

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Lori Bell,

10 Plaintiff,

11 v.

12 VF Jeanswear LP, *et al.*,

13 Defendants.

No. CV-14-01916-PHX-JJT

ORDER

14 At issue are Plaintiff's Motion Under FRCP 52(b) to Amend Findings, Conclusions,
15 and Judgment (Doc. 254), to which Defendant filed a Response (Doc. 265) and Plaintiff
16 filed a Reply (Doc. 267); Defendant's Motion to Alter or Amend Judgment (Doc. 255), to
17 which Plaintiff filed a Response (Doc. 269) and Defendant filed a Reply (Doc. 271); and
18 Defendant's Motion for Judgment as a Matter of Law Pursuant to Rules 50 and 59
19 (Doc. 257), to which Plaintiff filed a Response (Doc. 270) and Defendant filed a Reply
20 (Doc. 272). The Court resolves these Motions without oral argument. *See* LRCiv 7.2(f).

21 After a trial from March 21 to 31, 2017, a jury found that Defendant violated Title
22 VII by discriminating against Plaintiff, its former employee, on the basis of sex. (Doc. 204.)
23 The jury found that Defendant's actions did not violate the Equal Pay Act or the Arizona
24 Wage Act. (Doc. 204.)

25 The Court then held a three-day evidentiary hearing between May 4 and 11, 2017,
26 after which the Court entered an Order setting forth its findings of fact and conclusions as
27 to Plaintiff's equitable damages for Defendant's violation of Title VII. (Doc. 243, Damages
28 Order.) The Court also limited the \$528,000 jury award of compensatory and punitive

1 damages to \$300,000, as provided by 42 U.S.C. § 1982a(b)(3). In sum, the Court
2 determined that Plaintiff was entitled to \$300,000 in compensatory and punitive damages
3 and \$206,928.06 in equitable damages.

4 The parties have filed various Motions to express their disagreement with the
5 Court’s findings and conclusions in the Damages Order and with regard to punitive
6 damages at trial. The Court has reviewed the record and the submissions of the parties and
7 now addresses the Motions in turn.

8 **I. Plaintiff’s Rule 52(b) Motion**

9 Under Rule¹ 52(b), Plaintiff asks that the Court amend certain of its findings in the
10 Damages Order. Plaintiff first argues that the Court erred in finding that Plaintiff’s
11 entitlement to back pay terminated on August 31, 2015, because Defendant’s evidence was
12 not sufficient to show that Plaintiff could obtain a suitable position after August 2015. The
13 Court disagrees. As the Court already pointed out in the Damages Order, “a job in sales of
14 other apparel and accessory items, whether specialty or general, is not so different in
15 character that Plaintiff’s initial lack of intimate familiarity with the product line or industry
16 could be said to affect her opportunities.” (Damages Order at 14.) “The law does not allow
17 Plaintiff to redefine what is substantially equivalent employment such that it eliminates all
18 other possible employment.” (Damages Order at 14.)

19 In its present Motion, Plaintiff has presented nothing new, and it should thus come
20 as no surprise to Plaintiff that the Court’s findings remain the same now. Moreover, as the
21 Court also noted in the Damages Order, Plaintiff failed to make a reasonable effort to
22 mitigate her damages after February 28, 2014—making only “*post hoc* attempts to create
23 the appearance of diligence” (Damages Order at 16)—and Plaintiff was thus not entitled to
24 back pay for the period in which Defendant showed that substantially equivalent job
25 opportunities existed, that is, from August 31, 2015 on (Damages Order at 14-15). The
26 Court finds no error in its prior findings and conclusions.

27 _____
28 ¹ Unless otherwise indicated in this Order, “Rule” refers to the Federal Rules of
Civil Procedure.

1 Plaintiff next argues that the Court should adjust Plaintiff's compensation amount
2 to match that earned by a male who obtained a position she was denied. As the Court has
3 already stated on several occasions in these proceedings, the issue of Plaintiff's
4 compensation as compared to a similarly situated male was presented to the jury in the
5 form of Plaintiff's Equal Pay Act and Arizona Wage Act claims, both of which the jury
6 rejected. The jury expressly found that the differences in pay between Plaintiff and male
7 counterparts "resulted from one or more factors other than sex." (Doc. 204 at 4.) Plaintiff
8 has not demonstrated that, ignoring gender, she would have earned the same amount as a
9 particular male who obtained the position she was denied. Once again, this is a subject on
10 which the Court has already expressed its conclusion, and Plaintiff presents nothing new
11 to convince the Court to change its conclusion. The Court will thus deny Plaintiff's Rule
12 52(b) Motion (Doc. 254).

13 **II. Defendant's Rule 59(e) Motion**

14 Defendant asks the Court to alter the Judgment under Rule 59(e) by reconsidering
15 the conclusion that Plaintiff is entitled to back pay even though she resigned from her job
16 after Defendant's discriminatory employment action. In their briefs related to Defendant's
17 Rule 59(e) Motion, the parties renew arguments they have already made to the Court in at
18 least 14 prior briefs, (*see* Damages Order at 1 (enumerating briefs)), and which the Court
19 already addressed in detail, (*e.g.*, Damages Order at 2-6). Defendant presents no new
20 argument to the Court and should be unsurprised that the Court declines to change its prior
21 conclusion. The Court will thus deny Defendant's Rule 59(e) Motion (Doc. 255).

