

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VINCENT GRANO, an individual,
Plaintiff,
v.
SODEXO MANAGEMENT, INC., a
New York Corporation; and CARGILL
MEAT SOLUTIONS CORP., a Delaware
Corporation,
Defendants.

Case No.: 3:18-cv-01818-GPC-BLM
Case No.: 3:19-cv-01903-GPC-BLM
Case No.: 3:19-cv-01904-GPC-BLM
Case No.: 3:19-cv-01905-GPC-BLM
Case No.: 3:19-cv-01907-GPC-BLM
Case No.: 3:19-cv-01908-GPC-BLM
Case No.: 3:19-cv-01909-GPC-BLM
Case No.: 3:19-cv-01917-GPC-BLM

**ORDER GRANTING MOTION TO
FILE AMENDED COMPLAINTS**

[ECF No. 161]

AND RELATED CASES.

1 Before the Court is Plaintiff’s Motion for Leave to File Amended Complaints in
2 Grano v. Sodexo Mgmt. Inc. et al., 3:18-CV-01818-GPC-BLM (“Grano matter”), the
3 lead case, and in the seven related member cases.¹ ECF No. 161. On July 31, 2020,
4 Sodexo Management, Inc. (“Sodexo”) filed an opposition. ECF No. 173. Plaintiffs filed a
5 reply. ECF No. 174. For the reasons that follow, the Court **GRANTS** the motion.

6 **I. Factual Background**

7 Plaintiffs sustained injuries from the same 2017 E. coli outbreak at Marine Corps
8 Recruit Depot (“MCRD”) and Edson Range at Camp Pendleton, California. These
9 injuries included hemolytic uremic syndrome and permanent kidney injury and several
10 Plaintiffs suffered seizures and were required to undergo total hip replacements. ECF
11 No. 161-8 at 20. Plaintiffs bring strict liability and negligence claims against Sodexo and
12 Cargill Meat Solutions Corp. for injuries caused by this outbreak.

13 Sodexo is a New York corporation that is responsible for providing food and
14 facility management services for the United States Navy at both MCRD and Edson
15 Range. ECF No. 37 (“SAC”) ¶ 2. Cargill manufactures, distributes, and sells meat
16 products to Sodexo. Id. ¶ 3. In the proposed amended complaints, Plaintiffs seek to add
17 claims for punitive damages for both counts of strict liability and negligence.

18 Plaintiff Grano initiated the action in the lead case on August 3, 2018 (ECF No. 1)
19 and Plaintiffs in all seven member cases initiated their actions on October 7, 2019.

21
22 ¹ Unless otherwise noted, all ECF cites refer to the Grano matter. The member cases are Anderson v.
23 Sodexo Mgmt. Inc., et al., 3:19-cv-01903-GPC-BLM (“Anderson matter”); Lader v. Sodexo Mgmt. Inc.,
24 et al., 3:19-cv-01908-GPC-BLM (“Lader matter”); Baker v. Sodexo Mgmt. Inc., et al., 3:19-cv-01904-
25 GPC-BLM (“Baker matter”); Browning v. Sodexo Mgmt. Inc., et al., 3:19-cv-01905-GPC-BLM
26 (“Browning matter”); Abbott v. Sodexo Mgmt. Inc., et al., 3:19-cv-01917-GPC-BLM (“Abbott matter”);
27 Evers v. Sodexo Mgmt. Inc., et al., 3:19-cv-01907-GPC-BLM (“Evers matter”); Miller v. Sodexo Mgmt.
28 Inc., et al., 3:19-cv-01909-GPC-BLM (“Miller matter”). On March 18, 2020, the Court issued an
Amended Consolidation Order, consolidating all eight cases for the purpose of all motion practice. ECF
No. 88.

