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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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**JOHN JUSTIN JAMES,**  
**Plaintiff,**

**v.**

**SHANT SHEKLANIAN,**  
**Defendants.**

1:08-cv-01943-OWW-GSA

MEMORANDUM DECISION REGARDING  
PLAINTIFF'S MOTION FOR NEW  
TRIAL (Doc. 85)

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**I. INTRODUCTION.**

On April 28, 2010, the jury returned its verdict in this action. The jury found that Madera Police Officer Shant Sheklanian ("Defendant") unlawfully used excessive force in the arrest of John James ("Plaintiff") in violation of Plaintiff's Fourth Amendment rights under the U.S. Constitution. (Doc. 79). However, the jury also found that Defendant's Fourth Amendment violation was not the cause of harm or damage to Plaintiff. (Id.). Corresponding to instructions on the verdict form, the jury made no finding as to damages.

On May 28, 2010, Plaintiff filed a motion seeking: (1) to set aside the judgment; (2) to grant judgment as a matter of law; (3) to amend the judgment; or (4) a new trial. (Doc. 85).

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1 Defendant filed opposition to Plaintiff's motion on June 17,  
2 2010. (Doc. 89).

3 **II. FACTUAL BACKGROUND.**<sup>1</sup>

4 On January 26, 2007, at or about 11:20 p.m., an altercation  
5 arose inside the Back Street Bar & Grill in Madera ("the Bar"),  
6 California. Approximately 20 to 30 patrons exited the bar, and  
7 several individuals began fighting in the street. Plaintiff exited  
8 the Bar and attempted to intervene in a confrontation between one  
9 of his friends and another person. A few moments later, several  
10 Madera Police Officers arrived at the scene.

11 Although the circumstances surrounding Defendant's use of  
12 force on Plaintiff are subject to dispute, it is undisputed that  
13 Defendant tackled Plaintiff, punched Plaintiff after tackling him,  
14 and later utilized his taser on Plaintiff. Plaintiff was then  
15 arrested, placed in the back of a patrol car, and taken to a local  
16 hospital where he was treated for his injuries. Plaintiff paid  
17 approximately \$466 dollars for medical care related to the injuries  
18 he sustained on January 26, 2007.

19 Plaintiff testified that the taser strike was "very painful"  
20 and that he had "a lot of pain" in his left shoulder for about  
21 three weeks after the attack. Two taser barbs where lodged in  
22 Plaintiff's chest area and where not removed until Plaintiff  
23 arrived at the hospital. Plaintiff also sustained a laceration and  
24 a knot above his left eye. Plaintiff stated that he experienced  
25 limitations with respect to his ability to lift items over two

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26  
27 <sup>1</sup> The facts material to the instant motion are those relevant to the issue  
28 of whether it is possible to reconcile the jury's finding of excessive force with  
the jury's finding that Defendant did not cause Plaintiff harm. This factual  
history is limited accordingly.

1 pounds, to lay down with his arms in certain positions, and to  
2 engage in recreational activities. At the time of trial, tension  
3 and pain in Plaintiff's shoulder persisted.

4 **III. LEGAL STANDARD.**

5 Federal Rule of Civil Procedure 50 provides, in pertinent  
6 part:

7 If a party has been fully heard on an issue during a jury  
8 trial and the court finds that a reasonable jury would  
9 not have a legally sufficient evidentiary basis to find  
10 for the party on that issue, the court may:

- 11 (A) resolve the issue against the party; and  
12 (B) grant a motion for judgment as a matter of law  
13 against the party on a claim or defense that,  
14 under the controlling law, can be maintained  
15 or defeated only with a favorable finding on  
16 that issue

17 Fed. R. Civ. P. 50. A renewed motion for judgment as a matter of  
18 law pursuant to Federal Rule of Civil Procedure 50(b) is properly  
19 granted "if the evidence, construed in the light most favorable to  
20 the nonmoving party, permits only one reasonable conclusion, and  
21 that conclusion is contrary to the jury's verdict." *E.g. Harper v.*  
22 *City of L.A.*, 533 F.3d 1010, 1021 (9th Cir. 2008) (citation  
23 omitted). "A jury's verdict must be upheld if it is supported by  
24 substantial evidence, which is evidence adequate to support the  
25 jury's conclusion, even if it is also possible to draw a contrary  
26 conclusion." *Id.*

27 Federal Rule of Civil Procedure 59 states in part, "A new  
28 trial may be granted . . . 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 the  
United States." Fed. R. Civ. P. 59(a)(1). Historically recognized  
grounds include, but are not limited to, claims "that the verdict

1 is against the weight of the evidence, that the damages are  
2 excessive, or that, for other reasons, the trial was not fair to  
3 the party moving." *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243,  
4 251 (1940). Where a Rule 59 motion is based on a challenge to the  
5 jury's assessment of the evidence, the trial court may grant a new  
6 trial only if the jury's verdict was against the clear weight of  
7 the evidence. See, e.g. *Tortu v. Las Vegas Metro. Police Dep't*,  
8 556 F.3d 1075, 1083 (9th Cir. 2009).

9 A district court may set aside a jury's verdict and order a  
10 new trial where the jury's findings are so inconsistent that they  
11 cannot be reconciled with each other. *White v. Ford Motor Co.*, 312  
12 F.3d 998, 1005 (9th Cir. 2002). In an inconsistent verdict case,  
13 a court asks not whether the verdict necessarily makes sense under  
14 any reading, but whether it can be read in light of the evidence to  
15 make sense. *Id.* Only in the case of fatal inconsistency may the  
16 court remand for a new trial. *Floyd v. Laws*, 929 F.2d 1390, 1396  
17 (9th Cir. 1991) (citing *Gallick v. Baltimore & O.R.R. Co.*, 372 U.S.  
18 108, 110 (1963)). A court determines the meaning of the verdict  
19 in light of the jury instructions. *Borck v. City of L.A.*, 303 Fed.  
20 Appx. 437, 439 (9th Cir. 2008) (unpublished) (citing *Floyd*, 929  
21 F.3d at 1399); *Zhang v. Am. Gem Seafoods, Inc.*, 339 F.3d 1020, 1038  
22 (9th Cir. 2003).

#### 23 **IV. DISCUSSION.**

24 Plaintiff contends that in light of the jury instructions and  
25 evidence presented at trial, the jury's finding that Defendant used  
26 excessive force on Plaintiff but that Plaintiff's excessive force  
27 was not the cause of harm to Plaintiff is fatally inconsistent.  
28 The jury was provided with the following causation instruction:

1 In order to establish that the act of Officer Shant  
2 Sheklanian deprived the plaintiff of his particular  
3 rights under the laws of the United States Constitution  
4 as explained in other instructions, the plaintiff must  
5 prove by a preponderance of the evidence that the act was  
6 so closely related to the deprivation of the plaintiff's  
7 rights as to be the moving force that caused the ultimate  
8 injury.

9 (Doc. 77, Instruction 15).

10 The causation instruction accurately informed the jury of the  
11 causation requirement. Causation is established where the evidence  
12 demonstrates that a defendant's action was a substantial factor in  
13 bringing about the harm underlying a plaintiff's claim. *E.g.*,  
14 *Whiteley v. Philip Morris, Inc.*, 117 Cal. App. 4th 635, 701 (Cal.  
15 Ct. App. 2004) (discussing substantial factor standard); *Hardison*  
16 *v. Bushnell*, 18 Cal. App. 4th 22, 26 (Cal. Ct. App. 1993) ("simple  
17 test for determining whether the cause-in-fact component of legal  
18 cause exists: Was the actor's conduct 'substantial factor in  
19 bringing about the harm[?]'"); *accord Harpe v. City of L.A.*, 533  
20 F.3d 1010, 1027 (9th Cir. 2008) (causation established where  
21 defendant's action was "moving force behind the injury of which the  
22 plaintiff complains"). Harm is established by evidence that a  
23 plaintiff suffered a detrimental change to the body. *Macy's*  
24 *California, Inc. v. Superior Court*, 41 Cal. App. 4th 744, 755 (Cal.  
25 Ct. App. 1995). Use of force on another is so closely connected to  
26 the injury resulting from such force that it is the legal cause of  
27 the harm sustained. *See Delgado v. Interinsurance Exchange of*  
28 *Automobile Club of Southern California*, 47 Cal. 4th 302, 308 (Cal.  
2009) (discussing causation element of assault and battery).

The evidence presented at trial indicated that Defendant was  
responding to a reported fight in a public street outside the Bar.

1 Defendant, upon arrival, saw no fighting among people gathered in  
2 the street. Defendant saw Plaintiff talking to two or three  
3 individuals. Defendant tackled Plaintiff to the ground, punched  
4 him in the face, and utilized a taser on Plaintiff. The evidence  
5 presented at trial also indicated that Plaintiff suffered pain as  
6 a result of Defendant's use of force, and that Plaintiff incurred  
7 medical bills at a local hospital emergency room in connection with  
8 the physical injuries he sustained during Defendant's use of force,  
9 including removal of taser darts from his chest. No evidence was  
10 presented, nor did any exist, regarding alternate causes of  
11 Plaintiff's physical injuries. In light of the evidence presented  
12 at trial, the jury's finding that Defendant did not cause Plaintiff  
13 harm cannot be reconciled with the jury's finding that Defendant  
14 violated Plaintiff's Fourth Amendment right to be free from  
15 unreasonable seizure under color of law.

16 Defendant's opposition to Plaintiff's motion for a new trial  
17 contends that the jury could have reasonably found that Defendant  
18 used excessive force but that Plaintiff was not entitled to  
19 damages. The jury did not reach the issue of damages because it  
20 found no causation. This was clear error. That defendant suffered  
21 physical and mental pain and sustained physical injuries as a  
22 result of Defendant's use of force is undisputed. There was no  
23 evidence presented that would allow the jury to conclude that  
24 Defendant was not the cause of such pain and injuries. The  
25 fundamental inconsistency in the jury's verdict is its finding that  
26 Defendant used excessive force, but that such force did not cause  
27 harm to Plaintiff. The jury's verdict is legally irreconcilable.  
28 Whether, in the jury's mind, the act which rose to the level of

1 excessive force was Defendant's tackling, punching, or tasing of  
2 Plaintiff is immaterial. Because Defendant's use of excessive  
3 force is inseparable from the pain, medical treatment, and injury  
4 caused thereby, the jury's finding that Defendant did not cause  
5 Plaintiff harm renders the jury's verdict fatally inconsistent and  
6 requires granting of Plaintiff's motion for a new trial. See *Floyd*,  
7 929 F.2d at 1396.

8 **ORDER**

9 For the reasons stated, IT IS ORDERED:

- 10 1) Plaintiff's motion for a directed verdict is DENIED;  
11 2) Plaintiff's motion to amend the judgment is DENIED;  
12 3) The Clerk of Court is DIRECTED to vacate the judgment; and  
13 4) Plaintiff's motion for a new trial is GRANTED.

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15 IT IS SO ORDERED.

16 Dated: August 25, 2010

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE