SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
NORTH JUSTICE CENTER

MINUTE ORDER

DATE: 04/10/2026 TIME: 04:30:00 PM DEPT: N15

JUDICIAL OFFICER PRESIDING: Nathan Vu
CLERK: R. Castro
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: J. Campirano

CASE NO: **30-2022-01287702-CU-OE-NJC** CASE INIT.DATE: 10/21/2022
CASE TITLE: **Ramirez vs. City of Santa Ana**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 74822929

EVENT TYPE: Under Submission Ruling

APPEARANCES

In chambers.

There are no appearances by any party.

The court, having taken the above-entitled matter under submission April 1, 2026, and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

AMENDED RULING

Motion for New Trial

Defendant City of Santa Ana's Motion for New Trial is **GRANTED.**

This order shall only be effective if, on appeal, the judgment notwithstanding the verdict is reversed on appeal and this order is not appealed or is affirmed on appeal. (See Code Civ. Proc., § 629, subd. (d).)

Pending Motion

Defendant City of Santa Ana moves for a new trial pursuant to Civil Procedure Code section 657, subsections (1), (2), (4), (5), (6), and (7).

Standard for Motion for New Trial

The grounds upon which a new trial may be granted are:

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, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

5. Excessive or inadequate damages.

6. Insufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision is against law.

7. Error in law occurring at the trial and excepted to by the party making the application.

(Code Civ. Proc., § 657.)

The right to a new trial is purely statutory and the procedural steps for making and determining such a motion are mandatory and must be strictly followed. (*Id.* at 1193.) "[T]he motion for new trial can only be granted on a ground specified in the notice of intention to move for a new trial." (*Wagner v. Singleton* (1982) 133 Cal.App.3d 69, 72; see also Code Civ. Proc., § 657 ["On appeal from an order granting a new trial the order shall be affirmed if it should have been granted upon any ground stated in the motion, whether or not specified in the order or specification of reasons . . . ."].)

A motion for a new trial based on the first four grounds enumerated in the statute (irregularity in the proceedings or abuse of discretion, jury misconduct, accident or surprise, and new evidence) must be made upon affidavits. (Code Civ. Proc., § 658.)

A motion based upon one of the remaining grounds must be made based upon the minutes of the court. *(Ibid.*; *Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal. App. 4th 1171, 1192.) The "minutes of the court" include the records of the proceedings entered by the judge or courtroom clerk, showing what action was taken and the date it was taken, and may also include depositions and exhibits admitted into evidence and the trial transcript. (*Id.*)

The court must consider the entire record in ruling on a motion for new trial. (*Casella v. Southwest Dealer Services, Inc*. (2007) 157 Cal.App.4th 1127, 1159.)

However, the burden of proof rests with the moving party. (*Donovan v. Poway Unified School Dist.* (2008) 167 Cal.App.4th 567, 625.)

Whether to grant a new trial is left within the discretion of the trial court:

The trial court is in the best position to assess the reliability of a jury's verdict and, to this end, the Legislature has granted trial courts broad discretion to order new trials. The only relevant limitation on this discretion is that the trial court must state its reasons for granting the new trial, and there must be substantial evidence in the record to support those reasons.

(*Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 405, 411–412; see also *Shaw v. Pacific Greyhound Lines* (1958) 50 Cal.2d 153, 159 ["The determination of a motion for a new trial rests so completely within the court's discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears, and the order will be affirmed if it may be sustained on any ground, although the reviewing court might have ruled differently in the first instance."], citation omitted.)

"A trial court serves as a 'gatekeeper' on a motion for new trial. It opens the gate only rarely, a testament to the fact that the vast majority of trials are fairly conducted. In these cases, motions for new trial are routinely made, routinely denied, and are routinely affirmed on appeal." (*Baker v. American Horticulture*

Supply, Inc. (2010) 186 Cal.App.4th 1059, 1068-1069.) If appreciable conflict exists in the evidence, a trial court's decision to either grant or deny a motion for new trial will not be disturbed on appeal. (See *Tice v. Kaiser Co.* (1951) 102 Cal.App.2d 44, 46.)

