

PARTIES/ATTORNEYS

Plaintiff	Michelle McMillan	Angelica Caro
Defendant	NurseCore Management Services LLC	James D. Miller Brenna J. Hatcher

PROPOSED TENTATIVE

In a previous order, issued on October 1, 2025, the court detailed the parties and the nature of the lawsuit, and the substance of that order will not be recounted here. Suffice it to say that the court sustained the demurrer filed by defendant NurseCore Management Services, LLC (defendant) to the third and fourth causes of action; denied defendant’s motion to strike on the ground that plaintiff Michelle McMillan (plaintiff) had failed to plead a factual basis for punitive damages (based on an intent to injure); and granted defendant’s motion to strike as to punitive damages as plaintiff had failed to allege an adequate basis for exemplary damages against corporate employer, as required per Civil Code section 2594 subdivision (b), *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563 and progeny. Leave to amend was granted. On October 31, 2025, plaintiff filed a first amended complaint (FAC).

Defendant has filed a motion to strike all requests for punitive damages in the FAC. Defendant (once again) contends that plaintiff has failed to allege particular facts to show malice, oppression or fraud. The court (once again) rejects that claim, because (as the court observed in its earlier order) plaintiff alleges that defendant intended to injure plaintiff, which is an alternative basis for malice, oppression or fraud, and is sufficient by itself to survive challenge. (*G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29; *Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1041 [same]); *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1055 [a claim for punitive damages may be supported by pleading that the wrong was committed with design to injure].)¹

Defendant also renews the claim that plaintiff has failed to allege the necessary facts to support punitive damages for a corporate defendant pursuant to Civil Code section 3294, subdivision (b), and notably because plaintiff has failed to allege with specificity that either Lora Aladdin or Patricia Parker-Bundy, plaintiff’s supervisors, were “managing agents.” As our high court observed in *White v. Ultramar, Inc.*, *supra*, 21 Cal.4th, the term “managing agent” includes only those corporate employees who exercise substantial independent authority and judgment in

¹ Defendant in reply claims that there must be facts to support an intent to injure. As noted in *G.D. Searle & Co.*, however, when plaintiff alleges an intentional wrong, “a prayer for exemplary damages may be supported by a pleading that the wrong was committed willfully or with a design to injure.” (49 Cal.App.3d at p. 29.) Here, while not a model of clarity, plaintiff alleges an intentional wrong by all defendants, including Aladdin and Parker-Bundy. (See, e.g., ¶ 26(f) of the FAC.) Under *G.D. Searle & Co.*, exemplary damages may be supported by pleading that that corporate defendant intended to design or injury plaintiff. That is what has occurred here.

their corporate decision-making so that their decisions ultimately determinate corporate policy. The “mere ability to hire and fire employees” does not render a supervisor employee a managing agent. Rather, it is the discretion an employee wields in their decision-making and the extent to which their decisions inform corporate policy that are determinative. Corporate policy has been defined in this context as encompassing “the general principles which guide a corporation, or rules intended to be followed consistently over time in corporate operations. A ‘managing agent’ is one with substantial authority over decisions that set these general principles and rules.” (*Cruz v. Homebase* (2000) 83 Cal.App.4th 160, 167-168; *White, supra*, 21 Cal.4th at p. 575 [a managing agent is more than a supervisor or someone with hiring and firing powers; a “managing agent” must also have “substantial authority over decisions that ultimately determine corporate policy].) In *White*, for example, a regional director of eight stores was deemed a managing agent. In *Tilkey v. Allstate Ins. Co.* (2020) 56 Cal.App.5th 521, 554, the director of human resources was deemed a managing agent, as he helped guide application of company policy, and formulated operational corporate policy. And in *King v. U.S. Bank National Assn.* (2020) 53 Cal.App.5th 675, a human resources generalist overseeing the commercial banking division of the bank was a managing agent. Conversely supervisors who have no discretionary authority over decisions that ultimately determine corporate policy would not be considered managing agents even though they may have the ability to hire or fire other employees. In order to demonstrate that an employee is a true managing agent under section 3294, subdivision (b), a plaintiff seeking punitive damages would have to show that the employee exercised substantial discretionary authority over significant aspects of a corporation's business. (*White*, at pp. 576-577; see *Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1221 [quoting *White*]; *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 428 [same].)

