SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 5

20STCV10214 June 4, 2025
MICHAEL GARCIA vs STARBUCKS CORPORATION 9:00 AM

Judge: Honorable Frederick C. Shaller
Judicial Assistant: R. Aquino
Courtroom Assistant: None

CSR: Pam Myers, CSR #12940
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): John Alan Kawai , Nicholas Rowley, and Grayson Yoder

For Defendant(s): Stephen Thomas Pelletier and Richmond Moore

NATURE OF PROCEEDINGS: Hearing on Motion for New Trial and Motion for Judgment Notwithstanding the Verdict (JNOV); Hearing on Motion - Other on Prejudgment Costs; Hearing on Motion for Attorney Fees and Costs of $1,558,325.00; By Plaintiff Michael Garcia;

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Pam Myers, CSR# 12940, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The matters are called for hearing.

The Court's tentative rulings on the above motions are heard and argued.

The Court issues its Final Rulings on the Motion for New Trial and Starbuck's Motion for Judgment Notwithstanding the Verdict below.

Motion for New Trial
FINAL RULING

The Judgment and clerk's notice of entry of judgment in this matter was entered on 4/3/2025. Defendant's Notice of Intent for Move for a New Trial was timely filed and served on 4/18/2025. Time extensions were granted for briefing and proof in support and in opposition of the motion. Defendant's Memorandum of Points and Authorities and supporting Declarations were then timely filed on 5/8/2025 and Plaintiff's opposition and supporting declarations were then timely filed on 5/28/2025. Defendant's Reply to the motion for new trial was then filed on 6/2/2025. The court has taken these papers into consideration in ruling on the motion for new trial.

The motion is based upon the following arguments: New Trial is warranted because:

1. There was insufficient evidence to support the jury's verdict that Plaintiff was 0% at fault for the accident on the grounds of CCP §657(6);
2. The court committed an error at law by erroneously excluding evidence of Plaintiff's admission in a Starbucks incident report on grounds of CCP §657(7);
3. The $50,000,000 compensatory damages award was excessive on the grounds of CCP §657(5);
4. The damage award was punitive and therefore violated Starbuck's due process rights on the grounds of CCP §657(5);
5. Plaintiff's Medical Expenses were improperly excluded on the grounds of CCP §657(7).

The motion for new trial is DENIED IN FULL.

Jury's finding of 0% comparative fault

Starbucks complains that the verdict by the jury finding Plaintiff 0% at fault, or without comparative fault for the accident. This ground for new trial is based upon CCP §657(6) which allows for a grant of a new trial where there is insufficient evidence to support the verdict. In deciding this motion, the trial court sits as an independent trier of fact and reweighs the evidence to determine whether the weight of the evidence requires a finding contrary to the finding by the jury. Tice v. Kaiser Co. (1951) 102 Cal.App.2d 44,46. In this regard, the trial court is required to weigh the evidence and assess the credibility of the witnesses. The court must consider the probative force of the evidence and must be satisfied that the evidence is sufficient to sustain the verdict. Johnson & Johnson Talcum Powder Cases (2019) 37 Cal.App.5th 292, 337.

Starbuck's argument is supported by citation to facts that clearly had no bearing on the spill: (1) Plaintiff fed his 8-month-old German Shepherd a "pup cup" filled with whipped cream, placed the cup in the center console of his car, and allowed the puppy to sit next to him in the passenger seat; (2) Plaintiff left the car in drive and had to keep his foot on the brake; (3) After Plaintiff received the tray from the barista, he shifted the tray between his hands, risking that the cups would loosen in the tray; (4) Plaintiff took his right hand off the tray right before the cup collapsed into Plaintiff's lap; and, (5) Plaintiff was not truthful about these events.

The videotape of the spill is strongly conclusive and determinative of the fact that the feeding of the dog with a treat supplied by Starbucks and placing the residual cup in the cup tray had nothing to do with the spill. The feeding and cup placement had occurred maybe five minutes before the spill and was completed in seconds. Further, the videotape shows that the dog was not

anywhere near the tray or Plaintiff when the tea spilled. These claims are meritless and the evidence has no weight.

Leaving the car in drive and keeping his foot on the brake was not only reasonable but again had nothing to do with the spill. The car was still when the tray with the leaning venti tea container was handed to Plaintiff and fell into his lap. The feet and legs were not involved in the transfer, only the upper extremities. The car moved forward only after the hot tea had spilled. This evidence is given no weight.

The claim that Mr. Garcia shifted the tray between his hands is an argument based upon an expert opinion that in turn is based upon a strained and not credible interpretation of the evidence using slow motion images of the videotape of the spill. The additional claim that this movement had anything to do with the spill is without merit and is given little weight and certainly does not support a finding that the verdict was unsupported by substantial evidence. The jury was well justified in rejecting this speculative and insubstantial evidence.

The claim that Mr. Garcia took his right hand off the tray at the time immediately before the spill is another argument based upon an expert opinion that in turn is based upon a dubious interpretation of the evidence using slow motion images of the videotape of the spill. The spill was already in progress as the leaning tea container that had been inappropriately seated in the serving tray was falling before the claimed movement of the right hand. The evidence does not support that this claimed fact was even true, but if true it is given no weight in the happening of the incident.

The plaintiff was found to be very credible. Although he was impeached on these collateral matters, the videotape of the incident is the key evidence to support Plaintiff's lack of fault. The Starbucks employee handed an insecure tray of hot tea, with one tea container containing 20 ounces of 190-to-200-degree fluid leaning and falling over at the time it was transferred to Plaintiff. The plaintiff was in the court's view, based upon the totality of the admitted evidence, not at fault to any percentage. The jury got this finding right.

Denial of admission of exhibits 107-1 or 107-2

The defendant argues that the court's failure to admit Exhibits 107-1 and 107-2 was an error at law entitling Starbucks to a new trial pursuant to CCP §657(7). Improperly admitting or excluding evidence is a ground for new trial under this section. Richard v. Scott (1978) 79 Cal.App.3d 57, 63.

Both exhibits 107-1 and 107-2 are the same statements which purport, without foundation, to have been written and signed by Starbucks employee Rosalva Gomez and signed by Gemery Ruben. Neither witness testified to lay a foundation for the admission of the report or any statement in the report. As such neither witness could be cross-examined as to the authenticity of the incident report or the manner and purpose of the report.

The report is dated February 26, 2020 and states as follows:
"On February 8, 2020 we had an incident where a customer in drive thru burn himself driving away. My name is Rosalva, and I took care of the customer as much as i could. I heard the screaming and the customer was already away from the window. I go check and his screaming and crying. I bring a towel with ice cubes and a venti ice water to help him calm down. I asked what happened and Michal was having trouble speaking to me but said he receive 3 venti Honey Citrus teas in a cup holder and as he was driving away he also was trying to get a hold of his dog (Huskie) when the incident happen. Two venti cups were still full and one vente cup was the one that drop on him. I stood by him until he was okay. I offer him an ambulance he denied. I asked if he needed me to call anyone for him, he responded that he was already communicating with his girlfriend & mention that he had to pick her up from the airport and was doing Postmates. Few minutes passed by I continue to bring him ice, I gave him a burning gel, & i also offered him our restroom if he needed to use it for privacy. I got his information so i can do an incident report for our company. Michael Garcia [redacted]. Finally he agreed to call the ambulance so I went and go ahead and called. Fire Fighter came first and then the ambulance came and took him to ER. The FireFighter parked his car in our parking lot, I receive the keys, the dog was left in the car with water and windows cracked, until his girlfriend come to pick up the car 1-2 hour after."

The report is not an eyewitness statement of the spill because Ms. Gomez did not witness the spill and the identity of Gemery Ruben is not clear to the court. It is unknown why the other employee signed the report. This self-serving report was prepared 18 days after the incident and it appears to be a report prepared by an unknown person in anticipation of litigation.

