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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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11 HIPOLITO M. CHACOAN,

No. 2:05-cv-02276-MCE-KJN

12 Plaintiff,

13 v.

MEMORANDUM AND ORDER

14 DR. ROHRER, et al.,

15 Defendants.

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18 This case proceeded to a jury trial on January 30, 2012. On  
19 February 3, 2012, the jury reached a verdict in favor of  
20 Defendants Dr. Traquina and Dr. Naku. Plaintiff now moves for a  
21 new trial pursuant to Federal Rule<sup>1</sup> of Civil Procedure 59.

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28 <sup>1</sup> All future references to "rule" or "rules" are to the  
Federal Rules of Civil Procedure.



1           **A.     Clear Weight of the Evidence**

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3           Plaintiff's argument as to Dr. Traquina rests on his  
4 contention that Dr. Traquina, the chief medical officer at the  
5 prison where Plaintiff was incarcerated, knew that patients were  
6 "falling through the cracks," yet did nothing to alleviate the  
7 problem. Plaintiff maintains that this fatal error in the  
8 medical operation Dr. Traquina oversaw resulted in Plaintiff's  
9 injury. Thus, Plaintiff argues, the jury's finding that  
10 Defendant was not deliberately indifferent to Plaintiff's serious  
11 medical need was contrary to the clear weight of the evidence.

12           Dr. Traquina counters that, even if, as Plaintiff maintains,  
13 Dr. Traquina was aware that some inmates with routine problems  
14 were "falling through the cracks," that, in and of itself, does  
15 not demonstrate the jury's conclusion that Dr. Traquina was not  
16 deliberately indifferent to Chacoan's serious medical needs was  
17 clearly contradicted by the weight of the evidence presented at  
18 trial. Dr. Traquina testified that he was under serious  
19 budgetary restraints that required a concentration on high risk  
20 patients. Moreover, for "routine patients whose care was  
21 delayed, [Dr. Traquina] relied on their complaints, either  
22 written or oral; letters or telephone calls from their families;  
23 or formal inmate grievances, also known as 602 appeals."

24 (Dr. Traquina's Opp'n, filed March 5, 2012, [ECF No. 205] at  
25 3:7-10.) Dr. Traquina also points out that when he received such  
26 notice, he personally reviewed the inmates case to rectify  
27 existing problems.

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1 Thus, Dr. Traquina avers the jury's finding — that Dr. Traquina  
2 was not deliberately indifferent to Plaintiff's serious medical  
3 needs — did not conflict with the clear weight of the evidence.

4 With regard to Defendant Dr. Naku, Plaintiff argues that the  
5 jury's conclusion that Dr. Naku was not deliberately indifferent  
6 to Plaintiff's medical needs was contrary to the clear weight of  
7 the evidence because he testified that, despite being aware of  
8 Plaintiff's ear condition, he took no steps to ensure that  
9 Plaintiff received the surgery he needed. Naku counters that the  
10 jury did not erroneously find that he was not deliberately  
11 indifferent to Plaintiff's ear condition because Dr. Naku is not  
12 an ear, nose and throat specialist. Naku also notes that the  
13 evidence showed that he consistently provided Plaintiff with  
14 antibiotics which, according to Dr. Lustig, Plaintiff's surgeon  
15 at the University of California Medical Center, San Francisco, is  
16 an appropriate manner to treat infections associated with  
17 Plaintiff's ear condition.

18 The court must apply a stringent standard to Plaintiff's  
19 argument that the verdict reached cannot be reconciled with the  
20 weight of the evidence. Digidyne Corp. v. Data General Corp.,  
21 734 F.2d 1336, 1347 (9th Cir. 1984). A motion for new trial may  
22 be granted on this ground only if the verdict is against the  
23 "great weight" of the evidence or if "it is quite clear that the  
24 jury has reached a seriously erroneous result." Id., see also  
25 Venegas v. Wagner, 831 F.2d 1514, 1519 (9th Cir. 1987).

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1 It would amount to an abuse of discretion on the part of the  
2 court to grant a new trial on any lesser showing, and the court  
3 cannot extend relief simply because it would have arrived at a  
4 different verdict. Silver Sage Partner, LTD v. City of Desert  
5 Hot Springs, 251 F.3d 814, 818-19 (9th Cir. 2001).

6 The Court finds that Plaintiff has not presented a  
7 compelling argument for granting the extraordinary remedy sought.  
8 In the Court's view, there was sufficient evidence from which the  
9 jury could have reached its conclusion that neither Dr. Naku nor  
10 Dr. Traquina were deliberately indifferent to Plaintiff's serious  
11 medical needs. As to Dr. Traquina, the parties presented  
12 conflicting evidence regarding whether Dr. Traquina was  
13 deliberately indifferent. Indeed, the court specifically  
14 referenced this conflicting evidence in denying Dr. Traquina's  
15 Rule 50 motion for judgment as a matter of law. It is clear that  
16 the jury found credible Dr. Traquina's testimony that, given the  
17 circumstances, he took sufficient precautions to ensure that  
18 those prisoners with serious medical needs did not slip through  
19 the cracks. Indeed, Dr. Lustig testified that his system was  
20 similar to that employed by Dr. Traquina and that some routine  
21 scheduling matters still fell through the cracks. To this end,  
22 the Court cannot find that the jury's determination that  
23 Dr. Traquina was not deliberately indifferent to Plaintiff's  
24 serious medical need was contrary to the overwhelming weight of  
25 the evidence.

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1 Plaintiff's arguments with regard to Dr. Naku are similarly  
2 unavailing. Specifically, the evidence showed that, even if it  
3 was not the ideal course of action, Dr. Naku saw Plaintiff on a  
4 number of occasions and administered the treatment he thought  
5 appropriate at the time — the same treatment Dr. Lustig  
6 testified was appropriate for Plaintiff's ear condition. This  
7 evidence, combined with the fact that Dr. Naku was not an ear,  
8 nose and throat specialist, provided the jury with sufficient  
9 evidence to find that Dr. Naku was not deliberately indifferent  
10 to Plaintiff's serious medical needs. Consequently Plaintiff's  
11 motion for new trial against Dr. Naku on grounds of insufficiency  
12 of the evidence must be denied.

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14 **B. Plaintiff's Special Jury Instructions**

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16 Plaintiff's second argument in seeking a new trial rests  
17 with his contention that the court committed clear legal error by  
18 failing to give special jury instructions 20a and 21a. Proposed  
19 special instruction 20a requested the court to deviate from the  
20 Ninth Circuit's Model Jury instructions regarding supervisory  
21 liability under 42. U.S.C. § 1983 (Section 1983). Plaintiff  
22 argues that his proffered special instruction regarding  
23 supervisory liability should have been given in light of the  
24 Ninth Circuit's recent decision in Starr v. Baca, 652 F.3d 1202  
25 (9th Cir. 2011).

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1 Specifically, Plaintiff maintains that Starr changed the scope of  
2 supervisory liability in this Circuit, and thus, the Ninth  
3 Circuit's model civil jury instruction 9.3 — the instruction the  
4 court ultimately gave — was insufficient to apprise the jury of  
5 the current contours of supervisory liability under Section 1983.  
6 Plaintiff's proposed special instruction 21a requested the court  
7 give a specific instruction regarding what constitutes a serious  
8 medical need in accordance with Lolli v. Cnty of Orange, 351 F.3d  
9 410 (9th Cir. 2003). Plaintiff argues that this instructions  
10 should have been given to avoid jury confusion.

11 Defendant contends that failure to give proposed instruction  
12 20a was not in error because Starr did not alter the law upon  
13 which the standard jury instruction used by the court was based.  
14 Defendant further maintains that Plaintiff has offered no  
15 evidence to show that failure to give Plaintiff's proposed jury  
16 instruction 21a misled the jury in any regard. Further,  
17 Defendants argue that, by following the Ninth Circuit's Model  
18 Instruction 9.25 regarding deliberate indifference to serious  
19 medical need, the court did not abuse its discretion.

20 A new trial may be required when the court offers incorrect  
21 jury instructions that "infect[] the deliberative process of the  
22 jury with regard to its evaluation of the" claims presented.  
23 Bateman v. Mnemonics, Inc., 79 F.3d 1532, 1549 (11th Cir. 1996).  
24 The district "court's formulation of the jury instructions" is  
25 within the discretion of the court. Masson v. New Yorker  
26 Magazing, Inc., 85 F.3d 1394, 1397 (9th Cir. 1996).

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1 A challenge to the district court's composition of the jury  
2 instructions cannot be successfully challenged unless "the  
3 instructions, considered as a whole, were inadequate or  
4 misleading." Id.

5 The court finds unavailing Plaintiff's contention that the  
6 court clearly committed legal error by omitting Plaintiff's  
7 proposed special jury instructions and instead relying on the  
8 Ninth Circuit's Model Civil Jury Instructions for Plaintiff's  
9 Section 1983 claims. First, contrary to Plaintiff's contention,  
10 Starr did not create a new legal standard regarding supervisory  
11 liability under § 1983; it merely held that the United States  
12 Supreme Court's ruling in Ashcroft v. Iqbal, 556 U.S. 662 (2009)  
13 did not eliminate supervisory liability from the scope of Section  
14 1983. Id. at 2258. After concluding that it did not, the court  
15 reaffirmed the long-standing 9th Circuit standards governing  
16 supervisory liability under Section 1983. Id. at 2262-2263. To  
17 this end, the court did not err in utilizing Ninth Circuit Model  
18 Jury Instruction 9.3.

19 Second, Plaintiff's contention that the court's failure to  
20 give Plaintiff's requested jury instruction defining serious  
21 medical need necessitates a new trial is similarly unpersuasive.  
22 Indeed, Plaintiff's contention is belied by his own previous  
23 filings — Plaintiff, in his trial brief, expressly stated that  
24 it was undisputed that Mr. Chacoan has a serious medical need.<sup>3</sup>

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27 <sup>3</sup> Indeed, "Defendants [did] not dispute that [P]laintiff has  
28 a serious medical need. . . . Rather, they dispute[d] whether  
they acted with deliberate indifference." (Findings &  
Recommendation, filed May 14, 2009, [ECF No. 91] at 11:24-26.)



1 (Pl.'s Trial Brief, filed Nov. 17, 2011, [ECF No 140] at 9:19.)  
2 If there was no dispute as to whether Plaintiff had a serious  
3 medical need, the Court cannot surmise how lack of an instruction  
4 as to what constitutes a serious medical need detrimentally  
5 misled or confused the jury. Thus, the Court finds that it did  
6 not commit error in denying Plaintiff's request to include  
7 Plaintiff's proffered special instruction 21a.

8 Plaintiff has simply failed to show that the court's  
9 employment of the Ninth Circuit's Model Jury Instructions  
10 constituted such clear error to merit the extraordinary remedy of  
11 a new trial. Thus, Plaintiff's motion for a new trial on the  
12 basis of denying Plaintiff's requested special jury instructions  
13 is denied.

14  
15 **CONCLUSION**  
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17 For the reasons set forth above, Plaintiff's motion for a  
18 new trial is DENIED.

19 IT IS SO ORDERED.

20 Dated: March 27, 2012

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23 MORRISON C. ENGLAND, JR.  
24 UNITED STATES DISTRICT JUDGE  
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