

JUN 27 2025

RULING FOR CIVDS1909501

Department S24 - Judge Carlos M. Cabrera

BY Jennifer Medina
JENNIFER MEDINA, DEPUTY

Jesus Fonseca v. Wal-Mart Associates, Inc. and Walmart, Inc.

Motion: (1) Motion for New Trial; and (2) Judgment Notwithstanding the Verdict (JNOV)

Movant: Jesus Fonseca ("Plaintiff" or "Fonseca")

Respondent: Wal-Mart Associates, Inc. and Walmart, Inc. ("Defendant" or "Walmart")

RELEVANT PROCEDURE POSTURE AND STATEMENT OF RELEVANT FACTS

On March 28, 2019, Plaintiff filed this action against Defendant. On July 5, 2019, Plaintiff filed the operative First Amended Complaint (FAC), removing a Negligence Infliction of Emotional Distress cause of action and adding a cause of action for Defamation and Intentional Infliction of Emotional Distress. The FAC alleged 11 causes of action, (1) Disability Discrimination, (2) Failure to Accommodate, (3) Failure to Engage in an Interactive Process, (4) Retaliation under FEHA, (5) Failure to Prevent Discrimination, (6) Interference under CFRA, (7) Retaliation under CFRA, (8) Hostile Work Environment, (9) Wrongful Termination, (10) Intentional Infliction of Emotional Distress and (11) Defamation. On April 12, 2023, the Court partially granted Defendant's Motion for Summary Adjudication as to all but Plaintiff's 11th cause of action.

On November 19, 2024, using a Special Verdict Form (Attached hereto and incorporated herein by reference as Attachment 1), the jury rendered its verdict in favor of Plaintiff on phase 1 of the trial. On November 20, 2024, the jury rendered its verdict in favor of Plaintiff on phase 2 of the trial. (Attached hereto and incorporated herein by reference as Attachment 2). In total the jury awarded damages totaling the sum of \$34,700,249.00 to Plaintiff, consisting of the following:

1. \$522,323.00 for past economic damages, including lost wages, earnings, benefits and harm in business, trade, profession, or occupation.
2. \$677,926.00 for future economic damages, including lost wages, earnings, benefits and harm in business, trade, profession, or occupation.

3. \$3,500,000.00 for past non-economic damages, including loss of enjoyment of life, mental suffering, grief, inconvenience, emotional distress, shame, mortification, hurt feelings, and/or harm to reputation.
4. \$6,000,000.00 for future non-economic damages, including loss of enjoyment of life, mental suffering, grief, inconvenience, emotional distress, shame, mortification, hurt feelings, and/or harm to reputation.
5. \$25,000,000.00 in punitive damages.

On April 17, 2025, Judgment was entered, which included summaries of the special verdict forms. On the same day, Walmart filed their intention to move for a new trial and for JNOV. On April 25, 2025, Defendants filed their motion for a new trial and JNOV. Plaintiff opposes both motions.

ANALYSIS

Judgment Notwithstanding the Verdict (JNOV)

The Court, before the expiration of its power to rule on a motion for a new trial, either on its own motion or a 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).)

A JNOV motion challenges whether the evidence was sufficient to prove the claims or defenses asserted by the opposing party and now embodied in the jury’s verdict. (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110 (*Hauter*).) The motion thus has the same function as a motion for nonsuit or directed verdict, the only difference being that the JNOV motion lies *after* a verdict for the opposing party has been rendered. (*Beavers v. Allstate Ins. Co.* (1990) 225 Cal.App.3d 310, 327.)

A JNOV motion may 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, but should be denied if there is any substantial evidence, or reasonable inferences to be drawn from the evidence, in support of the verdict. (*Sweatman v. Dept. of Veterans Affairs* (2001) 25 Cal.4th 62, 68; *Hauter, supra*, 14 Cal.3d at p. 110.) “If the evidence is conflicting or if several reasonable inferences may be drawn, the motion for [JNOV] should be denied.” (*Hauter, supra*, 14 Cal.3d at p. 110.)

In ruling on a JNOV motion, the trial court does not weigh the evidence or judge the credibility of witnesses. (*Hauter, supra*, 14 Cal.3d at p. 110.) Even evidence improperly admitted during trial constitutes “substantial evidence” on a JNOV motion, because the proponent of the evidence may have relied on the court’s ruling (by not offering other evidence to prove the same point); the proper remedy to review erroneous evidentiary rulings is a motion for new trial or appeal. (*Donahue v. Ziv Television Programs, Inc.* (1966) 245 Cal.App.2d 593, 609-610.)

A JNOV in favor of defendant is proper only where no evidence of “sufficient substantiality” supports the verdict in plaintiff’s favor; this is determined by *disregarding* evidence on defendant’s behalf, giving plaintiff’s evidence all the value to which it is legally entitled, and indulging in every legitimate inference that may be drawn from that evidence. (*Reynolds v. Willson* (1958) 51 Cal.2d 94, 99 (emphasis added).)

As for the timing of a JNOV motion, because JNOV and new trial motions often are made in the alternative, JNOV motions are governed by the same time limits as new trial motions. (Code Civ. Proc., §§ 629, subd. (b), 659.) If the party moving for JNOV also moves for a new trial, both motions must be decided at *the same time* and *before* the court’s power to grant a new trial expires. (Code Civ. Proc., § 629, subd. (b).)

On April 17, 2025, Walmart simultaneously served and filed a Notice of Intent to Move for New Trial and Notice of Intent to file a JNOV Motion. Both of Walmart’s notices were

timely because they were served and filed on the same day that Judgment was entered and before any notice of entry of Judgment was served by the clerk of the Court or by any party. (Code Civ. Proc., §§ 629, subd. (b), 659, subd. (a)(2).)

Defamation is by libel or slander (Civ. Code, § 44), and requires proving: (i) intentional publication, (ii) of a statement of fact, (iii) that is false, (iv) defamatory, (v) unprivileged, and (vi) has a natural tendency to injure or that causes special damages. (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369.) In the case at hand, Plaintiff's defamation claim is based on the publication of internal Walmart investigation that generally communicated that Plaintiff's conduct amounted to gross misconduct based on an integrity violation under Walmart's company policies.

Walmart makes four arguments in support of its JNOV motion: (A) Plaintiff's defamation claim is not separately actionable pursuant to the recent ruling in *Hearn v. Pacific Gas & Electric Co.* (2025) 108 Cal.App.5th 301 (*Hearn*); (B) there is insufficient evidence to find Walmart liable for defamation; (C) Plaintiff's defamation claim is time-barred by the one-year statute of limitations for libel and slander; and (D) there is insufficient evidence to find that Plaintiff is entitled to punitive damages. The parties stipulated at time of oral argument that if in fact the majority opinion of *Hearn* is applicable in the matter then it is a complete bar to Plaintiff seeking tort remedies in an employment termination case.

Hearn v. Pacific Gas & Electric Co. (2025) 108 Cal.App.5th 301 (Hearn)

Walmart argues that because Plaintiff's defamation claim is based entirely on statements tied to an investigation and eventually led to his termination and therefore exclusively seeks termination related damages, Plaintiff's defamation claim is not separately actionable pursuant to

the ruling in *Hearn*. Plaintiff argues that *Hearn* was wrongly decided and correctly notes that the California Supreme Court has recently granted a petition for review on the issue.¹

California Rules of Court 8.115 states in pertinent part that ...unless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter, and any published opinion of a Court of Appeal in a matter in which the Supreme Court has ordered review and deferred action pending the decision, is citable and has binding or precedential effect, except to the extent it is inconsistent with the decision of the Supreme Court or is disapproved by that court.” (CRC§8.115(e)(2).

The California Supreme Court in its order granting review, also denied depublishing of the opinion. The Supreme Court specifically stated in its order that *Hearn* “may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, to choose between sides of any such conflict.” The issue now before the Supreme Court is exactly the issue pending before this Court. “The issue to be briefed and argued is limited to the following: May a terminated employee bring a defamation claim against a former employer when the defamation allegedly contributed to the reasons for the termination of that employment or must such a claim be pursued under a wrongful discharge theory?

The *Hearn* case is remarkably similar to the matter at hand. In fact, the underlying facts are almost identical. An employee undergoes an internal investigation. The investigation report makes certain negative findings about the employee. The employee is terminated based on the contents of the report. The employee sues company for wrongful termination causes of action

¹ Plaintiff also argues that the holding *Hearn* is inapplicable on two other grounds:

First, Plaintiff argues that by stipulating to special jury verdict forms that “combined reputational harm with other non-economic harm,” Walmart should be precluded from relying on the holding in *Hearn* pursuant to the ruling in *Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 277 (*Mardirossian*) [holding that the failure to object to a special verdict form at trial waived their right to complain as to its form”]. However, *Mardirossian* is inapplicable to the instant case because Walmart is not challenging the use of the special jury verdict form used at trial. Second, Plaintiff asserts that there is substantial evidence that Plaintiff suffered other “reputational harm” by citing testimony that shows that Plaintiff suffered emotional harm as a result of disparaging statements made by Walmart employees in connection with his termination.

and defamation. The company prevails on the wrongful termination part of the litigation but loses on the defamation part. The damages awarded by the jury stem from the termination.

This Court agrees with the analysis and holding of the majority in the Hearn matter. This Court finds that the instant case is analogous to Hearn, and it will apply the holding and legal principles to the facts of this case. Under Hearn Plaintiff must overcome a two-prong test before tort damages may be awarded in an employment termination case; “(1) such tort claims must be based on conduct other than that giving rise to the employee's termination and (2) the damages sought cannot exclusively “result from [the] termination *itself*.” (Hearn at 315). Hearn went on to further state, “We do not interpret this second factor as requiring a plaintiff to allege damages uniquely specific to defamation; it merely requires that the damages resulting from any alleged defamation cannot arise exclusively from his or her termination.” (Hearn at 315)

Prong 1

In the instant case, there is no question that the defamation claim arises from the exact conduct that gave rise to his termination, the contents of Defendant’s internal investigation report. The investigation and report were conducted for the sole purpose of determining whether Plaintiff violated Defendant’s policy. The findings of the report that Plaintiff was terminated for “gross misconduct and integrity” was the sole basis of termination and the sole basis for Plaintiff’s claim for defamation.

Prong 2

The damages alleged by Plaintiff exclusively arise from his termination. In fact, Plaintiff points out in their arguments that by falsely labeling Plaintiff as having committed an integrity violation, the false statements therefore caused his termination and all his injuries arising from said termination. While Plaintiff argues that they put on evidence of damages concerning the

defamatory comments within the report, that is not the issue under a Hearn analysis. The issue also is not whether certain the instant challenge was preserved with a verdict form. It is strictly whether whatever damages suffered resulted from the termination. The answer to that question in this case, as in Hearn, is yes.

Fonseca attempted to obtain damages caused by his termination via wrongful termination claims and failed. Under Hearn, he is not allowed to now pursue those same damages under a defamation case. “[W]here the jury's special verdict for the plaintiff is based on conduct that does not constitute an actionable tort, that verdict cannot stand.” (Hearn at 319 citing to *Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd. (2021) 71 Cal.App.5th 528, 533.*)

As the Court’s analysis under Hearn is dispositive on the Motion for Judgment Notwithstanding the Verdict, it will not address the further arguments raised in the motion. Furthermore, considering the ruling on the JNOV, the Motion for New Trial is now moot.

RULING

1. Plaintiff’s Request for Judicial Notice (RJN) of Exhibits A through Q is **DENIED**. Plaintiff has not presented any evidence to show that each of the jury verdicts cited in his RJN involved an action solely grounded upon a claim for defamation. The documents are not relevant to the matter at hand.
2. Defendant’s Motion for Judgment Notwithstanding the Verdict is **GRANTED**. Judgment shall be entered in favor of the Defendant and against the Plaintiff.
3. Defendant’s Motion for New Trial is **MOOT**.
4. Defendant to Judgment.
5. Matter is set for OSC entry of Judgment for July 29, 2025 at 9am.

IT IS SO ORDERED:

Dated: JUN 27 2025



CARLOS M. CABRERA
Judge of the Superior Court

ATTACHMENT A

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 19 2024

BY Jennifer Medina
JENNIFER MEDINA DEPUTY

JESUS FONSECA

Plaintiff,

vs.

Case No. CIVDS1909501

WAL-MART ASSOCIATES, INC., ET AL

Defendant(s).

USED X

NOT USED

VERDICT FORM

DEPARTMENT S24

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

JESUS FONSECA

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., a
corporation; et al.

Defendants.

Case No.: CIVDS1909501

[Assigned for All Purposes to: Hon. Carlos M.
Cabrera; Dept. S24]

SPECIAL VERDICT FORM

We answer the questions submitted to us as follows:

VF-1705: DEFAMATION PER QUOD

1. Did Walmart make any of the following statements to a person other than Jesus Fonseca?

a. Jesus Fonseca committed gross misconduct - integrity; or

b. Jesus Fonseca committed gross misconduct based on an integrity issue.

Yes X

No _____

If your answer to question 1 is yes, answer question 2. If you answered no to question 1,
stop here, answer no further questions and have the Presiding Juror sign and date this form.

2. Did the person or people to whom the statement(s) was/were made reasonably understand that the statement(s) was/were about Jesus Fonseca?

Yes ☒ No ☐

If your answer to question 2 is yes, answer question 3. If you answered no to question 2, stop here, answer no further questions and have the Presiding Juror sign and date this form.

3. Did Walmart fail to use reasonable care to determine the truth or falsity of the statement(s)?

Yes ☒ No ☐

If your answer to question 3 is yes, answer question 4. If you answered no to question 3, stop here, answer no further questions and have the Presiding Juror sign and date this form.

4. Did the statement(s) tend to injure Jesus Fonseca in his occupation?

Yes ☒ No ☐

If your answer to question 4 is yes, answer question 5. If you answered no to question 4, stop here, answer no further questions and have the Presiding Juror sign and date this form.

5. Did Jesus Fonseca suffer harm to his property, business, profession or occupation?

Yes ☒ No ☐

If your answer to question 5 is yes, answer question 6. If you answered no to question 5, stop here, answer no further questions and have the Presiding Juror sign and date this form.

6. Did Walmart make the statement(s) with malice as defined by instruction 1723?

Yes ☒ No ☐

If your answer to question 6 is yes, answer question 7. If you answered no to question 6, stop here, answer no further questions and have the Presiding Juror sign and date this form.

7. For all statement(s) that you found in question 1 that Walmart made, did Walmart prove that the statement(s) was/were substantially true?

Yes ☐ No ☒

1 If your answer to question 7 is no, answer question 8. If you answered yes to question 7,
2 stop here, answer no further questions and have the Presiding Juror sign and date this form.

- 3 8. Was Walmart's making the statement(s) a substantial factor in causing Jesus Fonseca actual
4 harm?

5 Yes ☒ No ☐

6 If your answer to question 8 is yes, answer question 9. If you answered no to question 8,
7 stop here, answer no further questions and have the Presiding Juror sign and date this form.

8 **VF: DAMAGES**

- 9
10 9. What are Jesus Fonseca's damages?

- 11 a. Past economic loss including lost wages, earnings, benefits and harm to business,
12 trade, profession or occupation?

13 \$ 522,323

- 14 b. Future economic loss including lost wages, earnings, benefits and harm to business,
15 trade, profession or occupation?

16 \$ 677,926

- 17 c. Past noneconomic loss including loss of enjoyment of life, mental suffering, grief,
18 inconvenience, emotional distress, shame, mortification, hurt feelings and/or harm to
19 reputation?

20 \$ 3.5 million

- 21 d. Future noneconomic loss including loss of enjoyment of life, mental suffering, grief,
22 inconvenience, emotional distress, shame, mortification, hurt feelings and/or harm to
23 reputation?

24 \$ 5.0 million

25 If Jesus Fonseca has not proved any actual damages, stop here, answer no further questions,
26 and have the presiding juror sign and date this form. If you awarded actual damages, answer
27 question 10.
28

VF: PUNITIVE DAMAGES

10. Has Jesus Fonseca proven by clear and convincing evidence that an officer, director or managing agent of Defendant Walmart was guilty of malice, fraud or oppression (as defined in instruction 3946) in engaging in the conduct upon which you base your liability verdict against Defendant Walmart?

Yes X No

Please have the Presiding Juror sign and date this form.

Dated:

11/19/2024

Signed:

[Signature]
Presiding Juror

After this verdict form has been signed and dated, notify the court attendant that you are ready to present your verdict in the courtroom.

ATTACHMENT B

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 20 2024

BY Jennifer Medina
JENNIFER MEDINA, DEPUTY

JESUS FONSECA

Plaintiff,

vs.

Case No. CIVDS1909501

WAL-MART ASSOCIATES, INC., ET AL

Defendant(s).

USED X

NOT USED

VERDICT FORM- PHASE TWO

DEPARTMENT S24

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JESUS FONSECA

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., a
corporation; et al.

Defendants.

Case No.: CIVDS1909501

*[Assigned for All Purposes to: Hon. Carlos M.
Cabrera; Dept. S24]*

VERDICT FORM – PHASE TWO

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PHASE TWO

We answer the question submitted to us as follows:

11. What amount of punitive damages, if any, do you award Jesus Fonseca against Walmart?

Answer:

\$ 25 million

Please have the Presiding Juror sign and date this form.

Dated:

11/20/2024

Signed:

Michael Sweetser
Presiding Juror

Michael Sweetser
(Please Print Name)

After this verdict form has been signed and dated, notify the court attendant that you are ready to present your verdict in the courtroom.