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8 **United States District Court**
9 **Central District of California**

10 RHONDA PELTIER, an individual,
11
12 Plaintiff,

13 v.

14 UNITED STATES OF AMERICA,
15 Defendant.

Case No 2:16-CV-00774-ODW (SPx)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

16
17 **I. INTRODUCTION**

18 On September 26, 2017, the Court held a one-day bench trial in this action.
19 (ECF No. 61.) Plaintiff Rhonda Peltier filed this lawsuit following a car accident that
20 occurred when she rear-ended Mark Campbell on an on-ramp to Interstate-405 South.
21 Mark Campbell is an agent of the Drug Enforcement Administration (“DEA”), and
22 was on duty at the time of the incident. Peltier claims she suffered injuries as a result
23 of Campbell’s negligence when he cut her off, and then purposefully stopped in front
24 of her, causing the accident.

25 The parties submitted, and the Court admitted into evidence, testimony of the
26 parties’ direct witnesses through declarations and/or deposition testimony. The parties
27 submitted the direct testimony of: Mark Campbell, Charles Rosen, M.D., Rhonda
28 Peltier, Eugene Peltier, Robyn Scancich, Officer Darren Wybenga, and Glenn Huber,

1 M.D.¹ (ECF Nos. 54–55.) The parties cross-examined Mark Campbell, Charles
2 Rosen, M.D., Glenn Huber, M.D., Rhonda Peltier, and Eugene Peltier live in the
3 courtroom.

4 After Peltier rested her case, the United States moved for a judgment on partial
5 findings, pursuant to Federal Rule of Civil Procedure 52(c). The United States
6 renewed its Motion at the close of the evidence. The Court deferred ruling on the
7 United States’ Motion, and now **DENIES** the United States’ Motion, and issues this
8 Findings of Fact and Conclusions of Law.

9 Having carefully reviewed and considered the evidence and the arguments of
10 counsel as presented at trial and in their written submissions, the Court issues the
11 following findings of fact and conclusions of law pursuant to Federal Rule of Civil
12 Procedure 52(a). To the extent that any finding of fact constitutes a conclusion of law,
13 it is adopted as such, and vice versa.

14 **II. FINDINGS OF FACT**

15 **A. The June 2, 2014 Car Accident**

- 16 1. On Monday, June 2, 2014, at approximately 9:00 a.m., Plaintiff Rhonda
17 Peltier rear-ended a truck driven by on-duty DEA Special Agent Mark
18 Campbell.
- 19 2. The accident occurred on the freeway on-ramp for the Interstate-405
20 South at Woodruff Avenue in the city of Long Beach.
- 21 3. Prior to the accident, Campbell’s 2009 Chevy Silverado merged in front
22 of Peltier’s 2007 Toyota Corolla. Peltier had to apply her brakes to allow
23 Campbell sufficient space to merge into the lane.

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26 ¹ The United States objected to paragraphs 7, 12, and 21 of the Declaration of Glenn Huber, M.D.,
27 Peltier’s treating physician and expert orthopedist. (ECF Nos. 55, 57.) At trial, the Court sustained
28 the United States’ objection to paragraph 7 and overruled the objection to paragraph 12. As for
paragraph 21, the parties agreed that the Court could strike paragraph 21 of Dr. Huber’s declaration,
and that the exhibits identified in that paragraph could be authenticated by Peltier. Accordingly, the
Court strikes paragraph 21 of Dr. Huber’s declaration.

- 1 4. Peltier felt threatened by the unexpected merge, and feared Campbell did
2 not see her. She reacted by honking her horn, yelling, gesticulating, and
3 giving the middle finger to Campbell. There was no contact between the
4 cars at this moment.
- 5 5. Peltier continued to follow Campbell up the on-ramp of Interstate-405
6 South, and was approximately two to three car lengths behind him.
- 7 6. Out of frustration with Peltier's reaction, Campbell slowed down his
8 truck on the on-ramp, and almost came to a complete stop.
- 9 7. Peltier applied the brakes and was able to avoid a collision.
- 10 8. Both parties then continued up the on-ramp, when Campbell again
11 applied the brakes out of frustration, and abruptly slowed almost to a
12 complete stop. There was nothing ahead of Campbell requiring him to
13 apply his brakes. (Deposition of Robyn Scancich ("Scancich Dep.") at
14 17:20-22, ECF No. 58-2. ("Q. Was there any reason you could see for
15 [Campbell] to stop dead on the on-ramp? A. Absolutely not.")
- 16 9. Peltier applied the brakes, but could not stop before hitting Campbell's
17 truck in light of his abrupt stop, and the distance she allowed between the
18 two vehicles, while traveling up the on-ramp.
- 19 10. After the accident, Campbell immediately stopped his truck and went to
20 speak to Peltier. Campbell did not yell, gesticulate, or act aggressively to
21 Peltier.
- 22 11. Peltier stepped out of her car without any assistance and approached
23 Campbell to discuss the incident.
- 24 12. Peltier also spoke with a percipient witness, Robyn Scancich. Peltier was
25 visibly upset and shaken after the accident, and there was coffee split on
26 Peltier's clothes when she spoke with Scancich.
- 27 13. The Court finds the testimony of percipient witness Robyn Scancich,
28 who does not appear to have any connections to either party, to be

1 credible. Scancich testified: “[Campbell] either stopped completely or
2 nearly stopped. But either way there was not much Miss Peltier could
3 have done to avoid hitting [Campbell].” (Scancich Dep. at 25:2-10, ECF
4 No. 58-2.)

5 14. The accident caused no visible property damage to the rear of Campbell’s
6 government-owned 2009 Chevy Silverado.

7 15. Peltier’s 2007 Toyota Corolla suffered from a buckled hood and
8 scratched front bumper. Peltier’s airbag did not deploy, and she did not
9 hit any part of her body on the interior of the vehicle. She was wearing
10 her seatbelt.

11 16. Peltier did not immediately go to the hospital, was not transported by
12 ambulance, nor did she seek medical attention on the day of the accident.

13 **B. Medical Treatment**

14 17. Peltier reported to HealthCare Partners the day after the incident, and
15 complained of low back pain. Peltier had a prior history of sciatica,
16 fibromyalgia, neck pain, and *left* hip pain.

17 18. In the weeks after the incident, Peltier underwent physical therapy for
18 her low back pain, and also received an x-ray and MRI of her low back.
19 The x-ray, taken on June 20, 2014, revealed a degenerative condition
20 called a “Schmorl’s Node,” but no broken bones. The MRI, taken on
21 July 14, 2014, revealed a 1-2mm diffuse disc bulge with mild disc height
22 loss at L-3-L4. She participated in physical therapy from July 25, 2014
23 through November 26, 2014, at Advanced Orthopedic PT.

24 19. On September 10, 2014, Peltier reported for evaluation to Dr. Daniel
25 Stephenson at Beach Cities & Orthopedic Sports Medicine, with a chief
26 complaint of low back pain. Dr. Stephenson noted that Peltier
27 complained of “LBP x 5-6 months.” (Defendant’s Trial Exhibit (“DX”)
28 1016-23.) After the incident, Peltier experienced increased low back pain

1 with radicular pain. Dr. Stephenson examined her and assessed her as
2 having lumbar degenerative disc disease. He recommended physical
3 therapy for range of motion and core strengthening.

4 20. Dr. Stephenson also recommended, and Peltier received, epidural
5 injections in her back, which the Court finds were causally related to her
6 degenerative disc disease.

7 21. On January 18, 2017, Dr. Huber performed an arthroscopic surgery on
8 Peltier's *right* hip, and prescribed subsequent rehabilitative physical
9 therapy. As discussed below, the Court finds this injury was not causally
10 related to the accident.

11 III. CONCLUSIONS OF LAW

12 A. Liability

13 22. The Federal Tort Claims Act ("FTCA") preconditions liability and
14 jurisdiction upon proof of an actionable duty, causation, and
15 recoverable damages under the law of the state where the conduct
16 complained of occurred. *See* 28 U.S.C. §§ 1346(b)(1) and 2674 *et seq.*

17 23. To be cognizable under the FTCA, the claim must arise from the
18 negligent or wrongful act of a government employee acting within the
19 scope of his or her employment "under circumstances where the
20 United States, if a private person, would be liable to the claimant in
21 accordance with the law of the place where the act or omission
22 occurred." 28 U.S.C. § 1346(b)(1); *Dalehite v. United States*, 346 U.S.
23 15, 17 (1953).

24 24. Campbell worked for the DEA, and thus was a government
25 employee. At the time of the accident, Campbell was on
26 duty, and thus was acting within the course and scope of his
27 employment with the DEA.

- 1 25. California law applies to this action. *Molzof v. United States*, 502
2 U.S. 301, 305 (1992); 28 U.S.C. §§ 1346(b), 2674.
- 3 26. In California, “[t]he elements of a cause of action for negligence
4 are... (a) a legal duty to use due care; (b) a breach of such a legal duty;
5 [and] (c) the breach as the proximate or legal cause of the resulting
6 injury.” *Ladd v. Cty. of San Mateo*, 12 Cal. 4th 913, 917 (1996)
7 (citing and quoting *Evan F. v. Hughson United Methodist Church*, 8
8 Cal. App. 4th 828, 834 (1992)); *see also* Cal. Civ. Code § 1714(a).
- 9 27. “A driver is not necessarily negligent because his vehicle rear-ends
10 another.” *Pittman v. Boiven*, 149 Cal. App. 2d 207, 214 (1967) (citing
11 cases and explaining factors that are relevant to determining liability
12 in a rear end accident). A driver also has a duty to give an appropriate
13 signal if stopping abruptly. Cal Veh. Code § 22109 (“No person shall
14 stop or suddenly decrease the speed of a vehicle on a highway without
15 first giving an appropriate signal...to the driver of any vehicle
16 immediately to the rear when there is opportunity to give the signal.”).
- 17 28. Campbell was negligent in the operation of his truck when he stopped
18 on the on-ramp of Interstate-405 South. He did not act reasonably
19 under the circumstances because there was nothing in front of him
20 requiring him to slow down on the first or second occasion. Instead,
21 he acted purposefully out of frustration with Peltier’s reaction.
22 Campbell’s act of stopping his vehicle abruptly on the on-ramp to
23 Interstate-405 South was a substantial factor in causing the collision.
- 24 29. At the same time, a driver “shall not follow another vehicle more
25 closely than is reasonable and prudent, having due regard for the
26 speed of such vehicle and the traffic upon, and the condition of, the
27 roadway.” *Id.* § 21703. Where a plaintiff also acts negligently, the
28 plaintiff’s recovery is reduced by his or her portion of fault. *Pfeifer v.*

1 *John Crane, Inc.*, 220 Cal. App. 4th 1270, 1285 (2013) (citations and
2 quotations omitted) (“The comparative fault doctrine is designed to
3 permit the trier of fact to consider all relevant criteria in apportioning
4 liability. The doctrine is a flexible commonsense concept, under
5 which a jury properly may consider and evaluate the relative
6 responsibility of various parties for an injury....”).

7 30. The Court finds Peltier was also negligent. Had Peltier driven at a
8 slower speed, and provided more space between her and Campbell’s
9 vehicle, which she had just observed slow down drastically once
10 before the impact, she may have been able to avoid the collision. The
11 Court determines Peltier’s negligence was a substantial factor in
12 causing the accident, and apportions fault to her of 25%, which will
13 reduce her damages accordingly.

14 **B. Damages**

15 **i. Economic Damages: Past Medical Expenses**

16 31. A plaintiff may only recover the reasonable value of past medical
17 services. *Howell v. Hamilton Meats & Provisions, Inc.*, 52 Cal. 4th
18 541, 555 (2011). A plaintiff’s damages are limited to “the lesser of
19 (1) the amount paid or incurred for past medical services, and (2) the
20 reasonable value of the services.” *Ochoa v. Dorado*, 228 Cal. App.
21 4th 120, 134 (2014) (citing *Howell*, 52 Cal. 4th at 556). To recover
22 for past medical expenses, a plaintiff must prove: (1) the amount of
23 each expense; (2) that each of the charges was reasonable; (3) that
24 each of the services was actually given, and was reasonably necessary
25 to diagnose and treat the injuries; and (4) that the condition which
26 necessitated the treatment was the legal result of the injury caused by
27 the defendant. *See Ochoa*, Cal. App. 4th at 137.

1 32. Both parties' experts agree that Peltier likely suffered some low back
2 strain and pain as a result of the accident. (Huber Decl., ¶ 12, ECF
3 No. 55-3; Rosen Decl., ¶ 37, ECF No. 54-2.) The accident also likely
4 exacerbated her preexisting condition. A reasonable initial course of
5 treatment for such an injury would include physical therapy and anti-
6 inflammatory for a number of weeks after the incident. (Rosen
7 Decl., ¶ 37, ECF No. 54-2.)

8 33. Dr. Huber testified that Peltier's right hip surgery in January 2017
9 was a result of the incident. The Court does not find this testimony
10 credible or persuasive, and declines to find that Peltier's right hip
11 surgery and associated treatment are causally related to car accident,
12 which occurred in June 2014—two and a half years earlier. The
13 credibility of Dr. Huber's testimony is also eroded because he did not
14 review Peltier's medical records prior to forming his initial opinions,
15 as disclosed in his expert report. The Court excluded any opinions
16 based on his review of these records when it granted the United
17 States' Motion in Limine No. 1. (*See* ECF Nos. 51, 56.) The fact that
18 Dr. Huber claims he later reviewed the records, but they had
19 absolutely no impact on his opinions only further calls into question
20 his credibility. Furthermore, the Court was not persuaded that Peltier
21 submitted sufficient evidence of the mechanism of injury, as it relates
22 to her right hip, especially where Peltier testified in deposition that her
23 body did not make contact with the inside of her vehicle.

24 34. The Court also finds that the epidural injections Peltier received were
25 not a result of her preexisting degenerative disc disease, and thus not
26 causally related to the accident. Any exacerbation of her preexisting
27 condition should have been treated with physical therapy. Peltier's
28 expert, Dr. Huber, conceded that he would expect any acute back pain

1 related to the accident would be resolved, and characterized Peltier's
2 pain, which continued over two years, as chronic. He further opined
3 that he would not recommend injections because she was not
4 complaining of radicular or nerve symptoms, which is what epidural
5 injections are used to treat.

6 35. The Court finds Peltier's initial evaluation for her back injury, and
7 course of treatment, including physical therapy, were proximately
8 caused by the accident, and were reasonable and necessary. The
9 Court awards **\$1,706.84** in past medical expenses:

Dates of Service	Location	Recoverable Cost
06/13/14	Memorial Medical Group Inc. (Plaintiff's Trial Exhibit ("PX") 10.)	\$127.05
07/25/14- 11/26/14	Advanced Orthopedic PT (PX 11.)	\$802.00
06/20/14 07/14/14	Los Coyotes Imaging Center (PX 12.)	\$544.59
9/10/14- 01/21/15	Beach Cities Orthopedics & Sports Medicine (PX 13.)	\$233.20 ²
	TOTAL	\$1,706.84

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26 ² The Court calculated this amount by removing the charges for the x-ray and MRI of Peltier's right
27 hip, in light of its findings discussed above. The Court awards the expenses related to her January
28 21, 2015 visit (\$101.60), as a reasonable and necessary follow-up visit after her initial consultation
with Dr. Stephenson for her back pain. The Court does not award her damages for visits after this
date.

1 **ii. Economic Damages: Future Medical Expenses**

2 36. Future medical expenses are appropriate where a plaintiff proves: 1)
3 the reasonable value of those services; 2) that the future care is
4 reasonably certain and necessary; and 3) that the condition requiring
5 future care is causally connected to the injuries inflicted by the
6 defendant. *Garcia v. Duro Dyne Corp.*, 156 Cal. App. 4th 92, 97
7 (2007); *see also* Cal. Civ. Code § 3283.

8 37. The Court finds Peltier’s need for future medical care speculative and
9 not causally related to the accident because her alleged future care
10 relates to her right hip injury. To the extent Peltier claims future care
11 related to her back injury, the Court finds it speculative, and more
12 likely than not related to her pre-existing conditions, which included
13 prior complaints of, and treatment for, neck and back pain, more
14 likely related to a degenerative condition.

15 **iii. Non-Economic Damages**

16 38. In California, a plaintiff may recover non-economic damages for past
17 and future pain and suffering. *See Duarte v. Zachariah*, 22 Cal. App.
18 4th 1652, 1664–65 (1994) (“Garden-variety pain and suffering defies
19 a nice standard of calculation.”).

20 39. Where a plaintiff is comparatively at fault, the amount of non-
21 economic damages is also reduced according to the apportionment of
22 fault. *Li v. Yellow Cab Co.*, 13 Cal. 3d 804, 828–29 (1975)
23 (“Therefore, in all actions for negligence resulting in injury to person
24 or property, the contributory negligence of the person injured in
25 person or property shall not bar recovery, but the damages awarded
26 shall be diminished in proportion to the amount of negligence
27 attributable to the person recovering.”).

40. Having considered the evidence Peltier presented regarding the pain, suffering, and anxiety she experienced during, and after, the incident, the Court awards **\$2,500** in non-economic damages.

C. Apportionment of Fault & Reduction of Damages³

41. The Court previously found Peltier to be 25% at fault for this accident, and her damages must be reduced accordingly. *Id.*

Damages	Total Awarded	% of Fault	Recoverable Amount
Economic: Past Medical Expenses	\$1,706.84	25%	\$1,280.13
Non-Economic	\$2,500	25%	\$1,875.00
		TOTAL	\$3,155.13⁴

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³ In addition to medical billings and proof of payment, Peltier submitted a Property Damage Report, which is an estimate of the cost to repair her 2007 Corolla. (PX 1.) However, the report does not indicate anywhere that the estimate for repairs was ever paid. (*See id.*) Peltier’s declaration only states: “Exhibit 1 is the property damage report I received for my Toyota Corolla. On page 6, it shows that they cleaned up my coffee spill in the car.” (Peltier Decl., ¶ 26, ECF No. 55-1.) Nowhere does Peltier prove that she is responsible for paying the amounts in the estimate, nor did she testify that she intends to repair her vehicle in the future, which might allow the Court to consider the Property Damage Report as evidence of the reasonable value of her vehicle. Accordingly, the Court does not award Peltier property damages. *See Pacific Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.*, 69 Cal. 2d 33, 42–45 (1968).

⁴ The FTCA precludes an award of prejudgment interest. 28 U.S.C. § 2674.

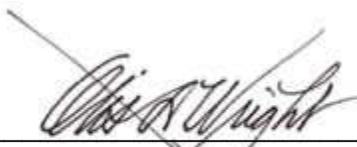
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IV. CONCLUSION

In light of the Court’s findings of fact and conclusions of law, the Court **ORDERS** the parties to confer and submit a Proposed Judgment. The parties shall submit the Proposed Judgment no later than 7 days after issuance of this Order.

IT IS SO ORDERED.

October 16, 2017



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE