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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ROBERT CARDENAS,) Case No. CV 14-4904 (AJW)
)
Plaintiff,)
) MEMORANDUM OF DECISION
v.)
)
UNITED STATES OF AMERICA,)
et al.,)
)
Defendants.)
_____)

The court has considered the testimony and exhibits admitted into evidence during the non-jury trial, the parties' proposed findings of fact and conclusions of law, and the closing arguments of counsel. With that as its basis, the court makes the following ruling.

Findings of Fact

1. Plaintiff Robert Cardenas was born on April 26, 1951 [Reporter's Transcript of Proceedings ("RT") 579:16-20].
2. From 1972-1982, plaintiff worked for his sister at her Burnt Tortilla restaurant. [RT 376:8-377:8]
3. In 1992, plaintiff started working as a letter carrier for the United States Postal Service ("USPS") at the Redondo Beach Post Office. [RT 580:23-581:13]

1 4. Since 2011, Plaintiff has been on extended medical leave
2 from work after injuring his shoulder and wrist while delivering mail.
3 [RT 580:23-581:13; Pl. Depo. 47:4, 7-9¹]

4 5. The collision between plaintiff's vehicle and Susan
5 Slaughter's vehicle occurred on July 2, 2012, at approximately 5:00
6 p.m. [Dkt. No. 54, Admitted Facts ("AF") 5(a)]

7 6. Plaintiff was traveling westbound on West Redondo Beach
8 Boulevard near the United States Post Office located at 1455 West
9 Redondo Beach Boulevard, Gardena, CA 90247 (the "Gardena Post
10 Office"). [AF 5(a), 5(d); RT 584:6-16, 467:4-6]

11 7. Plaintiff was driving a 1993 Honda Accord. [AF 5(b); RT
12 97:4-16]

13 8. Ms. Slaughter has been a USPS employee since 1990. [RT
14 464:23-465:4]

15 9. At the time of the collision, Ms. Slaughter was a letter
16 carrier working at the Gardena Post Office. [RT 465:5-7, 465:11-16]

17 10. Ms. Slaughter was acting within the course and scope of her
18 employment at the time of the collision. [AF 5(f)]

19 11. Ms. Slaughter was familiar with the Gardena Post Office
20 location and its vicinity. She had worked as a letter carrier at the
21 Gardena Post Office and had resided in a nearby neighborhood for about
22 twenty years. [RT 468:1-16]

23 12. On July 2, 2012, Ms. Slaughter was driving a Grumman Long
24 Life Vehicle (LLV) (the "postal truck"), a standard postal truck used
25 by letter carriers to deliver USPS mail. [AF 5(c); RT 466:5-14] The
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27 ¹ "Pl. Depo." refers to designated portions of plaintiff's
28 deposition. [Dkt. No. 81]

1 driver of an LLV sits on the right side. [RT 577:15-17]

2 13. The Gardena Post Office is on the north side of West Redondo
3 Beach Boulevard, between cross-streets Nuano Drive (to the west) and
4 Normandie Avenue (to the east). [Trial Exhibit ("Ex.") 106-2; RT
5 467:7-18]

6 14. The employees' driveway is east of the driveway leading to
7 the public parking lot of the Gardena Post Office. [Ex. 104-1]

8 15. Plaintiff intended to make a right turn into the public
9 parking lot for the Gardena Post Office, not the employee's parking
10 lot for the post office. [RT 585:8-20]

11 16. The collision between plaintiff's vehicle and Ms.
12 Slaughter's vehicle occurred in the driveway leading to the employees'
13 parking lot of the Gardena Post Office. [RT 466:18-467:3, 478:22-
14 479:2; Ex. 104-1, 104-3]

15 17. The section of West Redondo Beach Boulevard near the Gardena
16 Post Office is lined with strip malls and businesses. [RT 39:10-24,
17 467:22-25]

18 18. The strip mall immediately east of the Gardena Post Office
19 ("the strip mall") includes the Burnt Tortilla restaurant. [Ex. 104-
20 1, 104-4]

21 19. The driveway allowing traffic to enter and exit the strip
22 mall from West Redondo Beach Boulevard is located approximately 90
23 feet east of the Gardena Post Office employees' driveway and
24 approximately 140 feet east of the public driveway. [Ex. 104-4; RT
25 23:15-17, 95:12-17]

26 20. The portion of West Redondo Beach Boulevard in front of the
27 Gardena Post Office is heavily traveled and the traffic is often slow
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1 moving. [Ex. 104-9; RT 33:5-9, 34:7-18, 268:12-18, 318:23-319:9,
2 639:23-640:7; Pl. Depo. 168:10-12]

3 21. As westbound traffic on West Redondo Beach Boulevard crosses
4 Normandie Avenue, the three marked westbound lanes narrow to only two
5 lanes. [Ex. 106]

6 22. Two graphical lane-ending signs indicate to drivers on
7 westbound West Redondo Beach Boulevard both east and west of Normandie
8 Avenue that the third lane ends. [Ex. 106-2]

9 23. Westbound West Redondo Beach Boulevard contains three
10 painted pavement arrows just west of the Normandie Avenue intersection
11 indicating that the third lane ends. [Exs. 104-8, 106-2, 109-39]

12 24. In front of the Gardena Post Office, a designated left-turn
13 pocket lane on eastbound West Redondo Beach Boulevard enables traffic
14 to turn left into the public and employee driveways. [Ex. 104-2]

15 25. In front of the Gardena Post Office, there are two marked
16 lanes of westbound traffic on West Redondo Beach Boulevard. [RT
17 39:25-40:11] Those lanes are paved in dark asphalt and are divided by
18 a single lane of raised ceramic lane dividers. [Ex. 104-1; RT 39:25-
19 40:11]

20 26. Between the strip mall and the entrance to the public
21 parking lot of the Gardena Post Office, there are only two marked
22 lanes of westbound traffic on West Redondo Beach Boulevard. [RT 40:3-
23 41:5; Declaration of Eric Deyerl ("Deyerl Decl.") ¶¶ 89-94]

24 27. For the entire path of travel taken by plaintiff's vehicle
25 (approximately 70-80 feet) along West Redondo Beach Boulevard, there
26 are only two marked lanes of westbound traffic. [Deyerl Decl. ¶¶ 76,
27 93]

1 28. No third lane or "merger lane" existed. [Deyerl Decl. ¶¶ 89-
2 94; Ex. 106-2]

3 29. There are no marked lane dividers for the purported "merger
4 lane." [RT 92:15-23]

5 30. In any event, plaintiff did not use the paved shoulder as a
6 merge lane to enter the two marked lanes; instead, plaintiff used it
7 to pass stopped traffic on the right.

8 31. Prior to the collision, Ms. Slaughter was traveling
9 eastbound on West Redondo Beach Boulevard in order to return to the
10 Gardena Post Office after completing her work shift. [RT 452:25-
11 453:2]

12 32. Ms. Slaughter turned on her left-turn signal and entered the
13 designated left-turn pocket lane on eastbound West Redondo Beach
14 Boulevard in front of the Gardena Post Office. [Ex. 104-2; RT 34:7-
15 18, 41:25-42:6, 454:8-10, 469:2-9]

16 33. Ms. Slaughter came to a complete stop and waited for an
17 opportunity to make a left turn. [RT 454:6-10] She yielded to oncoming
18 westbound traffic in the two marked lanes. [RT 460:1-16, 454:1-7] Her
19 left-turn signal remained on after she entered the left-turn pocket
20 lane. [RT 470:2-7]

21 34. After about five minutes, during which Ms. Slaughter's
22 vehicle was waiting in the left-turn pocket lane, the vehicles in the
23 two marked lanes of westbound West Redondo Beach Boulevard stopped
24 because of a red light at Nuano Drive. [RT 454:11-17, 469:20-470:1]
25 The vehicles yielded, providing a gap for Ms. Slaughter to make her
26 left turn into the employees' driveway. [RT 470:13-15]

27 35. When making a left turn, Ms. Slaughter would check oncoming
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1 traffic to make sure it was safe to do so. [RT 457:22-458:4]

2 36. Before the incident, Ms. Slaughter had seen vehicles driving
3 along the paved shoulder plaintiff was using at the time of the
4 collision. [RT 456:11-25, 457:22-458:4]

5 37. Prior to making her left turn into the employee's parking
6 lot, Ms. Slaughter looked for oncoming traffic, including any
7 potential vehicles driving along the paved shoulder between the curb
8 and the two marked lanes of traffic. [RT 457:16-459:12]

9 38. During her turn, Ms. Slaughter continued to look to her
10 right at the yielding traffic. [RT 470:16-21]

11 39. Due to her high-seated position on the right side of the
12 postal truck, Ms. Slaughter had an unobstructed view of the paved
13 shoulder as she turned left. [RT 470:22-471:14, 764:10-765:21, 769:13-
14 770:12]

15 40. Ms. Slaughter did not see plaintiff's vehicle or any other
16 vehicle traveling in the paved shoulder before the collision. [RT
17 471:15-20]

18 41. During her left turn, Ms. Slaughter was traveling between
19 five to ten miles per hour. [RT 460:9-10] She slowed to approximately
20 five miles per hour while entering the employee's driveway. [RT 34:7-
21 18, 459:13-460:8]

22 42. As Ms. Slaughter was completing her left turn, plaintiff
23 passed the yielding two lanes of traffic on the right.

24 43. Plaintiff's vehicle struck the right side of the postal
25 truck behind the door, in front of the rear wheel well, close to the
26 rear tire. [RT 34:7-35:14, 43:12-25, 471:22-472:10, 473:9-11]

27 44. Plaintiff reported to his psychotherapist that his vehicle
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1 collided with the postal truck near its back wheel. [RT 920:5-13]

2 45. The front wheels of the postal truck had already entered the
3 ramp of the employees' driveway when plaintiff's car collided with it.
4 [RT 471:21-25, 473:12-14, 480:7-14, 587:22-25; Ex. 104-3]

5 46. The postal truck's rear wheels were in the paved shoulder,
6 outside the two marked lanes of traffic, when the collision occurred.
7 [RT 587:22-25]

8 47. At the time of the collision, plaintiff's vehicle was in the
9 paved shoulder - the lighter-colored concrete gutter area close to the
10 north curb, outside of and to the right of the two marked lanes of
11 traffic, which were paved in darker asphalt. [RT 473:4-11, 480:1-6;
12 Ex. 104-3]

13 48. Ms. Slaughter heard a single impact or thud. [RT 472:23-24]
14 The impact was not sufficiently forceful to cause either the postal
15 truck or the empty mail trays within the postal truck to move. [RT
16 472:11-22].

17 49. Plaintiff traveled at speeds of up to 25 miles per hour
18 while driving on the paved shoulder. [RT 552:1-9, 654:3-15, 654:12-15]

19 50. Immediately before the collision, plaintiff saw a large
20 truck to his left in lane two. [RT 653:14-24]

21 51. Plaintiff understood that there were only two lanes of
22 westbound travel on West Redondo Beach Boulevard after Normandie
23 Avenue. [RT 159:1-16, 160:6-8]

24 52. Plaintiff did not look for traffic coming from the left-turn
25 pocket lane on eastbound West Redondo Beach Boulevard in front of the
26 Gardena Post Office. [Pl. Depo. 171:2-10]

27 53. The stopped traffic in the two westbound lanes should have
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1 alerted plaintiff to check for cross traffic but he neglected to do
2 so. [Deyerl Decl. ¶ 86]

3 54. Plaintiff had traveled 70-80 feet in the paved shoulder
4 before colliding with Ms. Slaughter's Postal truck. [RT 95:12-17]

5 55. Plaintiff was wearing a post-surgery "clamshell" brace on
6 his wrist at the time of the collision. [RT 474:19-22, 589:7-23; Pl.
7 Depo. 182:21-23] The brace restricted his movement to the extent that
8 he "couldn't wiggle" his thumb and his "whole wrist was immobilized."
9 [Pl. Depo. 133:21-134:20]

10 56. Dr. Ronald Goldstein, the orthopedic hand surgeon who had
11 performed a wrist surgery on plaintiff a few months before the
12 collision, told plaintiff not to drive while wearing the brace. [RT
13 173:12-21]

14 57. Prior to the collision, plaintiff was taking prescription
15 medications including Norco, Wellbutrin, Trazadone, and Ativan, among
16 others. [Ex. 120-5, 120-6; RT 549:19-24, 550:10-18, 550:24-511:12,
17 167:25-168:20]

18 58. After surgery, Dr. Goldstein prescribed Norco, an opioid, to
19 relieve plaintiff's wrist pain. [RT 167:1-168:20]

20 59. Dr. Goldstein instructs all his patients that they should
21 not drive while under the influence of narcotics. [RT 171:15-20]

22 60. Norco is a prescription drug that is accompanied by
23 manufacturer's warnings against operating heavy machinery, including
24 motor vehicles, while taking the drug. [RT 816:10-25]

25 61. Plaintiff admitted to his primary care physician that he had
26 been taking five pills of Norco a day for his chronic pain just prior
27 to the collision. [RT 554:4-17]

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1 of action for negligence are (1) facts showing a duty of care in the
2 defendant, (2) negligence constituting a breach of the duty, and (3)
3 injury to the plaintiff as a proximate result"); see Judicial Council
4 of California, Civil Jury Instructions (2016) ("CACI") 400.

5 4. "Every one is responsible, not only for the result of his
6 willful acts, but also for an injury occasioned to another by his want
7 of ordinary care or skill in the management of his property or
8 person." Cal. Civ. C. § 1714; see CACI 401.

9 5. "A driver must exercise the degree of care and caution that
10 an ordinarily careful and prudent person, acting in same or similar
11 circumstances, would exercise." Sedie v. United States, 2010 WL
12 1644252, at *11 (N.D. Cal. Apr. 21, 2010)(citing Sills v. Forbes, 33
13 Cal.App.2d 219, 227 (1939)). "[A driver is] under a duty, both by
14 statute and common law, to operate his vehicle without negligence so
15 as to abstain from injuring any other person or his property." Bewley
16 v. Riggs, 262 Cal.App.2d 188, 194 (1968); see CACI 700.

17 6. Section 21801(a) of the California Vehicle Code explains a
18 driver's duty in executing a left-hand turn:

19 The driver of a vehicle intending to turn to the left or to
20 complete a U-turn upon a highway, or to turn left into
21 public or private property, or an alley, shall yield the
22 right-of-way to all vehicles approaching from the opposite
23 direction which are close enough to constitute a hazard at
24 any time during the turning movement, and shall continue to
25 yield the right-of-way to the approaching vehicles until the
26 left turn or U-turn can be made with reasonable safety.

27 See CACI 705.

1 7. Section 21801 (b) requires oncoming drivers to yield when a
2 left-turning driver in front of them has properly executed a left-hand
3 turn:

4 A driver having yielded as prescribed in subdivision (a),
5 and having given a signal when and as required by this code,
6 may turn left or complete a U-turn, and the drivers of
7 vehicles approaching the intersection or the entrance to the
8 property or alley from the opposite direction shall yield
9 the right-of-way to the turning vehicle.

10 See Ball v. United States, 191 F. Supp. 467, 468 (N.D. Cal. 1961)

11 ("[T]he driver turning left, having so yielded, may then make his
12 turn and all other vehicles approaching from the opposite direction
13 shall yield the right of way to him. Clearly, the driver turning
14 left need not yield the right of way to all through motorists; under
15 certain conditions they must yield to him.").

16 8. Plaintiff relies on subsection (a) of the California Vehicle
17 Code § 21801, which is fair, because subsection (a) is applicable.
18 But plaintiff ignores subsection (b). Subsection (b) indicates that
19 once a turning driver has complied with subsection (a), as Ms.
20 Slaughter did, then plaintiff was obliged to yield. By failing to do
21 so, plaintiff violated § 21801(b).

22 9. That Ms. Slaughter checked the paved shoulder for vehicles
23 - but did not see plaintiff's vehicle - is evidence of caution, not
24 carelessness. The most likely explanation as to why Ms. Slaughter did
25 not see plaintiff's vehicle was that it was still in the strip mall
26 driveway or otherwise far from her planned path of travel until she
27 had completed her turn and slowed to begin to enter the driveway of
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1 the employee parking lot.

2 10. A driver is not required to anticipate danger which occurs
3 as a result of another driver violating the law: "every person has a
4 right to presume that every other person will perform his duty and
5 obey the law, and in the absence of reasonable ground to think
6 otherwise it is not negligence to assume that he is not exposed to
7 danger which comes to him only from violation of law or duty by such
8 other person." Dickinson v. Pac. Greyhound Lines, 131 P.2d 401, 402
9 (Cal. App. 1942); see also Leblanc v. Cloverdale, 3 P.2d 312, 313
10 (1931)(a driver has the right to assume that the driver of the other
11 car will obey the law, slow down, and yield the right of way).

12 11. That others sometimes drive on the paved shoulder where
13 plaintiff chose to pass the stopped traffic on the right neither
14 justifies nor excuses plaintiff's behavior. People often exceed the
15 speed limit, run red lights, drive under the influence of alcohol,
16 etc., but that does not justify others in doing so. Nor does it
17 require law abiding drivers to anticipate that other drivers will
18 drive in an unsafe, unlawful, or reckless manner. See CACI 411.

19 12. A left-turning driver is not liable "[i]f another driver, by
20 reason of his violation of a statutory provision, or by reason of
21 other negligent conduct, collides with him." Washam v. Peerless
22 Automatic Staple Mach. Co., 45 Cal. App. 2d 174, 178 (1941).

23 13. Ms. Slaughter was not negligent and did not breach the duty
24 of care in executing her left-hand turn.

25 14. By contrast, plaintiff was negligent and breached the duty
26 of care in several respects.

27 15. First, plaintiff breached the duty of care when he failed to
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1 yield the right of way.

2 16. "Where a car has actually entered an intersection [or the
3 entrance to the property] before the other approaches it, the driver
4 of the first car has the right to assume that he will be given the
5 right of way and be permitted to pass through the intersection without
6 danger of collision. He has a right to assume that the driver of the
7 other car will obey the law, slow down, and yield the right of way, if
8 slowing down be necessary to prevent a collision." Leblanc, 3 P.2d at
9 13.

10 17. Ms. Slaughter was in the intersection and in the process of
11 completing her left turn, before plaintiff's vehicle approached. Two
12 lanes of vehicles had yielded to her, but plaintiff's vehicle
13 inexplicably did not.

14 18. Second, plaintiff breached the duty of care when he failed
15 to keep a lookout for cross-traffic.

16 19. "All drivers of vehicles on a public highway are required by
17 law to keep a vigilant lookout ahead so as to avoid, if reasonably
18 possible, a collision with any other vehicle or person lawfully upon
19 such highway. Failure to keep such lookout, or failure to see that
20 which may be readily seen, if the driver is looking would constitute
21 negligence as a matter of law." Huetter v. Andrews, 91 Cal. App. 2d
22 142, 146 (1949); see CACI 700.

23 20. The California Driver's Handbook advises against what
24 plaintiff did in this case: "Before you pass, look ahead for road
25 conditions and traffic that may cause other vehicles to move into your
26 lane." [Ex. 109-45]

27 21. Plaintiff breached the duty of care when, in heavy traffic,
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1 including a large truck partly blocking his view to his left, he
2 failed to keep a proper look out, and failed to put himself in a
3 position to determine if an oncoming vehicle turning left had the
4 right of way.

5 22. Third, plaintiff breached the duty of care by passing
6 slower-moving traffic "upon the right" when the road conditions made
7 it unsafe to do so.

8 23. "The driver of a vehicle may overtake and pass another
9 vehicle upon the right only under conditions permitting that movement
10 in safety. In no event shall that movement be made by driving off the
11 paved or main-traveled portion of the roadway." Cal. Veh. C. § 21755.

12 24. Passing on the right is prohibited regardless of whether the
13 passing vehicle began the maneuver from a marked lane or from the
14 shoulder. Opinion No. 59-230, 35 Ops. Cal. Atty. Gen. 39, 41, 1960
15 Cal. AG Lexis 14 (February 8, 1960)("[T]his section prohibits the
16 passing of a vehicle on the right by traveling on the shoulder or off
17 the main-traveled portion of the roadway, regardless of whether the
18 passing vehicle left the main-traveled portion of the roadway to reach
19 the shoulder in passing, or was already present there.")(interpreting
20 Cal. Veh. C. § 21755).

21 25. When a driver passes traffic and thereafter strikes a
22 vehicle making a legal left-hand turn in front of him, he is negligent
23 per se and liable for all injuries sustained by the driver and
24 passengers in the vehicle making the left-turn. See Hickson v. Beitel,
25 103 Cal. App. 2d 391, 392, (1951) (holding that where a driver passed
26 a stopped car on the right, and a collision immediately ensued with a
27 driver making a left-hand turn, the violation against passing traffic
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1 upon the right was negligence per se); People v. Wattier, 51
2 Cal.App.4th 948, 951 (1996) (finding a criminal violation where a
3 driver followed a car into the right lane and then proceeded further
4 onto the right shoulder, accelerated, and tried to pass the front
5 vehicle on the right).

6 26. The California Driver's Handbook advises: "Passing other
7 vehicles at crossroads, railroad crossings, and shopping center
8 entrances is dangerous." [Ex. 109-45]

9 27. Fourth, plaintiff breached the duty of care when he drove in
10 the paved shoulder or concrete gutter alongside West Redondo Beach
11 Boulevard, outside the marked lanes of traffic.

12 28. The Vehicle Code expressly prohibits plaintiff's chosen path
13 of travel: "In no event shall that movement [passing traffic upon the
14 right] be made by driving off the paved or main-traveled portion of
15 the roadway." Cal. Veh. C. § 21755.

16 29. The California Driver's Handbook advises: "Never drive off
17 the paved or main-traveled portion of the road or on the shoulder to
18 pass." [Ex. 109-45]

19 30. At the time of the collision, plaintiff was traveling in the
20 paved shoulder, which was not within the main-traveled portion of the
21 roadway.

22 31. Fifth, plaintiff breached the duty of care by wearing a
23 clamshell brace while driving and by driving while under the influence
24 of prescription medication.

25 32. A person must exercise reasonable care in driving a vehicle,
26 and must "control the speed and movement of their vehicles." CACI
27 700.
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1 33. Sections 21352 and 21353 of the California Vehicle Code
2 prohibit driving under the influence of drugs, whether or not
3 prescribed. A driver is "under the influence" when she has consumed
4 drugs that impair her ability to drive in a reasonably careful manner.
5 CACI 709.

6 34. Sixth, plaintiff breached the duty of care by driving too
7 fast.

8 35. The California "basic speed law," prohibits driving at a
9 rate of speed that is unsafe under the circumstances. Cal. Veh. C. §
10 22350; see CACI 706; see also Hardin v. San Jose City Lines, Inc., 41
11 Cal.2d 432, 438 (1953)("a violation of the statute is negligence").

12 36. Plaintiff violated the "basic speed law" by driving 20-25
13 miles per hour in the paved shoulder. The court believes plaintiff's
14 relatively contemporaneous accounts of his speed of travel, rather
15 than the lower estimates he provided at trial.

16 37. Due to his use of prescribed medication and the restrictive
17 brace on his wrist, plaintiff should have been driving even more
18 slowly and cautiously than an unimpaired driver. See CACI 403.

19 38. Plaintiff's breaches of his duty to operate his vehicle with
20 due care were the cause of the collision and his injuries, not
21 anything that Ms. Slaughter did or failed to do.

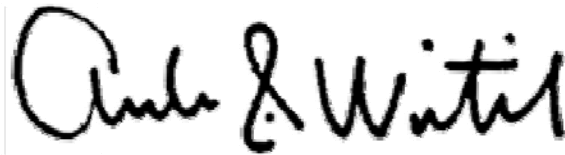
22 39. There is no need to address the issue of comparative fault
23 because Ms. Slaughter was not negligent and nothing that she did or
24 failed to do was a substantial factor in causing the collision or any
25 injuries resulting therefrom.
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2 **Conclusion**

3 Based on the foregoing findings of fact and conclusions of law,
4 the court concludes that plaintiff was negligent, Ms. Slaughter was
5 not negligent, plaintiff's negligence was the sole cause of the
6 collision, and plaintiff is entirely responsible for any injuries and
7 other losses resulting from the collision. Therefore, defendant is
8 entitled to judgment on the merits.

9 **IT IS SO ORDERED.**

10 Dated: March 8, 2017

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Andrew J. Wistrich
13 United States Magistrate Judge
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