Further, the court may not grant a new trial unless an error was prejudicial to the complaining party. " [T]he trial court, no less than the appellate court, is expressly enjoined by [Article 6, Section 13] of our Constitution from granting a new trial for error of law unless such error is prejudicial. If it clearly appears that the error could not have affected the result of the trial, the court is bound to deny the motion." (*Bristow v. Ferguson* (1981) 121 Cal.App.3d 823, 826, *quoting Sparks v. Redinger* (1955) 44 Cal.2d 121,125.)

The court may not presume that an error was prejudicial and may not vacate a judgment unless it can be shown that "the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed." (Code Civ. Proc., § 475.)

If a court denies a motion for new trial, a minute order is sufficient and no reasons for the denial are required. (*Stevens v. Owens–Corning Fiberglas Corp.* (1996) 49 Cal.App.4th 1645, 1657.)

Evidence of "Camps" and "Gangs"

Defendant first contends that the court erred in denying its Motion in Limine Number 50, which sought to exclude all evidence of "camps" or "gangs" at the City of Santa Ana Police Department (Police Department).

Defendant contends that such evidence should not have been introduced at trial because a party's membership in a social group cannot form a basis for that party to claim that he or she has been discriminated, harassed, or retaliated against in the employment context. (See *Nakai v. Friendship House Ass'n of American Indians, Inc.* (2017) 15 Cal.App.5th 32, 40 [no valid Fair Employment and Housing Act (FEHA) claim where alleged animus is based on particulars about a person's spouse, rather than legally protected marital status]; *Chen v. County of Orange* (2002) 96 Cal.App.4th 296 [no valid FEHA claim where alleged animus and adverse employment actions were based on antipathy toward someone with whom plaintiff had relationship rather than plaintiff being member of protected class].)

However, the court did not deny Motion in Limine Number 50 because it disagreed with the above legal contention. Rather, the court denied the motion in limine because evidence of membership in a "camp" was relevant to critical issues in this case.

In order to make out either the 1st Cause of Action for Retaliation in Violation of Labor Code § 1102.5 or the 2nd Cause of Action for Retaliation in Violation of the Fair Employment and Housing Act, Plaintiff was required to show a causal link between Defendant's knowledge of Plaintiff's protected activity and the adverse employment actions taken against Plaintiff. (See *St. Myers v. Dignity Health* (2019) 44 Cal.App.5th 301, 314 [plaintiff claiming for retaliation under Section 1102.5 "must show (1) she engaged in a protected activity, (2) her employer subjected her to an adverse employment action, and (3) a causal link between the two."]; *Zamora v. Security Industry Specialists, Inc.* (2021) 71 Cal.App.5th 1, 63 [under FEHA, "[t]o establish a prima facie case of retaliation, 'a plaintiff must show (1) he or she engaged in a "protected activity," (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action.'"], quoting *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042.)

The evidence of "camps" was necessary to explain the intent of Chief David Valentin and other members of the Police Department's command staff when they took actions that Plaintiff alleged constituted adverse employment actions. In turn, the intent of these persons could prove or disprove the required causal link. The evidence of "camps" therefore was relevant and admissible. (See Evid. Code, § 351

["Except as otherwise provided by statute, all relevant evidence is admissible."].) (fn.1)

(fn.1) As explained in the court's ruling on the motion for judgment notwithstanding the verdict, the evidence of "camps" was relevant to show that there was no causal link between Plaintiff's protected activity and any adverse employment actions. The evidence of camps showed that, at worst, any adverse employment actions arose from Plaintiff's refusal to join Chief Valentin's "camp".

Further, Defendant does not present sufficient evidence that it was prejudiced. As an initial matter, there was no evidence that there were any "gangs" at the Police Department and the term came up only a handful of times during this lengthy trial.

In addition, the court gave Special Jury Instruction Number 1, in which it stated:

Membership or nonmembership in a "camp" is not a legally-protected class and the formation of camps is not an illegal activity. Accordingly, Rita Ramirez cannot base her claims on the fact that she joined or refused to join a "camp," or that she reported the existence of "camps" at the Santa Ana Police Department.

(ROA #803 at p. 26.)

Thus, the court instructed the jury to avoid the improper use of "camps" and it must be assumed that the jury followed this instruction. (*Epochal Enterprises, Inc. v LF Encinitas Properties, LLC* (2024) 99 Cal.App.5th 44, 65 ["We are required to presume the jury followed the trial court's instructions in the absence of contrary evidence."].)

