SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

ATE: 09/04/13			DEPT. 16
ONORABLE RITA MILLER	JUDGE	T. FREEMAN	DEPUTY CLERK
ONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
S. WORKU, C.A.	Deputy Sheriff	NONE	Reporter

3:00 pm BC481207

ELIZABETH POP ET AL
VS
PASADENA AREA COMMUNITY COLLEGE DISTRICT

Plaintiff Counsel N/A

Defendant Counsel N/A

NATURE OF PROCEEDINGS:

Dated: 9-4-2013

John A. Clarke, Executive Officer/Clerk

By: _____
T. Freeman

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MINUTES ENTERED
09/04/13
COUNTY CLERK

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3:00 pm	BC481207	Plaintiff Counsel	N/A
	ELIZABETH POP ET AL VS PASADENA AREA COMMUNITY COLLEGE DISTRICT	Defendant Counsel	N/A

NATURE OF PROCEEDINGS:

DEFENDANT'S MOTION FOR NEW TRIAL AND MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT ARGUED AND TAKEN UNDER SUBMISSION ON AUGUST 27, 2013 ARE RULED ON AS FOLLOWS:

The Court denies defendant's motions for new trial and judgment notwithstanding the verdict and plaintiff's request for contempt as more fully reflected in the "Order" incorporated hereto.

The clerk gives notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the
minute order and order
upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

MINUTES ENTERED
09/04/13
COUNTY CLERK

ORDER

HEARING DATE:	August 27, 2013
CASE NUMBER:	BC481207
CASE NAME:	*Pop, et al. v. Pasadena Area Community College District*
MOVING PARTY:	Defendant
RESPONDING PARTY:	Plaintiffs Ian Vloke-Wurth and Victor Zavala
MOTION:	Motion for New Trial Motion for Judgment notwithstanding the Verdict
SUMMARY OF ORDER:	The court denies defendant's motions for new trial and judgment notwithstanding the verdict and plaintiff's request for contempt.

Discussion:

DEFENDANT'S MOTION FOR NEW TRIAL

"A motion for new trial is a creature of statute; . . ." (*Neal v. Montgomery Elevator Co.* (1992) 7 Cal. App. 4th 1194, 1198.) A movant must satisfy Code of Civil Procedure section 657. Section 657 only permits a new trial on seven grounds: (1) irregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial; (2) misconduct of the jury; (3) accident or surprise, which ordinary prudence could not have guarded against; (4) newly discovered evidence; (5) excessive or inadequate damage; (6) insufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision is against law; and (7) error in law, occurring at the trial and excepted to by the party making the application.

Defendant's Argument That The Evidence Was Insufficient Is Inconsistent With The Weight Of The Evidence And Reasonable Inferences Drawn Therefrom.

Code of Civil Procedure section 657 provides: "A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision." (Code Civ. Proc., § 657.)

Having weighed the entire record, the credibility of the witnesses, the evidence, and the reasonable inferences drawn therefrom, the court is convinced that the evidence and reasonable inferences to be drawn therefrom was more than sufficient to justify the verdict and the jury's answers to the questions on the verdict form. The court is not convinced that the jury should

have reached a different verdict or decision. Indeed, the weight of the evidence favors plaintiffs. The most important portions of the court's reasoning are set forth below.

The Weight Of The Evidence, And Reasonable Inferences Drawn Therefrom, Shows That Plaintiffs Vloke-Wurth And Zavala Opposed And Complained About What They Reasonably And In Good Faith Believed Was Supervisor Hutchings' Mistreatment Of Pop Because She Was A Woman, That Their Complaint About That Mistreatment Was Communicated To Their Supervisor, Hutchings, And That He Terminated Them The Same Day Because They Had Made That Complaint.

The court has concluded based on the entire record that the weight of the evidence, and reasonable inferences drawn therefrom, shows that plaintiffs Vloke-Wurth and Zavala opposed and complained about what they reasonably and in good faith believed was supervisor Hutchings' mistreatment of Pop because she was a woman, that their complaint about the mistreatment of Pop because she was a woman was communicated to their supervisor, Hutchings, and that he terminated them the same day because they had made that complaint.

The following is some of the evidence, and reasonable inferences drawn therefrom, on which the court has based its conclusion as to what the weight of the evidence is.

The incident that started the chain of events that led to this litigation involved plaintiff Pop, her supervisor Hutchings, and co-employee Alice Hawkins ("Ms. Hawkins"). It occurred during a maintenance department staff "briefing" that started at the beginning of Pop's shift, at 3:00 pm on February 24, 2011. The incident started when Pop asked her supervisor, Hutchings, to sign a form given to her by the College that said it must be signed by her supervisor.

He had refused to sign it on previous occasions and initially refused to sign it on February 24, when Pop brought it to him for signature at the start of the 3:00 pm briefing. He told her to have someone else sign it. He was annoyed that Pop had asked him again to sign the form. After she asked him to "please sign this form," he stated that "a monkey could sign that paperwork, that his job was to make money for the school and that she needed to be quiet." He raised his voice, told her to sit down, and began to reprimand her, although Pop's conduct was appropriate and polite.

Hutchings told her that he was going to tell her a story about a date that he had had, which was one of the best dates he had ever gone on. The jist of the story, told to Pop and all the employees assembled for the daily briefing, was that the best date he had ever had was one where the woman did not say a single word the entire evening. He reiterated that the best thing about the date was that she never spoke. The implication was that women should not talk and should be subservient. At one point, Hutchings compared Pop to a rattling trash can that annoyed him when it made noise. He made these points after he had told her to sit down and be quiet. During this story Hutchings was sitting in a chair opposite Pop's chair, so close that they were almost knee to knee. Pop again asked politely if he would please sign the form. Ms. Hawkins, who was standing over Pop's seated figure, started yelling at Pop "shut up, shut up, shut up, know your place, know your place" and other things. Hutchings looked on, seeming to enjoy Hawkins' mistreatment of Pop. Hutchings had a "smile on his lips" and looked as if he were

enjoying a movie. Hutchings did not try to stop Ms. Hawkins, although he was her supervisor. Pop remained speechless and humiliated. She felt threatened by Hutchings' conduct.

Pop left the briefing room and went immediately to the Human Resources Department where she complained to Ms. Polo, describing what had happened. Although Pop did not use the "buzz words" of "hostile work environment," or "gender discrimination" or "sexual harassment," the words she used in describing the incident and complaining to Polo clearly amounted to a charge that Hutchings had created a hostile work environment and harassed and mistreated her based on her gender. Among other things, Pop specifically told Polo on February 24 that, "as a woman [she] felt belittled and that Mr. Hutchings was communicating to her that [she] needed to be quiet and do as [she] was told." Polo made no written record of Pop's complaint.

When Pop left the briefing room, Plaintiffs Vloke-Wurth and Zavala were standing together in the briefing room. They were saying to each other that they believed that Hutchings mistreated Pop because of her gender and that they were offended by it. Both believed in good faith that Hutchings had mistreated Pop because of her gender. (E.g., Vloke-Wurth testified "I mean, he was degrading her, humiliating her in front of everyone because she was a woman.")

Hutchings' right hand man, Luis Rodriguez, was very close to Vloke-Wurth and Zavala in the briefing room during this conversation. Rodriguez overheard what they were saying and became concerned because it sounded to him as if they were "revolting" by criticizing Hutchings' mistreatment of Pop because of her gender. He was sufficiently worried about this "revolt" that he walked over to Vloke-Wurth and Zavala and confronted them. He would not have known they were "revolting" unless he heard what they were saying, as no one testified that their observable body language somehow suggested a "revolt." There is no credible alternate explanation for Rodriguez' conduct.

When Rodriguez reached them, he asked what they were discussing. Zavala told Rodriguez that they were discussing the inappropriate way Hutchings and Hawkins had mistreated Pop. Zavala told Rodriguez that Hutchings was humiliating Pop and enjoying that Alice Hawkins was yelling at Pop and that the one reason Zavala could think of for Hutchings' conduct was "because she was a woman . . . ." Vloke-Wurth also told Rodriguez that he believed Hutchings had attacked Pop because she was a woman. Vloke-Wurth agreed and reiterated to Rodriguez what Zavala had said about Pop's mistreatment because she was a woman. Vloke-Wurth's interactions with Rodriguez were not limited to a single gesture as defendant claims. Rodriguez's recollection that Vloke-Wurth gestured but did not "make words" is less persuasive that Zavala's testimony that Vloke-Wurth told Rodriguz that Hutchings had mistreated Pop because she was a woman. They both communicated to Rodriguez that they opposed Hutchings' mistreatment of Pop because of her gender.

Vloke-Wurth was standing with Zavala and Rodriguez during this entire exchange. In addition to his verbal complaints, Rodriguez testified "he was making gestures with his head like that like he agreed . . . ." Defendant's argument at the hearing on the motion that there was only a single gesture by Vloke-Wurth is belied by defendants' own friendly witness. Vloke-Wurth's gestures further communicated to Rodriguez, and ultimately Hutchings, that Vloke-Wurth opposed Hutchings' mistreatment of Pop due to her gender.

Rodriguez immediately left the briefing room to tell Hutchings about Vloke-Wurth and Zavala's complaints. Vloke-Wurth left the briefing room to do his work, leaving Zavala behind. It is logical to assume Rodriguez accurately reported to Hutchings what he had heard; that is that Vloke-Wurth and Zavala both had been criticizing Hutchings because they believed Hutchings had mistreated and demeaned Pop because of her gender. This was what Rodriguez meant when he said they were "revolting."

After Rodriguez reported the conversation to Hutchings, Hutchings "charged" back into the briefing room and up to Zavala so angrily that Zavala was afraid Hutchings was going to attack him. Hutchings said that he understood that Zavala had been talking about him. Zavala told Hutchings in an appropriate tone of voice that he and Vloke-Wurth had been complaining about Hutchings' mistreatment of Pop; that Hutchings had been attacking her, and allowing Ms. Hawkins to do so, because Pop was a woman. Hutchings replied "You have that 80s bullshit mentality. I have run million dollar corporations. My job is to make money, not babysit."

During this conversation between Hutchings and Zavala, Hutchings angrily told Zavala: "You have a problem and I am that problem. You don't like working here do you? It's obvious. You don't need this job. You don't want this job." Zavala responded by saying he did need the job. Hutchings accused Zavala of being disloyal, and that "I could have you out of here tomorrow."

That is exactly what Hutchings did. During that shift, Hutchings told Rodriguez to terminate Zavala and Vloke-Wurth. Rodriguez reminded him that the department was under-staffed. Hutchings decided to terminate them anyway. Hutchings made the decision to terminate them because the two male plaintiffs had complained that he had mistreated and humiliated Pop because of her gender. Rodriguez told Vloke-Wurth and Zavala that they had been terminated at the end of the very shift that had started with the 3:00 pm briefing. In connection with the termination, Hutchings told Rodriguez: "We cannot continue to have those kind of employees. We have to get rid of people with that kind of an attitude."

As plaintiffs' Opposition explains on pages 16 through17, the termination of all three plaintiffs on the same day that all the foregoing events occurred is strong evidence that the termination of Vloke-Wurth and Zavala was triggered by their complaints that day about Hutchings' mistreatment of Pop based her gender, and that their termination was not due to any pre-existing complaints about poor performance. If the termination had been based on incidents of poor performance, it would be an incredible coincidence that Hutchings decided that day, after hearing about Vlke-Wurth and Zavala's complaints, to terminate them due to earlier performance issues.

There was no credible evidence that Vloke-Wurth or Zavla were terminated for poor performance. Although there may have been minor performance issues in the past, Vloke-Wurth and Zavala continued to work after any performance issues arose, and were not terminated until immediately after Hutchings discovered they objected to Hutchings's gender-based mistreatment of Pop. Defendant's argument that they were terminated due to performance issues that occurred before February 24, is not credible.

Defendant's Arguments As to Vloke-Wurth

The first of defendant's three arguments summarized above is that the evidence was insufficient to support the jury's verdict for Vloke-Wurth because Vloke-Wurth did not engage in a protected activity. Defendant argues that, because Vloke-Wurth used gestures in his communications with Rodriguez on February 24, rather than words, and because the gestures were directed at Rodriguez rather than Hutchings, Vloke-Wurth did not complain to management.