22 **III. Defendant's Rules 50 and 59 Motion**

23 Defendant next argues it is entitled to judgment as a matter of law under Rule 50 or
24 a new trial under Rule 59 on the issue of punitive damages. Specifically, Defendant argues
25 (1) the trial record contains insufficient evidence that Defendant's conduct was willful,
26 egregious, or recklessly indifferent, as required for a punitive damages award; (2) the jury's
27 punitive damages award of \$500,000, as compared to the compensatory damages award of
28 \$28,000, is excessive and disproportionate, even though the Court reduced the award to the

1 statutory cap; and (3) the Court improperly admitted testimony regarding two former
2 employees of Defendant and excluded evidence of Defendant’s anti-harassment policy.

3 Rule 50(a) provides that after a party has been fully heard on an issue at trial, the
4 court may grant a motion for judgment as a matter of law against that party only if it finds
5 that “a reasonable jury would not have a legally sufficient evidentiary basis to find for the
6 party on that issue.” Rule 59(a) provides that the court may “grant a new trial on some of
7 the issues . . . for any reason for which new trial has heretofore been granted.” Upon review
8 of the record of trial in this case, it is clear to the Court that the evidence presented provided
9 a legally sufficient basis from which a reasonable jury could find for Plaintiff on the issue
10 of punitive damages, and the Court finds no harmful error in its evidentiary rulings.

11 To begin with, the Court agrees with Plaintiff that the evidence presented to the jury
12 was sufficient for the jury to award punitive damages. Jury Instruction No. 23—which
13 Defendant does not challenge—stated the following to the jury:

14 You may award punitive damages only if you find that the Defendant’s
15 conduct that harmed the Plaintiff was malicious, oppressive or in reckless
16 disregard of the Plaintiff’s rights. Conduct is malicious if it is accompanied
17 by ill will, or spite, or if it is for the purpose of injuring the Plaintiff. Conduct
18 is in reckless disregard of the Plaintiff’s rights if, under the circumstances, it
19 reflects complete indifference to the Plaintiff’s safety or rights, or if the
20 Defendant acts in the face of a perceived risk that its actions will violate the
21 Plaintiff’s rights under federal law. An act or omission is oppressive if the
22 Defendant injures or damages or otherwise violates the rights of the Plaintiff
23 with unnecessary harshness or severity, such as by misusing or abusing
24 authority or power or by taking advantage of some weakness or disability or
25 misfortune of the Plaintiff.

26 If you find that punitive damages are appropriate, you must use reason in
27 setting the amount. Punitive damages, if any, should be in an amount
28 sufficient to fulfill their purposes but should not reflect bias, prejudice or
sympathy toward any party. In considering the amount of any punitive
damages, consider the degree of reprehensibility of the Defendant’s conduct.

(Doc. 197 at 26.)

29 The jury heard evidence that Plaintiff’s performance evaluations were good and that
30 the reason for Defendant gave for demoting her—that she was weak on sales data
31 analysis—was pretextual, especially considering that two male counterparts who also
32 lacked the ability to do advanced sales data analysis were not demoted. The evidence

1 showed that company and human resources managers in charge of operating Defendant's
2 organization decided to demote Plaintiff on the basis of sex even though those managers
3 had anti-discrimination training and were aware of the organization's anti-discrimination
4 policies. (*E.g.*, Trial Tr. 918:9-16; 1469:15-24.) Accordingly, the evidence reasonably
5 permits the conclusion that Defendant acted "in the face of a perceived risk that its actions
6 will violate the Plaintiff's rights under federal law"—the standard for the jury to find
7 reckless indifference. *See Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 536 (1999);
8 *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1198-99 (9th Cir. 2002).

9 The jury also received evidence that Defendant was dismissive of Plaintiff's
10 discrimination complaints without further investigation, including that Plaintiff's manager
11 stated there was no room for discussion and the demotion was a done deal and a Vice-
12 President of Human Resources said he had no reason to oppose the demotion. (*E.g.*, Trial
13 Exs. 7, 259; Trial Tr. 338:22-339:1.) Punitive damages may be appropriate against an
14 employer that is dismissive to the employee's discrimination complaints and does not
15 actually investigate the complaints. *Arizona v. ASARCO LLC*, 773 F.3d 1050, 1059 (9th Cir.
16 2014). In view of this and other evidence, Defendant is not entitled to judgment as a matter
17 of law or a new trial on the issue of punitive damages.

18 Defendant also contends that the jury's punitive damages award was excessive and
19 disproportionate to the compensatory damages award. As both parties recognize, Ninth
20 Circuit case law—which this Court must follow—provides that the guideposts the Supreme
21 Court laid out in *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996), for evaluating
22 the constitutionality of a punitive damages award amount do not apply with rigor to awards
23 for Title VII claims; in other words, awards under 42 U.S.C. § 1981a—for cases of
24 intentional discrimination in employment—"comport with due process." *ASARCO*, 773
25 F.3d at 1055-56. As such, the Court declines to disturb the jury verdict as to the punitive
26 damages amount in this case.

27 Defendant next argues that the Court committed prejudicial error by admitting
28 testimony regarding two other employees of Defendant, Pena and Clegg, because they were

1 not sufficiently similarly situated to Plaintiff but Plaintiff was nonetheless able to compare
2 Defendant's conduct toward her to that toward Pena and Clegg. With regard to Pena,
3 another female executive of Defendant, it was Defendant that asked the Court for leave to
4 include her on a chart of individuals who held the same position as Plaintiff. The Court
5 agrees with Plaintiff that, by asking to include Pena on a chart shown to the jury, Defendant
6 opened the door for Plaintiff to elicit testimony regarding Pena's sex discrimination claim
7 against Defendant and her termination. Under the "opening the door" doctrine, the
8 introduction of inadmissible evidence by one party allows an opponent, in the court's
9 discretion, to introduce evidence on the same issue to rebut any false impression that might
10 have resulted from the earlier admission." *U.S. v. Whitworth*, 856 F.2d 1268, 1285 (9th Cir.
11 1988). To the extent Defendant believes it was prejudiced by testimony that Pena was
12 terminated but not why, the proposed testimony—the facts behind Pena's termination—
13 was too far afield from the issues the parties were addressing, including that Pena was the
14 only executive of Defendant that was fired and she is a woman. Applying Federal Rule of
15 Evidence 403, the Court may exclude relevant evidence if its probative value is
16 "substantially outweighed by a danger of . . . confusing the issues, misleading the jury, [or]
17 wasting time." The Court appropriately limited the evidence related to Pena after
18 Defendant opened the door to testimony about her. Moreover, any prejudice to Defendant
19 with regard to Plaintiff's punitive damages claim—at issue here—resulting from the
20 testimony regarding Pena was at most minimal.

21 With regard to Clegg, a male executive that was terminated for falsifying expense
22 reports but whose departure Defendant treated as a retirement, Defendant once again
23 opened the door by including Clegg on charts of individuals who held the same position as
24 Plaintiff. The testimony regarding Clegg was appropriately limited to his departure, and
25 Defendant was not unduly prejudiced by the testimony or counsel for Plaintiff's reference
26 to it, which was minimal.

27 Finally, Defendant contends the Court erred in not admitting Defendant's anti-
28 harassment policy and limiting testimony regarding Plaintiff's prior internal complaint, in

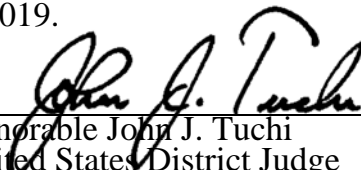
1 2008, of sexual harassment against a former supervisor. Like most of the issues the Court
2 addresses in this Order, the Court already heard argument on these issues before making
3 its rulings, and Defendant presents nothing new in its present Motion. This case concerned
4 discrimination by way of demotion, not sexual harassment, so Defendant's anti-harassment
5 policy had at best marginal probative value. The Court did permit Defendant to testify as
6 to its responses to harassment complaints. But the Court did not permit Defendant to dive
7 into the merits of Plaintiff's 2008 sexual harassment complaint because it was not related
8 to the same individual, it was sexual harassment and not discrimination by demotion, and
9 the parties' positions regarding Plaintiff's credibility, or lack thereof, in bringing her 2008
10 complaint would have required extensive testimony wholly unrelated to the facts and issues
11 in this case. In balancing the Federal Rule of Evidence 403 factors, the Court properly
12 excluded testimony regarding Plaintiff's 2008 sexual harassment complaint.² *See Duran v.*
13 *City of Maywood*, 221 F.3d 1127, 1130-33 (9th Cir. 2000) (noting evidence of marginally
14 probative value that would require a trial within a trial and result in undue delay was
15 properly excluded under Federal Rule of Evidence 403). For all these reasons, the Court
16 will deny Defendant's Rules 50 and 59 Motion (Doc. 257).

17 IT IS THEREFORE ORDERED denying Plaintiff's Motion Under FRCP 52(b) to
18 Amend Findings, Conclusions, and Judgment (Doc. 254).

19 IT IS FURTHER ORDERED denying Defendant's Motion to Alter or Amend
20 Judgment (Doc. 255).

21 IT IS FURTHER ORDERED denying Defendant's Motion for Judgment as a Matter
22 of Law Pursuant to Rules 50 and 59 (Doc. 257).

23 Dated this 28TH day of January, 2019.

24 
25 Honorable John J. Tuchi
26 United States District Judge

27
28 ² To the extent Defendant tangentially argues that the Court erred in allowing
testimony about individuals employed in Retail Space Management ("RSM"), where
Plaintiff used to work, Defendant demonstrates no prejudice from this testimony.