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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

LA-KEBBIA WILSON and CHARLES SMITH,

Plaintiffs,

v.

CITY OF FRESNO, HOWARD LACY, JEFFREY CARDELL, JENNIFER CLARK, KELLI FURTADO, TIMOTHY BURNS, KEVIN WATKINS, ANDREIA CUEVAS, DEL ESTABROOKE, and DOES 1 to 100, inclusive,

Defendant.

Case No. 1:19-cv-01658-KES-FRS (SAB)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR NEW TRIAL

Date: June 15, 2026
Time: 1:30 pm
Crtrm.: 6, 7th Floor

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I.

INTRODUCTION

The City of Fresno (the "City") moves for a new trial, or in the alternative, remittitur, on the grounds that the weight of the evidence does not support the jury's award of non-economic damages, and that award is excessive. As demonstrated below, the jury verdict in this action greatly exceeds awards that case law has held excessive, despite more concrete proof of more severe emotional distress in those other cases.

The timeframe in this case encompassed a short window, approximately 2 years and four months for Ms. Wilson, a year of which she was on paid administrative leave. The Court instructed the jury to not consider events that had a greater adverse impact on her employment—her suspension and termination, spanning approximately another three years before trial. Plaintiff presented limited, largely subjective testimony, unsupported by corroborating evidence such as medical treatment, expert testimony, or documentation of ongoing psychological injury. What little medical evidence there was confirmed that counseling would largely mitigate any injury, yet Plaintiff did not pursue counseling. Despite a record that objectively supports a sum lower than in other reported cases, this jury returned an award that far exceeds other amounts that have been judicially found to be excessive.

A trial judge has both broad authority and a duty to intervene where a damages award is excessive. Not only does the size of the verdict alone warrant such intervention, but so do other circumstances that indicate that a judge's moderation should accompany the jury's verdict.

For one, the instructions required the jury to engage in difficult line drawing. For example, the "severe and pervasive" element of the underlying liability issues naturally invited argument that would have a natural tendency to inflame lay jurors. But, the instructions then directed the jury that, upon determining liability, the jury must not include any punishment in its damages award and its sole task was to determine a reasonable sum to compensate for proven emotional harm. Similarly, to place the events in question in context, the jury heard evidence of events that preceded May 13, 2018, and events that postdated October 2019, including evidence related to Ms. Wilson's suspension and termination, yet the Court instructed the jury that it could not award damages based

on any of those more serious adverse employment actions, or events outside the time period at issue.

This kind of line drawing is difficult for lay jurors who are in ordinary civic life and are not required to compartmentalize related events in a way that the law and instructions required in this case. That is why our law grants broad authority to, and imposes a solemn duty upon, the trial judge to conduct reasoned review of the verdict amount.

For another, Plaintiffs' counsel's closing argument on the damages amount proposed an arbitrary range of $5 million to $20 million in damages, without grounding those numbers in any evidence. Lay jurors, who are not trained in the law, have no reliable way to assess whether such a request is normal or aligns with damages award in other cases.

In fact, the trial judge's ability to perform proportionality review and compare the award in the case at issue to other awards in other cases is both among the reasons why a judge has broad post-verdict authority and an important post-verdict duty. Such review ensures fairness and consistency across cases, which is crucial to the rule of law and confidence in our legal system.

Lastly, Title VII caps the damages award on the federal causes of action at $300,000 for each plaintiff, but the jury's undifferentiated damages award makes it impossible to determine how much (if not all) the jury awarded on the capped federal causes of action, compared to how much the jury may have awarded on the FEHA causes of action. Because the Court instructed the jury on the continuing violation theory only on the federal causes of action, and given other differences in the law, the jury may have awarded more on the capped federal causes of action. Reducing the award to be closer to the Title VII cap would help mitigate the possibility of prejudice by reducing the likelihood that the reduced sum represents damages that are subject to the federal cap.

As it turns out, the Title VII cap represents a reasonable damages sum for a case where the plaintiff did not present issue of any physical injury, medical condition or treatment, the only adverse employment actions at issue found by the jury were a letter of reprimand and an investigation by an outside attorney, here the time period at issue was limited, and where other more serious adverse employment events could not be a basis for damages.

As far as Mr. Smith, he was only a full-time employee for three months when the alleged events occurred, however, the jury awarded him $400,000 in unsubstantiated emotional distress

damages.

The City respectfully requests that the Court reduce the non-economic damages, or, alternatively, order a new trial under Federal Rule of Civil Procedure, Rule 59.

II.
RELEVANT BACKGROUND

Because the Title VII $300,000 damages cap is 1/50th of the sum that the jury awarded, any justification of the amount of the verdict must be grounded in the FEHA, so the discussion below concentrates on the FEHA causes of action.

A. Plaintiffs' Claims Which Proceeded To Trial.

On October 22, 2019, Plaintiff La-Kebbia Wilson ("Ms. Wilson") and Plaintiff Charles Smith ("Mr. Smith"), both former employees within the City of Fresno's Code Enforcement Division, sued the City of Fresno and eight individual City Defendants, asserting a variety of employment claims. The individual Defendants were all dismissed before trial.

After a series of motions, on the first day of trial, Wilson's remaining claims against the City were for harassment, discrimination and retaliation under FEHA and Title VII; a failure to prevent discrimination, harassment and retaliation under FEHA; and violation of Labor Code Section 1102.5 based upon FEHA. After the City's Motion for Judgment was granted as to promotional opportunities, Ms. Wilson's claims were based on three adverse actions (1) letter of understanding; (2) being placed on paid administrative leave; and (3) the investigation by attorney Selling.

Mr. Smith's remaining claims against the City were for retaliation under Title VII and FEHA; associational harassment and failure to prevent retaliation and harassment under FEHA.[1] Mr. Smith's adverse actions in relation to his discrimination claims and retaliation claim under FEHA were identified as (1) the transfer to the tire team; (2) failure to re-hire; and (3) constructive discharge.

[1] In his claim for retaliation under Title VII, the Court further held Smith is precluded from seeking relief for those adverse employment actions which took place prior to August 14, 2018. The only adverse action that occurred after this date is the failure to rehire him after he resigned, a claim which was rejected by the jury.

B. Relevant Time Frame At Issue.

Ms. Wilson was hired by the City of Fresno's Code Enforcement Division in 2004. On or about July 19, 2009, Wilson filed her first lawsuit against the City for racial discrimination, harassment and retaliation in United States District Court. On or about April 9, 2012, the first lawsuit was resolved through a settlement agreement, a 1542 general release, and dismissal with prejudice. As such, this Court ruled in its order granting, in part, the City's Motion for Summary Judgment, "any employment actions taken by the City and its employees as to Wilson prior to April 9, 2012, are released by the settlement agreement and cannot form the basis for Wilson's present claims." (See MSJ Order attached as Exhibit "B" to the Request for Judicial Notice filed herewith ("RJN") at p. 10:2-4.)

On or about August of 2013, the City eliminated Wilson's position as part of a lay-off. (See Plaintiffs' Complaint ("the Complaint") attached as Exhibit "A" to the RJN at ¶ 39). As such, Ms. Wilson was not an employee of the City from August of 2013 until December 12, 2016, when she returned. (*Id*. at ¶ 70).

On the FEHA cause of action, the Court instructed the jury that it could only base liability on events that occurred from May 13, 2018 to October 22, 2019. The Court's instructions specified that the "continuing violation" theory applied only to the damages-capped Title VII cause of action. As a result, Plaintiffs' counsel conceded in closing argument that on the FEHA causes of action, the jury could back to May 13, 2018 "but no further." (See Reporter's Transcript attached as Exhibit "E" to the RJN ("RT") at p. 1634) From August of 2018 until July of 2019, Ms. Wilson was on paid administrative leave.

There is also no dispute that the operative timeframe for Mr. Smith was three months as he did not begin his full-time employment with the City of Fresno until April of 2018 and then quit on July 10, 2018. Mr. Smith, in resigning, stated "the last three months of my life have been more fulfilling than the five years before it." (Def. Ex. 39, RJN at Exh. "G".)

C. Ms. Wilson's Allegations of Harassment, Retaliation, and Discrimination During the Relevant Timeframe.

At trial, Ms. Wilson testified that she experienced various acts of harassment, retaliation,

and discrimination by the City from the time she returned from her layoff in December of 2016 until October of 2019 when she filed her Complaint. They are discussed below.

Inadequate Office Space/Supplies: First, Ms. Wilson claims that, upon her return, she was not provided with adequate desk space. Namely, she claimed she was temporarily placed in a conference room as her cubicle was not ready. (The evidence actually showed that the City was in the process of renovating, and thus, many employees were temporarily placed in conference rooms while their work spaces were being renovated.) Ms. Wilson claims that, when she was ultimately assigned a cubicle, it *initially* had no partition or walls or computer or telephone and was near a high foot traffic. (RT at pp. 44:1-46:2) The evidence shows, however, that she received a computer after a couple of weeks and partition walls and a phone after one month. However, she complained that the equipment ultimately issued to her by this government entity was outdated. (RT at pp. 47:1-49:10.)

Undesirable Truck: Ms. Wilson also complained that, when she returned to work in December of 2016, she was assigned a truck from the fleet that was filthy and had a metal bar protruding through the driver's seat. (RT at pp. 52:17-55:6) Her truck was thereafter immaculately cleaned/detailed and the upholstery fixed. (RT at p. 57:18-24)

Old Tool Bag: Wilson also complained that, when she returned to work in December of 2016, she initially was not given a bag to hold her tools, then was given a tool bag made of cloth, which was not sufficient to hold her tools. (RT at pp. 58:1-63:16) Ms. Wilson's supervisor Kevin Watkins ended up walking to Office Max himself and buying her a new tool bag with his own money. (RT at pp. 64:1-65:10)

Not Permitted to Park in a Restricted Parking Area: Next, Ms. Wilson claims she was singled out by being told she could not park in a restricted parking area of the City Hall although she knew another employee was permitted to park there. (RT at pp. 77:4-82:20)

Alleged Use of a Racial Slur Against Wilson: In July of 2018, Ms. Wilson was informed by Plaintiff Charles Smith that Howard Lacy had allegedly called her a lazy piece of shit and an entitled "N" word. (RT at p. 95:6-10). Ms. Wilson admitted during trial that she was so "f***ing mad" and "pissed", got "angrier and angrier" while walking into City Hall, could not control herself,

and yelled out "they're all fucking liars, all of them." (RT at pp. 106:16-107:5) Of note, Ms. Wilson confirmed that other than that statement, she neither heard nor learned of another derogatory comment made towards her or about her. (RT at p. 1051:24-25)

Letter of Reprimand Issued to Wilson: Given her outburst in the hallway, on August 16, 2018, Ms. Wilson was issued a Letter of Reprimand. (RT at pp. 131:2-132:1)

City's Failure to Immediately Separate Lacy and Wilson: Ms. Wilson claims that the City took an entire month to separate her from Howard Lacy. (RT at pp. 125:1-126:4)

Wilson Placed on Administrative Leave: Ms. Wilson was then placed on paid administrative leave in August of 2018. (RT at pp. 145:11-147:15) While on paid administrative leave, Ms. Wilson understood that, if she needed time off, she could request it from the City and could use banked time in her account, like PTO or vacation time. (Transcript Day 4, 215:23-216:2) She also accrued vacation and sick time and received her full rate of pay. (RT at p. 1070:12-17)

Investigation by Dallas Selling: Dallas Selling was hired by the City to conduct an outside investigation and she interviewed Ms. Wilson six times, totaling over or close to 12 hours. (RT at pp. 161:1-16; 1038:4-1039:4) Ms. Wilson claimed that Ms. Selling was a family law practitioner and had no prior experience conducting workplace investigations into complaints of harassment, discrimination, and retaliation. (RT at pp. 33:25-34:3) Selling's final report concluded that the evidence was insufficient to prove discrimination, harassment, or retaliation. (RT at p. 37:22-25)

Alleged Continued Harassment After Return from Administrative Leave: Ms. Wilson claims that she experienced additional harassment upon her return to work in July of 2019. (RT at p. 163:8-9) First, she claims that she was initially placed on the same floor as Howard Lacy. (RT at p. 163:1-7) Then Ms. Wilson claims that her personal property was allegedly tampered with, namely her earbuds were tied with a zip tie and her reading glasses were broken. (RT at p. 141:11-144:13)

Results of Selling Investigation: On September 6, 2019, Ms. Wilson received a letter from Douglas Sloan informing her that her complaint of discrimination, harassment and retaliation were not substantiated. (RT at pp. 171:5-172:1) However, she also learned of a letter sent to Howard Lacy which indicated findings not only on her complaint against him, but also on a complaint that Mr. Lacy had made against Ms. Wilson. (RT at p. 172:2-8) Ms. Wilson claims that she was never made

aware of any complaint that Mr. Lacy had made against her by anyone, including Douglas Sloan or investigator Dallas Selling. (RT at p. 172:9-20) She claims that the failure to notify her of a complaint was a violation of City policy. (RT at pp. 172:21-25)

Plaintiffs' Damages Arguments: In closing argument, Plaintiffs' counsel urged the jury to award emotional distress damages in a range of $5 million to $20 million. Counsel did not provide any explanation of how those numbers were derived. Nor did counsel identify any of the traditional indicia of emotional distress damages identified in the case law: physical injury, disfigurement, debilitating pain, a medical condition that requires treatment, or lingering psychological injuries of such severity that a medical provider prescribes medication or treatment. Instead, counsel emphasized primarily the kind of injury alleged in a defamation case, but not at issue here: "character assassination," which counsel described as a kind of "death" that is permanent. But reputational harm was not a form of damages on which the jury was instructed. Similarly, counsel argued the value of human dignity—a point that likewise connected only loosely with what the Court more precisely instructed the jury to assess: proven emotional suffering or harm.

D. Jury Verdict.

Trial commenced on February 24, 2026. On March 11, 2026, the jury returned a verdict in favor of Plaintiff Wilson on all of her claims, in the amount of $15,000,000, purely based upon her claim for emotional distress damages, as both Plaintiffs were prevented from asserting any economic damages, including lost wages. However, the jury did not find that being placed on administrative leave during the Selling Investigation was an adverse action. As such, the only adverse employment actions at issue in relation to Ms. Wilson was the letter of reprimand in August of 2018 and the Selling Personnel Investigation itself. (See Verdict Form attached as Exhibit "C" to the RJN.)

The jury also returned a verdict in favor of Plaintiff Smith on some of his claims in the amount of $400,000, purely based upon his claim for emotional distress damages. However, the jury found that Mr. Smith only met his burden in establishing an adverse action related to his transfer to the tire team, and found that Mr. Smith did not meet his burden in establishing that he was constructively discharged or that the City unlawfully failed to rehire him. (Exhibit "C" to the RJN.)

Judgment was entered on March 11, 2026. (See Exhibit "D" to the RJN.)

This Motion is timely filed within 28 days of the entry of judgment, as required by Rule 59(b). (FRCP, Rule 59; *Gonzalez v. Shahin*, 77 F.4th 1183, 1189 (2023).)

III.
LAW AND ARGUMENT

A. Federal Standards On A Motion For New Trial.

Federal Rule of Civil Procedure ("FRCP"), Rule 59 gives a court the power to both amend judgments and grant new trials. (FRCP 59(a)-(e). "Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying [a motion to amend]." (*McDowell v. Calderon*, 197 F.3d 1253, 1255 fn. 1 (9th Cir. 1999) (en banc).) However, the court is "bound by those grounds that have been historically recognized", which include, but are not limited to (1) a verdict that is contrary to the weight of the evidence; (2) a verdict where the damages are excessive; (3) the trial was unfair to the moving party due to prejudice, bias, or other procedural irregularities; or (4) to prevent a miscarriage of justice. (FRCP, Rule 59, *Boateng v. BMW AG,* 753 F. Supp. 3d 215, 227 (2024); *EEOC v. New Breed Logistics*, 783 F.3d 1057, 1065-1066 (2015); *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 729 (2007) [quoting *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940)]; *Fenner v. Dependable Trucking Co., Inc.*, 716 F.2d 598, 603 (9th Cir. 1983).)

California case law and statutory authority also demonstrate the trial court's authority to grant a new trial when a jury's award of emotional distress damages is deemed excessive, particularly when the evidence does not adequately support the amount awarded or when the award appears to result from passion or prejudice. Pursuant to CCP section 662.5, the court may issue a conditional order granting a new trial unless the prevailing party consents to a reduction of damages to an amount the court deems fair and reasonable.

The trial court has broad discretion in determining whether to grant a new trial, and such discretion is reviewed for abuse, only in exceptional circumstances. (*Fleming v. County of Kane*, 898 F.2d 553, 559 (7th Cir. 1990).)

B. The Weight Of The Evidence Does Not Support The Emotional Distress Award And That Award Is Excessive.

Because the verdict can only avoid the Title VII $300,000 cap based on the California law

causes of action, we begin with the California law that governs a trial judge's review of a jury's emotional distress verdict. Under California law, "'[t]he amount of damages is a fact question, first committed to the discretion of the jury and next to the discretion of the trial judge on a motion for new trial." (*Major v. W. Home Ins. Co.*, 169 Cal. App. 4th 1197, 1213 (2009).) The trial judge may grant a new trial if it finds the awards excessive according to the judge's "independent appraisal of the evidence." (*Mokler v. County of Orange*, 157 Cal. App. 4th 121, 147 (2007) [affirming trial court's "exercise[ ] [of] its duty" to grant new damages trial].) While there is no precise standard for a jury to follow in computing emotional distress damages, the trier of fact must still assess the degree of harm suffered and determine an appropriate sum solely to compensate for that proven harm—and not to punish, deter or serve any other purpose. (*Walnut Creek Manor v. Fair Employment & Housing Com.,* 54 Cal. 3d 245, 263 (1991).) In determining the amount of emotional distress damages, factors such as the impact of the employer's discriminatory conduct on the employee's physical and mental well-being, personal integrity, dignity, privacy, career advancement, and relationships are considered. (*Sasco Electric v. Fair Employment & Housing Com.*, 176 Cal. App. 4th 532, 544 (2009). The duration and severity of the emotional injury is also relevant. (*Id.*) A court may consider other damages awards in analogous cases in determining whether to reduce the damages award or order a new trial. (*Bandary v. Delta Air Lines, Inc*., *supra*, 623 F. Supp. 3d at p. 1075-1076.)

Courts have regularly granted new trials for emotional distress verdicts in employment actions which ranged between $400,000 and $8 million. In doing so, the courts either granted new trials or asked plaintiff to accept remitted awards in the range of $125,000 and 400,000. The verdict in this case is much higher than others that courts have held were excessive.

In *Glick v. City of Los Angeles*, the trial court expressed its intent to grant a new trial unless plaintiff accepted a reduction of emotional distress damages from $8,000,000 to $250,000 in action for discrimination and retaliation. (*Glick v. City of Los Angeles*, 2023 Cal. Super. LEXIS 88708, at *26-27.)

In *Villalpando v. Hughes Aircraft Co.*, the trial court granted the defendant's Motion for Judgment Notwithstanding the Verdict and Motion for New Trial, in the alternative, finding jury's

awards of $3.5 million and $2 million in emotional distress damages for two plaintiffs' discrimination and retaliation claims excessive, where plaintiffs provided minimal evidence of distress and no evidence of medical attention due to distress. (*Villalpando v. Hughes Aircraft Co.*, 1994 Cal. Super. LEXIS, *24-26.)

In *Radford v. Bae Sys. San Francisco Ship Repair*, the court granted defendant a new trial after damages in an action for wrongful termination, based on race and found that the jury's award of $360,000 in emotional distress damages were excessive, where plaintiff provided little evidence of distress. (*Radford v. Bae Sys. San Francisco Ship Repair*, 2011 Cal. Super. LEXIS 457, *14-17.)

In *Glenn-Davis v. City of Oakland,* the trial court granted defendant's motion for new trial unless plaintiff accepted a remitted award of $400,000 in emotional distress damages, finding that the jury award of $1.85 million was wildly excessive, where plaintiff provided minimal evidence of emotional distress from defendant's failure to promote her due to plaintiff's pregnancy. (*Glenn-Davis v. City of Oakland*, 2007 U.S. Dist. LEXIS 19171, at *6-8 (N.D. Cal. Mar. 5, 2007).)

In *Alvarado v. Fed. Express Corp.*, the trial court granted defendant's motion for new trial unless plaintiff accepted a remitted award of $300,000 in emotional distress damages, finding the jury award of $500,000 excessive, where plaintiff provided no evidence he suffered from depression or anxiety due to defendant employer's retaliation, and there was no evidence of loss of salary or benefits due to retaliation. (*Alvarado v. Fed. Express Corp.*, 2008 U.S. Dist. LEXIS 21238, at *9-12 (N.D. Cal. Mar. 18, 2008).)

In *Mokler v. County of Orange*, the appellate court affirmed a reduction in the verdict from $1.6 million to $125,000. (*Mokler v. County of Orange*, 157 Cal. App. 4th 121, 147 (2007).)

In *Knutson v. Foster*, the trial court granted a motion for a new trial on the ground that the jury's award of $400,000 in noneconomic damages for emotional distress was excessive. (*Knutson v. Foster*, 25 Cal. App. 5th 1075, 1088 (2018).) The court found that the evidence presented at trial did not sufficiently support the award. (*Id.* at p. 1089.) Specifically, the plaintiff's testimony about feeling betrayed, violated, and manipulated, which included her tearing up during testimony, was deemed insufficient to justify the amount awarded. (*Id.*) Similar to the present action, the court in *Knutson* noted that no expert testimony connected the emotional distress to the defendant's conduct,

and the plaintiff had stipulated that certain factors (e.g., her eating disorder and NCAA eligibility loss) were not attributable to the defendant. *(Id.* at p. 1096) [Emphasis Added].)

In *Diaz v. Tesla, Inc.,* the jury awarded Plaintiff $6.9 million in compensatory damages and $130 million in punitive damages in a racial discrimination case against Tesla under the FEHA. The evidence showed that Plaintiff was subject to frequent racial abuse including the *repeated* use of the N-word slur *in his presence and directed at him personally*. His supervisors and Tesla's management did little or nothing to respond. The trial judge reduced the compensatory damages to $1.5 million as the highest award supported by the evidence. (*Diaz v. Tesla, Inc.,* 598 F. Supp. 3d 809, 835 (N.D. Cal. 2022).)

In *Horsford v. Bd. of Trs. of Cal. State Univ.*, the appellate court affirmed the trial court's reduction of an emotional distress award based on a FEHA cause of action from between $1 million and $1.5 million to between $250,000 and $300,000. (*Horsford v. Bd. of Trs. of Cal. State Univ.*, 132 Cal. App. 4th 359, 389-90 (2005).)

In *Iwekaogwu v. City of L.A.*, the appellate court affirmed the trial court's remitted award of $450,000 in emotional distress damages for retaliation claim. (*Iwekaogwu v. City of L.A.*, 75 Cal. App. 4th 803, 821 (1999).)

In *Merlo v. Standard Life & Acc. Ins. Co.*, the appellate court reversed the compensatory damages award of $267,294, which included approximately $250,000 in emotional distress damages noting that the plaintiff's emotional distress damages were "disproportionate" and the "result of passion and prejudice". (*Merlo v. Standard Life & Acc. Ins. Co.*, 59 Cal. App. 3d 5, 16-17 (1976).)

In *Villalta v. JS Barkats, P.L.L.C.,* the court discussed the emotional harm suffered by the plaintiff due to the egregious conduct of her employer. The plaintiff in that action endured severe emotional trauma, including paranoia, anxiety, depression, and self-harm, as a result of sexual assaults and ongoing harassment during her employment. Despite the severity of her experiences, the court found that an emotional distress award of $1 million was excessive, given the limited corroborating evidence, such as the absence of a PTSD diagnosis or long-term psychiatric treatment. Instead, the court awarded $350,000 in emotional distress damages, aligning with awards in similar cases involving sexual assault and harassment. (*Villalta v. JS Barkats, P.L.L.C.*, 2021 U.S. Dist.

LEXIS 75071, *36.)

Not only is the sheer size of the award here vastly more excessive than in the above cases that directed a post-verdict reduction, but the limitations the Court's instructions placed on what could be compensated also further show the award was excessive and likely included compensation for events about which the jury heard but which were not compensable under the instructions.

In *Roby v. McKesson Corp.*, 47 Cal.4th 686 (2009), a jury awarded $300,000 in emotional distress for a discrimination claim that embraced on-the-job and termination injuries, and $500,000 for a wrongful termination claim that encompassed only the termination. (*Id.* at 704.) The injuries in this case were far more severe - after the lawful job termination, the plaintiff became "agoraphobic, suicidal and completely disabled for purposes of employment." (*Id.* at 704.)

The California Supreme Court held the verdict made no sense because on the more comprehensive discrimination claim (which included damages from her termination) the jury awarded *less* in noneconomic damages than it did on the less comprehensive wrongful termination count. The court held that, as a matter of law, it cannot be that the same termination caused $500,000 in noneconomic damages when litigated as a wrongful termination in violation of public policy, but that it caused only $300,000 in noneconomic damages when litigated as an instance of discrimination in violation of the FEHA, and this discrepancy is especially odd as the FEHA discrimination claim was, as a legal matter, the broader of the two claims—that is, it covered both the termination itself, and events that preceded the termination. (*Id.* at 706.)

The California Supreme Court also found it "highly unlikely that the jury found that Roby suffered 60 percent greater emotional injury from events that *preceded* the termination (the $800,000 award for failure to accommodate) than from the termination (the $500,000 award for wrongful termination). This finding is especially odd because the evidence showed that, before the termination, Roby was coming to work regularly and coping with a difficult situation reasonably well, whereas after the termination she became agoraphobic, suicidal and completely disabled for purposes of employment." (*Id.* at 704.) The Court held that this "further suggest that the jury did not understand the various categories of damages, making any efforts to divine its intent as to its ambiguous verdict difficult at best." (*Id.*) The Court held that a new trial on damages "would

ordinarily be appropriate," but was unnecessary because both parties stipulated to a lesser award to avoid a new trial. (*Id.* at 705.)

Roby thus highlights the need in post-verdict review to align the damages award to correspond to (a) the proven injury—especially physical manifestations of emotional injury; and (b) what the instructions told the jury about what was compensable and what was not compensable. *Roby* also shows that the difficult line drawing that the law and jury instructions sometimes require juries to perform in FEHA cases can be a challenge for lay jurors, so post-verdict judicial review is essential.

Here, the verdict is nearly 20 times higher than the amount that the California Supreme Court held required a new trial in *Roby*, there are no physical manifestations of emotional distress or other comparable evidence of emotional harm here, the non-compensable events here both included more serious adverse employment actions, and a much broader time range than the limited compensable time period, and the line-drawing that the instructions required the jury to perform in this case were even more challenging in light of both the temporal restrictions and the events that had been summarily adjudicated in the City's favor.

Further scrutiny of the evidence here and other relevant circumstances further supports a sizeable reduction.

1. The Weight Of The Evidence Does Not Support The Emotional Distress Verdict And That Verdict Is Excessive.

Given the 2 year and four month timeframe, a year of which included paid leave, the evidence does not support the $15 million emotional distress verdict.

a. Ms. Wilson's Medical Records Showed Her Stress Level Was Not Extensive Until After Her Suspension.

During the examination of Wilson's primary care physician Dr. Padilla, Dr. Padilla authenticated Ms. Wilson's medical records and they were admitted as Defense Exhibit 95, without objection. (RT at pp. 962:9-963:18; Def. Exh. 96 at RJN Exh. "F".) Those records showed Dr. Padilla did not prescribe Ms. Wilson Prozac, for depression and anxiety, until 2021, long after the relevant timeframe. (RT at pp. 970:8-971:25) By that time, Ms. Wilson was appealing the CSB decision to the state court.

At trial, Dr. Padilla confirmed she is a family practitioner and is not licensed or certified in psychology or psychiatry. (RT at pp. 971:17-972:25) Dr. Padilla confirmed, and her medical records show, that Ms. Wilson was advised to seek counseling with a licensed therapist. In fact, this recommendation was given to Ms. Wilson on at least three occasions: March 11, 2019, October 26, 2020 and July 25, 2022. (DX 95 and pages 16, 35, and 134.) Ms. Wilson testified at trial that she did not, in fact, seek counseling as her doctor had recommended. (RT at p. 1047:17-19) When Dr. Padilla was informed that Ms. Wilson never sought psychological counseling, Dr. Padilla confirmed that this would have been against her advice and that this would give her reason to be concerned. (RT at pp. 972:25-974:9; 1047:17-19)

Next, although Dr. Padilla's notes indicate on a couple of occasions that Ms. Wilson reported having work stress, not once in her medical record is there any indication that Ms. Wilson indicated to Dr. Padilla that she was being subjected to discrimination, harassment, or retaliation at work based upon her race. (See DX 95 at pages 19, 35, 51, 65, 83, 97, 111, 119, 134, 154, 171, 190.)

Next, Ms. Wilson's medical record indicates that the extent of her doctors' visits and her anxiety levels were documented most greatly during the timeframe of her suspension and termination, events that the Court instructed could not be a basis for a damages award. (Def. Ex. 95.083, 95.102, 95.116, 95.119, 95.134, 95.161, 95.171, 95.190.) For example, Dr. Padilla's progress notes at Def. Exhibit 95.141 provides that Ms. Wilson had "little interest or pleasure in doing things more than half the days" and "trouble falling asleep or staying asleep more than half the days."

In sum, the medical testimony and records provide no evidence of any emotional distress that is both (a) attributable to the compensable events, and (b) could not have been avoided reasonably by the mitigation of damages that Ms. Wilson's doctors repeatedly urged her to pursue.

b. Wilson's Testimony Does Not Support A $15 Million Award.

At trial, although Ms. Wilson testified as to some emotional harm, her testimony neither described a severity of injury that would warrant the verdict amount, nor did she provide sufficient detail to attribute that injury to the compensable events, as distinct from her failure to mitigate damages and the more severe adverse employment actions that the jury was instructed could not

be compensated.

First, Ms. Wilson indicated she was having intimacy problems with her husband and there was a strain on her marriage. (RT at pp. 120:9-16; 155:4-14) However, she failed to provide any specific details in this regard and failed address when these alleged marital problems began and whether they were worse during the relevant timeframe, as opposed to when she was suspended and ultimately terminated, acts which occurred outside of the timeframe.

Next, Plaintiff Wilson testified that her social life/interactions changed when she returned to the City in December of 2016. (RT at p. 120:21-25) She testified that she did not engage in social events as much as she used to. (RT at p. 121:1-2)

Next, Ms. Wilson claims that during the time the City delayed in separating her from Howard Lacy, she had diarrhea, felt nauseated, and was anxious. (RT at pp. 125:1-126:4; 128:9-16) This period of time was one month.

Next, Ms. Wilson testified that being placed on administrative leave in August of 2018 impacted her sleep because she didn't know when and where she was going to be called. (RT at p. 152:13-24)

Next, Ms. Wilson testified that she developed heart failure during her leave and was diagnosed by Dr. Padilla. (RT at pp. 157:11-158:1) Ms. Wilson then testified that Dr. Padilla sent her to specialist Dr. Teresa Daniele, who wanted to run tests. (RT at p. 158:4-10) She claims her heart was operating at approximately “36 or 37 percent.” (RT at p. 159:3-5.) First, nowhere in the medical records does it indicate that Dr. Padilla diagnosed Ms. Wilson with heart failure. Next, Ms. Wilson did not present any evidence to the jury of Dr. Daniele’s results, what factors led to her heart failure, whether her heart failure was attributable to her compensable claims against the City, etc. In fact, Plaintiffs neglected to call Dr. Daniele to testify on Ms. Wilson’s behalf.

Ms. Wilson’s husband’s description of her bad feelings must be considered against the undisputed evidence that those feelings were not so severe as to result in Wilson following her doctor’s recommendation to get counseling.

Regardless of how one views this evidence, it does not add up to $15 million, particularly when measured against the many cases above that have found a fraction of that sum was excessive.

c. Plaintiffs Failed To Provide The Jury With Sufficient Information To Assist Them In Allocating Other Stressors Which Admittedly Contributed To Their Emotional Distress Claim.

Where the evidence shows other distressing circumstances occurring during the same relevant timeframe, trial judges have reduced the verdict to reflect such additional stressors. (*Piutau v. Fed. Express Corp.*, 2003 U.S. Dist. LEXIS 6830, at *8-10 (N.D. Cal. Apr. 21, 2023); *Ramirez v. Jack in the Box*, 2019 Cal. Super. LEXIS, *1-3; *Horsford v. Board of Trustees of California State University*, 132 Cal. App. 4th 359, 389-90 (2005).

In *Piutau v. Fed. Express Corp.*, *supra*, a wrongful termination case, the plaintiff testified that after the suspension, he was sad, ashamed and very depressed, suffered from dizziness, loss of appetite and headaches, and had trouble sleeping. (*Piutau v. Fed. Express Corp.,* 2003 U.S. Dist. LEXIS 6830, *8.) He also testified that while he was suspended, he was worried about losing his home and was upset by his inability to provide new clothes and other items for his children. (*Id*.) His wife testified that after the suspension, plaintiff was depressed, unhappy, worried, irritable, had trouble sleeping, and would stay inside the home and just stare at the walls. (*Id*. at pp. 8-9) His former supervisor testified that, prior to the suspension, plaintiff was a "rock," but after the suspension plaintiff appeared anxious. (*Id*.) The Court credited the testimony concerning plaintiff's emotional distress and found that plaintiff did incur emotional distress as a result of his suspension without pay. In response, however, the defendant argued there were also other factors in addition to the suspension, in particular, plaintiff's arrest and his concern about facing criminal charges, his dissatisfaction with his criminal defense attorney's tactics, which resulted in plaintiff's case being publicized in the local media, etc. (*Id*.)

After hearing the evidence, the court found that factors other than the suspension at issue in the case also caused plaintiff to suffer emotional distress. (*Piutau v. Fed. Express Corp., supra*, 2003 U.S. Dist. LEXIS 6830, *8.) As such, the Court found that plaintiff was entitled to, and defendant was liable for, non-economic damages in the amount of $35,000. (*Id*.)

In *Ramirez v. Jack in the Box,* the Court granted a new trial unless plaintiff accepted a reduction from $5,000,000 to $800,000 in non-economic damages, based on finding that plaintiff's emotional distress started from her family relationships rather than from defendant employer's

retaliation and discrimination. (*Ramirez v. Jack in the Box*, 2019 Cal. Super. LEXIS, *1-3.)

In *Horsford v. Board of Trustees of California State University*, the appellate court affirmed the trial court's remittitur of emotional distress damages to plaintiffs in employment discrimination action, where the trial court based its decision partly on evidence that plaintiffs' harm had causes other than defendant's discriminatory and retaliatory conduct, such as litigation stress and dislike of boss's leadership style. (*Horsford v. Board of Trustees of California State University*, 132 Cal. App. 4th 359, 389-90 (2005).)

(i) Several Factors Admittedly Contributed To Ms. Wilson's Emotional Distress Outside The Relevant Timeframe Of This Action.

Both Ms. Wilson and her medical doctor testified that, in addition to her work environment, Ms. Wilson, suffered from emotional distress as a result of several different stressors. (RT at p. 953:1-14)

Dr. Padilla explained that various stressors can contribute to high blood pressure, including postpartum issues and the death of a family member.

Admittedly, Ms. Wilson had a difficult pregnancy and was diagnosed with hypertension as a result. (RT at pp. 960:19-962:8)

In addition, Ms. Wilson testified to the fact that she had two deaths in the family. First, her brother was murdered. (RT at pp. 963:20-964:6) Then, her mother passed away unexpectedly during this timeframe, which was "beyond devastating with the hell that I was going through at work." (RT at p. 1046:21-24) After her mother's death, Wilson began caring for her autistic nephew and that's she has had her hands full with taking care of a disabled family member, up to the present day. (RT at pp. 177:19-178:10; 1047:2-9)

Next, Ms. Wilson testified regarding the stress of having to work during Covid. (RT at pp. 969:4-970:10) In fact, she testified COVID-19 was stressful for everyone and she was "a wreck" during that time. (RT at pp. 1041:22-1042:10)

Ms. Wilson also testified about the stress she was under when she was placed under suspension by the City and appeared at a Skelly Hearing. (RT at pp. 185:21-187:8) She testified that the Skelly hearing was during COVID, which was stressful. (RT at p. 187:9-16) The hearing was

also stressful because she knew "walking in it wasn't going to be fair". (RT at p. 187:16-18) Ms. Wilson also testified about her ultimate termination by the City and the financial stress it imposed upon her and her family. She stated she "was a mess to her family, just kind of went into her own little world." (RT at p. 177:1-5) Ms. Wilson also testified that she has not been able to find other employment since she left the City and she intended to retire from the City, pay for her daughter's education, update her forever home, etc. (RT at pp. 177:17-178:25) The termination also resulted in her losing her medical benefits and she has heart issues. (RT at p. 179:3-5) She's overwhelmed with creditors calling about medical bills she can't pay, but she still needs the service and has to live with her heart. (RT at p. 179:5-8) She testified that the termination changed her lifestyle and financial being, "which changes everything." (RT at p. 179:1-3) Inside she's "just broke." (RT at p. 179:11-14) These stressors were all clearly based on her termination, upon which the jury was specifically instructed was not at issue and should not have been considered, yet clearly it was in the $15 million dollar award.

(ii) Plaintiff Wilson Failed To Provide A Proper Allocation To The Jury In Awarding Emotional Distress And Her Counsel Did Not Tie Her Proposed Damages Figure To The Evidence.

Although the above-referenced admitted stressors on the part of Ms. Wilson should have been excluded from Plaintiff's damages award, as they occurred outside the operative time frame and were not attributable to the City, the jury was provided with no means in which to filter out such events. In fact, neither Ms. Wilson's doctor, nor her attorneys were able to provide the jury with any benchmarks in which to allocate Ms. Wilson's alleged emotional distress caused by the City in the present action, an error which resulted in the jury awarding her $15 million in damages.

Dr. Padilla made it very clear that she is not the appropriate person to place an allocation on the various causes of Ms. Wilson's stress. In fact, although Dr. Padilla could confirm that she documented that Ms. Wilson reported stress related to work with the City of Fresno during the 2016-2020 timeframe, she certainly was not qualified to place an allocation on that stress compared to Ms. Wilson's other stressors. (RT at pp. 978:22-982:14) Dr. Padilla suggested a Qualified Medical Examiner ("QME") would be more qualified to allocate such stress. (RT at pp. 975:25-977:15)

There is no dispute that Ms. Wilson did not retain any experts, let alone a QME to quantify

her emotional distress claim.

In addition, during closing arguments, Plaintiffs' counsel did nothing to assist the jury in quantifying Ms. Wilson's stress compared to other admitted stressors or to tie the sums requested to the evidence. Instead, in closing argument, Plaintiffs' counsel made only arguments that were either entirely untethered to the evidence relevant to emotional distress or only loosely connected. Counsel urged a $5 million to $20 million range, without any explanation of how this related to any evidence of proven distress. Counsel did not discuss Dr. Padilla's testimony, Plaintiff's failure to obtain counseling or any other *relevant* evidence.

Instead, counsel made primarily two loose and generic arguments: "character assassination" and the "value of human dignity."

The character assassination argument was off point because (a) this is not a defamation case and the jury was not instructed they could award damages for reputational harm, (b) the adverse employment events that the jury found paled in potential reputational impact to the suspension and termination that the Court instructed the jury was *not* compensable,

Human dignity, of course, is valuable, and so injury to a dignity interest is compensable. But counsel's untethered invocation of this point highlights the problem here. It provided the jury no objective, reasonable or proportional way to assess fair compensation for the injury at issue and instead encouraged the jury to simply arbitrarily pick a number within the range that counsel had proposed. But because lay jurors have no way to know how that range aligns with the awards in other cases or for similar reasons, and have no knowledge of the above case law holding that such a range is grossly excessive, a post-verdict judicial reduction is warranted.

C. The Court's Instructions Confined The Emotional Distress Award, Yet The Verdict Does Not Align With Those Limits

1. The Court Instructed The Jury On The Relevant Timeframe.

The Court provided the jury with the following instructions relating to the timeframe for the FEHA claims:

- "As to Plaintiff Wilson's discrimination and retaliation claims under FEHA and the State Labor Code, you may only consider adverse employment actions between May

13, 2018, and October 22, 2019. (See Jury Instruction No. 37, RJN Exh. "H")

- You should not base any award of liability or damages to these claims on any other purported adverse action." (See Jury Instruction No. 37; RJN Exh. "H")

Yet, the jury also heard Ms. Wilson's alleged statements that she was harassed for "years and years." (See Wilson's testimony where she states that prior to her outburst at City Hall, she walked by HR and it made her more angry because those were the people that she'd been telling "for years and years" about was going on. (RT at pp. 99:13-099:24)

2. The Court Instructed The Jury Not To Consider Ms. Wilson's Suspension Or Termination

A trial, the court instructed the jury as follows: "You may not consider the City's 30-day suspension of Plaintiff Wilson in 2019 or her termination in 2022 as adverse employment actions. Those actions are not the basis for her claims." (RT at pp. 1587:4-7)

However, as shown above, Ms. Wilson testified in great detail about her suspension and her termination and the fact that it caused her a substantial amount of stress. (RT at pp. 176:22-177:1) Further, the medical evidence showed her treatment increased only during those timeframes. (Def. Ex. 95.)

3. The Court Instructed The Jury That They Cannot Impose Damages To Punish The City.

The Court instructed the jury that it may not include in its award any damages to punish or make an example of the City of Fresno. (See Jury Instruction No. 44; RJN Exh. "H"). The Court informed the jury that any such damages would be "punitive damages, and they cannot be a part of your verdict. You must award only the damages that fairly compensate each plaintiff for his or her loss."

This instruction represented yet another difficult line-drawing challenge for the jury because the liability issue of whether the alleged harassment was sufficiently "severe and pervasive" prompted Plaintiffs' counsel to emphasis in closing all of the "aggravating" circumstances here, and the absence of "mitigating" circumstances. While that argument was appropriate on the liability question, it amounted to yet another challenging, line-drawing exercise for the jury. To the extent

ordinary citizens who are not trained in the law have encountered the concept of "aggravating" or "mitigating" circumstances outside of this case, it likely and typically is in the context of penalties or punishment—such as eligibility for the death penalty for certain crimes.

But of course, whether the underlying conduct was "aggravated" or "mitigated" had no bearing on the emotional distress award—which was solely to compensate for any emotional harm that Wilson actually suffered and proved was attributable to the conduct that the jury found actionable within the limited period at issue (as distinct from all the non-actionable and more distressing events that the jury also heard about during the trial).

Other rhetoric or tone used by Plaintiff's counsel encouraged the jury to smuggle punishment into its emotional distress award. For example, during the cross-examination of Erica Camarena, instead of asking her substantive questions, Plaintiffs' counsel merely stated, "Are you, on behalf of the City, willing to look Ms. Wilson and Mr. Smith in the eye, and admit the City is at fault and apologize to them and accept responsibility?" (RT at pp. 1522:25-1523:2). The Court reprimanded counsel for this tactic. But the jury heard it—and then awarded a grossly excessive sum.

In *State Farm v. Campbell*, the Supreme Court recognized that emotional distress damages can often be used as a surrogate for punishment. (*State Farm Mut. Auto. Ins. Co. v. Campbell,* 538 U.S. 408, 412.) The Court held that the $1 million award of compensatory damages, for a year and a half of emotional distress, was substantial and likely included a punitive component that the jury then duplicated in its punitive damages award. (*Id*. at p. 412.)

4. The Court Instructed The Jury Wilson's Duty To Mitigate Her Damages

The Court instructed the jury that Plaintiffs have a duty to use reasonable efforts to mitigate damages", meaning to avoid or reduce damages." (See Jury Instruction No. 43; RJN Exh. "H") As shown above, at trial, Defendants elicited testimony from Wilson and her doctor that, although she was advised to see counseling on three separate occasions, she did not follow doctor's orders and did not seek counseling.

5. The Court Instructed The Jury To Not Consider Alleged Racial Statements Made By Howard Lacy Prior To The Relevant Timeframe.

The Court gave six limiting instructions throughout the trial, all related to testimony

concerning alleged racially biased statements or conduct by Mr. Lacy. Each instruction directed the jury that such testimony could only be considered for the limited purpose of assessing Mr. Lacy's alleged bias as a witness, and not for any other purpose. Because that evidence had the potential to inflame the jury, however, it provides another reason for post-verdict reduction of the award.

D. The Damages Awarded To Plaintiff For Emotional Distress Are Excessive

Even if the Court believes that the evidence supports a damages verdict and that the jury followed its instructions, it may still order a new trial if the damages awarded by the jury are excessive. (*Oltz v. St. Peter's Community Hosp.*, 861 F.2d 1440, 1452 (9th Cir. 1988).)

Courts have historically granted new trials where damages are excessive or disproportionate to the evidence presented. (*Burnett v. Duna USA Inc*., 2025 U.S. Dist. LEXIS 263765 (2025); *EEOC v. New Breed Logistics*, *supra*, 783 F.3d at pp. 1065-1066.)

An error in damages alone can require a new trial on all issues. (*See Gasoline Prods. Co. v. Champlin Ref. Co.*, 283 U.S. 494, 500 (1931).) This is because an excessive damages award, undermines confidence in the verdict. (*See Hatfield v. Seaboard Air Line R. Co.*, 396 F.2d 721, 724 (5th Cir. 1968) [jury's "misconduct" in refusing, "through misunderstanding or through willfulness," to assess damages that ensued "necessarily contaminated the entire verdict," warranting complete new trial].) When a court "determines that the damages award is excessive, it has two alternatives: (1) it may grant the defendant's motion for a new trial; or (2) it may deny the motion conditional upon the prevailing party accepting a remittitur." (*Fenner v. Dependable Trucking Co., Inc.*, *supra*, 716 F.2d at p. 603.) There, the prevailing party is given the option of either submitting to a new trial or accepting a reduced amount of damage which the court considers justified." (*Id.*) "If the prevailing party does not consent to the reduced amount, a new trial must be granted." (*Id.*)

A new trial is also necessary when the jury allocates damages among claims in a way that is inexplicable or irreconcilable with the law or the evidence. (*See Video Int'l Prod., Inc. v. Warner-Amex Cable Commc'ns, Inc.*, 858 F.2d 1075, 1086 (5th Cir. 1988); *LaSalle Nat'l Bank v. Mass. Bay Ins. Co.*, 90 C 2005, 1997 WL 619856 (N.D. Ill. Sept. 30, 1997).)

Similarly, where, as here, a jury must engage in careful line-drawing, but its verdict shows

it did not, a new trial is proper. (*See Wood v. Holiday Inns, Inc.*, 369 F. Supp. 82, 91 (M.D. Ala. 1974), aff'd in part, rev'd in part on other grounds, 508 F.2d 167 (5th Cir. 1975) [complete new trial warranted where verdict showed jury failed to perform "difficult task" of assessing damages against "several defendants for several wrongs proximately causing the same indivisible damage"].)

As the court in *Villalpando, supra*, noted, "it saddens the court to overturn the verdict, or in the alternative to grant a new trial. However, it is the court's duty, for if the jury system is to survive, runaway verdicts such as this have to be reversed." (*Villalpando v. Hughes Aircraft Co., supra,* 1994 Cal. Super. LEXIS 1, *35-3.) As such, a new trial is appropriate to remedy the excessive award.

1. The Verdict Far Exceeds The Damage Cap Placed Upon Title VII Discrimination Cases.

The legislative history indicates that Congress intended the cap to serve several purposes, including to (1) deter frivolous lawsuits; (2) protect employers from financial ruin; (3) encourage corrective action; and (4) maintain judicial oversight. (*42 USCS § 1981a; § 99.04 Caps on Damages Under Title VII; Luciano v. Olsten Corp.*, 110 F.3d 210, 221 (1997), *Murray v. The Int'l Longshore &,* 1999 U.S. Dist. LEXIS 23766 (1999); *Jensen v. West Jordan City*, 968 F.3d 1187, 1200 (2020).)

The verdict here is 50 times higher than the maximum amount that anyone in the United States could recover under Title VII for racial discrimination that resulted in the most severe emotional distress possible. By contrast, the above cases suggest a reduction to $300,000 or less would bring the verdict here in line with how California law cases have remitted other excessive verdicts. Doing so would have the additional advantage of eliminating any issue regarding whether the jury awarded any of the damages that exceeded $300,000 based upon the Title VII findings—which were similar to but did not overlap completely—with the FEHA findings.

2. Mr. Smith Did Not Present Any Evidence Of Emotional Distress To Support A Verdict Of $400,000.

During the trial, other than mentions of irregular sleep patterns, anger, frustration, and an inability to forget the incident, Mr. Smith did not testify about any substantial mental suffering, offered no witnesses to substantiate mental anguish, and provided no medical records showing treatment for stress or anxiety. Instead, his own email described his time at the City as among the best period of his life, and he attempted to get re-hired by the City, undercutting any claim of

ongoing anguish caused by the City.

Although he testified that his blood pressure was elevated, he had to get on medication and he claims to have had a minor heart attack, he provided no evidence to substantiate these claims, let alone evidence that any blood pressure elevation or minor heart attack on his part was caused by the City. (RT at pp. 520:23-25; 521:1-11) As such, the evidence does not support a $400,000 award. This is particularly so because during cross-examination, when asked if he was blaming the City for his heart problems, Mr. Smith testified that he is "blaming a bunch of things on it and the City is one of them." (RT at p. 595:23-25) This evidence failed to provide a reasoned basis to distinguish among the compensable and non-compensable stressors.

E. If the Court Does Not Grant a New Trial, It Should Remit the Excessive Non-Economic Damages Awards for Plaintiffs Wilson and Smith.

Given that the maximum amount a plaintiff can recover for the worst, most egregious form of emotional distress is $300,000 under Title VII, and the evidence here would place this case at below that level under the above California state law, the City suggests the damages award to Wilson be reduced to $200,000 or less.

The damages award to Smith should be reduced to $50,000 or less.

IV. CONCLUSION

The City of Fresno requests that this Court grant this Motion pursuant to FRCP 59, vacate the judgment, and order a new trial on all the issues. In the event it declines to do so, the Court should grant a partial new trial limited to the amount of emotional distress damages awarded or order a substantial damages remittitur.

Dated: April 8, 2026

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