IN THE SUPERIOR COURT OF GUAM

LIN SHR CONSTRUCTION CO., INC., et al., Plaintiffs, **vs.** **ACETOWN, INC.,** Defendant.	**CIVIL CASE NO. CV0029-22** **DECISION AND ORDER RE DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MOTION FOR A NEW TRIAL**
ACETOWN, INC., Counterclaim-Plaintiff, **vs.** **LIN SHR CONSTRUCTION CO., INC., et al.,** Counterclaim-Defendants.	

This matter came before the Honorable Dana A. Gutierrez upon Defendant Acetown, Inc.'s ("Defendant") Motion for Judgment Notwithstanding the Verdict and Motion for a New Trial ("Motions"). On December 9, 2025, the Court held a hearing on the Motions. Attorney Charles McDonald, on behalf of Plaintiffs Lin SHR Construction Co., Inc. and Yu Yao Lin, and Attorney

Anita Arriola, on behalf of Defendant Acetown, Inc., appeared at this hearing. After reviewing the record, arguments of counsel, and applicable law, the Court issues the following Decision and Order.

BACKGROUND

This action arises from a commercial lease dispute between Plaintiffs Lin SHR Construction Co., Inc., doing business as Lin's Hardware, and its owner, Mr. Lin (collectively, "Plaintiffs"), and Defendant Acetown, Inc. ("Defendant"). Plaintiffs leased commercial premises from Defendant pursuant to a written lease agreement governing the use and maintenance of the property ("Lease"). During the Lease term, Plaintiffs operated a hardware business on the premises and stored inventory within the leased warehouse space.

The dispute centers on two incidents occurring during the latter part of the Lease term. The first incident occurred in June 2020, when a fire suppression pipe located within the warehouse ruptured and leaked water into the premises. *See* Def.'s Mem. of Points and Authorities in Supp. of Mot. for J. Notwithstanding the Verdict and Mot. for a New Trial at 2–3 (Jun. 27, 2025) ("Def.'s Mots."). The second incident occurred in or about June 2021, when Plaintiffs experienced water intrusion during rainfall conditions. *Id.* at 3.

The operative complaint, the First Amended Complaint for Damages, alleged claims including breach of contract, negligence, and breach of the implied covenant of good faith and fair dealing, intentional infliction of emotional distress, negligent infliction of emotional distress, injury to personal property, and deceptive trade practices. *See* First Amended Compl. for Damages

at 6–14 (Jun. 20, 2022). At the summary judgment stage, Judge John C. Terlaje[1] granted summary judgment in favor of Defendant on the claim of deceptive trade practices but denied summary judgment as to all other claims. *See* Decision and Order at 9–10 (Dec. 29, 2023). At the close of Plaintiffs' case-in-chief, Defendant moved for judgment as a matter of law pursuant to Guam Rules of Civil Procedure ("GRCP") Rule 50(a). The Court granted the motion in part and denied it in part. The Court entered judgment as a matter of law in favor of Defendant on certain claims but allowed Plaintiffs' claims for breach of contract, negligence, and breach of the implied covenant of good faith and fair dealing to proceed to the jury. *See* Order Granting in Part and Denying in Part Defendant's Motion for Judgment as a Matter of Law at 10–15 (Apr. 1, 2025) ("JMOL Order"). These claims are at issue in this Decision and Order.

During trial, the Court addressed a number of evidentiary issues and motions. Prior to trial, the Court issued an order addressing motions in limine, including an order excluding testimony concerning an alleged conversation between Mr. Lin and an individual identified as Mr. Jiang. *See* Order at 4 (Mar. 24, 2025) ("In Limine Order"). The Court also ruled on evidentiary matters relating to damages, including testimony concerning alleged lost profits and loss of use of rental space. During the course of the trial, multiple witnesses testified regarding the Lease, the condition of the premises, the repair history of the building and fire suppression system, and the damages allegedly sustained by Lin's Hardware. Mr. Lin testified regarding the operation of the hardware store, the business' revenues and profits, and the impact of the water incidents on the store's operations.

[1] This matter was reassigned to this Court on June 3, 2024, after Judge Terlaje consented to his disqualification from the case on May 31, 2024. *See* Notice of Judge Reassignment (June 3, 2024); Answer to Statement of Objection (May 31, 2024).

Following the close of evidence and closing arguments, the Court instructed the jury on the applicable law, including instructions regarding breach of contract, negligence, breach of the implied covenant of good faith and fair dealing, and modification of contract. *See* Jury Instructions (Apr. 11, 2025). The jury subsequently returned its verdict. On June 17, 2025, the Court entered judgment in favor of Lin's Hardware on its claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and negligence. The jury awarded Lin's Hardware damages in the amounts of $347,562.44 for loss of inventory or personal property, $129,249.86 for lost profits, $13,950.00 for loss of use of rental property, and $24,854.00 for cleanup costs. *See* Judgment at 2 (Jun. 17, 2025). Judgment was entered consistent with the jury's verdict. *See id.*

On June 27, 2025, Defendant filed a motion for judgment notwithstanding the verdict and a motion for a new trial. *See* Def.'s Mots. at 1. Plaintiffs filed their opposition to those motions on August 1, 2025. *See* Pls.' Opp'n to Def.'s Mots. at 1 (Aug. 1, 2025) ("Pls.' Opp'n"). Defendant filed a reply on August 22, 2025. Def.'s Reply at 1 (Aug. 22, 2025).

DISCUSSION

I. Motion for Judgment Notwithstanding Verdict

A. Legal Standard

A motion for judgment notwithstanding the verdict under GRCP Rule 50(b) is governed by the same standard as a motion for judgment as a matter of law. *See Kennedy v. Sule*, 2015 Guam 38 ¶ 21 ("A motion for a directed verdict and a motion for judgment notwithstanding the verdict is the same as a motion for judgement [*sic*] as a matter of law.") (citing *O'Mara v. Hechanova*, 2001 Guam 13 ¶ 6) (alteration in original); *Guerrero v. DLB Const. Co.*, 1999 Guam 9 ¶ 11 ("A motion for judgment notwithstanding the verdict is the same as a motion for judgment as a matter

of law."). Such a motion may be granted "if the evidence, construed in the light most favorable to the nonmoving party, permits only one reasonable conclusion, and that conclusion is contrary to that of the jury." *Kennedy*, 2015 Guam 38 ¶ 21 (citing *O'Mara*, 2001 Guam 13 ¶ 6).

In evaluating the sufficiency of the evidence, the Court does not "weigh the evidence or assess the credibility of witnesses." *See Contreras v. Jeremias*, 1988 WL 138285, at *2 (E.D.N.Y. Dec. 15, 1988);[2] *Whalen v. Roanoke Cnty. Bd. of Sup'rs*, 769 F.2d 221, 226 (4th Cir. 1985) ("The trial court is prohibited from assessing the credibility of witnesses and weighing the evidence when ruling on a motion for judgment notwithstanding the verdict."); *In re Hawaii Fed. Asbestos Cases*, 734 F. Supp. 1563, 1571 (D. Haw. 1990) ("When ruling on a motion for judgment notwithstanding the verdict, 'the trial judge cannot reweigh the evidence or consider the credibility of the witnesses.'") (citing *Peterson v. Kennedy*, 771 F.2d 1244, 1252 (9th Cir.1985)). Instead, the Court must determine "whether [the verdict] is supported by substantial evidence." *Guerrero*, 1999 Guam 9 ¶ 20 (citing *Maynard v. City of San Jose*, 37 F.3d 1396, 1404 (9th Cir.1994)). "Substantial evidence" is defined as "such relevant evidence which reasonable minds might accept as adequate to support a conclusion even if it is possible to draw two inconsistent conclusions from the evidence." *Id.* "A trial court may grant a new trial only if the verdict is against the clear weight of the evidence, and may not grant it simply because the court would have arrived at a different verdict." *Martin v. California Dep't of Veterans Affs.*, 560 F.3d 1042, 1046 (9th Cir. 2009) (citation omitted).

[2] "[B]ecause the Guam Rules of Civil Procedure are generally derived from, although not identical to, the Federal Rules of Civil Procedure . . ., federal decisions that construe the federal counterparts to the [GRCP] are persuasive authority." *Portis Int'l, LLC v. Marquardt*, 2018 Guam 22 ¶ 7 n.1 (citing *Gov't of Guam v. O'Keefe*, 2018 Guam 4 ¶ 9) (alteration in original).

If there is substantial evidence supporting the jury's verdict, the motion must be denied; conversely, judgment notwithstanding verdict is granted where a party has failed to present sufficient evidence on an essential element of its claim or defense. *See, e.g.*, *Mroz v. Lee*, 884 F. Supp. 246, 249 (E.D. Mich. 1995) ("Judgment notwithstanding the verdict is appropriate as a matter of law when the evidence produced at trial fails to establish an element necessary to Plaintiffs' cause of action."); *Scott v. Land Span Motor, Inc.*, 781 F. Supp. 1115, 1118 (D.S.C. 1991) ("[W]here the non-moving party has the ultimate burden of proof and fails to produce sufficient evidence in support of an essential element of the cause of action, then the court should render judgment in favor of the moving party as a matter of law.") (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). "[S]ince the grant of such a motion deprives the nonmoving party of a determination of the facts by a jury, judgment notwithstanding the verdict should be cautiously and sparingly granted." *E.E.O.C. v. Prudential Fed. Sav. & Loan Ass'n*, 763 F.2d 1166, 1171 (10th Cir. 1985) (alteration in original) (citation omitted); *see also Scottsdale Ins. Co. v. Tolliver*, 2008 WL 5146457, at *5 (N.D. Okla. Dec. 8, 2008) ("Judgment notwithstanding the verdict 'should be cautiously and sparingly granted.'") (citing *Lucas v. Dover Corp., Norris Div.*, 857 F.2d 1397, 1400 (10th Cir. 1988)).

B. Breach of Contract

Defendant argues that judgment notwithstanding the verdict is warranted because Plaintiffs failed to prove essential elements of its breach of contract claim, particularly its own performance or a legally sufficient excuse for nonperformance under the Lease. Def.'s Mots. at 2–3. Defendant contends that the Lease expressly required Plaintiffs to maintain and repair the fire suppression system, roof, and premises, and that Plaintiffs admitted it failed to perform those obligations,

including failing to maintain the fire suppression system that allegedly caused the June 2020 pipe rupture. *Id.* at 3. It further asserts that Plaintiffs' withholding of rent constituted an independent breach because the Lease required payment "without deduction [or] offset," and no provision permitted withholding rent based on alleged repair failures. Def.'s Reply at 3.

Plaintiffs counter that substantial evidence supports the jury's finding of breach, including evidence that a valid contract existed, Plaintiffs performed or were excused from performance, Defendant breached, and Plaintiffs suffered damages. Pls.' Opp'n at 3. Plaintiffs argue it was excused from performance because Defendant undertook responsibility for installation and repairs of the fire suppression system and structural components, including the roof, and performed those repairs throughout the Lease term. *Id.* at 3–4. Plaintiffs further point to testimony that Defendant installed noncompliant PVC piping, shut off water to the fire suppression system, and failed to adequately repair persistent leaks, resulting in damage to Plaintiffs' inventory and business operations. *Id.* at 3–5. According to Plaintiffs, the jury reasonably relied on this evidence, including witness testimony and the Court's prior findings in the JMOL Order regarding witness testimony, to conclude that Defendant breached its obligations under the Lease, and therefore the verdict is supported by substantial evidence. *Id.*

The Court finds that Defendant has not met its burden to warrant judgment notwithstanding the verdict. A motion for judgment notwithstanding the verdict requires the Court to determine whether, viewing the evidence in the light most favorable to the nonmoving party, there is substantial evidence supporting the jury's verdict. *See Kennedy*, 2015 Guam 38 ¶ 21. Here, Defendant is arguing that the jury's verdict in favor of Plaintiffs on the breach of the Lease claim is unwarranted because Plaintiffs itself breached the Lease. Jury Instruction 3A states that an

element of Plaintiffs' breach of contract claim is "LIN's HARDWARE did all, or substantially all, of the significant things that the contract required it to do . . . ." Jury Instructions at 28 (Apr. 11, 2025) ("Instruction 3A"). The Court held, at the close of Plaintiffs' case in chief, that "a reasonable jury could find, based solely on the evidence presented so far, that [Lin's Hardware] substantially performed its obligations under the Lease Agreement." *See* JMOL Order at 11.

At trial, the jury heard competing evidence regarding the parties' respective obligations under the Lease and whether those obligations were fulfilled. Defendant presented testimony and documentary evidence suggesting that Plaintiffs failed to maintain the fire suppression system, failed to repair portions of the premises, and improperly withheld rent. *See* Def.'s Mots. at 3 (enumerating Plaintiffs' alleged breaches of the Lease). Plaintiffs, however, presented testimony that Defendant installed and repaired components of the fire suppression system, performed structural repairs to the premises, and undertook maintenance responsibilities throughout the Lease period. *See* Pls.' Opp'n at 3. Plaintiffs also introduced evidence that leaks in the roof and defects in the fire suppression system caused damage to its inventory and interfered with the operation of its business. *See* Pls.' Opp'n at 5 ("Acetown's failure to repair the building's leaks led to significant damage to Plaintiffs' inventory throughout the store and caused the premises to appear unsafe, dirty and unsanitary.").

The jury was entitled to evaluate the credibility of the witnesses and weigh conflicting testimony regarding which party bore responsibility for the alleged damages. *See, e.g.*, *Walter Int'l Prods., Inc. v. Salinas*, 650 F.3d 1402, 1417 (11th Cir. 2011) ("The jury as factfinder, assisted by counsel, must judge the credibility of witnesses, resolve conflicting evidence and claims, and assess the weight to be given damages testimony.") (citation omitted); *In re Pandora Media, LLC*,

2025 WL 1090408, at *15 (C.D. Cal. Jan. 21, 2025) ("It is up to the trier of fact to hear the dueling testimony presented by the parties and determine whose position to credit."). Although Defendant argues that Plaintiffs relied primarily on Mr. Lin's testimony, the jury was free to credit that testimony and to draw reasonable inferences from the evidence presented at trial.