Special Jury Instruction Number 1

Defendant next complains about Special Jury Instruction Number 1.

Where the court gives an erroneous jury instruction or erroneously refuses to give a jury instruction, that may be a basis to grant a new trial pursuant to Section 657, subsections (1) and (7). (See *Bristow v. Ferguson*, *supra*, 121 Cal.App.3d at p. 826; *Christian v. Bolls* (1970) 7 Cal.App.3d 408, 414.)

However, Defendant does not assert that Special Jury Instruction Number 1 was erroneous. In fact, it was Defendant who proposed giving Special Jury Instruction Number 1 in the first place.

Rather, Defendant's argument seems to be that "the instruction was clearly ineffective" because "by that point in time [when the instruction was given], the bell could not be unrung and undue prejudiced had already resulted." (Def.'s Mot. for New Trial, Mem. P.&A.s at p. 12:15-17.)

However, this argument violates the case law that indicates that the court must assume the jury followed the jury instruction and that the court may only grant a new trial on the basis of a jury instruction where that jury instruction is erroneous.

The true gravamen of Defendant's argument seems to be that the introduction of evidence about "camps" was prejudicial, which the court has already addressed above.

Plaintiff's Counsel Misconduct

Defendant also alleges that Plaintiff's Counsel engaged in "pervasive" misconduct before and throughout the trial.

Defendant contends that Plaintiff's Counsel asserted in closing argument that Plaintiff's refusal to join a "camp" could constitute a basis to find retaliation against her.

However, the passage of Plaintiff's Counsel's closing argument that is cited by the Defendant only asserts that Chief Valentin shunned Plaintiff and took responsibilities away from her because she refused to join his "camp." Plaintiff's Counsel did not argue Chief Valentin's actions could constitute retaliation.

Defendant also argues that Plaintiff's Counsel mislead the court by claiming that Plaintiff's would provide evidence of illegal gangs at the Police Department and that admissions were made at a Police Department retreat.

As to the former, the statements about illegal gangs at the Police Department were made with respect to Motion in Limine Number and in support of Plaintiff's efforts to be allowed to provide evidence about "camps" and "gangs". As noted above, the court's ruling on that issue was correct so there was no prejudice even assuming Plaintiff's Counsel falsely represented the evidence that Plaintiff intended to present.

With respect to the latter, Defendant's argument rests of Defendant's interpretation of what was said at the retreat. A factfinder could reasonably come to the opposite conclusion – that admissions were made at the retreat.

In any case, the only effect of Plaintiff's Counsel's allegedly false representation was that the court denied Motion in Limine Number 5, which sought to exclude all evidence about the retreat. Defendant has not presented any evidence that it was prejudiced by introduction of evidence about the retreat. Defendant only claims that the retreat was "completely irrelevant," not that it was prejudicial to Defendant. (Def.'s Mot. for New Trial, Mem. P.&A.s at p. 14:21.)

Defendant next argues that Plaintiff's Counsel was "coaching" Plaintiff when she was testifying on the stand. However, this assertion is based on the speculation of one juror, who could only say that Plaintiff's Counsel "appeared to signal" to Plaintiff.

Defendant then contends that Plaintiff's Counsel improperly used artificial intelligence, which lead Plaintiff's Counsel to provide the court with citations to non-existent cases. Defendant is correct on this point, but fails to show that it suffered any prejudice that would support the granting of a new trial.

As an initial matter, the citations were made in briefing to the court and were never presented to the jury.

Further, as the court stated at the time, it did not rely on the false citations in making its ruling. This is because, while the citations were incorrect, the proposition that the citations were intended to support was correct. (fn.2)

(fn.2) Accordingly, as the court advised previously, this argument is best addressed in a motion for sanctions rather than a motion for new trial.

Finally, Defendant asserts that the cumulative effect of all this misconduct requires a new trial. However, because none of these actions prejudiced the Defendant, all of these actions in the aggregate also did not prejudice the Defendant.

Jury Misconduct

Defendant then contends that a new trial should be granted because of juror misconduct.

As the Court of Appeal has explained:

One practice guide states that when a trial court is considering a new trial motion based on jury

misconduct, it must undertake a three-step inquiry and decide (1) whether affidavits supporting the motion are admissible, (2) whether the evidence establishes misconduct occurred, and (3) whether the misconduct was prejudicial.

