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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Joseph Lucero,

10 Plaintiff,

11 v.

12 STI Trucking Incorporated, et al.,

13 Defendants.
14

No. CV-22-08035-PCT-SMB

ORDER

15 Pending before the Court is Defendants’ Second Motion for Partial Summary
16 Judgment: Punitive Damages (Doc. 103) and the required statement of facts (Doc. 104).
17 Plaintiff filed a response (Doc. 105) and a contravening statement of facts (Doc. 106), to
18 which Defendant replied (Doc. 108). After reviewing the parties’ arguments and relevant
19 case law, the Court will grant Defendants’ Motion.

20 **I. BACKGROUND**

21 The Court recounted much of this case’s factual background in its previous
22 summary judgment Order (Doc. 98). However, for ease of reference it is repeated here.

23 This is a personal injury action involving two semi-trucks traveling east on Interstate
24 40 in Mohave County, Arizona. (Doc. 1 at 2.) The collision occurred on August 22, 2020.
25 (*Id.*) Defendant, Alexander Kim, was driving a white 2020 Volvo semi-truck, owned by
26 Defendant STI Trucking Inc. (“STI”). (*Id.* at 2, 6.) Defendant Alexander Karp, Kim’s
27 driver trainer, was also in the truck but was asleep at the time of the collision. (*Id.* at 6;
28 Doc. 88 at 12.) Plaintiff was driving a green 2020 Mack semi-truck. (Doc. 1 at 7.) At the

1 time of the accident, both Kim and Karp were employees of STI. (*Id.* at 6–8.) The accident
2 occurred when Kim attempted to merge into the lane that Plaintiff was driving in and
3 collided with Plaintiff’s truck. (Doc. 104 at 2 ¶ 2.) Plaintiff was transported to Kingman
4 Regional Medical Center for treatment. (Doc. 89-3 at 1.) Law enforcement issued
5 Defendant Kim a traffic citation at the scene for an unsafe lane change. (Doc. 106 at 10
6 ¶ 19.)

7 Plaintiff originally brought several claims against STI, Karp, and Kim. (*See*
8 *generally* Doc. 1.) Defendants then moved for summary judgment on the negligent
9 entrustment claim, the negligent hiring, training, and supervision and retention claims, and
10 the negligence per se claim arising out of Federal Motor Carrier Safety Administration
11 (“FMCSA”) violations against STI and sought to “dismiss” Karp from the case. (Doc. 72.)
12 The Court granted summary judgment for Plaintiffs as to the negligent entrustment claim
13 and the negligent hiring, training, supervision and retention claims, but denied summary
14 judgment as to on the negligence per se claim based on 49 C.F.R. §§ 382.303(a)(2) and
15 383.111(a)(7). (Doc. 98.) Based on this Order, the Court dismissed Defendants Dimitry
16 Karp and Jane Doe Karp from the case. (Doc. 109.)

17 The only remaining claims are negligence claims against Kim and the vicarious
18 liability claims against STI. Now before the Court is the issue of whether punitive damages
19 are available for these claims.

20 **II. LEGAL STANDARD**

21 Summary judgment is appropriate in circumstances where “there is no genuine
22 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
23 Fed. R. Civ. P. 56(a). Material facts are those that may affect the outcome of a case under
24 the applicable substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
25 Factual disputes are genuine when the evidence could allow a reasonable jury to find in
26 favor of the nonmoving party. *Id.* “A party asserting that a fact cannot be or is genuinely
27 disputed must support the assertion by . . . citing to particular parts of materials in the
28 record” or by “showing that an adverse party cannot produce admissible evidence to

1 support the fact.” Fed. R. Civ. P. 56(c)(1)(A)–(B). Additionally, the Court may enter
2 summary judgment “against a party who fails to make a showing sufficient to establish the
3 existence of an element essential to that party’s case, and on which that party will bear the
4 burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

5 When considering a motion for summary judgment, a court must view the evidence
6 in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith*
7 *Radio Corp.*, 475 U.S. 574, 587 (1986). The Court must draw all reasonable inferences in
8 the nonmovant’s favor. *Anderson*, 477 U.S. at 255. Additionally, the Court does not make
9 credibility determinations or weigh the evidence. *Id.* at 253. The determination of whether
10 a given factual dispute requires submission to a jury is guided by the substantive
11 evidentiary standards that apply to the case. *Id.* at 255.

