NOT FOR PUBLICATION

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MAY 29 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ACTCA, A MEMBER OF THE ALLIANCE, INC., a California corporation,

Plaintiff-ctr-defendant - Appellant,

v.

RHYTHM PHARMACEUTICALS, INC., a Delaware corporation,

Defendant-ctr-claimant - Appellee,

v.

SFCT, A MEMBER OF THE ALLIANCE, INC.; ICTLV, INC.; NYCT, A MEMBER OF THE ALLIANCE, INC.,

Counter-defendants - Appellants.

No. 24-6954

D.C. No. 2:22-cv-01127-CAS-GJS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Argued and Submitted April 24, 2026
Pasadena, California

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

Before: HIGGINSON, NGUYEN, and BRESS, Circuit Judges.[**]

ACTCA, SFCT, ICTLV, and NYCT (collectively, Axis) appeal the district court's decision granting a new trial in Axis's breach of contract case against Rhythm Pharmaceuticals. Axis also appeals the district court's amendment of the pretrial conference order before the parties' second trial, as well as the court's ruling excluding certain of Axis's exhibits from evidence during the second trial. We review for abuse of discretion the district court's decisions to grant a new trial, to amend the pretrial conference order, and to exclude evidence. *Experience Hendrix L.L.C. v. Hendrixlicensing.com Ltd*, 762 F.3d 829, 841 (9th Cir. 2014); *Galdamez v. Potter*, 415 F.3d 1015, 1020 (9th Cir. 2005); *Balla v. Idaho*, 29 F.4th 1019, 1024 (9th Cir. 2022). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. A district court on its own may order a new trial "after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59(a)(1)(A), (d). Those reasons include when "the verdict is against the weight of the evidence, the damages are excessive, or, for other reasons, the trial was not fair to the [moving] party." *Claiborne v. Blauser*, 934 F.3d 885, 894 (9th Cir. 2019) (brackets in original) (internal quotation marks omitted)

[**] The Honorable Stephen A. Higginson, United States Circuit Judge for the Court of Appeals, Fifth Circuit, sitting by designation.

(quoting *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940)). In addition, a "district court can grant a new trial under Rule 59 on any ground necessary to prevent a miscarriage of justice." *Experience Hendrix*, 762 F.3d at 842.

The district court did not abuse its discretion by ordering a new trial. The court concluded that the jury's verdict after the first trial, which found both parties liable for breach of contract, was likely based on an impermissible determination of comparative fault. *See Kransco v. Am. Empire Surplus Lines Ins. Co.*, 2 P.3d 1, 10 (Cal. 2000) (observing that "contractual breaches are generally excluded from comparative fault allocations"). On appeal, Axis argues there was evidence presented at trial for the jury to find Rhythm in breach of six of the GO-ID Study contracts, and Axis in breach of six of the Basket Study contracts, meaning the jury's findings were not based on a legally impermissible compromise verdict.

However, throughout the course of the first trial, no party made any argument to the jury that it could base its verdict on study-specific findings of breach. The jury instructions did not apprise the jury that it could make any findings on a study-specific basis, nor did the instructions break down the parties' claims based on individual contracts or sets of contracts. Similarly, the verdict form asked only, with respect to each party, whether the jury found that the party had "breached *the contract* between the parties." (Emphasis added). In addition, the damages awarded by the jury were tens of thousands of dollars away from the damages estimates that

each side presented at trial for the respective studies. The district court's conclusion that the verdict was more likely based on a misapplication of law was not "illogical, implausible, or without support in the inferences that may be drawn from the record." *Kode v. Carlson*, 596 F.3d 608, 612 (9th Cir. 2010); *see also Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36 (1980) ("The authority to grant a new trial, moreover, is confided almost entirely to the exercise of discretion on the part of the trial court.").

2. The district court did not abuse its discretion in modifying the pretrial conference order for the second trial. "The [district] court may modify the order issued after a final pretrial conference only to prevent manifest injustice." Fed. R. Civ. Proc. 16(e). In evaluating whether to grant a party's motion to amend the pretrial conference order, "a district court should consider four factors: (1) the degree of prejudice or surprise to the [opposing party] if the order is modified; (2) the ability of the [opposing party] to cure the prejudice; (3) any impact of modification on the orderly and efficient conduct of the trial; and (4) any willfulness or bad faith by the party seeking modification." *Galdamez*, 415 F.3d at 1020.

The district court did not abuse its discretion by granting Rhythm's request to amend the pretrial conference order before the second trial to redesignate its expert witness as an affirmative witness, add four fact witnesses, and add twenty-five exhibits. Rhythm's expert witness, initially designated as a rebuttal witness, did not

testify at the first trial due to Axis's decision not to call its own expert witness. The four newly added fact witnesses were to provide testimony responsive to testimony presented by Axis during the first trial. And the twenty-five exhibits were from Axis's own document production. Rhythm communicated these planned changes to the pre-trial order to Axis six months before the second trial. Axis thus suffered minimal prejudice from these amendments, and any marginal prejudice was cured by the fact that the district court gave Axis the opportunity to require Rhythm to disclose the subject matter of the new witness testimony, take depositions of the new witnesses, and designate its own rebuttal expert.

3. The district court did not abuse its discretion in excluding certain documents offered by Axis from evidence at the second trial (Exhibits 47–52, 73, and 74). Although the court admitted these exhibits at the first trial, it was permitted to revisit its evidentiary rulings in the second trial. *See Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 601–02 (9th Cir. 1991). Axis makes no substantive argument challenging the district court's rulings under Fed R. Evid. 408 and 803(6) at the second trial. Accordingly, any argument that Exhibits 47–52, 73, and 74 are business records and not inadmissible settlement documents is forfeited. *See Greenwood v. F.A.A.*, 28 F.3d 971, 977 (9th Cir. 1994). Regardless, we discern no abuse of discretion in the district court's evidentiary determinations.

AFFIRMED.