

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Barry James Christensen, II v. Findlay ARN, LLC, et al.

Christensen · No. 3:24-CV-00371-ART-CLB · Decided December 31, 2025

SUMMARY

The United States District Court for the District of Nevada addresses Plaintiff Barry James Christensen, II's motion for leave to file an amended complaint and Defendants' motion to strike that motion and the proposed amended complaint. The court grants the motion to amend in part and denies it in part, rejecting proposed new defendants and claims including constructive fraud and constructive discharge as unduly delayed, prejudicial, or futile. The court denies Defendants' motion to strike.

OPINION

1 UNITED STATES DISTRICT COURT 2 DISTRICT OF NEVADA 3 * * * 4 BARRY JAMES CHRISTENSEN, II, Case No. 3:24-CV-00371-ART-CLB 5 Plaintiff, ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S 6 v. MOTION TO FILE AMENDED COMPLAINT AND DENYING 7 FINDLAY ARN, LLC, et al., DEFENDANTS' MOTION TO STRIKE 8 Defendants. [ECF Nos. 51, 53] 9 10 Before the Court is Plaintiff Barry James Christensen, II's ("Christensen") motion 11 for leave to file an amended complaint.

(ECF No. 511.) Also pending before the Court is 12 Defendant Findlay ARN, LLC, Findlay Automotive Inc., and Justin Findlay's (collectively 13 referred to as "Defendants") motion to strike Christensen's motion for leave to file an 14 amended complaint. (ECF No. 532.)

For the reasons stated below, Christensen's motion 15 for leave to file an amended complaint, (ECF No. 51), is granted in part and denied in part 16 and Defendants' motion to strike, (ECF No. 53), is denied. 17 I. PROCEDURAL HISTORY 18 Christensen initiated this suit on August 19, 2024. (ECF No. 2.) Christensen filed 19 a pro se complaint against Defendants Findlay ARN LLC ("Audi Reno Tahoe"), Findlay 20 Automotive, and Justin Findlay ("J.

Findlay"). (Id. at 2-3.) The original complaint in this 21 case alleges the following claims: (1) failure to provide overtime payment under the Fair 22 Labor Standards Act ("FLSA"); (2) unlawful decrease in compensation by employer under 23 NRS 608.100; (3) unlawful demand to receive fee or commission as a condition of giving 24 or continuing employment to work under NRS 613.120; (4) violation of the Family Medical 25 26 1 Defendants responded, (ECF No. 52), and Christensen replied.

(ECF No. 54.) 27 2 Christensen responded, (ECF No. 57), and Defendants replied. (ECF No. 1 Leave Act ("FMLA"); (5) deceptive trade practices under NRS 598.0915(15), NRS 2 598.0923(1)

(d), and NRS 598.0923(1)(e); (6) breach of the covenant of good faith and 3 fair dealing; and (7) liability for personal injury under NRS 41.130. (Id. at 26-68.) All claims 4 are asserted against each Defendant.

(Id.) Christensen seeks compensatory and punitive 5 damages. (Id. at 68-71.) 6 A. Motion to Amend 7 On October 6, 2025, Christensen filed a motion for leave to amend his complaint. 8 (ECF No. 51.) Christensen seeks leave to file an amended complaint “to correct the 9 pleadings based on information that became available after the arbitration ruling, his Initial 10 Disclosures, and Defendants’ subsequent discovery responses.” (Id.)

The amended 11 pleading would: 12 • Remove Findlay Automotive as a Defendant; 13 • Add four new Defendants: Findlay Management Group (“FMG”), Clifford J. Findlay 14 (“C. Findlay”), Donna Sue Findlay (“D. Findlay”), and the Cliff Findlay and Donna S. Findlay Family Trust (“Findlay Trust”) (collectively referred to as “New 15 Defendants”); 16 • Add one new claim for Constructive Fraud, Constructive Discharge, Unjust Enrichment, and Intentional Infliction of Emotional Distress; 17 • Remove the following claims: (1) for unlawful demand to receive fee or commission 18 as a condition of giving or continuing employment to work under NRS 613.120 19 (currently claim 3); (2) deceptive trade practices under NRS 598.0915(15), NRS 598.0923(1)(d), and NRS 598.0923(1)(e) (currently claim 5); and (3) liability for 20 personal injury under NRS 41.130 (currently claim 7).

21 (ECF No. 51 at 2; compare ECF No. 51-1 with ECF No. 2.) Christensen argues that 22 discovery provided in this case gives the factual foundation necessary to plead 23 Constructive Fraud as a new claim and “present Constructive Discharge, Unjust 24 Enrichment, and Intentional Infliction of Emotional Distress as standalone causes of 25 action rather than embedded allegations.” (Id. at 3.)

Christensen also states that he seeks 26 to add several defendants because ownership and organization structure of Audi Reno 27 Tahoe was confirmed through Defendants’ discovery responses, admissions, and parallel 1 litigation. (Id. at 10.) 2 Defendants opposed, arguing that Christensen’s motion to amend is unnecessary, 3 delayed, and in bad faith. (ECF No. 52.)

Defendants argue that the ownership of Audi 4 Reno Tahoe has been publicly available information “[a]t all times relevant to Mr. 5 Christensen’s employment” and that no new facts have been raised to warrant the 6 addition of the New Defendants at this time. (Id. at 2, 7-9.) Defendants further argue that 7 adding the proposed claims would be futile as the claims are legally insufficient.

(Id. at 8 10-20.) 9 Christensen replied, arguing he diligently sought ownership clarification and timely 10 amended after he received new information. (ECF No. 54 at 2.) Christensen admits he 11 had a document from June 2011 disclosing ownership interests in Audi Reno Tahoe but 12

“[b]ecause it was thirteen years old, Plaintiff was unsure if it remained accurate.” (ECF 13 No. 54 at 3.)