1 Plaintiff Grano filed a first amended complaint on September 19, 2018, see ECF No. 6,
2 and on October 22, 2019, Plaintiff Grano filed a Second Amended Complaint (“SAC”),
3 adding Cargill as a defendant on the basis that Cargill had sold to Sodexo the allegedly
4 contaminated ground beef patties that give rise to Plaintiffs’ claims. ECF No. 37 ¶ 34.
5 On May 4, 2020, the Court granted Plaintiffs’ motion to file amended complaints in all
6 member cases in order to add US Foods as a Defendant, in response to Sodexo’s decision
7 to file third-party complaints against US Foods in the lead and member cases. ECF No.
8 126 at 14.²

9 On June 5, 2020, the Court ordered that Plaintiffs must file any motion for leave to
10 amend and/or add claims on or before July 6, 2020. ECF No. 146. On July 6, 2020,
11 Plaintiffs filed this instant motion.

12 II. Legal Standard

13 Under Federal Rule of Civil Procedure (“Rule”) 15(a), leave to amend a complaint
14 after a responsive pleading has been filed may be allowed by leave of the court and “shall
15 freely be given when justice so requires.” *Foman v. Davis*, 371 U.S. 178, 182 (1962);
16 Fed. R. Civ. P. 15(a). Granting leave to amend rests in the sound discretion of the trial
17 court. *Int’l Ass’n of Machinists & Aerospace Workers v. Republic Airlines*, 761 F.2d
18 1386, 1390 (9th Cir. 1985). Because Rule 15(a) favors a liberal policy, the nonmoving
19 party bears the burden of demonstrating why leave to amend should not be granted.
20 *Genentech, Inc. v. Abbott Labs.*, 127 F.R.D. 529, 530-31 (N.D. Cal. 1989). In assessing
21 the propriety of an amendment, courts consider several factors: (1) undue delay, (2) bad
22

23
24 ² In this order, the Court also granted Sodexo’s motion to file a third-party complaint against US Foods
25 (ECF No. 71); denied Sodexo’s motion to file a third-party complaint against Old Republic (ECF No.
26 72); denied Sodexo’s motion to file a first supplemental cross-claim against Cargill (ECF No. 73); and
27 granted in part and denied in part Plaintiffs’ motion to sever all cross-claims (ECF No. 96). ECF No.
28 126.

1 faith or dilatory motive; (3) repeated failure to cure deficiencies by amendments
2 previously permitted; (4) prejudice to the opposing party; and (5) futility of amendment.
3 Foman, 371 U.S. at 182; United States v. Corinthian Colleges, 655 F.3d 984, 995 (9th
4 Cir. 2011). These factors are not equally weighted; the possibility of delay alone, for
5 instance, cannot justify denial of leave to amend, DCD Programs, LTD v. Leighton, 833
6 F.2d 183, 186 (9th Cir. 1987), but when combined with a showing of prejudice, bad faith,
7 or futility of amendment, leave to amend will likely be denied. Bowles v. Reade, 198
8 F.2d 752, 758 (9th Cir. 1999).

9 III. Discussion

10 In the proposed amended complaints, Plaintiffs seek to add allegations regarding
11 Sodexo’s long-standing inaction in fixing known issues in its meat preparation process
12 that exposed its consumers to severe risk.³ Defendants argue that Plaintiffs should not be
13 permitted to amend to include these allegations because, even taking all of Plaintiffs’
14 allegations as factually true, they fail to make a claim for punitive damages.

15 “Futility alone can justify the denial of a motion for leave to amend.” Nunes v.
16 Ashcroft, 375 F.3d 805, 808 (9th Cir. 2004). However, “a proposed amendment is futile
17 only if no set of facts can be proved under the amendment to the pleadings that would
18 constitute a valid and sufficient claim or defense.” Miller v. Rykoff-Sexton, Inc., 845 F.2d
19 209, 214 (9th Cir. 1998) (citing J. Moore, Moore’s Federal Practice ¶ 15.08[4] (2d ed.
20 1974) (proper test to be applied when determining the legal sufficiency of a proposed
21 amendment is identical to the one used when considering a Rule 12(b)(6) motion)).
22
23
24

25 ³ In the proposed amended complaint in the lead case, the new allegations are included in Paragraphs 19-
26 24, 29-38 and 59-60, 72-73. ECF No. 161-7 at 293, Ex. U. The proposed new allegations are
27 substantially identical in the member cases.