(*TRC Operating Co. Inc. v. Chevron USA, Inc.* (2024) 102 Cal.App.5th 1040, 1063, citing (3 Fairbank, et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2023) ¶ 18:140.1, p. 18-39.)

"The test for prejudice is whether there is a reasonable probability that a result more favorable to the moving party would have been obtained in the absence of the juror misconduct." (*Ibid*.)

Defendant relies upon the declaration of Juror Irma Garcia, who states:

During jury deliberations, several jurors made statements reflecting an opinion that the City of Santa Ana had significant financial resources and should be required to pay damages because of its ability to do so. Specifically, I recall comments during
deliberations along the lines of: "Santa Ana has a lot of money, they could have done
better, they deserve to pay." One of the jurors who stated something like this was
Jeffrey Thongsewan. These comments were made in connection with discussions about what amount of money should be awarded to Plaintiff Rita Ramirez.

(Decl. of Juror Irma Garcia (Garcia Decl.), ¶ 2.)

What is missing from the declaration is any indication that Juror Garcia, or any other juror, considered these alleged statements in coming to a verdict and increased the amount of damages the intended to award.

Further, Plaintiff has presented the declaration of Juror Dan Adams, who stated that "the final damage award was accurate and I did not 'double' or otherwise miscalculate the amount. . . . Also, the jury did not consider Defendant's 'financial resources' in determining the verdict and amount of damages." (Decl. of Dan Adams in Supp. of Pltf.'s Opp'n to Def.'s Mot. for New Trial (Adams Decl.), ¶ 4.)

In addition, Juror Roberta Valentine also stated that "the jury did not consider Defendant's 'financial resources' in determining the verdict and amount of damages" and "the final damage award was accurate and it was not 'doubled' or otherwise miscalculated." (Decl. of Roberta Valentine in Supp. of Pltf.'s Opp'n to Def.'s Mot. for New Trial (Valentine Decl.), ¶ 3.)

Finally, the declaration of Juror Michelle Rayos, which was provided by Defendant and not Plaintiff, makes no mention of discussions about the City of Santa Ana's wealth or financial resources or any miscalculation of damages. (See Decl. of Juror Michelle Rayos, ¶¶ 1-2.) Further, when the jury was polled, Juror Rayos agreed with the 10 other jurors (other than Juror Garcia) regarding the amount of damages. (See ROA #795.)

Based on this state of the evidence, the court cannot say that juror misconduct occurred because the jury considered evidence outside the record or that Defendant was prejudiced because the jury increased the amount of damages. (fn.3)

(fn.3) The Garcia and Rayos Declarations also include statements that "[d]uring deliberations, testimony related to the alleged "camps" within the department
was discussed and considered by jurors." (Garcia Decl., ¶ 4; Rayos Decl., ¶ 1.) For the reasons explained above, it was not improper for the jury to discuss and consider "camps." It was only inappropriate for the jury to render a verdict for Plaintiff because she discriminated, harassed, or retaliated against because of her membership or non-membership in a "camp" or her reporting of adverse employment actions taken against employees because of their membership or non-membership in a "camp". The declarations of Juror Adams and Juror Valentine state that the jury did not dos so. (See

Adams Decl., ¶ 2; Valentine Decl., ¶ 4.)

Excessive Non-Economic Damages

Defendant argues that the jury's non-economic damages award is excessive.

The Civil Procedure Code states that "[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." (Civil Proc. Code § 657.)

"The judge is not permitted to substitute his judgment for that of the jury on the question of damages unless it appears from the record the jury verdict was improper." (*Bigboy v. County of San Diego* (1984) 154 Cal.App.3d 397, 406.)

"In making this assessment, the court may consider, in addition to the amount of the award, indications in the record that the fact finder was influenced by improper considerations." (*Don v. Cruz* (1982) 131 Cal.App.3d 695, 707.) "The relevant considerations include inflammatory evidence, misleading jury instructions, improper argument by counsel, or other misconduct." (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 299.)

Therefore, "'[t]he question is not what this court would have awarded as the trier of the fact, but whether this court can say that the award is so high as to suggest passion or prejudice.'" (*Seffert v. Los Angeles Transit Lines* (1961) 56 Cal.2d 498, 507, quoting *Holder v. Key System* (1948) 88 Cal.App.2d 925, 940.)

