TENTATIVE RULINGS

DEPARTMENT C44

Judge Walter Schwarm

May 10, 2024 (Updated at approximately 7:40-7:45 p.m. on May 9, 2024)

These are the Court's tentative rulings. They may become an order if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

If the parties agree to submit on the Court's tentative ruling, please call the Court Clerk to inform the court that **all** parties submit on the Court's tentative ruling. The tentative ruling will then become the order of the Court upon a party or parties informing the Court that **all** parties submit to the Court's tentative ruling.

APPEARANCES: Department C44 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Check-in instructions and instructional video are available at https://www.occourts.org/media-relations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") are also available at https://www.occourts.org/media-relations/aci.html. Parties preferring to appear in-person for law and motion hearings may do so by providing notice of in-person appearance to the court and all other parties five (5) days in advance of the hearing. (see Appearance Procedures, section 3(c)(1).).

PUBLIC ACCESS: Media and public access to proceedings will be in person in the courtroom where the hearing is scheduled. In the event any proceeding is conducted entirely remotely, the press and public can obtain public access by contacting the courtroom. Phone numbers for the courtrooms can be found at https://www.occourts.org/directory/civil/CivilPhoneDepartmentDirectory.pdf. In those instances where proceedings will be conducted only by remote video and/or audio, access will be provided to interested parties by contacting the courtroom clerk, preferably 24 hours in advance. No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

COURT REPORTERS: Official court reporters (i.e. court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- Civil Court Reporter Pooling; and

- For additional information, please see the court's website at Court Reporter Interpreter Services for additional information regarding the availability of court reporters.

#	Case Name	Tentative
	30-2017-00941390 Zheng v. Zheng 8:30 a.m.	The court does not issue a tentative ruling and will argument regarding whether the spouse of Gene Zheng is an indispensable party based on designation that Gene Zheng and his spouse held the Terry Property as "Husband and Wife as Community Property with Rights of Survivorship" and the Goldenwest Property as "husband and wife as community property." The court requests the parties to appear at 8:30 a.m. on 5-10-24 in Department C44. The parties may appear by way of Zoom.
	30-2016-00882021 Avey v. Mink 2:00 p.m.	**MOTION NO. 1:** **Plaintiff's (Tiffany Avey) Motion for New Trial (Motion), filed on 3-8-24 under ROA No. 893, is DENIED. (Plaintiff's Notice of Intent to Move for New Trial (Notice) was filed on 2-29-24 under ROA No. 890; Also, it appears that Plaintiff filed a duplicate of this Motion on 3-8-24 under ROA No. 895. The court takes the Motion filed under ROA No. 895 OFF CALENDAR.)** Code of Civil Procedure section 659, subdivision (a), states, "The party intending to move for a new trial shall file with the clerk and serve upon each adverse party a notice of his or her intention to move for a new trial, designating the grounds upon which the motion will be made and whether the same will be made upon affidavits or the minutes of the court. . . ." The Notice designates the following grounds as the basis for Plaintiff's Motion: (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial. Cal. Code of Civ. Proc.§ 657(1) . . . ." (Notice; 1:25-28); (2) Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors. Cal. Code of Civ. Proc. § 657(2) . . . ." (Notice; 2:1-5); (3) "Accident or surprise, which ordinary prudence could not have guarded against. Cal. Code of Civ. Proc. § 657(3) . . . ." (Notice; 2:6-7.); (4) "Newly

		discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial. Cal. Code of Civ. Proc. § 657(4) . . . .” (Notice; 2:8-10.); (5) “Excessive or inadequate damages. Cal. Code of Civ. Proc. § 657(5) . . . .” (Notice; 2:11-12.); (6) “Insufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision is against law. Cal. Code of Civ. Proc. § 657(6) . . . .” (Notice; 2;13-14.); and (7) “Error in law, occurring at the trial and excepted to by the party making the application. Cal. Code of Civ. Proc. § 657(7) . . . .” (Notice; 2:14-16.) Although Plaintiff’s Notice designates all of causes contained in Code of Civil Procedure section 657, the Motion specifically relies on Code of Civil Procedure sections 657, subdivision (1) (Motion; 5:5-6:13) and apparently 657, subdivision (6) (Motion; 6:14-10:7). **Code of Civil Procedure section 657, subdivision (1):** *Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1411-1412 (*Rayii*), states, “Attorney misconduct is a ground for a new trial (Code Civ. Proc., § 657, subd. (1)). [Citation.] Attorney misconduct can justify a new trial only if it is reasonably probable that the party moving for a new trial would have obtained a more favorable result absent the misconduct. [Citations.] [¶] A party ordinarily cannot complain on appeal of attorney misconduct at trial unless the party timely objected to the misconduct and requested that the jury be admonished. [Citation.] The purpose of these requirements is to allow the trial court an opportunity to remedy the misconduct and avoid the necessity of a retrial; a timely objection may prevent further misconduct, and an admonition to the jury to disregard the offending matter may eliminate the potential prejudice. [Citations.] The failure to timely object and request an admonition waives a claim of error unless the misconduct was so prejudicial that it could not be cured by an admonition (*People v. Cunningham* (2001) 25 Cal.4th 926, 1000–1001, 108 Cal.Rptr.2d 291, 25 P.3d 519; *Whitfield, supra,* at p. 892, 112 Cal.Rptr. 540, 519 P.2d 588), an objection or request for admonition would have been futile (*People v. Hill* (1998) 17 Cal.4th 800, 820, 72 Cal.Rptr.2d 656, 952 P.2d 673) or the court promptly overruled an objection and the objecting party had no opportunity to request an admonition (*Cassim, supra,* at pp. 794–795, 16 Cal.Rptr.3d 374, 94 P.3d 513). Attorney misconduct is incurable only in extreme cases. [Citation.]”

		Cassim v. Allstate Insurance Company (2004) 33 Cal.4th 780, 795-796, states, "When presentation of the evidence is concluded in a civil trial, 'unless the case is submitted to the jury on either side or on both sides without argument, the plaintiff must commence and may conclude the argument.' [Citation.] In conducting closing argument, attorneys for both sides have wide latitude to discuss the case. ' " ' "The right of counsel to discuss the merits of a case, both as to the law and facts, is very wide, and he has the right to state fully his views as to what the evidence shows, and as to the conclusions to be fairly drawn therefrom. The adverse party cannot complain if the reasoning be faulty and the deductions illogical, as such matters are ultimately for the consideration of the jury." ' " [Citations.] "Counsel may vigorously argue his case and is not limited to 'Chesterfieldian politeness.' " [Citations.] "An attorney is permitted to argue all reasonable inferences from the evidence. . . ." [Citation.] "Only the most persuasive reasons justify handcuffing attorneys in the exercise of their advocacy within the bounds of propriety." [Citation.]' [Citation.] The same rules apply in a criminal case. [Citation.] [¶] An attorney who exceeds this wide latitude commits misconduct. For example, '[w]hile a counsel in summing up may indulge in all fair arguments in favor of his client's case, he may not assume facts not in evidence or invite the jury to speculate as to unsupported inferences.' [Citation.] Nor may counsel properly make personally insulting or derogatory remarks directed at opposing counsel or impugn counsel's motives or character. [Citation.] Additional examples abound; these are but a few. [Citation.]" *People v. Riel* (2000) 22 Cal.4th 1153, 1212 (*Riel*), states, "Defendant also argues the prosecutor committed many acts of misconduct in his argument to the jury. However, he objected to none. Because an admonition could easily have cured any harm from any misconduct, the contentions are not cognizable on appeal. [Citation.] Citing *People v. Hill* (1998) 17 Cal.4th 800, 72 Cal.Rptr.2d 656, 952 P.2d 673, defendant argues that an objection would have been futile, thus excusing his failure. *Hill,* however, was an extreme case. There, defense counsel made a number of objections, although he did not continually object to pervasive misconduct. We found that the prosecutor's 'continual misconduct, coupled with the trial court's failure to rein in her excesses, created a trial atmosphere so poisonous' that continual objections 'would have been futile and counterproductive to his client.' [Citation.] 'Under these *unusual circumstances,'* we concluded that defense counsel 'must be excused from the legal obligation