Christensen further argues he is “not altering his legal theories” and that 14 Defendants will not be harmed by the new constructive fraud claim because he could not 15 have brought the claim originally. (Id. at 10.) 16 B. Motion to Strike 17 On October 22, Defendants filed a motion to strike Christensen’s motion for leave 18 to amend and his proposed first amended complaint.

(ECF No. 53.) Defendants argue 19 that Christensen is “attempting to smear the name of Defendants and additional parties 20 with spurious and unsupportable claims.” (Id. at 2.) Defendants argue they face harm from 21 these allegations and thus the motion and proposed amended complaint should be 22 stricken. (Id. at 5.) 23 Christensen opposed, arguing that Rule 12(f) only authorizes the Court to strike 24 allegations from a pleading, which does not include his motion to amend.

(ECF No. 57 at 25 12, 17.) Christensen further argues that Defendants are seeking to substitute this Rule 26 12(f) motion to strike for a Rule 12(b)(6) motion to dismiss. (Id. at 18.) Christensen also 27 argues that allegations of wrongdoing are not scandalous or harassing “simply because 1 Defendants replied, arguing that seeking the motion and proposed amended 2 complaint be stricken under Rule 12(f) is proper because the proposed amended 3 complaint is not the operative complaint and therefore not subject to a Rule 12(b)(6) 4 motion.

(ECF No. 59 at 3.) Defendants reiterate their argument that the allegations of 5 misconduct and fraud in the proposed complaint “can only be harassing in nature as each 6 claim includes repeated and exaggerated allegations that fail to actually establish any 7 viable legal claim, regardless of Plaintiff’s intent or assertions otherwise.” (Id. at 6.) 8 II. MOTION TO AMEND 9 A. LEGAL STANDARD 10 Federal Rule of Civil Procedure 15(a)(2) instructs that “[t]he court should freely 11 give[] leave [to amend a pleading] when justice so requires.” The Ninth Circuit has made 12 clear Rule 15(a) permits liberal application.

Sonoma Cnty. Ass’n of Retired Emps. v. 13 Sonoma Cnty., 708 F.3d 1109, 1117 (9th Cir. 2013). Amendments seeking to add parties 14 are not to be granted as freely as amendments seeking to add claims. Union Pac. R.R. 15 Co. v. Nevada Power Co., 950 F.2d 1429, 1432 (9th Cir. 1991).

Under Rule 15(a), courts 16 consider various factors, including: (1) bad faith; (2) undue delay; (3) prejudice to the 17 opposing party; (4) the futility of the amendment; and (5) whether the plaintiff has 18 previously amended his complaint. *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 19 1154 (9th Cir. 2014).

The factors do not weigh equally; rather, prejudice receives the 20 greatest weight. *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020) 21 (citing *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003)). 22 Defendants bear the burden of establishing

prejudice, and absent its presence or 23 a “strong showing” under the other factors, there is a presumption in favor of permitting 24 amendment.

Eminence Cap., LLC, 316 F.3d at 1052 (citing DCD Programs, Ltd. v. 25 Leighton, 833 F.2d 183, 186-87 (9th Cir. 1987)). When considering prejudice, the court 26 may weigh against the movant the amended pleading’s great alteration of the litigation’s 27 nature that requires the opposing party to defend against “different legal theories and... 1 Cir. 2006) (internal quotation omitted).

Alone, such alteration is not fatal. Morongo Band 2 of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990). 3 By contrast, futility “alone can justify the denial of a motion for leave to amend.” 4 Nunes v. Ashcroft, 375 F.3d 805, 808 (9th Cir. 2003) (quoting Bonin v. Calderon, 59 F.3d 5 815, 845 (9th Cir. 1995)). Futility arises when the amendment is legally insufficient, 6 Missouri ex rel.

Koster v. Harris, 847 F.3d 646, 656 (9th Cir. 2017), or where the amended 7 complaint would be subject to dismissal, such as when it violates the statute of limitations. 8 Platt Elec. Supply, Inc. v. EOFF Elec., Inc., 522 F.3d 1049, 1060 (9th Cir. 2008). 9 B. Discussion 10 Christensen seeks to add the New Defendants and add four claims.

The Court will 11 first discuss the addition of the New Defendants before analyzing the proposed claims. 12 1. Amendment to Add Defendants 13 The Court will first address whether Christensen should be given leave to amend 14 his complaint to add the New Defendants.

The Court will first address the addition of C. 15 Findlay, D. Findlay, and the Findlay Trust before turning to evaluate the addition of the 16 FMG. 17 i. C. Findlay, D. Findlay, and the Findlay Trust 18 Turning to proposed defendants C. Findlay, D. Findlay, and the Findlay Trust, 19 Christensen argues he lacked sufficient information to determine the ownership structure 20 of Audi Reno Tahoe and thus now seeks to add these defendants.

(ECF No. 51.) 21 Christensen alleges that the Findlay Trust owns part of Audi Reno Tahoe and therefore 22 C. Findlay and D. Findlay are owners through the Findlay Trust. (Id.) Defendants argue 23 that ownership of an entity does not make an individual an employer. (ECF No. 52.) 24 First, the Court finds that there was undue delay in filing the amended complaint 25 to add these defendants.

In this case, Christensen seeks to add C. Findlay, D. Findlay, 26 and the Findlay Trust because they are part of Audi Reno Tahoe’s ownership structure. 27 (ECF No. 51 at 2.) Christensen states he could not confirm the ownership relationship 1 preparing his own initial disclosures, he located a document from June 2011 disclosing 2 ownership interest in Audi Reno Tahoe.

(Id.) Based on these representations, it seems 3 that Christensen had documentation showing the ownership structure of Audi Reno 4 Tahoe long before he filed the initial complaint in this case. 5

Courts in the Ninth Circuit have held that a plaintiff was not diligent in filing a motion to amend her complaint seven weeks after learning facts in a deposition.

See *Edwards v. 7 Conn Appliances, Inc.*, No. 218CV01998APGBNW, 2020 WL 6126276, at *2 (D. Nev. 8 Sept. 30, 2020), report and recommendation adopted, No. 218CV01998APGBNW, 2020 9 WL 6120151 (D. Nev. Oct. 15, 2020); *Sako v. Wells Fargo Bank, Nat. Ass'n*, No. 10 14CV1034-GPC JMA, 2015 WL 5022326, at *2 (S.D. Cal. Aug. 24, 2015).

Although the 11 amendment in this case was made six weeks after receiving information in discovery, this 12 information was not actually new to Christensen. The Ninth Circuit has repeatedly upheld 13 determinations that a motion to amend was made after undue delay where the plaintiff 14 knew of the facts before filing previous versions of their complaints. *Chodos v. W. Publ'g 15 Co.*, 292 F.3d 992, 1003 (9th Cir.

2002) (citing *Lockheed Martin Corp. v. Network 16 Solutions*, 194 F.3d 980, 986 (9th Cir.1999)). Thus, the Court finds that Christensen was 17 not diligent in filing a motion to amend and the factor of undue delay weighs against 18 granting leave to amend. 19 The Court will next address whether the addition of C. Findlay, D. Findlay, and the 20 Findlay Trust would be futile.

Christensen argues that because these defendants are part 21 of Audi Reno Tahoe's ownership structure, they share liability as his employers. However, 22 Christensen has not alleged sufficient facts to show that these defendants are 23 "employers" under the law. 24 Where an individual exercises "control over the nature and structure of the 25 employment relationship," or "economic control" over the relationship, that individual is an 26 employer within the meaning of the FLSA and is subject to liability.

Boucher v. Shaw, 572 27 F.3d 1087, 1091 (9th Cir. 2009) (citing *Lambert v. Ackerley*, 180 F.3d 997, 1012 (9th 1 Ninth Circuit upheld a finding of liability against a chief operating officer and a chief 2 executive officer where the officers had a " 'significant ownership interest with operational 3 control of significant aspects of the corporation's day-to-day functions; the power to hire 4 and fire employees; [the power to] determin[e][] salaries;[and the responsibility to] 5 maintain [] employment records.' " *Lambert*, 180 F.3d at 1001-02, 1012 (quoting the 6 district court's jury instruction).

7 In his proposed amended complaint, Christensen does not allege with any sort of 8 specificity that the New Defendants had operational control of significant aspects of the 9 business's day-to-day functions, the power to hire and fire employees, or the power to 10 determine salaries. (See ECF No. 51-1.)

As to C. Findlay, D. Findlay, and the Findlay 11 Trust, Christensen alleges they owned 50% of Audi Reno Tahoe. (ECF No. 51-1 at 4-5.) 12 However, the mere fact that these defendants may have financially benefitted from Audi 13 Reno Tahoe is insufficient to find that they are

employers. Based on the proposed 14 amended complaint, it is unclear whether Christensen himself had any interactions – of 15 any kind – with C. Findlay, D. Findlay, or the Findlay Trust.

(See ECF No. 51-1.) Rather 16 than allege with specificity what actions each new Defendant made in relation to his 17 claims, Christensen refers to Audi Reno Tahoe, FMG, J. Findlay, C. Findlay, D. Findlay, 18 and the Findlay Trust jointly as “Defendant Findlays.” (Id. at 5.) This method makes it 19 virtually impossible for the Court to determine which party is responsible for what actions.

20 Therefore, in addition to the undue delay, allowing amendment to include these 21 defendants would be futile. Missouri, 847 F.3d at 656. As futility “alone can justify the 22 denial of a motion for leave to amend,” Christensen’s motion for leave to amend is denied 23 to the extent he seeks to add C. Findlay, D. Findlay, and the Findlay Trust. Nunes, 375 24 F.3d at 808.

25 ii. FMG 26 The Court will now address proposed defendant FMG. Defendants argue that 27 Christensen has “disclosed witnesses and documents clearly identifying FMG” and thus 1 Christensen had the information in his possession showing the ownership structure of 2 Audi Reno Tahoe before he ever filed this lawsuit. (ECF No. 54 at 3.)

Here, the Court 3 again finds that Christensen’s motion to amend was unduly delayed. Chodos, 292 F.3d 4 at 1003 (citing Lockheed Martin, 194 F.3d at 986). While undue delay is not sufficient 5 grounds to deny leave to amend, the factor of undue delay strongly weighs against 6 granting leave to amend. United States v. United Healthcare Ins. Co., 848 F.3d 1161, 7 1184 (9th Cir.

2016). 8 Furthermore, the Court finds that the addition of FMG would require additional 9 discovery and greatly expand the litigation because there will be an increased need to 10 delineate the responsibilities of each party individually in relation to the claims. 11 Christensen argues that additional discovery would be unnecessary because responses 12 from Audi Reno Tahoe and J. Findlay encompass the conduct of FMG.

(ECF No. 51 at 13 25.) This is incorrect. The conduct of Audi Reno Tahoe and J. Findlay cannot be 14 automatically imputed onto FMG. Rather, significant additional discovery would be 15 needed to delineate the actions of each party. This would be significantly prejudicial to 16 the current Defendants and FMG. 17 The combination of undue delay and prejudice resulting to Defendants provide 18 strong reasons for denying Christensen leave to amend to add FMG.

Jones v. Int’l 19 Collection Servs., Inc., No. CV-S-04-0896-KJD-LRL, 2005 WL 8161651, at *1 (D. Nev. 20 May 13, 2005). As amendments seeking to add parties are not to be granted as freely as 21 amendments seeking to add claims, the Court finds that Christensen’s motion to amend 22 is denied as to the addition of FMG. see Union Pac. R.R., 950 F.2d at 1432. 23 1.

Amendment to Add Claims 24 The Court will now turn to the new claims in the proposed amended complaint. 25 i. Constructive Fraud 26 As to the new claim for constructive fraud, Christensen states this claim “arises 27 from [his] review of his Initial Disclosures and substantiated by Defendants’ discovery 1 his initial disclosures, [he] located and reviewed records in his possession that had not 2 previously been examined” and that “[a]nalysis of those records confirmed existing claims 3 and substantiated allegations previously embedded within other claims.” (Id. at 11.)

4 Constructive fraud is characterized by a breach of duty arising out of a fiduciary or 5 confidential relationship. *Perry v. Jordan*, 900 P.2d 335, 337 (1995). In *Long v. Towne*, 6 the Nevada Supreme Court stated that: 7 [c]onstructive fraud is the breach of some legal or equitable duty which, irrespective of moral guilt, the law declares fraudulent because of its 8 tendency to deceive others or to violate confidence.

Constructive fraud is 9 characterized by a breach of duty arising out of a fiduciary or confidential relationship. A “confidential or fiduciary relationship” exists when one 10 reposes a special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests 11 of the one reposing the confidence.

12 639 P.2d 528, 529-30 (Nev. 1982) (citations omitted). A confidential relationship “exists 13 when one party gains the confidence of the other and purports to act or advise with the 14 other’s interests in mind.” *Perry*, 900 P.2d at 338 (emphasis added). A confidential 15 relationship may arise “where one party imposes confidence in the other because of that 16 person’s position, and the other party knows of this confidence.” Id. at 337 (emphasis 17 added).

To prove the existence of a special relationship, a party must show that: (1) “the 18 conditions would cause a reasonable person to impart special confidence”; and (2) the 19 trusted party reasonably should have known of that confidence. *Mackintosh v. Cal. Fed. 20 Sav. & Loan Ass’n*, 935 P.2d 1154, 1160 (Nev. 1997) (per curiam). 21 Claims involving fraud are subject to the heightened pleading standard set forth in 22 Fed.

R. Civ. P. 9(b). Rule 9(b)’s heightened standard applies to state law causes of 23 action, *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103 (9th Cir. 2003), and requires 24 a party to “state with particularity the circumstances constituting fraud.” Fed. R. Civ. P. 25 9(b). A complaint must “ ‘identify the who, what, when, where, and how of the misconduct 26 charged, as well as what is false or misleading about the purportedly fraudulent 27 statement, and why it is false’ ” to satisfy the heightened pleading standard.

Salameh v. 1 Dynamics C4 Sys., Inc., 637 F.3d 1047, 1055 (9th Cir. 2011)). 2 “When an entire complaint, or an entire claim within a complaint, is grounded in 3 fraud and its allegations fail to satisfy the heightened pleading requirements of Rule 9(b), 4 a district court may dismiss the

complaint or claim.” Vess, 317 F.3d at 1107. [T]o state a 5 viable fraud claim, ‘[t]he complaint must specify such facts as the times, dates, places, 6 benefits received, and other details of the alleged fraudulent activity.’ ” Sacramento 7 E.D.M., Inc. v. Hynes Aviation Indus., Inc., 965 F. Supp. 2d 1141, 1151 (E.D.

Cal. 8 2013) (quoting Neubronner v. Milken, 6 F.3d 666, 671 (9th Cir.1993)). To avoid dismissal 9 under the 9(b) standard, a complaint must also state the “specific content of the false 10 representations as well as the identities of the parties to the misrepresentation.’ ” Edwards 11 v. Marin Park, Inc., 356 F.3d 1058, 1066 (9th Cir. 2004) (quoting Alan Neuman Prods., 12 Inc., 862 F.2d at 1393).

13 In this case, Christensen did not allege facts showing that the trusted party 14 reasonably should have known of his confidence in them. Mackintosh v. Cal. Fed. Sav. & 15 Loan Ass’n, 935 P.2d 1154, 1160 (Nev. 1997) (per curiam).

The proposed amended 16 complaint is full of allegations showing that Christensen repeatedly raised concerns about 17 “the fraudulent used car strategy, the resulting financial losses, hostile treatment by GM 18 Parvin (including threats of termination), and mistreatment by Used Car Sales Manager 19 Conidaris” to “Defendant Audi’s Management and Defendant Findlay Management 20 Executives.” (ECF No. 51-1 at 120.)

Christensen alleges he raised these concerns in 21 October 2022, March 2023, April 2023, and September 2023. (Id.) On October 10, 2022, 22 Christensen alleges he told Defendant Findlay Management’s Human Resources 23 Director that “it sometimes feels like Mr. Parvin (General Manager) and Larry (Used Car 24 Sales Manager) are colluding to make our department (Sales) unprofitable so that people 25 can be fired or make everyone so miserable that they will quit.” (Id. at 121.)

In April 2023, 26 Christensen reiterated his concerns and stated “[t]his store is completely mismanaged” 27 and that Mr. Parvin and Mr. Conidaris were “fighting [him] every step of the way.” (Id. at 1 confidence in them or that a confidential relationship was created necessary to support 2 this claim. Consequently, Christensen has failed to sufficiently allege a confidential 3 relationship.

4 As finding that there was a confidential relationship is an essential element of his 5 constructive fraud claim, the proposed amendment is futile because the amendment is 6 legally insufficient. Missouri, 847 F.3d at 656.

As futility “alone can justify the denial of a 7 motion for leave to amend,” Christensen’s motion for leave to amend is denied to the 8 extent he seeks to add a claim for constructive fraud. Nunes, 375 F.3d at 808. 9 However, even assuming the proposed amendment would not be futile, the 10 Desertrain factors still weigh against amendment.

First, as to undue delay, Defendants 11 show that Christensen was fully aware of the facts stated in the complaint related to this 12 claim as this claim. (ECF No. 51 at 25.) Thus, Christensen was in possession of the 13 information necessary to bring a constructive fraud claim from the beginning of the 14 litigation and therefore the motion to amend was unduly delayed.

Chodos, 292 F.3d at 15 1003 (citing Lockheed Martin, 194 F.3d at 986). 16 As to the factor of bad faith, the Court finds that it weighs slightly in favor of denying 17 leave to amend. Christensen offers minimal explanation for the delay other than to state 18 he did not understand how the facts were connected until he received discovery from 19 Defendants.

However, Christensen did have sufficient information to bring his claim using 20 his own personal knowledge and documents already in his possession. Had Christensen 21 not been representing himself pro se, the Court would find that the factor of bad faith 22 weighs strongly in favor of denial. Furthermore, the addition of this claim would change 23 the nature of the litigation and require extensive additional discovery in a case in which 24 there has already been extensive and combative discovery.

Thus, the Court finds that 25 adding this claim at this stage of the litigation would be unduly prejudicial to Defendants 26 in that it would vastly expand the scope of this litigation. Consequently, the Court finds 27 that each of the Desertrain factors support denial of Christensen's motion to amend as to 1 ii. Constructive Discharge 2 Christensen next seeks to amend his complaint to add a claim for constructive 3 discharge.

(ECF No. 51.) A constructive discharge has been held to exist when an 4 employer creates working conditions so intolerable and discriminatory that a reasonable 5 person in the employee's position would feel compelled to resign. *Satterwhite v. 6 Smith*, 744 F.2d 1380, 1381 (9th Cir.1984).

To show constructive discharge, a plaintiff 7 must show "working conditions so intolerable that a reasonable person would have felt 8 compelled to resign." *Penn State Police v. Suders*, 542 US 129, 147 (2004); see 9 also *Munoz*, 2021 WL 9220191, at *3 (citing *Green v. Brennan*, 578 U.S. 547 (2016)).

To 10 that end, an employee who resigns without providing their employer a chance to remedy 11 the problem has not been constructively discharged. *Poland v. Chertoff*, 494 F.3d 1174, 12 1185 (9th Cir. 2007). 13 Where a plaintiff has failed to plead a hostile work environment claim, they have 14 necessarily failed to plead a constructive discharge claim because of the heightened 15 standard for constructive discharge.

See *Mayorga v. Diet Ctr. LLC*, No. 23-15807, 2024 16 WL 1574362, at *2 (9th Cir. Apr. 11, 2024) (because plaintiff had failed to allege a hostile 17 work environment claim, plaintiff could necessarily not establish the higher burden of 18 a constructive discharge claim); *Brooks v. City of*

San Mateo, 229 F.3d 917, 930 (9th Cir. 19 2000) (“Where a plaintiff fails to demonstrate the severe or pervasive harassment 20 necessary to support a hostile work environment claim, it will be impossible for her to 21 meet the higher standard of constructive discharge.”).

22 The Ninth Circuit has held that where a plaintiff was demoted and reassigned to a 23 different state but worked for five months before deciding to retire, and then resigned 24 three months later was not, as a matter of law, the actions of someone who finds his 25 working conditions so intolerable that he felt compelled to resign. Poland, 494 F.3d at 26 1185 (citing Manatt v. Bank of America, 339 F.3d 792, 804 (9th Cir.

2003); Montero v. 27 AGCO Corp., 192 F.3d 856, 861 (9th Cir.1999); Smith v. Bath Iron Works Corp., 943 F.2d 1 In this case, Christensen alleges he was employed by Defendant Audi Reno Tahoe 2 and Findlay Management as General Sales Manager from January 1, 2020, through 3 February 10, 2024. (ECF No. 51-1 at 12.) Christensen alleges that “[t]hroughout his 4 tenure as General Sales Manager, Defendants maintained working conditions that were 5 so severe and intolerable that a person in [his] position would have felt compelled to 6 resign.” (Id. at 113.)

Christensen specifically alleges that on June 6, 2023, he signed a 7 new compensation policy but that “[t]he timing was deliberately calculated to exploit [his] 8 overlapping family and financial crises, ensuring maximum coercive pressure and 9 eliminating any realistic alternative to submission.” (Id. at 116.)

However, Christensen 10 alleges he only realized that his \$1,500 per month guaranteed salary had been eliminated 11 when he returned from FMLA leave in August 2023. (Id. at 117.) Christensen then states 12 he “resigned in February 2024 as a direct result of these intolerable conditions.” (Id.) 13 Here, based on the allegations in the proposed amended complaint, Christensen 14 cannot allege a claim for constructive discharge because, as a matter of law, remaining 15 in the position from January 1, 2020, through February 10, 2024, was not the actions of 16 someone who finds his working conditions so intolerable that he felt compelled to resign.

17 Poland, 494 F.3d at 1185 (citations omitted). Even if the Court disregards Christensen’s 18 general allegations that the conditions were intolerable throughout his entire tenure as 19 General Sales Manager to focus on his allegations following the realization that his 20 compensation was reduced, remaining in the position from August 2023 through February 21 2024 was not the actions of someone who finds his working conditions so intolerable that 22 he felt compelled to resign.

Id. Therefore, the proposed amendment to add a claim for 23 constructive discharge is futile because the amendment is legally insufficient. Missouri, 24 847 F.3d at 656. As futility “alone can justify the denial of a motion for leave to amend,” 25 Christensen’s motion for leave to amend is denied to the extent he seeks to add a claim 26 for constructive discharge.

Nunes, 375 F.3d at 808. 27 Even if the Court did not find that adding the constructive discharge claim would 1 delay, Christensen states that information gained during discovery allowed him to present 2 this claim as a standalone cause of action rather than embedded allegations and admits 3 that he seeks leave to amend the complaint “[b]ased on additional facts and information 4 provided by Plaintiff’s own Initial Disclosures (served April 28, 2025) and corroborated by 5 Defendants’ subsequent discovery responses.” (ECF No. 51 at 3, 7.)

The fact that the 6 “additional facts and information” were included in his own initial disclosures means that 7 Christensen had this information in his possession long before he filed the instant motion 8 to amend.

Thus, the Court finds that the motion to amend was unduly delayed. Chodos, 9 292 F.3d at 1003 (citing Lockheed Martin, 194 F.3d at 986). 10 As to the factor of bad faith, the Court finds that it weighs slightly in favor of denying 11 leave to amend. Christensen offers minimal explanation for the delay other than to 12 “corroborate” facts he already knew. Had Christensen not been representing himself pro 13 se, the Court would find that the factor of bad faith weighs strongly in favor of denial.

14 Furthermore, the addition of this claim would change the nature of the litigation and 15 require extensive additional discovery in a case in which there has already been extensive 16 and combative discovery. Thus, addition of this claim would be unduly prejudicial to 17 Defendants. Consequently, the Court finds that each of the Desertrain factors support 18 denial of Christensen’s motion to amend as to this claim.

19 iii. Unjust Enrichment 20 Christensen also seeks to amend his complaint to add a claim for unjust 21 enrichment. (ECF No. 51.) Under Nevada law, unjust enrichment is an implied contract 22 which “occurs whenever a person has and retains a benefit which in equity and good 23 conscience belongs to another.” *In re Amerco Derivative Litig.*, 252 P.3d 681, 703 (Nev.

24 2011) (quotation omitted); *Leasepartners Corp. v. Robert L. Brooks Trust* Dated Nov. 12, 25 1975, 942 P.2d 182, 187 (Nev. 1997). The elements of unjust enrichment are as follows: 26 (1) “benefit conferred on the defendant by the plaintiff; [(2)] appreciation by the defendant 27 of such benefit, and; [(3)] acceptance and retention by the defendant of such benefit under 1 payment of the value thereof.” *Leasepartners*, 942 P.2d at 187 (quoting *Unionamerica 2 Mortg. & Equity Trust v. McDonald*, 626 P.2d 1272, 1274 (1981)).

An unjust enrichment 3 claim cannot lie where an express written contract exists “because no agreement can be 4 implied when there is an express agreement.” *Id.* 5 In the proposed amended complaint, Christensen alleges Defendants “breached 6 his employment contract” and “compelled [him] to sign a materially adverse compensation 7 policy.” (ECF No. 51-1 at 116.)

Thus, Christensen has alleged that there existed an 8 express written contract concerning his compensation for the duration of his employment. 9 Consequently, amendment would be futile as Christensen cannot maintain a claim for 10 unjust enrichment where there was an express agreement. *Leasepartners*, 942 P.2d at 11 187; *Missouri*, 847 F.3d at 656. Christensen’s motion to amend is therefore denied to the 12 he seeks to add a claim for unjust enrichment.

Nunes, 375 F.3d at 808. 13 Assuming for argument that adding the unjust enrichment claim would not be futile, 14 the *Desertrain* factors still weigh against amendment. First, as to undue delay, 15 Christensen again claims that information gained during discovery allowed him to present 16 this claim as a standalone cause of action rather than embedded allegations and admits 17 that he seeks leave to amend the complaint “[b]ased on additional facts and information 18 provided by Plaintiff’s own Initial Disclosures (served April 28, 2025) and corroborated by 19 Defendants’ subsequent discovery responses.” (ECF No. 51 at 3, 7.)

The fact that the 20 “additional facts and information” were included in his own initial disclosures means that 21 Christensen had this information in his possession long before he filed the instant motion 22 to amend.

Thus, the Court finds that the motion to amend was unduly delayed. *Chodos*, 23 292 F.3d at 1003 (citing *Lockheed Martin*, 194 F.3d at 986). 24 As to the factor of bad faith, the Court finds that it weighs slightly in favor of denying 25 leave to amend. Christensen offers minimal explanation for the delay other than to 26 “corroborate” facts he already knew. Had Christensen not been representing himself pro 27 se, the Court would find that the factor of bad faith weighs strongly in favor of denial.

1 require extensive additional discovery in a case in which there has already been extensive 2 and combative discovery. Thus, addition of this claim would be unduly prejudicial to 3 Defendants. Consequently, the Court finds that all of the *Desertrain* factors support denial 4 of Christensen’s motion to amend as to this claim. 5 iv. Intentional Infliction of Emotional Distress 6 The Court now turns to Christensen’s proposed claim for intentional infliction of 7 emotional distress (“IIED”).

IIED is a claim that arises under Nevada state law. An IIED 8 claim has four elements: “(1) extreme and outrageous conduct on the part of the 9 defendant; (2) intent to cause emotional distress or reckless disregard for causing 10 emotional distress; (3) that the plaintiff actually suffered extreme or severe emotional 11 distress; and (4) causation.” *Blige v. Terry*, 540 P.3d 421, 432 (Nev.

2023) (quoting *Miller 12 v. Jones*, 970 P.2d 571, 577 (Nev. 1998)). “Extreme and outrageous conduct is conduct 13 which is ‘outside all possible bounds of decency and is regarded as utterly

intolerable in 14 a civilized community.” Okeke v. Biomat USA, Inc., 927 F. Supp. 2d 1021, 1029 (quoting 15 Maduik v. Agency Rent–A–Car, 953 P.2d 24, 26 (Nev. 1998)).

In Nevada, it “is well 16 established that whether specific conduct is extreme and outrageous is a factual 17 determination for the jury.” Mikhalsky v. Tran, 555 P.3d 285 (Nev. App. 2024); see Branda 18 v. Sanford, 637 P.2d 1223, 1227 (Nev. 1981) (“[The] jury [is] entitled to determine, 19 considering prevailing circumstances, contemporary attitudes and [the Plaintiff’s] own 20 susceptibility, whether the conduct in question constituted extreme outrage.”) (internal 21 quotation marks omitted). “General physical or emotional discomfort is insufficient to 22 demonstrate severe emotional distress—a plaintiff must allege such ‘serious emotional 23 distress’ that it ‘results in physical symptoms.’ ” Evans v. Hawes, 718 F. Supp. 3d 1351, 24 1373 (D.

Nev. 2024) (quoting Chowdhry v. NLVH Inc., 851 P.2d 459, 482 (Nev. 1993)). 25 In Shoen v. Amerco, Inc., 896 P.2d 469 (Nev. 1995), the Nevada Supreme Court 26 held that verbal threats, frivolous litigation, and the withholding of retirement funds “for 27 the express reason of causing... extreme financial hardship” constituted potentially 1 alleges that Defendants induced him into signing a compensation package that eliminated 2 any guaranteed income and reduced his overall pay significantly.

(ECF No. 51-1 at 145.) 3 Christensen alleges that the timing of when Defendants provided the new compensation 4 package to sign was deliberately calculated to cause emotional distress because it was 5 days before he took leave to care for his children after they had surgery, as well as 6 Christensen’s purchase of a home. (Id. at 145-47, 156.) Christensen further alleges he 7 was subject to retaliatory discipline and hostile work conditions after raising concerns with 8 alleged fraudulent business practices.

(Id. at 147-155.) Christensen concludes that the 9 “combination of economic ruin and psychological harm constitutes extreme damages 10 supporting intentional infliction of emotional distress.” (Id. at 156.) 11 While Christensen has alleged employment discrimination, his allegations do not 12 suggest the kind of targeted, scorched-earth tactics addressed by Shoen.

Furthermore, 13 Christensen has not alleged emotional distress “so severe and of such intensity that no 14 reasonable person could be expected to endure it.” Alam v. Reno Hilton Corp., 819 15 F.Supp. 905, 911 (D. Nev.1993). Christensen’s proposed amendment is therefore futile 16 because it is legally insufficient. Missouri, 847 F.3d at 656.

As futility “alone can justify the 17 denial of a motion for leave to amend,” Christensen’s motion for leave to amend is denied 18 to the extent he seeks to add a claim for IIED. Nunes, 375 F.3d at 808. 19 However, in addition to be futile, the Court finds that the remaining Desertrain 20 factors weigh against amendment.

First, as to undue delay, Christensen states that 21 information gained during discovery allowed him to present this claim as a standalone 22 cause of action rather than embedded allegations and admits that he seeks leave to 23 amend the complaint “[b]ased on additional facts and information provided by Plaintiff’s 24 own Initial Disclosures (served April 28, 2025) and corroborated by Defendants’ 25 subsequent discovery responses.” (ECF No. 51 at 3, 7.)

The fact that the “additional facts 26 and information” were included in his own initial disclosures means that Christensen had 27 this information in his possession long before he filed the instant motion to amend. 1 information related to his own alleged emotional distress long before discovery 2 commenced in this case or at the time the original complaint was filed.

Thus, the Court 3 finds that the motion to amend was unduly delayed. Chodos, 292 F.3d at 1003 (citing 4 Lockheed Martin, 194 F.3d at 986). 5 As to the factor of bad faith, the Court finds that it weighs slightly in favor of denying 6 leave to amend. Christensen offers minimal explanation for the delay other than to 7 “corroborate” facts he already knew. Had Christensen not been representing himself pro 8 se, the Court would find that the factor of bad faith weighs strongly in favor of denial.

9 Furthermore, the addition of this claim would change the nature of the litigation and 10 require extensive additional discovery in a case in which there has already been extensive 11 and combative discovery. Thus, addition of this claim would be unduly prejudicial to 12 Defendants. Consequently, the Court finds that each of the Desertrain factors support 13 denial of Christensen’s motion to amend as to this claim.

14 3. Withdraw Claims and Defendant 15 Finally, the Court will address the motion for leave to amend to withdraw claims 16 and remove Defendant Findlay Automotive. (ECF No. 51.) Christensen seeks to withdraw 17 the following claims: (1) for unlawful demand to receive fee or commission as a condition 18 of giving or continuing employment to work under NRS 613.120 (currently claim 3); (2) 19 deceptive trade practices under NRS 598.0915(15), NRS 598.0923(1) (d), and NRS 20 598.0923(1)(e) (currently claim 5); and (3) liability for personal injury under NRS 41.130 21 (currently claim 7).

(ECF No. 51 at 2.) Christensen explains that these claims “do not 22 provide a private right of action in the employer-employee context.” (Id.) Christensen also 23 seeks to remove Defendant Findlay Automotive because it was erroneously named. (Id.) 24 Christensen explains that Findlay Automotive is a Kia dealership in Las Vegas. (ECF No. 25 54 at 5.) 26 Defendants do not oppose the withdrawal of these claims or Defendant Findlay 27 Automotive.

(See ECF No. 52.) Consequently, Christensen’s motion to amend to is 1 withdrawn: (1) for unlawful demand to receive fee or commission as a condition of giving 2 or continuing employment to work under NRS 613.120; (2) deceptive trade practices 3 under NRS

598.0915(15), NRS 598.0923(1)(d), and NRS 598.0923(1)(e); and (3) liability 4 for personal injury under NRS 41.130.

5 III. MOTION TO STRIKE 6 A. Legal Standard 7 Rule 12(f) of the Federal Rules of Civil Procedure empowers the Court to strike 8 from any pleading “an insufficient defense or any redundant, immaterial, impertinent, or 9 scandalous matter.” *Perrong v. Sperian Energy Corp. et al.*, No. 2:19-cv-00115-RFB-EJY, 10 2019 WL 8161573, at *1 (D. Nev. Aug. 26, 2019); *Board of Trustees of Glazing Health 11 and Welfare Fund v. Z-Glass*, No. 2:17-cv-01638-JAD-NJK, 2019 WL 10733033, at *1 (D.

12 Nev. Apr. 3, 2019); *Ernest Bock, L.L.C. v. Steelman*, No. 2:19-cv-01065-JAD-EJY, 2021 13 WL 4750726, at *2 (D. Nev. Sept. 22, 2021). The essential function of a Rule 12(f) motion 14 is to “avoid the expenditure of time and money that may arise from litigating spurious 15 issues by dispensing with those issues prior to trial.” *Whittlestone, Inc. v. Handi-Craft Co.*, 16 618 F.3d 970, 973 (9th Cir.

2010) (quotations omitted). “Modern litigation is too protracted 17 and expensive for the litigants and the court to expend time and effort pruning or polishing 18 the pleadings.” *Russell Road Food & Beverage, LLC v. Galam*, 2013 WL 6684631, at *2 19 (D. Nev. Dec. 17, 2013) (quoting 5 *Wright & Miller, Federal Practice and Procedure*, § 20 1382 (2004)). Motions to strike are disfavored given the potential for use as a delay tactic 21 and given the limited importance of pleadings in federal practice.

E.g., *Cardinale v. La 22 Petite Academy, Inc.*, 207 F. Supp. 2d 1158, 1162 (D. Nev. 2002). Given their disfavored 23 status, courts often require a showing of prejudice by the moving party before granting 24 the requested relief.” *Roadhouse v. Las Vegas Metropolitan Police Dept.*, 290 F.R.D. 535, 25 543 (D. Nev. 2013). “Whether to grant a motion to strike lies within the sound discretion 26 of the district court.” *Id.* 27 /// 1 B. Discussion 2 Defendants argue that Christensen’s motion to amend and proposed amended 3 complaint should be stricken because Christensen is “attempting to smear the name of 4 Defendants and additional parties with spurious and unsupportable claims.” (ECF No. 53.

5 at 2.) Defendants argue they face harm from these allegations and thus the motion and 6 proposed amended complaint should be stricken. (*Id.* at 5.) 7 The purpose of a Rule 12(f) motion is to “avoid the expenditure of time and money 8 that may arise from litigating spurious issues by dispensing with those issues prior to 9 trial.” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir.

2010) (quotations 10 omitted). In this case, because the Court has already determined that Christensen may 11 not amend his complaint to add the New Defendants or the four proposed

additional 12 claims, the Court finds that neither the motion for leave to amend nor proposed amended 13 complaint should be stricken.

The motion for leave to amend is granted solely to remove 14 claims identified as insufficient. As the allegedly harassing and scandalous allegations 15 will not be allowed to proceed, there is no need for the Court “to expend time and effort 16 pruning or polishing the pleadings.” Russell Road Food & Beverage, 2013 WL 6684631, 17 at *2 (citations omitted).

Thus, Defendants’ motion to strike the motion to amend and the 18 proposed amended complaint is denied. 19 III. CONCLUSION 20 IT IS THEREFORE ORDERED that Christensen’s motion to amend, (ECF No. 51), 21 is GRANTED IN PART and DENIED IN PART as follows: 22 • Christensen’s motion to amend is GRANTED as to the withdrawal of Defendant Findlay Automotive and the following claims: (1) for unlawful demand to receive 23 fee or commission as a condition of giving or continuing employment to work under 24 NRS 613.120; (2) deceptive trade practices under NRS 598.0915(15), NRS 598.0923(1)(d), and NRS 598.0923(1)(e); and (3) liability for personal injury under 25 NRS 41.130; 26 • Christensen’s motion to amend is DENIED as to the addition of Defendants FMG, C. Findlay, D. Findlay, and the Findlay Trust; 27 1 e Christensen’s motion to amend is DENIED as to the addition of claims for Constructive Fraud, Constructive Discharge, Unjust Enrichment, and Intentional 2 Infliction of Emotional Distress.

3 IT IS FURTHER ORDERED that Defendants’ motion to strike the motion to amend and the proposed amended pleading, (ECF No. 53), is DENIED. IT IS SO ORDERED. 6 | DATED: December 31, 2025.) ‘ 7 8 UNITED STATES MAGISTRATE JUDGE 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 94