

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, WEST
JORDAN DEPARTMENT, STATE OF UTAH**

**TRAVIS and AIMEE KNORR, husband
and wife,**

Plaintiffs,

vs.

**DWIGHT & LINFORD ENTRPRISES,
LLC, d/b/a JIMMY JOHN'S, a Utah
Limited Liability Company,**

Defendant.

**DWIGHT & LINFORD ENTRPRISES,
LLC, d/b/a JIMMY JOHN'S, a Utah
Limited Liability Company,**

Third-Party Plaintiff,

vs.

**SYSCO CORPORATION, a Texas
corporation; A & Z, LLC, d/b/a; A & Z
PRODUCE, a Utah Limited Liability
Company; KESSIMAKIS PRODUCE,
INC., a Utah Corporation; and
REYNOLDS INDUSTRIES, INC. d/b/a
NATURE JIMS GARDEN FRESH
SPROUTS, a Utah Corporation;**

Third-Party Defendants.

RULING

Case No. 200902468

Judge Douglas Hogan

Pending before the court is Plaintiffs Travis and Aimee Knorr's Motion for Leave to Filed Second Amended Complaint, filed April 19, 2021. Defendant Dwight & Linford Enterprises, LLC d/b/a/ Jimmy John's, ("Dwight & Linford") filed an opposition memorandum on May 3, 2021.

Plaintiffs filed a reply on May 10, 2021 and submitted the motion for decision on June 8, 2021. Neither party requested oral argument. The court reviewed the moving and opposition papers, and now GRANTS the motion as follows.

BACKGROUND

Plaintiffs ask the Court for permission to file a second amended complaint to include a claim for punitive damages. Dwight & Linford operates a Jimmy John's restaurant, where Travis Knorr purchased a Billy Club sandwich on February 21, 2020. After eating the sandwich, he began experiencing symptoms consistent with food poisoning. He was later diagnosed through a stool sample test with STEC O103:H2. Plaintiffs argue his illness was part of a nation-wide outbreak of Shiga toxin-producing E. coli (STEC) O103 that occurred in the early months of 2020. The federal Centers for Disease Control and Utah Department of Health traced this outbreak to the sprouts used by multiple Jimmy John's locations to make sandwiches. Plaintiffs now assert that Dwight & Linford acted recklessly in a manner it knew or should have known would result in substantial harm to customers, justifying a request for punitive damages.

DISCUSSION

Rule 15(a) of the Utah Rules of Civil Procedure permits a party to amend its pleading by leave of court, which should "be freely given when justice so requires." Utah R. Civ. P. 15(a). Generally, "[d]istrict courts should liberally allow amendments unless the amendments include untimely, unjustified, [or] prejudicial factors." *Dahl v. Dahl*, 2015 UT 79, ¶ 162, 794 Utah Adv. Rep. 5 (internal citation omitted). However, "a party is not entitled to file an amended complaint when the new claim is legally insufficient or futile." *Wagner v. State*, 2005 UT 54, ¶ 54, 122 P.3d 599. "[A] complaint does not fail to state a claim unless it appears to a certainty that the plaintiff would be entitled to no

relief under any state of facts which could be proved in support of the claim.” *Shah v. Intermountain Healthcare, Inc.*, 2013 UT App 261, ¶ 9, 314 P.3d 1079, 1084 (citations omitted).

The court first examines whether the proposed amendment is untimely, unjustified, or unfairly prejudicial. “[M]otions to amend are typically deemed untimely when they are filed in the advanced procedural stages of the litigation process, such as after the completion of discovery, [or] on the eve of a scheduled trial date.” *Reller v. Argenziano*, 2015 UT App 241, ¶ 25, 360 P.3d 768, 775. Here, the proposed amendment was filed approximately one year after the original complaint. The parties have recently stipulated to an extension of fact discovery, and trial has not yet been scheduled. At this point, the Court concludes that the proposed amendment is timely. Furthermore, it does not appear to be unjustified. Plaintiffs claim that, through the discovery process, they have already learned information that may support their new claim for punitive damages. Finally, the Court sees no risk of unfair prejudice to Dwight & Linford. Litigation has not proceeded for such a length of time that memories have faded or evidence has diminished. Indeed, Dwight & Linford has just agreed to prolonging the fact discovery period. To the extent that their discovery strategy may be impacted by the amendment, Dwight & Linford still has time to conduct additional fact discovery.

Dwight & Linford nevertheless argues the proposed amendment should be rejected as futile. The claim for punitive damages is futile, it argues, because (1) it relates to Jimmy John’s Franchise, LLC, an entity not named in this suit; and (2) it is unsupported by evidence. Plaintiffs reject these arguments. They assert, and the Court agrees, that although a franchisee may have taken some actions that contributed to Plaintiffs’ injuries, many of those same actions can be rightly ascribed to Dwight & Linford, as well. These include failure to take the contaminated sprouts off the menu, failure to practice good risk communication toward customers, and failure to provide adequate resources to food

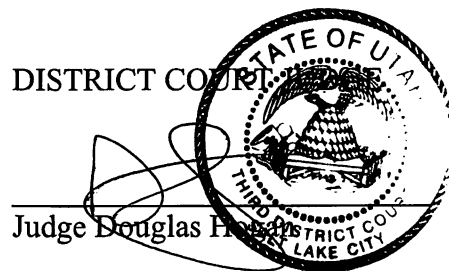
handlers to control the cross-contamination of sprouts. As to Dwight & Linford's contention that punitive damages are not supported by the evidence in this case, Plaintiffs point to these and other actions, as well as the expert opinion of Benjamin Chapman, Ph.D., to refute this claim. Furthermore, fact discovery is ongoing, and may well lead to additional evidence.

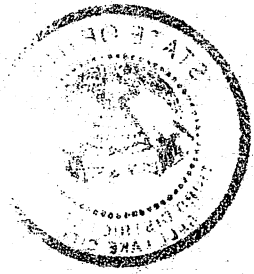
Finally, Plaintiffs cite to the Utah Code, which states that punitive damages are appropriate when the acts or omissions of the defendant are the result of "conduct that manifests a knowing and reckless indifference toward, and a disregard of, the rights of others." Utah Code §78B-8-201(1)(a). Utah courts have interpreted this to mean that "the defendant must either know or should know 'that such conduct would, in a high degree of probability, result in substantial harm to another.'" *Nguyen v. IHC Health Servs., Inc.*, 2010 UT App 85, ¶ 12, 232 P.3d 529, 535. The facts in this case are sufficient to conceivably meet this standard. Plaintiffs should therefore be allowed to plead their claim.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion for Leave to Filed Second Amended Complaint is GRANTED.

DATED this 20th day of July, 2021.





CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 200902468 by the method and on the date specified.

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07/21/2021

/s/ CHERI LINDSLEY

Date: _____

Signature