The court excluded the report on the grounds of hearsay. Starbucks agrees that the report is multiple hearsay but states that the limited portion of the report wherein Mr. Garcia reported that the spill occurred as he was driving away and trying to get a hold of his dog is subject to exceptions to the hearsay rule for party admission (E.C. §1200) and business records exception to the hearsay rule (E.C. §1221.)

The business records hearsay exception does not apply. First, the report was not created in the ordinary course of business because the report was prepared weeks after the injury, clearly in

anticipation of litigation, and did not have any relationship to the systematic conduct of Starbucks as a business or in the ordinary business operations of Starbucks. There was no first-hand clarification as to why the report was prepared so long after the incident. There was no explanation as to who Gemery Rubin was and why he or she signed the report. There was no first-hand evidence provided as to why the report was prepared or the mode of preparation. In the court's view there was unsatisfactory foundational evidence that the report was prepared in the ordinary course of business. As held by the United States Supreme Court in the case of Palmer v. Hoffman 318 U.S. 109, 63 S. Ct 477, such reports by employees about an incident are inherently unreliable and should not be admissible as business records. Similarly, California precludes admission of accident reports where they are prepared in anticipation of litigation because they are not part of the business' primary or routine business activities. Dahl-Beck Electric co v. Rogge (1969) 275 Cal.App.2d 893; People v. McVey (2018) 24 Cal.App. 5th 405, 415.

Second, the report was prepared 18 days after the incident. This does not meet the requirement that the writing, to be admissible as a business record, be recorded at or near the time of the incident. E.C. §1271(b).

Third, the report was not considered trustworthy as is required by E.C. §1271(d). The court concludes that the reliability of the sources of information, primarily the fact that record was prepared in anticipation of litigation, and the circumstances and timing and preparation of the record makes the record untrustworthy such that it should not be admitted to absent further foundation from the authors. See Levy-Zentner Co. v. Southern Pac. Transp. Co. (1977) 74 Cal.App.3d 762, 784 – 785. Neither signatory to the incident report were called as witnesses at trial.

Finally, the report itself is full of unanswered questions about source of information, timing of the report, accuracy of statements in light of the purpose of the report, identity of the person who made observations recorded in the report, and inconstancies in the report from the actual videotape of the incident. These questions could only be answered by allowing the cross-examination of the authors of the report. Starbucks withheld and did not offer the testimony of Ms. Gomez or Mr. or Ms. Rubin. These witnesses were not deposed, were not on the witness list, or proffered at trial to lay the foundation for the content of the report. To allow Starbucks to admit this report under the business records exception to the hearsay rule would violate fundamental justice and fairness as well as due process by allowing Starbucks to offer one-sided information and avoid any cross-examination of the content of the report. Under these circumstances the report should also be excluded under E.C. §352 as the admission of the report would be more prejudicial than probative.

$50,000,000 Noneconomic Damage Award

This argument has two aspects: first, the amount of the award itself is excessive; and, second that the award reflects improper argument that inflamed the passions of the jury. Other issues such as a lack of "comparator cases" or settlement offers are not considered to be material to the claim of excessive award. Regarding comparison cases, there is no case provided to the court for consideration that are comparable to the damages suffered by Mr. Garcia in the case.

The third claim made in argument is that the jury erroneously awarded a "fixed" amount of damages per year when the facts clearly do not support that each year will result in the same amount of damages. This argument is without merit. While mathematically the $50,000,000 award divided by a 50 years (45.4-year life expectancy per CACI 3934 instruction + approximately 5 years from date of incident) would render approximately $1,000,000 per year for the Plaintiff's life expectancy from date of incident, there is no evidence and only speculation that the jury made this kind of calculation or arrived at a damage figure in this manner.

Defendant seeks a new trial on damages asserting that the while there "is no dispute that Plaintiff had serious injuries, the award of $50 million in noneconomic damages is far beyond any reasonable measure of compensation. It is disproportionate to the severity of the injury, does not reflect Plaintiff's recovery, and is far out of step with awards for similar or even more severe injuries."

The claim of excessive damages is based upon CCP §657(5). A new trial may be granted on the basis of a claim of excessive damages only where the trial judge is convinced from the entire record, including reasonable inferences, that the jury clearly should have reached a different verdict. CCP §657; See Neal v. Farmers Ins. Exch. V. Parke, Davis, & Co. (1973) 9 Cal.3d 51, 61-62. The court cannot grant a new trial simply because it would have found differently than the jury. (Dominguez v. Pantalone (1989) 212 Cal.App.3d 201, 216 [260 Cal. Rptr. 431].)

The court, in ruling on this motion must weigh the evidence and act as an independent trier of fact. Ryan v. Cown Castle NG Networks, Inc. (2016) 6 Cal.App.5th 775, 784.

A court may grant a new trial under §657(5) only when the evidence is too speculative to support the damage award. Toscano v. Green Music (2004) 124 Cal.App.4th 685, 695 – 696. "The purpose of Code of Civil Procedure section 657 is not to give the trial court permission to run roughshod over a party's constitutional right to jury determination. Instead, the purpose is to allow the trial court to grant a new trial on those rare occasions when the jury's verdict is so at odds with any reasonable view of the evidence that judicial intervention is required to avoid a

manifest miscarriage of justice.
Huy Fong Foods, Inc. v. Underwood Ranches, LP (2021) 66 Cal. App. 5th 1112, 1126

The court has reviewed the record in this matter and finds that the award of compensatory damages in this case of $50,000,000 was not excessive or at odds with any reasonable view of the evidence. This award mathematically calculates to $1,000,000 for every year of Mr. Garcia's past pain and suffering and for the future years of his life expectancy. In light of the horrific injuries and permanent residual physical and psychological consequences, this award is most appropriate.

The extent of the damages was clearly proven with testimony of experts and percipient witnesses including Plaintiff. The medical and psychological experts presented by Plaintiff were highly credible and qualified and presented clear evidence of damages. Plaintiff's experts included Kevin Brenner, Irvin Goldstein, and Robert Faulk. Plaintiff also presented percipient witnesses, former girlfriends, including Alexandra Davalos and Ceclia Ochoa as well as his own testimony. The jury was also given testimony from Defendant's expert witnesses Michael Brones, Dominic Addario, and Dr. Gazzinga.

Kevin Brenner, Plaintiff's expert plastic surgeon who is a specialist in treating burn injuries, testified about the original injury and how the burn caused permanent damages to Mr. Garcia. The burns are thermal in nature from the hot tea. These burns create damage deeper than skin level into the muscle and other tissue. Examples of the burns include Exhibit 32-1 showing that the right side of the penis was burned and the tissue bubbled up. Skin is lifted up. Exhibit 35.1 showed a deep burn in the glans penis. He described by reference to demonstrative evidence, Exhibit 36-1, how the burn went through the skin into the dermis and into the layer of skin that contains nerves and blood vessels. He described the skin grafting done on the glans and shaft of the penis and the process of dermabrasion or sanding off the dead burned layers of tissue. He testified how the skin of the penis is painful to the touch and that due to the depth of the burn the healing caused the brain to detect pain when the touch is supposed to be pleasurable. Dr. Brenner further described extensive sequalae of the burn injuries including that Garcia's penis is not functioning for sex. The healing left permanent conditions including that his penis is asymmetrical and on the tip of his penis is a white scar that looks like a sexually transmitted disease, all of which would be off-putting at best for sexual partners.

Dr. Irwin Goldstein, a world-famous urologist specializing in sexual dysfunction testified to Plaintiff's damages. He has over 400 peer-reviewed publications and receives funding from NIH to study sexual health. He stated his opinion that the burn injury resulted in extensive neurological, cosmetic, and vascular damages to Plaintiff. The result of the burn, he states, is

lack of pleasure and pain due to nerve damage. He described the scarring inside the penis and the crus from the burn and how this has caused permanent dysfunction preventing him from getting and then keeping an erection needed for sex. Due to demonstrable scarring he showed in the ultrasounds, he documents how the scarring prevents the erection from retaining venous blood, which he described as a venous leak, thereby preventing the continuation of an erection needed to complete sex. He further described how the burn and related damages had major psychological implication for Mr. Garcia, including constant nightmares, a sleep disorder, and intrusive flashbacks. He described that the burn caused additional changes to the girth and length of his penis which also results in further psychological damage. He reviewed treatment options and that he has prescribed Mr. Garcia with a medication which has to be injected into the penis to obtain and maintain an erection, but it is somewhat fruitless because it results only in painful sex due to the neurological damage and greatly decreased orgasmic capability.

Roberta Faulk, a clinical psychologist, also testified as an expert in the case for Plaintiff. She has diagnosed Plaintiff with PTSD, post-traumatic stress disorder due to the burn. It has resulted in flashbacks, intrusive recollections, triggers like hot water – like doing mundane tasks like washing the dishes causes him to react physiologically (washing dishes evokes "images of scenes of the horror of the scalding tea all over" that he "would feel the pain like it was happening all over again.") This condition is identified as "classic PTSD" and needs to be treated on and off the rest of his life. (RT 841-843, 799-800, 828-831) She started treating him in 2023 but he received some treatments while at the Grossman Burn Center after the initial hospitalizations. She learned that he was in considerable denial about the extent of his psychological injury and had engaged in avoidance and eating junk food which has aggravated his diabetic condition. She described his reaction to having painful sex, which was quite devastating. He is particularly affected because he cannot satisfy a sexual partner due to his injury and because he is so negative about himself and locked in a state of denial. She described his situation as facing a particularly difficult life situation resulting in persistent depression, discouragement, pessimism, and giving him an eating disorder. Healing to the extent possible will be a lifelong process to redefine himself as a man without the ability to perform sex which is so engrained in society. He finally has to grieve the loss of this function. She says that the psychological injury will likely be lifelong as this process will be a struggle.

The testimony of the defense experts offered some contradiction to the extent of injuries but on cross-examination their opinions were shown to be weak, biased, and poorly supported. The testimony of expert Brones, Addario, and Gazzinga are not given substantial weight.

Alexandra Davalos was Mr. Garcia's girlfriend at the time of the incident and then they separated about six months after the incident due to the burn injuries and other mutual

differences. The burn injury affected their sex life and emotional relationship. Before the injury, they had no sex issues. They tried to be intimate afterwards, but he had pain and could not complete sex successfully although they tried several times. She describes him as self-conscious about color and misshapenness of his penis. His libido was affected and she testified that in her opinion the injury emasculated him. She describes his penis as shorter and not as thick as before the incident. She describes his penis as deformed, unappealing, and unsightly. While she says she could possibly look past that if he could function like he used to, but he cannot.

Cecilia Ochoa, another ex-girlfriend of Plaintiff, also testified. She was with Plaintiff for only four months. She and Plaintiff tried to have sex but it did not work too well. From her perspective he is so worried about whether he could have an erection. He was so afraid that she would be disgusted with him and not want to be with him. When they tried sex, he would lose his erection. One time he actually cried. She left the relationship because, due to his physical and emotional injuries, he was not emotionally available. The injury affected his manhood and he felt he was not good enough for her and this got worse over the relationship.

Michael Garcia testified about his injuries. He states having sex is so limited that he doubts he will be able to have children, and he always wanted to have as big a family as possible. Regarding sex, he enjoyed it frequently before his injury, but not it comes with dread. He worries about whether he can face a potential girlfriend with the need to discuss his dysfunction and cosmetic defects. He has tried sex 10 times in the past 5 years but he loses his rection and the friction of sex causes him discomfort and has not had a satisfying climax since the injury. Use of hot water is a trigger for him causing him to reexperience the horrific burn. He still has dreams about the incident and cries out in pain in his sleep. He is depressed.

At the time of verdict, it had been five years or more from the date of the injury and the evidence documents the ongoing nature of these injuries. The injuries have not been healed by credible expert testimony from Dr. Goldstein. (RT 1123, 950-951). The court instructed the jury, and Starbucks did not present any credible evidence to contradict the instruction that Michael Garcia would live another 45 years. This life expectancy is reasonable and realistic given that the injuries he sustained are emotional and due to stable yet extreme penile damages from the burn. The jury award that Mr. Garcia would suffer damages on average of $1,000,000 per year was reasonable given the permanent and enormous damage that Plaintiff had sustained. These witnesses, whose testimony is summarized above, are overwhelming evidence that Mr. Garcia suffered significant pain and suffering and will continue to do so for the rest of his life.

There is nothing about the amount of the award on its face that indicates jurors' passion, prejudice or corruption was the basis for the award. In another case, given the severity of the

damages, it was held in the case of Johnson v. Monsanto (2020) 52 Cal.App. 5th 434 that an award of $1 million per year was not per se excessive, although in that case, unlike the present case, there was inadequate proof of life expectancy to sustain the damage award.

In this case the proof of compensatory damages in the amount of $1 million per year for 50 years of life expectancy from the date of the injury was reasonable based upon the court's independent review of the evidence.

Misconduct of Counsel/Improper Argument

Starbucks argues that Mr. Rowley's final argument inflamed the jury with improper argument it speculates led to this verdict. However, Starbucks did not object to any of the alleged arguments that were purportedly improper. "[W]here misconduct of an attorney is relied on in a motion for new trial, it must be shown that objection was made as soon as the misconduct became known." (People v. Rosson (1962) 202 Cal.App.2d 480, 491.) The court, therefore, did not have an opportunity to interject a ruling and admonition. If there had been an improper argument, then Starbucks waived the right to a new trial for any attorney misconduct by failing to object during the trial to the misconduct of which the defense was aware, and by not requesting a jury admonition or a mistrial. Fernandez v. Jimenez (2019) 40 Cal. App. 5th 482, 492. A party may not wait to see whether the jury renders a verdict in the party's favor and, if the jury does not do so, then file a motion for a new trial based upon misconduct. Garcia v. ConMed Corp (2012) 204 Cal. App. 4th 144, 148.

"Because the effect of misconduct can ordinarily be removed by an instruction to the jury to disregard it, it is generally essential . . . that it be called to the attention of the trial court at the time, to give the court an opportunity to so act, if possible, as to correct the error and avoid a mistrial." (Dominguez v. Pantalone (1989) 212 Cal.App.3d 201, 211–212.) None of the misconduct claimed by Mr. Rowley could not have been cured by an appropriate admonition by the court. Certainly, had any objection been made to the claimed misconduct, then there would have been a pause in the argument to allow the court to formulate and interject an admonition. Since Starbucks did not object Starbucks cannot now complain that the improper argument somehow inflamed the jury verdict. It should be noted that Mr. Rowley did not invite the jury to award punitive damages, but rather clearly argued only for compensatory damages and advised the jury that punitive damages were not appropriate. (RT 1186.)

The court agrees with the arguments in opposition to the new trial that the finding of misconduct in a prior case does not give any weight to an argument that Mr. Rowley acted improperly in this case.

In the reply Starbucks argues that Burchell v. Fac. Physicians & Surgeons of Loma Lina Univ. Sch. of Med. (2020) 54 Cal.App.5th 515, 531 stands for the proposition that the court may "consider[] whether improper attorney argument tended to show that a damages award was the product of passion or prejudice, even where an attorney misconduct claim [has] not been preserved." In that regard, the court has considered the argument and finds that improper argument did not cause the jury to enter a verdict that was tainted by passion and prejudice. Mr. Rowley never argued that the damages should be inflated beyond what the instructions permitted. He paraphrased CACI 3924 in stating that punitive damages are not proper. The instructions contained CACI 3924 which stated in pertinent part: "You must not include in your award any damages to punish or make an example of STARBUCKS CORPORATION. Such damages would be punitive damages, and they cannot be a part of your verdict. You must award only the damages that fairly compensate MICHAEL GARCIA for her [sic] loss."

It is certainly proper for counsel in the final argument to comment on the failure of the opposing party to prove their contentions, including commenting on discrepancies and contradictions between the opening statement and the evidence that was presented. People v. Chatman (2006) 38 Cal.4th 344, 385; People v. Welch (1999) 20 Cal. 4th 701, 753. Here, Starbucks counsel referred to itself as a "conscientious and thoughtful corporate citizen" made up of "salt of the earth" people (RT 480). The comments criticizing Starbucks in the final argument as not being a good corporate citizen is a permissible retort. These arguments were not attacks on the character or motives of the adverse party but rather an argument to attempt to negate the possible prejudice of statements made in opening statement.

In argument, Starbucks focuses on the anti-corporation arguments made in argument that invited the jury to set Starbucks straight or similar language. This was taken as an argument on liability, not one seeking to impermissibly foment the jury to act out of passion and anti-corporation prejudice. Again, it is important to emphasize that Mr. Rowley carefully and clearly argued that the jury should only award fair compensation to Plaintiff and not to award any punitive damages and he did not argue that the jury should inflate the award beyond reasonable compensation. These remarks are not misconduct and in any event were cured by counsel's other statements to the jury, and there is no indication that the jury was influenced by passion or prejudice" Any arguable claim of impropriety disappears if the argument is considered as a whole. Nishihama v. City and County of San Francisco (2001) 93 Cal.App.4th 298, 304–306: Bell v. Farmers Ins. Exchange (2004) 115 Cal. App. 4th 715, 764
Some of the arguments that Mr. Rowley made are characterized by Starbucks as "over the top" are considered by the court as permissible argument which did not mischaracterize the evidence even though it did characterize the evidence in dramatic and hyperbolic language. See for example People v. Gamache (2010) 48 Cal.4th 347, 371.

Statements made by Mr. Rowley about the nature and extent of damages are considered proper arguments because such arguments were merely a permissible statement of opinion that the evidence supports a particular conclusion. See Rogers v. Foppiano (1937) 23 Cal.App.2d 87, 94 – 95.

The court agrees with Plaintiff's arguments in the Opposition to the motion at pages 7:26 to 9:6 that regardless of the failure to object, the statements made by Mr. Rowley did not amount to misconduct for the reasons stated in those arguments.

The prejudicial impact of the arguments has not been shown either as the jurors clearly showed restraint and reason in their award as documented by the amount of the award compared to the much higher suggestion given by Mr. Rowley in his final argument and as supported by the evidence discussed in the portion of this decision relating to compensatory damages. The juror affidavits attached to the opposition declaration of Mr. Yoder at Exhibit B are further support for the conclusion that the award of damages was not caused by any argument made by Mr. Rowley.

Claim that the award was punitive in nature

For the same reasons as discussed regarding the fairness of the compensatory award, the court rejects the claim that the damage award was some form of punitive award. As cited in the argument, Mr. Rowley made it clear that the award of damages may only be compensatory and may not be punitive in nature (RT 1186.)

Argument that it was an error to exclude evidence of the amount of medical expense incurred by Plaintiff

Initially, it should be mentioned that Starbucks argues that the withdrawal of medical expense claims is not novel or unusual. It is a common strategy of Plaintiffs counsel in order to avoid disputes over the amount of the medical bills, the amount of reimbursement for those bills, and the reasonable value of the medical bills to withdraw a claim for economic damages. These disputes prolong the trial by requiring billing and reasonable value of services experts and divert attention from liability. The withdrawal of a claim of damages is wholly proper in the discretion of the Plaintiff.

This argument presupposes that there was some admissible evidence that could be admitted on this subject. Starbucks asks the court to speculate that somehow Mr. Garcia could lay a foundation of knowledge testify as an expert on the reasonable value of the medical care that he

received and the amount of reimbursement for medical care from collateral sources, or the amount incurred for the medical treatment.
There is no precedent for the claim that admission of such evidence was required or relevant to the award of noneconomic damages. There is no authority establishing limits upon a general damage award based upon a small amount of special damages Westphal v. Wal-Mart Stores, Inc. (1998) 68 Cal.App.4th 1071, 1078–1079. There is no specific requirement that any special damages be awarded before general damages may be awarded. (Id.) As a corollary, there is no requirement "that there must be some 'reasonable relationship' between economic and noneconomic damages." Burchell v. Faculty Physicians & Surgeons of Loma Linda University School of Medicine (2020) 54 Cal.App.5th 515, 529.

The plaintiff correctly argues that allowing evidence about the medical expenses in the case through Mr. Garcia would have been improper due to lack of foundation on the part of Mr. Garcia about the amount or value of the medical bills and because it is irrelevant to the issue of compensatory damages. The argument that Starbucks proposed it would have made based upon the introduction of the amount of the medical bills would have been improper because it would be asking the jury to speculate to an unsupportable inference that compensatory damages should be somehow limited because of the amount of medical bills. See Garcia v. ConMed Corp. (2012) 204 Cal.App.4th 133, 148; People v. Fuiava (2012) 53 Cal. 4th 622, 728 – 729.

Conclusion

Based upon the foregoing, the motion for new trial is DENIED.

Starbuck's Motion for Judgment Notwithstanding the Verdict
FINAL RULING

The motion for JNOV is based upon CCP §629(a). That section states:
"(a) The court, before the expiration of its power to rule on a motion for a new trial, either of its own motion, after five days' notice, or on motion of a party against whom a verdict has been rendered, shall render judgment in favor of the aggrieved party notwithstanding the verdict whenever a motion for a directed verdict for the aggrieved party should have been granted had a previous motion been made."
A motion for a directed verdict is in the nature of a demurrer to the evidence and concedes as true the evidence on behalf of the adverse party with all fair and reasonable inferences to be deduced therefrom. Lehmann v. Mitchell (1952), 109 Cal. App. 2d 719.

On a motion for a directed verdict, the function of the trial court is analogous to that of a reviewing court in determining, on appeal, whether there is evidence in the record of sufficient substance to support a verdict. Dailey v. Los Angeles Unified School Dist. (1970), 2 Cal. 3d 741.

A directed verdict or judgment notwithstanding the verdict may be sustained only when it can be said as a matter of law that no other reasonable conclusion is legally deducible from the evidence. Kaiser Cement & Gypsum Corp. v. Allis-Chalmers Mfg. Co. (1973), 35 Cal. App. 3d 948.

All the arguments made in support of this motion seem to be directed to the belief that somehow the Plaintiff had a degree of fault in the incident and that the trial evidence was insufficient to allow for a contrary finding. The motion is predicated upon the core arguments made at trial which were all clearly negated by the actual video of the incident. There is no credible evidence in support of the proposition that Plaintiff has comparative fault to any degree and the jury was completely correct in disregarding the testimony of T. Le to the contrary.

Therefore, the motion is DENIED.

The Court's final rulings on Starbuck’s Motion for New Trial and Motion for Judgment Notwithstanding the Verdict are served on the parties by electronic mail this date pursuant to CRC 3.1109.

The Court takes the Hearing on Motion - Other on Prejudgment Costs and Hearing on Motion for Attorney Fees and Costs of $1,558,325.00; By Plaintiff Michael Garcia; under submission.

The Court will issue further rulings on the submitted matters under separate notice.