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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Ronald Addy, an individual, )

No. CV 09-02674-PHX-JAT

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Plaintiff, )

**ORDER**

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vs. )

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State Farm Insurance Companies, an )  
Illinois Corporation; Dan and Virginia )  
Sullivan, husband and wife, )

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Defendants. )

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Pending before the Court are Dan and Virginia Sullivan’s (the “Sullivan Defendants”)

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Motion to Dismiss all claims asserted against them (Doc. # 12) and the Sullivan Defendants’

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Motion for Summary Adjudication of the Motion to Dismiss (Doc. # 15). Plaintiff Ronald

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Addy (“Plaintiff”) filed a Response to the Sullivan Defendants’ Motion to Dismiss (Doc. #

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16) and a Response to the Sullivan Defendants’ Motion for Summary Adjudication (Doc. #

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17).<sup>1</sup> The Sullivan Defendants filed a Reply in Support of their Motion to Dismiss (Doc. #

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18).

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<sup>1</sup> The Sullivan Defendants filed their Motion for Summary Adjudication of the Motion to Dismiss on January 25, 2010 requesting that the Court rule on the Motion to Dismiss because Plaintiff failed to file a timely response. Plaintiff subsequently filed his Response to the Motion to Dismiss on January 25, 2010. Accordingly, the Court will now consider the Motion to Dismiss on the merits and the Motion for Summary Adjudication is denied as moot.

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1 **I. BACKGROUND**

2 On November 23, 2009, Plaintiff commenced this action against Defendant State  
3 Farm Insurance Companies (“State Farm”) and the Sullivan Defendants. In the Complaint,  
4 Plaintiff alleged (1) violations of Title VII of the Civil Rights Act of 1964 and the Arizona  
5 Civil Rights Act and (2) Intentional Infliction of Emotional Distress. Pursuant to Federal  
6 Rules of Civil Procedure 12(b)(6), the Sullivan Defendants filed a Motion to Dismiss all  
7 claims asserted against them. They argue that all four counts of Plaintiff’s Complaint (Doc.  
8 # 1) should be dismissed as asserted against them because (1) Counts One and Two cannot  
9 be asserted against the Sullivan Defendants because such claims cannot be made against  
10 individuals; (2) Count Four is a punitive damage claim that can only be asserted as an  
11 element of damages and cannot be treated as a separate cause of action; and (3) all four  
12 counts are alleged against Defendant State Farm, not the Sullivan Defendants, and thus do  
13 not satisfy the notice pleading requirement of Federal Rules of Civil Procedure 8(a)(2).

14 In response, Plaintiff concedes that the allegations in Counts One and Two should be  
15 dismissed because those Counts cannot be alleged against individuals, but contends that  
16 Counts Three and Four satisfy the notice pleading requirement as asserted against the  
17 Sullivan Defendants and, accordingly, the Court should not dismiss Counts Three and Four.  
18 Plaintiff argues, in the alternative, that if the Court finds that Counts Three and Four do not  
19 satisfy the notice pleading requirement, Plaintiff should be granted leave to amend his  
20 Complaint.

21 **II. LEGAL STANDARD**

22 A motion to dismiss for failure to state a claim is disfavored and rarely granted.  
23 *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 248–49 (9th Cir. 1997). This Court construes  
24 the facts alleged in the Complaint in the light most favorable to Plaintiff, and the Court must  
25 accept all well-pleaded factual allegations as true. *See Shwarz v. United States*, 234 F.3d  
26 428, 435 (9th Cir. 2000). Plaintiff must nonetheless satisfy the pleading requirements of  
27 Federal Rules of Civil Procedure 8(a)(2).