Defendant's arguments largely ask the Court to reweigh the evidence and substitute its judgment for that of the jury. That is not the role of the Court when considering a motion for judgment notwithstanding the verdict. *See, e.g., Bliss & Laughlin Steel Co. v. TRW Koyo Steering Sys., Co.*, 1995 WL 134773, at *1 (N.D. Ill. Mar. 27, 1995) ("In ruling on a motion for judgment notwithstanding the verdict, the court may not reweigh or reevaluate the evidence. Rather, it must view the evidence and all inferences reasonably drawn therefrom in the light most favorable to the nonmoving party."); *Contreras v. Jeremias*, 1988 WL 138285, at *2 (E.D.N.Y. Dec. 15, 1988) ("On a motion for judgment notwithstanding the verdict, the Court is not permitted to weigh the evidence or assess the credibility of witnesses."). Where the record contains evidence that could reasonably support the jury's determination that Plaintiffs performed or substantially performed and that Defendant breached the Lease, the verdict must be upheld. *See Kennedy*, 2015 Guam 38 ¶ 21 (A judgment notwithstanding the verdict is appropriate only when "the evidence . . . permits only one reasonable conclusion, and that conclusion is contrary to that of the jury.")

Accordingly, Defendant's Motion for Judgment Notwithstanding the Verdict as to the breach of contract claim is **DENIED**.

C. Breach of the Implied Covenant of Good Faith and Fair Dealing

Defendant contends that Plaintiffs failed to establish a breach of the implied covenant of good faith and fair dealing because there was no evidence that Defendant unfairly interfered with

Plaintiffs' contractual rights or deprived Plaintiffs of the benefits of the Lease. Def.'s Mots. at 6; Def.'s Reply at 4. Defendant argues that Plaintiffs' theory improperly relies on assertions not supported by the trial record, including claims that Defendant replaced pipes prior to the June 2020 incident or shut off water to the fire suppression system, which Defendant disputes. Def.'s Reply at 4. Defendant further maintains that Plaintiffs' evidence consisted largely of Mr. Lin's testimony, which was contradicted by photographic and documentary evidence showing Plaintiffs continued to use the premises and failed to maintain it in accordance with the Lease. *Id.* at 5.

Plaintiffs argue that substantial evidence supports the jury's finding that Defendant breached the implied covenant of good faith and fair dealing by engaging in conduct that frustrated Plaintiffs' ability to receive the benefits of the Lease. Pls.' Opp'n at 6. Plaintiffs point to evidence that Defendant installed noncompliant PVC pipes in the fire suppression system, shut off water to that system, and failed to properly repair structural issues such as roof and wall leaks despite representing that repairs had been completed. *Id.* Plaintiffs contend that these actions obstructed its use of the premises, forced it to relocate inventory, and ultimately deprived it of the full use and enjoyment of the leased property. *Id.* Relying on this evidence, Plaintiffs maintains that the jury reasonably concluded that Defendant's conduct unfairly interfered with Plaintiffs' contractual rights and thus constituted a breach of the implied covenant. *Id.*

The Court finds that Defendant has not demonstrated that judgment notwithstanding the verdict is warranted on Plaintiffs' claim for breach of the implied covenant of good faith and fair dealing. The "covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made." *Goodwind Dev. Corp. v. W. Bay Corp.*, 2025 Guam

14 ¶ 86 (affirming the trial court's dismissal of the claim of breach of the implied covenant of good faith and fair dealing) (citing *Waller v. Truck Ins. Exch., Inc.*, 900 P.2d 619, 639 (Cal. 1995)); *see also Nein v. HostPro, Inc.*, 95 Cal. Rptr. 3d 34, 50 (Cal. Ct. App. 2009) ("The implied covenant 'is designed to effectuate the intentions and reasonable expectations of parties reflected by mutual promises within the contract.'") (citation omitted). Here, while Defendant contends that Plaintiffs' theory rests on unsupported assertions and disputed testimony, the record reflects that Plaintiffs presented evidence from which a reasonable jury could conclude that Defendant's conduct interfered with Plaintiffs' use and enjoyment of the leased premises.

In particular, Plaintiffs offered testimony that Defendant undertook repairs to the fire suppression system and structural components of the building, installed noncompliant materials, and failed to adequately address recurring issues such as leaks and system deficiencies. Pls.' Opp'n at 6. Plaintiffs further presented testimony that these conditions impacted its ability to operate its business, including the need to relocate inventory and reduced usability of the premises. Although Defendant disputes these facts and points to contrary evidence, the resolution of such conflicting evidence and the credibility of witnesses were matters properly within the province of the jury. *See, e.g.*, *Carter v. Duncan-Huggins, Ltd.*, 727 F.2d 1225, 1234 (D.C. Cir. 1984) ("The weighing of conflicting evidence and the evaluation of witness credibility is exclusively within the jury's province."); *Van Pelz v. Marshall*, 2008 WL 11442001, at *17 (C.D. Cal. Feb. 22, 2008) ("It is well established that it is within the sole province of the jury to determine the credibility of witnesses and resolve evidentiary conflicts.") (citing *Walters v. Maass*, 45 F.3d 1355, 1358 (9th Cir. 1995)).

Viewing the evidence in the light most favorable to Plaintiffs, the Court cannot conclude that only one reasonable inference could be drawn in Defendant's favor. Rather, there was sufficient evidence upon which the jury could find that Defendant's actions frustrated Plaintiffs' contractual rights and deprived it of the benefits of the Lease. Accordingly, the jury's verdict on this claim is supported by substantial evidence and is not against the clear weight of the evidence.

Defendant's motion for judgment notwithstanding the verdict on this ground is therefore **DENIED**.

D. Negligence

Defendant argues that Plaintiffs failed to establish the elements of negligence and that the claim should not have been submitted to the jury or sustained by the verdict. Def.'s Mots. at 4–5; Def.'s Reply at 5. Defendant contends that it owed no independent duty outside the Lease to maintain or repair the premises and that Plaintiffs' negligence claim merely duplicates its contract claim. Def.'s Mem. at 5. It further asserts that the evidence showed Plaintiffs' own failure to maintain the fire suppression system caused the June 2020 pipe rupture, and that Plaintiffs admitted it took no action to repair or replace the system even after being notified of deficiencies. Def.'s Reply at 5. *Id.* Finally, Defendant asserts that Plaintiffs failed to prove causation and damages, particularly with respect to alleged losses arising from the June 2021 roof leaks and claims for lost profits and loss of use, which it characterizes as unsupported and speculative. *Id.*

Plaintiffs respond that the jury's negligence finding is supported by substantial evidence demonstrating duty, breach, causation, and damages. Pls.' Opp'n at 6–7. Plaintiffs argue that even if Defendant was not contractually obligated to make repairs, it voluntarily undertook to perform repairs to the building and fire suppression system, thereby assuming a duty to do so with

reasonable care. *Id.* at 7. Plaintiffs further contend that Defendant breached this duty by installing noncompliant PVC pipes, improperly maintaining the fire suppression system, and failing to adequately repair persistent roof and structural leaks, which led to water damage to Plaintiffs' inventory and business interruption. *Id.* Plaintiffs argue that the jury reasonably concluded that Defendant's negligent repair work was the proximate cause of Plaintiffs' damages, and that such conduct could simultaneously constitute both a breach of contract and a tort. *Id.*

The Court finds that Defendant has not established that a judgment notwithstanding the verdict on the negligence claim is warranted. To prevail on a motion for judgment notwithstanding the verdict, Defendant must demonstrate that, viewing the evidence in the light most favorable to Plaintiffs, no reasonable jury could have found in Plaintiffs' favor on the elements of duty, breach, causation, and damages. *See Gov't of Guam v. Kim*, 2015 Guam 15 ¶ 60 ("Negligence requires: (1) a duty, (2) breach of the duty, (3) causation, and (4) damages.") (citation omitted). Here, although Defendant argues that it owed no independent duty outside the Lease and that Plaintiffs' negligence claim merely duplicates its contract claim, the record reflects evidence from which a reasonable jury could conclude otherwise.

Specifically, Plaintiffs presented evidence that Defendant undertook repairs to the premises, including the fire suppression system and structural components, thereby assuming a duty to perform such repairs with reasonable care. *See, e.g., Cooper v. State Farm Mut. Auto. Ins. Co.*, 99 Cal. Rptr. 3d 870, 884 (Cal. Ct. App. 2009) ("[I]f the defendant enters upon an affirmative course of conduct affecting the interests of another, he is regarded as assuming a duty to act, and will thereafter be liable for negligent acts or omissions [.]") (citation omitted); *Rosen v. St. Joseph Hosp. of Orange Cnty.*, 122 Cal. Rptr. 3d 87, 93 (2011) ("It is ancient learning that one who assumes to

act, even though gratuitously, may thereby become subject to a duty of acting carefully, if he acts at all.") (citation omitted). Plaintiffs further introduced testimony that Defendant installed noncompliant PVC piping and failed to adequately remedy ongoing structural issues such as roof leaks, which allegedly resulted in damage to Plaintiffs' inventory and business operations. Pls.' Opp'n at 7. While Defendant disputes this evidence and points to Plaintiffs' own maintenance failures, inspection reports, and alleged contributory negligence, these arguments go to the weight of the evidence and the credibility of witnesses—matters, again, squarely within the jury's province.

Lastly, Plaintiffs' negligence claim is not "merely a restatement" of its breach of contract claim, and Defendant's reliance on *Maeda* is misplaced. *See* Def.'s Mots. at 4 (citing *Maeda Pac. Corp. v. GMP Hawaii, Inc.*, 2011 Guam 20). *Maeda* answers a narrow question. The Court's holding is not that in every case that arises from a contract the plaintiff is limited to a breach of contract claim, but rather that tort claims are barred only in the specific context of commercial construction disputes seeking purely economic losses arising from the contractual bargain itself. Specifically, the Guam Supreme Court articulated its holding in full:

> We hold that in the context of commercial construction litigation, where a party in privity of contract with a design professional is seeking to recover economic loss damages, and no personal injury or damage to property other than the subject of the contract is alleged, such a party is limited to contractual remedies, and a negligence action may not be maintained.

Maeda Pac. Corp. v. GMP Hawaii, Inc., 2011 Guam 20 ¶ 43 (citation omitted).

Thus, *Maeda* does not establish a broad rule that negligence claims are barred whenever the parties have a contract or whenever the same conduct could also constitute a breach of contract.

Rather, the economic loss doctrine applies to a particular category of commercial construction cases involving purely economic loss and contractually allocated risk among sophisticated parties. *See id.* ¶ 50 ("We reiterate that the analysis above is narrowly tailored to the case before us, which involves sophisticated parties engaging in a commercial construction project."). Defendant's attempt to extend *Maeda* beyond those circumstances to eliminate Plaintiffs' negligence claim is therefore unsupported by the decision itself.

Accordingly, the Court concludes that the jury's verdict on the negligence claim is supported by substantial evidence and is not against the clear weight of the evidence. Defendant's motion for judgment notwithstanding the verdict on this ground is therefore **DENIED**.

II. Motion for New Trial

A. Legal Standard

"A new trial may be granted to all or any of the parties and on all or part of the issues in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of Guam." GRCP 59(a). A new trial may also be warranted where attorney misconduct, erroneous jury instructions, or the admission of improper evidence materially affected the verdict. *See, e.g.*, *Am. Color Graphics, Inc. v. Travelers Prop. Cas. Co. of Am.*, 2007 WL 9728853, at *16 (N.D. Cal. Jan. 22, 2007) ("Erroneous or inadequate jury instructions are a basis for granting a new trial.") (citing *Murphy v. City of Long Beach*, 914 F.2d 183, 187 (9th Cir. 1990)); *Harbor Bus. Compliance Corp. v. Firstbase.io, Inc.*, 152 F.4th 516, 533 (3d Cir. 2025) ("Improperly admitted evidence is also a valid ground for granting a new trial."); *Adams v. Duenas*, 1998 Guam 15 ¶ 17 ("Attorney misconduct warrants a new trial only if such misconduct affected the verdict.") (citing *Mateyko v. Felix*, 924 F.2d 824,

828 (9th Cir.1990)). "[T]he decision of whether or not to conduct a new trial or hold an evidentiary hearing [is] in the sound discretion of the trial court." *Pangelinan v. Camacho*, 2011 Guam 9 ¶ 16; *see also HRC Guam Co. v. Bayview II L.L.C.*, 2017 Guam 25 ¶ 88 ("A trial court's decision to grant or deny a motion for a new trial will not be disturbed on appeal except for cases of clear abuse of discretion.") (citation omitted); *Oliver v. Merlo*, 2022 WL 20656413, at *2 (D. Haw. Aug. 30, 2022) ("The authority to grant a new trial . . . is confided almost entirely to the exercise of discretion on the part of the trial court.") (citing *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36 (1980)).

B. Prejudicial Attorney Conduct Warrants a New Trial

The Guam Supreme Court has made clear that "[a]rgument which has no relevance to issues in a case and which is a transparent attempt to appeal to jurors' emotions, is clearly misconduct." *HRC Guam*, 2017 Guam 25 ¶ 102 (citation omitted). Likewise, "[p]ersonal attacks on the character or motives of the adverse party, his counsel or his witnesses are misconduct." *Id.* ¶ 103 (citation omitted). Misconduct warrants a new trial when it "affected the verdict." *Adams*, 1998 Guam 15 ¶ 17. In evaluating prejudice caused by attorney misconduct, the Court considers "the nature and seriousness of the remarks and misconduct, the general atmosphere, including the judge's control of the trial, the likelihood of prejudicing the jury, and the efficacy of objection or admonition under all the circumstances." *HRC Guam*, 2017 Guam 25 ¶ 108 (citation and quotation omitted).

Here, the record reflects a pattern of improper advocacy—repeated appeals to sympathy and wealth disparity, unsupported accusations of concealment and bad faith, and disparagement of witnesses untethered to evidence. Taken cumulatively, the misconduct substantially increased the

risk that the verdict was driven by passion and prejudice rather than the evidence and the law, and therefore, warrants a new trial.