		to *continually* object, state the grounds of his objection, and ask the jury be admonished.' [Citation.]" The Motion states, "First, defense counsel argued to the jury both in opening and closing arguments that Plaintiff's case was an 'attorney driven medical build up.' The Court sustained Plaintiff's first objection to defense counsel's statement during opening statements on the ground that the statement violated Plaintiff's Motion in Limine No. 8. Yet, the Court permitted Defendant to repeat these prejudicial phrases to the jury throughout closing argument, overruling Plaintiff's objection. Second, defense counsel presented prejudicial photographs of Plaintiff's counsel and expert witnesses, Dr. Gerald Alexander, Dr. Mobin in informal attire, Dr. Mobin in Golf Polo and Dr. Alexander with his Ferrari to the jury." (Motion; 5:23-6:3.) Thus, the Motion identifies two areas of misconduct by the defense. The Motion directs the court to the trial proceedings on 7-12-23. (Joseph Decl., ¶¶ 2 and 3 and Exhibit 1.) The court's minutes show Opening Statement began on 7-12-23. (7-12-23 Minute Order.) The transcript provided by Plaintiff does not provide the context for the statements to which Plaintiff objected, but it appears that Plaintiff objected to a portion of Defendant's (Virgil Mink) Opening Statement. Plaintiff objected to the statement by Defendant's attorney where Defendant's attorney stated, "This is the start of the build up, the attorney-driven medical buildup for litigation." (Joseph Decl., ¶¶ 2 and 3 and Exhibit 1 (7-12-23 RT 38:20-39:9).) Plaintiff objected based on ". . . Move to strike . . . also 352 . . . ." (Joseph Decl., ¶¶ 2 and 3 and Exhibit 1 (7-12-23 RT 38:20-26).) The court sustained Plaintiff's objection. (Joseph Decl., ¶¶ 2 and 3 and Exhibit 1 (7-12-23 RT 38:20-39:9).) After the court sustained the objection, Plaintiff's attorney raised an issue regarding Motion In Limine No. 8. (Joseph Decl., ¶¶ 2 and 3 and Exhibit 1 (7-12-23 RT 53:9-55:26).) As to the objection raised on 7-12-23, this objection occurred in the context of opening statements. The court sustained the objection, and the Plaintiff did not ask the court to admonish the jury. The Plaintiff did not object based on attorney misconduct. The Motion does not explain why a request for an admonition would have been futile under *Riel*. The Motion does not explain why Plaintiff did not have an opportunity to request an admonition. As to the argument by Defendant's attorney that referred to "attorney driven medical build up," the court initially sustained the objection. (Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 52:17-57:26) and Exhibit 1 (7-12-23 RT 53:9-55:26.) In a discussion outside the presence

		of the jury, the court then overruled the objection because there was ". . . evidence of the lien agreement that contain your name on them . . ." referring to the name of Plaintiff's attorney. (Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 53:12-26).) Exhibits 107-169, 122-118, and 127-015 are lien agreements between Plaintiff and the treating doctors that also contain the name of Plaintiff's attorney. Exhibit 107-006 are notes from Dr. Alexander that state in part, ". . . Atty [] refer . . . ." Further, in closing argument, Defendant's attorney stated, "As more evidence that this was attorney driven, this email was contained withing Dr. Alexander's expert files: [¶] 'My office is pending authorization form the attorney for surgery regarding the above referenced client. Avey, Tiffany, August 2, 2017' . . . ." (Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 72:16-73:3).) When Defendant's attorney referred to this email in closing argument, Defendant's attorney did not cite to an Exhibit number connected to this email. At closing argument, Defendant's attorney stated, ". . . A month after being discharged for noncompliance from physical therapy, her attorney takes her away from her primary doctors and starts referring her to lien doctors. . . . ." (Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 52:17-20).) Plaintiff's attorney objected as ". . . Beyond the scope of evidence . . . Misstates the evidence," and the court sustained the objections. (Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 52:21-23).) Defendant's attorney continued, "The lien doctors have a financial interest in this case. That's the start of the attorney driven medical build-up for purposes . . . ." (Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 52:24-26).) Plaintiff's attorney objected as ". . . Misstates the evidence. 352. Beyond the scope of the evidence." (Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 53:1-2).) The court took a recess to discuss this objection and the court overruled the objection because there was ". . . evidence of the lien agreements that contain your name on them . . ." in referring to the name of the Plaintiff's attorney. (Exhibits 107-169, 122-118, and 127-015; Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 53:3-57:26).).) Thus, the court overruled the specific objections made by Plaintiff's attorney. The court notes that Plaintiff did not object based on attorney misconduct and did not request an admonition. (Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 53:3-57:26).).) The Motion does not explain why a request for an admonition would have been futile under *Riel*. The Motion does not explain why Plaintiff did not have an opportunity to request an admonition especially since the court discussed the objection outside of the presence of the jury with the attorneys.

		As to the photographs of Plaintiff's attorney, Dr. Alexander, and Dr. Mobin, the court sustained Plaintiff's Evidence Code section 352 objection to the slide of the photograph with Dr. Alexander. (Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 65:17-24).) This slide depicted Dr. Alexander standing in front sports cars. (See Power Point Slide based on Stipulation filed on 5-8-24 under ROA No. 935.) Under *Cassim*, it was misconduct for Defendant's attorney to show this slide to the jury because it was not an exhibit that the court admitted into evidence. Although the display of this slide to the jury was misconduct, Plaintiff's attorney did not object based on attorney misconduct. Further, under *Riel*, the Motion does not explain why a request for an admonition would have been futile as to this slide. The Motion does not explain why Plaintiff did not have an opportunity to request an admonition regarding this slide. As a further evidence of attorney misconduct during argument, Plaintiff has provided a part of the closing argument by Defendant's attorney where Defendant's attorney read from an email that the court had excluded from evidence. Defendant's attorney stated, "Further, in closing argument, Defendant's attorney stated, "As more evidence that this was attorney driven, this email was contained withing Dr. Alexander's expert files: [¶] 'My office is pending authorization form the attorney for surgery regarding the above referenced client. Avey, Tiffany, August 2, 2017' . . . ." (Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 72:16-73:3).) The parties do not dispute that the source of this email was Exhibit 107-088. (8-1-23 Minute Order.) On 8-1-23, one day before the closing argument, the court sustained Plaintiff's objection to Exhibit 107-088. (8-1-23 Minute Order.) Despite the court's ruling that found that Exhibit 107-088 was inadmissible, Defendant's attorney read the email from this exhibit to the jury in closing argument. Defendant's attorney used this email to support the defense theory ". . . that this was attorney driven . . . ." (Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 72:16-73:3).) The reference to this email by Defendant's attorney was misconduct under *Cassim* because it was not admitted into evidence. Plaintiff's attorney, however, did not object to the improper use by Defendant's attorney of an exhibit not in evidence. (Joseph Decl., ¶¶ 4 and 5 and Exhibit 2 (8-2-23 RT 72:16-73:26).) The Motion does not explain why a request for an admonition would have been futile under *Riel*. The Motion does not explain why Plaintiff did not have an opportunity to request an admonition. The Motion does not direct the court to the argument by Defendant's that displayed the slides containing photographs of Plaintiff's attorney and Dr. Mobin. The

		Motion does not direct the court to an objection by Plaintiff to the display of the slides containing the photographs of Plaintiff's attorney and Dr. Mobin. **Code of Civil Procedure section 657(6):** Code of Civil Procedure section 657 states, "The verdict may be vacated and any other decision may be modified or vacated, in whole or in part, and a new or further trial granted on all or part of the issues, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party: . . . [¶] A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision . . . unless after weighing the evidence the court is convince from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision." *Barrese v. Murray* (2011) 198 Cal.App.4th 494, 503 (*Barrese*) explains, "The powers of a trial court in ruling on a motion for new trial are plenary. The California Supreme Court has held that the trial court, in ruling on a motion for new trial, has the power 'to disbelieve witnesses, reweigh the evidence, and draw reasonable inferences therefrom contrary to those of the trier of fact' [citation], that the court sits as 'an independent trier of fact' [citation] and that it must 'independently assess[ ] the evidence supporting the verdict' [citation]. The trial judge has 'to be satisfied that the evidence, as a whole, was sufficient to sustain the verdict; if he was not, it was not only the proper exercise of a legal discretion, but his duty, to grant a new trial.' [Citation.]" *Fountain Valley Chateau Blanc Homeowner's Association v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 751-752 (*Fountain Valley*), states, "By contrast, the motion for a new trial has a different purpose. As the Supreme Court noted in the famous case of *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 458–459, 20 Cal.Rptr. 321, 369 P.2d 937, the function of a new trial motion is to allow a *reexamination* of an issue of fact. [¶] The difference in purpose means a difference in standards. Unlike nonsuits, directed verdicts, and judgments notwithstanding the verdict—we will call these the 'dispositive' motions—granting a new trial does not entail a victory for one side or the other. It simply means the reenactment of a *process* which may eventually yield a winner. Accordingly, the judge has much wider latitude in deciding the motion [citation], which is reflected in an abuse of discretion standard when the ruling is reviewed by the appellate court. A new trial motion allows a judge to disbelieve witnesses, reweigh evidence and draw reasonable inferences contrary to that of the jury, and

		still, on appeal, retain a presumption of correctness that will be disturbed only upon a showing of manifest and unmistakable abuse. [Citation.] Hence, given the latitude afforded a judge in new trial motions, orders granting new trials are 'infrequently reversed.' [Citation.] [¶] Now here is the anomaly. The reason for the 'dispositive' motions is that the plaintiff cannot win, because the plaintiff has presented insufficient evidence to support a favorable judgment. Yet a new trial motion may *itself* be based on insufficient evidence to support a favorable judgment. (Code Civ. Proc., § 657, clause 6 ['for any of the following causes . . . :[¶] 6. Insufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision is against law.'].) Moreover, even though there are some extra requirements on the judge before he or she may grant a new trial on insufficient evidence, the fact remains that the trial judge may, in granting such a motion, draw inferences and resolve conflicts in the evidence different from that of the jury. [Citation.] Accordingly, it is natural to ask, if a trial judge is convinced that a litigant has no substantial evidence to justify a favorable judgment, why take the hard and narrow road of granting one of the dispositive motions with the attendant stringent standard of review when he or she can take a much easier and wider path by granting a new trial? [¶] The answer is this: Inherent in the new trial statute is the following, but unstated, premise: When a trial judge grants a motion for new trial based on insufficiency of the evidence, it is *not* because the judge has concluded that the plaintiff *must* lose, but only because the evidence in the trial that actually took place did not justify the verdict. Evidence might exist to justify the verdict, but for some reason did not get admitted; perhaps the plaintiff's attorney neglected to call a crucial witness or ask the right questions. *There is still the real possibility that the plaintiff has a meritorious case.* Indeed, such a conclusion is a simple corollary from the observation of our Supreme Court in the venerable *Auto Equity* decision that the essential function of the new trial is to *re-examine* the evidence. [Citation.] At the same time, misuse of a new trial motion as a *dispositive* motion renders surplusage the Legislature's provisions for nonsuits, directed verdicts, and judgments notwithstanding the verdict. [Citation.]" (Italics in *Fountain Valley*; Footnotes 1 and 2 omitted.) The Motion states, "Even when viewed in the light most favorable to Defendant, no substantial evidence supported the jury's verdict on Question 2 denying causation between Plaintiff's injuries and Defendant's negligence. The weight of the evidence was against the verdict. First, Defendant admitted negligence in this case. Defendant admitted he negligently crashed into Plaintiff's

		car due to looking at his phone while driving. As a result of Defendant's negligence, it is clear that Plaintiff suffered some degree of injuries, therefore, the jury should only have been tasked with determining the amount of her damages." (Motion; 6:16-22.) Defendant's Opposition to Motion for New Trial (Opposition), filed on 3-15-24 under ROA No. 902, states, "First and foremost, Plaintiff fails to realize that in a motion for new trial, the court reviews the **entire record**, not solely Plaintiff's cherry-picked testimony of her own experts. (See CCP §657). In fact, noticeably absent from Plaintiff's brief is Defendant's experts very compelling testimony or any of the cross-examination of Plaintiff's experts. The court reviews all such compelling testimony, to make a determination if the jury clearly should have reached a different verdict or decision. Thus, Plaintiff's approach is completely wrong. Nonetheless, in the instant matter, the court can easily conclude, after reviewing and weighing the entire record, that the evidence was sufficient to support the jury's determination that Defendant's alleged negligence was not a substantial factor in causing Plaintiff harm." (Opposition; 6:12-20 (Emphasis in Opposition.) First, court instructed the jury pursuant to CACI No. 424 and 3901. (See Instructions filed on 8-2-23 under ROA No. 851.) CACI No. 424 required Plaintiff to prove that Plaintiff was harmed, and that Defendant's negligence was a substantial factor in causing Plaintiff's harm. Contrary to Plaintiff's contention, CACI No. 424 does not direct the jury to determine the amount of damages based solely on a defendant's admission of negligence. Second, the question is not whether there was substantial evidence to support a finding in Plaintiff's favor. Rather, the issue is whether the court is convinced ". . . from the entire record that, including reasonable inferences therefrom, that the . . . jury clearly should have reached a different verdict or decision. . . ." (Code Civ. Proc., § 657.) Third, the Motion directs the court to the testimony of Dr. Jan Fritz, Dr. Gerald Alexander, Dr. Fardad Mobin, and Rami Hashish (Ph.D) to support that Plaintiff presented substantial evidence as to the medical causation of Plaintiff's injuries. (Motion; 7:1-9:20.) The Opposition directs the court to the testimony from Dr. Rhee and Dr. Macyszyn. (Opposition; 7:6-9:10.) After independently weighing the evidence as to the issue of causation based on the transcript excerpts provided by the parties, the court is not convinced that the jury should

