UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Rilley, et al.,

Plaintiffs,

v.

MoneyMutual, LLC, et al.,

Defendants.

Court File No. 16-cv-4001 (DWF/LIB)

ORDER

This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636(b)(1)(A), and upon Plaintiffs' Motion for Leave to Amend Complaint to Seek Punitive Damages, [Docket No. 176]. The Court held a Motions Hearing on November 15, 2018, after which it took the Motion under advisement. (Minute Entry [Docket No. 206]).

For the reasons discussed below, Plaintiffs' Motion for Leave to Amend Complaint to Seek Punitive Damages, [Docket No. 176], is **GRANTED**.

I. PROCEDURAL HISTORY

In March 2014, Plaintiffs Scott Rilley, Michelle Kunza, Linda Gonzalez, and Michael Gonzalez (collectively, "Plaintiffs"), filed suit in Minnesota state district court against MoneyMutual, LLC, a Nevada corporation that conducts business in Minnesota. (Notice of Removal, Ex. A, [Docket No. 1-1], at 4, 6). Plaintiffs are citizens of Minnesota and they brought claims, on behalf of a putative class, alleging that MoneyMutual is a company "that arranges payday loans between Minnesotans and payday lenders" who are not licensed to operate as payday lenders in Minnesota and who offer loans which violate Minnesota's payday loan laws by charging

interest rates higher than allowed by Minnesota law and failing to make required loan disclosures. (Id. at 4–5). The individual Plaintiffs had each received payday loans after completing an application on MoneyMutual's website, loans that Plaintiffs allege violate Minnesota law. (Notice of Removal, Ex. A, [Docket No. 1-1], at 13–16).

On April 28, 2014, Defendant MoneyMutual moved in Minnesota state district court to dismiss for lack of personal jurisdiction and for failure to join necessary and indispensable parties. (Windler Dec., Ex. 1, [Docket No. 22-1], at 2). The Minnesota state district court denied the motion, finding it had personal jurisdiction over Defendant MoneyMutual. (Windler Decl., Ex. 2, [Docket No. 22-1], at 5). Based upon the denial of the motion to dismiss and in the same order in which it issued that denial, the Minnesota state district court also denied Defendant MoneyMutual's motion to stay discovery pending the ruling on the motion to dismiss. (Windler Decl., Ex. 2, [Docket No. 22-1], at 5, 13).

On November 1, 2016, Plaintiffs filed an Amended Complaint in Minnesota state district court. (Notice of Removal, Ex. B, [Docket No. 1-2], 6–33). Plaintiffs named two additional Defendants: Selling Source, LLC, and PartnerWeekly, LLC (with MoneyMutual, collectively "Defendants"), whom Plaintiffs alleged are also in the business of arranging illegal payday loans between Minnesotans and payday lenders. (Id. at 6). Defendant Selling Source is a Delaware limited liability company with its principal place of business in Nevada. (Id. at 8; Mem. in Supp. of Mot. to Dismiss, [Docket No. 27], at 11). Defendant Selling Source is the parent holding company of several wholly-owned subsidiaries, including Defendant PartnerWeekly, a Nevada limited liability company, and Defendant MoneyMutual. (Notice of Removal, Ex. B, [Docket No. 1-2], at 8, 13; Mem. in Supp. of Mot. to Dismiss, [Docket No. 27], 11; McKay Aff., [Docket No. 28], at 2).

On November 28, 2016, Defendants filed their Notice of Removal to federal court. (Notice of Removal, [Docket No. 1], at 1). On December 1, 2016, Defendants filed a Motion to Dismiss, [Docket No. 8], and an Amended Motion to Dismiss, [Docket No. 11]. In their Memorandum in Support of their Amended Motion to Dismiss, Defendants moved to dismiss the Complaint for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2) or, in the alternative, for failure to state a claim upon which relief can be granted under Rule 12(b)(6). (Mem. in Supp. of Amend. Mtn to Dismiss, [Docket No. 32], 3–5, 8–51). In contrast to their motion to dismiss in Minnesota state court, the Amended Motion to Dismiss argues a lack of personal jurisdiction over all three Defendants, two of whom were not parties to the litigation at the time of the motion to dismiss in Minnesota state court. (Id. at 3 n.2). In addition, Defendant MoneyMutual argued that the state court's decision regarding personal jurisdiction over Defendant MoneyMutual does not preclude it arguing again that the federal court lacks personal jurisdiction over Defendant MoneyMutual, as Defendant MoneyMutual intends to introduce substantially different evidence and argue that the state court's decision was clearly erroneous. (Id.).

On August 30, 2017, District Court Judge Donovan W. Frank granted in part and denied in part Defendants' Amended Motion to Dismiss for Lack of Personal Jurisdiction and for Failure to State a Claim. (Order [Docket No. 62]). Specifically, Judge Frank denied Defendant's Motion to Dismiss for Lack of Personal Jurisdiction; dismissed with prejudice Plaintiffs' claim under Minnesota Statute § 47.60 and Plaintiffs' RICO claim; and dismissed with prejudice Plaintiffs' claims under the Minnesota Consumer Fraud Act, the Minnesota False Statement in Advertising Act, and the Minnesota Uniformed Deceptive Practices Act to the extent those claims rely on the nonactionable statements that MoneyMutual offers short-term loans to people with no other alternatives and that getting a payday loan "can help provide the immediate assistance to avoid

expensive fees." (Id. at 26–27). Thus, Plaintiffs' remaining claims are for violations of Minnesota Statute § 47.601, the Minnesota Consumer Fraud Act, the Minnesota Uniform Deceptive Trade Practices Act, unjust enrichment, civil conspiracy and aiding and abetting, and alter ego/piercing. (Id.).

On March 21, 2018, Plaintiffs filed their Second Amended Complaint, which added Plaintiffs Jonathan Aldrich, Venus Colquitt-Montgomery, and Kendra Buettner, and did not add any new claims or theories of recovery. (Second Amended Compl. [Docket No. 85]). Defendants then filed a Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint, seeking to dismiss the Second Amended Complaint in its entirety. (Mot. to Dismiss [Docket No. 95]).

On October 3, 2018, Judge Frank denied Defendants' Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint. (Mem. Opinion and Order [Docket No. 172]).

On October 17, 2018, Plaintiffs' filed the present Motion for Leave to Amend to Seek Punitive Damages. (Plfs.' Motion to Amend [Docket No. 176]). On November 2, 2018, Defendants filed their opposition to Plaintiffs' Motion to Amend. (Defs.' Opposition [Docket No. 202]).

II. PLAINTIFF'S MOTION FOR LEAVE TO AMEND. [DOCKET NO. 176].

Plaintiffs now move this Court for leave to amend their Complaint. (Plfs.' Motion to Amend [Docket No. 176]). Specifically, Plaintiffs now move the Court for leave to add a claim for punitive damages against all Defendants. (Id.).

1. Standards of Review

"As part of the Tort Reform Act of 1986, the Minnesota legislature enacted § 549.191 prohibiting a prayer for punitive damages in the initial complaint and requiring a prima facie showing to the court as a condition of seeking such damages in an amended complaint." Fournier v. Marigold Foods, Inc., 678 F. Supp. 1420, 1422 (D. Minn. 1988). As this District has previously

explained, "the Minnesota Legislature adopted, in 1986, the [evidentiary based] pleading requirements of Section 549.191 in order to deter certain practices in the presentment of punitive damage claims which were thought to be abusive, and in order to address a perceived insurance crisis." Ulrich v. City of Crosby, 848 F. Supp. 861, 866–67 (D. Minn. 1994). As the Eighth Circuit Court of Appeals has recognized, the Legislature enacted the statute "to prevent frivolous punitive damage claims by allowing a court to determine first if punitive damages are appropriate." Gamma–10 Plastics, Inc. v. American President Lines, Ltd., 32 F.3d 1244, 1255 (8th Cir. 1994).

Under Minnesota law, a plaintiff may not assert punitive damages in its initial complaint, but must instead later move to amend the pleadings to claim punitive damages. Minn. Stat. § 549.191. Such a motion must assert "the applicable legal basis under 549.20 or other law for awarding punitive damages" and contain one or more affidavits with facts supporting the motion. Id. A court will grant the motion if it finds *prima facie* evidence of an entitlement to punitive damages. Id. A plaintiff seeking leave to demand punitive damages "is not required to demonstrate an entitlement to punitive damages *per se,* but only an entitlement to allege such damages." Ulrich v. City of Crosby, 848 F. Supp. 861, 867 (D. Minn. 1994).

Minnesota Statute § 549.20, subd. 1 (2006), provides the applicable standard for entitlement to punitive damages:

> (a) Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others.
>
> (b) A defendant has acted with deliberate disregard for the rights or safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and:
>
> (1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or

> (2) deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

Minn. Stat. § 549.20.

The moving party must make a *prima facie* showing that clear and convincing evidence exists that the acts of the defendant show deliberate disregard for the safety of others. "[P]rima facie evidence is that evidence which, if unrebutted, would support a judgment in the movant's favor." Swanlund v. Shimano Indus. Corp., Ltd., 459 N.W.2d 151, 154 (Minn. Ct. App. 1990). Proof is clear and convincing if it is sufficient for a jury to find a high probability of such deliberate disregard. Olson v. Snap Prods., Inc., 29 F. Supp. 2d 1027, 1036 (D. Minn. 1998).

In addition, under the Section 549.20 standard, the Court "is required to search for evidence which is 'clear and convincing.'" Id. "To be 'clear and convincing,' there must be 'more than a preponderance of the evidence but less than proof beyond a reasonable doubt.'" Ulrich, 848 F. Supp. at 868 (quoting Weber v. Anderson, 269 N.W.2d 892, 895 (Minn. 1978)). Ultimately, the Court's independent search for a prima facie showing that clear and convincing evidence exists (albeit unrebutted at this motion stage) that the defendant acted with a deliberate disregard for the rights or safety of others requires the Court to do more than "rubber stamp" the mere allegations in the Motion papers. Ulrich, 848 F. Supp. at 868; Swanlund, 459 N.W.2d at 154.

Since the enactment of Minnesota Statute § 549.191, Courts in this District have applied § 549.191 and § 549.20 in determining whether or not to allow the assertion of claims for punitive damages brought in federal court when the claims are premised on Minnesota state law causes of action. See, e.g., Fournier v. Marigold Foods, Inc., 678 F. Supp. 1420, 1422 (D. Minn. 1988); Coy v. No Limits Educ., No. 15-cv-93 (BRT), 2016 WL 7888047 (D. Minn. Apr. 1, 2016); Inline Packaging, LLC v. Graphic Packaging Int'l LLC, No. 15-cv-3183 (D. Minn. Mar. 8, 2018). More

recently, however, some United States Magistrate Judges in this District have instead applied Federal Rule of Civil Procedure 15's more liberal pleading standard. See, In re Bair Hugger Forced Air Warming Devices Prods. Liab. Litig., MDL No. 15-cv-2666, 2017 WL 5187832 (D. Minn. July 27, 2017).

Accordingly, before addressing the merits of the present Motion, the undersigned must determine the standard applicable to the present Motion.

The Courts which have recently concluded that the Rule 15 standard applies to the question of whether or not a party may amend its complaint to assert claims for punitive damages premised on Minnesota state law claims brought in Federal Court have relied heavily on the United States Supreme Court's preceding decision in Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co., 559 U.S. 393 (2010) (hereinafter "Shady Grove"). See, In re Bair Hugger Forced Air Warming Devices Products Liability Litigation, No. 15-cv-2666 (JNE/FLN), 2017 WL 5187832 (D. Minn. July 27, 2017) (hereinafter "In re Bair Hugger"), aff'd on other grounds on Oct. 19, 2017.

Shady Grove was a putative class action suit filed in the United States District Court for the Eastern District of New York on behalf of plaintiffs to whom Allstate Insurance Company allegedly owed statutory interest on benefits which had been paid after a statutory deadline for payment. 559 U.S. at 397. The United States District Court for the Eastern District of New York dismissed the case for lack of jurisdiction on the grounds that N.Y. Civ. Prac. Law Ann. § 901(b), "which precludes a suit to recover a 'penalty' from proceeding as a class action," applies in cases brought in Federal Court under diversity jurisdiction, and the statutory interest sought was a "penalty." Id. The Court of Appeals for the Second Circuit affirmed, holding that Federal Rule of Civil Procedure 23, which states that "'[a] class action may be maintained'" if two specifically

enumerated conditions are met (both of which were met in Shady Grove), did not conflict with N.Y. Civ. Prac. Law Ann. § 901(b). Id. at 398. The Second Circuit further held that because there was no federal rule addressing the legitimacy of class action suits seeking to recover a penalty and the New York state law was substantive, the New York state law applied in diversity cases such as Shady Grove and prohibited the class action suit initiated therein. Id.

On review, the United States Supreme Court reversed the Second Circuit. A plurality of the Court in Shady Grove concluded that Federal Rule 23 was procedural in nature, further concluded that Rule 23 did not violate the Rules Enabling Act, and therefore, Federal Rule 23 operated in Shady Grove to allow the class action to proceed in Federal Court despite the New York state law. Id. at 406–16.[1]

The undersigned finds that the holding of Shady Grove, and the analysis discussed therein, are inapposite to the determination of whether Federal Rule 15 or Minnesota Statute § 549.191 controls the question of whether or not to allow the assertion of a claim for punitive damages brought in federal court when the claims are premised on Minnesota state law causes of action.

Shady Grove involved a conflict between Federal Rule of Civil Procedure 23 and New York Civil Practice Law § 901(b) which the Shady Grove plurality highlighted was "to be found in New York's procedural code[.]" Shady Grove, 559 U.S. at 409.[2] It is the view of the undersigned

[1] The Court held that Rule 23 directly conflicts with N.Y. Civ. Prac. Law § 901(b) because Rule 23 "empowers a federal court 'to certify a class in each and every case where the Rule's criteria are met'" and, in fact, Federal Courts must do so; Federal Courts do not have the discretion to decline to certify a class if Rule 23's requirements are satisfied. Id. at 399–400. Therefore, the New York state law, which would prohibit a class action seeking a penalty even if Rule 23's requirements are met, directly conflicted with Rule 23. Id. Justice Stevens, however, departed from the plurality's rationale in part and would have held that "there are some state procedural rules that federal courts must apply in diversity cases because they function as a part of the State's definition of substantive rights and remedies," but Justice Stevens nonetheless joined in the ultimate holding reversing the Second Circuit and remanding the case for further proceedings. Id. at 416–17.

[2] Notably, the plurality in Shade Grove acknowledged that N.Y. Civ. Prac. Law § 901(b) was "[u]nlike a law that sets a ceiling on damages (or puts other remedies out of reach) . . . ." Shady Grove, 559 U.S. at 401. Minnesota Statute § 549.191 is a statute that can put the recovery of punitive damages "out of reach" of a plaintiff because if a plaintiff is

that, unlike the procedural law of New York Civil Practice Law § 901(b), Minnesota Statute § 549.191 is a substantive law defining a substantive right under Minnesota law.

The Erie Doctrine prohibits Congress from "declar[ing] substantive rules of common law applicable in a state." See, Erie R. Co. v. Tompkins, 304 U.S. 64, 78 (1938). "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any [diversity jurisdiction] case is the law of the State." Id. at 78. Congress has enacted the Rules Enabling Act, which gives the United States Supreme Court "'the power to prescribe, by general rules, . . . the practice and procedure in civil actions at law'" as long as such rules "'neither abridge, enlarge, nor modify the substantive rights of any litigant.'" See, Sibbach v. Wilson & Co., 312 U.S. 1, 7-8 (1941) (citation omitted).

The reasoning in the portions of Shady Grove which gained the approval of a plurality of the United States Supreme Court do not indicate that Erie concerns mandate anything other than the application in the present case of Minnesota Statute § 549.191.

For the purposes of an Erie doctrine determination, the undersigned finds that Minnesota Statute § 549.191 is a substantive law defining a substantive right under Minnesota law. The Courts in the District of Minnesota—taking guidance from Minnesota State Courts and the Minnesota Legislature—have always on Minnesota state law claims historically applied Erie doctrine substantive law deference to Minn. Stat. § 549.191 and § 549.20, and therefore, have given the Minnesota statutory scheme substantive law status. See, e.g., Fournier v. Marigold Foods, Inc., 678 F. Supp. 1420, 1422 (D. Minn. 1988); Kuehn v. Shelcore, Inc., 686 F. Supp. 233, 234–35 (D. Minn. 1988); Sec. Sav. Bank v. Green Tree Acceptance, Inc., No. 3-89-cv-28, 1990 WL 36142, at

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unable to satisfy the evidentiary requirement, as opposed to mere allegation pleading thresholds, of Minnesota Statute § 549.191', then that plaintiff will not be permitted to pursue a claim for punitive damages.

*1–5 (D. Minn. Mar. 22, 1990), aff'd, 739 F. Supp. 1342 (D. Minn. 1990); Laffey v. Indep. Sch. Dist. No. 625, 806 F. Supp. 1390, 1406 (D. Minn. 1992), aff'd sub nom. Laffey v. St. Paul Tech. Vocational Inst., 994 F.2d 843 (8th Cir. 1993); Hammond v. Northland Counseling Ctr., Inc., No. 5-96-cv-353 (MJD/RLE), 1998 WL 315333, at *6–11 (D. Minn. Feb. 27, 1998); Richardson v. Cardiac Surgical Assocs., P.A., No. 01-cv-542 (ADM/SRN), 2002 WL 737505, at *1 (D. Minn. Apr. 24, 2002); Berczyk v. Emerson Tool Co., 291 F. Supp. 2d 1004, 1008–18 (D. Minn. 2003); Coy v. No Limits Educ., No. 15-cv-93 (BRT), 2016 WL 7888047 (D. Minn. Apr. 1, 2016); Inline Packaging, LLC v. Graphic Packaging Int'l LLC, No. 15-cv-3183 (D. Minn. Mar. 8, 2018).

Further, Minnesota has a state civil rule for amending a pleading identical to Federal Rule of Civil Procedure 15, see, Minn. R. Civ. P. 15.01; however, despite this Minnesota rule, the Minnesota Legislature chose to treat punitive damages outside of Minnesota Rule of Civil Procedure 15.01's liberal mere allegations pleading standard, and the legislature erected a clear and convincing evidentiary threshold showing necessary to punitive damages which if not met is dispositive of punitive damages claims before trial. This treatment by the Minnesota Legislature demonstrates that Minn. Stat. § 549.191 is in effect and by intent substantive in nature.[3]

Applying Federal Rule 15's vastly more liberal mere allegation pleading standard to the decision as to whether or not to allow the assertion of claims for punitive damages brought in federal court when the claims are premised on Minnesota state law causes of action would materially enlarge and modify the substantive rights of litigants attempting to assert claims for

[3] The undersigned acknowledges that the only Court which can definitely answer the question of whether or not Minnesota Statute § 549.191 is substantive in nature is the Minnesota Supreme Court; however, the Minnesota Supreme Court has not spoken directly on the issue. An answer to the current question could be achieved through a certified question to the Minnesota Supreme Court. See, Minn. Stat. § 480.065 (providing that the Minnesota Supreme Court "may answer a question of law certified to it by a court of the United States . . . if the answer may be determinative of an issue in pending litigation in the certifying court and there is no controlling appellate decision, constitutional provision, or statue" and further providing that "[t]he court certifying the question of law to the Supreme Court of [Minnesota] shall issue a certification order and forward it to the Supreme Court of" Minnesota).

punitive damages brought in federal court as opposed to when the claims premised on Minnesota state law causes of action are brought in state court.

The failure now to apply Minnesota Statute § 549.191 in determining whether or not to allow the assertion of claims for punitive damages brought in federal court when the claims are premised on Minnesota state law causes of action would most certainly invite forum shopping and yield markedly disparate litigation outcomes because it would greatly lower the substantive standard by which a plaintiff must show its entitlement to plead and pursue punitive damages on Minnesota state law claims despite this Court's long history of applying Minnesota Statute § 549.191 in materially indistinguishable cases. See, e.g., Sorin Group USA, Inc. v. St. Jude Medical, S.C., Inc., 176 F. Supp. 3d 814, 828 (D. Minn. 2016) ("Because this case is in federal court due to diversity jurisdiction, in order to add punitive damages to its claim, [plaintiff] had to seek leave to amend under Minn. Stat. § 549.191."); Rassier v. Sanner, No. 17-cv-938 (DWF/LIB), 2017 WL 5956909, *7 (D. Minn. Nov. 30, 2017) ("Courts in this district, however, have consistently applied §§ 549.191-.20 to state-law claims."); Streambend Props. III, LLC, v. Sexton Lofts, LLC, 297 F.R.D. 349, 360-61 (D. Minn. 2014) ("Minnesota Statutes sections 549.191 and 549.20 govern the pleading of punitive damages claims based on Minnesota law."); Nat'l Union Fire Ins. Co. of Pittsburgh, PA, v. Donaldson Co., Inc., No. 10-cv-4948 (JRT/TNL), 2016 WL 6902408, *3-7 (D. Minn. June 15, 2016) (applying Minn. Stat. § 549.191 to determine whether punitive damages could be pled); Coy v. No Limits Education, No. 15-cv-93 (BRT), 2016 WL 7888047, *2-6 (D. Minn. April 1, 2016) (same); Fournier v. Marigold Foods, Inc., 678 F. Supp. 1420, 1422 (D. Minn. 1988).

If Federal Rule of Civil Procedure 15 is now applied, because Minn. Stat. § 549.191 and § 549.20 are now to be deemed purely procedural (despite a history of decisions to the contrary),

then for Minnesota state law claims or diversity cases arising out of Minnesota, the District of Minnesota need not even require a motion to amend, but "procedurally" punitive damages could be plead in the original complaint to be filed directly in Federal Court or in the Amended Complaint as soon as a Defendant removes a diversity case from state court to Federal Court. Additionally, under Federal Rule 15, plaintiffs are permitted to amend a pleading "once as a matter of course within" twenty-one days of Answer or responsive pleadings or within twenty-one days of serving the Complaint which could further allow a plaintiff to amend to add a punitive damages claim on Minnesota state law claims as a matter of right. See, Fed. R. Civ. P. 15. Under the liberal Federal Rule 15 standard, a punitive damage claim need not be supported by any actual admissible evidence, but only by mere factual allegations that would plausibly suggest the putative defendant deliberately disregarded the rights or safety of a putative plaintiff. See, Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556–67 (2007)).

This liberal (and unchecked in the case of a "matter of course" amendment) pleading standard completely undermines the substantively claim preclusive purpose the Minnesota Legislature intended in enacting Minnesota Statute § 549.191 and § 549.20. As noted above, "the Minnesota Legislature adopted . . . Section 549.191 in order to deter certain practices in the presentment of punitive damage claims which were thought to be abusive, and in order to address a perceived insurance crisis[,]" Ulrich, 848 F. Supp. at 866–67, and "to prevent frivolous punitive damage claims by allowing a court to determine first if punitive damages are appropriate." Gamma–10 Plastics, Inc. v. American President Lines, Ltd., 32 F.3d 1244, 1255 (8th Cir. 1994). Should the Federal Courts in this District now suddenly shift to take the position that Federal Rule 15 governs the amendment of complaints to add claims for punitive damages based on Minnesota state law without need to comply with the procedural and substantive evidentiary standard of

Minnesota Statute § 549.191, it could lead to a reinstatement in Federal cases involving Minnesota state law claims of the precise "practices in the presentment of punitive damage claims which [the Minnesota Legislature] thought to be abusive" in the litigation settlement process, while the same claim if brought it Minnesota State Court would have a materially different procedural and substantive outcome even at the pleading stage.

Accordingly, in the absence of binding Eighth Circuit, U.S. Supreme Court, or Minnesota Supreme Court precedent to the contrary, the undersigned finds Minnesota Statute § 549.191 to be substantive state law in nature and effect and provides the relevant standard of proof for the present Motion.

Minnesota Statute § 549.191 provides:

> After filing the suit a party may make a motion to amend the pleadings to claim punitive damages. The motion must allege the applicable legal basis under section 549.20 or other law for awarding punitive damages in the action and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim punitive damages.

Minnesota Statute § 549.20, Subd. 1(a), allows punitive damages in civil actions "only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others." "The clear-and-convincing standard is satisfied when "the evidence is sufficient to permit the Jury to conclude that it is highly probable that the defendant acted with deliberate disregard to the rights or safety of others."" Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Donaldson Co., Inc., No. 10-cv-4948 (JRT/TNL), 2016 WL 6902408, *4 (D. Minn. June 15, 2016) (citation omitted).

Minnesota Statute § 549.20 further explains:

> [**Subd. 1**](b) A defendant has acted with deliberate disregard for the rights or safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and:
> (1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or
> (2) deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

In substance, "[a] defendant operates with 'deliberate disregard' by acting with intent or indifference to threaten the rights or safety of others." Gamma–10 Plastics, Inc. v. American President Lines, Ltd., 32 F.3d 1244, 1256 (8th Cir. 1994); See, Hern v. Bankers Life Cas. Co., 133 F. Supp. 2d 1130, 1135 (D. Minn. 2001). As such, "[a] mere showing of negligence is not sufficient" to sustain a claim of punitive damages. Admiral Merchs. Motor Freight, Inc. v. O'Connor & Hannan, 494 N.W.2d 261, 268 (Minn. 1992). "[I]nstead, the conduct must be done with . . . reckless disregard for the rights of others.'" Nat'l Union Fire Ins. Co., 2016 WL 6902408, at *4 (citation omitted).

> [However, because] a prima facie showing is one "that prevails in the absence of evidence invalidating it," "the Court reviews the evidence in support of a Motion to Amend as the Court would review a . . . Motion for Judgment as a Matter of Law" under the Federal Rules of Civil Procedure. In other words, in reaching the determination whether the plaintiff has established a prima facie case for punitive damages, the Court makes no credibility rulings and does not consider any challenge, by cross-examination or otherwise, to the plaintiff's proof, but the Court must carefully scrutinize the evidence presented by the moving party to make sure that it amounts to a prima facie showing that the substantive requirements for punitive damages have been met.

Target Corp. v. LCH Pavement Consultants, LLC, 960 F. Supp. 2d 999, 1010 (D. Minn. 2013) (citations omitted). In reviewing the evidence, a court "makes no credibility rulings, and does not consider any challenge, by cross-examination or otherwise, to the plaintiff's proof." Berczyk v. Emerson Tool Co., 291 F. Supp. 2d 1004, 1008 n. 3 (D. Minn. 2003). "At the present stage, the plaintiff 'is not required to demonstrate an entitlement to punitive damages *per se*, but only an

entitlement to allege such damages.'" Coy v. No Limits Education, No. 15-cv-93 (BRT), 2016 WL 7888047, *3 (D. Minn. April 1 2016) (citations omitted). However, the Court is to scrutinize the record to assure the required evidentiary showing has been met, and it must do more than to merely "rubber stamp" the movant's mere allegations. Ulrich v. City of Crosby, 848 F. Supp. 861, 868–69 (D. Minn. 1994); Swanlund v. Shimano Indus. Corp., Ltd., 459 N.W.2d 151, 154 (Minn. Ct. App. 1990).

2. Discussion

Plaintiffs contend that Defendants deliberately disregarded warnings from the Minnesota Attorney General's office, and that alone is sufficient to allow for a claim for punitive damages to proceed. (Mem. In Supp., [Docket No. 178], at 15). Specifically, Plaintiffs argue that Defendants' were aware that they were violating Minnesota law by arranging short-term loans with unlicensed lenders and continued to do so even after repeated warnings from the Minnesota Attorney General's office. (Id.).

In support of their proposed punitive damages claims, Plaintiffs submitted and rely on the deposition testimony of Glenn McKay, (Ex. 1 [Docket No. 180-1]; Ex. 5 [Docket No. 180-3]); a declaration from Tim Madsen (Ex. 4 [Docket No. 180-2]); a declaration from Glenn McKay (Ex. 6 [Docket No. 180-4]); deposition testimony of David Maple (Ex. 7 [Docket No. 180-5]); deposition testimony of Tim Madsen (Ex. 8 [Docket No. 180-6]); copies of enforcement actions by the Minnesota Department of Commerce against unlicensed lenders (Ex. 10 [Docket No. 180-8]); a copy of Defendants' on-boarding process (produced by Defendants) (Ex. 11 [Docket No. 185]); correspondence from the Minnesota Attorney General to MoneyMutual dated August 7, 2012 (Ex. 12 [Docket No. 180-9]); correspondence from the Minnesota Attorney General to MoneyMutual dated September 25, 2012 (Ex. 13 [Docket No. 180-10]); deposition testimony of

Glenn McKay (Ex. 14 [Docket No. 180-14]); a copy of the complaint from a Nevada case against Defendants (Ex. 15 [Docket No. 180-12]); a copy of a consent order entered into by MoneyMutual and the New York State Department of Financial Services on March 9, 2015 (Ex. 18 [Docket No. 180-13]); a copy of a consent agreement and order between Defendants and the Commonwealth of Pennsylvania Department of Banking, dated February 18, 2011 (Ex. 19 [Docket No. 180-14]); a cease and desist order issued by the State of Oregon, dated November 27, 2013 (Ex. 20 [Docket No. 180-15]); and a complaint filed by the State of Illinois against MoneyMutual dated September 21, 2012 (Ex. 21 [Docket No. 180-16]).

The Court has carefully considered the exhibits and affidavits individually and as a whole, and it finds that Plaintiffs have demonstrated a prima facie case for asserting a claim for punitive damages. The Court discusses each of Plaintiffs' asserted bases in some more detail below.

a) Facts Relevant to Plaintiffs' Punitive Damages Claim

The first letter sent from the Minnesota Attorney General's office was sent on May 19, 2010, by email to customerservice@moneymutual.com, and by mail to 4051 Barrancas Avenue, Pensacola, Florida. (Albanese Decl., Ex. 12 [Docket No. 180]). The letter stated, among other things, the following:

> [T]he Minnesota Legislature amended the laws that regulate payday loans in Minnesota to clarify that these laws apply to online payday lenders when they lend to Minnesota consumers. Moreover, the Minnesota Legislature has made it clear that Minnesota's payday lending laws apply to online lead generators that "arrange for" payday loans to Minnesota consumers. Accordingly, Minnesota's payday lending laws apply to you when you arrange for payday loans to be extended to Minnesota consumers.

(Id.). The letter also went on to cite Minn. Stat. §§ 47.60 and 47.601, which govern consumer small loans and consumer short-term loans. (Id.).

Two years later, on August 7, 2012, the Minnesota Attorney General's office sent another letter to Defendants by mail to 8174 S. Las Vegas Blvd., Suite #109, Las Vegas, Nevada, informing Defendants that the Minnesota Attorney General's office had been contacted by a Minnesota citizen regarding a loan she had received through MoneyMutual. (Id.). The letter stated that the Minnesota citizen had received a $200 loan and had since paid $790 on the loan, which the citizen contended was more than the legal interest that can be charged in Minnesota. (Id.). The letter asked MoneyMutual to "review this matter as quickly as possible." (Id.). The letter also informed Defendants that the Minnesota Attorney General's office had not received a response to their May 19, 2010, letter, a copy of which was included with the latest letter. (Id.).

A month later, on September 7, 2012, the Minnesota Attorney General's office sent another letter to MoneyMutual at 8174 S. Las Vegas Blvd., Suite #109, Las Vegas, Nevada, to follow up on its August 7, 2012, letter, requesting a response from MoneyMutual. (Albanese Decl., Ex. 13 [Docket No. 180]). The letter also included a copy of the August 7, 2012, letter. (Id.).

A few weeks later, on September 25, 2012, the Minnesota Attorney General's office sent another letter to MoneyMutual at 8174 S. Las Vegas Blvd., Suite #109, Las Vegas, Nevada, to again follow up on its August 7, 2012, letter. (Id.). The letter communicated that the Minnesota Attorney General's office had yet to receive any response from MoneyMutual and again requested that they respond. (Id.).

In the deposition of Mr. McKay, his counsel, Donald Putterman, in reference to the letters from the Minnesota Attorney General's office, stated that "Partner Weekly, on behalf of MoneyMutual, as MoneyMutual's agent, would have received any of these letters at some point." (Albanese Decl., Ex. 14, [Docket No. 180], at 4). He went on to say that since the letters were produced by Defendants, "then they were all in our files." (Id.). In that same deposition, Mr.

McKay stated that Defendants' company policy "was not to respond to this type of communication, as there were – they did not have the jurisdiction over us. Other than the State of Nevada, we would have had to respond, but not other states." (Id. at 5). Mr. McKay further stated that the Defendant companies did not make any internal changes to any of its policies or processes in response to any letters that it received from the Minnesota Attorney General's office. (Id.). Mr. McKay also stated that Defendants' companies' policy not to respond to state agencies had changed within the last few years. (Id. at 6). Lastly, Mr. McKay also testified that he simultaneously served as the CEO of Selling Source and President of PartnerWeekly (Id.). According to Mr. McKay, Selling Source also does not have annual meetings, bylaws, and "does not follow . . . corporate formalities." (Id.).

Plaintiffs also submitted documents from legal actions in several other states, including a Consent Order from the New York Department of Financial Services entered into by MoneyMutual on March 9, 2015, and a Consent Agreement and Order from the Commonwealth of Pennsylvania Department of Banking entered into by Selling Source on February 18, 2011. (See, Ex. 15 [Docket No. 180-12]; Ex. 18 [Docket No. 180-13]; Ex. 19 [Docket No. 180-14]; Ex. 20 [Docket No. 180-15]; Ex. 21 [Docket No. 180-16]).

b) Legal Analysis

Plaintiffs assert that Defendants' conduct meets the applicable standard and allows for a punitive damages claim to be asserted because "Defendants were explicitly told multiple times by the Minnesota Attorney General that they were violating the law." (Plfs.' Mem. in Support, [Docket No. 178], at 15). In support of their assertion that they have met their prima facie burden that Defendants knew that their lead-generating activities violated Plaintiffs' rights under Minnesota law, Plaintiffs rely on the letters that the Minnesota Attorney General's office sent to Defendants. Plaintiffs also point to the fact that Defendants were the subject of litigation in several

other states as showing that Defendants were aware that they were subject to the jurisdiction of the laws of other states beyond just Nevada. (Id.).

As previously explained, under Minnesota law Plaintiffs must show, by unrebutted clear and convincing evidence, that Defendants acted with a "deliberate disregard for the rights or safety of others." Minn. Stat. § 549.20, Subd. 1(a). To do so, Plaintiffs must demonstrate that (1) Defendants had knowledge of facts or intentionally disregarded facts that created a high probability of injury to the rights or safety of Plaintiffs, and (2) deliberately proceeded to act with indifference to the high probability of injury to the rights or safety of Plaintiffs. Minn. Stat. § 549.20, Subd. 1(b).

In the present case, this means that Plaintiffs must demonstrate that Defendants knew that their lead-generating activities for unlicensed payday lenders would injure the rights of Plaintiffs, and that Defendants deliberately proceeded to continue generating leads for unlicensed payday lenders with indifference to the high probability of injury to Plaintiffs' rights under Minnesota law. Plaintiffs have made such a showing here.

Plaintiffs cite to two cases that are persuasive examples of where courts have allowed punitive damage claims to proceed to trial where the defendant intentionally disregarded applicable state law.

In Northwest Airlines, Inc. v. American Airlines, Inc., 870 F. Supp. 1499 (D. Minn. 1994), the plaintiff was granted leave to amend the pleadings to seek punitive damages on its claims for misappropriation of trade secrets under the Minnesota Uniform Trade Secrets Act. Id. at 1502. The reviewing judge[4] found that, because of his former occupation, the evidence suggested that the

[4] The Judge was the Honorable Diana E. Murphy, a Circuit Court judge sitting by designation.

defendant "knew or should have known" that the information was proprietary, and that defendant "willfully engaged in misappropriation of that information." Id.

Like in Northwest Airlines, there is evidence in the record—specifically the May 19, 2010, letter—that Defendants were aware that their conduct was violating Minnesota law, but that Defendants continued to engage in conduct—lead-generating activities with unlicensed payday lenders—that violated Minnesota law. Defendants claim that they did not receive the May 19, 2010, letter until a copy of it was sent with the August 7, 2012, letter. (Defs.' Mem. in Opp., [Docket No. 202], at 8). While possible, all subsequent letters were mailed to Defendants at a Las Vegas address, which Defendants acknowledged receiving. (See, Albanese Decl., Ex. 14, [Docket No. 180], at 166–69).[5] Any delay in receiving the initial May 19, 2010, letter is inconsequential because Defendants acknowledge that they received a copy of the May 19, 2010, letter, when they received the subsequent letters sent by the Minnesota Attorney General's office. (Id.). Since the lawsuit was not initiated until 2016, approximately four years after Defendants acknowledge receiving a copy of the May 19, 2010, letter, the potential two-year delay is inconsequential because Defendants had four years to change their alleged conduct and did not do so. Thus, because Defendants acknowledge receiving the letter, there is clear and convincing evidence that Defendants "knew or should have known" that their conduct violated Minnesota law. Northwest Airlines, Inc., 870 F. Supp. at 1502.

In Kruszka v. Novartis Pharm. Corp., 19 F. Supp. 3d 875, 898 (D. Minn. 2014), the Court held that the plaintiff's evidence, "if true, could lead a reasonable jury to find that Defendant had acted with the requisite disregard for the safety of patients." Id. at 898. The Court emphasized two

[5] In the deposition of Glenn McKay, counsel for Defendants acknowledged that Defendants received the Minnesota Attorney General's letters because Defendants were the ones who produced the letters during discovery. (Albanese Decl., Ex. 14, [Docket No. 180], at 4).

examples of evidence in the record that satisfied the burden for a punitive damages claim: (1) evidence of a number of instances where the defendant was made aware of concerns that their product caused injury; and (2) that the defendant was aware that doctors had seen patients that had suffered injury and were concerned the injury was caused by the defendant's product. Id. Thus, the Court found that the plaintiffs had "presented sufficient evidence to allow a reasonable juror to conclude that [the plaintiffs] [had] proved their case for punitive damages." Id. at 899.

Like in Kruszka, the evidence in the present case shows that Defendants deliberately continued to engage in conduct after they had been notified by the Minnesota Attorney General's office that their conduct was violating Minnesota law. Despite the letters from the Minnesota Attorney General's office, evidence in the record shows that Defendants did not make any changes to its policies or processes and continued to engage in lead-generating activities in Minnesota with unlicensed payday lenders. (See, McKay Deposition, Ex. 1 [Docket No. 180-1]; Ex. 5 [Docket No. 180-3]). Thus, there is clear and convincing evidence in the record that shows that Defendants acted with the "requisite disregard for the safety" of Plaintiffs. Kruszka, 19 F. Supp. 3d at 898.

Ultimately, the unrebutted evidence before the Court shows that Defendants were notified by the Minnesota Attorney General's office that they were potentially harming Plaintiffs' rights by violating Minnesota law. The evidence also shows that after receiving this notification, Defendants did not respond or otherwise change their conduct or policies of arranging loans in Minnesota with unlicensed payday lenders. Thus, Plaintiffs have shown by unrebutted clear and convincing evidence that Defendants had knowledge that their conduct created a high probability of injury to Plaintiffs and that they deliberately continued to act in that same manner. Therefore, Plaintiffs have met their prima facie burden.

Defendants make several arguments against finding that Plaintiffs have met their prima facie burden for punitive damages. None, however, are persuasive.

As an initial argument, Defendants argue that they are not lenders subject to the Minnesota payday lending laws, and therefore Plaintiffs cannot meet their burden to present evidence that Defendants knew they were engaged in lending that violated Minnesota law and that they deliberately disregarded an obligation to comply with those laws. (Defs.' Mem. in Opp., [Docket No. 202], at 8). If, as Defendants argue, they are not lenders subject to Minnesota's payday lending laws, then this action would have been dismissed when Defendants filed their 12(b)(6) Motion to Dismiss. Judge Frank, however, rejected Defendants' argument. (See, Mem. Opinion and Order [Docket No. 172]). Judge Frank stated the following regarding Defendants' argument that they are not subject to Minnesota's payday lending laws:

> Minnesota Statute § 47.601 regulates "individual or entity engaged in the business of making or arranging consumer short-term loans, other than a state or federally chartered bank, savings bank, or credit union." Plaintiffs argue that Defendants arranged consumer short-term loans and therefore are covered by the statute. "Arrange" is not defined in the statute. In State ex rel. Swanson v. Cashcall, the Minnesota Court of Appeals concluded that § 47.601 applied to an entity that serviced the loans. 2014 WL 4056028, at *7 (Minn. Ct. App. Aug. 18, 2014). While the case is unpublished, the Court finds it persuasive for the proposition that § 47.601 is not limited to the loan issuers. "Arrange" is defined, among other things, as "to bring about an agreement." Arrange, Merriam-Webster, https://www.merriam-webster.com/dictionary/arrange (last visited Aug. 28, 2017); see also Shire v. Rosemount, Inc., 875 N.W.2d 289, 292 (Minn. 2016) ("To determine the plain meaning of a word, we often consider dictionary definitions."). Here, Defendants' business is connecting lenders and borrowers. Defendants therefore help bring about an agreement. Thus, the Court concludes that, as alleged in the Amended Complaint, Defendants are covered by Minnesota Statute § 47.601 because they arrange consumer short-term loans.

Rilley v. MoneyMutual, LLC, No. 16-cv-4004 (DWF/LIB), 2017 WL 3822727, *5 (D. Minn. August 30, 2017). Thus, because Judge Frank has already found that Defendants are subject to

Minnesota's payday lending statute, Defendants argument that Plaintiffs cannot meet their burden because they are not subject to Minnesota's payday lending statute does not preclude a claim for punitive damages in this case.

Defendants next argue that they cannot be held liable for punitive damages because acted in good-faith when not acknowledging the Minnesota Attorney General's letters notifying Defendant that Minnesota Statute § 47.601 applies to lead-generators. Defendants support their argument in part by relying on Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d (Minn. 1980), in which the Court held that because there was a split in authority regarding the interpretation of the U.C.C., punitive damages were not recoverable if the wrongful conduct was done in a "good faith reasonable interpretation of a statute which had not been construed by this court." Id. at 237.

Cobb, however, is clearly distinguishable from the present case because it involved a split in authority between multiple jurisdictions regarding the interpretation of a statute. While this jurisdiction has not previously interpreted the applicability of Minnesota Statute § 47.601 to lead-generators, neither has any other jurisdiction. Thus, there is no split in authority on the applicability for Defendants to rely on in good faith and thus Cobb does not apply to the present case. Instead, only Defendants interpret Minnesota Statute § 47.601 differently and therefore their argument fails. See, Rilley v. MoneyMutual, LLC, No. 16-cv-4004 (DWF/LIB), 2017 WL 3822727, *5 (D. Minn. August 30, 2017).

Defendants lastly argue that their testimony "reflects an innocent and equally viable explanation for their decision not to respond or take other actions in response to the letters." (Defs.' Mem. in Opp., [Docket No. 202], at 10). Specifically, Defendants argue that their decision not to take action in response to the letters was based on their good faith belief and reliance on their own unilateral company policy that they were not subject to the jurisdiction of the Minnesota Attorney

General or the Minnesota payday lending laws because of their company policy only required them to respond to the State of Nevada. (Id.).

Defendants unpersuasively cite to Romano v. ING ReliaStar Life Ins., No. 12-cv-0137 (SRN/JJK), 2013 WL 3448079 (D. Minn. July 9, 2013), for the proposition that the clear and convincing standard cannot be met where equally viable innocent explanations exist. In Romano, the plaintiff alleged that the defendant conducted a sham investigation into her complaint against another employee. 2013 WL 3448079 at *18. The Court, however, disagreed with the plaintiff's claim that there was a sham investigation, and instead found that the plaintiff's evidence suggested other innocent explanations for the company's findings; namely, that the company legitimately considered the evidence and concluded that plaintiff's complaint was incredible. Id. Thus, the Court held that the plaintiff did not meet the clear and convincing standard required for a punitive damages claim to proceed because there were equally viable explanations for the company's conduct; one of which was innocent. Id.

In the present case, the evidence submitted by Plaintiffs does not show that there was an equally viable innocent explanation of why Defendants did not respond to the Minnesota Attorney General office's letters or change their conduct after receiving the letters. It likewise does not show that Defendants acted in good faith reliance on the advice of legal counsel. Rather, the record reflects that Defendants were contemporaneously involved in several other lawsuits with states other than Nevada, including Illinois, New York, and Pennsylvania. These other lawsuits clearly show that Defendants were aware that they were in fact subject to the laws of states other than Nevada despite their unilateral, internal in company policy. The evidence before this Court merely shows that when Mr. McKay was asked about the Defendants' company policy, Defendants' counsel objected on attorney-client privilege grounds. Ultimately, because Defendants have been

involved in several lawsuits in jurisdictions other than Nevada (some resulting in consent judgments), their arguments that their unilateral, internal company policy constitutes an innocent explanation for their conduct is unpersuasive.

As Section 549.191 makes clear, "if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim punitive damages." Minnesota Statutes Section 549.191. Ultimately, the trial court has discretion to allow punitive damages in consumer protection cases. See, Wexler v. Brother's Entertainment Group, Inc., 457 N.W.2d 218, 220 (Minn. Ct. App. 1990) ("The trial court has discretion to allow punitive damages in consumer fraud cases."); Yost v. Millhouse, 373 N.W.2d 826, 832 (Minn. Ct. App. 1985). Despite Defendants' receipt of the Minnesota Attorney General's letters informing them of Minnesota law and expressing concern that Defendants were violating it, Defendants did not respond to those letters or alter its policies and instead continued to engage in the same alleged harmful conduct for several more years.

Lastly, for purposes of the present motion to amend, there is clear and convincing evidence in the record that Selling Source, MoneyMutual, and PartnerWeekly, are sufficiently indistinguishable from each other so that a claim for punitive damages would apply to all three Defendants. As stated by Judge Frank:

> Here, Selling Source wholly facilities the Minnesota-related payday-lending activities of MoneyMutual and PartnerWeekly. Specifically, Selling Source is the sole owner of PartnerWeekly and MoneyMutual, and executive leaders occupy roles in both Selling Source and PartnerWeekly. For example, Glenn McKay simultaneously served as the CEO of Selling Source and President of PartnerWeekly. According to McKay, Selling Source does not have annual meetings, bylaws, and "does not follow . . . corporate formalities." Evidence also indicates that Selling Source and PartnerWeekly also shared a Chief Technology Officer. Moreover, the content of the MoneyMutual website, which was a touchpoint for most contacts with Minnesotans, was developed with input from

> counsel for Selling Source. And Selling Source employees sent marketing e-mails for PartnerWeekly, including to consumers located in Minnesota.

(Mem. Opinion and Order, [Docket No. 172], at 13–14) (internal citations omitted). In reaching his conclusion, Judge Frank primarily relied on Mr. McKay's deposition testimony, where he stated that Selling Source, Money Mutual, and PartnerWeekly do not follow corporate formalities. (Albanese Decl., Ex. 14, [Docket No. 180], at 4). Additionally, Mr. McKay testified that he simultaneously served as CEO or Selling Source and President of PartnerWeekly. (Id.). Lastly, Mr. McKay testified that all three companies had the same policy regarding responding to regulatory efforts by states other than Nevada. (Id. at 5). Thus, based on Judge Frank's findings, as well as, the fact that Defendants all had the same policies, this Court finds that the analysis for Plaintiffs' punitive claim applies to all Defendants.

In sum, there is clear and convincing prima facie evidence in the record before this Court that Defendants knew that its lead-generating activities in Minnesota with unlicensed payday lenders were harming the rights of Minnesota Plaintiffs, and that Defendants continued to engage in that conduct despite that knowledge. Thus, Plaintiffs' prima facie evidence demonstrates that Plaintiffs are entitled to plead a claim for punitive damages, leaving to the fact finder at trial the propriety for such an award, under the facts of this case, and the Laws of the State of Minnesota. See, Olson, 29 F. Supp. 2d at 1039.

Accordingly, Plaintiffs' Motion for Leave to Amend, [Docket No. 176], is **GRANTED**.

III. Conclusion

For the foregoing reasons, and based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Plaintiffs' Motion for Leave to Amend, [Docket No. 176], is **GRANTED**.

Dated: December 13, 2018

s/Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE