

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3

4 LUCIO CORRAL RODRIGUEZ,
5 individually and as Successor in
6 Interest to the decedents,
7 MARICRUZ CORRAL, IVAN ALEXANDER
8 CORRAL, and LUCIO ANTHONY CORRAL,

9 Plaintiff,

10 vs.

11 COUNTY OF STANISLAUS; CITY OF
12 MODESTO; CITY OF RIVERBANK; STATE
13 OF CALIFORNIA, AMTRAK CALIFORNIA;
14 BURLINGTON NORTHERN SANTA FE
15 RAILWAY; and DOES 1 to 200,

16 Defendants.

1:08-cv-00856 OWW GSA

MEMORANDUM DECISION AND ORDER
RE POST-TRIAL MOTIONS.

(DOC. 452, 454)

17 I. INTRODUCTION

18 This case arises from a collision between a train operated
19 by National Railroad Passenger Corporation ("Amtrak") and a
20 vehicle driven by Lucio Corral Rodriguez's ("Plaintiff") wife,
21 Maricruz Corral, resulting in the death of Maricruz Corral and
22 Plaintiff's two children (together, "Decedents"). Plaintiff sued
23 several defendants, including Amtrak, Burlington Northern Santa
24 Fe Railway ("BNSF"), and the State of California, Department of
25 Transportation (together, "Defendants").

26 Before the court for decision are post-trial motions.
27 Plaintiff moves for (1) entry of judgment against Amtrak and the
28 State of California and (2) accrual of interest from the date of

1 filing of the jury's original verdict. (Doc. 452). Defendants
2 filed an opposition seeking a setoff and sanctions (Doc. 453), to
3 which Plaintiff replied (Doc. 456). Defendants also move for
4 judgment as a matter of law regarding punitive damages (Doc.
5 454), which Plaintiff opposed (Doc. 455). A hearing on the
6 motions was held May 23, 2011. The parties submitted supplemental
7 briefs on the issue of pre and post judgment interest. Docs. 464,
8 465.
9

10 II. BACKGROUND

11 On December 8, 2010, a twelve-day jury trial began. On the
12 second day of trial, the County of Stanislaus settled its case
13 with Plaintiff for \$800,000. The trial culminated with a
14 unanimous jury verdict on January 14, 2011. The jury made
15 findings that: (1) Amtrak was negligent in operating the train;
16 (2) Amtrak's negligence caused Plaintiff's harm; (3) Burlington
17 Northern and Santa Fe Railway were not negligent in the
18 maintenance and/or use of its property; and (4) Maricruz Corral
19 was 50% at fault. The jury awarded Plaintiff the following
20 damages for Amtrak's negligence: (1) \$431,359 for economic
21 damages Decedents would have contributed in lifetime financial
22 support; (2) \$432,000 for the reasonable value of household
23 services Decedents would have provided; and (3) \$3,000,000 in
24 non-economic damages.
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1 III. DISCUSSION

2 A. Plaintiff's Motion for Proposed Judgment

3 1. Amount of Judgment

4 Plaintiff moves for entry of judgment in his favor in the
5 amount of \$1,931,694.50, which represents the jury's total damage
6 award of \$3,863,389, reduced by 50% (the percentage of Marricruz
7 Corral's comparative fault). Amtrak argues that, pursuant to
8 California Code of Civil Procedure § 877, the damage award should
9 be reduced by the full amount of the County of Stanislaus'
10 \$800,000 settlement.
11

12 California Code of Civil Procedure § 877 imposes joint and
13 several liability on joint tortfeasors. Section 877 states in
14 relevant part:

15 Where a release, dismissal with or without prejudice, or a
16 covenant not to sue or not to enforce judgment is given in
17 good faith before verdict or judgment to one or more of a
18 number of tortfeasors claimed to be liable for the same
19 tort, or to one or more other co-obligors mutually subject
20 to contribution rights, it shall have the following effect:

21 (a) It shall not discharge any other such party from
22 liability unless its terms so provide, but it shall reduce
23 the claims against the others in the amount stipulated by
24 the release, the dismissal or the covenant, or in the amount
25 of the consideration paid for it whichever is the greater.

