. Such arguments are properly the subject of a motion to strike, motion for summary judgment, or motion for summary adjudication, especially where they are only applicable to some but not all of the Defendants. Plaintiffs must first be allowed to add the claim.

Plaintiff to give notice.

Civil Jury Trial is continued pursuant to Court's motion to 04/20/2012 at 08:30AM before Judge Steven R. Denton.

Trial Readiness Conference (Civil) is continued pursuant to Court's motion to 03/29/2011 at 09:00AM before Judge Steven R. Denton.

Steven R. Denton

Judge Steven R. Denton