12 The burden initially falls with the movant to demonstrate the basis for a motion for
13 summary judgment, and they must identify “those portions of [the record] which it believes
14 demonstrate the absence of a genuine issue of material fact.” *Celotex Corp.*, 477 U.S. at
15 323. If this initial burden is not met, the nonmovant does not need to produce anything.
16 *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102–03 (9th Cir. 2000).
17 However, if the initial burden is met by the movant, then the nonmovant has a burden to
18 establish that there is a genuine issue of material fact. *Id.* at 1103. The nonmovant “must
19 do more than simply show that there is some metaphysical doubt as to the material facts.”
20 *Zenith Radio Corp.*, 475 U.S. at 586. Bare assertions alone do not create a material issue
21 of fact, and “[i]f the evidence is merely colorable, or is not significantly probative,
22 summary judgment may be granted.” *Liberty Lobby*, 477 U.S. at 247–50 (citations
23 omitted).

24 **III. DISCUSSION**

25 Courts may not award punitive damages based simply on negligence, gross
26 negligence or recklessness. *Rawlings v. Apodaca*, 726 P.2d 565, 578 (Ariz. 1986). Instead,
27 under Arizona law, a plaintiff may only be entitled to punitive damages where they can
28 show that the defendant acted “with a knowing, culpable state of mind.” *Gurule v. Illinois*

1 *Mut. Life and Cas. Co.*, 734 P.2d 85, 86 (Ariz. 1987). “[U]nless the evidence establishes
2 that . . . [the] defendant acted with an evil mind, punitive damages are unnecessary because
3 compensatory damages adequately deter.” *Id.* “To establish an evil mind requires clear
4 and convincing evidence that the defendant’s actions either (1) intended to cause harm, (2)
5 were motivated by spite, or (3) were outrageous, creating a ‘substantial risk of tremendous
6 harm to others.’” *Swift Transportation Co. of Arizona L.L.C. v. Carman*, 515 P.3d 685,
7 692 (Ariz. 2022) (quoting *Volz v. Coleman Co.*, 748 P.2d 1191, 1194 (Ariz. 1987)). As
8 applied to negligence cases, the only way a plaintiff can meet this burden is by
9 demonstrating “the outrageousness of the defendant’s conduct is such that the defendant
10 had ‘an evil mind’ when engaging in such conduct.” *Id.* Accordingly, “a plaintiff generally
11 must show that the defendant's conduct was ‘outrageous, oppressive or intolerable,’ and
12 ‘create[d] [a] substantial risk of tremendous harm,’ thereby evidencing a ‘conscious and
13 deliberate disregard of the interest[s] and rights of others.’” *Id.* (cleaned up). In other
14 words, “a plaintiff must establish that the defendant knew, or intentionally disregarded,
15 facts that created an unreasonable risk of physical harm—a risk substantially greater than
16 that necessary to make his or her conduct negligent or even grossly negligent—and
17 consciously disregarded that risk.” *Id.* at 693.

18 Defendants argue that the instant holding in *Swift* precludes punitive damages here.
19 (Doc. 103 at 5.) Conversely, Plaintiff argues that he can raise a genuine issue of fact as to
20 Defendant Kim acting with an evil mind based on the approach taken in other Arizona
21 cases. (Doc. 105 at 4.)

22 Plaintiff cites to *Purdy v Metcalf*, 502 P.3d 36, 43 (Ariz. Ct. App. 2021) for the
23 premise this Court should use a multi-factor test applied on a case-by-case basis “totality
24 of the circumstances” approach to decide whether punitive damages are warranted here.
25 (Doc. 105 at 8.) Although *Purdy* may stand for this proposition, *Swift* is a more recent case
26 from the Arizona Supreme Court and is therefore controlling. The Court in *Swift* did not
27 use, or mention, a “totality of the circumstances” test when analyzing punitive damages in
28 a truck crash negligence claim. *See generally Swift*, 515 P.3d 685. Instead, the *Swift* court

1 affirmed that the standard for whether punitive damages are available for this kind of tort
2 is whether the defendant acted outrageously, with an “evil hand” and an “evil mind.” *Id.*
3 at 692.

