

1 DENIED in part.

2 I. BACKGROUND

3 The facts are well known to the parties and therefore the
4 following is only a brief summary. In 2009, Plaintiffs brought
5 this action for the conversion of a Westinghouse Airbrake Company
6 Articulated Loader model 1200 ("the Loader"), which they claimed
7 to have owned and was located on Defendant J. Wayne Strauch's
8 property before Defendants sold it. Pretrial Conference Order
9 ("PCO"), Doc. #87, at 2.

10 On April 18, 2008, Defendants sold the subject Loader to
11 Richard Van Tassel. Id. Mr. Van Tassel gave Defendant
12 Stephenson a check for \$6,000.00 for the Loader made out to the
13 Strauch Administrative Trust. Id. The Loader was moved off the
14 property in April 2008. Id.

15 A HD 41 Dozer ("Dozer") was also located on the property and
16 the Defendants' both knew that their mother had sold the Dozer
17 sometime in the past. Id.

18 At trial, the jury found that Defendants' converted the
19 Loader by selling it to Mr. Van Tassel and awarded Plaintiffs
20 \$6,000 in damages. Jury Verdict, Doc. #139, at 1-3.

21
22 II. OPINION

23 A. Legal Standard

24 1. Motion for a New Trial

25 Pursuant to Federal Rule of Civil Procedure 59, a court has
26 discretion to grant a new trial "after a jury trial, for any
27 reason for which a new trial has heretofore been granted in an
28 action at law in federal court." Fed. R. Civ. P. 59(a)(1)(A).

1 Historically recognized grounds for a new trial include claims
2 “that the verdict is against the weight of the evidence, that
3 the damages are excessive, or that, for other reasons, the trial
4 was not fair to the party moving.” Molski v. M.J. Cable, Inc.,
5 481 F.3d 724, 729 (9th Cir. 2007) (quoting Montgomery Ward & Co.
6 v. Duncan, 311 U.S. 243, 251 (1940)). Unlike a renewed motion
7 for judgment as a matter of law, the court must “weigh the
8 evidence as it saw it” and may set aside the verdict, even if it
9 is supported by substantial evidence. Id. A new trial should be
10 granted “if, having given full respect to the jury’s findings,
11 the judge on the entire evidence is left with the definite and
12 firm conviction that a mistake has been committed.” Landes
13 Constr. Co. v. Royal Bank of Canada, 833 F.2d 1365, 1371-72 (9th
14 Cir. 1987) (citations omitted).

15 2. Motion to Amend

16 Federal Rule of Civil Procedure 59(e) allows a party to move
17 to alter or amend a judgment within 28 days after entry of
18 judgment. See Fed. R. Civ. P. 59(e). Reconsideration is
19 appropriate if “(1) the district court is presented with newly
20 discovered evidence, (2) the district court committed clear error
21 or made an initial decision that was manifestly unjust, or (3)
22 there is an intervening change in the controlling law.”

23 Securities & Exch. Comm’n v. Platforms Wireless Int’l Corp., 617
24 F.3d 1072, 1100 (9th Cir. 2010).

25 B. Discussion

26 1. Motion for New Trial

27 Plaintiffs contend that a partial new trial on damages is
28 warranted because the damages award is in violation of the law,

1 because the damages award is against the weight of the evidence,
2 because admission of evidence on the Dozer was prejudicial, and
3 because of attorney misconduct. Defendants argue that a partial
4 new trial is not appropriate in this case and that each argument
5 made by Plaintiffs for a new trial lacks merit. The Court
6 addresses each set of arguments in turn below.

7 (a) Partial New Trial

8 Plaintiffs request a partial new trial on damages because
9 the issue of the damages award is completely separable from the
10 issue of conversion. Defendants disagree, arguing that partial
11 retrial is barred where there is factual entanglement and the
12 verdict includes equitable claims that cannot be detached.

13 Partial trials "may not properly be resorted to unless it
14 clearly appears that the issue to be retried is so distinct and
15 separable from others that a trial of it alone may be had without
16 injustice." Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128,
17 1133-34 (9th Cir. 1995) (quoting Gasoline Products Co., Inc. v.
18 Champlin Refining Co., 283 U.S. 494, 500 (1931)). Retrial on
19 damages is permissible when "the issues of damages and liability
20 are not so interwoven as to require a new trial on both." Lies
21 v. Farrell Lines, Inc., 641 F.2d 765, 774 (9th Cir. 1981)
22 (citations omitted). For example, in Grimm v. California Spray-
23 Chemical Corp., the Ninth Circuit affirmed the district court's
24 decision to grant a new trial on both liability and damages
25 because the trial judge found that "the causation of the damages
26 was a difficult and close issue for the jury to decide" and
27 therefore the issues of liability and damages were interwoven.
28 264 F.2d 145, 146 (9th Cir. 1959).

1 Here, Defendants argue that their equitable defense and
2 Plaintiffs' claims were interconnected and that the damages
3 amount indicates the verdict was equitable in nature. Opp. at 3.
4 However, Defendants' equitable defense was limited to whether
5 Plaintiffs should be equitably estopped from receiving money
6 damages, and it had no effect on the damages amount once the jury
7 decided that Plaintiffs should not be equitably estopped. In the
8 jury verdict, Defendants' equitable defense and the damages
9 amount were two separate, unrelated inquiries. See Jury Verdict,
10 Doc. #139, at 1-3. Therefore, the equitable defense was not
11 interwoven with the damages award. Moreover, unlike in Grimm,
12 there is no evidence that the causation of the damages was
13 particularly difficult for the jury to decide.

14 Accordingly, the Court finds that a partial new trial on
15 damages, if warranted, would not be barred because of factual
16 entanglement.

17 (b) Damages Award Is Not in Violation of the Law

18 Plaintiffs argue that a new trial is warranted because the
19 damages award is not the highest price as required under
20 California Civil Procedure Code Section 1263.320(a) ("Section
21 1263.320(a)").

22 Section 1263.320(a) provides, "The fair market value of the
23 property taken is the highest price on the date of valuation."
24 Cal. Civ. Proc. Code § 1263.320. However, the Court finds that
25 the case law interpreting Section 1263.320(a), holds that this
26 section applies to real property taken through eminent domain.
27 See e.g., City of San Diego v. Rancho Penasquitos P'ship, 105
28 Cal.App.4th 1013, 1028-29 (2003) (applying Section 1263.320 to

1 determine the value of property being condemned in an eminent
2 domain proceeding). For conversion claims, the value of the
3 property is determined pursuant to California Civil Code Section
4 3336 ("Section 3336"), which provides that the value of
5 converted personal property is "[t]he value of the property at
6 the time of the conversion, with the interest from that time . .
7 . ." Cal. Civ. Code § 3336. Previously, the section included
8 the language, "the highest market value of the property at any
9 time between the conversion and the verdict." Wong v. Paine,
10 Webber, Jackson & Curtis, 208 Cal.App.2d 17, 19 (1962).

11 However, that section was removed and replaced with the
12 provision allowing a court to award "an amount sufficient to
13 indemnify the party injured for the loss which is the natural,
14 reasonable and proximate result of the wrongful act complained
15 of and which a proper degree of prudence on his part would not
16 have averted." Bank of Stockton v. Verizon Commc'ns, Inc., 375
17 F. App'x 746, 747 (9th Cir. 2010) (refusing to award the
18 "highest market value" of stock in a conversion claim) (citation
19 omitted). Therefore, Plaintiffs' argument that their damages
20 award is in violation of the law, i.e. under Section 1263.320(a)
21 they were entitled to an award of the highest market value, is
22 without merit and is not an appropriate ground for a new trial.

23 (c) Damages Award Is Not Against the Weight of
24 the Evidence

25 Plaintiffs claim that the \$6,000 damages award is against
26 the weight of the evidence because Mr. Timothy Fadda,
27 Plaintiffs' expert witness, evaluated the Loader at \$120,000 to
28 \$220,000 if sold as-is and \$150,000 to \$250,000 if operable.

1 When there is contradictory and conflicting evidence as to
2 value and condition of converted property, a court is not bound
3 to accept an expert's testimony on the property's value but can
4 look to other evidence as well. See Wade v. Markwell & Co., 118
5 Cal.App.2d 410, 431 (1953) (noting, in an action for conversion
6 of a mink coat, where evidence of its value was conflicting, the
7 trial court was not bound to accept expert's testimony, but
8 "could look to other evidence of value in the light of all the
9 surrounding circumstances"). Evidence, such as "the extent of
10 the use of the property and its condition and depreciation," may
11 be taken into consideration "to determine the subsequent value
12 of the property and establish the loss sustained as the result
13 of an unlawful conversion." Id.

14 In this case, Mr. Fadda's appraisal was significantly
15 called into question through cross-examination and contradicted
16 by Mr. Churches' testimony. Mr. Churches, a qualified
17 percipient witness, testified that the Loader was in poor
18 condition and that he was willing to pay only \$8,000 for it.
19 See Transcript of Testimony of Richard David Churches ("Churches
20 Test."), Doc. #152, at 9-12. Plaintiffs argue that Mr.
21 Churches' testimony contained inconsistencies on whether the
22 Loader ran and regarding the date on which he negotiated a price
23 with Mr. Durand and therefore it was false testimony. However,
24 the inconsistencies in Mr. Churches' testimony do not make his
25 entire testimony on the condition of the Loader false or
26 perjurious so as to warrant a new trial. See Molski, 481 F.3d
27 at 729 (stating that "[t]he trial court may grant a new trial
28 only if the verdict . . . is based upon false or perjurious

1 evidence") (citation omitted). Moreover, as Defendants note,
2 the jury valued the Loader based on the amount Defendants
3 received for it (\$6,000) when it was sold to Mr. Van Tassel and
4 not the amount Mr. Churches was willing to pay for it. Opp. at
5 4 n.1. Therefore, in light of the testimony on the condition of
6 the Loader and the evidence of how much the Defendants' received
7 for the Loader, Mr. Fadda's testimony was not binding or
8 persuasive.

9 Accordingly, the Court finds that a partial new trial is
10 not warranted because the verdict is not against the weight of
11 the evidence.

12 (d) Admission of Evidence on the Dozer was Not
13 Prejudicial

14 Plaintiffs argue that Mr. Churches' testimony about the
15 Dozer was prejudicial because the Dozer was not the subject of
16 the lawsuit and it was sold under duress, and therefore, a new
17 trial is warranted. Defendants note that the testimony on the
18 Dozer was relevant because the Dozer and Loader were acquired
19 together and remained together as a matched set at all relevant
20 times. Opp. at 4 n.1.

21 Federal Rule of Evidence 402 provides that all relevant
22 evidence is admissible, except as otherwise provided by the
23 Constitution, Act of Congress, the Federal Rules of Evidence, or
24 rules promulgated by the Supreme Court. Fed. R. Evid. 402.
25 Relevant evidence is evidence having the tendency to make the
26 existence of any consequential fact more or less probable than
27 it would be without the evidence. Fed. R. Evid. 401.
28 Nevertheless, relevant evidence may be excluded where its

1 probative value is substantially outweighed by the danger of
2 unfair prejudice, confusion of the issues, or misleading the
3 jury. Fed. R. Evid. 403. If evidence is improperly admitted,
4 the admission must have constituted prejudicial error in order
5 to grant a new trial. Chalmers v. City of Los Angeles, 762 F.2d
6 753, 761 (9th Cir. 1985).

7 In this case, the testimony on the Dozer was clearly
8 relevant. Although the Dozer was not the subject of the
9 lawsuit, testimony on the ownership and location of the Dozer
10 helped establish Plaintiffs' ownership of the Loader because the
11 Loader and Dozer were acquired together and remained together
12 until the Loader was converted. Testimony on the condition of
13 the Dozer was also relevant because both the Dozer and Loader
14 were subject to the same weather and treatment. Moreover,
15 testimony on the amount Mr. Churches paid for the Dozer was
16 relevant because it placed the \$8,000 he was willing to pay for
17 the Loader in context. Churches Test. at 7. Finally, there is
18 no evidence that the value of the Dozer affected the damage
19 award because, as mentioned above, the award was based on the
20 amount Defendants received for it when it was sold to Mr. Van
21 Tassel. Therefore, the Court finds that Mr. Churches' testimony
22 was properly admitted because its probative value substantially
23 outweighed any danger of unfair prejudice.

24 Accordingly, the arguments concerning the admissibility of
25 evidence do not provide grounds for a new trial.

26 (e) Attorney Misconduct

27 Plaintiffs argue that Defendants' counsel throughout the
28 trial worked to discredit Plaintiffs by referencing the Rule 11

1 sanction, which was later vacated and reversed by this Court.

2 A new trial due to attorney misconduct is warranted if “the
3 flavor of misconduct sufficiently permeate[s] an entire
4 proceeding to provide conviction that the jury was influenced by
5 passion and prejudice in reaching its verdict.” Hemmings v.
6 Tidyman’s Inc., 285 F.3d 1174, 1192 (9th Cir. 2002) (quoting Kehr
7 v. Smith Barney, 736 F.2d 1283, 1286 (9th Cir. 1994)).

8 Here, Defendants’ Counsel’s references to the Rule 11
9 sanction occurred primarily at the beginning of the trial and
10 ultimately seized after the Court admonished Defendants’ Counsel,
11 and therefore, the Court did not find it necessary to instruct
12 the jury to disregard the information. In addition, there is no
13 evidence that the jury’s damages award was influenced by
14 Defendants’ Counsel’s references to the Rule 11 sanction.

15 Accordingly, the Court finds that a partial new trial is not
16 warranted based on attorney misconduct.

17 2. Motion to Amend

18 Plaintiffs claim that they are entitled to prejudgment
19 interest at an interest rate of 10%. Mot. at 10. Defendants
20 agree that Plaintiffs are entitled to prejudgment interest but at
21 an interest rate of 7%. Opp. at 4-5.

22 Section 3336 provides that in a conversion action, a
23 plaintiff is entitled to prejudgment interest at the legal rate
24 from the time of conversion to the date judgment is entered.
25 Cal. Civ. Code § 3336. The legal rate of prejudgment interest in
26 California, absent a statute to the contrary, is 7%, while post-
27 judgment interest is 10%. Compare Cal. Const. art. XV, § 1 with
28 Cal. Civ. Proc. Code § 685.010.

1 In this case, Plaintiffs seek prejudgment interest pursuant
2 to Section 3336 for conversion claims. Because there is no
3 statute to the contrary, the prejudgment interest rate is 7%.
4 See Stan Lee Trading, Inc. v. Holtz, 649 F. Supp. 577, 582-83
5 (C.D. Cal. 1986) (awarding prejudgment interest rate at 7% under
6 California law in a conversion action). Therefore, the Court
7 finds that Plaintiffs are entitled to prejudgment interest at an
8 interest rate of 7% from the date of conversion, April 18, 2008,
9 until the date judgment was entered, February 6, 2013.

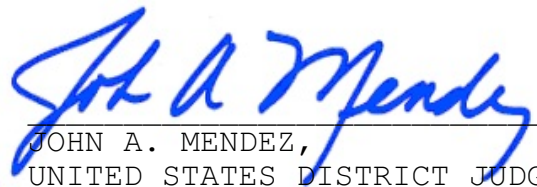
10 Accordingly, Plaintiffs' motion to amend the judgment is
11 granted in part and denied in part.

12
13 III. ORDER

14 For the reasons set forth above, Plaintiffs' motion for a
15 new trial is DENIED, and Plaintiffs' motion to amend the judgment
16 is GRANTED in part and DENIED in part. Plaintiffs are entitled
17 to prejudgment interest at an interest rate of 7% from the date
18 of conversion, April 18, 2008, until the date judgment was
19 entered, February 6, 2013.

20
21 IT IS SO ORDERED.

22 Dated: May 17, 2013

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE