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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CARLOS URIAS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant(s).

Case No. CV 22-1680-KK-PVCx

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

On March 14, 2022, plaintiff Carlos Urias (“Plaintiff”) filed a Complaint against defendant United States of America (“Defendant”) for negligence arising from a car accident in violation of the Federal Tort Claims Act. ECF Docket No. (“Dkt.”) 1. On March 18, 2024, and March 19, 2024, the matter was tried before the Court without a jury. Dkts. 78, 79.

Having considered all the evidence admitted at trial – including the Declarations of Expert Testimony, dkts. 62-68, and the briefing submitted by the parties, dkts. 86, 87 – the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52.

I.
FINDINGS OF FACT

A. PROCEDURAL HISTORY

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4 1. On March 14, 2022, Plaintiff filed a Complaint alleging a single cause of
5 action for negligence under the Federal Tort Claims Act, seeking damages for past
6 and future medical expenses, property damage, loss of income and earning capacity,
7 and general damages. Dkt. 1.

8 2. On December 18, 2023, Defendant filed two Motions in Limine seeking
9 to exclude (1) Plaintiff's non-retained expert witness ("Motion in Limine 1"); and (2)
10 "all testimony and evidence at trial of Plaintiff's claimed past and future lost earnings"
11 ("Motion in Limine 2"). Dkts. 36, 40. Plaintiff filed an Opposition to Defendant's
12 Motion in Limine 1, but failed to file an Opposition to Motion in Limine 2. Dkt. 51.
13 On February 29, 2024, the Court denied Defendant's Motion in Limine 1 and granted
14 Motion in Limine 2 due to Plaintiff's failure to oppose. Dkt. 54. Thus, Plaintiff was
15 precluded from offering any testimony or evidence of Plaintiff's past and future lost
16 earnings. Id.

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18 3. On March 18 and 19, 2024, the parties appeared for trial before this
19 Court and presented witness testimony. Dkts. 78, 79. The Court received testimony
20 from: Carlos Urias, Carlos Urias, Jr., Wilfredo Escobar, and Dr. Serge Obukhoff.
21 Dkt. 80. The Court additionally received testimony both in Court and by declaration
22 from: Dr. Lester Zackler, Dr. Neil Ghodadra, Dr. Ilan Danan, Dr. Geoffrey Miller,
23 Lindsay Knutson, and Dr. Jeffrey Schaeffer. Dkts. 62, 64-68, 80.

24 4. After the close of evidence, the Court ordered the parties to file
25 Proposed Findings of Facts and Conclusions of Law no later than April 15, 2024.
26 Dkt. 79.
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1 5. On April 15, 2024, Defendant filed its Proposed Findings of Fact and
2 Conclusions of Law. Dkt. 86. On April 16, 2024, Plaintiff filed his Proposed
3 Findings of Facts and Conclusions of Law. Dkt. 87.

4 **B. BACKGROUND**

5 i. Accident

6 6. On October 17, 2020, around 7:00 p.m., Wilfredo Escobar, an employee
7 of the United States Postal Service (“USPS”), was driving a USPS postal truck on
8 Laurel Canyon Boulevard in Los Angeles, California, when he struck the back rear
9 bumper of a 2020 Toyota Camry Plaintiff was driving (the “Camry”). Dkt. 83, Trial
10 Transcript, Day 1 (“T1”) at 57-62; Dkt. 84, Trial Transcript, Day 2 (“T2”) at 239.

11 7. Escobar testified he “was getting ready to turn right,” “the light turned
12 red,” the Camry in front of him “start[ed] stopping,” Escobar’s postal truck “was kind
13 of close from [Plaintiff’s],” and then Escobar’s vehicle hit the Camry. T2 at 239. As
14 described in the USPS Accident Report, Escobar “in [his] rear view mirror noticed [a]
15 vehicle approaching was coming at [a] high speed[.]” Ex. 52 at 12. Escobar “tried to
16 move ahead to complete [the] right turn in [an] attempt to avoid getting rear ended
17 and failed to check clearance and [the Camry] ahead stopped and [his postal truck]
18 rear ended [the Camry].” Id. Escobar estimated he was driving about five miles per
19 hour at the moment of impact. T2 at 241.

20 8. Plaintiff testified that prior to the accident, he was “stopped completely”
21 and leaning over to retrieve a pack of gum from the driver’s door side pocket. T1 at
22 60. The collision caused Plaintiff to hit the left side of his forehead against the
23 driver’s side window. Id.; Ex. 222 at 3. Plaintiff testified he was in shock and
24 confused and felt “something hot” on the left side of his head. T1 at 68-69. Escobar
25 testified Plaintiff did not appear to be unconscious in the car following the collision.
26 T2 at 242.

1 9. Plaintiff testified he exited the Camry and observed Escobar's postal
2 truck behind him, the postal truck's round side-mirror on the ground, and Escobar on
3 the phone with his supervisor. T1 at 61-63, 65. Plaintiff testified he spoke to
4 Escobar, who informed Plaintiff his supervisor would meet them at the scene to
5 prepare a report. Id. at 65. After the initial interaction, Plaintiff and Escobar moved
6 their cars to the curb. Id. at 69-70; T2 at 243-244. Plaintiff estimated he drove his car
7 about 80-100 feet. T1 at 69-70. Escobar testified that when Plaintiff exited the car he
8 did not appear to be dazed, dizzy, or in pain, and he never asked for medical
9 attention. T2 at 243-244.

10 10. Approximately seven to ten minutes after Escobar's call, his supervisor
11 arrived on the scene and spoke to both Escobar and Plaintiff. T1 at 65-66; T2 at 248.
12 Escobar's supervisor prepared a report detailing the accident and showed Plaintiff the
13 completed report. T1 at 66; Ex. 52 at 8-14. The report noted the accident was not
14 serious. Ex. 52 at 11 ("Serious Accident: No"). The report additionally documented
15 any "Unsafe practice(s)," which noted for Plaintiff, "No unsafe practice," and for
16 Escobar, "Failure to check clearance." Id. at 11-12.

17 11. Escobar estimated the entire interaction with Plaintiff following the
18 accident lasted approximately 30 minutes. T2 at 244. There was no evidence
19 presented that either Plaintiff or Escobar called the police to report the accident. At
20 the end of the interaction, Plaintiff called his son to ask him to drive him home. T1 at
21 69-70. Plaintiff did not seek medical treatment that evening. Id.

22 12. The collision caused damage to the rear bumper and undercarriage of
23 the Camry. T1 at 35. The collision also dislodged one of the side mirrors on the
24 USPS truck. Id. at 63-65. Carlos Urias, Jr., the owner of the Camry, testified the total
25 damages to the Camry was \$4,234.26 according to documentation from his insurance
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1 company. T1 at 35. Of that amount, he paid \$1,000 to cover his insurance
2 deductible. Id.

3 **ii. Medical Treatment**

4 13. On October 18, 2020, the day after the accident, Plaintiff began
5 developing pain in his neck and back. T1 at 71.

6 14. On October 19, 2020, Plaintiff sought treatment from Dr. Jack
7 Demirchian, a chiropractor. Ex. 216. On the intake form, Plaintiff indicated pain in
8 his neck, waist, and upper and mid back. Id. at 3. Plaintiff additionally listed the
9 name and contact information for an attorney.¹ Id. at 1. Dr. Demirchian treated
10 Plaintiff “on 35 occasions from October 19, 2020, to February 10, 2021.” Dkt. 64,
11 Declaration of Geoffrey Miller (“Miller Decl.”), ¶ 25; Dkt. 66, Declaration of Jeffrey
12 Schaeffer (“Schaeffer Decl.”), ¶ 42.

14 15. On October 31, 2020, Plaintiff had an MRI brain scan completed by
15 Allstar Imaging. Ex. 222 at 5.

16 16. On October 31, 2020, Plaintiff presented to the Providence Holy Cross
17 Medical Center Emergency Department (“Providence Medical Center”). Ex. 222.
18 Plaintiff reported he “had recurrent dizziness and feels disoriented at times, and
19 describe[d] a noise in the left side of his head.” Id. at 3. Plaintiff also complained of
20 “mid back pain,” but “denie[d] headache.” Id. at 7, 8. The records further note
21 “there was no loss of consciousness” from the accident. Id. at 3. Doctors also
22 reviewed Plaintiff’s MRI and determined the MRI showed a “subdural hematoma,”
23 but “[n]o evidence of acute intracranial infarct, hemorrhage, midline shift or mass
24 effect.” Id. at 5. While at Providence Medical Center, Plaintiff received a head CT
25 scan, which also revealed a “large subarachnoid cyst,” but “[o]therwise [a] normal
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28 ¹ The attorney noted on the initial form is different than Plaintiff’s current
counsel. See Ex. 216 at 1.

1 examination.” Id. at 6, 7. Plaintiff was diagnosed “with concussion, which likely
2 occurred 2 weeks ago [following collision] . . . epidural hematoma, subdural
3 hematoma or arachnoid cyst,” and he was discharged the same day. Id. at 7, 8.

4 17. On November 9, 2020, Plaintiff was seen by a neurologist, Dr. Grigor
5 Harutunian. Ex. 225. According to Dr. Harutunian’s consultation report and
6 Plaintiff’s description of the collision, Plaintiff reported “striking the left side of his
7 head and feeling dazed,” but “[h]e remained conscious.” Id. at 3. The report
8 indicated Plaintiff had developed headaches since the accident and “experiences some
9 nausea with the pain,” but “[d]enies vomiting.” Id. Plaintiff also reported “episodic
10 dizziness,” “difficulty focusing and concentrating,” and “developing ringing sounds
11 from his ears along with noise sensitivity.” Id. Dr. Harutunian found Plaintiff’s
12 “symptoms are postconcussional.” Id. at 5. Dr. Harutunian referred Plaintiff to “see
13 a Neurosurgeon ASAP” due to the subdural hematoma shown on Plaintiff’s MRI and
14 recommended a “repeat CT Brain.” Id. Dr. Harutunian recommended Tylenol for
15 pain, OTC Migrelief for headaches, OTC Vertisil and Meclizine for vertigo, adequate
16 rest, and avoidance of contact activities or labor. Id.

18 18. On November 11, 2020, Plaintiff received a CT head scan from Precise
19 Imaging. Miller Decl., ¶ 34; Dkt. 65, Declaration of Ilan Danan (“Danan Decl.”), ¶
20 7.h; Schaeffer Decl., ¶ 40.

21 19. On November 12, 2020, Plaintiff was evaluated by neurosurgeon, Dr.
22 Serge Obukhoff. Ex. 226. During the evaluation, Plaintiff complained of headaches,
23 difficulties with balance, nausea, episodes of vomiting, and noise inside of his head.
24 Id. at 1, 3; T2 at 199. Dr. Obukhoff testified that Plaintiff told him “during the
25 accident, . . . he lost consciousness briefly . . . and after that, when he returned his
26 consciousness, very shortly, he started developing these problems.” T2 at 199.
27 During a physical examination of Plaintiff’s lower extremities, Dr. Obukhoff found
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1 “[n]o problem in [Plaintiff’s] neck and back,” but Plaintiff complained of lower back
2 pain. Ex. 226 at 4. As to Plaintiff’s balance, Dr. Obukhoff further found Plaintiff
3 was “not stable,” but Plaintiff had “no other focal neurological symptoms.” T2 at
4 200.

5 20. Dr. Obukhoff reviewed Plaintiff’s MRI and CT scans and determined
6 Plaintiff had “a large cyst” that likely developed in his early childhood. Ex. 226 at 4.
7 However, Dr. Obukhoff noted “there are no signs of contusion to the brain or
8 hemorrhages.” Id. After the evaluation, Dr. Obukhoff concluded Plaintiff’s
9 “diagnosis is cerebral concussion with brief loss of consciousness immediately after
10 the accident and development of symptoms consistent with postconcussion
11 syndrome.” Id. Based on Plaintiff’s claim that he lost consciousness, Dr. Obukhoff
12 opined that the concussion was “rather significant.” T2 at 202 (“And I would say
13 even the brief loss of consciousness during – when he hit his head against the – the
14 window in his car, it’s rather a significant concussion because, as I mentioned earlier, a
15 loss of consciousness, even brief loss of consciousness, indicates that he was shaken
16 very severely and brain cut down basically consciousness for short period of time.”).
17 Notably, Plaintiff’s claim that he lost consciousness contradicted his earlier claims to
18 Dr. Hartunian and the doctors at Providence Medical Center. See Ex 225 at 3; Ex.
19 222 at 3.

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21 21. Dr. Obukhoff recommended Plaintiff “slow down” and take Tylenol.
22 Ex. 226 at 4. He saw “no indication for surgical treatment” and found Plaintiff “at
23 that stage, did not need any emergency treatment or urgent treatment as a result of
24 th[e] accident.” Id.; T2 at 218. Based on Plaintiff’s complaints of back pain, Dr.
25 Obukhoff referred Plaintiff for a lumbar spine MRI. Ex. 226 at 4.
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27 22. On December 6, 2020, Plaintiff had a cervical spine MRI. Miller Decl., ¶
28 40.

1 23. On December 17, 2020, Dr. Obukhoff re-evaluated Plaintiff. T2 at 205.
2 Plaintiff reported feeling a bit better, but that his symptoms persisted – specifically his
3 headaches and balance issues. Id. Dr. Obukhoff recommended Plaintiff return in
4 one month. Id. at 205-206. He did not review Plaintiff’s cervical MRI. Id. at 205.

5 24. From December 21, 2020 to July 13, 2021, Plaintiff was treated by Dr.
6 Roy Nini and Dr. Paul Lee with injections for pain management. Danan ¶ 7.l;
7 Schaeffer Decl., ¶ 42. Plaintiff testified he received injections from Dr. Roy Nini to
8 help with his neck and back pain. T1 at 83-84. Plaintiff testified the injections
9 themselves were quite painful and did not fully alleviate his pain. Id. at 84-85.

10 25. On February 27, 2021, Dr. Demirchian discharged Plaintiff from
11 chiropractic care. Schaeffer Decl., ¶ 42. Plaintiff “reportedly made improvement, but
12 had persisting symptoms in his head, neck, and lumbar spine region.” Id.

13 26. On May 12, 2021, Plaintiff was evaluated by neurosurgeon, Dr. Parham
14 Yashar.² Dkt. 67, Neil Ghodadra (“Ghodadra Decl.”), ¶ 38; Danan Decl., ¶ 7.m.

15 27. On May 28, 2021, Plaintiff was evaluated by neurologist, Dr. Leon
16 Barkodar.³ Ghodadra Decl., ¶ 41; Danan Decl., ¶ 7.n.

17 28. On August 4, 2021, Plaintiff was evaluated by Otolaryngologist, Dr.
18 Stephen Grifka.⁴ Miller Decl., ¶ 69. Plaintiff testified Dr. Grifka recommended
19 Plaintiff schedule a follow-up appointment, but an appointment was never scheduled.
20 T1 at 116.

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25 ² No records or testimony from Dr. Yashar’s treatment was entered into
26 evidence.

27 ³ No records or testimony from Dr. Barkodar’s treatment was entered into
28 evidence.

⁴ No records or testimony from Dr. Grifka’s treatment was entered into
evidence.

1 29. On January 28, 2022, Plaintiff was evaluated by clinical psychologist,
2 Ronald Kaufman.⁵ Schaeffer Decl., ¶ 47.

3 30. On July 28, 2022, Plaintiff returned to Providence Medical Center. Ex.
4 223. Plaintiff reported a headache that “got[] progressively worse over [the] past 3-4
5 days.” Id. at 7. Plaintiff reported “his balance has been off since [the] accident but . .
6 . [symptoms] have worsened recently.” Id. Plaintiff was given a limited prescription
7 for Norco for pain and discharged. Id. at 6.

8 31. On September 21, 2022, Plaintiff was re-evaluated by Dr. Yashar.
9 Ghodadra Decl., ¶ 59.d.; Danan Decl., ¶ 7.p.

10 32. On March 23, 2023, Dr. Neil Ghodadra, a board-certified orthopedic
11 surgeon and certified life care planner, evaluated Plaintiff and completed a
12 comprehensive orthopedic examination, with an emphasis on Plaintiff’s cervical spine.
13 Ghodadra Decl., ¶¶ 12, 13. Plaintiff testified Dr. Nini had referred Plaintiff to a
14 surgeon for evaluation because Plaintiff’s pain persisted. T1 at 86. On the date of the
15 evaluation, Plaintiff complained of pain in his neck and lower back. Ghodadra Decl.,
16 ¶ 12. Dr. Ghodadra referred Plaintiff to Dr. Greg Khounganian for a surgical
17 consultation because Plaintiff “remained symptomatic despite the conservative
18 treatments he received in the form of therapy, medication, and pain management
19 injections.” Id. ¶ 14.

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21 33. On May 4, 2023, Plaintiff was evaluated by spine surgeon, Dr.
22 Khounganian.⁶ Ghodadra Decl., ¶ 15.

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26 _____
27 ⁵ No records or testimony from Dr. Kaufman’s treatment was entered into
evidence.

28 ⁶ No records or testimony from Dr. Khounganian’s treatment was entered
into evidence.

1 34. On June 1, 2023, Plaintiff was again evaluated by Dr. Khounganian.
2 Ghodadra Decl., ¶ 15.

3 35. On June 15, 2023, Plaintiff was re-evaluated by Dr. Ghodadra for neck
4 and back pain. Ghodadra Decl., ¶ 17. Dr. Ghodadra found the “following areas of
5 concern: general weakness, fatigue, headache, neck pain, positive muscle spasms,
6 positive joint pain, stiffness, backache, and limitations of range of motion.” Id. ¶ 18.
7 Dr. Ghodadra “agree[d] with Dr Khounganian’s assessment that [Plaintiff] will benefit
8 from a cervical fusion C4-C7,” and recommended that Plaintiff “be seen again by pain
9 management for repeat Lumbar injections.” Id. ¶¶ 22, 23. Dr. Ghodadra further
10 opined that “if [Plaintiff] fails Lumbar injections, he is a candidate to be seen by the
11 spine surgeon for lumbar disectomy surgery, or, in the alternative, implantation of a
12 spinal cord simulator.” Id. ¶ 23. However, Plaintiff testified that, while surgery was
13 recommended, he chose not to have the surgery because of the risks involved. T1 at
14 87.
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16 36. On August 7, 2023, and August 8, 2023, Dr. Lester Zackler, a clinical
17 and forensic neuropsychiatrist specializing in the evaluation and treatment of the
18 biopsychosocial consequences of illness and trauma, conducted a psychological
19 evaluation of Plaintiff, which included a comprehensive interview and two
20 psychological measures, (1) the Millon Clinical Multiaxial Inventory-IV; and (2) the
21 MMPI-2, the Minnesota Multiphasic Personality Inventory. Dkt. 68, Declaration of
22 Lester Zackler (“Zackler Decl.”), ¶ 24.
23

24 37. The interpretive report regarding the MMPI-2 stated: “The client
25 answered the MMPI-2 items in such a way as to invalidate the test. He answered an
26 unusually large number of extreme items in the deviant direction; an indiscriminate
27 and exaggerated response pattern is probable. Individuals who produce such deviant
28 patterns cannot be clearly evaluated by the resulting profile.” Id. ¶ 27.

1 38. The interpretive report regarding the MCMI-IV stated: “This patient’s
2 response style may indicate a tendency to magnify illness, an inclination to complain,
3 or feelings of extreme vulnerability associated with a current episode of acute turmoil.
4 The patient’s scale scores may be somewhat exaggerated, and the interpretations
5 should be read with this in mind.” Id. ¶ 28.

6 39. On October 5, 2023, Dr. Zackler conducted a second interview with
7 Plaintiff and Plaintiff’s wife. Id. ¶ 32. Dr. Zackler talked to Plaintiff about “using
8 medications to treat his anxiety, depression, pain, and sensitivity to threat.” Id. ¶ 33.
9 Dr. Zackler prescribed Cymbalta for Plaintiff’s anxiety, headaches, pain, and nausea.
10 Id. ¶ 38. Plaintiff reported he had previously not been on any medication other than
11 Tylenol. Id. ¶ 33.

12 40. On February 13, 2024 and February 27, 2024, Dr. Zackler conducted a
13 subsequent evaluation of Plaintiff to assess his response to Cymbalta. Id. ¶ 40.
14 Plaintiff reported “improved mood, but persistent disequilibrium and fear of
15 reinjury.” Id. ¶ 41. Plaintiff reported “[h]e has been unable to return to work as a
16 labor/handyman due to his fears of reinjury.” Id. ¶ 58. Plaintiff reported “[h]is
17 emotional and cognitive symptoms have stressed his marriage, as has his inability to
18 return to work.” Id. Plaintiff further reported “[h]e has become socially isolated and
19 withdrawn.” Id.

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21 **iii. Defense Medical Expert Witness Testimony**

22 **a. Dr. Jeffrey Schaeffer**

23 41. On May 29, 2023, Dr. Jeffrey Schaeffer, a clinical neuropsychologist –
24 specializing in traumatic brain injury, behavior toxicology, praxeology and geriatrics,
25 and the neuropsychology of medical illness – conducted a neuropsychological
26 examination of Plaintiff and reviewed Plaintiff’s medical records. Schaeffer Decl., ¶¶
27 1, 16. Dr. Schaeffer concluded Plaintiff “sustain[ed] a mild but Complicated
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1 Traumatic Brain Injury with a defined subarachnoid thin-sheet bleed, (as documented
2 by a subsequent Magnetic Resonance Imaging Scan-MRI) close in time following his
3 complex mild traumatic brain injury, of fairly substantial dimensions measured in
4 centimeters, but constituting a less significant ‘thin-sheet’ bleed without evidence of
5 any significant continuation of bleeding.” Id. He noted “[i]t appeared that [Plaintiff’s]
6 bleed . . . occurred in close proximity to his small benign-appearing congenital
7 subarachnoid cyst, without any need for further care.” Id. ¶ 24.

8 42. As to future medical concerns, Dr. Schaeffer noted “the proximate
9 medical records from either of the two initial Emergency Department visits⁷ failed to
10 identify any claimed or objectively documented abnormalities of a neurological,
11 cognitive, or of a mental status nature[.]” Id. ¶ 60. He concluded, “[a]t that point,
12 closer in time to the accident, it appeared that only headaches, as well as the neck and
13 back pain, remained as subjective symptoms reported by [Plaintiff].” Id. He further
14 concluded “there appeared to be no other current objective documentation of
15 ongoing Cognitive or Psychiatric injuries, conditions, or deficits, that would have been
16 caused by, or associated with, the continuing sequelae of a traumatic brain injury of
17 any severity (even in the presence of the documented thin-sheet subarachnoid bleed
18 adjacent to the congenital cyst), as documented by [the] early Brain MRI.” Id. ¶ 24.

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20 43. In addition to reviewing Plaintiff’s medical records, Dr. Schaeffer also
21 administered a Psychometric Assessment to Plaintiff and found Plaintiff “*did not pass*
22 *any* of the performance validity measures (PVTs), which is a[n] extremely unusual
23 finding actually, with several performed at or *below chance levels*, which is far more
24 consistent with an intentional need to perform poorly (such as malingering) on such
25 measures.” Id. ¶ 71 (emphasis in original).

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28 ⁷ The first Emergency Department visit was on October 31, 2020, and the
second Emergency Department visit was on July 8, 2022. Exs. 222, 223.

1 44. “In order to further assess [Plaintiff’s] personality and emotional
2 functioning,” Dr. Schaeffer administered the “Minnesota Multiphasic Personality
3 Inventory, Third Edition (MMPI-3) in Spanish.” Id. ¶ 77. However, “[v]alidity scales
4 of the MMPI-3 again raised concerns for gross and exaggerated overreporting of
5 symptoms.” Id. ¶ 80. Dr. Schaeffer found the results revealed Plaintiff “had unusual
6 responses that are associated with non-credible memory complaints.” Id.

7 45. Ultimately, Dr. Schaeffer opined based on the records he reviewed and
8 his assessment of Plaintiff that Plaintiff “has not suffered any evidence of a more
9 enduring or permanent traumatic brain injury of any type, and is fully functional in
10 daily life, and able to maintain full-time gainful employment in a food market (owned
11 by he and his wife, drives and handles money and finances) in the Panorama City Area
12 of the San Fernando Valley (Los Angeles) by his own report to me.” Id. ¶ 23.

13 **b. Dr. Geoffrey Miller**

14 46. Dr. Geoffrey Miller, a board-certified orthopedic surgeon, reviewed
15 Plaintiff’s medical records and opined “[w]hile the medical records do establish a large
16 left sided congenital brain cyst, the clinical timeline and lack of any true objective
17 findings by anyone (except the doctor with secondary gain from injections) does not
18 support a hematoma or brain injury.” Miller Decl., ¶ 12. He noted “[b]oth
19 neurosurgeons seen by [Plaintiff] reviewed the ‘hematoma’ scan and agreed it only
20 showed a pre-existing and longstanding cyst, not an injury from the motor vehicle
21 accident.” Id. Additionally, Dr. Miller opined there is no surgical indication for any
22 future surgery based on the fact that “four[] consecutive specialists (two
23 neurosurgeons and two neurologists) found no surgical spine issue” and that Plaintiff
24 has not had any treatment for his spine in two years. Id. ¶¶ 74, 75. Finally, while one
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1 doctor, Dr. Khounganian,⁸ had recommended surgery, Dr. Miller rejected Dr.
2 Khounganian’s recommendation because he found the recommendation was based
3 on inconsistencies within Dr. Khounganian’s own report and unsupported analyses
4 and conclusions. Id. ¶¶ 76-78, 80-81.

5 **c. Dr. Ilan Danan**

6 47. On June 14, 2023, Dr. Ilan Danan, a neurologist who is board-certified
7 in adult neurology and brain injury medicine, conducted an independent medical
8 examination of Plaintiff. Danan Decl., ¶ 9. Dr. Danan reported that in describing the
9 accident, Plaintiff “did now acknowledge a loss of consciousness.” Id. ¶ 12. As to
10 Plaintiff’s current symptoms, Dr. Danan noted Plaintiff presented with a chief
11 complaint of mood related disorders, focusing on anxiety and depression, along with
12 insomnia and “noises in his head.” Id. ¶ 10. With respect to the buzzing sound in his
13 head, notably, Plaintiff “acknowledged a history of an intermittent ‘buzzing sound’
14 before the [accident] that he attributed towards working with noisy machinery well
15 before the accident.” Id. ¶ 70. Plaintiff “also reported pain-related complaints
16 involving his neck, low back, and head, but stated that his larger concerns are on
17 addressing his anxiety and depression.” Id. ¶¶ 10, 70.

18 48. Following his examination and review of Plaintiff’s medical records, Dr.
19 Danan opined Plaintiff suffered at worst from a “mild uncomplicated traumatic brain
20 injury, or concussion for which, I believe symptoms ultimately self-resolved, as most
21 tend to do.” Id. ¶ 28. Dr. Danan ultimately concluded “the risk of permanent
22 disability following an uncomplicated mild TBI is low, with upwards of 90% of
23 patients endorsing complete symptom recovery within three months of the injury,”
24 and any claims by Plaintiff of long-term disability are undermined by the fact that
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28 ⁸ Dr. Khounganian’s report of his findings and recommendations was not entered into evidence.

1 Plaintiff's "claims are largely subjective with inconsistent histories, generally
2 unremarkable neurologic examinations, and poor patient follow up." Id. ¶ 42.

3 **iv. Lay Witness Testimony**

4 **a. Plaintiff's Testimony**

5 49. Plaintiff testified he worked as a "handyman" prior to the accident –
6 doing stone / concrete work, electrical work, and plumbing. T1 at 56. After the
7 accident, however, Plaintiff did not try to return to work due in part to the neck and
8 back pain he was suffering from, but mostly because he was concerned about the
9 balance issues he developed after the accident. Id. at 80.

10 50. Plaintiff testified he currently helps his wife at her store, Pacoima Water.
11 Id. at 100. Plaintiff's wife purchased the store three months before the accident, and
12 Plaintiff occasionally works at the store 12 hours a day. Id. at 91, 101.

13 51. Plaintiff testified that after the accident he became depressed, suffered
14 from anxiety, and had thoughts of suicide. Id. at 89. He is taking Cymbalta to help
15 with these psychological issues. Id. Plaintiff testified he lives in fear following the
16 discovery of the intracranial cyst. Id. at 93.

17 **b. Carlos Urias, Jr.'s Testimony**

18 52. Carlos Urias, Jr., Plaintiff's son, testified about his observations of
19 Plaintiff's changes in behavior following the accident. T1 at 38-47. Urias, Jr. was the
20 only lay witness to testify for Plaintiff and the only person to offer testimony
21 observing Plaintiff's change in behavior following the accident. According to Urias,
22 Jr., Plaintiff is not the same following the accident. Id. at 44. He described Plaintiff
23 as "not himself" – he is "a little slower" – often stressed and worried. Id. at 42, 44,
24 47. Plaintiff avoids activities like hiking and biking because he and his family "don't
25 want anything to happen to him." Id. at 44, 47.
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1 v. **Reasonable Medical Expenses**

2 a. **Dr. Neil Godadra**

3 53. Dr. Godadra reviewed Plaintiff's past medical bills and provided an
4 itemization of "reasonable past medical charges incurred by [Plaintiff]." Godadra
5 Decl., ¶ 49. Godadra opined that "[w]ithin the medical regional probability, the past
6 medical bills are within the standard, and are appropriate," and "[t]he bills are
7 reasonable and consistent with the usual and customary charges in the ZIP Code of
8 treatment." Id. To support his conclusion, Dr. Godadra explained he "used the
9 usual, customary, and reasonable 80th percentile as the center for Medicaid services
10 uses this as a marker for Medicare set aside's, which are treatment plans and costs
11 associated with care and management of patients." Id. ¶ 51.

12 54. Dr. Godadra explained: "I am a certified life care planner, and I had a
13 better appreciation of understanding charges and bills once I was trained as a life care
14 planner. One of the ways that we do it is I use a database called Context 4 Health."
15 Id. ¶ 80. "Context 4 Health is the largest database of provider bills and charges that
16 we have in this country, and it represents 70 percent of all bills and charges." Id. ¶ 81.
17 Context 4 Health includes a very large collection of fees, contracted fees, HMOs,
18 Medicare, out-of-network insurance, among others." Id. ¶ 82.

19 b. **Lindsay Knutson**

20 55. Lindsay Knutson is a Director in the Health Analytics at Berkley
21 Research Group. Dkt. 62, Declaration of Lindsay Knutson ("Knutson Decl."), ¶ 1.
22 Part of her professional services include making determination of appropriate rates of
23 reimbursement for healthcare services. Id. ¶ 2. She uses "payor and provider data
24 sets, publicly available government data, publicly available state encounter and
25 hospital financial data, as well as private healthcare data, in order to, among other
26 things, prepare damages calculations and analyses for expert reports." Id. ¶ 1.
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1 56. Ms. Knutson concluded “the reasonable value of health services is
2 appropriately determined by the market rate, i.e. the amount that willing buyers pay
3 and willing sellers accept in an arm’s length transaction.” Id. ¶ 17. “These values
4 reflect market rates and are consequently the most appropriate values to use.” Id.
5 She noted Plaintiff’s “insurance, access to insurance, any Medicare eligibility, and
6 financial means to pay his medical bills (or lack thereof) is not relevant to my analyses
7 because they have no bearing on the market rate for medical treatment.” Id. ¶ 18.

8 57. Ms. Knutson explained: “I reviewed the medical bills submitted for
9 Plaintiff’s medical care from 10 health care providers. . . . I list information regarding
10 all past bills I have for which I have calculated a reasonable value, including each
11 health care provider, the charges included on the health care provider’s bills, and the
12 reasonable value for the services that are identified[.]” Id. ¶ 22.

13
14 **vi. Witness Credibility**

15 **a. Plaintiff**

16 58. The Court finds credibility issues with Plaintiff’s testimony, which
17 undermine the weight of Plaintiff’s subjective complaints. First, there were
18 inconsistencies as to whether Plaintiff lost consciousness immediately following the
19 collision. For example, during Plaintiff’s first hospital visit on October 31, 2020, he
20 informed doctors he did not lose consciousness following the accident. See Ex. 222
21 at 3. Additionally, during Plaintiff’s evaluation with Dr. Hartunian, Plaintiff told Dr.
22 Hartunian he did not lose consciousness following the accident. See Ex. 225 at 3.
23 However, during Plaintiff’s subsequent evaluation with Dr. Obukhoff, Plaintiff stated
24 he briefly lost consciousness following the collision. T2 at 199. This detail impacted
25 Dr. Obukhoff’s final conclusion regarding the severity of the concussion. See id. at
26 199-200.
27
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1 59. Further, the Court notes Plaintiff failed to follow treatment
2 recommendations, which undermines his subjective testimony about the severity of
3 his symptoms. For example, Dr. Obukhoff, Dr. Godadra, and Dr. Grifka each
4 recommended Plaintiff schedule follow-up appointments, but Plaintiff never did. See,
5 e.g., T2 at 206; T1 at 116-117.

6 60. Finally, Plaintiff failed at least two psychometric tests – one with Dr.
7 Schaeffer and one with Dr. Zackler. As Dr. Schaeffer reported, failing these tests “is
8 a[n] extremely unusual finding.” Schaeffer Decl., ¶ 71. Failing suggests “a purposive
9 or intentional choice on the part of the examinee and is far more common in cases
10 where a Plaintiff is attempting to intentionally portray ‘impairment.’” Id. ¶ 72.
11 Notably, Dr. Zackler, Plaintiff’s own neuropsychiatrist, also found Plaintiff failed both
12 psychological measures he administered. Zackler Decl., ¶¶ 24, 25. The interpretive
13 results from Dr. Zackler’s assessments reported Plaintiff “answered an unusually large
14 number of extreme items in the deviant direction; an indiscriminate and exaggerated
15 response pattern is probable,” and that Plaintiff’s “response style may indicate a
16 tendency to magnify illness, an inclination to complain, or feelings of extreme
17 vulnerability associated with a current episode of acute turmoil.” Id. ¶¶ 27, 28.

19 61. Thus, for each of these reasons, the Court finds Plaintiff’s credibility is
20 undermined, and therefore, gives less weight to Plaintiff’s subjective complaints.

21 **b. Wilfredo Escobar**

22 62. The Court found Wilfredo Escobar to be an honest, candid, and
23 believable witness whose testimony was supported by the evidence.

24 **c. Carlos Urias, Jr.**

25 63. The Court notes that Carlos Urias, Jr., is Plaintiff’s son, and therefore,
26 not a truly disinterested witness. However, the Court found Carlos Urias, Jr., to be an
27 honest, candid, and believable witness.
28

1 where the United States, if it were a private individual, would be liable under the law
2 of the state where the claim arose. 28 U.S.C. § 1346(b).

3 69. Under the FTCA, the substantive law of the state where the allegedly
4 negligent act occurred applies. 28 U.S.C. § 1346(b)(1). Here, California law applies
5 because the accident occurred in California. To establish a negligence claim under
6 California law, Plaintiff must prove the “defendant had a duty to use due care, that he
7 breached that duty, and that the breach was the proximate or legal cause of the
8 resulting injury.” Brown v. USA Taekwondo, 11 Cal. 5th 204, 213 (2021) (internal
9 quotation marks and citation omitted). “[E]ach person has a duty to use ordinary care
10 and ‘is liable for injuries caused by his failure to exercise reasonable care in the
11 circumstances.’” Cabral v. Ralphs Grocery Co., 51 Cal. 4th 764, 771 (2011) (internal
12 quotation marks and citation omitted).

13
14 70. “Causation is established for purposes of California tort law if the
15 defendant’s conduct is a substantial factor in bringing about the plaintiff’s injury.”
16 Liberty Surplus Ins. Corp. v. Ledesma & Meyer Constr. Co., 5 Cal. 5th 216, 223
17 (2018), as modified (July 25, 2018) (internal quotation marks omitted). “The plaintiff
18 must introduce evidence which affords a reasonable basis for the conclusion that it is
19 more likely than not that the conduct of the defendant was a cause in fact of the
20 result.” Ortega v. Kmart Corp., 26 Cal. 4th 1200, 1205 (2001). “[I]n a personal injury
21 action causation must be proven within a reasonable medical probability based upon
22 competent expert testimony.” Jones v. Ortho Pharm. Corp., 163 Cal. App. 3d 396,
23 402 (1985). “A possible cause only becomes ‘probable’ when, in the absence of other
24 reasonable causal explanations, it becomes more likely than not that the injury was a
25 result of its action.” Id. at 403.

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1 **C. DUTY**

2 71. Here, Escobar had a duty to use ordinary care in the operation of his
3 postal truck. Cabral, 51 Cal. 4th at 771. Escobar testified his postal truck was close to
4 the Camry driven by Plaintiff as he was trying to make a right turn. T2 at 239. When
5 Plaintiff stopped at the red light, Escobar hit Plaintiff's car. Id. at 239, 241. The
6 USPS accident report noted Escobar engaged in an "unsafe practice[]" of "fail[ing] to
7 check clearance." Ex. 52 at 11. Thus, the evidence establishes Escobar's failure to
8 keep a reasonable distance and failure to check the clearance between his vehicle and
9 Plaintiff's vehicle was a breach of the duty of care.

10 **D. CAUSATION**

11 72. The evidence establishes that Escobar's negligence, and the subsequent
12 accident, was a substantial factor in causing damage to the Camry and some, but not
13 all, of Plaintiff's claimed injuries.⁹

14 **i. Property Damage**

15 73. With respect to the Camry, the evidence establishes Escobar's negligence
16 caused damage to the rear bumper and undercarriage of the Camry, which resulted in
17 \$4,234.26 worth of damages. T1 at 35.

18 **ii. Neck and Back Injuries**

19 74. With respect to Plaintiff's injuries, specifically the pain to his neck and
20 back, evidence establishes that within a day of the accident, Plaintiff began to
21 experience pain in his neck and back. T1 at 71. On October 19, 2020, two days after
22 the accident, Plaintiff sought treatment from chiropractor, Dr. Demirchian. Ex. 216.
23 From October 19, 2020 to February 10, 2021, Plaintiff regularly received treatment
24
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27 ⁹ In Plaintiff's Proposed Findings of Fact and Conclusions of Law, Plaintiff
28 does not request or argue that he is entitled to any economic damages based on
property damage to the Camry. See dkt. 87-1 ¶ 34.

1 from Dr. Demirchian – receiving care on 35 different occasions. Miller Decl., ¶ 25;
2 Schaeffer Decl., ¶ 42. Plaintiff’s symptoms improved with chiropractic care, but he
3 continued to have pain in his head, neck, and lumbar spine region. Schaeffer Decl., ¶
4 42.

5 75. In December 2020, Plaintiff began pain management treatment with Dr.
6 Nini. Danan Decl., ¶ 7.1; Schaeffer Decl., ¶ 42; T1 at 83-84. From December 2020 to
7 July 2021, Plaintiff received multiple injections to address the pain in his neck and
8 spine. Id. Plaintiff testified the injections, though painful, eased some of the pain,
9 but did not resolve it completely. T1 at 84-85.

10 76. Notably, however, Plaintiff’s last recorded injection treatment was in July
11 2021. Schaeffer Decl., ¶ 42. Plaintiff has not presented any evidence to show he
12 continued to receive any treatment for his neck and back pain after July 2021.
13 Additionally, as of May 2023, the evidence shows the only medication Plaintiff had
14 been taking since the accident was Tylenol. See Zackler Decl., ¶ 31.

15 77. Thus, the evidence presented establishes Escobar’s negligence likely was
16 a substantial cause of Plaintiff’s neck and back injuries based on treatment
17 documented through July 2021.

18
19 **iii. Neurocognitive Injuries**

20 78. The evidence establishes Plaintiff likely suffered from a mild traumatic
21 brain injury or concussion as a result of the car accident, but no injury that would
22 cause long-term cognitive deficits. Although the October 2020 MRI showed the
23 presence of a thin-sheet bleed, there is no other objective evidence to support a major
24 brain injury resulting from the car accident. See Schaeffer Decl., ¶¶ 22-26. Rather,
25 the MRIs and CTs show the presence of a congenital brain cyst – a cyst that was not
26 caused by the accident, but rather something Plaintiff has had since birth. See Ex. 226
27 at 4.
28

1 79. Notably, the only expert assessments Plaintiff entered into evidence
2 relevant to any neurocognitive deficits were a November 2020 report from Dr.
3 Harutunian and testimony from Dr. Obukhoff following his November 2020 and
4 December 2020 evaluations of Plaintiff – both of which relied on Plaintiff’s
5 inconsistent, self-reported symptoms. Compare Ex. 225 at 3 (As noted by Dr.
6 Hartunian, Plaintiff “remained conscious” during the accident and “denies
7 vomiting.”) with Ex. 226 at 3 (As noted by Dr. Obukhoff, Plaintiff “briefly lost
8 consciousness” and later developed “nausea together with episodes of vomiting.”).
9 With the exception of these two expert evaluations, evidence of Plaintiff’s
10 neurocognitive deficits was largely based on Plaintiff’s own subjective complaints.
11 Moreover, while Dr. Obukhoff appeared to suggest there could be evidence of long-
12 term post-concussion effects, Dr. Obukhoff’s analysis and conclusion were largely
13 premised upon Plaintiff’s inconsistent and unsupported claim that he briefly lost
14 consciousness following the collision. See Ex. 226 at 4; T2 at 202. Thus, the Court
15 gives less weight to Dr. Obukhoff’s opinion about the severity of Plaintiff’s
16 concussion.
17

18 80. Moreover, Defendant presented expert testimony from both Dr. Danan
19 and Dr. Schaeffer that undermined Plaintiff’s claim of lasting neurocognitive effects
20 from the accident. As Dr. Danan opined, “[a]t worst, [Plaintiff] suffered a mild
21 uncomplicated traumatic brain injury, or concussion, for which, I believe symptoms
22 ultimately self-resolved, as most tend to do.” Danan Decl., ¶ 28. Dr. Danan further
23 reported “the risk of permanent disability following an uncomplicated mild TBI is
24 low, with upwards of 90% of patients endorsing complete symptom recovery within
25 three months of the injury.” Id. ¶ 42. Undermining any claims of long-term disability
26 is the fact that Plaintiff’s “claims are largely subjective with inconsistent histories,
27 generally unremarkable neurologic examinations, and poor patient follow up.” Id.
28

1 81. Dr. Schaeffer similarly opined “the proximate medical records from
2 either of the two initial Emergency Department visits¹⁰ failed to identify any claimed
3 or objectively documented abnormalities of a neurological, cognitive, or of a mental
4 status nature.” Schaeffer Decl., ¶ 60. Further, based on his evaluation of Plaintiff,
5 “there appeared to be no other current objective documentation of ongoing Cognitive
6 or Psychiatric injuries, conditions, or deficits, that would have been caused by, or
7 associated with, the continuing sequelae of a traumatic brain injury of any severity[.]”
8 Id. ¶ 24.

9
10 82. As to Plaintiff’s headaches and balance issues, the testimony from Dr.
11 Obukhoff, Dr. Schaeffer, and Dr. Danan establishes these symptoms were likely the
12 result of the mild concussion following the collision. However, with respect to the
13 tinnitus, there is evidence that Plaintiff suffered from issues with buzzing noises in the
14 past due to his work as a handyman. Danan Decl., ¶ 70. Hence, at most, there is
15 evidence the buzzing noise was aggravated by the collision.

16 83. Thus, based on the evidence presented, Escobar’s negligence was a
17 substantial cause of a concussion or mild traumatic brain injury, but there is no
18 evidence that Escobar’s negligence caused any lasting effects to Plaintiff’s
19 neurocognitive health.

20 **iv. Psychological Injuries**

21 84. To the extent Plaintiff claims anxiety and psychological distress caused
22 by the discovery of the cyst is a result of the accident, the evidence does not establish
23 the requisite causation. “[L]egal responsibility must be limited to those causes which
24 are so close to the result, or of such significance as causes, that the law is justified in
25 making the defendant pay.” Kumaraperu v. Feldsted, 237 Cal. App. 4th 60, 68 (2015).
26

27 _____
28 ¹⁰ The first Emergency Department visit was on October 31, 2020, and the
second Emergency Department visit was on July 8, 2022.

1 85. Here, Plaintiff's anxiety caused by the discovery of his congenital brain
2 cyst is too attenuated from Escobar's negligent conduct to reasonably hold Escobar,
3 and by extension Defendant, accountable. Cabral, 51 Cal. 4th at 780 (observing an
4 injury is too indirect and attenuated from a negligent act when "there is no logical
5 cause and effect relationship between that negligence and the harm suffered . . .")
6 (quoting Bryant v. Glastetter, 32 Cal. App. 4th 770, 782 (1995)). Thus, Plaintiff has
7 failed to establish Escobar's conduct was a substantial factor in causing Plaintiff's
8 anxiety and related emotional distress due to the discovery of the cyst.

9 **E. DAMAGES**

10 **i. Past and Future Medical Expenses**

11 86. "A plaintiff may recover as damages for past medical expenses no more
12 than the reasonable value of the services provided." Ochoa v. Dorado, 228 Cal. App.
13 4th 120, 134 (2014) (citing Howell v. Hamilton Meats & Provisions, Inc., 52 Cal. 4th
14 541, 555 (2011)). "Such damages are limited to the lesser of (1) the amount paid or
15 incurred for past medical services, and (2) the reasonable value of the services." Id.
16 "[T]here can be significant disparities between the amounts charged by medical
17 providers and the costs of providing services, the price of a particular service can vary
18 tremendously . . . from hospital to hospital in California, and a medical care provider's
19 billed price for particular services is not necessarily representative of either the cost of
20 providing those services or their market value." Id. at 135 (internal citations and
21 quotation marks omitted). In addition, a plaintiff may recover future medical
22 expenses if plaintiff establishes "that from all the evidence, including the expert
23 testimony, if there be any, it satisfactorily appears that such disability will occur with
24 reasonable certainty." Garcia v. Duro Dyne Corp., 156 Cal. App. 4th 92, 97-98
25 (2007).
26
27
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1 87. As to past medical expenses, both Dr. Ghodadra and Lindsay Knutson
2 reviewed Plaintiff's medical bills and provided what they assessed to be a reasonable
3 value for each healthcare provider. Dr. Ghodadra's amounts appear to be based
4 primarily off the amounts billed, which "is not necessarily representative of either the
5 cost of providing those services or their market value." Ochoa, 228 Cal. App. 4th at
6 135; see Ghodadra Decl., ¶ 49. Although he asserts he "used the usual, customary,
7 and reasonable 80th percentile as the center for Medicaid services," he fails to offer
8 any explanation for the Court to find the billed amounts are a reasonable value of the
9 services received.

10 88. In contrast, Lindsay Knutson's costs were calculated "by applying an
11 adjustment factor to data collected and published by the United States Department of
12 Health and Human Services" to identify a reasonable market rate for each service.
13 Knutson Decl., ¶ 26. The Court, thus, finds Ms. Knutson's calculation of \$57,022.01
14 for Plaintiff's past medical expenses to be a reasonable value for the services he
15 received.

16 89. As to future medical expenses, Plaintiff has failed to establish the need
17 for future treatment with reasonable certainty. First, Plaintiff has failed to seek out
18 injection or pain management treatment since 2021. See Schaeffer Decl., ¶ 42; Miller
19 Decl., ¶¶ 74, 75. Hence, the evidence does not support continued injection treatment
20 is reasonably certain or necessary. Second, because there is no evidence supporting
21 injection treatment, there is no evidence to warrant Plaintiff pursuing surgery, as
22 surgery was the proposed option if injection treatments failed. See Ghodadra Decl., ¶
23 23. Finally, because the evidence has not established the accident was a substantial
24 factor causing Plaintiff's anxiety – instead the evidence shows Plaintiff's anxiety was
25 caused by the discovery of the cyst – future psychotherapy treatment as a result of the
26 accident is also not warranted or supported. See Zackler Decl., ¶¶ 38, 41.

1 **ii. Noneconomic Damages**

2 90. In California, a plaintiff who has established liability may recover
3 noneconomic damages for a wide variety of harms, including emotional distress and
4 pain and suffering, which may include not only physical pain but also “fright,
5 nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity,
6 embarrassment, apprehension, terror or ordeal.” Capelouto v. Kaiser Found. Hosps.,
7 7 Cal. 3d 889, 892-93 (1972). The test for determining noneconomic damages “is one
8 of reasonable compensation.” Hilliard v. A. H. Robins Co., 148 Cal. App. 3d 374, 412
9 (1983). A plaintiff may recover for future noneconomic damages that are reasonably
10 certain to occur. Garcia, 156 Cal. App. 4th at 97.

11 91. Plaintiff testified that he was in substantial pain and suffered from
12 headaches and dizziness following the collision and that he has suffered emotional
13 distress from not being able to work and from the deteriorating relationship with his
14 wife. T1 at 56. In light of Plaintiff’s testimony about the physical pain he has
15 endured from his neck and back and the records that establish he endured two years
16 of neck and spine injections in an attempt to ease his pain, the Court finds there is
17 evidence to warrant a noneconomic award for pain and suffering. Capelouto, 7 Cal.
18 3d at 892-93. Plaintiff’s testimony about the impact the accident has had on his
19 relationship with his wife and his own emotional distress as a result of his injuries and
20 subsequent loss of work provides additional support for an award of noneconomic
21 damages.
22

23 92. Considering the evidence and looking at other cases as benchmarks,¹¹
24 the Court finds the government’s proposal of \$6,000 for past pain and suffering to be
25

26 _____
27 ¹¹ See, e.g., Seferaj v. United States, No. CV 21-6928-DMG-AFMx, 2023 WL
28 5530026, at *6 (C.D. Cal. Aug. 28, 2023) (awarding \$18,000 in non-economic damages

1 inadequate, but Plaintiff's proposal of \$1,000,000 is excessive. Dkts. 86, 87. Based on
2 the evidence presented, an award of \$27,000 for past noneconomic damages of pain
3 and suffering is reasonable and supported.

4 93. Lastly, the Court finds sufficient evidence has been presented that
5 Plaintiff may continue to suffer from headaches and dizziness. However, the
6 evidence presented has shown that Plaintiff is largely able to manage these symptoms
7 with, at most, over the counter medication like Tylenol. See Zackler Decl., ¶ 33.
8 Accordingly, the Court finds an additional \$6,000 for future pain and suffering to be
9 reasonable compensation in this case.

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14 for back, neck, and leg pain that had continued several years after an accident where a
15 postal truck struck plaintiff's driver door and injured Plaintiff); Ream v. United States,
16 No. 17-1141-RAJ, 2020 WL 1303429, at *1-2, 6 (W.D. Wash. Mar. 19, 2020)
17 (awarding \$100,000 in noneconomic damages for roughly seven years of past pain,
18 suffering, and disability where plaintiff experienced neck and lower back pain, and
19 needed assistance tying her shoes, putting on clothes, bathing, and going to the
20 bathroom); Penny v. State Farm Mut. Auto. Ins. Co., No. C18-5195-JLR, 2020 WL
21 6559288, at *4-5, 12 (W.D. Wash. Nov. 9, 2020) (awarding \$92,000 in noneconomic
22 damages for one year of pain and suffering and loss of enjoyment of life where
23 automobile accident caused a mild traumatic brain injury; cervical, thoracic,
24 lumbosacral, bilateral knee, and bilateral ankle sprain and strain injuries; and the
25 exacerbation of preexisting writ and thumb pain); Peltier v. United States, No. CV 16-
26 00774-ODW-SPx, 2017 WL 4621544, at *2, 5 (C.D. Cal. Oct. 16, 2017) (awarding
27 \$2,500 in noneconomic damages for back pain, suffering, and anxiety stemming from
28 minor rear-end collision); Cantu v. United States, No. CV 14-00219-MMM-JCGx,
2015 WL 4720580, at *2-5, 13-15, 36 (C.D. Cal. Aug. 7, 2015) (awarding \$15,000 in
noneconomic damages for past mild back, neck, and shoulder pain stemming from a
moderately severe collision where plaintiff's automobile spun clockwise and rolled
onto its roof; plaintiff remained secured in his seat and walked away from the
wreckage).

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III.

CONCLUSION

For the foregoing reasons, the Court finds Plaintiff's damages include \$57,022.01 in medical expenses, \$27,000 in past noneconomic harm, and \$6,000 for future noneconomic harm for a total of \$90,022.01.

Dated: May 13, 2024



HONORABLE KENLY KIYA KATO
United States District Judge