When 'bad plaintiff' tactics blow up: The cautionary tale of character evidence

Argueta v. Worldwide Flight Services demonstrates how portraying a plaintiff as "bad" through character evidence can undermine a trial and lead courts to overturn verdicts

By Leonid M. Zilberman

A few weeks ago, after giving their opening statements in downtown Los Angeles, the parties in _Argueta v. Worldwide Flight Services, Inc._, decided to settle their case for almost $4 million. This was the second trial of the case, because after a defense verdict the first time around, plaintiff appealed and had the verdict overturned in a published decision from December 2023 (_Argueta v. Worldwide Flight Servs., Inc._, 97 Cal. App. 5th 822 (2023)). The case lasted almost nine years, and the real learning lesson isn't about the second trial or the facts, but why the first verdict was overturned. It is a story that defense lawyers should heed and not repeat because California courts treat character evidence in FEHA harassment cases as a potential minefield, and they police it through the Evidence Code's character rules and section 352 balancing.

But let's begin at the beginning. Defense lawyers love a good story about a "bad" plaintiff. After all, we know that credibility is the prime battle in any employment case, right? Except the _Argueta_ case is a published reminder that if your story is built on character evidence untethered to the elements of harassment, you are not trying a case, rather, you are setting the groundwork for your own reversal on appeal.

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The cautionary tale of admitting evidence that makes plaintiff look bad

Eunices Argueta worked as an agent at a freight operations company, and claimed her boss sexually harassed her. At trial, the court admitted evidence of multiple complaints that other employees made against Argueta, accusing her of retaliation, yelling, making threats and other bad behavior and the employer won a defense verdict in her sexual harassment case brought under FEHA. The win didn't last.
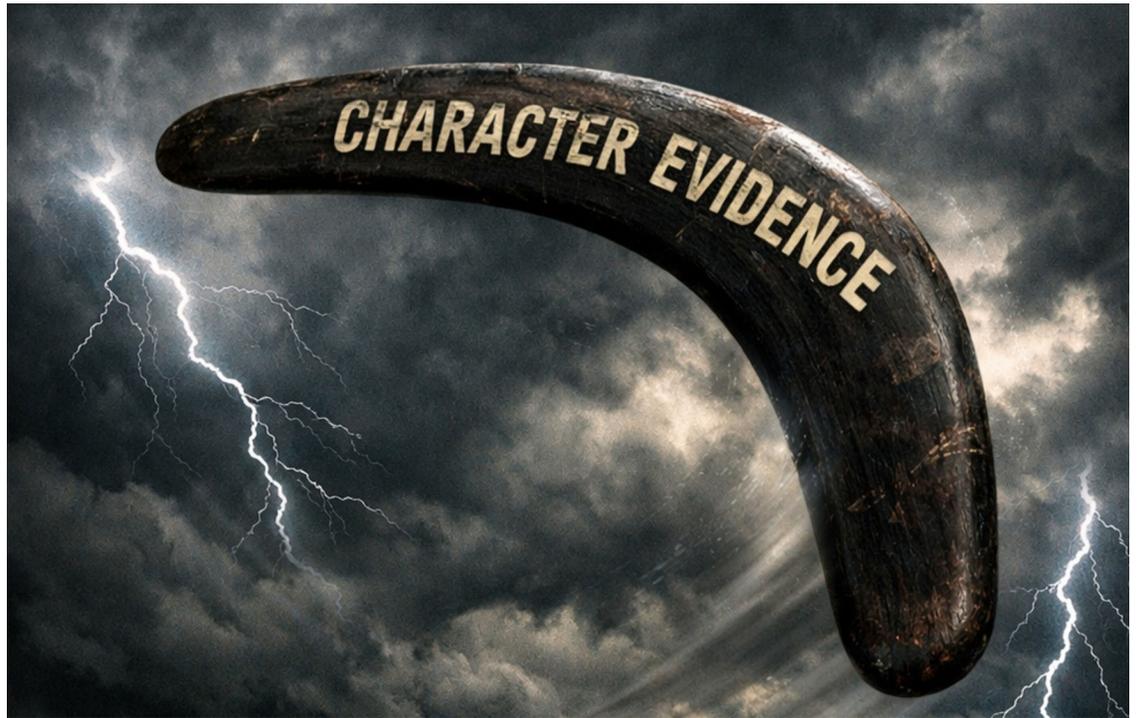
The Court of Appeal reversed and ordered a new trial because the jury heard, in excruciating detail, multiple subordinates' written complaints that the plaintiff was a bullying, rude, lazy, dishonest, power-tripping supervisor. While it played well at trial, not on appeal because this evidence is what the court termed a "quintessential" example of unduly prejudicial character evidence.

The written complaints had nothing to do with whether the accused manager's touching, comments and physical intrusions were severe or pervasive enough to alter the conditions of employment. They had everything to do with painting Argueta as someone jurors would instinctively dislike. That is precisely why the Court of Appeal held their admission was an abuse of discretion under section 352 and why the defense verdict could not stand.

Motive is not a magic password for admissibility

Defense counsel persuaded the trial court that the substance of the subordinates' complaints showed plain-

tiff's "motive" to fabricate harassment to save her own job. That framing is familiar in employment defense: "I'm not using this to show she's a bad person; I'm using it to show why she lied about it."

Argueta exposes how thin that move can be when scrutinized. The court acknowledged that motive to lie is a legitimate credibility issue under Evidence Code section 780, but then did something important: it asked whether the *specific* bad-conduct details added anything probative beyond the fact that serious complaints existed and consequences might follow.