Here, all of Defendant's arguments with respect to excessive non-economic damages merely repeat the contentions made above or are based on upon Defendant's disagreement with the jury's determination. The court has already rejected the former arguments and cannot grant a new trial based on the latter argument because "[n]o fixed standard exists for deciding the amount of [] noneconomic damages." (CACI 3905A.)

Evidence Insufficient to Support the Verdict

Defendant's final argument that the evidence is insufficient to justify the verdict.

As with the grant of a new trial for excessive damages, a new trial based on insufficiency of the evidence to justify the verdict may be granted only if "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." (Civil Proc. Code § 657.)

In support of this argument, Defendant repeats and incorporates all of the arguments it made in its motion for judgment notwithstanding the verdict.

However, unlike with a motion for judgment notwithstanding the verdict, a court considering a motion for new trial "is a trier-of-fact and is not bound by factual resolutions made by the jury. The court may grant a new trial even though there be sufficient evidence to sustain the jury's verdict on appeal, so long as the court determines the weight of the evidence is against the verdict." (*Candido v. Huitt* (1984) 151 Cal.App.3d 918, 923.)

In this case, the court has found that the evidence presented at trial can lead to only one reasonable conclusion and therefore, has granted the motion for judgment notwithstanding verdict.

Accordingly, the court also finds that the weight of the evidence is against the jury's verdict, for the reasons given in the ruling on the motion for judgment notwithstanding the verdict.

Therefore, the court will grant the motion for new trial on this basis.

Motion for Judgment Notwithstanding the Verdict

Defendant City of Santa Ana's Motion for Complete or Partial Judgment Notwithstanding the Verdict is **GRANTED.**

The Interim Judgment entered January 22, 2026 (ROA #837) is **VACATED.**

The court **ORDERS** that judgment shall be entered in favor Defendant City of Santa Ana and against Plaintiff Rita Ramirez on the 1st, 2nd, and 5th Causes of Action on Plaintiff Rita Ramirez's Complaint.

In light of the fact that Plaintiff Rita Ramirez voluntarily dismissed the 2nd and 3rd Causes of Action of Plaintiff Rita Ramirez's Complaint, the court **ORDERS** that Plaintiff Rita Ramirez shall take nothing by way of Plaintiff Rita Ramirez's Complaint.

Pending Motion

Defendant City of Santa Ana moves for judgment notwithstanding the verdict with respect to the 1st, 2nd, and 5th Causes of Action of Plaintiff Rita Ramirez's Complaint (Complaint).

Standard for Nonsuit, Directed Verdict, and Judgment Notwithstanding the Verdict

Civil Procedure Code section 581c provides that:

Only after, and not before, the plaintiff has completed his or her opening statement, or after the presentation of his or her evidence in a trial by jury, the defendant, without waiving his or her right to offer evidence in the event the motion is not granted, may move for a judgment of nonsuit.

(Code Civ. Proc., § 581c, subd. (a).)

In addition, Civil Procedure Code section 629 states that:

The court, before the expiration of its power to rule on a motion for a new trial, either of its own motion, after five days' notice, or on motion of a party against whom a verdict has been rendered, shall render judgment in favor of the aggrieved party notwithstanding the verdict whenever a motion for a directed verdict for the aggrieved party should have been granted had a previous motion been made.

(Code Civ. Proc., § 629, subd. (a).)

Finally, Civil Procedure Code section 630 indicates that:

[A]fter all parties have completed the presentation of all of their evidence in a trial by jury, any party may, without waiving his or her right to trial by jury in the event the motion is not granted, move for an order directing entry of a verdict in its favor.

(Code Civ. Proc., § 630, subd. (a).)

As the Court of Appeals has explained:

Typically, if a defendant believes that the plaintiff has not presented substantial evidence to establish a cause of action, the defendant may move for a nonsuit if the case has not yet been submitted to the jury,

a directed verdict if the case is about to be submitted, or a judgment notwithstanding the verdict (jnov) following an unfavorable jury verdict.

While made at different times, the three motions are analytically the same and governed by the same rules. The function of these motions is to prevent the moving defendant from the necessity of undergoing any further exposure to legal liability when there is insufficient evidence for an adverse verdict. Put another way, the purpose of motions for nonsuit, directed verdicts and jnovs is to allow a party to prevail as a matter of law where the relevant evidence is already in.

(*Fountain Valley Chateau Homeowner's Ass'n v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 750.)

These motions have been described as being "in the nature of a demurrer to the evidence." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 629.)

"A motion for judgment notwithstanding the verdict of a jury may properly be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence to support the verdict." (*Brandenburg v. Pac. Gas & Elec. Co.* (1946) 28 Cal.2d 282, 284; see *O'Shea v. Lindenberg* (2021) 64 Cal.App.5th 228, 235 [motion for judgment notwithstanding the verdict "may be granted when 'the court . . . determines there is no evidence of sufficient substantiality to support the claim or defense of the party opposing the motion, or a verdict in favor of that party." quoting *Howard v. Owens Corning*, *supra*, 72 Cal.App.4th at pp. 629-630.)

Stated another way, "judgment notwithstanding the verdict may be sustained only when it can be said as a matter of law that no other reasonable conclusion is legally deducible from the evidence and that any other holding would be so lacking in evidentiary support that the reviewing court would be compelled to reverse it or the trial court would be required to set it aside as a matter of law." (*Spillman v. City and County of San Francisco* (1967) 252 Cal.App.2d 782, 786.)

"In determining such a motion, the trial court has no power to weigh the evidence, and may not consider the credibility of witnesses. It may not grant [the motion] where there is any substantial conflict in the evidence." (*Howard v. Owens Corning*, *supra*, 72 Cal.App.4th at p. 629.)

The court must "disregard[] conflicting evidence, giv[e] the evidence of the party against whom the motion is directed all the value to which it is legally entitled, and indulge[e] every legitimate inference from such evidence in favor of that party." (*Ibid.*)

"'If the evidence is conflicting or if several reasonable inferences may be drawn, the motion [] should be denied.'" (*Hansen v. Sunnyside Products, Inc.* (1997) 55 Cal.App.4th 1497, 1510, quoting *Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 878.)

<u>1st Cause of Action (Retaliation in Violation of Labor Code § 1102.5) and 2nd Cause of Action (Retaliation in Violation of the Fair Employment and Housing Act)</u>

In this case, the jury rendered a verdict in favor of Plaintiff as to the 1st and 2nd Causes of the Complaint.

The 1st Cause of Action asserted a violation of Labor Code section 1102.5, which states that:

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an

investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(Labor Code, § 1102.5, subd. (b).)

In order to make out a claim for retaliation under Section 1102.5, the plaintiff "must show (1) she engaged in a protected activity, (2) her employer subjected her to an adverse employment action, and (3) a causal link between the two." (*St. Myers v. Dignity Health* (2019) 44 Cal.App.5th 301, 314.)

An employee who reports wrongdoing directly to his employer or supervisor is considered to be engaged in a protected activity under Section 1102.5. (*People ex rel. Garcia-Brower v. Kolla's, Inc.* (2023) 14 Cal.5th 719, 729-730.)

"'The retaliatory motive is 'proved by showing that plaintiff engaged in protected activities, that his employer was aware of the protected activities, and that the adverse action followed within a relatively short time thereafter.'" (*Morgan v. Regents of University of Cal.* (2000) 88 Cal.App.4th 52, 69, quoting *Jones v. Lyng* (D.D.C. 1986) 669 F.Supp. 1108, 1121.)

The 2nd Cause of Action, which alleged a violation of the Fair Employment and Housing Act (FEHA), has similar elements.

Under FEHA, in order "[t]o establish a prima facie case of retaliation, 'a plaintiff must show (1) he or she engaged in a "protected activity," (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action.'" (*Zamora v. Security Industry Specialists, Inc.* (2021) 71 Cal.App.5th 1, 63, citing *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042.)

An unlawful employment practice includes retaliation "against a person for requesting accommodation under this subdivision, regardless of whether the request was granted." (Gov. Code, § 12940, subd. (m)(2); see *Cornell v. Berkeley Tennis Club* (2017) 18 Cal.App.5th 908, 942 [in adding subdivision (m)(2) to section 12940 of the Government Code, the Legislature specified its intent was "to make clear that a request for reasonable accommodation on the basis of ... disability is a protected activity"].)

In this case, there was no evidence that Plaintiff was engaged in any protected activity until she prepared the memorandum relating to the Women Leaders in Law Enforcement (WLLE) Conference, and after that, she was interviewed by Jennifer Ro-Connelly and Daniel Durham, and filed her own complaint.

There is evidence that Plaintiff reported gender discrimination in the WLLE memorandum, in her interviews, and in her own complaint.

However, there is no evidence that prior to preparing the WLLE memorandum in September 2020, Plaintiff had ever reported gender discrimination or engaged in any other protected activity. Plaintiff only presented that, prior to September 2020, she had been shunned by Chief David Valentin and some members of the City of Santa Ana Police Department's (Police Department) command staff and had some assignments taken away from her because she had refused to become a member of Chief Valentin's "camp" or clique.

However, Plaintiff's reporting of such conduct does not constitute a protected activity because it is not a violation of law to show animus or take adverse employment actions against an employee on the basis of personal or social relationships unrelated to a protected class. (See *Nakai v. Friendship House Ass'n of American Indians, Inc.* (2017) 15 Cal.App.5th 32, 40 [no valid FEHA claim where alleged animus is based on particulars about a person's spouse, rather than legally protected marital status]; *Chen v. County of*

Orange (2002) 96 Cal.App.4th 296 [no valid FEHA claim where alleged animus and adverse employment actions were based on antipathy toward someone with whom plaintiff had relationship rather than plaintiff being member of protected class].)

Therefore, the court looks to see whether there is substantial evidence whether there was a causal link between Plaintiff's statements in the WLLE memorandum, in her interviews with Ro-Connelly and Daniel Durham, and in her complaint, on the one hand, and any adverse employment action. (fn.1)

(fn.1) With respect to the 1st Cause of Action, the jury was asked to find whether "Rita Ramirez's disclosure of information or the City of Santa Ana's belief that Rita Ramirez had disclosed information was a contributing factor in the City of Santa Ana's decision to constructively discharge Rita Ramirez or subject her to other adverse employment action." (CACI 4603.) On the 2nd Cause of Action, the jury was required to determine whether "Rita Ramirez's reporting of acts of gender discrimination, harassment, or retaliation within the City of Santa Ana Police Department was a substantial motivating reason for the City of Santa Ana's decision to constructively discharge Rita Ramirez or subject her to other adverse employment action." (CACI 2505.) The court holds that there is no material difference between the requirement that there be a "causal link" and the requirement that the protected activity be a "contributing factor" or "substantial motivating reason" for the adverse employment actions. However, even if there was a difference, the court would still find that Plaintiff has failed to present substantial evidence with respect to the "contributing factor" or "substantial motivating reason" requirements.

Here, there was no substantial evidence of this causal link. For example, there was no evidence of any statements or communications by Chief Valentin or any member of the command staff that indicated any connection between Plaintiff's protected activity and any actions taken against her.

Plaintiff did present evidence that Chief Valentin appeared to be angry while attending a meeting with several of the female police officers whose complaints had been laid out in the WLLE memorandum. However, Plaintiff was not at this meeting and there was no evidence that Chief Valentin was angry at Plaintiff or any particular person, for that matter.

Plaintiff contends that there was temporal proximity between the WLLE memorandum, Plaintiff's interviews, and Plaintiff's complaint, on the one hand, and the adverse employment actions, on the other hand.

It is true that "'[t]he causal link may be established by an inference derived from circumstantial evidence, 'such as the employer's knowledge that the [employee] engaged in protected activities and the proximity in time between the protected action and allegedly retaliatory employment decision.' '" (*Morgan v. Regents of University of Cal.*, *supra*, 88 Cal.App.4th at p. 69, quoting *Jordan v. Clark* (9th Cir. 1988) 847 F.2d 1368, 1376 and *Yartzoff v. Thomas* (9th Cir. 1987) 809 F.2d 1371, 1376.)

However, the evidence does not show "that the adverse action followed within a relatively short time" after Chief Valentin became aware of Plaintiff's protected activity. (*Morgan v. Regents of University of Cal.*, *supra*, 88 Cal.App.4th at p. 69, quoting *Jones v. Lyng*, *supra*, 669 F.Supp. at p. 1121.)

To the contrary, the evidence showed that the shunning (which Plaintiff testified eventually lead to her constructive discharge because she felt compelled to retire) began in 2018 and the removal of assignments (including removing her from being the primary manager of the Tri-Tech project) began in 2019. Thus, the adverse employment actions against Plaintiff began a year or more *before* Plaintiff ever engaged in protected activity, and not shortly thereafter.

The United States Supreme Court has stated that where an employer had announced or began to implement an adverse employment action and the employee then engages in protected activity, the fact that the employer continues "along lines previously contemplated, though not yet definitively determined, is no evidence whatever of causality." (Clark County School Dist. V. Breeden (2001) 532 U.S. 268, 272.)

Further, in the context of motions for summary judgment, the Court of Appeal has held that proximity in time is not sufficient by itself to meet Plaintiff's burden to show a triable issue of fact as to a causal link where the defendant has put forth evidence that it had non-retaliatory reasons for its actions. (See *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 868 ["Since we have already concluded that [plaintiff] cannot meet her burden of showing that the stated reasons for her termination were false or pretextual, we reject her contention that the timing in this case, in itself, was sufficient to create a triable issue regarding her tortious discharge and retaliation claims."]; see also *Arteaga v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 353 ["But temporal proximity alone is not sufficient to raise a triable issue as to pretext once the employer has offered evidence of a legitimate, nondiscriminatory reason for the termination."].)

Here, Defendant presented considerable evidence that any adverse employment actions against Plaintiff were taken in the regular course of operations of the Police Department and were based upon the management and personnel needs of the Police Department.

Further, Plaintiff herself presented substantial evidence that any adverse employment actions against her were taken not in retaliation for protected activity, but for non-actionable reasons – namely, that she refused to join Chief Valentin's "camp" or clique.

In the face of this significant evidence that there was no causal link between Plaintiff's protected activity and any adverse employment actions taken against her, Plaintiff presented no evidence other than temporal proximity.

If such evidence is not sufficient for a plaintiff to get to trial on a retaliation claim, it stands to reason that such evidence is not sufficient to support a verdict for a plaintiff who did go to trial. Regardless of the procedural vehicle used (whether motion for summary judgment or motion for judgment notwithstanding the verdict), the fact remains that Plaintiff has not presented substantial evidence of a causal link between her protected activity and the adverse employment actions taken against her.

Even disregarding all of the conflicting evidence and giving Plaintiff's evidence all of the value and every inference to which it is entitled, there is no other reasonable conclusion that can be deduced from that evidence. More importantly, any other conclusion, would be lacking in substantial evidentiary support.

Therefore, the court will grant the motion for judgment notwithstanding the verdict as to the 1st and 2nd Causes of Action.

<u>5th Cause of Action (Failure to Investigate or Prevent Harassment and Retaliation in Violation of FEHA</u>

In addition to rendering a verdict in favor of Plaintiff with respect to the 1st and 2nd Causes of Action, the jury also rendered a verdict in favor of Plaintiff as to the 5th Cause of Action.

The Fair Employment and House Act (FEHA) provides that it is an unlawful employment practice: "(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring." (Gov. Code, § 12940, subd. (k).)

Section 12940(k) "creates a separate actionable tort enforceable upon the establishment of the usual tort elements of duty of care, breach of duty (a negligent act or omission), causation, and damages." *(Dickson v. Burke Williams, Inc.* (2015) 234 Cal.App.4th 1307, 1313.)

Such a claim requires a plaintiff to prove: (1) he or she was an employee; (2) subject to harassment/discrimination/ retaliation in the course of employment; (3) the employer failed to take all reasonable steps to prevent the harassment/discrimination/retaliation; (4) the plaintiff was harmed; and

(5) the employer's failure to take all reasonable steps to prevent harassment/ discrimination/retaliation was a substantial factor in causing the plaintiff's harm. (See CACI 2527.)

Because there was no substantial evidence to show that Plaintiff was subject to retaliation, as explained above, there is no substantial evidence to support the jury's verdict as to the 5th Cause of Action. (See *Kruitbosch v. Bakersfield Recovery Services, Inc.* (2025) 114 Cal.App.5th 200, 205 ["Plaintiff's claim for failure to prevent harassment, discrimination or retaliation under section 12940, subdivision (k) (§ 12940 (k)) is dependent upon a viable claim for harassment, discrimination or retaliation . . . ."].)

Thus, the court will grant the motion for judgment notwithstanding the verdict as to the 1st and 2nd Causes of Action.

The court clerk shall give notice of these rulings.