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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE MADRIGAL,
Plaintiff,
v.
UNITED STATES,
Defendant.

CV 19-5041-RSWL-PLA

**ORDER AND FINDINGS OF FACT
& LAW**

Complaint Filed: June 10, 2019
Trial Date: May 25-26, 2021

Plaintiff Jose Madrigal ("Plaintiff") initiated this Action against Defendant United States ("Defendant") for injuries arising out of a collision (the "Collision") between Plaintiff's vehicle and a United States Postal Service mail delivery truck. On May 25 and May 26, 2021, the Court conducted a bench trial.¹ Having considered the evidence, the parties'

¹ On April 27, 2021, the Court ordered [69] the parties to submit declarations in lieu of oral live testimony for purposes of direct examination.

1 objections to the evidence, the credibility of the trial
2 witnesses, and both parties' arguments at trial, the
3 Court issues the following findings of fact and
4 conclusions of law pursuant to Federal Rule of Civil
5 Procedure 52(a).

6 **I. FINDINGS OF FACT**

7 The intersection of Baltic Avenue and Dominguez
8 Street lies in Carson, California. Ex. 3, at 4; Ex.
9 115-7. Baltic Street is a residential roadway that runs
10 north and south. Ex. 3, at 4; Ex. 115-7. Dominguez
11 Street is a business roadway that runs east and west.
12 Ex. 3, at 2. The intersection of Baltic and Dominguez
13 has no traffic lights. Ex. 3, at 4; Ex. 115-7; Ex. 52,
14 at 27:2-6.

15 On June 16, 2017, United States Postal Service
16 ("USPS") employee Asia Crowfield was driving a USPS mail
17 truck on an unfamiliar route. Ex. 51, at 38:1-10. Ms.
18 Crowfield was traveling northbound on Baltic Avenue,
19 approaching the intersection of Baltic Avenue and
20 Dominguez Street. Ex. 3, at 5; Ex. 115-9. At the same
21 time, Plaintiff was driving his twelve-wheel semi-truck
22 eastbound on Dominguez Street. ¶¶ 5-6. Ms. Crowfield
23 attempted to make an unprotected left turn from Baltic
24 Avenue into the westbound lane of Dominguez Street. Ex.
25 49 ¶ 5. Although Plaintiff saw Ms. Crowfield's mail
26 truck pull out from Baltic Avenue, he was unable to stop
27 his truck. Id. Ms. Crowfield's vehicle struck the
28 passenger side of Plaintiff's truck. Id. ¶ 6; Ex. 3, at

1 5-6; Ex. 115-9, 115-11. Plaintiff's feet hit the floor
2 of the truck, and his head hit the driver's side door
3 frame. Ex. 49 ¶ 6.

4 In precipitating the Collision, Ms. Crowfield
5 violated California Vehicle Code § 21801(a), which reads
6 as follows:

7 [t]he driver of a vehicle intending to turn to
8 the left or to complete a U-turn upon a highway
9 . . . shall yield the right-of-way to all
10 vehicles approaching from the opposite
11 direction which are close enough to constitute
12 a hazard at any time during the turning
13 movement, and shall continue to yield the
right-of-way to the approaching vehicles until
the left turn or U-turn can be made with
reasonable safety.

14 Ms. Crowfield was the sole cause of the Collision. Ex.
15 3, at 2, 6; Ex. 52, at 30:5-9; Ex. 115-3, 115-11.

16 Plaintiff has undergone significant medical
17 treatment in relation to resultant injuries to his
18 lumbar spine, including emergency room services,
19 magnetic resonance imaging ("MRI") scans, physical
20 therapy sessions, epidural steroid injections, physician
21 consultations, and a transforaminal lumbar interbody
22 fusion ("TLIF"). Ex. 45 ¶¶ 8-15; Ex. 46 ¶¶ 11-15. In
23 the future, Plaintiff is likely to require additional
24 care in the form of medical consultations, medications,
25 and interventional pain management. Ex. 46 ¶ 25; Ex.
26 158 ¶¶ 36, 38.

27 Plaintiff works as a truck driver five days per
28

1 week for approximately ten to twelve hours per day. Day
2 Tr. 17:17-25; Ex. 49 ¶ 12. He is reasonably expected
3 to earn \$29,627.75 annually, or \$569.76 per week.² Ex.
4 24. As a result of the Collision, Plaintiff missed
5 twelve weeks of work, including four weeks after the
6 Collision and eight weeks following his TLIF. Ex. 49 ¶
7 18. However, the Collision has not had a material
8 effect on Plaintiff's ability to perform his job, and no
9 physician has placed any work-related restriction on
10 him. Day 2 Tr. 18:19-19:3.

11 Plaintiff's injuries have hindered his ability to
12 engage in certain hobbies, including hiking with family
13 and traveling. Ex. 14; Ex. 49 ¶¶ 22, 36. Accustomed to
14 life as the family breadwinner, Plaintiff feels more
15 like a burden after the Collision. Ex. 49 ¶ 35.

16 **II. CONCLUSIONS OF LAW**

17 Plaintiff asserts a single claim for negligence
18 against Defendant by way of the Federal Tort Claims Act,
19 28 U.S.C. § 1346(b)(1). In California,³ the elements of
20 negligence are duty, breach of duty, causation, and
21 damages. Carrera v. Maurice J. Sopp & Son, 177 Cal.
22 App. 4th 366, 377 (2009) (citations omitted).

24 ² The \$29,627.75 figure is an average of Plaintiff's annual
25 income as a truck driver from the years 2011 to 2019, excluding
2014, for which no tax returns were provided.

26 ³ Because the Collision occurred in California, California
27 law applies to Plaintiff's claims. See 28 U.S.C. § 1346(b)(1)
28 (creating governmental liability "in accordance with the law of
the place where the act or omission occurred").

1 **A. Liability**

2 Negligence per se is an evidentiary doctrine, under
3 which the "violation of a statute gives rise to a
4 presumption of negligence in the absence of
5 justification or excuse." Ramirez v. Nelson, 44 Cal.
6 4th 908, 918 (2008). To establish negligence per se, a
7 plaintiff must establish: "(1) the defendant violated a
8 statute, ordinance, or regulation; (2) the violation
9 proximately caused the injury; (3) the injury resulted
10 from an occurrence that the enactment was designed to
11 prevent; and (4) the plaintiff fits within the class of
12 persons for whose protection the enactment was adopted."
13 Coppola v. Smith, 935 F. Supp. 2d 993, 1017 (E.D. Cal.
14 2013) (citing Cal. Evid. Code § 669).

15 Because Ms. Crowfield violated California Vehicle
16 Code § 21801(a) and thereby caused Plaintiff's injuries,
17 she was presumptively negligent. Moreover, because Ms.
18 Crowfield was acting within the scope of her employment
19 during that time, the Court imputes Ms. Crowfield's
20 presumptive negligence to Defendant.

21 Finally, a defendant may rebut the presumption of
22 negligence by showing that the person violating the
23 statute "did what might reasonably be expected of a
24 person of ordinary prudence, acting under similar
25 circumstances, who desired to comply with the law."
26 Cal. Evid. Code § 669(b)(1). Defendant adduced no such
27 evidence. Defendant is thus liable for damages
28 proximately caused by Ms. Crowfield's negligence.

1 **B. Damages**

2 1. Medical Care

3 Plaintiff is entitled to recover for reasonably
4 necessary medical care attributable to the Collision.
5 Hanif v. Housing Authority, 200 Cal. App. 3d 635, 640
6 (1988). Here, based on the testimony of Plaintiff's
7 medical experts Dr. Devin Binder and Dr. Fardad Mobin,
8 the ultimate severity of Plaintiff's condition would not
9 have emerged without the Collision. Ex. 45 ¶ 25; Ex. 46
10 ¶¶ 16-19. Plaintiff had some degeneration prior to the
11 Collision, but the Collision exacerbated his spinal
12 condition and rendered those degenerative problems
13 symptomatic. Ex. 46 ¶¶ 18-19. This aligns with
14 Plaintiff's credible testimony that he did not have any
15 back pain prior to the Collision but experienced an
16 onset of back pain soon after its occurrence. Ex. 49 ¶
17 24. As a result, the following medical care was
18 attributable⁴ to the Collision:

19 _____
20 ⁴ Defendant argued, and Defendant's medical experts posited,
21 that Plaintiff's condition was unrelated to the Collision. Def.
22 United States of Am.'s Closing Arg. 7:19-22, ECF No. 133; see
23 generally Exs. 145-146. Specifically, Dr. Raymond Hah and Dr.
24 Isaac Yang testified that the August 12, 2017 MRI revealed an
25 absence of trauma to the surrounding bone which, in turn,
26 signified an unlikelihood of trauma to the spinal discs. Ex. 157
27 ¶ 28; Ex. 158 ¶¶ 20-21. The doctors suggested that Plaintiff
28 merely exhibited mild degenerative symptoms typical for a person
of his age and occupation. Ex. 157 ¶ 28; Ex. 158 ¶ 10.

25 While Defendant's medical experts opined that injury to the
26 bone typifies disc herniation resulting from trauma, they did not
27 rule out the possibility that disc herniation resulting from
28 trauma could materialize absent trauma to the bone. See Day 1
Tr. 110:18; Day 2 Tr. 76:18-22. In fact, when confronted with
the question of causation on cross-examination, Dr. Hah and Dr.

- 1 - Emergency room services
- 2 - MRI scans
- 3 - Physical therapy sessions
- 4 - Epidural steroid injections
- 5 - Consultations with Dr. Binder
- 6 - TLIF surgery

7 Furthermore, Plaintiff's medical care was
8 reasonably necessary.⁵ The conservative treatment—
9 namely, the medical consultations, physical therapy, and
10 epidural injections—was a reasonable measure in an
11 attempt to alleviate Plaintiff's pain. Day 1 Tr.
12 104:12-22, 131:11-18. Moreover, contrary to Defendant's
13 position, a TLIF was a reasonably necessary surgery for
14 Dr. Binder to perform given the MRI scans, the
15 ineffectiveness of conservative treatment, and
16 Plaintiff's symptomatology. Ex. 45 ¶¶ 8-13; Ex. 46 ¶
17 15.

18 2. Plaintiff's Compensation for Medical Care

19 With respect to Plaintiff's monetary recovery for
20 medical services, the amount recoverable is "the lesser
21 of (1) the amount paid or incurred for past medical
22

23 Yang displayed notable incertitude about the causal connection
24 between the Collision and Plaintiff's degenerative pathology.
Day 1 Tr. 110:18-111:1, 111:6-18, 120:12-13, 130:13-2.

25 ⁵ Although the parties stipulated to the admission of
26 certain medical records—specifically, those pertaining to
27 Plaintiff's visits with Dr. Shi and Dr. Chen—none of Plaintiff's
28 witnesses testified about these visits. The Court cannot
ascertain whether the services rendered were reasonably necessary
or attributable to the Collision.

1 expenses and (2) the reasonable value of the services.”
2 Corenbaum v. Lampkin, 215 Cal. App. 4th 1308, 1325-26
3 (2013). The reasonable value is the fair market value,⁶
4 or the amount that the provider “normally receives from
5 the relevant community for the services it provides.”
6 Bermudez v. Ciolek, 237 Cal. App. 4th 1311, 1334 (2015).
7 While billed amounts are relevant in the reasonableness
8 inquiry, they are alone insufficient.⁷ See id. at 1338
9 (stating that “the amount incurred by an uninsured
10 medical patient is not sufficient evidence on its own to
11 prove the reasonable amount of medical damages”).

12 The reasonable value of Plaintiff’s medical
13 treatment attributable to the Collision is as follows:

- 14 - Emergency room services - **\$425.00**
- 15 - MRI scans - **\$2,750.00**
- 16 - Physical therapy sessions - **\$8,704.40**
- 17 - Epidural steroid injections - **\$4,000.00**
- 18 - Consultations with Dr. Binder - **\$11,000.00**
- 19 - TLIF and associated costs - **\$39,500.00**

20 ⁶ As the California Supreme Court noted in Howell, “pricing
21 of medical services is highly complex and depends, to a
22 significant extent, on the identity of the payer. In effect,
23 there appears to be not one market for medical services but
several” Howell v. Hamilton Meats & Provisions, Inc., 52
Cal. 4th 541, 562 (2011).

24 ⁷ The determination of fair market value “will usually turn
25 on a wide-ranging inquiry” involving additional evidence and
26 expert testimony. Bermudez, 237 Cal. App. 4th at 1330-31; see
27 also Pebley v. Santa Clara Organics, LLC, 22 Cal. App. 5th 1266,
28 1275 (2018) (remarking that “the uninsured plaintiff also must
present additional evidence, generally in the form of expert
opinion testimony, to establish that the amount billed is a
reasonable value for the service rendered”).

1 These values derive from a dissection of the
2 respective analyses for each parties' experts.
3 Plaintiff, on the one hand, adduced evidence of the full
4 amount of his outstanding medical bills. These amounts
5 are minimally probative in determining the reasonable
6 value of medical services, as they represent the
7 unilateral assignment of value by Plaintiff's respective
8 providers. This concern is especially glaring for
9 services rendered by Dr. Binder, who was retained on a
10 lien.

11 On the other hand, Defendant proffered the expert
12 testimony of Lindsay Knutson, who opined on the fair
13 market value of Plaintiff's medical care. In reaching
14 her conclusions, Ms. Knutson applied a multiplier to
15 data extracted from the Medicare Physician Fee Schedule
16 Database, a comprehensive source of information on fees
17 for medical services. Ex. 159 ¶¶ 35-38. Application of
18 the multiplier to the cost of the service, which was
19 identified by the pertinent Current Procedural
20 Terminology code, yielded the "reasonable value" of the
21 respective service. Id.

22 The Court finds Ms. Knutson's methodology to be
23 more probative of the reasonable value of medical
24 services but nevertheless problematic. While her
25 methodology more nearly pinpoints the reasonable value,
26 it concerns a singular "fair market value." The Court
27 is not convinced that the relevant market for
28 Plaintiff's treatment is precisely aligned with the

1 market identified in Ms. Knutson's methodology. That
2 is, Ms. Knutson's methodology encompasses those rates
3 negotiated by payers who may have more bargaining power
4 than Plaintiff. Accordingly, the Court does not adopt
5 Ms. Knutson's conclusions but accords reasonable values
6 for Plaintiff's medical services more closely tied to
7 figures proffered by Ms. Knutson.

8 With respect to future medical care, Plaintiff is
9 entitled to recover the reasonable value of reasonably
10 necessary medical care that he is reasonably certain to
11 need in the future as a result of the Collision. Cuevas
12 v. Contra Costa County, 11 Cal. App. 5th 163, 183
13 (2017); see also CACI 3903A. As stated in the factual
14 findings, Plaintiff is likely to require future care,
15 including medical consultations, medications, and
16 interventional pain management. Application of the same
17 principles used to calculate the reasonable value of
18 Plaintiff's past medical services yields recovery for
19 future medical expenses of **\$10,800.00**. See Ex. 159 ¶
20 47.

21 3. Lost Wages

22 A plaintiff may recover for lost wages, but such
23 damages must not be speculative. Cantu v. United
24 States, No. CV 14-00219 MMM (JCGx), 2015 WL 4720580, at
25 *32 (C.D. Cal. Aug. 7, 2015) (citing Engle v. Oroville,
26 238 Cal. App. 2d 266, 273 (1965)).

27 Here, Plaintiff missed twelve weeks of work due to
28 the Collision. Because Plaintiff earns \$569.76 per week

1 as a truck driver, Plaintiff is entitled to recover
2 **\$6,837.12** in lost wages.⁸ In addition, the record
3 reflects a minor diminution in Plaintiff's work-life
4 expectancy. Given his significant medical treatment,
5 persistent back problems, and need for future treatment,
6 it is more likely than not that Plaintiff's work-life
7 expectancy is reduced by two years. With expected
8 annual earnings of \$29,627.75, Plaintiff is entitled to
9 recover **\$59,255.50** in future wages.

10 The Court does not adopt the figure of 4.2 years
11 suggested by Plaintiff's expert, Mr. Vega, because of
12 Plaintiff's current medical status and ongoing
13 vocational incentives. That is, no physician has placed
14 a work-related restriction on Plaintiff, and he
15 maintains potent incentives to work. Day 1 Tr. 78:15-
16 80:4; Day 2 Tr. 18:19-19:3; Ex. 160 ¶ 42.

17 4. Noneconomic Damages

18 In California, "[f]or harm to body, feelings or
19 reputation, compensatory damages reasonably proportioned
20 to the intensity and duration of the harm can be awarded
21 without proof of amount other than evidence of the
22 nature of the harm." Duarte v. Zachariah, 22 Cal. App.
23

24 ⁸ Plaintiff's vocational economic analyst, Enrique Vega,
25 testified that Plaintiff should recover an additional 26.9% of
26 his earnings to account for fringe benefits. Ex. 47 ¶ 16. While
27 26.9% of earnings may represent the national average in fringe
28 benefits, there is no evidence that this figure applies in
Plaintiff's case. Moreover, fringe benefits are reflected in
Plaintiff's tax returns as an offset to his earnings. Day 1 Tr.
82:14-18; see generally Ex. 24.

1 4th 1652, 1664-65 (1994) (quoting Restatement (Second)
2 of Torts § 912 (1979)). Plaintiff's noneconomic harm is
3 meager but nevertheless existent. Plaintiff adduced
4 minimal evidence of pain and suffering, and the
5 testimony of Maria Garcia, Plaintiff's partner, was
6 minimally probative on that point. He has, however,
7 been rendered somewhat burdensome to his family and has
8 lost the ability to hike or travel as he did before the
9 Collision. Plaintiff has suffered noneconomic harm in
10 the amount of **\$40,000.00**.

11 **III. CONCLUSION**

12 The Court awards Judgment for Plaintiff and against
13 Defendant in the amount of **\$183,272.02**, plus costs.

14 **IT IS SO ORDERED.**

15
16 DATED: August 13, 2021

/s/ Ronald S.W. Lew

17 **HONORABLE RONALD S.W. LEW**
18 Senior U.S. District Judge
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