The answer was essentially "no." Argueta's motive to lie (if any) flowed from being under investigation and facing termination, not from whether she was *actually* rude, lazy or cruel to subordinates. And the employer's decision to place her on leave over an incident already signaled that her job was precarious; without needing to parade every allegation of misconduct before the jury. In other words, the *fact* of complaints and discipline might have had minimal probative value on her motive. The *substance*–pages of narrative about her horrible personality –did not.

For defense lawyers, that's a wakeup call: labeling something "motive" or "credibility" does not magically immunize it from Evidence Section 352 analysis. A question you should ask yourself before insisting on the gory details is the same one the court asked here: "Does this specific evidence actually illuminate motive, or does it just make the plaintiff look awful?" If it's mostly the latter, you're loading the reversibleerror gun.

Character evidence: The boomerang you think is a spear

The opinion walks carefully through Evidence Code sections 352, 786, and 1101 and uses the defense closing to illustrate how character evidence reliably metastasizes once it's in the record. The trial judge tried to insulate the complaint letters with a limiting instruction: The jury was told the complaints were admitted only for their effect on plaintiff, not for their truth. But once the jury heard plaintiff was a manipulative, rumorspreading, threatening bully who treated pregnant workers like

malingerers, the die was cast.

Defense counsel's closing then did what, in real life, character evidence should do: it became a direct argument that the plaintiff did what "people like her" do. Counsel told the jury that her alleged threat to "come get" a co-worker if he complained was "consistent with who she is," pointing to complaints that she threatened subordinates. That is textbook propensity reasoning, squarely barred by Evidence Code 1101 and 786. The Court of Appeal had little patience for it and emphasized that evidence she "had done it before" was used to prove she did it again, is exactly what the character rules prohibit.

The Court noted that the complaints portrayed her as someone "not afraid to speak her mind," creating an improper inference that if she were really harassed, she would have reported sooner, which is precisely the reasoning the courts have rejected. Here lies the second wakeup call: character evidence is a boomerang. You throw it thinking you've struck the plaintiff's credibility; the appellate court sees you've weaponized propensity, and it comes back as reversible error.

Evidence Code section 352 is still key to overturning employment trial verdicts

Argueta is, in many ways, a section 352 case masquerading as a "character evidence" case. The opinion repeatedly returns to the imbalance between minimal probative value and overwhelming prejudicial impact. Key points worth building into your defense practice:

• "Quintessential prejudice." The court held the letters "fit the quintessential definition of prejudice" because they uniquely invited the jury to dislike plaintiff as a person–rude, dishonest, aggressive–while having "very little effect on the issues."

• "Extremely careful analysis" required. When prior bad acts are involved, substantial prejudice is inherent and the evidence should be admitted, if at all, only when it has substantial probative value.

• Limiting instructions are not a cure. They are least effective when probative value is low and the evidence goes to a central issue like credibility.

Just like when an umpire call is challenged in baseball, think of section 352 as the slow-motion review booth behind every evidentiary call in employment trials. You may be able to persuade a busy trial judge that you'll use the evidence for some finepoint credibility theory. But the Court of Appeal, with a transcript and much more time, will ask a plainer question: "Did this really help the jury decide the FEHA elements, or did it just make them hate the plaintiff?" If the answer is the latter, you're likely going to get reversed.

Practical lessons for defense counsel

For defense lawyers, *Argueta* provides a practical checklist with four key takeaways:

1. Separate conduct from character:

Conduct that goes directly to an element of the claim (e.g., whether the plaintiff engaged in misconduct that legitimately prompted discipline) may be relevant. Generalized descriptions of being manipulative, rude, a bully or lazy are character evidence and highly dangerous unless they directly tie into a material, disputed issue or element of a specific cause of action.

2. Use a "twosentence" test:

Before you fight to admit a complaint or bad act, ask: "In two sentences, how does this help the jury decide severe/pervasive, causation or damages?" If you can't answer that cleanly without relying on "she's the kind of person who...," you probably shouldn't put it in.

3. Offer the minimum necessary version:

If motive or context truly matter, consider stipulating or seeking admission of a neutralized fact pattern: "Multiple subordinates lodged written complaints; HR warned plaintiff further issues could lead to discipline." You don't need five pages about tone of voice, cellphone use and dramamaking to make that point.

4. Police your own closing argument:

Argueta shows how a defense verdict can be lost in the last 20 minutes of trial. Once you pepper your closing

with phrases like "consistent with who she is," you're no longer in credibilityimpeachment land; you're in propensity land. Draft closing themes with an Evidence Code in hand, not just a gut instinct about what will resonate with jurors.

The irony in *Argueta* is that defense counsel had other ammunition that was far safer and more legally sound to present to the jury. The opinion itself notes: (1) there were timing issues around when plaintiff first formally complained, including consulting a lawyer while on leave; (2) there were inconsistencies between what various witnesses said about what she reported and when; and (3) there was evidence about the employer's internal investigation and its own discipline of the alleged harasser.

All of these go to credibility and perception of severity/pervasiveness without smearing the plaintiff's general character as being a "bully" and "mean." They may not be as emotionally satisfying as reading salacious complaints aloud, but they are less likely to trigger a reversal.

In sexual harassment litigation, the temptation to put the plaintiff on trial is strong. But *Argueta* teaches that when you turn your crossexamination into a personality referendum, you are no longer just trying your case but potentially creating appellate law. And as this opinion shows, the law that emerges may not be the law you wanted.

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