1 Plaintiff brings claims for punitive damages under California Civil Code § 3294(a)
2 which provides:

3 In an action for the breach of an obligation not arising from contract, where it is
4 proven by clear and convincing evidence that the defendant has been guilty of
5 oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may
6 recover damages for the sake of example and by way of punishing the defendant.

6 . . .

7 (1) “Malice” means conduct which is intended by the defendant to cause injury to
8 the plaintiff or despicable conduct which is carried on by the defendant with a
9 willful and conscious disregard of the rights or safety of others.

10 (2) “Oppression” means despicable conduct that subjects a person to cruel and
11 unjust hardship in conscious disregard of that person’s rights.

12 Cal. Civ. Code § 3294 (West). Mere negligence, even gross negligence, is not sufficient
13 to justify an award of punitive damages. See *Ebaugh v. Rabkin*, 22 Cal.App.3d 891 (Ct.
14 App. 1972). In products liability actions, litigants can be entitled to punitive damages
15 under California law if they can show that manufacturers marketed their products with
16 conscious disregard for human safety. See *Morris v. Parke, Davis & Co.*, A Div. of
17 Warner-Lambert, 573 F.Supp. 1324 (C.D. Cal. 1983). California courts have repeatedly
18 upheld the right of plaintiffs to recover punitive damages in products liability cases. *Id.*
19 at 1326-27 (citing cases). Nonintentional torts support punitive damages when the
20 defendant’s conduct “involves conscious disregard of the rights or safety of others.”
21 *Pfeifer v. John Crane, Inc.*, 220 Cal. App. 4th 1270, 1299 (2013), as modified on denial
22 of reh’g (Nov. 27, 2013). To establish “conscious disregard,” and thus malice necessary
23 for award of exemplary damages, a plaintiff must show that defendant was aware of
24 probable dangerous consequences of his conduct and that he willfully and deliberately
25 failed to avoid those consequences. See *Hoch v. Allied-Signal, Inc.*, 24 Cal. App. 4th 48
26 (1994). Evidence suggesting that a manufacturer’s actions may have been consistent with

1 industry practices does not necessarily preclude an award of punitive damages. See
2 Pfeifer, 220 Cal. App. 4th at 1301.

3 Plaintiffs argue that, based on the new facts uncovered through documentary
4 discovery and depositions, they have sufficiently alleged that Sodexo's "long-standing
5 inaction" over the course of the 15-year period leading up to the 2017 outbreak amounts
6 to a conscious disregard of a probable known danger. Defendants counter that Plaintiffs'
7 allegations can only show negligent conduct on the part of Sodexo.

8 In Romo, plaintiffs brought a products liability and negligence action and sought
9 punitive damages based on Ford Motor Company's failure to warn customers about the
10 risks associated with one of its car models. The Romo court found that plaintiffs were not
11 required to allege that any individual at Ford had the "requisite malicious state of mind"
12 in order to obtain punitive damages since a "corporate defendant cannot shield itself from
13 liability through layers of management committees and the sheer size of the management
14 structure." Romo v. Ford Motor Co., 99 Cal. App. 4th 1115, 1140-41 (2002), cert.
15 granted, judgment vacated, 538 U.S. 1028 (2003), aff'd, 113 Cal. App. 4th 738 (2003).
16 Rather, plaintiffs were only required to show "a clear and convincing inference that
17 within the corporate hierarchy authorized persons acted despicably in willful and
18 conscious disregard of the rights or safety of others." Id. The Romo court noted that the
19 despicable conduct standard was met since it was obvious that "putting on the market a
20 motor vehicle with a known propensity to roll over and, while giving the vehicle the
21 appearance of sturdiness, consciously deciding not to provide adequate crush protection
22 to properly belted passengers . . . constitutes despicable conduct. Such conduct could kill
23 people." Id.

