

<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 align="center">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</p>	

THIS MATTER is before the Court on Plaintiff Nichola Lara’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 filed February 25, 2026. Defendant LCA-Vision, Inc. d/b/a LASIKPlus filed a Response on March 18, 2026. Plaintiff filed a Reply on March 23, 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 damages cap under C.R.S. section 13-64-302 and a motion to enter judgment pursuant to C.R.C.P. 58 (with damages in excess of the statutory cap). 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 (“Motion”) is now before the Court.¹

¹ The Court issued its *Order Regarding Plaintiff’s Motion for Entry of Final Judgment Pursuant to C.R.C.P. 58* contemporaneously with this Order.

II. ANALYSIS

Plaintiff requests that the Court enter judgment in excess of the economic damages cap in the Health Care Availability Act (the “HCAA”), C.R.S. section 13-64-302.

Pursuant to section 13-64-302:

The total amount recoverable for all damages for a course of care for all defendants in any civil action for damages in tort brought against . . . a health-care institution . . . whether past damages, future damages, or a combination of both, shall not exceed the greater of one million dollars, present value per patient, or one hundred twenty-five percent of the noneconomic damages limitations set forth in section 13-21-203(1)(b) in effect at the time the acts or omissions occurred . . . except that, if, upon good cause shown, the court determines that the present value of past and future economic damages would exceed such limitation and that the application of such limitation would be unfair, the court may award in excess of the limitation the present value of additional past and future economic damages only.

C.R.S. § 13-64-302(1)(b).

The Colorado Supreme Court recently clarified the proper standard for determining whether to enter judgment in excess of the statutory cap, and if so, for subsequently determining the proper amount of damages. *See Banner Health v. Gresser*, 579 P.3d 882 (Colo. 2025). The trial court first determines whether the plaintiff has established good cause to exceed the HCAA's damages cap and that imposing the cap would be unfair. Then:

[O]nce a court has determined, under section 13-64-302(1)(b), C.R.S. (2025) . . . that the plaintiff has established good cause to exceed the HCAA's damages cap and that imposing the cap would be unfair, the court's subsequent determination as to the proper amount of damages is governed by common law; meaning, under subsection 302(1)(b)'s exception, the jury retains its authority to determine the amount of damages, subject only to the court's remittitur authority and its authority to review the award for the sufficiency of the evidence.

Id. at 884–85.

Thus, the Court first must consider whether Plaintiff has established good cause to exceed the HCAA's damages cap and that imposing the cap would be unfair. If the Court finds in the

affirmative with respect to this first issue, the Court then must determine the proper amount of damages pursuant to common law, deferring to the jury's award of damages subject only to the Court's remittitur authority and the sufficiency of the evidence.

A. Statutory Damages Cap

As stated, the Court first must determine whether “the plaintiff has established good cause to exceed the HCAA's damages cap and that imposing the cap would be unfair.” *Id.*; C.R.S. § 13-64-302(1)(b); *Pressey ex rel. Pressey v. Child. 's Hosp. Colo.*, 488 P.3d 151, 155 (Colo. App. 2017) (“[A] trial court may uncap damages if it finds ‘good cause’ and determines that application of the cap would be ‘unfair.’ ”) (quoting C.R.S. § 13-64-302(1)(b)), *overruled on other grounds by, Rudnicki v. Bianco*, 501 P.3d 776 (Colo. 2021)).

The statute does not define the terms “good cause” or “unfairness.” *Wallbank v. Rothenberg*, 140 P.3d 177, 180 (Colo. App. 2006). Colorado courts have defined “[g]ood cause [as] a legally sufficient reason or a substantial or legal justification”, *Pressey*, 488 P.3d at 161 (citing *Wallbank*, 140 P.3d at 180); *see also May v. Colo. Civil Rights Comm'n*, 43 P.3d 750, 754 (Colo. App. 2002) (quoting *Watso v. Colo. Dep't of Soc. Servs.*, 841 P.2d 299, 311 (Colo. 1992) (“good cause” is a “substantial or legal justification, as opposed to an assumed or imaginary pretense”)), and “[u]nfairness [as] ‘marked by injustice, partiality, or deception.’ ” *Pressey*, 488 P.3d at 161 (citing *Wallbank*, 140 P.3d at 180).

