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8 **United States District Court**
9 **Central District of California**
10 **Western Division**
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12 WAVERLY SCOTT KAFFAGA, *etc.*,

CV 14-08699 TJH (FFMx)

13 Plaintiff,

14 v.

15 THOMAS STEINBECK, *et al.*,

Order

16 Defendants.

[311]

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20 The Court has considered Defendants' renewed motion for judgment as a matter
21 of law, Defendants' motion for a new trial and/or *remittitur*, and Plaintiff's motion for
22 a permanent injunction and declaratory relief, together with the moving and opposing
23 papers.

24 "Judgment as a matter of law is proper when the evidence permits only one
25 reasonable conclusion and the conclusion is contrary to that reached by the jury." *Ostad*
26 *v. Or. Health Sci. Univ.*, 327 F.3d 876, 881 (9th Cir.2003). Here, the jury's verdict
27 was a reasonable conclusion supported by substantial evidence. Therefore, a judgment
28 as a matter of law is not warranted.

1 The Court may grant a new trial, “after a jury trial, for any reason for which a
2 new trial has heretofore been granted in an action at law in federal court.” Fed. R.
3 Civ. P. 59(a)(1)(A). Here, Defendants challenge the sufficiency of the evidence to
4 support the jury’s verdict. However, the verdict was not against the clear weight of the
5 evidence. *See Landes Const. Co., Inc. v. Royal Bank of Canada*, 833 F.2d 1365, 1371-
6 1372 (9th Cir. 1987). Indeed, the verdict was supported by substantial evidence.
7 Further, the verdict was not a miscarriage of justice. *See Murphy v. City of Long*
8 *Beach*, 914 F.2d 183, 187 (9th Cir. 1990). Therefore, a new trial is not warranted.

9 In diversity cases, the question of whether the amount of a jury’s verdict is
10 excessive is determined by state law. *Browning-Ferris Indus. of Vermont, Inc. v. Kelco*
11 *Disposal, Inc.*, 492 U.S. 257, 278-279 (1989). Under California law, if the Court
12 determines that the jury’s damages award was excessive, the Court may issue a
13 *remittitur* and conditionally grant a new trial, subject to Plaintiff rejecting a reduced
14 damages award. Cal. Code Civ. Proc. § 662.5(a)(2). A *remittitur* can occur only if,
15 after weighing the evidence, the Court is convinced from the entire record, including
16 all reasonable inferences, that the jury clearly should have reached a different verdict.
17 Cal. Code Civ. Proc. § 657. The Court is not permitted to substitute its judgment for
18 that of the jury unless it appears from the record that the jury’s verdict was improper.
19 *Bigboy v. County of San Diego*, 154 Cal. App. 3d 397, 406, 201 (1984). Having
20 reviewed the record and having weighed the evidence, the Court is not convinced that
21 the jury should have reached a different verdict or that the verdict reached was
22 improper. Therefore, a *remittitur* is not warranted.

23 To support the issuance of a permanent injunction, Plaintiff must establish, *inter*
24 *alia*, that legal remedies, such as monetary damages, are inadequate to compensate for
25 any future injury. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).
26 The Court finds that monetary damages are an adequate remedy.

27 Further, this Court is not the appropriate court to issue injunctive or declaratory
28 relief based on decisions made by the Southern District of New York and the United

1 States Court of Appeals for the Second Circuit.

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3 Accordingly,

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5 **It is Ordered** that Defendants' renewed motion for judgment as a matter of law
6 be, and hereby is, **Denied**.

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8 **It is further Ordered** that Defendants' motion for a new trial and/or *remittitur*
9 be, and hereby is, **Denied**.

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11 **It is further Ordered** that Defendants' motion for a permanent injunction and
12 declaratory relief be, and hereby is, **Denied**.

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14 Date: February 9, 2018

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16 
17 **Terry J. Hatter, Jr.**
18 **Senior United States District Judge**