

JUL 14 1997

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KENNETH E. MARTONE
Clerk of the Superior Court

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Sy. M. RADEMAKER, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

MELANY ARGO, et al.,
Plaintiffs,
v.
GENERAL DYNAMICS
CORPORATION, et al.,
Defendants,

Case No. 687646

MOTIONS FOR JUDGMENT
NOTWITHSTANDING THE VERDICT
AND NEW TRIAL

AND RELATED CROSS-ACTIONS.

This matter came before the Court on June 27, 1997 on defendants General Dynamics' and Arthur Veitch's motions for judgment not withstanding the verdict and for new trial. Defendants and moving parties, General Dynamics Corporation and Arthur Veitch were represented by David C. Bohan, Esq. and Christopher D. Liguori, Esq.; plaintiffs in opposition were represented by Brian D. Monaghan, Esq., Michael A. Conger, Esq. and Terrence Joseph Rizzo, Esq. The Court read the papers submitted both in support of and in opposition to the motions and heard the oral argument of counsel. The matter was thereupon taken under submission in order to review some of the case law cited by the parties. California law requires the Court to render a written statement of its reason for granting a new trial, given the nature of this particular litigation and its significance for all parties involved, the Court has decided to give its reasons for denying the motions in writing.

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FACTUAL BACKGROUND

This action was brought by 101 former employees of General Dynamics Corporation alleging fraud and negligent and intentional interference with prospective economic advantage. The plaintiffs were salaried employees of the Convair division of General Dynamics Corporation. By virtue of their status, the plaintiffs had been entitled to join a class action for the payment of overtime pay which had been filed in the Federal District Court and which was known as the Sena litigation. Plaintiffs claimed that they did not join the Sena lawsuit because of representations by General Dynamics Corporation that to do so would be harmful to their careers at General Dynamics. The thrust of the plaintiffs' case was that they detrimentally relied upon these representations, although General Dynamics' management had a secret plan to close the Convair division and therefore they had no careers to jeopardize. The parties stipulated to 101 individual compensatory damage claims totaling \$1,772,089 which represented the amount of money the plaintiffs, collectively, would have recovered had they joined the Sena lawsuit. The stipulated compensatory damages varied from a low \$2,569 to a high of \$62,002. In addition to the plaintiffs' cases, General Dynamics cross complained against twenty-seven of the individual plaintiffs claiming, in essence, that it was their actions and not those of the corporation which discouraged the plaintiffs from joining the Sena lawsuit.

Trial in this matter consumed approximately eight weeks. One-hundred and twenty-six witnesses were called, over 300 exhibits were introduced, and the jury deliberated for five days before rendering 121 separate verdicts. The jury found for the cross-defendants on all of General Dynamics' cross complaints and rendered 97 individual plaintiffs' verdicts in favor of the employees. In addition to compensatory damages, which were stipulated to, the jury awarded individual punitive damage verdicts against General Dynamics ranging from a low of \$570,152 to \$1,641,224. In round numbers, the entire verdict was approximately \$100 million. Although the jury was not polled on each and every verdict, the verdicts with respect to the amounts of punitive damages, which were polled, were in each instance unanimous.

The Court feels that it is important to emphasize that in each and every instance the punitive damage award to the individual plaintiffs was entirely different and obviously

1 individually crafted. The Court further wishes to emphasize, insofar as it bears upon the very
2 relevant issue of whether the verdict was the result of passion and prejudice, that in seventeen
3 years of practice and ten years on the bench, I have never observed a more hard-working,
4 attentive and conscientious jury.

5 JUDGMENT NOTWITHSTANDING THE VERDICT

6 In making an order granting a motion for judgment notwithstanding the verdict, the trial
7 court may not weigh the evidence or judge the credibility of witnesses. An order granting a
8 judgment notwithstanding the verdict is appropriate only when disregarding conflicting evidence
9 and indulging in every legitimate inference which may drawn from plaintiff's evidence, the result
10 is no evidence sufficiently substantial to support the verdict. *See, Stubblefield Construction*
11 *Company v. City of San Bernardino* (1995) 32 Cal.App.4th 687, 703.

12 Under the substantial evidence test the issue is not whether the trial judge concurs with
13 the jury's evaluation of the testimony. The controlling factor is that there was evidence from
14 which the jury could have inferred the facts supporting the verdict. *See, Hale v. Farmers*
15 *Insurance* (1974) 42 Cal.App.3d 681, 692. As the Court pointed out during the trial and during
16 the hearing on the motion for judgment not withstanding the verdict, the evidence presented in
17 this case as to whether or not General Dynamics Corporation misled its employees to their
18 detriment was, in virtually every respect, a two-edged sword. Given the parameters of the
19 Court's analysis on a judgment not withstanding the verdict, substantial evidence was presented
20 to support the verdict. The motion for judgement NOV must be denied.

21 MOTION FOR NEW TRIAL

22 The sole issue which should be addressed on the motion for new trial is whether the
23 punitive damage verdict in this case was excessive. Defendants and moving parties insist that
24 the punitive damage verdict must be viewed in the aggregate and that so viewed, it fails to
25 comport with both federal and state decisions on the propriety of punitive damage awards.
26 Defendants observe that in this case the punitive damage award is 550% higher than the largest
27 award ever affirmed by a California appellate court in a published opinion. *See, defendants'*
28 *points and authorities at page 6, lines 7 and 8. The defendant cites as a further authority for the*

1 proposition that the Court must consider the award in the aggregate the case of *Cates*
2 *Construction Inc. v. Talbot Partners* (1997) 53 Cal.App.4th 1420. The Court has read the *Cates*
3 opinion on several occasions and finds nothing in the language to support defendants' contention
4 the analysis of the punitive damage awards must be in the aggregate. Furthermore, the jury in
5 this action was instructed to treat each plaintiff's case as a separate case. That the jury followed
6 this instruction is supported by the fact that they rendered a complete defense verdict as to one
7 plaintiff and that each of the punitive damage awards rendered in the case was individually
8 tailored. Accordingly, the Court finds no support, either in the case law or in the instructions
9 which were given to the jury, to suggest that its analysis of the punitive damage award should
10 be other than on an individual plaintiff basis. Defendants further argue to support their argument
11 that the punitive damage award be considered in the aggregate by noting that had these cases
12 been tried *seriatim* in each successive case, they would have been able to put on evidence of the
13 punitive damage awards in prior cases in order to prove to the jury that General Dynamics had
14 already been sufficiently "punished" for whatever misconduct the jury might have found. This
15 argument, although novel, invites sheer speculation on the part of the Court and cannot be
16 considered.

17 When viewed on an individual basis, the ratio of punitive damages/compensatory damage
18 awards in this case ranged from a low of 26 to 1 and averaged approximately 50 to 1. It is of
19 interest to note, since defendants emphasize the importance of the *Cates Construction Inc. v.*
20 *Talbot Partners* case, *supra*, as guidance for the Court, that in that action the compensatory
21 damages were stipulated to be one dollar (*see, Cates, supra*, at page 1432). The *Cates* court
22 approved a punitive damage award of \$15 million, a ratio considerably higher than that involved
23 in the instant case, whether viewed on an individual or aggregate basis.

24 As stated in *Cates*, "Under California law, we review an award of punitive damages to
25 determine whether the award is excessive as a matter of law or raises a presumption that it is the
26 product of passion or prejudice. We evaluate the award under three criteria: The nature of the
27 defendant's wrongdoing, the actual harm to the plaintiff, and the defendant's wealth." [citations].
28 These factors are not evaluated under a rigid formula. Calculation of punitive damages involves,

1 instead, a 'fluid process of adding or subtracting, depending upon the nature of the acts and effect
2 on the parties and the worth of the defendants.' Whether punitive damages should be
3 awarded and the amount of such an award are issues for the jury and for the trial court on a new
4 trial motion. All presumptions favor the correctness of the verdict and judgment [citations]."

5 The *Cates* Court specifically rejected the argument made by defendant that in analyzing
6 the propriety of the punitive damage award, the relevant ratio was between the \$28 million in
7 punitive damages awarded in the trial court and the one dollar stipulated as compensatory bad
8 faith damages (*see, Cates Construction, supra*, at page 1457). This Court must similarly, in
9 accordance with *Cates*, reject this analysis. Insofar as the first criteria is concerned under
10 California law, i.e., the nature of the defendant's wrongdoing, and the second criterion, the actual
11 harm to the plaintiff, substantial evidence heard by the jury in this case supports the conclusion
12 that the harm generated was not merely the dollars and cents, which plaintiffs failed to recover
13 had they joined the Sena lawsuit, but a course of conduct which insured that General Dynamics
14 would have available a skilled work force to fulfill its contractual obligations to build MD11
15 fuselages. As to the third criterion, defendants' wealth, the evidence was that General Dynamics
16 Corporation has a net worth of \$1.714 billion. Additionally, the jury could appropriately
17 consider the evidence before them that the potential liability in the Sena lawsuit was well over
18 \$500 million. Consequently, under California law, the individual punitive damage awards made
19 by the jury in this case cannot be deemed excessive or the product of passion or prejudice.

20 In analyzing the punitive damage award in this case, it is also incumbent upon the trial
21 court to determine whether the award is in compliance with federal standards under the Due
22 Process clause of the XIVth Amendment of the Federal Constitution. In, *BMW of North*
23 *America, Inc. v. Gore, supra*, (1996) 116 S.Ct.1589 the United States Supreme Court held that
24 punitive damages may properly be imposed to further a State's legitimate interest in punishing
25 unlawful conduct and deterring its repetition. The Court identified three "guideposts" to be
26 applied in determining the propriety of a punitive damage award. The federal guidelines are
27 similar to the standards set out in California. They are (1) the degree of the reprehensibility of
28 the conduct, (2) the disparity between the harm suffered and punitive damage award, and (3) the

1 difference between the award and civil penalties authorized or imposed in similar cases. (*BMW*
2 *of North America, Inc. v. Gore, supra*, at page 1598-1599).

3 As stated in *Cates Construction Inc.* in conformance with the principals set out in *BMW*
4 *of North America, Inc. v. Gore, supra*, "The principal purpose of punitive damage award is to
5 deter acts deemed socially unacceptable and, consequently, to discourage the perpetuation of
6 objectionable corporate policies." [citations] *Cates Construction Inc., supra*, at page 1454. In
7 this case, the state obviously has an interest in seeing that a corporate employer deals with its
8 employees in a fair and equitable manner. Whatever this Court's personal feelings may be, there
9 was substantial evidence before the jury that General Dynamics misled its employees and clear
10 and convincing evidence that there was fraud involved. As the defendant in the *Cates*
11 *Construction Inc.* case argued and defendant argues here, this was a "run-of-the-mill dispute."
12 The Court must disagree. This was an action involving long-time employees of a company
13 which was a fixture in the San Diego community. The evidence in this case is amenable to
14 comparisons with the cases involving the breach of fiduciary duty by an insurance company to
15 its insured rather than products liability cases involving individual personal injuries.

16 The only guidepost set out by the Supreme Court in *BMW of North America, Inc. v. Gore,*
17 *supra*, which differs from California law, is the third criterion in which one compares the
18 difference between the award and the civil penalties authorized or imposed in similar cases. In
19 this regard defendants argue that the Court must look at potential penalties under FLSA and that
20 so viewed the award in this case fails to fulfill the constitutional requirements set out in *BMW,*
21 *supra*. The Court disagrees. As pointed out in plaintiffs' opposition at page 14, footnote 42-47,
22 the FLSA provides for substantial criminal penalties as well as the criminal penalties affordable
23 under California's penal code.

24 This case will undoubtedly be reviewed in the District Court of Appeal. Given the
25 number of individual plaintiffs involved in this litigation, the issue of punitive damages awarded

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1 will be a case of first impression. However, given the limited parameters of the trial court's
2 review of this case, the motion for a new trial must be denied.

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Dated: July 10, 1997

Vincent P. DiFiglia
VINCENT P. DIFIGLIA
Judge of the Superior Court