In addition to not defining these two terms, the statute likewise “does not specify factors that a trial court must consider when determining whether a movant has shown good cause or unfairness.” *Wallbank*, 140 P.3d at 180-8). Instead, “[i]n making findings as to ‘good cause’ and ‘unfairness’ (which essentially are different ways of saying the same thing), trial courts must

consider the ‘totality of circumstances.’” *Id.* (quoting *Vitetta v. Corrigan*, 240 P.3d 322, 329 (Colo. App. 2009)); *See Banner Health*, 579 P.3d at 887 (citing *Pressey*, 488 P.3d at 155).

“Therefore, a court may exercise its discretion to consider factors it deems relevant when determining whether a movant qualifies for the lost future earnings exception to the cap.” *Wallbank*, 140 P.3d at 180. However, “[t]he trial court may not make that determination in a vacuum, but must necessarily consider the circumstances in each case.” *Id.* “The party seeking to exceed the cap—the movant—bears the burden of showing good cause and unfairness, and the court must consider the totality of the circumstances in determining whether the movant has carried that burden.” *Id.* (citing *Pressey*, 488 P.3d at 155) (internal citations omitted).

Courts have considered various factors when determining whether a plaintiff has met its burden to show good cause and unfairness. In one case, *Pressey v. Children’s Hospital of Colorado*, the trial court considered a “multitude of factors,” which included: the nature and degree of the injuries, the injured party's age and life expectancy, past and future medical expenses, lost future earnings and earnings capacity, the strength and certainty of the evidence of damages, the amount and composition of the jury verdict, whether there is an overlap in the damage award, particular needs and losses, and the purpose of the cap.² *Pressey*, 488 P.3d at 162.

Plaintiff cites *Pressey* and makes his argument based on these factors, and the Court finds the *Pressey* factors are apt for the Court’s consideration of the present motion. Therefore, the Court addresses each *Pressey* factor and uses these factors as a guide to consider the totality of the circumstances and determine whether Plaintiff has shown good cause to exceed the damages cap and that imposing the damages cap would be unfair. Because all of LCA-Vision’s arguments can

² The Court lists these factors in the order it addresses them herein rather than in the order the court in *Pressey* lists them and combines some factors for brevity (e.g., the plaintiff’s age and life expectancy).

fall under these factors, the Court addresses each of LCA-Vision’s arguments as applicable when addressing these factors.

1. Nature & Degree of Injuries

Plaintiff asserts the nature and degree of the injury show good cause to exceed the damages cap and that imposing the damages cap would be unfair because Plaintiff testified how his injury adversely impacts essentially every aspect of his daily life, and Dr. Randleman testified to the permanence of Plaintiff’s injury.

LCA-Vision disagrees and asserts that exceeding the damages cap requires “extraordinary” or “exceptional” circumstances and catastrophic injury. However, the case LCA-Vision primarily cites for this proposition discusses the standard for exceeding the cap for noneconomic damages. LCA-Vision provides the following quote in their standard of review section:

“[I]n the thirty-five years since the legislature enacted section 13-21-102.5(3)(a), courts have consistently relied on a case’s exceptional circumstances to justify the decision to exceed the cap.” *Pisano v. Manning*, 510 P.3d 572, 577-78 (Colo. [App.] 2022) (collecting catastrophic-injury cases).

Resp. p. 3.

But Plaintiff is requesting to exceed the economic damages cap pursuant to section 13-64-302(1)(b), not the noneconomic damages cap pursuant to section 13-21-102.5(3)(a). Section 13-21-102.5(3)(a)(I), the provision addressed in *Pisano*, does not apply to this case because this case was filed after January 1, 2025, and because it is a tort action against a health-care institution. *See* C.R.S. § 13-21-102.5(3)(a)(I) (“In any civil action filed before January 1, 2025, other than any civil action . . . for damages in tort brought against . . . a health-care institution, as defined in section 13-64-202 (3)”); *See Pisano*, 510 P.3d at 576 (addressing C.R.S. § 13-21-102.5(3)(a)(I)).

More importantly, though both standards require a court to consider the totality of the circumstances, while a court may exceed the economic damages cap upon good cause shown, the trial court may exceed the noneconomic damages cap pursuant to section 13-21-102.5(3)(a)(I) “only if it finds justification by clear and convincing evidence to exceed the cap.” *Pisano*, 510 P.3d at 576; *See* C.R.S. § 13-21-102.5(3)(a)(I) (the trial court may not exceed the noneconomic damages cap in section 13-21-102.5(3)(a)(I) “unless the court finds justification by clear and convincing evidence therefor.”). Thus, LCA-Vision’s premise that exceeding the economic damages cap requires exceptional circumstances or catastrophic injury is flawed at the outset because it is largely based on cases like *Pisano v. Manning*, which address the requirements for exceeding the noneconomic damages cap.³

Moreover, even the *Pisano* court’s collection of “catastrophic-injury cases” includes cases where the estimated progression of the injury, not the current manifestation, justified exceeding the noneconomic damages cap by clear and convincing evidence. *See, e.g., Pisano*, 510 P.3d at 578 (citing *Colwell v. Mentzer Invs., Inc.*, 973 P.2d 631, 639 (Colo. App. 1998) (“finding justification to exceed the cap because the plaintiff’s multiple sclerosis was progressing and she was likely going to ‘end up in a wheelchair’ ”)).

The other cases LCA-Vision cites in support of their contention that “[o]ther cases confirm that the exceptional circumstances justifying a departure from the damage cap involve catastrophic injury” are simply cases where the facts involved catastrophic injury. The injuries in *Banner Health* were catastrophic, which is why the Court upheld a \$40 million jury award to an infant. And significant “calamity” occurred from the plaintiff’s injuries in *Scholle v. Ehrichs*, 546 P.3d 1170

³ As the Court addresses in later in this Order, the other case LCA-Vision relies on for its interpretation of the appropriate standard, *Wallbank v. Rothenberg*, 140 P.3d 177 (Colo. App. 2006), while it applies the standard applicable to this Motion, is factually inapposite. *See infra* § II(A)(5).

(Colo. 2024), which supported the trial court exceeding the cap and awarding over \$9 million in economic damages to an individual near retirement age.⁴ But these cases do not support the contention that such catastrophic injury is required.

What is required is that Plaintiff establish good cause to exceed the damages cap and that imposing the cap would be unfair. As stated, Plaintiff asserts the nature and degree of the injury show good cause and unfairness because Plaintiff testified how the injury to his eye adversely impacts essentially every aspect of his daily life and Dr. Randleman testified to the permanence of Plaintiff's injury. The Court agrees, and while Plaintiff's injury is perhaps less visible than other "catastrophic" injuries, injuries to the eyes cause significant loss of quality of life, pain, and suffering. Even when managed, the irritation caused by eye injuries significantly impacts one's quality of life and that individual's ability to enjoy various kinds of activities, and Plaintiff testified to this effect. Plaintiff and Plaintiff's wife likewise testified to the significant emotional toll caused by this impact to Plaintiff's quality of life. Considering the adverse impact Plaintiff suffers in his daily life, and the fact that Dr. Randleman provided expert testimony regarding the permanence of this injury, the nature and degree of the injury support Plaintiff's assertion that there is good cause to exceed the damages cap and that imposing the cap would be unfair.

2. The Injured Party's Age & Life Expectancy

Plaintiff was 24 years old at the time of surgery and was 27 years old at the time of trial. Due to his young age, Plaintiff's life expectancy is approximately 50 years with a work life expectancy of 43 years. *See Ex. E*, at 52:11-53:3. Assuming Plaintiff lives up to his anticipated life

⁴ It seems unclear what the plaintiff's precise age was in *Scholle*, but at the time of the injury, he had already served twenty years in the military, received an honorable discharge, and moved on to a new career in civilian work, *Scholle*, 546 P.3d at 1173–74, and it appears he was at least 65 as he was on Medicare. *Id.* The plaintiff in *Scholle* died two years prior to the Colorado Supreme Court's ruling on his case. *Id.* at 1173 n. 2.

expectancy, Plaintiff will spend the majority of his life suffering from this injury that impacts his quality of life daily. Plaintiff will also suffer the loss of his professional career decades before the end of his work life according to the expert testimony at trial. Plaintiff's young age and life expectancy support Plaintiff's assertion that there is good cause to exceed the damages cap and that imposing the cap would be unfair.

3. Past & Future Medical Expenses

Plaintiff's past and future medical expenses are narrow and reasonable, and the economist's calculation of the present value of those expenses was undisputed. Plaintiff expressly instructed the jury not to award past medical expenses. For future medical expenses, the \$130,000 awarded consisted of the cost for scleral lenses over Plaintiff's lifetime and the cost of annual eye exams with imaging over Plaintiff's lifetime. Plaintiff's economic expert calculated the present value of these costs as \$129,700. The evidence supported these reasonable medical expenses, and the economist's calculations for these expenses were undisputed. Thus, Plaintiff purposely sought no past medical expenses and requested only these narrow, reasonable future medical expenses for Plaintiff's permanent injury over his 50-year life expectancy. This supports Plaintiff's assertion that there is good cause to exceed the economic damages cap and that imposing the cap would be unfair.

4. Lost Future Earnings & Earnings Capacity

While the lost future earnings awarded to Plaintiff are perhaps uniquely high, Plaintiff's projected future earnings and earnings capacity are uniquely high. As a pilot for NetJets, a private jet company, Plaintiff's projected future earnings based on the company's typical promotions and bargaining agreement are \$400,000 per year as a NetJet captain. Plaintiff demonstrated at least this

high of an earning capacity as well as that working as a pilot can be a lucrative career. According to the expert testimony, Plaintiff will lose his lucrative career as a pilot and the corresponding future earnings because of this injury.

Additionally, Plaintiff's economist calculated the present value of these lost future earnings by applying a 3% inflation rate to the wages rather than the 4% inflation rate provided in NetJets' collective bargaining agreement specifically to provide a conservative estimate of Plaintiff's future earnings. According to Plaintiff's economist, this resulted in a \$1.5 million reduction in the present value of Plaintiff's future earnings. And, this calculation was based on an assumption that Plaintiff would continue to work for NetJets in a non-pilot roll making approximately \$200,000 if he can no longer work as a pilot. Therefore, in addition to there being specific evidence as the basis for Plaintiff's future earning capacity, the economist's calculations of Plaintiff's future lost earnings were based on a conservative inflation rate and an assumption that Plaintiff would still be able to make a well-above average salary if he can no longer work as a pilot (which is not guaranteed).

Considering Plaintiff's uniquely high projected future earnings and earnings capacity with his current employer, that Plaintiff will lose out on those future earnings according to the expert testimony, and that the economist's calculated the present value of Plaintiff's lost future earnings using conservative metrics, Plaintiff's future lost earnings and earnings capacity support Plaintiff's assertion that there is good cause to exceed the economic damages cap and that imposing the cap would be unfair.

5. Strength & Certainty of the Evidence of Damages

While Plaintiff's loss of future earnings is speculative to an extent, as are all future earnings, as Plaintiff demonstrates, the expert testimony opining on the projected progression of

Plaintiff's injury, Plaintiff's projected future earnings with NetJets, and the expert testimony calculating Plaintiff's lost future earnings based on the projected progression of the injury and projected future earnings were all barely challenged or were un rebutted entirely. LCA-Vision cites *Wallbank* and *Pisano* to argue the damages here are too speculative, but the facts in these cases are clearly distinguishable.

In *Wallbank*, the plaintiff "had no record of substantial earnings" and "no evidence at trial provided any basis for determining the extent to which [the plaintiff's] injury would impact her future earnings". *Wallbank*, 140 P.3d at 178. Unlike the plaintiff in *Wallbank*, where the expert's testimony was necessarily too speculative because the plaintiff neither had a record of substantial earnings nor provided any evidentiary basis for how the injury would impact her future earnings, Plaintiff here has a record of substantial earnings with a specific company in a specific profession, and Plaintiff provided specific evidence for determining the extent to which Plaintiff's injury would impact his future earnings, including: documentation demonstrating his projected future earnings as a pilot with his current employer, expert testimony specifically discussing the progression of Plaintiff's injury which will result in the loss of those future earnings, and un rebutted expert testimony calculating the present value of Plaintiff's future earnings (using conservative metrics) based on this evidence.

LCA-Vision similarly cites *Pisano* for the proposition that "where the plaintiff's condition 'was being effectively managed' and the plaintiff 'continued to excel at a high-level job,' a departure from the damage cap is not warranted." But, in addition to *Pisano* addressing the noneconomic damages cap, *see supra* § II(A)(1), the facts in *Pisano* are also clearly distinguishable. In *Pisano*, the jury awarded the amount the plaintiff requested in noneconomic damages for pain and suffering while also finding "that [the plaintiff] had suffered no compensable

physical impairments, including no cognitive impairment, as a result of the accident,” which was the sole basis for the plaintiff’s noneconomic injuries presented at trial. *Pisano*, 510 P.3d at 579. Unlike in *Pisano*, the jury here awarded the amount Plaintiff requested in full, this amount was supported by specific testimony presented to the jury at trial, and this amount was not in conflict with any of the jury’s other findings.

LCA-Vision also argues Plaintiff’s projected injury progression is too speculative based on the current manifestation of Plaintiff’s condition. But this has little bearing on how his injury will progress over the next ten years. This evidence regarding Plaintiff’s current management of his injury does nothing to negate the expert testimony that Plaintiff’s injury would worsen to a reasonable degree of medical certainty over the next 10-year period.

LCA-Vision additionally asserts that the evidence showed Plaintiff’s vision “probably” will remain stable based on a statistic from one of the trial exhibits. Plaintiff adequately explains how this is a misrepresentation of Dr. Randleman’s testimony and a misunderstanding regarding the study’s interpretation and application to this case. *See Reply*, p. 3. Dr. Randleman explained this study, testified the extent to which Plaintiff is likely to experience a decline in vision over time to a reasonable degree of medical certainty, and explained that this conclusion is based on the known progression of ectasia and the limitations of available treatments.

There was little to effectively question Dr. Randleman’s testimony regarding the progression of Plaintiff’s injury, Plaintiff’s projected future earnings, or the economist’s testimony calculating the present value of Plaintiff’s lost future earnings. While there was some testimony related to Dr. Randleman’s frequency for testifying as an expert, which could suggest bias, there was more testimony demonstrating that Dr. Randleman is an ophthalmologist with significant experience in the specific area of ophthalmology at issue in this case. The strength and certainty

of the evidence ultimately support Plaintiff's assertion that there is good cause to exceed the damages cap and that imposing the cap would be unfair.

6. Amount & Composition of the Jury's Verdict

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 jury awarded damages as Plaintiff requested plus \$100,000. As discussed, Plaintiff requested narrow and reasonable future medical expenses and other damages. The additional damages the jury awarded, though not sought pursuant to Plaintiff's targeted request for noneconomic damages, were supported by the evidence. And, Plaintiff concedes that his noneconomic losses are capped pursuant to statute. The amount and composition of the jury's verdict does not entail a windfall but rather includes Plaintiff's reasonable request for damages other than future earnings and damages for future earnings which themselves were calculated using conservative metrics. This supports Plaintiff's assertion that there is good cause to exceed the damages cap and that imposing the damages cap would be unfair.

7. Whether There is an Overlap in the Damages Award

There is not an overlap in the damages award. As noted above, Plaintiff purposely narrowed his request for other damages and concedes the application of the noneconomic damages cap to the jury's award of future noneconomic damages. This supports Plaintiff's assertion that there is good cause to exceed the damages cap and that imposing the cap would be unfair.

8. Particular Needs & Losses

While Plaintiff's particular needs may be lower than average, his particular losses are higher than average. Expert testimony provided that, to a reasonable degree of medical certainty, Plaintiff will lose his lucrative career as a pilot. Not only will this result in significant financial loss, but there was also testimony from Plaintiff demonstrating his passion for flying as well as that Plaintiff followed his father into the profession. Thus, while Plaintiff may not have some of the physical needs like the plaintiffs in "catastrophic" cases which LCA-Vision references, Plaintiff has a much higher earning capacity and thus much higher future earnings losses than those plaintiffs. Plaintiff also will suffer significant sentimental loss from no longer being able to pursue his passion and work in the same profession as his father. This supports Plaintiff's assertion that there is good cause to exceed the damages cap and that imposing the cap would be unfair.

9. Purpose of the Cap

Similar to the respondents in *Scholle*, underpinning LCA-Vision's position that the cap should be imposed "is the notion that such a reading will ensure the fairest damage award is imposed against defendants." *Scholle*, 546 P.3d at 1184. "But the purpose of section 13-64-302(1)(b)'s good cause exception is to allow a trial court to exceed the \$1 million cap if its application would be unfair to the *plaintiff*." *Id.* (emphasis in original) (citing C.R.S. § 13-64-302(1)(b)).

Though "the legislature enacted the HCAA 'to assure the continued availability of adequate health-care services to the people of this state by containing the significantly increasing costs of malpractice insurance for medical care institutions and licensed medical care professionals[,] [t]he legislature also wanted 'to protect patients from bad doctors.'" *Banner Health*, 579 P.3d at 889.

This latter purpose seems especially pertinent when discussing elective surgery and a patient presenting with a contraindication as here. It logically follows that continued availability of adequate healthcare services is more important for necessary medical care than for elective medical care. To that end, it is in line with the purpose of the statute to exceed the economic damages cap where a plaintiff is told he is a good candidate for elective surgery, which the plaintiff sought solely to increase his quality of life, when that plaintiff, in fact, was not a good candidate and specifically presented with a contraindication, resulting in that plaintiff undergoing an unnecessary surgery that not only fails to increase his quality of life but diminishes it permanently.

LCA-Vision argues “the impact of the cap on Mr. Lara is softened by his earlier receipt of payment from a joint tortfeasor, in addition to the million-dollar compensation he will receive with the HCAA cap in place,” but the reality is imposing the cap on Plaintiff on this basis may result in a windfall for LASIKPlus in the form of reduced liability contrary to the General Assembly’s intent. Instead, the General Assembly’s intent in similar circumstances is that “[i]f either party is to receive a windfall, the rule awards it to the injured plaintiff who was wise enough or fortunate enough to secure compensation from an independent source, and not to the tortfeasor.” *Volunteers of Am. Colorado Branch v. Gardenswartz*, 242 P.3d 1080, 1083 (Colo. 2010) (*en banc*); *see Scholle*, 546 P.3d at 1184; *see also Van Waters & Rogers, Inc. v. Keelan*, 840 P.2d 1070, 1074 (Colo. 1992) (“To the extent that either party received a windfall, it was considered more just that the benefit be realized by the plaintiff in the form of double recovery rather than by the tortfeasor in the form of reduced liability.”). “The rule’s purpose is to prevent a tortfeasor from benefitting, in the form of reduced liability, from compensation in the form of money or services that the victim may receive from a third-party source.” *Gardenswartz*, 242 P.3d at 1083 (quoting in parenthetical *Quinones v. Pa. Gen. Ins. Co.*, 804 F.2d 1167, 1171 (10th Cir. 1986) (“[t]he rule

evolved around the commonsense notion that a tortfeasor ought not be excused because the victim was compensated by another source’’)).

Additionally, the impact of Dr. Rosenbaum having settled is negated by the fact that, where a tortfeasor settles and is then designated as a non-party at fault, “the jury award should [be] reduced only by the amount equivalent to the percentage of liability attributed to the settling nonparties.” *Smith v. Zufelt*, 880 P.2d 1178, 1181 (Colo. 1994). Thus, Dr. Rosenbaum’s fault as it relates to a reduction in damages is already contemplated in the 25% of fault attributed to Dr. Rosenbaum, and this settlement does not negate Plaintiff having established good cause to exceed the damages cap and that exceeding the damages cap would be unfair.

Lastly, Defendant seems to invoke the corporate practice of medicine doctrine without naming it and without citation to legal authority. The corporate practice of medicine doctrine either precludes liability against LCA-Vision or it does not. To the extent Defendant asserts this legal doctrine without naming it and without citation to legal authority as an argument against Plaintiff having established good cause to exceed the damages cap and that imposing the cap would be unfair, it is unavailing.

Having considered the Plaintiff’s arguments regarding the *Plessy* factors and how these demonstrate good cause to exceed the damages cap and that imposing the cap would be unfair, LCA-Vision’s arguments to the contrary, and the totality of the circumstances, the Court finds Plaintiff meets his burden to establish good cause to exceed the damages cap and that imposing the damages cap would be unfair.

B. Proper Amount of Damages

Having determined that Plaintiff has shown good cause to exceed the statutory damages cap and that imposing the cap would be unfair, the Court now must determine the proper amount of damages. The Court determines damages according to common law, deferring to the jury's determination of damages subject only to the Court's remittitur authority and the sufficiency of evidence. *Banner Health*, 579 P.3d at 884–85.

1. Remittitur Authority

“At common law, determining the amount of damages is solely within the province of the jury.” *Id.* at 886 (citing *Ochoa v. Vered*, 212 P.3d 963, 972 (Colo. App. 2009)). “Courts can always, of course, review the sufficiency of the evidence in support of an award, but may otherwise” reduce the jury's damages award only by ordering a remittitur. *Id.*

“[I]f the court determines that the jury's award is grossly and manifestly excessive, but not the result of bias, passion, or prejudice, ‘the court may order a remittitur and alternatively authorize a new trial on damages alone if the plaintiff refuses to accept the remittitur.’ ” *Id.* (quoting *Higgs v. Dist. Ct.*, 713 P.2d 840, 861 (Colo. 1985)). “A remittitur is ‘[t]he process by which a court reduces or proposes to reduce the damages awarded in a jury verdict.’ ” *Id.* (quoting *Garhart*, 95 P.3d at 582 (Colo. 2004)). “[U]nder common law, the party challenging the award as excessive bears the burden of showing that the jury's award should be reduced.” *Id.* at 888 (citing *Atl. & Pac. Ins. Co. v. Barnes*, 666 P.2d 163, 165 (Colo. App. 1983)).

As an initial matter, LCA-Vision has only requested that the Court impose the statutory damages cap and made no argument in the alternative regarding proper damages in the event the Court exceeds the damages cap. To the extent LCA-Vision's response can be considered a request

to reduce the jury's damages award (rather than only an objection to Plaintiff's request to exceed the statutory damages cap), LCA-Vision has only made such a request pursuant to statute. LCA-Vision has not requested a remittitur under common law nor argued that the jury's award is "grossly and manifestly excessive" as necessary for the Court to exercise its remittitur authority. At common law, the burden is on LCA-Vision to challenge the award as excessive, and LCA-Vision fails to meet that burden.

That said, in addition to LCA-Vision not requesting a remittitur, the Court finds the damages are not grossly and manifestly excessive. The jury awarded the amount Plaintiff requested plus additional damages which were supported by the evidence but which Plaintiff did not ask the jury to award pursuant to Plaintiff's targeted request for damages. The additional \$100,000 awarded was reasonable given the evidence. Like this finding, the jury's other findings on damages (which were awarded as requested) were supported by the evidence and not some excessive award without any basis. Nor is the amount itself grossly or manifestly excessive considering Plaintiff's age, work life capacity, and demonstrated future earnings capacity. Lastly, as discussed, Plaintiff and his economic expert took several steps to narrow the requested damages and use conservative metrics when calculating Plaintiff's future earnings.

LCA-Vision fails to meet its burden that the jury award is grossly and manifestly excessive, and the Court finds the damages award is not grossly and manifestly excessive such that the Court may exercise its remittitur authority.

2. Sufficiency of the Evidence

Plaintiff's damages for his future lost wages were supported by specific evidence at trial, including: Plaintiff's age and work life expectancy; Plaintiff's profession as a pilot; Plaintiff's

substantial earnings history as a pilot and with his current employer specifically; documentation from Plaintiff's employer demonstrating Plaintiff's projected future earnings and earnings capacity as a pilot with his current employer; expert testimony from an ophthalmologist with extensive experience in the area related to Plaintiff's injury regarding the injury Plaintiff suffered from the surgery at issue; expert testimony from that same ophthalmologist opining that Plaintiff's injury would progress such that he could no longer work as a pilot in 10 years; and expert testimony from an economist, which was unrebutted, calculating the present value of Plaintiff's future lost wages based on Plaintiff's age and work life expectancy, Plaintiff's earnings capacity and projected future earnings with his current employer if he continues working as a pilot, and the expert testimony regarding when Plaintiff would no longer be able to work as a pilot based on the progression of his injury. The jury awarded Plaintiff future lost wages based on this evidence and the economist's calculations. The evidence presented at trial was sufficient to support the jury's future economic damages award.

Because the damages were not grossly or manifestly excessive warranting the Court's exercise of its remittitur authority and the evidence presented at trial was sufficient to support the jury's damages award, pursuant to common law, the Court defers to the jury's determination of damages and finds the proper amount of damages is the amount the jury awarded.

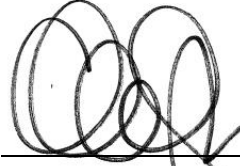
III. CONCLUSION

The Court finds Plaintiff meets his burden to establish good cause to exceed the statutory damages cap and that imposing the cap would be unfair, and the Court further finds it has no basis at common law to reduce the jury's damages award.

THE COURT THEREFORE ORDERS 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, is **GRANTED**.

DONE AND SIGNED: April 16, 2026.

BY THE COURT

A handwritten signature in black ink, consisting of several overlapping loops and a trailing flourish, positioned above a horizontal line.

CHANTEL CONTIGUGLIA
District Court Judge