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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

BLANCA TORRES, Plaintiff, Respondent and Cross-Appellant, v. B/E AEROSPACE, INC., Defendant, Appellant and Cross-Respondent.	B278517 (Los Angeles County Super. Ct. No. BC513171)

APPEAL from a Judgment of the Superior Court of Los Angeles County. Mel Red Recana, Judge. Affirmed.

The Zappia Law Firm, Edward P. Zappia; Gibson, Dunn & Crutcher, Theodore J. Boutrous, Jr., Perlette M. Jura, Gregory S. Bok and Lauren M. Blas for Defendant, Appellant and Cross-Respondent B/E Aerospace, Inc.

Law Offices of Maryann P. Gallagher, Maryann P. Gallagher; Benedon & Serlin, Gerald M. Serlin and Douglas G. Benedon for Plaintiff, Respondent and Cross-Appellant Blanca Torres.

Defendant B/E Aerospace, Inc. (B/E Aerospace) appeals from a judgment entered on a jury verdict in favor of plaintiff Blanca Torres (Torres) in her action for employment discrimination. Torres's operative first amended complaint went to trial on her claims against B/E Aerospace for discrimination under the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12940, et seq.)[1] based on age and gender, and wrongful termination in violation of public policy. The evidence at trial showed that B/E Aerospace terminated Torres in what it claimed was a reduction in force (elimination of her position), but the jury accepted Torres's contention that B/E Aerospace's reasons were a pretext for improper discriminatory motives. The jury awarded Torres a total of $1.516 million in compensatory damages and $7 million in punitive damages. The trial court granted B/E Aerospace's motion for a new trial conditioned on the reduction of punitive damages to $1 million. Torres consented to the reduction.

On appeal, B/E Aerospace contends that substantial evidence does not support the findings of liability and compensatory and punitive damages, and that two key jury instructions misstated the law. Torres cross-appeals from the trial court's remittitur of punitive damages. We affirm in full.

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[1] The trial court sustained defendants' demurrer to Torres's intentional infliction of emotional distress and implied contract claims, and dismissed the individual defendants Delaney and Garfias before trial.

FACTUAL BACKGROUND[2]

B/E Aerospace

B/E Aerospace manufactures parts for the aerospace industry (gears, pistons, and assemblies) according to its customers' specifications. Honeywell is B/E Aerospace's largest customer and is 70 percent of its business. B/E Aerospace also supplies parts to other large aerospace firms.

Originally, the company had four plants in Southern California: Vista, Pacoima, Compton, and Westminster, comprising B/E Aerospace's "machine products group" (MPG). In 2001, B/E Aerospace purchased Delco Machine & Gear (Delco), which occupied the Westminster plant. In 2011, after acquiring Delco, in order to expand its revenue, B/E Aerospace sold the Vista, Pacoima, and Compton plants and consolidated operations at the Westminster plant. At this time, B/E Aerospace was undergoing a period of expansion: in 2011, it had 7,500 employees, and by 2016, B/E Aerospace had over 10,500 employees at 25 facilities worldwide.

Quality is extremely important in the aerospace industry because any type of defect affects the function of an aircraft. Thus, as part of its manufacturing process, B/E Aerospace had quality control protocols in order to maintain its certifications with the industry's relevant standards. Under its NADCAP certification, B/E Aerospace could manufacture and

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[2] "As required by the rules of appellate procedure, we state the facts in the light most favorable to the judgment." (*Orthopedic Systems, Inc. v. Schlein* (2011) 202 Cal.App.4th 529, 532, fn. 1.) In this section we provide an overview of those facts necessary to understand the disputed issues in these appeals. Additional relevant facts will be discussed in following sections.

ship parts directly to its customers without the need for the customers to conduct onsite inspections.[3] In addition, "AS9100" quality management system specifications applied to all manufacturers in the aerospace industry.

Torres's Employment

Torres was a 23-year employee of B/E Aerospace at the time of her termination in June 2012. She began work at B/E Aerospace's predecessor, Delco, in 1989 and worked as a "quality manager." As relevant to this case, Torres worked in the quality assurance department at Westminster. That department was responsible for inspecting the components the facility manufactured to ensure that they satisfied regulatory, internal and customer requirements, standards, and specifications.

Torres had helped set up the quality assurance department at Westminster, where she supervised seven inspectors. According to Torres, her job duties consisted of directing all the jobs that were coming into quality assurance for inspection and prioritizing the jobs according to the customers' delivery dates. Every contract had a delivery date and it was her responsibility to make sure she had enough inspectors to get the orders delivered on time. She worked directly with the customers. She would conduct meetings, review contracts, and review the specifications on the drawings for the parts to be made. Torres also made sure that B/E

[3] NADCAP is an agency providing national accreditation.

had the correct tools, and the tools were properly calibrated. She would assign inspectors to each job, including the night shift.

Torres never took a sick day and never missed a day's work. She received uniformly positive performance reviews, and she was never disciplined. Nick Campanelli, who had been president of Delco and later became vice president of operations at B/E Aerospace, worked with Torres at Delco. Campanelli believed Torres excelled at her position, and was a hard worker who was helpful and pleasant. Many of Torres's coworkers echoed Campanelli's sentiment. Campanelli observed that Torres was willing to learn new things and help people when necessary, and Torres got along well with Honeywell and interacted well with the firm's customers.

In 2005 or 2006, Torres's supervisor, Julio Perez (Perez), hired Kevin Pacheco (Pacheco), who was 18 or 19 at the time, to be a general helper in inspection. He had no prior relevant experience, and Torres trained him.

Consolidation at Westminster, and the "Old Guard"

Around 2009, Randy Delaney (Delaney), who had previously been employed by B/E Aerospace as the general manager of its Vista site from 2002 to 2006, returned to B/E Aerospace. During his previous employment at B/E Aerospace, Delaney had managed the Vista site, and oversaw its finances, engineering, quality, HR, customer service, sales, environmental issues, and was accountable for any losses to the division. At this time, B/E Aerospace still had four sites. According to Delaney, B/E Aerospace wanted to grow its business, but they wanted to do it at one

site. Because the Vista site was losing money, Delaney convinced B/E Aerospace to consolidate that site with Westminster. B/E Aerospace sold the Pacoima and Compton sites.

Delaney's new responsibilities as general manager at the MPG facilities included full profit and loss responsibility for sales, engineering, operations, quality, finance, and HR departments at the sites, and developing and implementing annual budget and quarterly business review with management. He was specifically tasked with increasing profitability, upgrading and streamlining operations, improving productivity, and reducing costs. During the period 2009 to 2011, sales grew from $8 million to $20 million. In December 2010, Delaney recruited Brent Richter (Richter) as director of materials. According to Richter, the Westminster site had been the home of Delco and a lot of "legacy" people worked there. Richter found that there was an "old guard" at B/E Aerospace and there was a "matriarch style." He used the term "old guard" to describe the culture conflict between the Delco employees and B/E Aerospace. At B/E Aerospace, Richter found the "big three" of the "old guard"—Torres, Mario Torres, and Campanelli—the most resistant to change.

Delaney also brought in Paul Edwards, who had expertise in cultural and organizational development. Delaney had asked him to upgrade the system at Westminster, get everyone on the same page, and implement a better leadership format. They were looking at the whole structure of the company, and evaluating how to grow. Edwards found much resistance to change and a prevailing "laissez-faire" attitude.

Structural Reorganization

In 2011, Torres's immediate supervisor, Perez, who managed the quality assurance department as quality service director, left B/E Aerospace. Delaney then contemplated making a structural reorganization of the quality assurance department.

According to B/E Aerospace, Torres held the position titled "quality engineer," and she was the acting "quality supervisor." However, the organizational chart for B/E Aerospace in 2010 showed that Julio Perez was the quality assurance director and the quality supervisor was Torres.

As described by B/E Aerospace, the quality supervisor position was configured to cover administrative and supervisory duties, allowing the quality director to attend to higher-level quality assurance duties. The responsibilities also included attending daily manager meetings when the quality manager was not available, chairing the facilities material review board,[4] assisting with external and internal AS9100 audits, and assisting with the Westminster facility and the merged Vista site.

At trial, Delaney offered somewhat inconsistent reasons for not offering the quality supervisor position to Torres, even though she was working as the acting quality supervisor. On the one hand, he said that he initially considered offering the position to Torres, but changed his mind when she told him she would continue running the department the way it was. On the other hand, Delaney said that he did not consider

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[4] The materials review board met once a day to evaluate nonconforming parts. The board determines whether the part must be scrapped, if it can be reworked, or if it can be used later in the process.

Torres to have sufficient technical and managerial skills for the position of quality director/manager. He further testified that he considered eliminating her position entirely because he wanted to bring in another quality manager and do away with the quality supervisor position because there was overlap in the two positions.

As part of the business restructuring, B/E Aerospace transferred Carlos Garfias (Garfias) from Pacoima to Westminster to replace Perez, thus passing over Torres. At Pacoima, Garfias had performed the duties of both quality assurance and "operational excellence."[5] Garfias knew Torres had been a long-time employee and thought he could use her in another role.

Disputed Issues in Quality Control

At trial, Garfias testified that when he arrived at Westminster, he spent nine months "putting out fires," addressing the auditors, and working with customers. He was surprised at the gaps in the quality system: records were incomplete, and the nonconforming parts room had thousands of nonconforming parts dating from 2005 to 2011. According to Andreas Zill (Zill), the plant manager at Westminster starting in March 2012, B/E Aerospace was close to losing its "self-release," due to nonconforming parts, which meant that customers would have to inspect the parts themselves at the plant.

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[5] "Operational Excellence" consists of process improvements to maximize processes, efficiencies, productivity and eliminate defects and nonconformities.

In her testimony, Torres disagreed with this assessment. She testified that there was nothing unusual about the condition of the nonconforming parts room, because production control customarily conducted an inventory at the end of the year to take care of the issue.

Disputed Issues with Torres's Performance

Before Delaney arrived at Westminster, Torres had uniformly positive job reviews. Torres's 2010-2011 review stated that she "assumes personal responsibility and has carried out important tasks with minimal supervision. She takes the initiative to start and follow through on tasks." The evaluation also stated that "[Torres] is a cooperative person whose solid people skills have enabled her to build good working relationships with her co-workers. She is ready to assist others when needed. And she's always helpful and productive when working on team projects."

Garfias testified that when he started at Westminster, he attempted to assist Torres in expanding her role, skills and duties, and requested that she attend training. He advised Torres that she had the potential to assume Garfias's position of quality manager if she were successful in improving her skills. However, Garfias found that Torres preferred to stay in her comfort zone, performing administrative tasks while carrying out few supervisory/managerial duties. According to Garfias, Torres told Garfias that she did not want to perform any duties she had not performed before or that she did not consider part of her job.

Garfias found that Torres refused or failed to perform other supervisory duties, including participating in audits to ensure compliance with NADCAP and customer audits, attending daily supervisor meetings

chairing the materials review board, which was tasked with addressing nonconforming parts, and adjusting her hours from 5:30 a.m. to 2:30 p.m. in order to ensure broader supervisory coverage of inspectors under her supervision, some of whom worked until 5:00 p.m. After about six months, Garfias mentioned Torres's lack of cooperation to Delaney. Garfias felt he had exhausted the ways to approach the situation, and was not getting any cooperation from Torres.

On the other hand, according to the testimony of Torres and other employees, Garfias was unqualified for his position. At first, Torres got along with him, but he later became rude and singled her out. During meetings, he would announce that he would hear from anyone but her. He took her customers away, and told the other employees to ignore her advice and instead call Pacheco. According to Torres, although new training was offered, she did not attend, because Garfias sent only Pacheco. Because she did not attend the training, she was unable to handle customer orders.

Torres complained about her treatment to Campanelli, Delaney, and finally to Darnell Walker, who was the Vice President and General Manager. She told Walker that Garfias was taking away her ability to do her job, and was mistreating her because she was a woman, and because he wanted Pacheco to take her place. Walker responded that "upper management" disagreed, and had told him that Torres did not want to cooperate, attend training, or perform assigned tasks. Torres explained that "it's not that I don't want to do it. I'm not sent to do those tasks anymore. The things that I used to do, they were tak[en] away from me, and that was from [Garfias]. . . . [A]nd now he goes and tell[s] you guys in

the meetings that I don't want to do it." She added that "all [these] tasks that I used to do for 20 years, now I can't do it, not even a simple decision in the quality assurance department" because Garfias had usurped her duties.

Many of Torres's coworkers found that Garfias was not knowledgeable about current customer requirements and specifications; customers would have to explain to him why a certain feature on a part was important. Several customers had made it known that someone else needed to be brought in, or they would stop doing business with B/E Aerospace. Because of customer complaints, Loren Loudon was recruited to B/E Aerospace to work with Garfias. Loudon worked with Garfias every day and found that Garfias had a "limited skill set."

Having spoken to Delaney and Campanelli about her mistreatment and having received no help, Torres sent a letter to them dated February 16, 2012. She stated: "Randy, (Nick): Would you please take a moment to read these words, As you mention in the meetings we can talk to you any time, I have the courage to write to you because, I know I am a very important employee for this organization I need to share my thoughts with you because they are affecting my health in many aspects, Forgive me if I am wrong, (I am not pointing fingers at anybody) But somehow I know you have the wrong impression about me (attitude?) I have been working here longer than you, but Unfortunately we don't know each other, Perhaps we both have not taken the time to do it for whatever reason. May be you prefer to believe the people that surrounded you or work directly for you, I don't have attitude,) I might think, believe or act different than others, But for sure I like to speak and live always with the

truth. The problem is that I am a thinker/doer not a talking person, 'Do not overlook at people instead take a moment to know them.' Blanca Torres."

Torres's Termination

In March 2012, management at Westminster began to consider eliminating Torres's position. Gilbert Covarrubias, the HR Manager at Westminster, participated in the decision to eliminate Torres's position. Covarrubias explained that management was required to consider whether they could cut costs by cutting employee positions. In determining whether to eliminate a position, management considered financial and operational needs, as well as employee merit.

Delaney testified that he considered these factors with respect to Torres's position of quality engineer/supervisor, and decided to eliminate it based on: (a) the financial impact—she was being overpaid and receiving a supervisor's salary for performing primarily administrative duties, and she had consistently refused to assume supervisory duties commensurate with a supervisor's salary; (b) the operational impact—Torres's limited and unskilled administrative duties could be redistributed to existing employees and performed at lower cost; and (c) Torres's employee merit—despite repeated efforts by Garfias and Perez to help her advance, Torres refused to improve her knowledge and skills, refused to perform her duties (e.g., attending training, assisting with AS9100 implementation/audits), and was resistant, non-cooperative and insubordinate with quality manager Garfias. Delaney concluded that there were no other suitable positions available for Torres.

Delaney knew that the decision to eliminate a position had to be reviewed by HR, which would consider the employee's age, gender, and seniority with the company. B/E Aerospace had an antidiscrimination handbook, and when the company had a reduction in force, management was required to examine factors including age, gender, and ethnicity and give the information to corporate management. Both Covarrubias and Delaney testified that the legal department would also evaluate eliminations.

Covarrubias prepared a memorandum regarding the elimination of Torres's position. The memo echoed many of Delaney's observations, including that Torres refused to work outside her "comfort zone" and configured her job to perform minimal supervisory duties. Covarrubias wrote: "The position of the Quality Assurance (QA) Engineer, currently occupied by Blanca Torres, is a position that was configured to handle all QA administrative assignments as well as supervise the QA department while the QA manager attends the high level matters and/or other site QA issues." Covarrubias had evaluated Torres's February 16, 2012 letter and determined it did not reference any kind of harassment.

According to Delaney, if a position is eliminated, the duties of that position are be distributed to other positions. Delaney denied that Torre's age and gender were factors in the elimination of her position. He testified that Torres never complained to him that she experienced discrimination or retaliation because of her age or gender. At the time of Torres's elimination, B/E Aerospace also eliminated two other positions (manufacturing clerk and manufacturing engineer) held by men, one of whom was over 40.

Torres learned of her termination on June 22, 2012, when she arrived at work. Andi Ly of HR was waiting for her and told her to turn in her badge because her position had been terminated.

According to B/E Aerospace, it did not hire anyone to replace her. However, after Torres left, Pacheco assumed many of her duties. Pacheco had been working as an "inspector," and prepared shipping paperwork, and certificates of conformance. After Garfias was hired, Pacheco started attending meetings instead of Torres. When Torres was absent, he would take over her duties.

According to Pacheco, when Torres was terminated, he assumed only some of Torres's duties: answering questions about product nonconformities and meeting with customers at the plant. Although Torres supervised inspectors when she acted as quality supervisor and helped with the NADCAP audits, Pacheco did not assume these duties. In January 2014, Pacheco became a quality supervisor, a position he believed was not the same as Torres's former position. The job duties were different, and there was newer technology to apply, more trackers and key process indicators to monitor, and more efficiency reports.

Statistical Evidence

At trial, Torres introduced a chart (Torres's Exh. 35) derived from B/E Aerospace's EEOC statistics (B/E Aerospace's Exh. 188). The exhibit showed the termination dates of all Westminster employees over an approximately 15-year period. During the time Delaney was in charge, 27 women left employment at Westminster, the same number of women that had been terminated in the prior 10-year period. Similarly, during

Delaney's tenure, three times as many employees over the age of 40 as those under 40 years left employment.[6]

Argument at Trial

At trial, Torres principally argued to the jury that B/E Aerospace's reasons for eliminating her position and terminating her were pretextual, because (1) Pacheco, in substance, took over her position after she left, which established that her position had not been eliminated as claimed by B/E Aerospace; and (2) B/E Aerospace gave shifting and inconsistent reasons for terminating her and was therefore hiding its wrongful motive.

Jury Verdict, JNOV/Motion for New Trial; Remittitur

The jury returned a special verdict finding for plaintiff on her claims for age and gender discrimination and termination in violation of public policy. The jury awarded $75,000 for lost earnings, $931,000 for past noneconomic damages, and $510,000 for future noneconomic damages. After a bifurcated trial on punitive damages, the jury found that B/E Aerospace acted with malice, fraud or oppression, and awarded Torres $7 million in punitive damages.

B/E Aerospace filed a motion for judgment notwithstanding the verdict and new trial, arguing that insufficient evidence supported liability and that the compensatory and punitive damages awards were

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[6] We discuss this exhibit in more detail in our discussion of B/E Aerospace's contention that the verdict is not supported by substantial evidence.

excessive. The trial court denied the JNOV, but granted the new trial motion conditioned upon a remittitur of the punitive damages award, finding a "tremendous disparity" between the compensatory and punitive damages. Torres consented to a reduction of the punitive damage award to $1 million, and the court entered judgment. Thereafter, the trial court awarded Torres $800,903.38 in attorney fees.[7]

DISCUSSION

I. *Sufficiency of the Evidence*

B/E Aerospace contends that the evidence is insufficient to support a finding that Torres's age and gender were substantial motivating factors in her termination. B/E Aerospace argues, in substance, that the evidence established as a matter of law that it terminated Torres because it made a business decision that her position was redundant and could be more efficiently performed at lower cost by existing employees. Under the applicable standard of review, we find the evidence sufficient.

The California Fair Employment and Housing Act (FEHA) prohibits discrimination in employment based upon age or gender. (Gov. Code, § 12940, subd. (a).) The core of a discrimination case is that the plaintiff must prove the ultimate fact that defendant engaged in intentional

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[7] B/E Aerospace separately appealed from the first amended judgment (incorporating the remittitur) and the award of attorney fees. Those appeals were consolidated. B/E Aerospace asserts the award must be vacated if the underlying liability is reversed, and at a minimum reduced if the damage award is reduced, but does not otherwise challenge the validity of the award.

discrimination. (*McGrory v. Applied Signal Technology, Inc.* (2013) 212 Cal.App.4th 1510, 1534.)

Direct evidence of intentional discrimination is rare and thus most discrimination claims must be proved circumstantially. (*Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52, 67 (*Morgan*).) "Proving intentional discrimination can be difficult because '[t]here will seldom be "eyewitness" testimony as to the employer's mental processes.' [Citations.] It is rare for a plaintiff to be able to produce direct evidence or 'smoking gun' evidence of discrimination. [Citations.]" (*Heard v. Lockheed Missiles & Space Co.* (1996) 44 Cal.App.4th 1735, 1748.)

Ultimately, "[t]he central issue is and should remain whether the evidence as a whole supports a reasoned inference that the challenged action was the product of a discriminatory or retaliatory animus." (*Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 715 (*Mamou*).) In making this determination, we must examine the record as a whole, considering the plaintiff's evidence collectively and drawing from it all reasonable inferences the jury could have drawn. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 377.)

In cases involving affirmative adverse employment actions, pretext may be demonstrated by showing '"the proffered reason had no basis in fact, the proffered reason did not actually motivate the discharge, or, the proffered reason was insufficient to motivate discharge."' (*Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 224; see also *Hersant v. Department of Social Services* (1997) 57 Cal.App.4th 997, 1005.) Pretext

may also be shown by “‘“such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder *could* rationally find them "unworthy of credence," [citation], and hence infer "that the employer did not act for the [asserted] non-discriminatory reasons.”’” (*Morgan, supra*, 88 Cal.4th at p. 75; *Reeves v. MV Transportation, Inc.* (2010) 186 Cal.App.4th 666, 677 [employer's veracity may be in question “‘where the employer has given shifting, contradictory, implausible, uninformed, or factually baseless justifications for its actions’”].)

Simply showing the employer was lying, without some evidence of discriminatory motive, is not enough to infer discriminatory animus. "The pertinent [FEHA] statutes do not prohibit lying, they prohibit discrimination." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 361 (*Guz*); see also *Slatkin v. University of Redlands* (2001) 88 Cal.App.4th 1147, 1156.) "However, evidence that the employer's claimed reason is *false*—such as that it conflicts with other evidence, or appears to have been contrived after the fact—will tend to suggest that the employer seeks to conceal the real reason for its actions, and this in turn may support an inference that the real reason was unlawful." (*Mamou, supra*, 165 Cal.App.4th at p. 715.)

