

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

FILED

NOV 22 2013

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXASBY  DEPUTY CLERKTWO-WAY MEDIA, LLC,
Plaintiff,

v.

AT&T SERVICES, INC., et al.
Defendants.§
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Cause No. SA-09-CA-00476-OLG

ORDER

Before the Court are Defendants' Motion for Leave to File Renewed Rule 50(b) Motion for Judgment as a Matter of Law (JMOL) on Damages and Rule 59 Motion for New Trial under Seal (docket nos. 594, 599), Plaintiff's Unopposed Motion for Leave to File Under Seal its Opposition to Defendants' Renewed Rule 50(b) Motion for Judgment as a Matter of Law on Damages and Rule 59 Motion for New Trial, and Supporting Declaration of Rachel S. Black (docket no. 605), and Defendants' Motion for Leave to File a Reply In Support of their Renewed Rule 50(b) Motion for Judgment as a Matter of Law on Damages and Rule 59 Motion for New Trial Under Seal (docket no. 608). The Court hereby GRANTS each of the above-mentioned Motions for Leave to File. The Clerk of the Court is instructed to file each motion filed concurrently with the motions for leave to file as separate pleadings, and said pleadings shall be sealed.

Defendants move the court to enter a JMOL or grant a new trial based on damages. Rule 59 "allows a trial court to grant a new trial based on its assessment of the fairness of the trial and the reliability of the jury's verdict." *Seidman v. American Airlines, Inc.* 923 F.2d 1134, 1140 (5th Cir. 1991). The Court should not grant new trials on evidentiary grounds unless, at a minimum, the verdict is against the great, not merely the greater weight of the evidence. *Carr v. Wal-Mart Stores, Inc.*, 312 F.3d 667, 670 (5th Cir. 2002); *Conway v. Chem. Leaman Tank Lines, Inc.*, 610 F.2d 360, 363 (5th Cir. 1980). The Court may grant a new trial if "the verdict is against the weight of the

evidence, the amount awarded was excessive, or the trial was unfair or marred by prejudicial error.” *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 613 (5th Cir. 1985).

A court reviewing a JMOL motion must give “great deference to a jury’s verdict.” *Dresser-Rand Co. v. Virtual Automation, Inc.*, 361 F.3d 831, 838 (5th Cir. 2004). JMOL is appropriate under Rule 50 only when “a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.” FED. R. CIV. 50(a); *see, e.g. Old Town Canoe Co. v. Confluence Holdings Corp.*, 448 F.3d 1309, 1311 (Fed. Cir. 2006); *Guile v. United States*, 422 F.3d 221, 225 (5th Cir. 2005). The Court must review all of the evidence of record in deciding for JMOL, “draw all reasonable inferences in favor of the non-moving party, and . . . not make credibility determinations or weigh the evidence.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 149–50 (2000). In the Fifth Circuit, entry of JMOL under Rule 50(b) is appropriate if evidence supporting the movant is “uncontradicted and unimpeached [or] if the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that [a] reasonable [jury] could not arrive at a contrary verdict.” *Evans v. Ford Motor Co.*, 484 F.3d 329, 334 (5th Cir. 2007); *Med. Car. Am., Inc. v. Nat’l Union Fire Ins. Co.*, 341 F.3d 415, 420 (5th Cir. 2003).

The Court has carefully considered Defendants’ Renewed Rule 50(b) Motion for Judgment as a Matter of Law on Damages and Rule 59 Motion for New Trial, Plaintiff’s Opposition, Defendants’ Reply thereto, the applicable law, and the other papers and pleadings on file in this case. After considering the evidence admitted into the record at trial, and viewing it in the light most favorable to the non-moving party, the Court finds that sufficient evidence was presented by Plaintiff for the jury to reach its verdict regarding the issues presented by Defendants regarding damages, and that the jury’s verdict was not against the great weight of the evidence. *See Reeves*, 530 U.S. at 149–50; *Carr*, 312 F.3d at 670. Therefore, the Court finds Defendants’ Renewed Rule

50(b) Motion for Judgment as a Matter of Law on Damages and Rule 59 Motion for New Trial are hereby DENIED.

SIGNED this 22 day of November, 2013.

A handwritten signature in black ink, appearing to read "Orlando L. Garcia", written over a horizontal line.

United States District Judge Orlando L. Garcia