1. Improper Appeals to Wealth Disparity and Sympathy

a. The "Corporate Greed" Statement

Attorney McDonald framed the case as a moral contest between a struggling individual and a "greedy" corporation. Specifically, Attorney McDonald stated that "Really, for Mr. Lin, this case is all about preserving his life's work . . . . For the defendants, this case is all about preserving their profits—this case is corporate greed at its finest." *See* Pls.' Opp'n at 9. This rhetoric does not illuminate any element of the claims or defenses. It invites the jury to decide liability based on perceived virtue, wealth, or institutional status rather than contractual obligations, causation, or admissible damages proof. Such wealth-based framing is a classic appeal to prejudice and is improper. *See, e.g.*, *Kelham v. CSX Transp., Inc.*, 2015 WL 4426114, at *2 (N.D. Ind. July 20, 2015) ("Courts have held that appealing to the sympathy of jurors through references to the relative wealth of the defendants in contrast to the relative poverty of the plaintiffs is improper and may be cause for reversal."); *Tong Thao Lo v. Allstate Ins. Co.*, 2020 WL 3332654, at *1 (D. Colo. Feb. 20, 2020) ("[A]n appeal to the disparity in wealth between the parties to the litigation is highly prejudicial.") (citing *United States v. Socony Vacuum Oil Co.*, 310 U.S. 150, 239 (1940)); *Garcia v. Sam Tanksley Trucking, Inc.*, 708 F.2d 519, 522 (10th Cir. 1983) ("Reference to the wealth or poverty of either party, or reflection on financial disparity, is clearly improper argument.").

Attorney McDonald attempts to recast "corporate greed" as a permissible inference about collection posture or disputed numbers. But Attorney McDonald did not limit the argument to an evidentiary challenge (*e.g.*, "their figures are unsupported"); Attorney McDonald explicitly

juxtaposed "life's work" against "corporate greed," an unmistakable invitation to decide the case on sentiment. The prejudicial effect is heightened where, as here,[3] the theme was repeated. *See, e.g., McIntosh v. N. California Universal Enters., Inc.*, 2010 WL 2698747, at *11 (E.D. Cal. July 7, 2010) ("Repeated improprieties by one counsel severely prejudice his adversary.") (citing *Koufakis v. Carvel*, 425 F.2d 892, 901 (2nd Cir.1970); *Moody v. Ford Motor Co.*, 506 F. Supp. 2d 823, 847 (N.D. Okla. 2007) ("[R]epeated attempts to prejudice the jury by introducing irrelevant evidence and making inflammatory statements may require a court to order a new trial to prevent prejudice to the opposing party.") (citing *Draper v. Airco, Inc.*, 580 F.2d 91 (3d Cir.1978)); *Hopson v. Riverbay Corp.*, 190 F.R.D. 114, 123 (S.D.N.Y. 1999) (same); *Trovan, Ltd. v. Pfizer, Inc.*, 2000 WL 709149, at *3 (C.D. Cal. May 24, 2000) ("A mistrial is the appropriate remedy for persistent prejudicial attorney misconduct.") (citing *Anheuser–Busch, Inc. v. Natural Beverage Distrib.*, 69 F.3d 337 (9th Cir.1995)).

b. Appeals to the Jury to "Help" and "Protect" Mr. Lin

In closing, Attorney McDonald went further when he "ask[ed] [the jury] to help Mr. Lin and protect him from the corporate greed." *See* Pls.' Opp'n at 10.

While an attorney may argue reasonable inferences from the evidence, counsel may not appeal to the jurors' emotions or ask them to assume the role of protector or benefactor for a party. This is not argument about elements or proof. It is a direct plea for sympathy and a call to render a verdict as a charitable act. That is precisely the sort of emotionally charged advocacy condemned

[3] *See, e.g.*, Pls.' Opp'n at 10 ("When we first spoke when I did my opening, I mentioned this case was all about corporate greed and I think at the end it couldn't be more clear . . . We are asking you to help Mr. Lin and protect him from the corporate greed."); *id.* at 19 ("Because they want to take advantage of Mr. Lin! They want him to be responsible for their acts ladies and gentlemen."); *id.* at 18 ("They are trying to run up the tally on Mr. Lin.").

as misconduct. *See, e.g., HRC Guam*, 2017 Guam 25 ¶ 102 ("Argument which has no relevance to issues in a case and which is a transparent attempt to appeal to jurors' emotions, is clearly misconduct."); *Boateng v. BMW AG*, 753 F. Supp. 3d 215, 246 (E.D.N.Y. 2024) ("When 'ruling on a motion for a new trial based on attorney misconduct, the trial court must determine whether counsel's conduct created undue prejudice or passion which played upon the sympathy of the jury.'") (citing *Strobl v. N.Y. Mercantile Exch.*, 582 F. Supp. 770, 780 (S.D.N.Y. 1984)). This remark in the closing argument invited the jury to decide the case based on emotion and moral condemnation, not the governing legal standards. *See HRC Guam*, 2017 Guam 25 ¶ 100 (found improper the statement urging the jury to "show [Plaintiff] that it's a privilege to do business in Guam"). For that reason, this remark is therefore improper.

2. Improper Personal Opinions and Character Attacks

Counsel may attack credibility when the characterization is grounded in the record. *HRC Guam*, 2017 Guam 25 ¶ 103. Counsel crosses the line when argument devolves into personal attacks, argues facts not in evidence, or asks jurors to speculate about misconduct or motives without an evidentiary basis. *Id.* In this matter, the Court agrees with Defendant that Attorney McDonald exceeded the bounds of permissible advocacy.

a. "Up to No Good" Statement

Based on a photograph, Attorney McDonald told the jury "Look at Mr. Schrage. It looks like he's up to no good." This statement was not a fair inference from a disputed fact in the record. Rather, it constituted a conclusory character attack suggesting wrongdoing without evidentiary foundation. *HRC Guam*, 2017 Guam 25 ¶ 103 ("Personal attacks on the character or motives" of an adverse party's witnesses "are misconduct.") (citation omitted). While counsel is permitted to

argue that a witness's testimony is inconsistent with the record or that the witness possessed knowledge he denied having, such arguments must remain tethered to the evidence—*e.g.*, by pointing to testimony, documents, or inconsistencies. Suggesting that a witness was "up to no good" improperly invites the jury to infer bad character or misconduct untethered to any specific evidence, and is therefore improper.[4] *See id.* ¶ 102 ("[A]busive comments directed at opposing counsel and an opposing party's expert witness during closing argument should not be permitted by any court, and that such comments can indeed be grounds for a new trial.") (citing *Pesek v. Univ. Neurologists Ass'n*, 721 N.E.2d 1011, 1015 (Ohio 2000)).

b. "Stand for It" Statement

Counsel also argued to the jury that "[awarding "a big verdict against Mr. Lin" is] insulting to you . . . you should not stand for that." Pls.' Opp'n at 17. This type of argument shifts the jury's focus from the evidence and the governing law to the jurors' personal sense of indignation. By framing the dispute as an affront to the jurors themselves, counsel invited the jury to respond emotionally rather than to evaluate the claims based on the record. *See HRC Guam*, 2017 Guam 25 ¶ 102 ("Inviting the jury to teach [Plaintiff] a lesson based upon its community conscience was undoubtedly improper."); *id.* ¶ 100 ("[S]peak to him in a language he understands: Money . . . This man speaks—you know how he said English is his second language? You know what's his first language? Money."); *id.* ("[Plaintiff] got the nerve to come in here in front of this jury and tell Guam citizens that this elder gentleman, a statesman of Guam, a pioneer in Guam is cheating

[4] In the same vein, the Court notes that Attorney McDonald also stated to the jury that "Mr. Schrage was operating under a script." Pls.' Opp'n at 13.

them."). Even where portions of counsel's argument referenced evidence, the emphasis that Defendant's conduct was "insulting" to the jury improperly inflamed the jury's passions.

c. Accusation of Defendant's Motive

Counsel further argued "Because they want to take advantage of Mr. Lin!" Pls.' Opp'n at 19. Asserting that the opposing party intended to "take advantage" of the Plaintiffs introduces a claim of predatory motive without a concrete evidentiary basis. Such motive-based accusation appeals to the jury's sense of sympathy or moral condemnation, and is therefore improper.

d. Repeated "Hiding the Truth" Statements

Finally, Attorney McDonald summarized his argument by stating that "[Y]ou cannot trust their numbers, you cannot trust their testimony, and you cannot trust their case . . . they don't want you to know the truth . . . The only consistent testimony throughout this trial was Mr. Lin's testimony." Pls.' Opp'n at 21; *see also id.* at 16 ("There is no testimony from the safety and security department. So what does that tell you? That tells you that they don't want you to know the truth about this case."). Again, the repeated assertions that Defendant was "hiding the truth" improperly suggests deliberate concealment not supported by the record. The assertion that Mr. Lin testimony is the "only consistent testimony" is also problematic. While counsel may argue that a witness's testimony is credible based on the evidence presented, blanket assertions that one witness is truthful while opposing witnesses are deceptive—particularly when coupled with repeated accusations of concealment—exceed the bounds of proper argument. *See HRC Guam*, 2017 Guam 25 ¶ 107 ("Perhaps the most flagrant of counsel's comments came when counsel described one of his own witnesses by stating, 'I would respectfully submit to all of you that Alfred [Ysrael] was

real. Was not only a credible witness but *in my humble opinion one of the best witnesses I've ever seen.*'") (emphasis in original).

Taken together, these statements illustrate a pattern of argument that relied not only on commentary about the evidence but also on personal attacks, extra-record speculation, and inflammatory rhetoric. Such argument risks distracting the jury from its duty to decide the case based solely on the evidence and the Court's instructions.

3. Curative Instructions and Lack of Objections Do Not Eliminate Prejudice

Plaintiffs emphasize that objections were not always contemporaneous and that the Court gave general instructions regarding bias or counsel's argument. Those points do not resolve the prejudice inquiry. Under Guam law, the Court evaluates the totality of circumstances, including the cumulative impact of misconduct on the fairness of the trial. *See HRC Guam*, 2017 Guam 25 ¶ 108. Where improper appeals and extra-record accusations pervade openings and closings—and repeatedly frame the case as a moral referendum—general instructions are not sufficient to neutralize the likely prejudicial effect. *See id.* ("A new trial is warranted on the ground of attorney misconduct during the trial where the flavor of misconduct . . . sufficiently permeate[s] an entire proceeding to provide conviction that the jury was influenced by passion and prejudice in reaching its verdict.") (citing *Anheuser–Busch, Inc. v. Nat. Beverage Distribs.*, 69 F.3d 337, 346 (9th Cir. 1995)) (omission in original).

While Defendant's failure to object "weighs in favor of a finding that it was not prejudiced by [Attorney McDonald's] conduct," *HRC Guam*, 2017 Guam ¶ 94, "where the misconduct at issue is substantial or repeated, such as this one, a new trial is warranted even if opposing counsel

does not object to every single violation." *Waddington N. Am., Inc. v. Sabert Corp.*, 2011 WL 3444150, at *5 (D.N.J. Aug. 5, 2011) (citing *Draper v. Airco, Inc.*, 580 F.2d 91 (3d Cir.1978)); *see Brandt v. Magnificent Quality Florals Corp.*, 2009 WL 899915, at *2 (S.D. Fla. Mar. 31, 2009) ("[T]he lack of an objection is not always fatal to a claim for a new trial based on improper argument, and a new trial may be granted where necessary to serve the interests of substantial justice."); *Spurlock by Lockamy v. Lawson*, 881 F. Supp. 436, 438 (E.D. Ark. 1995) ("[C]ourts have held that even though the moving party failed to object, a new trial may be justified.") (citing *San Antonio v. Timko*, 368 F.2d 983 (2d Cir.1966)). Moreover, the Guam Supreme Court recognizes that failure to object to an attorney misconduct is but one of the considerations a court must examine, along with other factors such as "the nature and seriousness of the remarks and misconduct" and "the general atmosphere" of the trial. *See Adams*, 1998 Guam 15 ¶ 17 (citation omitted); *see also HRC Guam*, 2017 Guam 25 ¶ 114 (found a new trial warranted even when the movant for new trial "did not object to the [improper] comments contemporaneously"); *id.* ¶ 90 ("Our prior case law, however, indicates that failure to object at trial to attorney misconduct does not act as a complete bar to appellate review.").

In this matter, Plaintiffs assert that Defendant failed to contemporaneously object to some of the challenged statements, but Plaintiffs do not make that assertion with respect to all of them. More importantly, the misconduct identified above was not isolated. Rather, it consisted of repeated personal attacks and appeals to juror emotion that appeared throughout Attorney McDonald's argument and framed the dispute as a moral contest rather than a legal one. When viewed cumulatively, the frequency and nature of the remarks created a substantial risk that the jury's deliberations were influenced by passion, speculation, and indignation rather than by the

evidence and the Court's instructions. Accordingly, the Court finds a new trial is warranted on the ground of attorney misconduct, and therefore, **GRANTS** the Defendant's request for new trial on this ground.

C. Jury Instruction on Contract Modification

Defendant argues that the Court committed reversible error by giving a jury instruction on contract modification despite previously excluding parol evidence suggesting any alteration of the Lease. Def.'s Mots. at 15. Defendant contends there was no legally sufficient evidence of mutual assent—either written or executed oral agreement—to support a modification theory, and that the instruction improperly allowed the jury to consider inadmissible evidence and speculate that the Lease terms had been altered by conduct. *Id.* at 16.

Plaintiffs argue that the modification instruction was proper. According to Plaintiffs, the evidence shows that Defendant performed repairs over many years, which could support a finding of mutual assent to modify the Lease. Pls.' Opp'n at 22. Plaintiffs contend the Court's prior ruling only excluded specific conversations (not all evidence of conduct), and that other evidence demonstrated a pattern of repairs by Defendant. *Id.* Thus, Plaintiffs maintains the instruction was proper and did not mislead the jury. *Id.*

"A trial court is afforded wide discretion as to what jury instructions to give in a case." *Kennedy*, 2015 Guam 38 ¶ 22 (citing *Fenwick v. Watabe Guam, Inc.*, 2009 Guam 1 ¶ 9). The trial court errs if "the jury was likely misled by the instruction given" and "a different outcome would likely have resulted had the proposed instructions been given." *Id.* The jury instruction at issue here concerns modification of the Lease. Specifically, the Court instructed the jury as follows:

> LIN'S HARDWARE claims that the original contract was modified or changed. LIN'S HARDWARE must prove that the parties agreed to the modification. ACETOWN denies that the contract was modified.
>
> The parties to a contract may agree to modify its terms. You must decide whether a reasonable person would conclude from the words and conduct of the parties that they agreed to modify the contract. You cannot consider the parties' hidden intentions.
>
> A contract in writing may be modified by an oral agreement to the extent the oral agreement is carried out by the parties.

Jury Instructions at 33 (Apr. 11, 2025) ("Instruction 3F").

Defendant's argument is problematic on multiple grounds. First, the Court's In Limine Order did not exclude "any parol evidence that contradicts the clear and unambiguous terms and conditions of the Lease Agreement." *See* Def.'s Mot. at 15. Instead, the In Limine Order specifically excluded "any testimony regarding the alleged conversation between Lin and Mr. Jiang" because such testimony "directly contradicts Section 14C of the Lease Agreement," which "[Plaintiffs] do not contend . . . is ambiguous." *See* In Limine Order at 3–4. The In Limine Order also states that "the parol evidence rule does not *automatically* bar the admission of 6 GCA § 2515[5] evidence," which emphasizes that the Court's In Limine Order is not as broad as Defendant claims it is.

Second, Defendant asserts that Plaintiffs violated the In Limine Order by trying to introduce evidence that "[Defendant] allegedly claimed it would assume all responsibility for the repairs, upkeep, and maintenance of the leased premises and the fire suppression system." *See*

[5] 6 GCA § 2515 provides that "the circumstances under which [an instrument] is made, including the situation of the subject of the instrument and of the parties to it, may also be shown so that the judge or jury be placed in the position of those whose language he is or they are to interpret."

Def.'s Mot. at 15. Defendant further states that "[Defendant] timely objected and the Court sustained the objection." *See id.* (citing Min. Entry at 11:19:25–11:21:01 (Mar. 27, 2025)). The Court did not rule on whether such evidence violated the Court's In Limine Order; instead, Attorney McDonald withdrew his question, and the Court instructed the jury to not "take into consideration" any statement that was made. Min. Entry at 11:21:36 (Mar. 27, 2025).

Defendant challenges Instruction 3F on the ground that "[b]y giving this instruction, the Court allowed the jury to speculate based on unilateral, self-serving testimony that lacked factual or documentary support in the record." *See* Def's Mot. at 16. Here, Defendant is referring to Mr. Lim's testimony that "Acetown 'always did repairs' and that he 'never did any repairs.'" *See id.* "Critically," Defendant asserts, "the instruction enabled the jury to consider evidence that had already been ruled inadmissible by the Court." *See id.*

Again, the Court has never ruled Mr. Lin's testimony regarding the parties' conduct subsequent to the execution of the Lease inadmissible. Particularly, the In Limine Order applies the parol evidence rule, which does not exclude evidence of subsequent conduct of the parties. *See PG-USA, Inc. v. St. Andrews Prods. Co.*, 2009 WL 10700241, at *3 (C.D. Cal. July 2, 2009) ("The parol evidence rule therefore acts only to exclude evidence of prior or contemporaneous oral agreements, not subsequent agreements."); *Groth-Hill Land Co., LLC v. Gen. Motors LLC*, 2013 WL 3853160, at *15 (N.D. Cal. July 23, 2013) (The parol evidence rule is "a rule of evidence [that] exclude[es] precontractual discussions for lack of credibility or reliability."). Importantly, the Instruction did not state that the Lease *was* modified, nor did it relieve the jury of the requirement to find "a reasonable person would conclude from the words and conduct of the parties

that they agreed to modify the contract." *See* Instruction 3F. Rather, it correctly stated the governing legal principle and left the factual determination to the jury.

Given the evidentiary record and the governing standard, the Court cannot conclude that the jury was "likely misled" by the Instruction or that a different result would probably have occurred had the Instruction not been given. *See Kennedy*, 2015 Guam 38 ¶ 22. At most, the parties presented competing interpretations of the evidence regarding repair responsibilities. Resolving such factual disputes is the province of the jury.

Accordingly, the Court finds that giving the modification instruction was within its discretion and, by itself, does not constitute an error warranting a new trial, and the request on this ground is **DENIED**.

D. Admission of Evidence on Damages

Defendant argues that the Court erred by allowing the jury to consider speculative and undisclosed evidence of damages, specifically lost profits and loss of use of rental space, despite prior rulings excluding such evidence and related expert testimony. Def.'s Mots. at 19. Defendant contends that Plaintiffs failed to provide any reliable, non-speculative basis for these damages—offering only vague testimony without financial records, distinction between gross and net profits, or proper disclosure during discovery. *Id.* at 18. According to Defendant, permitting the jury to award damages based on such unsupported evidence resulted in a prejudicial and legally unsustainable verdict. *Id.* at 19.

Plaintiffs argue that the evidence of lost profits and loss of use was properly admitted and supported by competent testimony, particularly from Mr. Lin as the owner and operator with firsthand knowledge of the business. Pls.' Opp'n at 22. Plaintiffs maintain that such damages were

supported by trial testimony and prior disclosures (including gross receipts tax filings), and were subject to cross-examination by Defendant. *Id.* at 22–23. Plaintiffs further contend that the jury was entitled to weigh the credibility of this evidence and arrive at reasonable inferences regarding damages, and thus the admission of such evidence was neither erroneous nor prejudicial. *Id.*

The Court is not persuaded that the admission of this evidence warrants a new trial. "Where a motion for a new trial is based on an evidentiary error, a new trial is warranted only if the erroneous admission of the evidence 'substantially prejudiced' a party." *Chapman v. J. Concepts, Inc.*, 2009 WL 1561567, at *2 (D. Haw. June 3, 2009) (citing *Ruvalcaba v. City of L.A.*, 64 F.3d 1323, 1328 (9th Cir.1995)); *Centeno v. City of Carlsbad*, 2023 WL 5596262, at *1 (S.D. Cal. July 27, 2023) ("If a motion for new trial is based upon an alleged evidentiary error, a new trial is warranted only if the party was 'substantially prejudiced' by an erroneous admission of the evidence.") (citation omitted); *see also Fair Isaac Corp. v. Fed. Ins. Co.*, 763 F. Supp. 3d 797, 799 (D. Minn. 2025) ("The mere existence of evidentiary errors is not a sufficient basis for a new trial.") (citation omitted).

As an initial matter, the Court's prior evidentiary rulings excluded the testimony of an expert witness and the accompanying written lost-profit calculations on the grounds that they constituted undisclosed expert evidence. Those rulings did not categorically preclude Mr. Lin's testimony concerning the operation of his business or the financial impact of the alleged incidents, provided that such testimony was based on his personal knowledge as the owner and operator. *See* In Limine Order at 13 (excluding an undisclosed expert witness and his work product on damages calculation).

Defendant's objections primarily go to the weight and credibility of the damages evidence rather than its admissibility. While Defendant argues that the testimony lacked supporting financial statements or a distinction between gross and net profits, such deficiencies were properly explored through cross-examination and argument to the jury. The jury was free to consider these limitations when determining the amount of damages to award. Courts routinely permit business owners to testify regarding lost profits or business losses based on personal knowledge of their operations, even in the absence of formal expert analysis, so long as the testimony provides a rational basis from which the jury may draw reasonable inferences. *See, e.g.*, *Servicios Comerciales Lamosa, S.A. de C.V. v. De la Rosa*, 328 F. Supp. 3d 598, 618 (N.D. Tex. 2018) ("[B]usiness owners or officers may offer lay testimony on lost profits because they have personal knowledge of their business.") (citing *Miss. Chem. Corp. v. Dresser-Rand Co.*, 287 F.3d 359, 373 (5th Cir. 2002)); *Chabad of Nova, Inc. v. City of Cooper City*, 2008 WL 11401806, at *5 (S.D. Fla. Dec. 17, 2008) ("A business owner or officer is routinely permitted to testify as to the value of lost profits on the theory that he or she has a better understanding and knowledge of his or her own business, even if not an expert in the field.") (citations omitted).

Accordingly, the Court finds that the admission of Plaintiffs' damages evidence does not constitute reversible evidentiary error and does not warrant a new trial. Defendant's motion for a new trial on this ground is therefore **DENIED**.

E. Whether Verdicts on All Claims and Counterclaims Were Against the Clear Weight of the Evidence

Defendant argues that, even aside from legal errors and misconduct, a new trial is warranted because the jury's verdict was against the clear weight of the evidence. Def.'s Mot. at 19.

Defendant contends that Plaintiffs failed to prove essential elements of its claims—particularly performance under the Lease and causation of damages—and instead relied almost entirely on speculative and self-serving testimony that was contradicted by documentary evidence, witness testimony, and the express terms of the Lease. *Id.* at 19–20. Defendant further asserts that the evidence overwhelmingly showed Plaintiffs' own breaches, yet the jury disregarded this evidence and rejected Acetown's counterclaims, resulting in a verdict that cannot be reconciled with the record. *Id.*; Def.'s Reply at 12–13.

Plaintiffs argue that the verdict was fully supported by substantial evidence and should not be disturbed, emphasizing that the jury heard competing testimony and was entitled to make credibility determinations in Plaintiffs' favor. Pls.' Opp'n at 23. Plaintiffs contend that it presented sufficient evidence on each element of its claims—including Plaintiffs' failure to repair structural components and resulting damages—and that the jury reasonably rejected Defendant's defenses and counterclaims based on the evidence presented at trial. *Id.* Accordingly, Plaintiffs maintain that the verdict reflects a proper weighing of the evidence and should not be disturbed. *Id.*

Granting a new trial on the ground that the verdict is against the clear weight of the evidence is an extraordinary remedy and is not granted lightly. *See, e.g., CFE Racing Prods., Inc. v. BMF Wheels, Inc.*, 793 F.3d 571, 591 (6th Cir. 2015) ("[G]ranting a new trial on this ground is a rare occurrence.") (citation omitted); *Taddeo v. Am. Invsco Corp.*, 2015 WL 4416490, at *2 (D. Nev. July 20, 2015) ("The grant of a motion for a new trial premised upon a verdict contrary to the 'clear weight of the evidence' is a 'rare occurrence' and ought to be considered with great restraint.") (citing *Raedle v. Credit Agriole Indosuez*, 670 F.3d 411, 418–419 (2d Cir. 2012)). The Guam Supreme Court has emphasized as much: "[I]n order for this court to disturb a jury verdict,

we must find that the jury's decision to have been against the clear weight, overwhelming weight, or great weight of the evidence." *Guerrero*, 1999 Guam 9 ¶ 21 (citation omitted). "This [criterion] suggests [that] a trial judge should not displace a verdict because he or she disagrees with the jury's conclusion." *Fenwick*, 2009 Guam 1 ¶ 7 (citation omitted) (alteration in original). The jury's erroneous verdict "must be in extreme in order for a judge to invade the jury's function." *Id.*

Considering the record as a whole, the Court cannot conclude that the jury's verdict was against the clear weight of the evidence. Although Defendant identifies evidence that could support its theory that Plaintiffs breached the Lease and failed to prove causation or damages, the existence of conflicting evidence does not render a verdict contrary to the clear weight of the evidence. *See Fenwick*, 2009 Guam 1 ¶ 7. Rather, the Court must defer to the jury's role as factfinder where the verdict rests on evidence that reasonable jurors could credit.

At trial, the jury heard testimony from Mr. Lin regarding the condition of the premises, the recurring roof leaks and fire suppression system issues, and the resulting damage to inventory and disruption to business operations. The jury also heard testimony that Defendant performed certain repairs during the Lease term and that problems with the roof and fire suppression system persisted despite those efforts. In addition, testimony from the Guam Fire Department and other witnesses addressed the condition and functionality of the fire suppression system and the presence or absence of water in the system. Upon consideration of the evidence, the jury could reasonably conclude that Defendant failed to adequately maintain structural components of the building and that such failures caused damage to Plaintiffs' property and business operations.

Ultimately, Defendant's argument amounts largely to a request that the Court substitutes its judgment for that of the jury. That is not the standard for the Court ruling on a motion for a new

trial. *See Guerrero*, 1999 Guam 9 ¶ 21; *Fenwick*, 2009 Guam 1 ¶ 7 (". . . [A] trial judge should not displace a verdict because he or she disagrees with the jury's conclusion.") (citation omitted); *see also ICTSI Oregon, Inc. v. Int'l Longshore & Warehouse Union*, 442 F. Supp. 3d 1329, 1340 (D. Or. 2020) ("Although a district court may view the evidence differently than the jury, a district court may not substitute its 'evaluations for those of the jurors.'") (citing *Union Oil Co. of Cal. v. Terrible Herbst, Inc.*, 331 F.3d 735, 743 (9th Cir. 2003)); *Lucent Techs., Inc. v. Microsoft Corp.*, 837 F. Supp. 2d 1107, 1126 (S.D. Cal. 2011) ("The jury, and not the court, is given the task of weighing conflicting evidence and making credibility determinations. And, 'it is not the courts' place to substitute our evaluations for those of jurors [on a motion for new trial].'") (citations omitted). Where, as here, the jury heard competing evidence and made credibility determinations within its province, the Court will not disturb the verdict merely because Defendant presented evidence that might have supported a different outcome. *See B.M. Co. v. Avery*, 2001 Guam 27 ¶ 31 ("We will not disturb the jury's verdict or find that a new trial is warranted if the verdict is based on 'relevant evidence which reasonable minds might accept as adequate to support a conclusion even if it is possible to draw two inconsistent conclusions from the evidence.'") (citation omitted).

Accordingly, the Court finds that the verdict was not against the clear weight, overwhelming weight, or great weight of the evidence. Defendant's motion for a new trial on this ground is therefore **DENIED**.

CONCLUSION

For the foregoing reasons, the Court **DENIES** Defendant's Motion for Judgment Notwithstanding the Verdict. The Court finds that, when the evidence is viewed in the light most

favorable to Plaintiffs, the jury's verdict is supported by sufficient evidence and a judgment notwithstanding the verdict is not warranted.

However, the Court further finds that Attorney McDonald engaged in attorney misconduct during trial that resulted in prejudice and deprived Defendant of a fair trial. Accordingly, the Court **VACATES** the Judgment entered on June 17, 2025, and pursuant to GRCP Rule 59(a), the Court **GRANTS** Defendant's Motion for a New Trial.

SO ORDERED this 10th day of March, 2026.

HONORABLE DANA A. GUTIERREZ
Judge, Superior Court of Guam