In the instant case, the record supports an inference that age and gender were substantial motivating factors in the decision to terminate Torres. It is true that in the testimony of Randy Delaney, Brent Richter, Paul Edwards, Carlos Garfias, and Gilbert Covarrubias, B/E Aerospace

presented significant evidence portraying Torres's termination as a neutral business decision brought about by restructuring and financial needs, and by Torres's unreasonable resistance to participating in the new organizational system envisioned by Delaney. But significant evidence also contradicted this explanation, and suggested age and gender animus toward Torres.

First, in his deposition testimony, which was introduced at trial, Delaney characterized the resistance to his vision for change at Westminster as coming from the "old guard," which included Torres as well as others who had been at Westminster since 2001 when B/E Aerospace purchased Delco. Richter, whom Delaney hired as director of materials with a mandate to implement Delaney's new system, echoed that sentiment. At trial he testified that Westminster had many "legacy" people, including Torres, a group he characterized an "old guard" with a "matriarch style" that resisted change. Edwards testified that he found a "laissez-faire" atmosphere on the shop floor, exemplified by Torres (among others), a comment that suggests a stereotypical assessment of the older, experienced employees.

The disparaging references by these upper management personnel to "old guard," "legacy" people, "matriarch style," and "laissez-faire" atmosphere, all of which specifically included Torres, reasonably suggested animosity against Torres (and others) based on age and age stereotypes. They also, particularly in Richter's use of the word "matriarch," suggested animosity to having a mature woman such as Torres in a supervisory position. This evidence thus cast doubt on B/E

Aerospace's claim that it terminated Torres without any reference to her age or gender.[8]

Second, Delaney offered somewhat inconsistent reasons for not offering the quality supervisor position to Torres after Julio Perez (Torres's prior supervisor) left, even though she was working as the acting quality supervisor. On the one hand, he said that he initially considered offering the position to Torres, but changed his mind when she told him she would continue running the department the way it was. On the other hand, Delaney said that he did not consider Torres to have sufficient technical and managerial skills for the position of quality director/manager. He further testified that he considered eliminating her position entirely because he wanted to bring in another quality manager and do away with the quality supervisor position because there was overlap in the two positions.

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[8] We disagree with B/E Aerospace's contention that, as a matter of law, these comments were mere stray remarks directed at the hold-over employees from Delco and their culture, without reference to age or gender, and thus that the comments cannot support a finding of discriminatory motive. "Although stray remarks may not have strong probative value when viewed in isolation, they may corroborate direct evidence of discrimination or gain significance in conjunction with other circumstantial evidence. Certainly, who made the comments, when they were made in relation to the adverse employment decision, and in what context they were made are all factors that should be considered." (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 541.) Here, the comments were made by management employees who used disparaging language implicitly referring to age ("old guard," "legacy" people) and gender ("matriarch style" of management). Viewed in the context of this case, in which an older female quality supervisor (Torres) was terminated in favor of a younger male who assumed the substantial part of her duties, the comments reasonably suggested a discriminatory motive.

Third, the source of B/E Aerospace's characterization of Torres as a poor employee resistant to change was Carlos Garfias, whom Delaney transferred from another plant to replace Julio Perez as quality assurance director, thus becoming Torres's supervisor. But Garfias' characterization of Torres was undercut by the testimony of four of Torres's former coworkers (Loren Loudon, Cathy Braunsdorf, Manuel Gallardo, and Mario Torres), of Torres herself, and of Nick Campanelli (former vice-president of operations at Westminster).

Braunsdorf, Gallardo, and Mario Torres testified, in substance, that Garfias was an inept administrator who lacked quality assurance knowledge equal to that of Torres and who was the source of many customer complaints because of his ineptitude. Loudon, who was recruited to B/E Aerospace because of the customer complaints about Garfias and worked with him every day, found him to have a "limited skill set." Torres testified that Garfias singled her out for negative treatment. During meetings, he would take comments from anyone but her. He took away her duties, gave them to Julio Perez (a much younger male employee), and sent only Perez to training. Torres, among others, complained to Darnell Walker, who was Vice President and General Manager. She told him that Garfias was mistreating her because she was a woman and he wanted Pacheco to take her place. She received no help and complained again in writing, but nothing changed.

Campanelli, who had worked with Torres for 21 years and was Vice President of Operations (not her supervisor) when Torres was terminated, testified that Torres was a reliable employee, a hard worker, and excelled at being quality supervisor. He had told these things to Delaney. He

believed that her position—quality supervisor—was essential to the company and could not be eliminated. When Torres was fired, he protested to Darnell Walker, Vice President and General Manager. Campanelli believed the termination was not fair. He asked Walker why any existing issues concerning Torres could not be worked out, and commented that Walker himself knew of Torres's work habits and that she was a hard worker. But Walker simply told Campanelli that the decision had already been made, and offered no further explanation.

In light of this evidence, that Garfias' characterization of Torres was wildly inaccurate, that Garfias favored Pacheco (a younger male), and that, when pointedly questioned by Campanelli about what he felt was an unfair termination, Walker offered no explanation for the decision, the jury could reasonably infer that that the decision to terminate Torres was based on something other than a need to restructure her position and her purported lack of competence.

Fourth, the evidence showed that although Pacheco, a male much younger than Torres, may not have assumed all of Torres's prior duties (because the technology associated with the duties changed), he did assume the basic functions of Torres's prior position—ensuring quality control. That Torres was replaced by Pacheco, Garfias' hand-picked successor, a much younger male, supported the inference that the goal of Garfias' unfounded negative characterization of Torres's work performance was to replace her in favor of a younger man.

Finally, when being questioned about Plaintiff's Exhibit 35, Delaney conceded that during the four years he was Vice President, 27 women were terminated from, or voluntarily left, employment at Westminster, a

number equal to that for the entire preceding 10-year period (though Delany recognized only three names of women on the list who were involuntarily terminated). Later, in an attempt to show a varied workforce, including that there were at least 30 male employees who were between the ages of 60 and 83 when they left employment, B/E Aerospace's counsel questioned Gilbert Covarrubias about Defense Exhibit 188 concerning the age and gender makeup of employees who were voluntarily or involuntarily terminated by B/E Aerospace. Under further examination by Torres's counsel, Covarrubias admitted that Defense Exhibit 188 showed that during the 15-year period covered by the exhibit, 229 employees over the age of 40 were terminated or voluntarily left employment, compared to 71 employees under the age of 40. Covarrubias believed that the vast majority of employees who left the company did so voluntarily, because he estimated that there were only approximately seven involuntary terminations a year.

While the information in Exhibits 35 and 188 did not necessarily reflect involuntary terminations, it did reflect an inordinate flight of women during the four years of Delaney's tenure (27 women, equal to the number of the entire preceding 10-year period), and an inordinate flight of older employees (229 employees over the age of 40 during the 15-year period reflected in Defense Exhibit 188, compared to 71 employees under the age of 40). Whatever else might be said about this evidence, from it the jury could reasonably infer, in light of Torres's other evidence, that the statistics reflected an unwelcoming atmosphere for women and older workers, some of whom were involuntarily terminated.

Considering all the evidence as a whole, and drawing in support of the judgment all reasonable inferences, we conclude that the evidence was sufficient to support the finding that a substantial motivating factor in Torres's termination was her age and gender.

II. *Instructional Error Regarding Pretext*

B/E Aerospace asserts the trial court gave the jury two incorrect instructions—Nos. 3 and 8—on pretext.[9] We find no reversible error.

A. *Instruction No. 3*

Instruction No. 3 stated: "When a company, at different times, gives different and arguably inconsistent explanations for the termination, you may infer that the articulated reasons are false *and the true reason was discriminatory*." (Italics added.) Instruction No. 3 was misleading to the extent it suggested that, without more, from a mere finding the employer offered false reasons for an employee's termination (based on different and inconsistent explanations), a jury may infer a discriminatory motive. "Proof that the employer's proffered reasons are unworthy of credence may 'considerably assist' a circumstantial case of discrimination, because it suggests the employer had cause to hide its true reasons. [Citation.] Still, there must be evidence supporting a rational inference that *intentional discrimination, on grounds prohibited by the statute, was the*

[9] B/E Aerospace objected to these instructions at trial.

true cause of the employer's actions. [Citation.]" (*Guz, supra,* 24 Cal.4th at p. 361.)

Nonetheless, despite the error, it is not reasonably probable that a different result would have been reached. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580.) The reviewing court must evaluate the likelihood of actual prejudice as reflected in the individual trial record, taking into account "(1) the state of the evidence, (2) the effect of other instructions, (3) the effect of counsel's arguments, and (4) any indications by the jury itself that it was misled." (*Soule, supra,* 8 Cal.4th at pp. 580-581.)

Here, in other instructions, the jury was informed that Torres had to prove that her gender and age were substantial motivating factors in her termination. The jury was also instructed that "an employer may discharge . . . an employee for no reason, or for a good, bad, mistaken, unwise, or even unfair reason, as long as its action is not for a discriminatory . . . reason." A second instruction echoed this principle: "[E]very employer must on occasion review, criticize, terminate, transfer and discipline employees in order to properly manage its business. These personnel actions cannot form the basis of a discrimination claim—even if the Plaintiff objects to the employer's action—unless the Plaintiff shows by a preponderance of the evidence that [the] employer was unlawfully motivated by age or gender discrimination."

In the context of these instructions—explaining that Torres had the burden of proving discriminatory animus, and that an employer's false of mistaken reason is not unlawful unless the plaintiff proved a discriminatory motive—it was not reasonably likely that the jury would

understand from Instruction No. 3, viewed in isolation, that shifting explanations alone would suffice to meet Torres's burden of proof. Further, in closing argument, Torres's counsel never suggested that a finding that B/E Aerospace's reasons were false was sufficient to meet Torres's burden to proving discriminatory animus. She argued only that the falsity of the reasons was a factor to be considered in determining whether Torres was terminated based on her age and gender.[10] Moreover, there was ample evidence other than shifting explanations supporting a finding of discriminatory animus. This evidence includes the remarks and attitude of management (Delaney, Garfias, Richter and Edwards) toward Torres; her replacement with a younger, male worker who performed the same essential job functions; and her consistent satisfactory job performance ratings until Delaney took over management of Westminster. In light of these factors, we conclude that the error in giving Instruction No. 3 was not prejudicial.

B. *Instruction No. 8*

Instruction No. 8 stated: "Pretext may also be inferred from the timing of the company's decision, the identity of the person making the

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[10] "If [the reasons were] false, it's evidence that the real reason . . . was her age and gender"; "The reasons given for plaintiff's termination were false. That's what you can consider in determining whether age and gender were the true motivating factors"; "You're going to have these jury instructions [which state] you can't lie, and . . . terminate somebody for a discriminatory reason"; "Then we talk about false reasons again. . . . You can look at pretext is [*sic*] what's called a lie. . . . Pretext may be inferred from the timing of the decision."

decision, and the terminated employee's job performance before adverse employment action." This instruction is a correct statement of the law, as far as it goes. (*California Fair Employment & Housing Com. v. Gemini Aluminum Corp.* (2004) 122 Cal.App.4th 1004, 1023 ["'Pretext may also be inferred from the timing of the company's termination decision, by the identity of the person making the decision, and by the terminated employee's job performance before termination.'"].) It is true that there are qualifications to this principle: as explained in *Guz,* because courts are "'not free to second-guess an employee's business judgment,'" an assertion that the plaintiff was more qualified than retained employees is insufficient in itself to establish pretext. (*Guz, supra,* 24 Cal.4th at p. 375.) But that qualification was adequately covered in other instructions we have already mentioned, which explained that a mistaken or false reason for an employer's action (for instance, a mistaken or false characterization of the employee's qualifications or performance) was not unlawful, unless motivated by a discriminatory reason . The jury was told that "an employer may discharge . . . an employee for no reason, or for a good, bad, mistaken, unwise, or even unfair reason, as long as its action is not for a discriminatory . . . reason." It was also told that "[e]very employer must on occasion review, criticize, terminate, transfer and discipline employees in order to properly manage its business. These personnel actions cannot form the basis of a discrimination claim—even if the Plaintiff objects to the employer's action—unless the Plaintiff shows by a preponderance of the evidence that [the] employer was unlawfully motivated by age or gender discrimination."

Further, although the use of the word "and" between the three factors enumerated in Instruction No. 8 might be ambiguous, allowing a juror to possibly interpret the instruction to imply that any one factor alone could support a finding of pretext, we find no reasonable likelihood that any reasonable jury would so parse the instruction. As a whole, and construed in light of Torres's counsel's argument, the instructions adequately conveyed the message that the jury had to examine all the evidence to determine whether B/E Aerospace's false reasons were a pretext for discrimination based on age and gender.

III. *Evidentiary Support for Compensatory Damages*

B/E Aerospace argues that insufficient evidence supports both past and future noneconomic damages because those awards rest upon nothing more than Torres's own self-serving and uncorroborated testimony regarding her emotional distress. Torres counters that a plaintiff's own testimony can establish noneconomic damages, and in any event, such damages are difficult to measure and it is for the jury to determine the reasonableness of damages and probability of future harm. We agree with Torres.

A. *Factual Background*

According to the evidence at trial, before her termination, Torres attempted to resolve the difficulties in her department. She went to Walker and told him that that Garfias was mistreating her because she was a woman and that Garfias wanted Pacheco to take her place. Walker reassured her that she was an asset to the company, and she and Walker

would meet with HR and Garfias to work things out. However, she never heard back from Walker. Instead, after these meetings, Garfias became more hostile to her because he knew that she had complained to her superiors.

As a result, Torres became very upset. B/E Aerospace had been everything to her. Neither Garfias nor Delaney gave her any warnings. She felt desperate and believed she couldn't get any help from B/E. She would go home and cry, and she lost her appetite. She did not see a psychiatrist because she was embarrassed and confused and hoped things would change.

On the day of her termination, Torres thought, "Nobody will help me. And this was the answer? That day it was like the worst day of my life. Andi Ly had to send me out to my car. I started my car. I drove back to my house, and I just didn't know what to do because . . . my family, my husband, my boy is still home. I said how can I walk in the house after working [at B/E] so many years and say I'm out of a job. . . . And then instead of going to my house I—I parked in a Sears parking lot that is close to my house. And I waited there for almost an hour and a half just crying. And I said what am I going to do now? I dedicated my life to B/E. I didn't go to the school and get my final degree. I'm older. Who is going to hire me? Who will believe that I know to do the job if I didn't have a degree to back me up? They destroyed my whole life there. . . . B/E was everything for me. I wanted to retire from that place, and they took all of that away from me. Everything. Everything. The only thing they told me, you can get COBRA to cover your family for your medical."

Torres felt she “will have a scar forever because at my new job now, there’s way more meetings that there [was] at B/E, and they want to hear my voice. They ask for my opinion. And everything comes back to me. And I said I’m afraid. I’m insecure that they are going to say that I have an attitude if I answer? Are they going to say I’m negative if I have an answer?” She had been “fighting with [her termination] for the last three and a half years, hoping one day it will be done.”

B. *Analysis*

“Noneconomic damages compensate an injured plaintiff for nonpecuniary injuries,” which include “physical pain and various forms of mental anguish and emotional distress. [Citation.] Such injuries are subjective, and the determination of the amount of damages by the trier of fact is equally subjective.” (*Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1332.) Noneconomic damages include more than emotional distress and pain and suffering. (*Bigler–Engler v. Breg, Inc*. (2017) 7 Cal.App.5th 276, 300.) “[A] plaintiff may recover not only for physical pain but for fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal.” (*Capelouto v. Kaiser Foundation Hospitals* (1972) 7 Cal.3d 889, 892–893.) “There is no fixed standard to determine the amount of noneconomic damages. Instead, the determination is committed to the discretion of the trier of fact.” (*Corenbaum v. Lampkin, supra*, 215 Cal.App.4th at p. 1332; *Garfoot v. Avila* (1989) 213 Cal.App.3d 1205, 1210 [a jury has “relatively unfettered

authority and responsibility to calculate damages for pain and suffering"].)

"We review the jury's damages award for substantial evidence, giving due deference to the jury's verdict and the trial court's denial of the new trial motion. [Citations.]" (*Bigler–Engler v. Breg, Inc., supra*, 7 Cal.App.5th at p. 300.) "The 'focus is on the quality, not the quantity, of the evidence.'" (*Jorge v. Culinary Institute of America* (2016) 3 Cal.App.5th 382, 396.) "'An appellate court can interfere on the ground that the judgment is excessive only on the ground that the verdict is so large that, at first blush, it shocks the conscience and suggests passion, prejudice or corruption on the part of the jury.'" (*Bigler–Engler v. Breg, Inc., supra*, 7 Cal.App.5th at p. 299.)

Here, Torres presented sufficient evidence of both past and future noneconomic damages. Torres testified she was embarrassed, humiliated and depressed at her workplace due to the conduct of Garfias in taking away her assigned tasks and belittling her in meetings by saying he would hear from everyone but her. Garfias gave her work to Pacheco, the young man she trained. Torres also testified that although she has a new job, she still suffers anxiety given that she had become conditioned at B/E Aerospace to being treated poorly on the job. Further, the amounts awarded, $931,000 for past damages and $510,000 for future damages, are not excessive. The jury was in the best position to evaluate Torres's testimony and her demeanor and determine whether she suffered emotional distress and it was the result of Garfias's conduct, and the degree of her distress. (*Iwekaogwu v. City of Los Angeles* (1999) 75

Cal.App.4th 803, 820–821 [jury in best position to evaluate injury and impairment].)

IV. *Evidentiary Support for Punitive Damages, and Torres's Cross-Appeal from the Remittitur*

B/E Aerospace argues that the punitive damage award, even as reduced by the trial court, should be vacated because there was no evidence of fraud, oppression or malice, or that a managing agent of B/E Aerospace engaged in such conduct. Moreover, B/E Aerospace had a robust antidiscrimination policy and was engaged in good faith efforts to prevent discrimination.

Torres argues that punitive damages can be upheld on principles of authorization and ratification based on Delaney's conduct in ratifying Garfias's conduct, and that Delaney, Garfias and Covarrubias were managing agents because they had sufficient decision-making authority. Further, Torres cross-appeals from the remittitur of the award from $7 million to $1 million, arguing that the original award was well within constitutional parameters at 4.67 times the compensatory damages. As a result, the trial court's remittitur of the award to a ratio of .67 to one constituted an abuse of discretion and the trial court's grant of B/E Aerospace's new trial motion must be reversed.

We conclude that substantial evidence supports the punitive damage award and that the trial court did not abuse its discretion in issuing the remittitur.

A. *Punitive Damages Evidence at Trial*

Torres's evidence regarding B/E Aerospace's financial condition established that B/E Aerospace was a publicly traded corporation with gross sales of $2.7 billion in the year ended 2015, with net earnings of $285.7 million, or $780,000 per day. The company had cash or cash equivalents of $154.1 million, and net capital of $1.9 billion. B/E Aerospace had a net worth of $5.1 billion. However, B/E Aerospace's Westminster plant lost about $3.5 million in 2015.

B/E Aerospace had an in-place anti-discrimination policy at the time of Torres's termination that provided B/E Aerospace "prohibits and will not tolerate any such discrimination or harassment" on the basis of sex, age, "or any other characteristic protected by law." B/E Aerospace's policy strongly encouraged employees to report any conduct they believed was "contrary to this policy" and to make a complaint, either orally or in writing. B/E Aerospace explained that any reported allegations would be "investigated promptly, thoroughly and impartially." Delaney and Covarrubias testified at trial regarding an employee's obligation to report any discrimination and that B/E Aerospace had a "zero tolerance" policy toward discrimination. Torres admittedly did not make any written complaint of her treatment being based upon age or gender discrimination.

In ruling on the new trial motion, the court stated, "[t]he Court finds that the punitive damages award is excessive. Plaintiff is fully compensated for her economic damages and emotional injuries. The Court concurs with defense counsel's contention that there is a tremendous disparity between the compensatory and punitive damages."

B. *Discussion*

1. *Amount of Punitive Damages*

"Punitive damages are properly awarded 'when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate.'" (*Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 428.) Punitive damages generally may be awarded to a plaintiff in a civil action only if "the defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294, subd. (a).) Punitive damages awards that are '"grossly excessive or arbitrary"' are subject to Constitutional limitations because the due process clause entitles a tortfeasor to notice of conduct that will subject him or her to punishment, but also the severity of the penalty. (*Simon v. San Paolo U.S. Holdings Co, Inc*. (2005) 35 Cal.4th 1159, 1171 (*Simon*), citing *State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408 (*State Farm*).)

Both *State Farm, supra*, 538 U.S. at page 418 and *BMW of North America v. Gore* (1996) 517 U.S. 559 (*BMW*) developed a three-factor weighing analysis to evaluate the defendant's conduct and the state's treatment of comparable conduct in other cases. (*Simon, supra*, 35 Cal.4th at pp. 1171–1172.) These constitutional guideposts require the reviewing court to assess (1) the degree of reprehensibility of the defendant's conduct, (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damage award, and (3) the difference between the punitive damage awarded by the jury and such

damages awarded in comparable cases. (*Ibid.*; *State Farm, supra*, at p. 418; *BMW, supra*, at p. 575.)

We review the punitive damage award de novo, making an independent assessment of the *State Farm/BMW* factors. "This '[e]xacting appellate view' is intended to ensure punitive damages are the product of the ""application of law, rather than a decisionmaker's caprice.""" (*Simon, supra*, 35 Cal.4th at p. 1172, citing *State Farm, supra*, 538 U.S. at p. 418.) However, we review findings of historical fact under the substantial evidence test. (*Simon, supra*, at p. 1172.)

2. *Delaney Was a "Managing Agent" of B/E Aerospace*

As a threshold matter, we must determine whether Delaney, Covarrubias or Garfias were managing agents sufficient to impose liability on B/E Aerospace, or whether B/E Aerospace can be said to have ratified their actions. Corporations may be held liable for punitive damages through the malicious acts or omissions of their employees, but only for the acts or omissions of those employees with sufficient discretion to determine corporate policy. (Civ. Code, § 3294, subd. (b);[11] *Cruz v.*

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[11] Civil Code section 3294, subdivision (b), provides: "An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation."

HomeBase (2000) 83 Cal.App.4th 160, 167.) The intent of Civil Code section 3294, subdivision (b) is to limit corporate punitive damage liability to "those employees who exercise substantial independent authority and judgment over decisions that ultimately determine corporate policy." (*White v. Ultramar, Inc*. (1999) 21 Cal.4th 563, 573 (*White*).) Whether an employee is a "managing agent" does not depend on the employee's level in the corporate hierarchy, but the degree of discretion the employees possesses. In order to demonstrate that an employee is a "true managing agent," a plaintiff seeking punitive damages must show that "the employee exercised substantial discretionary authority over significant aspects of a corporation's business." (*White, supra*, 21 Cal.4th at p. 577.) Decisions that meet this standard are "the type likely to come to the attention of corporate leadership." (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 715 (*Roby*).) A managing agent's discretion is the "sort of broad authority that justifies punishing an entire company for an otherwise isolated act of oppression, fraud, or malice." (*Ibid.*) "The scope of a corporate employee's discretion and authority under our [managing agent] test is therefore a question of fact for decision on a case-by-case basis." (*White, supra*, at p. 567.)

"Corporate policy" means the "formal policies that affect a substantial portion of the company and that are the type likely to come to the attention of corporate leadership. It is this sort of broad authority that justifies punishing an entire company for an otherwise isolated act of oppression, fraud, or malice." (*Roby, supra*, 47 Cal.4th at p. 715.) The

"'critical inquiry is the degree of discretion the employees possess in making decisions that will ultimately determine corporate policy.'" (*Kelly–Zurian v. Wohl Shoe Co*. (1994) 22 Cal.App.4th 397, 421 [the senior most supervisor in a corporation's Southern California business, having no authority to set or change corporate policy, is not a managing agent].) Thus, for example, a single store's security supervisor who supervised only a few employees was not a managing agent of a corporation. (*Cruz v. HomeBase, supra*, 83 Cal.App.4th at p. 168.) Nor did a local administrator who supervised only two employees qualify as a managing agent of a corporation. (*Kelly–Zurian v. Wohl Shoe Co., supra,* 22 Cal.App.4th at pp. 406, 421.) However, supervision of eight retail stores and 65 employees was a significant aspect of corporation's business. The zone manager who supervised those stores and exercised significant discretionary authority affecting those stores and company policy was a managing agent of corporation. (*White, supra*, 21 Cal.4th at pp. 577–578; see also *Major v. Western Home Ins. Co*. (2009) 169 Cal.App.4th 1197, 1220–1221 [regional insurance claims manager who managed 35 claims employees and exercised discretionary authority to pay or deny claims was a managing agent of the corporation]; *Hobbs v. Bateman Eichler, Hill Richards, Inc*. (1985) 164 Cal.App.3d 174, 193 [manager of single branch office of securities brokerage firm was a managing agent of corporation because he was responsible for supervision of office's 8,000 accounts to ensure they were not being churned].)

Here, B/E Aerospace argues that neither Delaney, Covarrubias, nor Garfias, qualified as a managing agent: Garfias only supervised between

eight to 10 employees and had no authority to eliminate Torres; Covarrubias had no authority to eliminate Torres's position and had no control over B/E Aerospace's policies and procedures; and Delaney's discretion was limited to enforcing company policies, not making them.

With respect to Delaney, who was Vice President and General Manager at Westminster, we find sufficient evidence supports a finding he was a managing agent of B/E Aerospace. At Delaney's suggestion, B/E Aerospace had Delaney supervise and merge the four MPG sites into Westminster, and he was accountable to corporate for developing and implementing MPG's annual budget, for MPG's profit and loss, and for its operations, including engineering, quality, sales, customer service, environmental issues, and HR. In addition, Delaney made hiring and firing decisions, including the hiring of consultants to address culture issues at Westminster and personnel to implement the ERP,[12] and had the authority to restructure the quality assurance department. Under his leadership, the MPG's annual sales grew from $8 to $20 million. On balance, these factors overwhelm the fact that Delaney had to seek permission from corporate for hiring and firing decisions. Because we find that the evidence supports a finding that Delaney was a managing agent, and therefore his conduct is imputed to B/E Aerospace for purposes of punitive damages, we need not consider whether Garfias and Covarrubias were managing agents.

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[12] ERP stands for enterprise resource planning, an integrated system containing inventory, billing and shipping information.

We also conclude that the evidence also supports a finding that Delaney ratified the discriminatory conduct of Garfias and Covarrubias. "Ratification" in the punitive damages context requires a showing that "under the particular circumstances, the employer demonstrates an intent to adopt or approve oppressive, fraudulent, or malicious behavior by an employee in the performance of his job duties." (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 726.) Ratification can occur where the employer or its managing agent is charged with failing to intercede in a known pattern of workplace abuse, or failing to investigate or discipline the errant employee once such misconduct became known. (*Ibid.*; see also, *Roberts v. Ford Aerospace & Communications Corp*. (1990) 224 Cal.App.3d 793, 800–801 [management knows African-American employee is racially abused by colleagues at work and fires him after he complains]; *Hart v. National Mortgage & Land Co*. (1987) 189 Cal.App.3d 1420, 1432–1433 [management fails to stop known on-the-job sexual harassment of employee by coworkers].) Corporate ratification in the punitive damages context requires actual knowledge of the conduct and its outrageous nature. (*Ibid.*)

Here, Delaney, a managing agent, conferred repeatedly with Garfias and Covarrubias during the period 2011-2012 while they considered eliminating Torres's position. Crediting Torres's evidence, the record demonstrates that Garfias had Delaney's full support in Garfias's conduct toward Torres—excluding her from meetings, explicitly stating he did not want to hear from her when she did attend a meeting, stripping her of many of her duties, and making derogatory comments about her in front of others. Garfias pursued this agenda with the full support of Delaney to

further their objective of eliminating the "matriarchal" "old guard" from quality assurance. Similarly, Covarrubias, with Delaney's support, echoed Delaney and Garfias's sentiments about Torres and the need to eliminate her position.

3. *B/E Aerospace Acted with Malice, Fraud and Oppression*

B/E Aerospace argues that it should not be punished for discrimination when it had a good faith anti-discrimination policy in place, and had Torres made a complaint, B/E Aerospace would have promptly and thoroughly investigated it.

(a) *Showing of Malice*

"Malice" is defined as conduct "intended by the defendant to cause injury to the plaintiff," or "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) "[T]he statute's reference to 'despicable' conduct [represents a] substantive limitation on punitive damage awards. . . . [T]he statute plainly indicates that absent an intent to injure the plaintiff, 'malice' requires more than a 'willful and conscious' disregard of the plaintiffs' interests. The additional component of 'despicable conduct' must be found. [Citations.]" (*College Hospital Inc. v. Superior Court, supra,* 8 Cal.4th at p. 725.)

Several cases are instructive here. In *Cloud v. Casey* (1999) 76 Cal.App.4th 895, 900–901, a female employee was passed over for promotion because of her gender. *Cloud* affirmed the jury's award of

punitive damages, concluding that substantial evidence showed that the employer acted with malice: "The jury could properly conclude that the corporations intentionally discriminated by denying [the plaintiff] a promotion based on gender, then attempted to hide the illegal reason for their decision with a false explanation, and that in this, they acted in a manner that was base, contemptible or vile." (*Id.* at p. 912.) The court further noted that the decision-maker's concealment of the unlawful basis of its adverse employment action and pretextual explanation further supported the jury's findings of oppression. (*Ibid.*) In *Stephens v. Coldwell Banker Commercial Group, Inc.* (1988) 199 Cal.App.3d 1394, a 63–year–old plaintiff had no plans to retire, so the supervisor "engaged in a program of unwarranted criticism of [the] plaintiff's job performance to justify [the] plaintiff's demotion." (*Id.* at pp. 1398, 1403.) The court found the unwarranted criticism was oppressive behavior because it had no factual justification, damaged the plaintiff's reputation, and subjected the plaintiff to embarrassment. (*Id.* at pp. 1403–1404.)

Here, the evidence reasonably showed that three men who had more authority at Westminster than Torres engaged in a pattern of behavior designed to deprive Torres of the job she had had held and performed well for over twenty years. Garfias sought to strip plaintiff of her job duties, marginalized her within her own department, and belittled her in front of others. From the date of Perez's departure, Delaney and Covarrubias, with Garfias's help, orchestrated a scheme to eliminate her position. The jury could properly conclude that, given Torres's commendable job performance before Delaney's arrival and the evidence of discriminatory

animus, B/E Aerospace acted with malice and eliminated her position because she was older and female.

(b) *Showing of Good Faith Corporate Policy on Discrimination Does Not Negate Liability Where Such Policy is Not Followed*

In *Kolstad v. American Dental Assn.* (1999) 527 U.S. 526, the Supreme Court that stated that "[h]olding employers liable for punitive damages when they engage in good faith efforts to comply with Title VII, however, is in some tension with the very principles underlying common law limitations on vicarious liability for punitive damages—that it is 'improper ordinarily to award punitive damages against one who himself is personally innocent and therefore liable only vicariously.'" (*Id*. at p. 544.) *White, supra*, 21 Cal.4th at page 568, footnote 2, cited *Kolstad* with approval, observing in dicta that an in-place policy "may operate to limit corporate liability for punitive damages, as long as the employer implements the written policy in good faith."

Here, although B/E Aerospace's antidiscrimination policy was in theory undertaken in good faith, its implementation was not in good faith at the hands of Delaney, Garfias and Covarrubias. As discussed above, the evidence establishes they only observed the policy's formalities, i.e., checking the boxes on age and gender, but in practice, ignored it completely.

C. *Cross-Appeal of Remittitur*

Torres contends the trial court abused its discretion in reducing her punitive damage award from $7 million to $1 million because the original award was an acceptable ration at 4.67 to one. Torres points to cases upholding similar punitive damage awards. (See e.g., *Simon, supra*, 35 Cal.4th at p. 1182 [four to one]; *Johnson v. Ford Motor Co.* (2005) 35 Cal.4th 1191, 1213 [three to one]; *Fernandes v. Singh* (2017) 16 Cal.App.5th 932, 943–944 [3.982 to one]; *Izell v. Union Carbide Corp.* (2014) 231 Cal.App.4th 962, 984, 988 [4.62 to one].) B/E Aerospace urges this Court to uphold the reduction in punitive damages because the award was excessive as a matter of law. (*Grassilli v. Barr* (2006) 142 Cal.App.4th 1260, 1289–1290.) We find no abuse of discretion.

"Because the quintessence of punitive damages is to deter future misconduct by the defendant, the key question before the reviewing court is whether the amount of damages 'exceeds the level necessary to properly punish and deter.'" (*Adams v. Murakami* (1991) 54 Cal.3d 105, 110.) "'[W]here the trial court has required a remission as a condition to denying a new trial "a verdict is reviewed on appeal as if it had been returned in the first instance by the jury in the reduced amount." [Citations.]'" (*West v. Johnson & Johnson Products, Inc.* (1985) 174 Cal.App.3d 831, 877.) We do not act de novo, however. The trial court's determination of whether damages were excessive is entitled to great weight because it is bound by the more demanding test of weighing conflicting evidence. (*Izell v. Union Carbide Corp., supra,* 231 Cal.App.4th at p. 978.) "All presumptions favor the trial court's determination

[citation], and we review the record in the light most favorable to the judgment [citation]." (*Fortman v. Hemco, Inc.* (1989) 211 Cal.App.3d 241, 259.)

The parties here focus on the second State Farm factor, namely, the disparity between the compensatory and punitive awards. Our Supreme Court has held punitive damages should rarely exceed a single-digit multiplier. (See *Nickerson v. Stonebridge Life Ins. Co.* (2016) 63 Cal.4th 363, 367 ["Absent special justification, ratios of punitive damages to compensatory damages that greatly exceed 9 or 10 to 1 are presumed to be excessive"].) The Supreme Court has stated "an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety." (*State Farm, supra,* 538 U.S. at p. 425.)

However, "California published opinions on this issue have adopted a broad range of permissible ratios—from as low as one to one to as high as 16 to 1—depending on the specific facts of each case." (*Bankhead v. ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, 88 (*Bankhead*); accord, *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1312–1313.) In *Simon, supra*, 35 Cal.4th at page 1182, the California Supreme Court explained that when the ratio of punitive damages to compensatory damages is significantly greater than nine or 10 to one, the punitive damages award is suspect under federal due process. In the absence of some special justification, such as extreme reprehensibility or unusually small compensatory damages, punitive damages based on double digit multipliers cannot survive appellate scrutiny under the due process clause. (*Ibid.*)

However, "[m]ultipliers *less* than nine or 10 are not . . . presumptively *valid* . . . . Especially when the compensatory damages are substantial or already contain a punitive element, lesser ratios 'can reach the outermost limit of the due process guarantee.'" (*Simon, supra*, 35 Cal.4th at p. 1182; *Bankhead, supra*, 205 Cal.App.4th at p. 90 ["The inclusion of a punitive element in emotional distress damages reduces the permissible ratio of punitive to compensatory damages."].) "'[D]ue process permits a higher ratio between punitive damages and a small compensatory award for purely economic damages containing no punitive element than [it does] between punitive damages and a substantial compensatory award for emotional distress; the latter may be based in part on indignation at the defendant's act and may be so large as to serve, itself, as a deterrent.'" (*Roby, supra*, 47 Cal.4th at p. 718, quoting *Simon, supra*, 35 Cal.4th at p. 1189.)

Although initially the jury here awarded 4.67 times the compensatory damages, given that the compensatory award for noneconomic loss was more than 19 times Torres's gross annual salary, as the trial court observed, the compensatory award for noneconomic damages, at $1.44 million, already contained a large component of emotional distress damages. As a result, reduction of the punitive award to align with the compensatory damages here was not an abuse of discretion.

V. ATTORNEY FEES

B/E Aerospace argues that if liability and damages were reversed, the attorney fees award should be vacated, but did not otherwise

challenge the amount of the award. As we affirm the judgment, we also affirm the award of attorney fees.

DISPOSITION

The judgment is affirmed. Respondent is to recover her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.