A second principal argument is that there was no causal connection between Vloke-Wurth engaging in a protected activity and his termination. This second argument is based primarily on the first argument -- that Vloke-Wurth did not complain in words to management -- and even if he did, he was terminated due to poor performance rather than due to complaining about Hutchings' mistreatment of Pop based on her gender.

Defendant's third principal argument is that, because the jury decided that Hutchings' conduct did not rise to the level of creating a hostile work environment for Pop based on her gender, Vloke-Wurth and Zavala cannot recover for retaliation. However, even if Hutchings' conduct did not rise to the level of creating a work environment hostile to Pop because she was a woman, these plaintiffs may still recover so long as they complained about a work environment hostile to women based on a reasonable and good faith belief that Hutchings' conduct created such an environment.

None of defendant's arguments is consistent with the weight of the evidence.

In order to prove retaliation under the FEHA, plaintiff must show that: (1) he engaged in statutorily protected activity; (2) adverse employment action was taken against him; and (3) a causal connection between the protected activity and the employment action. (*Lane v. Hughes Aircraft Co.* (1997) 56 Cal.App.4th 1038, 1069.)

The California Supreme Court explained the law in *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1047:

"We agree with Yanowitz that when the circumstances surrounding an employee's conduct are sufficient to establish that an employer knew that an employee's refusal to comply with an order was based on the employee's reasonable belief that the order is discriminatory, an employer may not avoid the reach of the FEHA's antiretaliation provision by relying on the circumstance that the employee did not explicitly inform the employer that she believed the order was discriminatory. The relevant portion of section 12940(h) states simply that an employer may not discriminate against an employee "because the person has opposed any practices forbidden under this part." When an employer knows that the employee's actions rest on such a basis, the purpose of the antiretaliation provision is applicable, whether or not the employee has told her employer explicitly and directly that she believes an order is discriminatory. (See, *Miller v. Department of Corrections*, *supra*, 36 Cal. 4th at pp. 473–476.)

"Standing alone, an employee's unarticulated belief that an employer is engaging in discrimination will not suffice to establish protected conduct for the purposes of establishing a

prima facie case of retaliation, where there is no evidence the employer knew that the employee's opposition was based upon a reasonable belief that the employer was engaging in discrimination. (See, e.g., *Garcia-Paz v. Swift Textiles, Inc.* (D.Kan. 1995) 873 F. Supp. 547, 559–560 (Garcia-Paz) [holding that employee who champions cause of older worker is not engaged in protected activity under the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 et seq.), even where employee acts out of "an unarticulated belief that the employer is discriminating on the basis of age ... unless the activity in question advances beyond advocacy and into recognizable opposition to an employment practice that the claimant reasonably believes to be unlawful"].) Although an employee need not formally file a charge in order to qualify as being engaged in protected opposing activity, such activity must oppose activity the employee reasonably believes constitutes unlawful discrimination, and complaints about personal grievances or vague or conclusory remarks that fail to put an employer on notice as to what conduct it should investigate will not suffice to establish protected conduct. (See *Garcia-Paz* at p. 560 ["Employees often do not speak with the clarity or precision of lawyers. At the same time, however, employers need not approach every employee's comment as a riddle, puzzling over the possibility that it contains a cloaked complaint of discrimination"]; *Booker v. Brown & Williamson Tobacco Co.* (6th Cir. 1989) 879 F.2d 1304, 1313–1314 [affirming district court's determination that an allegation of "ethnocism" was too vague to constitute protected opposition under Michigan's antidiscrimination statute].) (*Yanowitz v. L'Oreal USA, Inc.*, supra at 1047.)

"As a threshold matter, [Defendant] does not dispute that an employee's conduct may constitute protected activity for purposes of the antiretaliation provision of the FEHA not only when the employee opposes conduct that ultimately is determined to be unlawfully discriminatory under the FEHA, but also when the employee opposes conduct that the employee reasonably and in good faith believes to be discriminatory, whether or not the challenged conduct is ultimately found to violate the FEHA. It is well established that a retaliation claim may be brought by an employee who has complained of or opposed conduct that the employee reasonably believes to be discriminatory, even when a court later determines the conduct was not actually prohibited by the FEHA." (*Id.* at 1043.)

As is noted above, one of defendant's arguments is that Vloke-Wurth did not sufficiently articulate his complaint that Pop was being mistreated based on her gender. Defendant argues that Vloke-Wurth made no statements at all to management, that he made only one physical "gesture" to Rodriguez, and that this did not constitute an adequate expression of his opposition to Hutchings' conduct. However, the weight of the evidence based on the testimony of Zavala was that Vloke-Wurth did communicate verbally to Rodriguez that this was his position. There seems little doubt that Rodriguez informed Hutchings in full of Vloke-Wurth's actual words. Within hours, Hutchings fired Vloke-Wurth, as well as Zavala, because Vloke-Wurth had complained.

This is sufficient under the law. As the court stated in *Yanowitz,* Vloke-Wurth was not required to inform Hutchings "directly," or even "explicitly" that he opposed Hutchings mistreatment of Pop based on her gender. As long as Hutchings was told by Rodriguez that Vloke-Wurth, complained about mistreatment of Pop due to her gender, Hutchings knew all he needed to know to satisfy the statutory requirements for a retaliation claim. He was aware that Vloke-Wurth

"opposed the prohibited conduct" and terminated him because of that opposition. That is the weight of the evidence here.

The second argument summarized above is that there was an insufficient connection between the complaint and the termination. Hutchings learned from Rodriguez the exact nature of Vloke-Wurth's complaint and terminated him the same day because he opposed Hutchings' mistreatment of Pop based on her gender. This also clearly is the weight of the evidence and is sufficient.

The third defense argument summarized above is that Vloke-Wurth's termination was not improper because Hutchins did not actually create a hostile work environment based on Pop's gender. As is demonstrated above, this argument is inconsistent with the weight of the evidence.

Moreover, this argument ignores a key holding of *Yanowitz*, wherein the court concluded that "when the employee opposes conduct that the employee reasonably and in good faith believes to be discriminatory, whether or not the challenged conduct is ultimately found to violate the FEHA," it is still protected activity that is actionable.

The jury reasonably could have concluded from the foregoing, consistent with the law, that Vloke-Wurth was terminated because he complained that Hutchings mistreated Pop because she was a woman. His complaint did not have to be proven accurate. Again, the weight of the evidence supports the jury's verdict in favor of Vloke-Wurth.

Defendant's Arguments As To Zavala

The evidence as to Zavala is coextensive with the evidence as to Vloke-Wurth set forth above and actually is stronger than the evidence as to Vloke-Wurth. It need not be repeated separately here. Similarly, the arguments for Vloke-Wurth's position are even stronger when made by Zavala.

The evidence shows that Hutchings, who made the termination decision, knew that Zavala objected to, opposed and complained about his treatment of Pop based on her gender. Zavala reasonably and in good faith believed that Hutchings' mistreatment of Pop was because Pop was a woman. Zavala was terminated the same day. The weight of the evidence supports the verdict for Zavala as well.

As is discussed in more detail below, to the extent that defendant argues that Vloke-Wurth and Zavala were terminated due to performance issues, that argument is contrary to the weight of the evidence.

Defendant's Argument That The Damages Awarded Are Excessive And Based On Improper Consideration Of Lost Earnings And Medical Expenses Is Not Persuasive.

Code of Civil Procedure section 657 provides: "A new trial shall not be granted upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced

from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision." (Code Civ. Proc., § 657.)

Defendant argues that the jury awarded excessive damages by including economic damages in the award when plaintiffs expressly waived recovery of economic damages. In support of this argument, defendant submits the declarations of jurors Sherry Flores and Marlon Quiambao. In opposition, plaintiffs submit the declarations of Sherry Flores and Benjamin Adams. Plaintiff objected to these declarations at the hearing on the New Trial Motion on the ground that they improperly relied upon statements about mental processes of the jurors.

When a party seeks a new trial based on jury misconduct, such as considering matters outside the evidence, the court must address three questions. The court must first decide whether the affidavits supporting the motion are admissible, and then must consider if the admissible evidence establishes misconduct. If so, the court must then consider whether the misconduct was prejudicial. (*People v. Perez* (1992) 4 Cal.App.4th 893 (rehearing and review denied).)

Admissibility of juror affidavits is governed by Evidence Code section 1150, which provides:

"(a) Upon an inquiry as to the validity of a verdict, any otherwise admissible evidence may be received as to statements made, or conduct, conditions, or events occurring, either within or without the jury room, of such a character as is likely to have influenced the verdict improperly. No evidence is admissible to show the effect of such statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined." (Evid. Code, § 1150.)

"Evidence of jurors' internal thought processes is inadmissible to impeach a verdict. (Evid. Code, § 1150, subd. (a); *People v. Hutchinson* (1969) 71 Cal.2d 342, 349–350 [78 Cal. Rptr. 196, 455 P.2d 132] (*Hutchinson*).) Only evidence as to objectively ascertainable statements, conduct, conditions, or events is admissible to impeach a verdict. (Evid. Code, § 1150, subd. (a); *In re Hamilton* (1999) 20 Cal.4th 273, 294 [84 Cal. Rptr. 2d 403, 975 P.2d 600].) Juror declarations are admissible to the extent that they describe overt acts constituting jury misconduct, but they are inadmissible to the extent that they describe the effect of any event on a juror's subjective reasoning process. (*In re Stankewitz* (1985) 40 Cal.3d 391, 398 [220 Cal. Rptr. 382, 708 P.2d 1260].) Accordingly, juror declarations are inadmissible to the extent that they purport to describe the jurors' understanding of the instructions or how they arrived at their verdict. (*People v. Dillon* (2009) 174 Cal.App.4th 1367, 1384, fn. 9 [95 Cal. Rptr. 3d 449]; *Mesecher v. County of San Diego* (1992) 9 Cal.App.4th 1677, 1684 [12 Cal. Rptr. 2d 279] (*Mesecher*).)" (*Bell v. Bayerische Motoren Werke Aktiengesellschaft* (2010) 181 Cal. App. 4th 1108, 1124-1125.)

Pursuant to *People v. Perez,* the court reviews the juror declarations presented by defendant to determine which portions are admissible.

Quimbao Declaration

Paragraph 2: Quiambao's statements that he and other jurors "wanted to hear testimony" from certain witnesses who were not called, and his statement that he "believes" that the absence of

the testimony had a negative effect, are inadmissible statements about the mental processes of the jurors. His statements about what the jurors actually said in the jury room are admissible because they are "an objectively ascertainable statement" which does not address the jurors' mental processes.

Paragraph 3: Quiambao's statement that "I feel that the amount of damages was excessive" is inadmissible as an impermissible statement about juror mental processes. Quiambao's statement that there were comments by jurors about the fact that the plaintiffs had lost income and incurred medical expenses as a result of their termination is admissible as it reflects "an objectively ascertainable statement" which does not directly address the jurors' mental processes. The statements that the jurors "thought they should be compensated for these losses . . . ." and that the award "included" money for lost income and medical expenses are not admissible because they constitute unfounded speculation as to the other jurors' mental processes and purport to reflect his own mental processes.

Paragraph 4: The statement that "this treatment of Ms. Doumanian gave us the impression that Ms. Doumanian had done something seriously improper and was detrimental . . . ." is inadmissible because it addresses the jurors' mental processes, as is the statement that the judge's interaction with the judge "made a point." The remainder is admissible.

Flores Declaration Submitted By Defendant

Paragraph 1: The statements as to what Flores would have "liked to hear" are inadmissible because they address the juror's mental processes. The remainder is admissible.

Paragraph 2: The comments about Flores' personal impressions of the Special Verdict Form are inadmissible because they address the juror's mental processes. The statement that "it seemed that what the two male plaintiffs perceived mattered . . . ." is inadmissible for the same reason, as is her speculation about what might have happened if the words of the verdict form were changed. The remainder is admissible.

Paragraph 3: The comments about what the award included are inadmissible speculation about other jurors' mental processes and inadmissible statements about her own mental processes. Paragraph 3 is inadmissible in its entirety.

Paragraph 4 is admissible.

The court here addresses the admissibility of the statements made by jurors in the counter-declarations offered by plaintiffs.

Flores Declaration Submitted By Plaintiffs

Paragraph 3: Flores' statement that she was contacted by defense counsel Nancy Doumanian, that Doumanian made certain representations to Flores to obtain her declaration and the statement by Flores that "I feel I have been misled" are admissible. Flores' statements about her state of mind after the trial and deliberations had concluded are not inadmissible as statements

about a juror's state of mind during deliberations, because they address matters that occurred after deliberations. The remainder is admissible

Paragraph 4: The statement that there was no amount "awarded by the jurors as part of the damages award" is inadmissible speculation as to the other jurors' mental processes and an impermissible statement about her own mental processes. The remainder is admissible.

Paragraph 5: The statement that "I did not award anything specifically for medical expenses." Is an inadmissible representation about her own mental processes. The remainder is admissible.

Paragraph 6: The statement that "The verdict the jury reached should be upheld" is inadmissible because it reflects the mental processes Flores used when reaching the verdict. The remainder is admissible.

Paragraph 7: In paragraph 7, Flores testifies as to what the jurors discussed and did not discuss. This is a statement as to the content of objective, verifiable facts – what was and was not actually discussed. Paragraph 7 is admissible.

Defendant argues that the court should disregard this second Flores declaration (obtained by plaintiff after defendant obtained the first Flores declaration) because it is purportedly inconsistent with the first declaration obtained from Flores by defendant. The court notes that Flores states in the second declaration that defense counsel obtained the declaration in support of the motion under false pretenses, telling Flores it was for her own use to learn what she could do better at trial, rather than in the motion for new trial filed shortly after the declaration was obtained from Flores. Under these circumstances, the court is not inclined to dismiss the second declaration as inconsistent with the first declaration. Thus, at the very least, the court cannot disregard the Flores declaration submitted by plaintiffs in the court's effort to weigh the evidence.

Adams Declaration

Paragraphs 1, 2, 4 and 5: These are admissible as they do not involve jurors' mental processes.

Paragraphs 3 and 6: Like Paragraph 7 in the Flores Declaration submitted by plaintiffs, these paragraphs discusses what the jurors did and did not discuss – objective, verifiable facts. Paragraphs 3 and 6 are admissible.

Paragraph 7: "To the best of my knowledge, the jurors followed the Court's instructions and did not award damages for lost earnings or for the cost of future medical care" is inadmissible speculation about the other jurors' mental processes and concerns his own mental processes. The remainder is admissible.

The foregoing are the court's rulings on the parties' respective objections to the jurors' declarations.

The gravamen of defendant's argument is that the jury failed to follow the court's instruction that it could only consider the evidence presented. Apparently, defendant also argues that the jury failed to follow CACI 3900 and 3905A, the damages instructions read to the jury, in sequence and 3902.

CACI 3900, states in part that: If you decide that [plaintiffs] have proven their claims against [defendant], you also must decide how much money will reasonably compensate [plaintiffs] for the harm. This compensation is called damages. The amount of damages must include an award for each item of harm that was caused by [defendant's] wrongful conduct . . . .The following are the specific items of damages claimed by [plaintiff]:"

This instruction was followed immediately by CACI 3905A, which identifies the "specific items of damages claimed by [plaintiff] as past and future physical pain/mental suffering," etc. The instruction goes on to call these "noneconomic damages," which common sense tells jurors exclude loss of income and past or future medical expenses. CACI 3902 told the jurors that: "[t]he damages "claimed" by [plaintiffs] for the harm caused by [defendant] are noneconomic damages."

No other instructions described any other "items" of damages for which plaintiffs could recover. Thus, the jury was instructed that the items of damages for which plaintiffs could recover were limited to noneconomic damages to compensate for past and future physical pain/mental suffering, etc. In the plain English of the CACIs, this meant that the jury was not allowed to award any amount of economic damages such as lost income or past or future medical expenses.

Courts "presume that the jury followed the instructions absent some indication to the contrary." ((*Cassim v. Allstate Insurance Company* (2004) 33 Cal.4th 780, 803–804.)

The evidence presented by juror declarations does not contain an "indication to the contrary." The jurors were instructed that the damages claimed were limited to noneconomic damages. Common sense would have told the jurors that lost income and medical bills are economic damages.

Defendant's contention that the jury awarded noneconomic damages is based on statements from some jurors that Vloke-Wurth and Zavala had lost income and had incurred medical expenses which should be compensated. The declarations do not state how many jurors made such statements. There is no evidence that the jury disregarded the jury instructions, or intended to make an award in violation of the jury instructions. (In fact, the jury read the instructions aloud while deliberating.) There is no evidence of an agreement to by the jurors to award lost income or medical expenses. There is no evidence, admissible or not, that any juror actually voted to compensate plaintiffs for economic damages. The statements by jurors easily may be interpreted as statements by jurors who followed the instructions to the letter, but expressed regret at their inability to compensate the plaintiffs for lost income and medical expenses.

It also does not appear that the awards to Vloke-Wurth and Zavala were so large that they necessarily included improper amounts. Quite to the contrary, the weight of the evidence was

that the loss of these jobs was emotionally devastating and debilitating to both Vloke-Wurth and Zavala.

The amount of the award was only a small fraction of the amount plaintiffs requested in closing. That Vloke-Wurth and Zavala had worked for defendant for only a short period of time before they were terminated has limited relevance to the emotional distress damages they suffered as a result of their unlawful termination. These were shown to be vulnerable people. Their reaction to their termination did not depend on the number of days they had worked for defendant or their long familiarity with unemployment.

The admissible evidence, and the weight thereof, is compatible with the amounts awarded and with appropriate deliberation by the jurors. It does not justify a finding that damages were excessive, included unauthorized items of damage, or that defendant was otherwise prejudiced.

Defendant's Argument That There Was An Error In Law Also Is Not Persuasive.

Section 657(7) of the Code of Civil Procedure states that an error in law is a ground for a new trial: "Error in law, occurring at the trial and excepted to by the party making the application." (Code Civ. Proc., § 657(7).)

Defendant argues that the special verdict form and an unidentified special instruction to the jury were erroneous as the "reasonable" and "good faith" beliefs of the plaintiffs were irrelevant. Defendant argues that what is relevant is that complaints about personal grievances or vague or conlusory remarks which fail to put an employer on notice of what needs to be investigated are insufficient to support a case of retaliation.

Although defendant did not identify or attach the jury instruction that created the alleged error of law, the court assumes that defendant is addressing 12940(h) which was modified at plaintiffs' request as follows: "To establish this claim, each plaintiff must separately prove all of the following: 1. That plaintiff complained that Elizabeth Pop had been subjected to what he or she perceived to be a hostile work environment based on Ms. Pop's gender . . . ."

This instruction was wholly consistent with applicable law. *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1043-1044 states as follows:

"As a threshold matter, L'Oreal does not dispute that an employee's conduct may constitute protected activity for purposes of the antiretaliation provision of the FEHA not only when the employee opposes conduct that ultimately is determined to be unlawfully discriminatory under the FEHA, but also when the employee opposes conduct that the employee reasonably and in good faith believes to be discriminatory, whether or not the challenged conduct is ultimately found to violate the FEHA. It is well established that a retaliation claim may be brought by an employee who has complained of or opposed conduct that the employee reasonably believes to be discriminatory, even when a court later determines the conduct was not actually prohibited by the FEHA. (See, e.g., *Miller v. Department of Corrections* (2005) 36 Cal. 4th 446, 473 [30 Cal. Rptr. 3d 797, 115 P. 3d 77]; *Flait v. North American Watch Corp., supra*, 3 Cal. App. 4th at p.

477; *Moyo v. Gomez* (9th Cir. 1994) 40 F.3d 982, 985 (*Moyo*); *Gifford v. Atchison, Topeka & Santa Fe Ry. Co.* (9th Cir. 1982) 685 F.2d 1149, 1157).)

"Strong policy considerations support this rule. Employees often are legally unsophisticated and will not be in a position to make an informed judgment as to whether a particular practice or conduct actually violates the governing antidiscrimination statute. A rule that permits an employer to retaliate against an employee with impunity whenever the employee's reasonable belief turns out to be incorrect would significantly deter employees from opposing conduct they believe to be discriminatory. (See, e.g., *Gifford v. Atchison, Topeka & Santa Fe Ry. Co., supra*, 685 F.2d at p. 1157; *Moyo*, supra, 40 F.3d at p. 985.) As the United States Supreme Court recently emphasized in the context of title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), "[r]eporting incidents of discrimination is integral to Title IX enforcement and would be discouraged if retaliation against those who report went unpunished. Indeed, if retaliation were not prohibited, Title IX's enforcement scheme would unravel." *(Jackson v. Birmingham Board of Education* (2005) 544 U.S. 167 [161 L. Ed. 2d 361, 125 S. Ct. 1497, 1508].) By the same token, a rule that would allow retaliation against an employee for opposing conduct the employee reasonably and in good faith believed was discriminatory, whenever the conduct subsequently was found not to violate the FEHA, would significantly discourage employees from opposing incidents of discrimination, thereby undermining the fundamental purposes of the antidiscrimination statutes."

The question on the verdict form accurately reflected that Vloke-Wurth and Zavala did not need to be correct in believing that Pop was subjected to mistreatment based on her gender. They need only have shown that they had a good faith, reasonable belief that Pop was subjected to the illegal conduct, shown that they had opposed or complained about it and management knew of their opposition, and shown they had been terminated because of that opposition or complaint.

CACIs cannot be tailored to every fact pattern that may be presented to a jury. In this case, the court was required to tailor CACI 12940(h) to address the contentions in this case.

As to defendant's objection(s) to the special verdict form, defendant did not identify in its briefs the questions on the special verdict form to which it objects. Nor did defendant indicate the place in the record, if any, where an objection was stated to the particular question. However, it appears that defendant's argument addresses the following questions on the verdict form:

"Did [plaintiff] complain that Elisabeth Pop had been subjected to what he perceived to be a hostile work environment based on her gender?"

"Was [plaintiff's] complaint based on his perception that Elisabeth Pop had been subjected to a hostile work environment based on her gender a substantial motivating reason for Pasadena Area Community College District's decision to discharge him?"

Their inclusion was proper for the same reasons discussed above as to CACI 12940(h).

Moreover, there is no indication defendant was prejudiced by the modification of the instruction or the inclusion of the language cited above in the instruction and verdict form. As is discussed

more fully below under the heading "Defendant's Argument That It Was Prejudiced Is Unsupported . . . ," the jury's meticulously split verdict and the answers to the questions on the verdict form indicate that the jurors were very careful to make fine distinctions between the three plaintiffs and each of their causes of action, rejecting some and accepting others. These distinctions suggest that the jury followed the law correctly.

A new trial is not justifiable based on the purported error in law.

Defendant's Argument That It Was Prevented From Having A Fair Trial Due To An Irregularity In The Proceedings Is Not Persuasive.

Section 657 (1) provides that an "[i]rregularity in the proceedings of the court, jury or adverse party, or any other order of the court or abuse of discretion by which either party was prevented from having a fair trial" is a ground for a new trial. (Code Civ. Proc., §657(1))

Defendant's Argument Concerning Events During Closing Argument Is Unfounded.

Defendant's principal argument is that the judge's words and demeanor while correctly sustaining an objection to defense counsel's statements during closing argument constituted an irregularity in the proceedings which may have influenced the jury and caused the trial to be unfair to defendant.

Defendant makes no argument to this effect in its New Trial Motion, but rather, attempts to incorporate by reference the entire Ex Parte Application and Motion for Mistrial defendant filed on July 3, 2013, the day following closing arguments. Defendant has not provided authority that it is proper to incorporate by reference another motion which is not currently noticed and exceeds the permissible length of the briefs. However, the court is inclined to address at least parts of defendant's argument on the merits, so long as the transcript of the July 3, 2013 hearing on the Motion for Mistrial and Plaintiffs' Opposition to the Motion for Mistrial, filed with the court's permission on July 11, 2013, are considered along with Defendant's brief on the same motion.

Defendant argued in its Motion for Mistrial, *inter alia,* that the court's words and demeanor were improper when it sustained plaintiffs' valid objection to a statement by defense counsel, Nancy Doumanian, during closing argument.

The transcript of the relevant portion of closing argument is as follows:

"MS. DOUMANIAN: THIS CASE IS NOT ABOUT INJUSTICE OR CIVIL RIGHTS. THIS CASE IS THE TYPE OF CASE THAT MAKES THAT MAKES LEGITIMATE CASES LOOK ILLEGITIMATE. THIS IS THE KIND OF CASE THAT HARMS ALL WORKERS WHO HAVE LEGITIMATE CLAIMS THAT THEY BRING TO THE COURTS. THIS CASE IS NOT ABOUT $5 MILLION. IT IS NOT ABOUT WRITING A WRONG. IN FACT, WHAT THIS CASE IS REALLY ABOUT IS YOU CANNOT EVEN AWARD THEM A DOLLAR OUT OF SYMPATHY. YOU CANNOT EVEN AWARD THEM

$1,00 OUT OF SYMPATHY JUST AS A MATTER OF PRINCIPLE. IF YOU AWARD ONE DOLLAR TO THE PLAINTIFFS, THEY GET TO COLLECT ALL OF THEIR ATTORNEY FEES AND RECOVER ATTORNEY FEES IN THEIR CASE.
MR. GOLDBERG: OBJECTION YOUR HONOR.
THE COURT: I'M SORRY.
MR. GOLDBERG: OBJECTION YOUR HONOR. THAT IS TOTALLY IMPROPER ARGUMENT.
THE COURT: ALL RIGHT. LETS SEE.
OH, YES. I AM SHOCKED THAT YOU WOULD SAY SOMETHING LIKE THAT.
MS. DOUMANIAN: THERE WAS NO IN LIMINE ON IT. I APOLOGIZE.
THE COURT: THERE WAS NO WHAT?
MS. DOUMANIAN: THERE WAS NO MOTION IN LIMINE ON THAT.
THE COURT: YOU KNOW THAT THAT IS COMPLETELY INADMISSIBLE. YOU KNOW THAT THAT IS COMPLETELY SOMETHING THAT IS NEVER TOLD TO JURORS. IT IS ONE OF THE DIRTIEST TRICKS I HAVE EVER SEEN. SO I AM GOING TO TELL THE JURY THAT WHAT SHE SAYS IS NOT EVIDENCE. YOU DON'T KNOW WHETHER SHE IS TELLING YOU THE TRUTH OR NOT. YOU MUST COMPLETELY DISREGARD WHAT SHE SAID. THERE IS NO WITNESS, THERE IS NO LEGAL INSTRUCTION THAT BACKS THAT UP, AND I AM SHOCKED.
WHY DON'T YOU FINISH RIGHT NOW."

Defendant complains that the judge impugned Ms. Doumanian's truthfulness with the foregoing admonition. However, Ms. Doumanian's statement of the law was, indeed, untrue. Counsel's claim that plaintiffs would "get to collect all of their attorney fees" so long as the jury awarded one dollar is a misstatement of the law. Trial courts have discretion to deny, and do deny, attorney fees to a plaintiff who recovers less than $25,000 on a FEHA claim. (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 990.)

Moreover, defense counsel should not have needed a motion in limine to warn her not to mention that plaintiffs might recover attorney's fees. Counsel knew that CACI 3964, which had just been read aloud to the jury in defense counsel's presence, states: "You must not consider or include as part of any award, attorney fees or expenses that the parties incurred in bringing or defending this lawsuit." Defense counsel knew that it was improper to raise the issue of attorney fees in closing argument and did it anyway.

This was not the first time defense counsel had made a clearly improper appeal to the jurors' sympathies passions and prejudices. A few minutes earlier in her closing argument, defense counsel had argued that the five million dollars plaintiffs were seeking in emotional distress damages would be better used if kept by the College for textbooks classrooms. This comment was not based on any evidence presented and was an improper appeal to the passions and

prejudices of these particular jurors, many of whom were college or high school teachers or students. The court had just sustained an objection to this argument without significant comment.

Nor was this the first time during closing argument or trial that defense counsel had misstated the evidence to the jury. Her closing argument had been rife with incorrect statements about what witnesses had testified to, as well as misleading omissions from testimony she quoted to the jury. (See Order granting Pop's motion for new trial, prepared concurrently herewith.)

Defendant contends that the judge's demeanor was angry, that the judge yelled and screamed, had a "tirade," and that her eyes "bulged." In support of this argument, defendant submits the declarations of two associates from Ms. Doumanian's law firm, two litigation assistants from her firm, the office manager from her firm, her courtroom technician and a College representative, along with two declarations from jurors which touch on the subject.

Defendant's Reply incorrectly states that the plaintiffs have not opposed the portion of defendant's new trial motion which is based on the judge's admonition to Ms. Doumanian quoted above. However, just as defendant has incorporated its Motion for Mistrial into its New Trial Motion, plaintiffs have incorporated their Opposition to the Motion for Mistrial into their Opposition to Defendant's New Trial Motion. As noted above, this Opposition and the transcript of the hearing on the mistrial motion (July 3, 2013, morning) must be considered if defendant's Motion for Mistrial is treated as having been incorporated by reference in the New Trial Motion.

With their Opposition to Defendant's Motion for Mistrial, plaintiffs submitted three counter-declarations. Two of these are by plaintiffs' two trial attorneys, and state that the Judge did not yell or scream and that the Judge's eyes did not "bulge."

All of the foregoing declarations are by persons who have an interest in the outcome. However, plaintiffs also submitted the declaration of a neutral person who has no apparent interest in the outcome. This is the declaration of Marc Nurik, executed July 9, 2013. Mr. Neurik states that he has been engaged in the active practice of law for 38 years, has tried hundreds of jury trials in state and federal court in various jurisdictions, and is currently of counsel to a firm not involved in this litigation. He declares that he was present during the entire closing arguments and states as follows:

"4. I heard Ms. Doumanian argue that if the jury awarded even one dollar to the Plaintiffs that the Plaintiffs would be entitled to recover all of their attorneys fees. I then heard the Judge tell Ms. Doumanian that the argument was improper. I also heard Ms. Doumanian attempt to justify her conduct by stating that there was no in limine motion on this issue. I then heard the Judge tell Ms. Doumanian that she knew that this was something which was never told to juries and that it was one of the dirtiest tricks the Judge had ever seen in her Court. I was looking at the Judge the entire time that she was speaking to Ms. Doumanian. At no time did the Judge yell or scream and the Judge's eyes were not bulging. I thought that given Ms. Doumanian's conduct that the Judge's response was quite restrained under the circumstances."

On a motion for new trial, the trial court considers the entire record and weighs conflicting evidence and reasonable inferences drawn therefrom. The law asks trial courts to do so because the judge was present as events unfolded and is in a position to determine what occurred.

The Neurik declaration is consistent with the court's recollection of events as to the judge's tone and demeanor. The court's recollection also is consistent with the declarations of plaintiffs' counsel, who say the judge did not yell or scream, and her eyes did not bulge. The conflicting declarations submitted by defendant are not consistent with the court's recollection. Moreover, the court is inclined to give the Nurik declaration the most weight, as that declaration is the only declaration from a person with no apparent stake in the outcome of this motion.

Defendant's Argument That It Was Prejudiced By Any Alleged Error Or Irregularity Is Unsupported And Based Upon Inadmissible Speculation About The Mental Processes Of The Jurors.

None of the juror declarations state that the judge's admonition to defense counsel was ever discussed during deliberations. The admissible portions of the declarations do not support defendant's claim that even a single juror considered the judge's admonition, tone or demeanor or changed his or her approach to reaching the verdict. Defendant's speculation about what might have been in the minds of the jurors is not evidence.

Indeed, the verdict was split meticulously by the jury. Pop recovered nothing. Vloke-Wurth and Zavala did not prevail on their own claims for hostile work environment. Interestingly, the jury found that they had been victims of a hostile work environment, but had not suffered damages as a result of that environment. Rather, their damages were found to be attributable to retaliation against them by defendant for their complaint.

Although Vloke-Wurth and Zavala recovered on their cause of action for retaliation, their combined recovery was only a little more than one tenth of what the plaintiffs had asked the jury to award.

In addition, the jurors had been instructed by the judge just prior to closing argument that, "[i]n reaching your verdict, do not guess what I think your verdict should be from something I may have said or done." (CACI 5000.) They had been given a similar instruction (CACI 100) at the commencement of the trial. As is noted above, the jurors are presumed to have followed the court's instructions unless there is evidence to the contrary. No evidence has been presented that the judge's words or demeanor, objectionable or not, played a role in the jury's deliberations or verdict.

The credible evidence is that the court's admonition was proper in tone and content. In weighing the conflicting evidence as it must on a motion for new trial, the court is convinced the judge's words and tone and facial expression were not inappropriate and did not prejudice defendant, that the trial was fair to defendant, and that it would be improper and contrary to the evidence to grant a new trial.

The court agrees that yelling or screaming or making faces at an attorney is improper. However, a merely stern admonition, like the one actually given here according to the only neutral declarant and the judge's observation of the proceedings, is one of a judge's only tools to deter misconduct and keep the trial fair. If lawyers are allowed to prevail on conflicting subjective allegations about the level of anger that was or was not in the judge's voice, the decibels of that voice, or their subjective interpretation of the expressions on the judge's face, along with speculation about all these things' subjective impact upon the jury, trial courts in California will be robbed of the ability to give any admonition at all. This is so because even the most benign words and facial expressions can be portrayed subjectively as angry, too loud, or too expressive of something, so that they may have prejudiced the jury.

The Other Arguments Raised In Defendant's Motion for Mistrial, Incorporated By Reference In New Trial Motion, Also Lack Merit.

Defendant also argues that the judge cut off the last three minutes of Ms. Doumanian's lengthy closing argument. It is well-recognized that the control of proceedings is within the court's broad discretion. (See, e.g., Cal. Code of Civil Proc., sections , 128, 187; e.g., *Venice Canals Resident Home Owners Ass'n. v. Superior Court* (1977) 72 Cal.App.3d 675 (court may control proceedings before it to prevent unfairness).) Curtailing an examination can be justifiable, as it can prevent an attorney from continuing to engage in unfair and improper conduct, such as making statements that are not based on the evidence, appealing to the jurors' sympathies, passions and prejudices, and improperly "ringing bells" that are difficult to "unring."

There are so many other arguments and counter-arguments in defendant's Motion for Mistrial, Plaintiffs' Opposition thereto and the transcript of the argument on the motion, that it is most efficient for the court to refer the parties to those materials, the court's statements at the hearing on the Motion for Mistrial, and the court's previous denial of that motion.

In evaluating the evidence, the court has concluded that none of defendants' arguments in the Motion for Mistrial are persuasive.

Defendant's Motion for New Trial is denied.

DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT ("JNOV")

A JNOV motion challenges the legal sufficiency of the opposing party's evidence - i.e., whether the evidence was sufficient to prove the claims or defenses asserted by the opposing party and now embodied in the jury's verdict. Thus, it has the same function as a motion for nonsuit or directed verdict, the only difference being that the JNOV motion is brought after the verdict is rendered. Since a JNOV motion is a "demurrer" to the evidence, all evidence supporting the verdict is presumed true. The issue is whether these facts constitute a prima facie case or defense as a matter of law. (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110.)

A JNOV motion is governed by the same rules that govern a motion for directed verdict or nonsuit. The trial judge cannot weigh the evidence or determine the credibility of witnesses.

Conflicting evidence is resolved against the moving party. The party in whose favor the verdict was rendered is entitled to the benefit of every reasonable inference which may reasonably be drawn from the evidence and to have all conflicts in the evidence resolved in his favor. A JNOV motion must be denied if substantial evidence, or reasonable inferences to be drawn therefrom, supports the verdict. (*Campbell v. Cal-Guard Sur. Svs. Inc.* (1998) 62 Cal.App.4th 563, 569.)

A party can prevail on a JNOV motion only where the verdict for the other party is supported only by inferences that are contrary to "clear, positive, uncontradicted evidence presented by the moving party, which is of such a nature that the moving party's evidence cannot rationally be disbelieved. (*Teich v. General Mills, Inc.* (1959) 170 Cal.App.2d 791, 799.)

The evidence supporting the verdict is set forth above. It is substantial and supports the verdict in favor of both Vloke-Wurth and Zavala.

Moreover, defendant has not identified any clear, positive, uncontradicted evidence of such a nature that it cannot be rationally disbelieved.

Defendant also raised all of the grounds in this motion that it raised in the Motion for New Trial. The only ground for a judgment notwithstanding the verdict is the legal sufficiency of the evidence. Other grounds will not be addressed here.

The Motion for Judgment Notwithstanding the Verdict lacks merit and is denied.

PLAINTIFFS' REQUEST THAT THE COURT HOLD MS. DOUMANIAN IN CONTEMPT

The court has not considered plaintiffs' request for contempt and will only do so if it receives a noticed motion that complies with all applicable legal requirements.

9/1/13

Dated

Rita Miller, Judge of the Superior Court