26 Cal. Code Civ. P. § 877 (emphasis added). Amtrak asks the court
27 to apply Section 877(a) to reduce the judgment by the full amount
28 of the County of Stanislaus' \$800,000 settlement.

The Fair Responsibility Act of 1986, enacted by Proposition
51 and codified in California Civil Code § 1431.2, provides in

1 pertinent part:

2 In any action for personal injury, property damage, or
3 wrongful death, based upon principles of comparative fault,
4 the liability of each defendant for non-economic damages
5 shall be several only and shall not be joint. Each defendant
6 shall be liable only for the amount of non-economic damages
7 allocated to that defendant in direct proportion to that
8 defendant's percentage of fault, and a separate judgment
9 shall be rendered against that defendant for that amount.

10 Cal. Civ. Code § 1431.2(a). California appellate courts have held
11 that Section 1431.2(a) eliminated joint and several liability for
12 noneconomic damages but retained it for economic damages. See
13 *e.g., Espinoza v. Machonga*, 9 Cal.App.4th 268, 272, 11 Cal.Rptr.2d
14 498 (1992) ("Under subdivision (a) of Civil Code section 1431.2,
15 a personal injury defendant is no longer liable for any amount of
16 the plaintiff's noneconomic damages which exceeds the percentage
17 of those noneconomic damages attributable to that defendant.");
18 *Hoch v. Allied-Signal, Inc.*, 24 Cal.App.4th 48, 63-65, 29
19 Cal.Rptr.2d 615 (1994).

20 Amtrak acknowledges that California appellate courts and
21 commentators have not interpreted California Code of Civil
22 Procedure § 877 to require set-off of noneconomic damages after
23 enactment of Section 1431.2(a) and that the California Supreme
24 Court has not opined on the matter. Amtrak contends that the
25 California appellate court decisions should be ignored and
26 instead the court should apply Justice Croskey's concurring
27 opinion in *Bostick v. Flex Equipment Co., Inc.*, 147 Cal.App.4th
28

1 80, 54 Cal.Rptr.3d 28 (2007):

2 I conclude further that despite the application of
3 Proposition 51, the setoff required by Code of Civil
4 Procedure section 877 (section 877) for a good faith
5 settlement applies to both economic and noneconomic damages,
6 contrary to *Espinoza v. Machonga* (1992) 9 Cal.App.4th 268,
7 11 Cal.Rptr.2d 498 (Espinoza), *Hoch v. Allied-Signal, Inc.*
8 (1994) 24 Cal.App.4th 48, 29 Cal.Rptr.2d 615 (Hoch), and
9 their progeny. In my view, both the language of section 877
10 and the purposes of the statute compel the conclusion that
11 section 877 requires a setoff of the noneconomic portion of
12 a good faith settlement to the extent necessary to avoid a
13 double recovery by the plaintiff. I suggest a formula to
14 reduce the plaintiff's claims against nonsettling defendants
15 in accordance with section 877 and determine the amounts of
16 economic and noneconomic damages to award the plaintiff in
17 an action subject to Proposition 51.

18 *Id.* at 100. Amtrak asks that the court predict that the
19 California Supreme Court, if confronted with the setoff issue,
20 would follow Justice Croskey's concurrence and reject the
21 numerous appellate court decisions that hold to the contrary. In
22 essence, Amtrak seeks to rewrite California Civil Code Section §
23 1431.2 and violate the law of precedent that a federal trial
24 court is bound by the decision of an intermediate state court
25 applying state law if the state Supreme Court has not decided the
26 issue. *See Estrella v. Brandt*, 682 F.2d 814, 817 (9th Cir. 1982)
27 ("Under the Erie doctrine, a federal court sitting in diversity
28 is not free to reject a state judicial rule of law merely because
it has not received the sanction of the state's highest court,
but it must ascertain from all available data what the state law
is and apply it.").

1 Applying *Espinoza*, the setoff attributable to economic
 2 damages is calculated by first determining the percentage of
 3 Plaintiff's damage award attributable to economic damages, or
 4 22.347% (\$863,359 divided by \$3,863,359). See *Espinoza*, 9
 5 Cal.App.4th at 276-77. This percentage is applied to the
 6 settlement amount to determine the portion of the settlement
 7 amount attributable to economic damages, or \$178,778.93 (\$800,000
 8 x 22.347%). See *id.* Plaintiff's judgment against Amtrak is
 9 reduced by \$178,778.93.

11 Amtrak's liability to Plaintiff is computed as follows:

12	\$ 863,359.00	Total economic damages
13	- \$ 431,679.50	Reduction of economic damages by Maricruz Corral's 50% fault
14	- \$ 178,778.93	Reduction of economic damages by economic portion of County of Stanislaus settlement
15	\$3,000,000.00	Total noneconomic damages
16	- \$1,500,000.00	Reduction of noneconomic damages by Maricruz Corral's 50% fault
17	\$1,752,900.57	Amtrak's liability to Plaintiff

18 See *id.*

19 Plaintiff's motion for entry of judgment as to the amount of
 20 liability and damages is GRANTED. Judgment will be entered for
 21 Plaintiff in the amount of \$1,752,900.57 (\$252,900.57 for
 22 economic damages and \$1,500,000.00 for non-economic damages).
 23

24 2. Liability of Amtrak

25 Plaintiff asks the court to enter judgment against Amtrak.
 26 The jury found that Amtrak was negligent in operating the train
 27 and Amtrak's negligence caused Plaintiff's harm. Amtrak does not
 28

1 address its liability in its opposition.

2 Plaintiff's motion for entry of judgment as to Amtrak's
3 liability is GRANTED.

4 3. Liability of State of California

5 Plaintiff moves for entry of judgment against the State of
6 California as the owner of the subject train. Plaintiff contends
7 that California Vehicle Code §§ 17150 and 17002 impose derivative
8 liability on the State of California for injuries caused by its
9 train. California Vehicle Code § 17150 provides:

11 Every owner of a motor vehicle is liable and responsible for
12 death or injury to person or property resulting from a
13 negligent or wrongful act or omission in the operation of
14 the motor vehicle, in the business of the owner or
15 otherwise, by any person using or operating the same with
16 the permission, express or implied, of the owner.

17 Cal. Vehicle Code § 17150. California Vehicle Code § 17002 makes
18 public entities liable under California Vehicle Code § 17150.

19 Cal. Vehicle Code § 17002.

20 Amtrak argues that the State of California is not
21 vicariously liable under California Vehicle Code § 17150 because
22 a train is not a vehicle under California Vehicle Code § 670.

23 Amtrak further contends that federal law explicitly exempts
24 trains from the definition of "motor vehicle." See 49 U.S.C.A. §
25 32101(7) ("'motor vehicle' means a vehicle driven or drawn by
26 mechanical power and manufactured primarily for use on public
27 streets, roads, and highways, but does not include a vehicle
28 operated only on a rail line."); see also 49 U.S.C.A. § 30301(4)

1 ("motor vehicle" means a vehicle, machine, tractor, trailer, or
2 semitrailer propelled or drawn by mechanical power and used on
3 public streets, roads, or highways, but does not include a
4 vehicle operated only on a rail line."). Plaintiff rejoins that a
5 train is a motor vehicle under California Vehicle Code § 415.

6
7 California Vehicle Code § 670 provides that:

8 A "vehicle" is a device by which any person or property may
9 be propelled, moved, or drawn upon a highway, excepting a
10 device moved exclusively by human power or used exclusively
11 upon stationary rails or tracks.

12 Cal. Vehicle Code § 670. Section 670 explicitly excludes trains
13 from the definition of "vehicle" by excepting any device "used
14 exclusively upon stationary rails or tracks." *See id.* Section 415
15 of California Vehicle Code defines "motor vehicle" as:

16 (a) A "motor vehicle" is a vehicle that is self-propelled.

17 (b) "Motor vehicle" does not include a self-propelled
18 wheelchair, motorized tricycle, or motorized quadricycle, if
19 operated by a person who, by reason of physical disability,
20 is otherwise unable to move about as a pedestrian.

21 Cal. Vehicle Code § 415.

22 Citing *Donahue Construction Company v. Transportation*
23 *Indemnity Company*, 7 Cal.App.3d 291, 86 Cal.Rptr. 632 (1970),
24 Plaintiff contends that certain sections of the California
25 Vehicle Code apply to "vehicle," while others apply to "motor
26 vehicle." The *Donahue* court, however, applied both the
27 definitions of "vehicle" in Section 670 and "motor vehicle" in
28 Section 415, holding that the provisions of the California

1 Vehicle Code defining "vehicle" and "motor vehicle" must be
2 considered part of every policy of liability insurance. *Id.* at
3 300.

4 The definition of "motor vehicle" in Section 415
5 incorporates the definition of "vehicle" in Section 670, which
6 explicitly excludes trains. See Cal. Vehicle Code § 415 (defining
7 a "motor vehicle" as a *vehicle* that is self-propelled) (emphasis
8 added). California Vehicle Code § 17150 does not apply to owners
9 of trains.
10

11 Amtrak further argues that there is no evidence of an
12 independent basis of liability as to the State of California.
13 Plaintiff's counsel conceded its direct liability claims against
14 the State of California.
15

16 Plaintiff's motion for judgment against the State of
17 California is DENIED, as it is not supported by the law and has
18 been conceded by Plaintiff.

19 4. Amtrak's Request for Sanctions

20 Amtrak requests sanctions against Plaintiff's counsel for
21 its motion for judgment against the State of California. Amtrak
22 contends that Plaintiff's motion misrepresents the law by failing
23 to inform the court and Defendant of California Vehicle Code §
24 670, which explicitly excepts trains. Plaintiff rejoins that its
25 motion was supported and Amtrak misquoted the California Vehicle
26 Code.
27
28

1 Rule 11(c) permits the court to impose sanctions on any
2 attorney or law firm for violating Rule 11(b), which provides:

3 By presenting to the court a pleading, written motion, or
4 other paper--whether by signing, filing, submitting, or
5 later advocating it--an attorney or unrepresented party
6 certifies that to the best of the person's knowledge,
information, and belief, formed after an inquiry reasonable
under the circumstances: . . .

7
8 (2) the claims, defenses, and other legal contentions are
warranted by existing law or by a nonfrivolous argument for
9 extending, modifying, or reversing existing law or for
establishing new law.

10
11 Fed. R. Civ. P. 11. Sanctions under Rule 11 are mandatory. *Golden*
12 *Eagle Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1540 (9th
13 Cir. 1986).

14 Here, Plaintiff's argument regarding the State of
15 California's liability under the California Vehicle Code was
16 incorrect. Rule 11 permits sanctions only when the "pleading,
17 motion, or other paper" is frivolous, not when one argument is
18 frivolous. *Id.* "Nothing in the language of the Rule or the
19 Advisory Committee Notes supports the view that the Rule empowers
20 the district court to impose sanctions on lawyers simply because
21 a particular argument or ground for relief contained in a non-
22 frivolous motion is found by the district court to be
23 unjustified." *Id.* at 1541.

24
25 Rule 11 also includes a mandatory safe harbor provision that
26 requires the party claiming sanctions to notify the nonmoving
27 party of the motion for sanctions and request correction. Fed. R.
28

1 Civ. P. 11(c) (2); *Holgate v. Baldwin*, 425 F.3d 671, 678 (9th Cir.
2 2005). "The movant serves the allegedly offending party with a
3 filing-ready motion as notice that it plans to seek sanctions.
4 After 21 days, if the offending party has not withdrawn the
5 filing, the movant may file the Rule 11 motion with the court."
6 *Truesdell v. S. Cal. Permanente Med. Grp.*, 293 F.3d 1146, 1151
7 (9th Cir. 2002). The safe harbor provision is enforced strictly.
8 *Holgate*, 425 F.3d at 678. Defendant did not comply with Rule 11's
9 mandatory safe harbor requirement.
10