1 Pursuant to Federal Rules of Civil Procedure 8(a)(2), a complaint must contain “‘a  
2 short and plain statement of the claim showing that the pleader is entitled to relief,’ in order  
3 to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it  
4 rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*,  
5 355 U.S. 41, 47 (1957)). Although a complaint attacked for failure to state a claim does not  
6 need detailed factual allegations, the pleader’s obligation to provide the grounds for relief  
7 requires “more than labels and conclusions, and a formulaic recitation of the elements of a  
8 cause of action will not do.” *Twombly*, 550 U.S. at 555 (internal citations omitted); see 5  
9 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE §  
10 1216, at 235–36 (3d ed. 2004) (stating that “the pleading must contain something more . . .  
11 than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of  
12 action”). A claim must be stated clearly enough to provide each defendant fair opportunity  
13 to frame a responsive pleading. *McHenry v. Renne*, 84 F.3d 1172, 1176 (9th Cir. 1996).  
14 “Something labeled a complaint . . . yet without simplicity, conciseness and clarity as to  
15 whom plaintiffs are suing for what wrongs, fails to perform the essential functions of a  
16 complaint.” *Id.* at 1180.

### 17 **III. DISCUSSION**

#### 18 **A. Dismissal of Counts One and Two**

19 As an initial matter, the Court finds that Counts One and Two should be dismissed  
20 with prejudice as to the Sullivan Defendants. Counts One and Two consist of allegations for  
21 violations of Title VII of the Civil Rights Act of 1964 and the Arizona Civil Rights Act. The  
22 Sullivan Defendants assert that these Counts against them should be dismissed because such  
23 actions cannot be brought against individual defendants. Plaintiff concedes that Counts One  
24 and Two should be dismissed as to the Sullivan Defendants. Neither Title VII of the Civil  
25 Rights Act of 1964 or the Arizona Civil Rights Act permit liability to run to individual  
26 defendants. See *Miller v. Maxwell’s Int’l, Inc.*, 991 F.2d 583, 587 (9th Cir. 1993) (stating  
27 that “individual defendants cannot be held liable for damages under Title VII”); *De La Torre*  
28

1 *v. Merck Enters., Inc.*, 540 F.Supp.2d 1066, 1079 (D. Ariz. 2008) (stating that individual  
2 Defendants cannot be held liable for damages under Title VII of the Civil Rights Act of 1964  
3 or the Arizona Civil Rights Act). Accordingly, the Court will dismiss Counts One and Two  
4 of Plaintiff’s Complaint with prejudice as to the Sullivan Defendants.

5 **B. Dismissal of Counts Three and Four**

6 The Sullivan Defendants also argue that the Complaint should be dismissed as to them  
7 because the Complaint does not sufficiently identify the parties to which each cause of action  
8 is directed, and to the extent it does identify the parties, the allegations are directed only  
9 against Defendant State Farm. In response, Plaintiff argues that the numerous factual  
10 allegations in the Complaint that implicate the Sullivan Defendants provide fair notice to  
11 them as required by Federal Rule of Civil Procedure 8(a)(2) and that inadvertently omitting  
12 the Sullivan Defendants from the individual counts should not constitute failure to adequately  
13 state a claim against them.

14 While the Court agrees with Plaintiff that the factual allegations leading up to the  
15 counts in the Complaint implicate the Sullivan Defendants, the language in the individual  
16 counts appears to limit the allegations to Defendant State Farm. A complaint must identify  
17 “whom plaintiffs are suing for what wrongs.” *McHenry*, 84 F.3d at 1180. The Court will  
18 not require the Sullivan Defendants to assume that certain counts are asserted against them  
19 merely because they are named as parties to the Complaint and the factual allegations  
20 implicate them, especially when the Counts include no mention of them and do specifically  
21 name Defendant State Farm. Accordingly, the Court will dismiss Counts Three and Four<sup>2</sup>

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23 <sup>2</sup> The Sullivan Defendants also argue that Count Four of Plaintiff’s Complaint should  
24 be dismissed because a claim for punitive damages should be asserted only as an element of  
25 damages and should not be treated as a separate cause of action. The Court agrees that  
26 punitive damages are a form a relief and not a separate cause of action. *Quiroga v. Allstate*  
27 *Ins. Co.*, 726 P.2d 224, 226 (Ariz. Ct. App. 1986) (stating that “[t]here is no such thing as a  
28 cause of action simply for punitive damages. Rather, the right to an award of punitive  
damages must be grounded upon a cause of action for actual damages.”). While Federal

1 of Plaintiff's Complaint as to the Sullivan Defendants.

2 **C. Leave to Amend**

3 Plaintiff requests leave to amend his complaint to correct the deficiencies therein. The  
4 Sullivan Defendants do not oppose the request for leave to amend. Leave to amend should  
5 be freely given "when justice so requires." FED. R. CIV. P. 15(a). "In exercising its  
6 discretion with regard to the amendment of the pleadings, 'a court must be guided by the  
7 underlying purpose of Rule 15—to facilitate decision on the merits rather than on the  
8 pleadings or technicalities.'" *Eldridge v. Block*, 832 F.2d 1132, 1135 (9th Cir. 1987)  
9 (quoting *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981)). This "policy of favoring  
10 amendments to pleadings should be applied with extreme liberality." *Id.* (quoting *Webb*, 655  
11 F.2d at 979).

12 A Court must consider the following factors in determining whether a motion to amend  
13 should be granted: (1) whether the pleading at issue has been previously amended, (2) futility  
14 of the amendment, (3) bad faith, (4) undue delay, and (5) prejudice to the opposing party.  
15 *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also Texaco, Inc. v. Ponsoldt*, 939 F.2d 794,  
16 798 (9th Cir. 1991). "Generally, this determination should be performed with all inferences  
17 in favor of granting the motion." *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877, 880 (9th Cir.  
18 1999) (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987)).  
19 "Significantly, '[t]he party opposing amendments bears the burden of showing prejudice,'  
20 futility, or one of the other permissible reasons for denying a motion to amend." *Farina v.*  
21 *Compuware Corp.*, 256 F.Supp.2d 1033, 1060 (D. Ariz. 2003) (quoting *DCD Programs*, 833  
22 F.2d at 187).

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24 Rules of Civil Procedure 8 does not require any specific organization for claims for relief,  
25 Plaintiff must clarify the underlying causes of action for which he is seeking punitive  
26 damages in order to provide fair notice to Plaintiffs. *See Silvas v. GMAC Mortgage, LLC*,  
27 No. CV-09-265-PHX-GMS, 2009 WL 4573234, \*14 (D. Ariz. Jan. 5, 2010) (dismissing  
28 separate causes of action for damages, but stating that the "remedy may be available for other  
underlying legal theories").

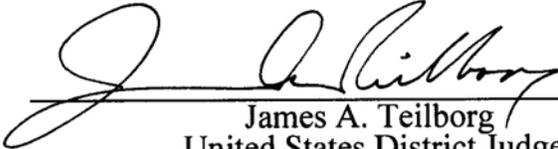
1 In this case, the Complaint has not been previously amended and there has been no  
2 showing of bad faith or undue delay. Further, Defendants have not shown that granting leave  
3 to amend would be futile or would prejudice them. Accordingly, the Court will grant Plaintiff  
4 leave to amend his Complaint.

5 **IT IS ORDERED** that the Motion to Dismiss Dan and Virginia Sullivan (Doc. # 12)  
6 is **GRANTED**.

7 **IT IS FURTHER ORDERED** that Counts One and Two of Plaintiff's Complaint  
8 (Doc. # 1) are dismissed with prejudice as to Dan and Virginia Sullivan and the remaining  
9 Counts are dismissed as to Dan and Virginia Sullivan for failure to state a claim, with leave  
10 to file an amended complaint. Plaintiff shall file his Amended Complaint within twenty (20)  
11 days of the date of this Order. The Amended Complaint shall not contain a separate Count  
12 for punitive damages.

13 **IT IS FURTHER ORDERED** that the Motion for Summary Adjudication of Dan and  
14 Virginia Sullivan's Motion to Dismiss (Doc. # 15) is **DENIED** as moot.

15 DATED this 7th day of April, 2010.

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20 James A. Teilborg  
21 United States District Judge  
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