		have clearly reached a different decision. There was a conflict between the experts called on behalf of Plaintiff and the experts called on behalf of Defendant as to whether Defendant's negligence was a substantial factor in causing harm to Plaintiff. For example, Defendant's evidence showed that Plaintiff did not complain of any injury to the police at the scene of the collision. (Rabbani Decl., ¶ 12 and Exhibit C (Plaintiff's Testimony; 7-24-23 RT 53:7-54:9).) Dr. Rhee gave his opinion that the source of Plaintiff's right side neck and right side shoulder pain after the accident was an osteoid osteoma. (Rabbani Decl., ¶ 13 and Exhibit D (Dr. Rhee's Testimony; 7-27-23 RT 45:20-49:18).) Dr. Macyszyn testified that Plaintiff did not need the injections to her neck and low back, the surgery performed by Dr. Alexander, and the surgery performed by Dr. Mobin. (Rabbani Decl., ¶ 14 and Exhibit E (Dr. Macyszyn's Testimony; 7-27-23 RT 34:20-35:9.) Under CACI 424, the defense evidence contradicts Plaintiff's evidence as to whether Plaintiff was harmed by Defendant's negligence. Based on the above, the court **DENIES** Plaintiff's (Tiffany Avey) Motion for New Trial filed on 3-8-24 under ROA No. 895. Defendant is to give notice. **MOTION NO. 2:** **Plaintiff's (Tiffany Avey) Motion for Partial Judgment Notwithstanding the Verdict (Motion), filed on 3-8-24 under ROA No. 897, is DENIED.** Code of Civil Procedure section 629, subdivision (b), states, "A motion for judgment notwithstanding the verdict shall be made within the period specified by Section 659 for the filing and service of a notice of intention to move for a new trial. The moving, opposing, and reply briefs and any accompanying documents shall be filed and served within the periods specified by Section 659a, and the hearing on the motion shall be set in the same manner as the hearing on a motion for new trial under Section 660. The making of a motion for judgment notwithstanding the verdict shall not extend the time within which a party may file and serve notice of intention to move for a new trial. The court shall not rule upon the motion for judgment notwithstanding the verdict until the expiration of the time within which a motion for a new trial must be served and filed, and if a motion for a new trial has been filed with the court by the aggrieved party, the court shall rule upon both motions at the same time. The power of the court to rule on a motion for judgment notwithstanding the verdict shall not extend beyond the

		last date upon which it has the power to rule on a motion for a new trial. If a motion for judgment notwithstanding the verdict is not determined before that date, the effect shall be a denial of that motion without further order of the court." *Kruthanooch v. Glendale Adventist Medical Center* (2022) 83 Cal.App.5th 1109, 1122 (*Kruthanooch*), states, " ' " 'A motion for judgment notwithstanding the verdict may be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence in support. [Citation.] [¶] . . . As in the trial court, the standard of review [on appeal] is whether any substantial evidence—contradicted or uncontradicted—supports the jury's conclusion.' " [Citation.]' [Citation.] ' " 'In general, substantial evidence has been defined in two ways: first, as evidence of " ' "ponderable legal significance . . . reasonable in nature, credible, and of solid value" ' " [citation]; and second, as " 'relevant evidence that a reasonable mind might accept as adequate to support a conclusion' " [citation].' [Citation.] 'Unless the finding, viewed in the light of the entire record, is so lacking in evidentiary support as to render it unreasonable, it may not be set aside.' [Citation.]" [Citation.]' [Citation.]" *Santos v. Kisco Senior Living* (2016) 1 Cal.App.5th 862, 869-870 (*Santos*), states, "A trial court must grant a motion for JNOV whenever a motion for a directed verdict for the aggrieved party should have been granted. [Citation.] ' " '[T]he power of the court to direct a verdict is absolutely the same as the power of the court to grant a nonsuit.' [Citation.] 'A motion for a directed verdict "is in the nature of a demurrer to the evidence, and is governed by practically the same rules, and concedes as true the evidence on behalf of the adverse party, with all fair and reasonable inferences to be deduced therefrom." ' " ' [Citation.]" The Motion states, "Even when viewed in the light most favorable to Defendant, no substantial evidence supported the jury's verdict on Question 2 denying causation between Plaintiff's injuries and Defendant's negligence. The weight of the evidence was against the verdict. First, Defendant admitted negligence in this case. Defendant admitted he negligently crashed into Plaintiff's car due to looking at his phone while driving. As a result of Defendant's negligence, it is clear that Plaintiff suffered some degree of injuries, therefore, the jury should only have been tasked with determining the amount of her damages. [¶] Second, Plaintiff presented substantial evidence showing medical causation of injuries, mechanism of injuries, and objective findings of injuries.

		A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. CACI 430." (Motion; 5:19-28.) Defendant's (Virgil Mink) Opposition to Plaintiff's Motion for Judgment Notwithstanding the Verdict (Opposition), filed on 3-15-24 under ROA No. 900, states, "Plaintiff relies on the same cherry-picked testimony while ignoring Defendant's experts' incredibly compelling testimony as well as the cross-examination of Plaintiff's experts. Plaintiff also argues that Defendant's expert's testimony was inconsistent, but again, she ignores the rest of the testimony. In the instant matter, the court can easily conclude, after reviewing and weighing the entire record, that the evidence was sufficient to support the jury's determination that the Defendant's negligence **was not a substantial factor** in causing harm to Plaintiff. Indeed, noticeably absent from Plaintiff's brief is Defendant's experts very compelling testimony or any of the cross-examination of Plaintiff's experts. In evaluating the testimony, it was well established that Plaintiff sustained no injuries from this accident and if she was injured, Defendant's negligence was not a substantial factor to causing such injuries. The motion solely focuses on self-serving testimony and excerpts from Plaintiff's various physicians and experts **only**, while ignoring all other incredibly damaging testimony to Plaintiff's theories. Thus, Plaintiff's approach is completely wrong." (Opposition; 4:1-14 (Emphasis in Opposition.) The court instructed the jury pursuant to CACI Nos. 424 and 3901. (See Instructions filed on 8-2-23 under ROA No. 851.) CACI No. 424 required Plaintiff to prove that Plaintiff was harmed, and that Defendant's negligence was a substantial factor in causing Plaintiff's harm. Contrary to Plaintiff's contention, CACI No. 424 does not direct the jury to determine the amount of damages based solely on a defendant's admission of negligence. The Motion directs the court to the testimony of Dr. Jan Fritz, Dr. Gerald Alexander, Dr. Fardad Mobin, and Rami Hashish (Ph.D) to support that Plaintiff presented substantial evidence as to the medical causation of Plaintiff's injuries. (Motion; 6:7-8:23.) The Opposition directs the court to the testimony from Dr. Rhee and Dr. Macyszyn. (Opposition; 4:27-7:5.) There was a conflict between the experts called on behalf of Plaintiff and the experts called on behalf of Defendant as to whether Defendant's negligence was a substantial factor in causing harm to Plaintiff. For example, Defendant's evidence showed that Plaintiff did not complain of any injury to the police at the scene of the

		collision. (Rabbani Decl., ¶ 12 and Exhibit C (Plaintiff's Testimony; 7-24-23 RT 53:7-54:9).) Dr. Rhee gave his opinion that the source of Plaintiff's right side neck and right side shoulder pain after the accident was an osteoid osteoma. (Rabbani Decl., ¶ 13 and Exhibit D (Dr. Rhee's Testimony; 7-27-23 RT 45:20-49:18).) Dr. Macyszyn testified that Plaintiff did not need the injections to her neck and low back, the surgery performed by Dr. Alexander, and the surgery performed by Dr. Mobin. (Rabbani Decl., ¶ 14 and Exhibit E (Dr. Macyszyn's Testimony; 7-27-23 RT 34:20-35:9.) Under CACI 424, the defense evidence contradicts Plaintiff's evidence as to whether Plaintiff was harmed by Defendant's negligence. Viewing the evidence in the light most favorable to Defendant, the testimony of Dr. Rhee and Dr. Macyszyn provides substantial evidence to support the verdict. Based on the above, the court **DENIES** Plaintiff's (Tiffany Avey) Motion for Partial Judgment Notwithstanding the Verdict filed on 3-8-24 under ROA No. 897. Defendant is to give notice.