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CLOSED

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

EDUARDO CERVANTES,	)	Case No. CV 12-09889 DDP (MRWx)
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER GRANTING DEFENDANTS' MOTION</b>
	)	<b>FOR REMITTITUR</b>
COUNTY OF LOS ANGELES;	)	
DEPUTY PAUL CRUZ #412035	)	
individually and as a peace	)	
officer; DEPUTY VICTOR	)	
CISNEROS #519470	)	
individually and as a peace	)	
officer,	)	[Dkt. 126]
	)	
Defendants.	)	
	)	

Presently before the court is Defendants Paul Cruz and Victor Cisneros' Motion for Remittitur. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following Order.

**I. Background**

Plaintiff Eduardo Cervantes alleged that Defendants Cisneros and Cruz, two Los Angeles County Sheriff's Deputies, used excessive force on Plaintiff in the course of an arrest. Plaintiff testified at trial that on November 23, 2010, he was looking at his cell

1 phone in his parked car in the parking lot of a billiards hall when  
2 Defendants ordered Plaintiff to leave his vehicle. Plaintiff  
3 testified that Defendants then punched Plaintiff in the face and  
4 neck and took Plaintiff to the ground, upon which he struck his  
5 head. Surveillance video confirmed that Plaintiff and Defendants  
6 went to the ground, but did not clearly record the incident in  
7 further detail.

8 Photos of Plaintiff after the incident show a bruised and  
9 swollen eye and scrapes on Plaintiff's face and the back of his  
10 head. A video interview of Plaintiff after the arrest shows  
11 similar injuries. Plaintiff testified that his treating physician  
12 told him several times that he "was fine." The doctor also  
13 prescribed Plaintiff 800 milligrams of ibuprofen, which Plaintiff  
14 had already been taking for pain related to his prosthetic leg.  
15 Plaintiff disagreed with the doctor's assessment, and testified  
16 that he still has occasional pain in and around his eye, and that  
17 he has suffered from floaters in his vision since the incident.  
18 Plaintiff acknowledged on cross examination, however, that while  
19 working a construction job in 2012, he was struck in the head by a  
20 falling chimney.

21 Plaintiff further testified that he suffers from emotional  
22 pain from the incident. Although Plaintiff only spent "a few  
23 hours" in jail, it pained him to tell his family that he had been  
24 incarcerated. On cross examination, Plaintiff acknowledged that he  
25 had been in jail prior to the incident as well. Plaintiff  
26 testified that he has difficulty sleeping and suffers from  
27 nightmares about being framed or killed by police officers, and  
28 that he is now very nervous about going out in public for fear of

1 being pulled over and assaulted. Plaintiff did, however, continue  
2 to visit the billiard hall every day even after the incident.<sup>1</sup>

3 Defendants did not put on a case. During closing arguments,  
4 Plaintiff's attorney asked the jury to award \$900,000. This figure  
5 included \$200,000 for past physical pain, \$300,000 for past  
6 emotional pain and suffering, and \$400,000 for future pain and  
7 suffering. After deliberating, the jury found for the Plaintiff  
8 and awarded him \$900,000.<sup>2</sup> Defendants now move for a remittitur.

## 9 **II. Discussion**

10 When a court determines that a damages award is excessive, it  
11 may grant a defendant's motion for a new trial or conditionally  
12 deny the motion, provided the plaintiff accepts a remittitur.  
13 Fenner v. Dependable Trucking Co., Inc., 716 F.2d 598, 603 (9th  
14 Cir. 1983); Fed. R. Civ. P. 59(a)(1)(A). The remittitur, or  
15 reduced damage award, "must reflect the maximum amount sustainable  
16 by the proof." Oracle Corp. v. SAP AG, 765 F.3d 1081, 1094 (9th  
17 Cir. 2014) (internal quotation and citation omitted). The  
18 plaintiff may choose either to accept the reduced damage award or  
19 to submit to a new trial. Fenner, 716 F.2d at 603.

20 As an initial matter, the court rejects Defendants' contention  
21 that, to the extent the jury awarded any damages for Plaintiff's  
22 future pain and suffering, such award violated the court's  
23  
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25  
26 <sup>1</sup> Plaintiff had aspirations to be a professional billiards  
player.

27 <sup>2</sup> The jury also found that Defendant Cisneros acted  
28 maliciously, oppressively, or in reckless disregard of Plaintiff's  
rights, but awarded no punitive damages.

1 instructions.<sup>3</sup> The court's jury instruction number eighteen  
2 instructed the jury to consider, among other factors in determining  
3 the amount of compensatory damages, "the nature and extent of the  
4 injuries" and "the physical, emotional pain and suffering  
5 experienced." That instruction sufficiently encompassed the  
6 ongoing nature of Plaintiff's physical and emotional injuries.<sup>4</sup>

7 Defendants and Plaintiff cite to a series of verdicts in civil  
8 rights cases to support their respective arguments that the jury's  
9 damages award here was or was not excessive. Damage awards,  
10 however, "turn on the facts of each case." Mattschei v. United  
11 States, 600 F.2d 205, 209 (9th Cir. 1979). "While analogies to,  
12 and comparisons with, other cases may be helpful on many types of  
13 issues, their usefulness on questions of damages is extremely  
14 limited." United States v. English, 521 F.2d 63, 72 (9th Cir.  
15 1975). The comparisons drawn here are further limited in their  
16 utility by their presence on the extreme ends of the factual  
17 spectrum. Unlike the plaintiffs in the cases cited, Plaintiff here  
18 did not behave in any unlawful or dangerous manner, nor were his  
19 physical injuries in any way life-threatening or severe.

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22 <sup>3</sup> Plaintiff's objection regarding the timeliness of  
23 Defendants' motion is overruled. The clerk's Judgment on the  
24 Verdict (Dkt. 113), entered after the return of the Special Verdict  
25 Form, to which Plaintiffs did not object, (Dkt. 100, 101) was not a  
Final Judgment, as explicitly stated in the Judgment on the Verdict  
itself.

26 <sup>4</sup> Although Defendants now contend that the instruction should  
27 have included the words "and which with reasonable probability will  
28 be experienced in the future," Defendants raised no such argument  
or objection at the time jury instructions were argued. See 9th  
Cir. Manual of Model Civ. Instructions No. 5.2 (2007).

1 Defendants focus on the extent of Plaintiff's physical  
2 injuries. Even putting aside evidence that Plaintiff's physician  
3 repeatedly declared him to be "fine," as well as Plaintiff's  
4 subsequent on-the-job head injury, the evidence showed relatively  
5 minor, though not insignificant, physical harm from the incident.  
6 Plaintiff suffered bruising and swelling of the face and a  
7 contusion to the back of his head after being tackled backward to  
8 the pavement. He continues to suffer headaches, eye pain, and some  
9 internal ocular bleeding. Defendants presented no medical evidence  
10 to refute Plaintiff's claims.

11 As Defendants acknowledge, a damage award for emotional  
12 distress may be based on a plaintiff's testimony alone. See Zhang  
13 v. American Gem Seafoods, 339 F.2d 1020, 1040 (9th Cir. 2003).  
14 Nevertheless, Defendants' argument that the court should reduce the  
15 award to no more than \$75,000 appears to discount the evidence of  
16 Plaintiff's emotional injuries. Plaintiff experienced emotional  
17 distress during and immediately after the incident, which triggered  
18 painful memories of bullying and feelings of humiliation,  
19 embarrassment, and shame. The incident caused lingering emotional  
20 effects, including nightmares, difficulty sleeping, and fear of  
21 encountering law enforcement so severe that it impinged upon  
22 Plaintiff's ability to leave the house and enjoy activities with  
23 his family in public spaces. The particulars of Plaintiff's  
24 situation might well have lent particular credence to his  
25 accounting of his emotional distress. Plaintiff, who has only one  
26 leg, was sitting in a parked car, with the windows down, in a  
27 parking lot on private property while examining his new cell phone  
28 in broad daylight. He was then ordered out of his vehicle based on

1 the officers' assessment that his car windows were illegally  
2 tinted. Within seconds of exiting the vehicle, Plaintiff was  
3 punched in the face and tackled backward to the pavement. Evidence  
4 of these unique circumstances could exacerbate what otherwise might  
5 have been milder emotional injuries.

6 Considering the totality of the evidence presented, the court  
7 finds that the jury's award of \$900,000 in compensatory damages was  
8 excessive.<sup>5</sup> That said, the evidence could support an amount  
9 significantly higher than the \$75,000 maximum advocated by  
10 Defendants. The court concludes that the evidence before the jury  
11 was sufficient to support a maximum award of \$500,000.

12 **III. Conclusion**

13 For the reasons stated above, Defendants' Motion for  
14 Remittitur is GRANTED. The award of damages is remitted from  
15 \$900,000 to \$500,000. Plaintiff shall have fourteen days from the  
16 date of this Order to accept or reject the remittitur. Should  
17 Plaintiff accept, a final judgment shall issue. Should Plaintiff  
18 reject the remittitur, the court shall grant Defendants' Motion for  
19 a New Trial in the Alternative.

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21 IT IS SO ORDERED.

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24 Dated: September 3, 2015

  
DEAN D. PREGERSON  
United States District Judge

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<sup>5</sup> The court also notes that at the time of the trial, there were news stories about instances of excessive force occurring throughout the country.