

<p>DISTRICT COURT, COUNTY OF JEFFERSON, STATE OF COLORADO</p> <p>100 Jefferson County Parkway Golden, Colorado 80401</p>	<p>DATE FILED April 16, 2026 2:25 PM CASE NUMBER: 2025CV30130 ▲ COURT USE ONLY ▲</p>
<p>Plaintiff: NICHOLAS LARA</p> <p>v.</p> <p>Defendants: GARY BIRCHAM, O.D., and LCA-VISION, INC. d/b/a LASIKPLUS</p>	<p>Case Number: 2025CV30130</p> <p>Division: 9 Courtroom: 550</p>
<p style="text-align: center;">ORDER REGARDING PLAINTIFF’S MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT TO C.R.C.P. 58</p>	

THIS MATTER is before the Court on Plaintiff Nicholas Lara’s Motion for Entry of Final Judgment Pursuant to C.R.C.P. 58 filed February 25, 2026. Defendant LCA-Vision, Inc. d/b/a LASIKPlus filed a Response on March 11, 2026. Plaintiff filed a Reply on March 13, 2026. The Court, having reviewed the record, briefings, and relevant law, FINDS and ORDERS as follows:

I. BACKGROUND

A 7-day jury trial on Plaintiff’s claims against Defendant Gary Bircham, O.D., and Defendant LCA-Vision, Inc. d/b/a LASIKPlus (“LCA-Vision”) was held on February 2, 2026, through February 6, 2026, and February 9, 2026, through February 11, 2026. The Court admitted the following exhibits at trial: Plaintiff’s exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13A, 16, 17, 19, 20, 21, 21A, 24, 24A, 25, 26, 33, 36, 38, 39, and 41; and Defendants exhibits 15, 19, 79, 119, 123, and 272.

On February 11, 2026, the jury returned a split-verdict following deliberation. *See Special Verdict Form Signed by All Jurors* (filed Feb. 11, 2026). The jury found Dr. Bircham was not negligent and returned a verdict in favor of Dr. Bircham. *Id.* The jury found LCA-Vision was negligent and was a cause of Plaintiff's injuries, and the jury returned a verdict in favor of Plaintiff and against LCA-Vision. *Id.*

The jury found Plaintiff was not contributorily negligent and not a cause of his injuries. *Id.* The jury found LCA-Vision 75% at fault for Plaintiff's injuries and non-party Dr. Rosenbaum 25% at fault for Plaintiff's injuries. *Id.* The jury awarded the following damages:

Past Lost Wages:	\$100,000.00
Past Noneconomic Losses:	\$100,000.00
Future Medical and other expenses:	\$130,000.00
Future Lost Wages:	\$7,200,000.00
Future Noneconomic Losses:	\$500,000.00

Id.

The Court ordered Plaintiff to file a proposed order of judgment regarding the jury's verdict by February 25, 2026, and ordered Defendants to file any objections to the proposed order by March 11, 2026. *Minute Order* (issued Feb. 11, 2026).

On February 25, 2026, Plaintiff filed two necessarily related motions: a motion to exceed the economic damages cap under C.R.S. section 13-64-302 and a motion to enter final judgment pursuant to C.R.C.P. 58 (with economic damages in excess of the statutory cap). Plaintiff's Motion for Entry of Final Judgment Pursuant to C.R.C.P. 58 ("Motion") is now before the Court.¹

¹ The Court issued its *Order Regarding Plaintiff's Motion to Enter Judgment in Excess of the \$1,000,000.00 Cap Imposed by the Colorado Health Care Availability Act, C.R.S. § 13-64-302* contemporaneously with this Order.

II. ANALYSIS

The Court first addresses Plaintiff's procedural argument. The Court then addresses Plaintiff's request to enter final judgment pursuant to C.R.C.P. 58.

A. Procedural Argument

Plaintiff asserts LCA-Vision waived any objection to Plaintiff's request to exceed the damages cap based on the Court's pretrial briefing schedule. This argument lacks merit.

Even assuming this pretrial briefing schedule applied to post-trial motions, which the Court disagrees that it does, these deadlines were fully within the Court's discretion to order and modify, C.R.C.P. 121 § 1-15(1), and the Court expressly issued a briefing schedule and ordered different instructions for filing the proposed order of judgment following trial, *see Minute Order* (issued Feb. 11, 2026), the latter of which Plaintiff failed to follow. To that end, Plaintiff's procedural argument could just as equally apply to Plaintiff. The Court ordered Plaintiff to file a proposed order of judgment, to which LCA-Vision was permitted to object. *Id.* Instead, Plaintiff filed two motions, putting LCA-Vision in an awkward position regarding how and when to respond to the motions rather than file an objection to one proposed order of judgment as the Court instructed. Regardless, Plaintiff's entire argument is based on C.R.C.P. 121 section 1-15(3) under which the Court may, in its discretion, deem a failure to respond a confession of the motion. The Court exercising its discretion here to find LCA-Vision unwittingly confessed "to Plaintiff's entitlement to \$7,430,000 million of economic loss" based on a pretrial expedited briefing schedule as Plaintiff requests rather than consider the merits of the parties' arguments would certainly be an abuse of that discretion. The Court rejects this procedural argument and need not address it further.

B. Request for Entry of Judgment Pursuant to C.R.C.P. 58

“[U]pon a general or special verdict of a jury, or upon a decision by the court, the court shall promptly prepare, date, and sign a written judgment.” C.R.C.P. 58. The Court first addresses the damages award. The Court then addresses prejudgment interest.

1. Damages Award

LCA-Vision argues the Court should apply the statutory economic damages cap to the entry of judgment. To the extent LCA-Vision asserts Plaintiff fails to meet his burden to establish good cause to exceed the economic damages cap and that imposing the economic damages cap would be unfair as required for the Court to exceed the cap pursuant to section 13-64-302(1)(b), the Court has already addressed and rejected LCA-Vision’s arguments regarding this issue. *See Order Re: Pl.’s Mot. to Enter Judg. in Excess of the \$1,000,000.00 Cap Imposed by the Colorado Health Care Availability Act, C.R.S. § 13-64-302* (issued April 16, 2026). The Court hereby incorporates by reference its findings of fact and conclusions of law in its *Order Regarding Plaintiff’s Motion to Enter Judgment in Excess of the \$1,000,000.00 Cap Imposed by the Colorado Health Care Availability Act, C.R.S. § 13-64-302* into this Order.

Additionally, it seems LCA-Vision may be asserting that a trial court is required to enter judgment pursuant to the statutory cap before considering a request to exceed the cap based on the use of “shall” in C.R.S. section 13-64-205. If so, to the extent LCA-Vision makes such an argument, the Court disagrees.

Section 13-64-205(1)(a) simply reiterates that the Court must apply section 13-64-302 when entering judgment:

- (1) In order to determine what judgment is to be entered on a verdict . . . the court shall proceed as follows:

(a) The court shall apply to the findings of past and future damages any applicable rules of law . . . in calculating the respective amounts of past and future damages each claimant is entitled to recover and each party is obligated to pay.

C.R.S. § 13-64-205(1)(a). LCA-Vision cites no legal authority which provides that the Court must first enter judgment before considering whether to exceed the damages cap.

Moreover, any such requirement would apply only to damages which the Court cannot exempt from the economic damages cap. *See Garhart ex rel. Tinsman v. Columbia/Healthone, L.L.C.*, 95 P.3d 571, 591–92 (Colo. 2004) (*en banc*). Because the Court has exempted Plaintiff’s damages for future earnings from the statutory cap as permitted pursuant to section 13-64-302(1)(b), the Court may award them and enter judgment according. *See Id.* at 592 n. 17 (“Pursuant to section 13-64-302(1)(b), a district judge, after considering the factors outlined in the statute, may ‘award the present value of additional future damages only for loss of such excess future earnings, or such future medical and other health care costs, or both,’ thus exempting these amounts from the \$1,000,000 cap.”)

Aside from requesting application of the statutory cap, LCA-Vision does not otherwise object to Plaintiff’s proposed damages and prejudgment interest or Plaintiff’s calculations of the same. Having dispensed with LCA-Vision’s objections related to the statutory economic damages cap, the Court may calculate Plaintiff’s damages award.

The jury awarded the following damages:

Past Lost Wages:	\$100,000.00
Past Noneconomic Losses:	\$100,000.00
Future Medical and other expenses:	\$130,000.00
Future Lost Wages:	\$7,200,000.00
Future Noneconomic Losses:	\$500,000.00

See *Special Verdict Form Signed by All Jurors* (filed Feb. 11, 2026). In total, the jury awarded \$7,430,000.00 in economic damages (past and future) and \$600,000.00 in noneconomic damages (past and future) to Plaintiff. *Id.* The jury found LCA-Vision 75% at fault for Plaintiff’s injuries and non-party Dr. Rosenbaum 25% at fault for Plaintiff’s injuries. *Id.*

Under Colorado’s Health Care Availability Act (“HCAA”), noneconomic damages are subject to a firm statutory limitation. Specifically, section 13-64-302 imposes a \$300,000 hard cap on noneconomic damages, inclusive of pre-judgment interest. See C.R.S. § 13-64-302(1)(b), (1)(c)(I)(A); see also *Bianco v. Rudnicki*, 576 P.3d 160, 164 (Colo. 2024). Plaintiff concedes the application of the noneconomic damages cap. See *Mot.* ¶ 7.

However, though LCA-Vision does not object to Plaintiff apportioning fault before applying the statutory noneconomic damages cap, the trial court must first apply the statutory damages cap and then apportion fault. See *Garhart*, 95 P.3d 571, 591–92 (concluding non-parties at fault who previously settled are considered “defendants” for the purposes of section 13-64-302 and holding the trial court erred because “it should have first applied the HCAA cap to the jury’s noneconomic damages award, then apportioned that amount according to the percentages the jury found to exist for each tortfeasor”).

Accordingly, the Court first applies the statutory noneconomic damages cap, which results in the following total damages:²

Past Economic Damages:	\$100,000.00
Future Economic Damages:	\$7,330,000.00
Noneconomic Damages:	\$300,000.00

² As noted above, the requirement to apply the statutory cap before apportioning fault only applies to amounts which the Court has not exempted from the statute, See *Garhart*, 95 P.3d 571, 591–92, and thus, this does not apply to the amount the Court awards in excess of the economic damages cap.

The Court then apportions fault, reducing the total damages award against Defendant LCA-Vision, Inc. d/b/a LASIKPlus pursuant to its allocation of fault as follows:³

Past Economic Damages:	\$75,000.00
Future Economic Damages:	\$5,497,500.00
Noneconomic Damages:	\$225,000.00

The Court, having found Plaintiff meets his burden to show good cause and unfairness to exceed the statutory economic damages cap, applied the statutory noneconomic damages cap, and apportioned fault as appropriate, and without objection otherwise from LCA-Vision as to the form of the entry of the damages award, determines Plaintiff is entitled to judgment in his favor and against Defendant LCA-Vision, Inc. d/b/a LASIKPlus, awarding the following damages pursuant to the jury's verdict:⁴

Economic Damages:	\$5,572,500.00
Noneconomic Damages:	\$225,000.00
Total Damages:	\$5,797,500.00

2. Prejudgment Interest

The Court now must determine the prejudgment interest on the damages.

Plaintiff concedes that the statutory noneconomic damages cap is inclusive of prejudgment interest and that he is therefore not entitled to prejudgment interest on the noneconomic damages. Thus, the Court only must address the prejudgment interest on the economic damages award.

³ $100,000 \times 0.75 = \$75,000$ [past economic damages].
 $7,330,000.00 \times 0.75 = \$5,497,500.00$ [future economic damages].
 $300,000.00 \times 0.75 = \$225,000$ [noneconomic damages].

⁴ $5,497,500.00$ [future economic damages] + $75,000$ [past economic damages] = $\$5,572,500.00$ [total economic damages].
 $5,572,500.00$ [economic damages] + $225,000$ [noneconomic damages] = $5,797,500.00$ [total damages].

Pursuant to C.R.S. section 13-21-101, “plaintiffs in personal injury cases stemming from a tort may claim interest on the damages alleged ‘from the date the action accrued.’ ” *Ford Motor Co. v. Walker*, 517 P.3d 653, 657 (Colo. 2022) (quoting C.R.S. § 13-21-101(1)). “When a plaintiff claims interest, ‘it is the duty of the court’ to add interest on the amount of damages assessed.” *Id.* (quoting C.R.S. § 13-21-101(1)). “Such interest must be ‘calculated at the rate of nine percent per annum’ up until ‘the date of satisfying the judgment.’ ” *Id.* (quoting C.R.S. § 13-21-101(1)). “Further, this calculation ‘must include compounding of interest annually from the date the suit was filed.’ ” *Id.* (quoting C.R.S. § 13-21-101(1)).

LCA-Vision does not object to Plaintiff’s interest calculations. LCA-Vision only notes section 13-21-101(1) instructs “courts to apply a market-based annual rate of interest” in certain circumstances where the judgment debtor appeals the judgment. *See Id.*; *see also* C.R.S. § 13-21-101(1). While true, the Court agrees with Plaintiff that LCA-Vision’s reference to this portion of section 13-21-101(1) is premature because the judgment has not been appealed.

For pre-filing interest, the Court calculates simple interest at a rate of nine percent per annum on the \$5,572,500.00 in economic damages “from the date plaintiff’s action accrued (here, the date of the accident) until the day before the action was filed.” *Francis ex rel. Goodridge v. Dahl*, 107 P.3d 1171, 1176 (Colo. App. 2005). Plaintiff is therefore entitled to simple interest for the 599 days from the date the action accrued (June 8, 2023) to the day before the action was filed (January 26, 2025), which equals \$823,049.96.⁵

⁵ $5,572,500.00 \times 0.09 = 501,525$.
 $501,525 / 365 = 1,374.04$.
 $1,374.04 \times 599 = \$823,049.96$ [pre-filing interest].

For post-filing prejudgment interest, the Court then calculates compounding interest from the date the action was filed (January 27, 2025) to the date judgment is entered (April 16, 2026). Plaintiff is therefore entitled to post-filing prejudgment interest in the amount of \$713,112.30.⁶

Taking together the pre-filing and post-filing prejudgment interest, Plaintiff is entitled to total prejudgment interest on the economic damages in the amount of \$1,536,162.26.⁷

III. CONCLUSION

Plaintiff is entitled to entry of final judgment in this matter as described above, and the Court enters final judgment in this matter pursuant to C.R.C.P. 58 accordingly. Because the jury found Defendant Gary Bircham, O.D., not liable, the Court also dismisses Plaintiff's claims against Defendant Gary Bircham, O.D., in this action.

THE COURT THEREFORE ORDERS Plaintiff's Motion for Entry of Final Judgment Pursuant to C.R.C.P. 58 is **GRANTED WITH AMENDMENTS**.

THE COURT ENTERS JUDGMENT in favor of Plaintiff Nicholas Lara and against Defendant LCA-Vision, Inc. d/b/a LASIKPlus, in the amount of **\$5,797,500.00** in damages, plus

⁶ Post-filing compounded interest for the period from the filing of the action (January 27, 2025) to 1 year (i.e., 365 days) from the filing of the action (January 26, 2026) = \$575,599.50.

- $823,049.96$ [pre-filing interest] + $5,572,500$ [economic damages award] = $6,395,549.96$
- $6,395,549.96 \times 0.09 = 575,599.50$.

Post-filing compounded interest for the period from January 27, 2026, to entry of judgment (April 16, 2026) = \$134,046.12.

- $575,599.50 + 6,395,549.96 = 6,971,149.46$
- $6,971,149.46 \times 0.09 = 627,403.45$
- $627,403.45 / 365 = 1,718.91$
- $1,718.91 \times 80$ [days from 1/27/2026 to 4/16/2026] = $137,512.80$.

$575,599.50$ [post-filing interest from 1/27/2025 to 1/26/2026] + $137,512.80$ [post-filing interest from 1/27/2026 to 4/16/2026] = $713,112.30$ [total post-filing prejudgment interest].

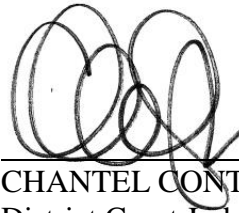
⁷ $823,049.96$ [pre-filing interest] + $713,112.30$ [post-filing prejudgment interest] = $1,536,162.26$ [total prejudgment interest].

prejudgment interest the amount of **\$1,536,162.26**, for a total judgment inclusive of prejudgment interest in the amount of **\$7,333,662.26**, plus postjudgment interest pursuant to C.R.S. section 13-21-101. Plaintiff Nicholas Lara is also entitled to recover his reasonable costs from Defendant LCA-Vision, Inc. d/b/a LASIKPlus, as provided by law.

THE COURT FURTHER ORDERS Plaintiff Nicholas Lara's claims against Defendant Gary Bircham, O.D., in this action are **DISMISSED**. Defendant Gary Bircham, O.D., is entitled to recover his reasonable costs from Plaintiff Nicholas Lara as provided by law.

DONE AND SIGNED: April 16, 2026.

BY THE COURT

A handwritten signature in black ink, consisting of several loops and a long tail, positioned above a horizontal line.

CHANTEL CONTIGUGLIA
District Court Judge