NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE CABLE, an individual, Plaintiff - Appellant, v. STARBUCKS CORPORATION, Defendant - Appellee.	No. 24-914 D.C. No. 2:20-cv-10931-JLS-AS MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

Submitted March 27, 2025**
Pasadena, California

Before: BOGGS***, FRIEDLAND, and BRESS, Circuit Judges.

Plaintiff George Cable appeals the district court's denial of his motion for a new trial and motion to alter or amend the judgment after the district court entered

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

judgment in favor of Defendant Starbucks Corporation following a jury trial. We have jurisdiction to review the district court's rulings under 28 U.S.C. § 1291, and we affirm.

1. Plaintiff asserts that the district court erred in concluding that the jury's initial verdict was inconsistent and resubmitting the entire special verdict form to the jury for further consideration. We review de novo a district court's conclusion that a jury returned an inconsistent verdict that cannot be reconciled and review for abuse of discretion a district court's decision to resubmit that inconsistent verdict to the jury. *See Wilks v. Reyes*, 5 F.3d 412, 415 (9th Cir. 1993).

"The consistency of the jury verdicts must be considered in light of the judge's instructions to the jury." *Toner for Toner v. Lederle Lab'ys*, 828 F.2d 510, 512 (9th Cir. 1987). Here, the initial verdict was inconsistent because the jury answered "yes" to Question 3 but failed to answer any subsequent questions, contradicting the special verdict form's instructions to continue to Question 4 if it responded "yes" to any of Questions 1 through 3. Because there was no "reasonable way" to reconcile the responses on the special verdict form, the district court did not err in concluding that the initial verdict was inconsistent. *Flores v. City of Westminster*, 873 F.3d 739, 756–57 (9th Cir. 2017) (quoting *Anheuser-Busch, Inc. v. John Labatt Ltd.*, 89 F.3d 1339, 1347 (8th Cir. 1996)).

When the jury's responses to a special verdict cannot reasonably be

reconciled and the jury is still available, "[t]he practice of resubmitting an inconsistent verdict to the jury for clarification is well-accepted." *Duk v. MGM Grand Hotel, Inc.*, 320 F.3d 1052, 1056 (9th Cir. 2003). In those circumstances, resubmission "best comports with the fair and efficient administration of justice." *Id.* at 1058. Here, as in *Duk*, the district court did not abuse its discretion in resubmitting the entire special verdict form to the jury.

2. Plaintiff argues that the jury's revised verdict resulted from improper judicial influence or improper jury compromise, and that the district court therefore erred in denying his motion for new trial and motion to amend the judgment. Although Plaintiff contends that we should review the district court's decisions de novo, those decisions are committed to the discretion of the district court. *Flores*, 873 F.3d at 748; *Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003).

Even assuming arguendo that de novo review applies, Plaintiff's argument is unpersuasive. First, Plaintiff points to no evidence that the court's statements upon resubmission were coercive. By endorsing resubmission of an inconsistent verdict, we have necessarily endorsed district courts' providing a neutral instruction—one that "does not push the jury in one direction or another"— upon resubmission. *Duk*, 320 F.3d at 1056 (quoting *Larson v. Neimi*, 9 F.3d 1397, 1401 (9th Cir. 1993)); *see Mateyko v. Felix*, 924 F.2d 824, 827 (9th Cir. 1990). Here, the district

court gave such a neutral instruction, and in the absence of any evidence that the judge additionally made an improper gesture or remark, no judicial coercion occurred. Second, "resubmission necessarily means that there might well be a difference between the first verdict and that reached after resubmission." *Duk*, 320 F.3d at 1059. A district court cannot order a new trial when there is a "legitimate explanation," such as redeliberation or clerical error, for a revised verdict "that is not contrary to the weight of the evidence." *Id.* Here, the jury repeatedly affirmed that it initially committed a clerical error, and Plaintiff does not contend that the revised verdict was against the weight of the evidence. The district court therefore did not err in denying Plaintiff's motion for a new trial and motion to amend the judgment.

AFFIRMED.