11 Defendant's request for sanctions is DENIED.

12 5. Interest

13 a) Pre-Judgment Interest

14 Plaintiff moves for pre-judgment interest from January 14,
15 2010, the date the original verdict was filed.
16

17 In cases that arise under federal law, pre-judgment interest
18 is determined by federal law. *United States v. Pend Oreille*
19 *Public Utility Dist. No. 1*, 28 F.3d 1544, 1553 (9th Cir. 1994).
20 *Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45
21 F.3d 288, 291 (9th Cir. 1995). In diversity cases, pre-judgment
22 interest is calculated at the state law rate. *James B. Lansing*
23 *Sound, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 801
24 F.2d 1560, 1569 (9th Cir.1986). This case was removed from state
25 court to a federal district court on the basis of federal
26 question jurisdiction under 28 U.S.C. § 1349 because Amtrak was
27 incorporated by an Act of Congress and the United States owns
28

1 over 50% of Amtrak's capital stock. Doc. 1, ¶ 4; Doc. 44, 12. "It
2 is well settled that prejudgment interest is a substantive aspect
3 of a plaintiff's claim, rather than a merely procedural
4 mechanism." *Sea Hawk Seafoods v. Exxon Corp.*, 484 F.3d 1098, 1101
5 (9th Cir. 2007). Because Plaintiff's claims are state law claims,
6 Plaintiff and Defendants do not contest that state law controls
7 the award of prejudgment interest. *See id.*

9 Plaintiff contends, without citing authority, that
10 prejudgment interest is discretionary and should be awarded based
11 on the equities of the case.

12 California Civil Code § 3288 provides that: "In an action
13 for the breach of an obligation not arising from contract, and in
14 every case of oppression, fraud, or malice, interest may be
15 given, in the discretion of the jury." Cal. Civ. Code § 3288.

16 Here, the jury did not award Plaintiff interest.

17
18 California Civil Code § 3291 provides:

19 In any action brought to recover damages for personal injury
20 sustained by any person resulting from or occasioned by the
21 tort of any other person, corporation, association, or
22 partnership, whether by negligence or by willful intent of
23 the other person, corporation, association, or partnership,
24 and whether the injury was fatal or otherwise, it is lawful
25 for the plaintiff in the complaint to claim interest on the
26 damages alleged as provided in this section.

27 If the plaintiff makes an offer pursuant to Section 998 of
28 the Code of Civil Procedure which the defendant does not
accept prior to trial or within 30 days, whichever occurs
first, and the plaintiff obtains a more favorable judgment,
the judgment shall bear interest at the legal rate of 10
percent per annum calculated from the date of the
plaintiff's first offer pursuant to Section 998 of the Code

1 of Civil Procedure which is exceeded by the judgment, and
2 interest shall accrue until the satisfaction of judgment.

3 Cal. Civ. Code § 3291. Defendants argue that Plaintiff does not
4 contend - nor can he contend - that Plaintiff made a settlement
5 offer to Defendants. Without a settlement offer, Section 3291
6 does not apply.

7 California Civil Code Section 3287(a) provides:

8 Every person who is entitled to recover damages certain, or
9 capable of being made certain by calculation, and the right
10 to recover which is vested in him upon a particular day, is
11 entitled also to recover interest thereon from that day,
12 except during such time as the debtor is prevented by law,
13 or by the act of the creditor from paying the debt. This
14 section is applicable to recovery of damages and interest
from any such debtor, including the state or any county,
city, city and county, municipal corporation, public
district, public agency, or any political subdivision of the
state.

15 Under section 3287(a), prejudgment interest is available when
16 "defendant actually know[s] the amount owed or from reasonably
17 available information could the defendant have computed that
18 amount." *Cassinovs v. Union Oil. Co.*, 14 Cal. App. 4th 1770, 1789
19 (1993). "Damages are deemed certain or capable of being made
20 certain within the provisions of [§ 3287(a)] where there is
21 essentially no dispute between the parties concerning the basis
22 of computation of damages if any are recoverable but where their
23 dispute centers on the issue of liability giving rise to damage."
24 *Fireman's Fund Ins. Co. v. Allstate Ins. Co.*, 234 Cal.App.3d
25 1154, 1173 (1991). Section 3287(a) does not authorize pre-
26 judgment interest where the amount of damages "depends upon a
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1 judicial determination based upon conflicting evidence and is not
2 ascertainable from truthful data supplied by the claimant to his
3 debtor." *Id.*; *Highlands Ins. Co. v. Cont'l Cas. Co.*, 64 F.3d 514,
4 521 (9th Cir. 1995). Here, the damages were dependent on a
5 judicial determination; Section 3287(a) does not authorize pre-
6 judgment interest.
7