24 Sodexo argues that Romo is distinguishable since in Romo, the plaintiffs alleged
25 that Ford "placed its own financial interests ahead of the safety of consumers" whereas
26 here, Plaintiffs only bring allegations against Sodexo regarding "one day of 18 years

1 worth of food service.” ECF No. 173 at 14. However, Sodexo mischaracterizes
2 Plaintiffs’ arguments. In fact, Plaintiffs seek to add in allegations to show Sodexo failed
3 to undertake review processes of its meat cooking process over the course of a multi-year
4 period, despite knowing the severe danger posed by undercooked beef and the unique
5 vulnerability of the Marine recruit population.⁴ Plaintiffs point to depositions of
6 Sodexo’s employees showing that Sodexo’s employees knew about the 1993 Jack in the
7 Box outbreak from E. coli-contaminated hamburgers, which led to the deaths of multiple
8 people. ECF No. 161-8 at 5-6. Plaintiffs allege this Jack in the Box outbreak served as
9 the “impetus for change across many segments of the food service industry generally” but
10 Sodexo failed to undertake reviews of its cooking process to ensure that the raw beef was
11 being cooked sufficiently, and argue that Sodexo’s failure to undertake the review of its
12 meat cooking process—specifically, failure to address the mishandling of raw ground
13 beef patties prior to cooking such that when they were placed on the grills they would be
14 at different temperatures, failure to assure that final hamburger cook temperatures were
15 consistently taken and recorded, and failure to assure that a safe combination of cook
16 time and temperature was in use—amounts to conscious disregard of risk. Id. At 6, 23;
17 ECF No. 161-7, Ex. U ¶¶ 36-38.

18 While “reports of isolated or speculative injuries do not constitute generally
19 accepted” knowledge, *Rosa v. Taser Int’l, Inc.*, 684 F.3d 941, 947 (9th Cir. 2012), here,
20 Plaintiffs do not merely point to the general circulation of reports or isolated and
21 speculative injuries, but instead allege that Sodexo employees and management officials
22 had specific knowledge about the risks posed by undercooked beef and failed to review
23 their meat-cooking processes over the course of a 15 to 17 year period. Accordingly,
24
25

26 ⁴ ECF No. 161-7, Ex. U ¶¶ 19-24, 29-38, 59-60, 72-73.

1 Plaintiffs have sufficiently alleged that the risk was potentially “knowable.” Rosa, 684
2 F.3d at 949 n.7.


3 Plaintiffs allege a long-standing pattern of inaction, which, if proven true, may
4 show a conscious disregard of the rights or safety of others. While Defendants raise a
5 number of counterarguments—including, issues with Plaintiffs’ cited evidence and
6 factual allegations regarding Sodexo’s positive food safety records and implementation of
7 safety measures—ultimately here, “[t]he questions is not whether the conduct, if it
8 occurred, was despicable, the question is whether there is sufficient evidence from which
9 a rational trier of fact could find that the knowing conduct occurred.” Romo, 99 Cal.
10 App. 4th at 1141. At this juncture, the Court’s task is not to award or ascertain whether
11 punitive damages are warranted, but only to consider whether no set of facts can be
12 proved under the proposed amended pleadings that would constitute a valid and sufficient
13 claim for punitive damages. Considering this liberal standard and the fact that this is
14 Plaintiffs’ first attempt to make substantive changes to their pleadings based on newly-
15 discovered documentary and deposition evidence, the Court **GRANTS** Plaintiff’s motion
16 to amend the complaints.

17 **IV. Conclusion**

18 The Court GRANTS Plaintiff’s motion to file amended complaints in the lead and
19 member cases. Plaintiffs must do so within five business days of the date of this order.

20 **IT IS SO ORDERED.**

21 Dated: August 18, 2020

22 
23 Hon. Gonzalo P. Curiel
24 United States District Judge