4 Here, in light of *Purdy*, Plaintiff asks the Court to consider the following actions in
5 making its determination on the availability of punitive damages. First, Plaintiffs note that
6 an expert report indicates that Defendant may have been distracted while driving. (Doc.
7 89-5.) Next, although the parties dispute the severity of his injuries, Plaintiff was injured
8 in the collision and Defendant was issued a traffic citation¹ for an unsafe lane change.
9 (Doc. 106 at 8 ¶ 28; Doc. 100 at 2 ¶ 2.) Plaintiff also asks the Court to consider that
10 Defendant Kim obstructed the collection of evidence by not giving a recorded or written
11 statement to STI and by not taking photos of the crash. (Doc. 105 at 10.) Plaintiff also
12 alleges that the fact that Kim is a professional driver and was operating a “larger size” truck
13 supports the ability to collect punitive damages. (*Id.* at 9.) Lastly, Plaintiff claims that
14 Kim’s “maneuver” of passing Plaintiff going uphill was “reckless driving” which should
15 be considered in making punitive damages available. (*Id.* at 11.)

16 In listing these factors, Plaintiff asks the Court to consider the “totality of the
17 circumstances” to determine whether Defendant disregarded a substantial risk thereby
18 warranting punitive damages. (*Id.* at 9.) However, as Defendants note, “disregard of a
19 substantial risk” is a much lower standard than what is required for punitive damages under
20 *Swift*. In fact, the court in *Swift* rejected the notion that mere disregard of a substantial risk
21 is enough to allow punitive damages, and instead found that a defendant must take an
22 *outrageous* action that “*create[es]* a substantial risk of *tremendous* harm.” *Swift*, 515 P.3d
23 at 693 (emphasis added). Here, instead of presenting how the facts show that Kim’s action
24 of changing lanes while going uphill in a large vehicle was *outrageous*, Plaintiffs argue
25 only that he consciously disregarded a risk. This, as a matter of law, is not enough to be
26 able to bring the issue of punitive damages before a jury.

27 Using the same standard, the Court also finds that there is not a genuine fact issue

28 ¹ Plaintiffs briefing attempts to color this ticket as a criminal charge. (Doc. 105 at 10.)
This is false. Kim was only ever issued a *civil* traffic citation. (Doc. 74-1.)

1 as to whether STI acted with an evil mind to make punitive damages available. As
2 Defendants note, Plaintiff’s Response and statement of facts attempts to recast their
3 negligent training claim against STI as evidence that can be used to support punitive
4 damages in the remaining vicarious liability claims. The Court already found that the
5 record failed to support a finding that Kim was incompetent or that STI failed to train him.
6 (Doc. 98 at 7–9.) Further, Plaintiff’s allegation that STI did not have a safety manager is
7 faulty at best, as the owner testified that he acts as a safety manager and there is a system
8 in place to prevent crashes. (Doc. 75-2.) However, even if there is a question on whether
9 there was an adequate safety manager, this is still insufficient to show that STI acted with
10 an evil mind. *Swift*, 515 P.3d at 694 (finding that a mere violation of safety protocol or
11 regulation may amount to negligence but does not rise to being “outrageous conduct” so to
12 warrant punitive damages).

13 Finally, as to the argument that Plaintiff’s pro se negligence claims should be subject
14 to punitive damages because they constitute a regulatory violation, the Court is not
15 persuaded. As explained in this Court’s previous Order, in Arizona, a “person who violates
16 a statute enacted for the protection and safety of the public is guilty of negligence per se.”
17 *Jensen v. EXC, Inc.*, No. CV-15-08019-PHX-SPL, 2019 WL 588034, at *3 (D. Ariz. Feb.
18 13, 2019) (quoting *Good v. City of Glendale*, 722 P.2d 386, 389 (Ariz. Ct. App. 1986)).
19 After this Court’s previous summary judgment Order, the only questions on regulatory
20 violations that remain are for 49 C.F.R. § 382.303(a)(2), which requires post-crash testing
21 for drugs and alcohol and 49 C.F.R. § 383.111(a)(7), which requires all CMV operators to
22 have knowledge in the importance of proper visual search and proper visual search
23 methods. The Court already found that punitive damages are not available for these kinds
24 of violations. (Doc. 98 at 11); *see also* 25A C.J.S. Damages § 228 (2023); *Swift*, 515 P.3d
25 694 (“Moreover, even if . . . conduct violated such a regulation, without more, such failure
26 is a far cry from the outrageous or quasi-criminal conduct sufficient to establish an evil
27 mind.”).

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IV. CONCLUSION

Accordingly,

IT IS ORDERED granting Defendants' Second Motion for Partial Summary Judgment: Punitive Damages (Doc. 103).

IT IS FURTHER ORDERED dismissing punitive damages as to all parties.

Dated this 8th day of April, 2024.



Honorable Susan M. Brnovich
United States District Judge