8 California Civil Code Section 3287(b) provides:

9 Every person who is entitled under any judgment to receive
10 damages based upon a cause of action in contract where the
11 claim was unliquidated, may also recover interest thereon
12 from a date prior to the entry of judgment as the court may,
in its discretion, fix, but in no event earlier than the
date the action was filed.

13 Cal. Civ. Code § 3287(b). Here, Plaintiff's claims are not based
14 in contract.

15 There is no basis to grant Plaintiff's request for
16 prejudgment interest. Plaintiff's motion for pre-judgment
17 interest is DENIED.
18

19 b) Post-Judgment Interest

20 Post-judgment interest is mandatory under 28 U.S.C. § 1961.
21 *Ford v. Alfaro*, 785 F.2d 835, 842 (9th Cir. 1986). 28 U.S.C. §
22 1961 provides in pertinent part:

23 (a) Interest shall be allowed on any money judgment in a
24 civil case recovered in a district court. . . . Such
25 interest shall be calculated from the date of the entry of
26 the judgment, at a rate equal to the weekly average 1-year
constant maturity Treasury yield, as published by the Board
of Governors of the Federal Reserve System, for the calendar
week preceding the date of the judgment. . . .

27 (b) Interest shall be computed daily to the date of payment
28 except as provided in section 2516(b) of this title and

1 section 1304(b) of title 31, and shall be compounded
2 annually.

3 28 U.S.C. § 1961. Interest shall accrue from the date of entry of
4 judgment, in accordance with the rate and computation set forth
5 in 28 U.S.C. § 1961.

6 Plaintiff's motion for post-judgment interest is GRANTED,
7 commencing with the date of entry of judgment on the jury's
8 verdict under Federal Rule of Civil Procedure § 54.

9
10 B. Amtrak's Renewed Motion for Judgment as a Matter of Law
as to Punitive Damages

11 Amtrak renews its motion for judgment as a matter of law as
12 to punitive damages pursuant to Federal Rule of Civil Procedure
13 50(b) (Doc. 454), which Plaintiff opposes (Doc. 455).

14
15 1. Legal Standard

16 Federal Rule of Civil Procedure 50 governs motions for
17 judgment as a matter of law in jury trials, and "allows the trial
18 court to remove cases or issues from the jury's consideration
19 'when the facts are sufficiently clear that the law requires a
20 particular result.'" *Weisgram v. Marley Co.*, 528 U.S. 440, 447-48
21 (2000).

22 Rule 50(a) provides in pertinent part:

23
24 If during a trial by jury a party has been fully heard on an
25 issue and there is no legally sufficient evidentiary basis
26 for a reasonable jury to find for that party on that issue,
27 the court may (A) resolve the issue against the party; and
28 (B) grant a motion for judgment as a matter of law against
the party on a claim or defense that, under the controlling
law, can be maintained or defeated only with a favorable
finding on that issue.

1 Fed. R. Civ. P. 50(a)(1). A Rule 50(b) motion for judgment as a
2 matter of law is a renewed Rule 50(a) motion. *E.E.O.C. v. Go*
3 *Daddy Software, Inc.*, 581 F.3d 951, 961 (9th Cir. 2009). The Ninth
4 Circuit has stated the standard for judgment as a matter of law:
5

6 When confronted with a motion for judgment as a matter of
7 law, whether at the end of a plaintiff's case or at the
8 close of all the evidence, a trial court must scrutinize the
9 proof and the inferences reasonably to be drawn therefrom in
10 the light most amiable to the nonmovant . . . In the
11 process, the court may not consider the credibility of
12 witnesses, resolve conflicts in testimony, or evaluate the
13 weight of evidence . . . A judgment as a matter of law may
14 be granted only if the evidence, viewed from the perspective
15 most favorable to the nonmovant, is so one-sided that the
16 movant is plainly entitled to judgment, for reasonable minds
17 could not differ as to the outcome.

18 *Gibson v. City of Cranston*, 37 F.3d 731, 735 (9th Cir. 1994)

19 (citations omitted).

20 "A jury's inability to reach a verdict does not necessarily
21 preclude a judgment as a matter of law." *Headwaters Forest*
22 *Defense v. Cnty. of Humboldt*, 240 F.3d 1185, 1197 (9th Cir. 2000),
23 *vacated on other grounds*, 122 S.Ct. 24 (2001). The same standard
24 applies to a motion for judgment as a matter of law made after a
25 mistrial because of jury deadlock. *See id.* at 1197 n.4 ("The fact
26 that the motion was granted after a mistrial was declared because
27 of jury deadlock does not alter the standard to be applied on
28 appeal.")

29 2. Discussion

30 California Civil Code §3294(a) allows a plaintiff to recover
31 punitive damages in a tort action only "where it is proven by

1 clear and convincing evidence that the defendant has been
2 guilty of oppression, fraud, or malice" Cal. Civ. Code
3 §3294(a). Plaintiff's claim against Amtrak is based solely on
4 allegations of "malice," which is defined as "conduct which is
5 intended by the defendant to cause injury to the plaintiff or
6 despicable conduct which is carried on by the defendant with a
7 willful and conscious disregard of the rights or safety of
8 others." Cal. Civ. Code §3294(c)(1).

10 Before the trial, Amtrak filed a Rule 50(a) motion for
11 judgment as a matter of law on the issue of punitive damages
12 (Doc. 428), which Plaintiff opposed (Doc. 435). Amtrak's motion
13 was denied orally on January 11, 2011. The court explained:

14
15 And it is the evidence in the case that if the jury were to
16 find that pursuant to a rule and policy of the railroad,
17 that objects and/or persons on the track are trespassers and
18 that the sole duty of the railroad is to sound a warning on
19 the horn and take no other action, including braking of any
20 kind or stopping, and that a dispute in the evidence as to
21 whether Engineer Cone accelerated the pace of his train as
22 approached the crossing.

23 From that it could be inferred, because there's a conflict
24 as to what he knew, what he observed and what his experience
25 taught him to do, that he simply ignored the risk. Having
26 seen movement by the vehicle, where it was at least
27 potentially interpretable by a reasonable engineer that,
28 from being on the tracks to backing up and then to moving
forward slightly, that is erratic and unusual enough action
that it could be argued that that put the engineer on notice
there's something going on up here. It doesn't look like
anything that I've seen or it looks sufficiently
unpredictable that I had better proceed with caution. And
instead, if the jury were to believe that he increased the
pace of the locomotive, that would be sufficient factual
support for a finding of conscious disregard.

1 And so I am going to deny the motion for judgment as a
2 matter of law.

3 Draft Trial Transcript, January 11, 2011, 112. Amtrak's renewed
4 motion for judgment as a matter of law does not alter the
5 previous conclusion that, drawing all inferences in Plaintiff's
6 favor, the evidence is not so one-sided that Amtrak is plainly
7 entitled to judgment as a matter of law. The previous ruling
8 remains unchanged.

9 Defendant's renewed motion for judgment as a matter of law
10 as to punitive damages is DENIED.

11
12 IV. CONCLUSION

13 For the reasons stated:

14 1. Plaintiff's motion for proposed judgment is GRANTED in part
15 and DENIED in part.

16 2. Defendant's renewed motion for judgment as a matter of law
17 as to punitive damages is DENIED.

18 3. Plaintiff shall submit a proposed form of order consistent
19 with this memorandum decision within five (5) days following
20 electronic service of this memorandum decision.
21

22 SO ORDERED.

23 DATED: July 5, 2011

24 /s/ Oliver W. Wanger
25 Oliver W. Wanger
26 United States District Judge