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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
8

9 **SAMI MITRI,**

10 **Plaintiff**

11 **v.**

12 **WALGREEN COMPANY,**

13 **Defendant**

CASE NO. 1:10-CV-538 AWI SKO

**ORDER ON DEFENDANT’S MOTION
FOR RECONSIDERATION**

(Doc. No. 151)

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16 This was a wrongful termination in violation public policy case brought by Plaintiff Sami
17 Mitri (“Mitri”) against his form employer Defendant Walgreen Co. (“Walgreens”). The jury found
18 for Mitri and awarded him \$88,000 in compensatory damages (all economic) and \$1.155 million
19 in punitive damages. Following a remand from the Ninth Circuit, the Court denied Walgreens’s
20 renewed Rule 50 motion and motion to reduce punitive damages. Walgreens has filed a motion
21 for reconsideration under Rule 60(b). For the reasons that follow, the motion will be denied.

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23 **RULE 60(b) FRAMEWORK**

24 Federal Rule of Civil Procedure 60(b) Rule permits a district court to relieve a party from a
25 final order or judgment on grounds of: (1) mistake, surprise, or excusable neglect; (2) newly
26 discovered evidence; (3) fraud or other misconduct; (4) a void judgment; (5) a satisfied or
27 discharged judgment; or (6) any other reason justifying relief. Fed. R. Civ. P. 60(b). Relief under
28 Rule 60(b)(1) may be appropriate where a party “demonstrates that the court made a ‘mistake’ . . .

1 [and] a district court’s erroneous reading of the law is a ‘mistake’ sufficient to require
2 reconsideration of an order.” Yniques v. Cabral, 985 F.2d 1031, 1034 (9th Cir. 1993) “The Rule
3 60(b)(6) ‘catch-all’ provision . . . applies only when the reason for granting relief is not covered by
4 any of the other reasons set forth in Rule 60.” Delay v. Gordon, 475 F.3d 1039, 1044 (9th Cir.
5 2007).

6 Local Rule 230(j) addresses motions for reconsideration. Under this Local Rule, a party is
7 required to set forth *inter alia* “new or different facts or circumstances claimed to exist which did
8 not exist or were not shown upon such prior motion, or what other grounds exist for the motion.”
9 Local Rule 230(j)(3). Motions for reconsideration are not the place for a party to make a new
10 argument that was not raised in an original brief. Clarke v. Upton, 2012 U.S. Dist. LEXIS
11 181234, *3 (E.D. Cal. Dec. 20, 2012); Arteaga v. Asset Acceptance, LLC, 733 F.Supp.2d 1218,
12 1236 (E.D. Cal. 2010). “A party seeking reconsideration must show more than a disagreement
13 with the Court’s decision, and recapitulation of the cases and arguments considered by the court
14 before rendering its original decision fails to carry the moving party’s burden.” Arteaga, 733
15 F.Supp.2d at 1236; U.S. v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).
16 Reconsideration should not be used merely to ask the court to rethink what it has already thought.
17 Clarke, 2012 U.S. Dist. LEXIS 181234 at *3; Arteaga, 733 F.Supp.2d at 1236.

18 19 **DEFENDANT’S MOTION**

20 *Defendant’s Arguments*¹

21 Walgreens argues that the Court’s order shows mistake and inadvertence because the Court
22 applied the wrong evidentiary standard to its review of “malice” and “ratification.” The Court
23 relied on the general framework of a Rule 50(b) motion but then erroneously relied on facts that
24 were established only by a preponderance of the evidence instead of requiring facts be proven by
25 clear and convincing evidence. The Court’s obligation was to determine whether there was
26 substantial evidence to support the punitive damages determination by clear and convincing
27 evidence, not to see if the evidence was adequate to support the jury’s conclusion even if it was

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¹ Plaintiff filed an opposition to Defendant’s motion. Plaintiff argued that the Court’s analysis was sound and correct.

1 possible to draw a contrary conclusion. The error is apparent throughout the order because many
2 facts at best were only established by a preponderance of the evidence.

3 Walgreens also argues that the 13:1 punitive damages ratio is unconstitutional. Walgreens
4 argues that the Court failed to follow the *BMW* guideposts and focused too much on Walgreens's
5 net worth. A single digit multiplier is all that is permissible and several California cases have
6 reduced punitive damages to a one to one ratio.

7 Discussion

8 Walgreens is incorrect that the Court used the wrong evidentiary standard in evaluating the
9 issues of "malice" and "ratification." The Court reviewed the evidence under the standard of a
10 Rule 50 motion. That standard requires the Court to view the evidence in the light most favorable
11 to Plaintiff and to make all reasonable inferences in Plaintiff's favor, even if contrary inferences
12 are possible. See Hagen v. City of Eugene, 736 F.3d 1251, 1256 (9th Cir. 2013); Harper v. City of
13 L.A., 533 F.3d 1010, 1021 (9th Cir. 2008). Not every fact found by the Court was supported by
14 direct evidence, and many facts entailed a rejection of some of Walgreens's evidence or
15 Walgreens's interpretation of the evidence.² This does not mean that the facts identified in the
16 Court's order were not adequately supported or that a jury could not have made a particular
17 finding.³ After reviewing the evidence in the Rule 50 prism, the Court then assessed whether the
18 evidence was sufficient to show malice and ratification by clear and convincing evidence. See

19 ² Much of Walgreens's motion seems to implicitly take issue with the absence of direct evidence, or emphasizes
20 evidence that may have been contrary to Plaintiff. However, under Rule 50, the Court disregards the non-moving
21 party's evidence (as long as the jury is not required to accept it) and makes inferences from the evidence that favor the
22 non-moving party. See Harper, 533 F.3d at 1021.

23 ³ Walgreens argues that each fact identified by the Court was not necessarily established by clear and convincing
24 evidence. However, Plaintiff was only required to prove malice and ratification by clear and convincing evidence.
25 See Cal. Civ. Code § 3294; Judicial Council of Cal., Civil Jury Instructions § 3946. Walgreens cites no cases that
26 require each and every fact that might be relevant to the issue of malice or ratification to also be proven by clear and
27 convincing evidence. Rather, Walgreens's cases generally stand for the proposition that the Court views all of the
28 evidence, and the reasonable inferences therefrom, to see if a jury could find malice, fraud, oppression, etc. by clear
and convincing evidence. E.g. Basich v. Allstate Ins. Co., 87 Cal.App.4th 1112, 1119-20 (2001). That is, there must
be sufficient collective evidence that shows malice or ratification by clear and convincing evidence. See id. It is true
that Bator v. Carty, 2002 Cal.App. Unpub. LEXIS 8616 *34-*35 (2002) held that a finding of fraud that was
supported by a preponderance of the evidence was insufficient to support punitive damages. However, the fraud was
found during the liability phase. See id. Punitive damages are available when there is a finding of fraud, but the fraud
must be supported by clear and convincing evidence. See Cal. Civ. Code § 3294. That fraud was proven by a
preponderance of the evidence for purposes of liability did not mean that it had also been proven by clear and
convincing evidence for purposes of punitive damages under Civil Code § 3294. See Bator, 2002 Cal.App. Unpub.
LEXIS 8616 at *34-*35. Unlike Bator, a fraud cause of action was not at issue during the liability phase in this case.

1 Doc. No. 150 at 7; Cf. Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc., 78
2 Cal.App.4th 847, 891-93 (2000) (finding that while evidence may have demonstrated
3 unreasonable conduct, the evidence did not show despicable conduct, i.e. malice or oppression, by
4 clear and convincing evidence); Tomaselli v. Transamerica Ins. Co., 25 Cal.App.4th 1269, 1288
5 (1998) (“Nothing was revealed . . . which *adds up to* malice, oppression, or despicable conduct.”)
6 (emphasis added). The Court found that the totality of the evidence was sufficient to support
7 findings of malice and ratification by clear and convincing evidence.

8 That Walgreens may disagree with the Court’s conclusion that the evidence was sufficient
9 to show malice and ratification by clear and convincing evidence does not mean that the Court
10 used the wrong standard. The Court’s analysis and process was consistent with the Ninth Circuit’s
11 prior review of punitive damages in this case. See Mitri v. Walgreens Co., 566 Fed. Appx. 606
12 (9th Cir. 2014). Walgreens does not differentiate the Court’s analysis from the analysis in *Mitri*.
13 Also, Walgreens focuses on Page 2 of the Order, without addressing Page 7 of the order. That
14 page cited to *Mitri* and expressly found that there was clear and convincing evidence of malice and
15 ratification. Walgreens’s focus on Page 2 to the exclusion of Page 7 is improper.

16 With respect to the amount of punitive damages, the Court applied the *BMW* factors. See
17 Doc. No. 150. Walgreens simply disagrees with how the *BMW* factors were applied. Walgreens
18 points to the 13:1 ratio in this case and the Court’s discussion of the size of Walgreens. The Court
19 found Walgreens’s conduct to be highly reprehensible and found that the \$1.155 million award did
20 not sting Walgreens particularly hard given its assets and size. Walgreens does not argue that its
21 size is wholly irrelevant or take issue with the observation that punitive damages are “supposed to
22 sting,” see White v. Ford Motor Co., 500 F.3d 963, 976 n.10 (9th Cir. 2007), nor does it
23 adequately address the reprehensibility consideration.

24 In the end, Walgreens is simply reiterating arguments that were previously rejected or
25 expressing its disagreement with the Court’s conclusions. That is insufficient to warrant
26 reconsideration. Clarke, 2012 U.S. Dist. LEXIS 181234 at *3; Arteaga, 733 F.Supp.2d at 1236.

ORDER

Accordingly, IT IS HEREBY ORDERED that Defendant's motion for reconsideration is DENIED.

IT IS SO ORDERED.

Dated: April 9, 2015



SENIOR DISTRICT JUDGE

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