In the FAC plaintiff alleges that Aladdin was the “Branch Director of the Santa Maria” location, and although she reported “directly to Nurse Care’s Regional Vice President,” she was responsible, inter alia, for “setting goals and objectives for branch operation and growth in accordance with company philosophy, policy and goals for growth”; developed sales and business plans for the branch; identified and conducted sales activities; provided direction to team members and made “day-to-day operations decisions”; managed all “financial components to ensure branch profitability”; provided “clinical and regulatory oversight”; developed and implemented “recruitment plans to support business growth”; ensured branch compliance with all state and federal laws; supervised approximately “75 field employees and 5 office staff”; assigned qualified personnel to client cases; and “conducted investigations of complaints.” As for Parker-Bundy, plaintiff alleges that Parker-Bundy, as a Client Specialist, has “broad discretion to act with little, if any supervision,” and is responsible for, inter alia, assignments, counseling, initiating complaint and service failure reporting and investigations, and ensuring compliance with licensure and credentialing requirements. Based on this, plaintiff alleges that Parker-Bundy exercises “substantial discretionary authority over significant aspects of NurseCore’s business,” and thus can be a “managing agent” for pleading purposes.

Plaintiff in opposition, filed on January 22, 2026, claims these allegations are sufficient to show both employees are “managing agents.” A reply was filed on January 28, 2026. All briefing has been examined.

The court finds that the allegations in the FAC, if true, would support a claim that both Aladdin and Parker-Bundy would be “managing agents” as defined under *White* and progeny, at least for pleading purposes. As noted above, the term “managing agent” includes only those corporate employees who exercise substantial independent authority and judgment in their corporate decision-making so that their decisions ultimately determine corporate policy. (*White, supra*, at pp. 566-567.) The status does not depend on the person’s level within the corporate hierarchy but on the discretion permitted in decision making, and a managing agent can formulate operational policies through discretionary decisions. (*Colucci v. T-Mobile USA, Inc.* (2020) 48 Cal.App.5th 442, 452-453.) While neither Parker-Bundy’s nor Aladdin’s ability to hire and fire is sufficient to characterize either as a managing agent, the allegations show that both potentially guide the application of company policy in some way. The allegations show that when judgment is required, either would make decisions and in so doing arguably formulated operational corporate policy as to investigations, disciplinary measures, and other matters. (*Id.* at p. 452 [a manager’s discretionary authority over daily operations like disciplinary measures, investigations, and employee transfers, led to the “ad hoc formulation of policy”].) Notably, as alleged, both Aladdin and Parker-Bundy allegedly exercised independent authority and judgment in handling these matters sufficient to trigger the rules for managing agents

Defendant insists that the allegations show only “day-to-day management decisions; assigning qualified personnel to cases, counseling field employees, initiating complaint and service failures, investigations, and ensuring compliance with licensing requirements.” “. . . [N]one of these responsibilities rise to the corporate decision-making level such that she would be defined as a ‘managing agent’” Not so. In *Colucci v. T-Mobile, USA, Inc., supra*, 48 Cal.App.5th 442, for example, the court found the following attributes supported a managing agent determination: 1) the manager had independent, final authority to hire or fire employees; 2) he had substantial discretionary authority “over daily store operations, which led to ad hoc formulation of policy,” such as decisions whether to transfer employees, to institute disciplinary measures, how to investigate employees’ reported concerns, all of which affected company policy over significant aspects of the company’s business. The manager need not be involved in “big-level policy making.” (*Id.* at p. 453.) The same attributes have been alleged here. As to both Aladdin and Parker-Bundy, plaintiff claims that they exercise sufficient independent, discretionary authority on day-to-day operations to impact corporate policy, even though they were not high-end corporate policy makers. This is particularly true with regard to licensing and credentialing requirements, which is a form of ad hoc operational policy formulation (i.e., someone who formulates operational policies through discretionary decisions can also be a managing agent). While the allegations are far from overwhelming, they are sufficient, meaning

the issue becomes a question of fact that survives pretrial challenge. (*Davis v. Kiewit Pacific Co.* (2013) 220 Cal.App.4th 358, 366.)

Defendant's reliance on *Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal.App.4th 397 and *Cruz v. HomeBase* (2000) 83 Cal.App.4th 160 is misplaced. In *Kelly-Zurian*, the appellate court reversed the jury's punitive damages award against corporate defendant because the employee at issue "although a supervisor, was not a managing agent of [corporate defendant] Wohl . . ." (*Id.* at p. 405.) Specifically, the appellate court determined that the evidence was "clear that Lawicki was not a managing agent." This was true because the only evidence plaintiff presented was that Lawicki had immediate and direct control over her with the responsibility for supervising her performance. (*Id.* at p. 421.) "However, the fact [plaintiff] reported to Lawicki and that he had the authority to terminate her merely reflect Lawicki was [plaintiff's] supervisor, not that he was a managing agent." (*Id.* at p. 422.) There was no evidence that Lawicki was in a "policymaking position." The allegations involving the two employee's discretionary, policy-making authority are more robust than the insufficient evidence presented in *Kelly-Zurian*.

As for *Cruz*, a jury awarded plaintiff punitive damages against corporate defendant HomeBase, finding that one John Kinsel (who was the offending employee defendant's supervisor) was a "managing agent." The appellate court found the evidence presented at trial was insufficient to support such a finding. The *Cruz* court observed generally that a managing agent "is the group whose intentions guide corporate conduct. . ." (*Id.* at p. 167.) They must exercise "substantial discretionary authority over decisions that ultimately determine *corporate policy*" (*ibid.*, italics in original). While the italicized language is not defined, it means "general principles which guide a corporation, or rules intended to be followed consistently over time in corporate operations" (a managing agent is one who has authority to set general principles and rules. *Id.* at p. 168.) "Here, there was no evidence that Kinsel was an officer or director, and the evidence was insufficient as a matter of law [] to show that Kinsel was a managing agent. Kinsel was not a manager of numerous stores, but only a supervisor subordinate to the store manager in a single outlet of multi-store chain. He supervised only a few employees, and had authority over only one narrow area of a single store's multifaceted operations: security. There was not a hint of evidence that he exercised authority over corporate principles or rules of general application to the corporation." (*Id.* at p. 168.) As was true in *Kelly-Zurian*, above, the court finds the **allegations** in the FAC concerning the two employee's impact on corporate policy as possible policymakers have broader scope than the insufficient **evidence** offered in *Cruz* about Kinsel.²

² The court wants to be clear about what it is saying at this juncture. It may ultimately be the case that **evidence** offered by plaintiff here will be no more significant than the evidence offered by plaintiff in *Cruz*. One can certainly see potential parallels between supervisor Kinsel in *Cruz*, on one hand, and the alleged "managing agents" Aladdin and Parker-Bundy in this case on the other hand. But as was true in *Cruz* (as well as in *Kelly-Zurian*), the plaintiff here should be given an opportunity to develop evidence beyond the pleading stage. It is settled that the scope of corporate employee's discretion and authority are generally questions of fact to be determined on a case-by-case basis. (*White, supra*, 21 Cal.4th at p. 567.) Neither *Cruz* nor *Kelly-Zurian* floundered at the pleading stage. Neither should this case.

The motion to strike concerning allegations in support of any “managing agent” determination is therefore denied.

Nothing offered in defendant’s reply alters the court’s conclusions. Defendant cites to *Myers v. Trendwest Resorts, Inc.* (2007) 148 Cal.App.4th 1403. In *Myers*, plaintiff claimed on appeal that the trial court erred in granting summary adjudication in favor of defendant on plaintiff’s claim for punitive damages (focusing on claims raised under the Fair Employment and Housing Act (FEHA)). The appellate court found punitive damages were inappropriate because the evidence presented at summary adjudication showed that the employee at issue, Damlahki, “was not a corporate officer, director, or managing agent within the meaning of Civil Code section 3294.” This determination did not hinge on the employee’s “level” in the corporate hierarchy, but rather on the “degree of discretion the employees possess in making decisions that will ultimately determinate corporate policy.” As noted by the appellate court: “Here, Trendwest presented evidence that Damlahki did not have policy-making authority, and plaintiff did not refute that evidence.” (*Id.* at p. 1437.) “Plaintiff says in her reply that she *did* dispute the point. She says there was evidence in this case that Damlahki was unfit as a project director, and his unfitness was brought to the attention of upper management. Plaintiff says that, given the evidence, summary adjudication was patently erroneous. However, evidence that Damlahki was unfit as project director says nothing about whether he had policymaking authority. [¶] On the other hand, knowledge by upper management that Damlahki was unfit might provide a basis for punitive damages under Civil Code section 3294, and this basis was not addressed in Trendwest’s separate statement of facts concerning punitive damages.” (*Id.* at p. 1438.)

Nothing in *Myers* supports defendant’s argument here. The issue in *Myers* did not turn on the quality of the pleading allegations, but on plaintiff’s failure to counter evidence presented by corporate employer at summary adjudication. As noted above, the allegations in the FAC include contentions that both Aladdin and Parker-Bundy had corporate policy-making power. *Myers* might be apt if the issue involved an evidence-based determination. But that is not the case in a motion to strike, as the court is required to assume the truth of the allegations as pleaded. (See, e.g., *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 836 [for purposes of a motion to strike, courts read the allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth].) *Myers* did not involve a pretrial pleading challenge, and thus offers little aid to defendant.

Accordingly, the court denies defendant’s motion to strike on all grounds advanced. Defendant is directed to file a responsive pleading within 30 days of today’s hearing date. Both parties are directed to appear in person or by Zoon at the hearing.