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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARY HOLZHAUER,  
Plaintiff,

v.

GOLDEN GATE BRIDGE HIGHWAY &  
TRANSPORTATION DISTRICT,  
Defendant.

Case No. 13-cv-02862-JST

**ORDER DENYING MOTION FOR NEW TRIAL**

Re: ECF No. 162

Before the Court is Plaintiff Mary Holzhauer's Motion for New Trial. The Court will deny the motion.

**I. BACKGROUND**

On February 16, 2013, the ferry SAN FRANCISCO, operated by Defendant Golden Gate Bridge, Highway & Transportation District ("District"), collided with a speedboat on the San Francisco Bay. The collision killed the driver of the speedboat, Harry Holzhauer, and seriously injured his fellow passenger and owner of the boat, David Rhoades. Mr. Holzhauer's widow, Mary Holzhauer ("Plaintiff"), and David Rhoades filed negligence claims against the District following the accident.

Mr. Rhoades and Mrs. Holzhauer both made claims for economic and noneconomic damages. ECF No. 1; ECF No. 30. Mrs. Holzhauer's adult sons, however, made claims only for noneconomic damages. They sought damages for:

"1. The loss of Harry Holzhauer's love, companionship, comfort, care, assistance, protection, affection, society, and moral support.

2. The loss of Harry Holzhauer's training and guidance."

ECF No. 262 at 35. During trial, Plaintiff's sons, Timothy and Jeffery Holzhauer, testified about their relationship with their father. Timothy Holzhauer testified that his father was an important

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1 figure in his professional life: his father helped him build his business, provided career guidance,  
2 and helped him get jobs in real estate appraisal and teaching over the years. ECF No. 362-1 at 3.  
3 He also testified to having a close personal relationship with his father. He described his father as  
4 his “mentor” and said he spoke to him on an almost daily basis. Id.

5 Jeffrey Holzauer also testified to having a close relationship with his father. He testified  
6 that he had worked with his father in the past and had plans to continue working with him in the  
7 future. Id. Jeffrey Holzauer described his father as a big moral supporter and a “protector.” Id.  
8 at 4. Both sons testified that their father had promised to help pay his grandchildren’s college  
9 tuitions. Id. at 3.

10 Mary Holzauer reiterated that her husband had a close relationship with their sons. Id. at  
11 4. She testified that she and her husband regularly traveled with their sons and grandchildren, that  
12 they had purchased timeshares to vacation together, and that her husband was the “go-to-guy” for  
13 the entire family. Id. Mrs. Holzauer also shared photographs of Mr. Holzauer with his sons and  
14 grandchildren. Id.

15 At trial, the jury received the same instructions concerning noneconomic damages for both  
16 Mrs. Holzauer and her sons. ECF No. 262 at 35. The jury was told that “[n]o fixed standard  
17 exists for deciding the amount of noneconomic damages. You must use your judgment to decide a  
18 reasonable amount based on the evidence and your common sense.” Id. After deliberating, the  
19 jury found Mrs. Holzauer had proven \$1,000,000 in noneconomic damages.<sup>1</sup> ECF No. 355 at 1-  
20 2. It found her sons had proven none. Id.

21 Plaintiff now moves for a new trial as to the singular issue of the noneconomic damages  
22 suffered by Timothy and Jeffrey Holzauer. ECF No. 162. The District opposes the motion. ECF  
23 No. 367.

## 24 **II. LEGAL STANDARD**

25 “A plaintiff’s path towards a new trial based on inadequate damages is feasible, but  
26 formidable.” D’Amato v. Lillie, No. CV-06-0314-EFS, 2008 WL 4735141, at \*2 (E.D. Wash.

27 \_\_\_\_\_  
28 <sup>1</sup> The jury also found that Mrs. Holzauer had proven \$546,747 in past and future economic  
damages. ECF No. 261 at 3.

1 Oct. 23, 2008) (citing Mekdeci v. Merrell Nat'l Labs., 711 F.2d 1510, 1513 (11th Cir. 1983)). A  
2 trial court may grant a new trial on all or some issues if “the verdict is contrary to the clear weight  
3 of the evidence . . . or to prevent, in the sound discretion of the trial court, a miscarriage of  
4 justice.” Silver Sage Partners, Ltd. v. City of Desert Hot Springs, 251 F.3d 814, 819 (9th Cir.  
5 2001) (internal citation omitted). However, “a district court may not grant a new trial simply  
6 because it would have arrived at a different verdict.” Id.; see also Tortu v. Las Vegas Metro.  
7 Police Dep’t, 556 F.3d 1075, 1084 (9th Cir. 2009) (holding that a “district court cannot substitute  
8 its evaluations for those of the jurors”) (internal citation omitted). Rather, to grant a new trial, “the  
9 trial court must have a firm conviction that the jury has made a mistake.” Landes Contr. Co. v.  
10 Royal Bank of Canada, 833 F.2d 1365, 1372 (9th Cir. 1987). Courts should be cognizant that “in  
11 cases involving intangible, non-economic losses” determining damages “is a matter peculiarly  
12 within a jury’s ken.” Smith v. Kmart Corp., 177 F.3d 19, 30 (1st Cir. 1999) (internal quotations  
13 omitted).

### 14 **III. ANALYSIS**

15 Plaintiff contends that the jury’s conclusion that her sons proved no noneconomic loss  
16 “was contrary to the clear weight of evidence” and warrants a new trial on the question. ECF No.  
17 362-1 at 2. Although Plaintiff concedes the jury instructions were correct and that the jury  
18 understood them – as evidenced by the jury’s “reasoned award” of \$1,000,000 in noneconomic  
19 damages for her – Plaintiff contends her sons’ trial testimony clearly demonstrated they also  
20 suffered significant noneconomic loss. Id. at 6. Because the District presented no evidence  
21 disputing this testimony, Plaintiff argues “[t]here was simply no way the jury could reasonably  
22 find that Tim and Jeff suffered no loss.” ECF No. 374 at 4.

23 The District does not dispute that Plaintiff’s sons had a close relationship with their father,  
24 but contends the intangible nature of noneconomic damages means their loss was a “quintessential  
25 jury question” that the Court should not second guess. ECF No. 376 at 2. The jury, the District  
26 argues, received the correct instructions, which Plaintiff concedes they understood, but Plaintiff  
27 simply did not meet its burden “of proving damages by preponderance of the evidence.” Id.  
28 Therefore, the District contends, the Court should deny Plaintiff’s motion. Id.

