

1 judgment” and “Injunctive Relief as requested”). He argues that without the requested relief,
2 there is nothing to stop defendant or those acting on her behalf from retaliating against him for
3 this or any other lawsuit. He notes defendant’s trial testimony that she had not received formal
4 training about inmates’ right of access to the courts and the evidence suggesting she would not be
5 subject to discipline for impeding plaintiff’s access to the courts. He concludes that the damage
6 to his First Amendment rights is sufficient irreparable injury to justify the entry of an injunction.

7 A. Injunctive Relief

8 Injunctive relief is an extraordinary remedy that may only be awarded upon a clear
9 showing that the moving party is entitled to such relief; it is never ordered as of right. *Winter v.*
10 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). “To seek injunctive relief, a plaintiff must
11 show that he is under threat of suffering ‘injury in fact’ that is concrete and particularized; the
12 threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to
13 the challenged action of the defendant; and it must be likely that a favorable judicial decision will
14 prevent or redress the injury.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009).

15 Under federal law, past injury by itself does not establish standing. *Lopez v.*
16 *Candaele*, 630 F.3d 775, 785 (9th Cir. 2010); *Mayfield v. United States*, 599 F.3d 964, 970 (9th
17 Cir. 2010) (“Once a plaintiff has been wronged, he is entitled to injunctive relief only if he can
18 show that he faces a ‘real or immediate threat . . . that he will again be wronged in a similar
19 way.’” (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983))). Instead, the plaintiff
20 must show “‘an injury that is actual or imminent, not conjectural or hypothetical. In the context
21 of injunctive relief, the plaintiff must demonstrate a *real or immediate threat* of an irreparable
22 injury.’” *Hangarter v. Provident Life & Acc. Ins. Co.* 373 F.3d 998, 1021 (9th Cir. 2004)
23 (emphasis in original) (quoting *Clark v. City of Lakewood*, 259 F.3d 996, 1007 (9th Cir. 2001)).
24 Neither speculation nor subjective apprehension about possible harm establishes standing.
25 *Mayfield*, 599 F.3d at 970.

26 Plaintiff does not allege he is facing any imminent injury but only that without an
27 injunction, there is nothing to stop Fields or those acting on her behalf from retaliating against
28 him. Moreover, he has not alleged Fields acted in conformance with a policy nor shown a pattern

1 of retaliatory acts. *Cf. Gomez v. Vernon*, 255 F.3d 1118, 1129 (9th Cir. 2001). His fear of future
2 injury, even coupled with the past injury, is not a sufficient basis for injunctive relief.

3 B. Declaratory Relief

4 Under 28 U.S.C. § 2201, a court may “declare the rights and other legal relations”
5 of the parties to an actual controversy. “The Declaratory Judgment Act gives the Court the
6 authority to declare the rights and legal relations of interested parties, but not a duty to do so.”
7 *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 533 (9th Cir. 2008). When the relief sought
8 “will neither serve a useful purpose in clarifying and settling the legal relations in issue nor
9 terminate proceedings and afford relief from uncertainty and controversy faced by the parties,” a
10 court need not grant declaratory relief. *United States v. Washington*, 759 F.2d 1353, 1357 (9th
11 Cir. 1985).

12 Moreover, as with injunctive relief, a person seeking declaratory relief must “show
13 a very significant possibility of future harm; it is insufficient for [him] to demonstrate only a past
14 injury.” *San Diego Cnty Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996);
15 *Mayfield*, 599 F.3d at 969 (“[A] plaintiff who has standing to seek damages for a past injury, or
16 injunctive relief from an ongoing injury, does not necessarily have standing to seek prospective
17 relief such as a declaratory judgment.”).

18 Plaintiff has not shown that a declaratory judgment will “afford relief from
19 uncertainty and controversy faced by the parties”: the only controversy in this case was whether
20 defendant had retaliated against plaintiff on a single occasion. Moreover, as noted above, he has
21 not shown “a very significant possibility of future harm.”

22 The request for the entry of a declaratory judgment is denied.

23 II. MOTIONS FOR JUDGMENT AS A MATTER OF LAW AND FOR A NEW TRIAL
24 (ECF Nos. 124 & 125)

25 Plaintiff argues he is entitled to a judgment as a matter of law (JMOL) on punitive
26 damages because the jury did not reach the issue and because the verdict was contrary to the
27 weight of the evidence at trial. ECF No. 124. He also argues he is entitled to a new trial on

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1 punitive damages because the jury instruction on punitive damages failed to include the necessary
2 intent element. ECF No. 125.

3 A. Standards

4 Federal Rule of Civil Procedure 50(b) governs renewed motions for judgment as a
5 matter of law, raised after the denial of a Rule 50(a) motion made during trial and provides that
6 the court may: “(1) allow judgment on the verdict, if the jury returned a verdict; (2) order a new
7 trial; or (3) direct the entry of judgment as a matter of law.” In rendering its decision on a Rule
8 50 motion, the court views the evidence in the light most favorable to the non-moving party and
9 draws all reasonable inferences in favor of the non-moving party. *Lakeside–Scott v. Multnomah*
10 *Cnty.*, 556 F.3d 797, 802 (9th Cir. 2009); *Josephs v. Pac. Bell*, 443 F.3d 1050, 1062 (9th Cir.
11 2006). The court must not weigh the evidence or make credibility determinations. *Reeves v.*
12 *Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000).

13 “The test applied is whether the evidence permits only one reasonable conclusion,
14 and that conclusion is contrary to the jury’s verdict.” *Josephs*, 443 F.3d at 1062. “The verdict
15 will be upheld if it is supported by substantial evidence, ‘even if it is also possible to draw a
16 contrary conclusion.’” *First Nat’l Mortg. Co. v. Fed. Realty Inv. Trust*, 631 F.3d 1058, 1067 (9th
17 Cir. 2011) (quoting *Pavao v. Pagay*, 307 F.3d 915, 918 (9th Cir. 2002)). However, judgment as a
18 matter of law “is appropriate when the jury could have relied only on speculation to reach its
19 verdict.” *Lakeside-Scott*, 556 F.3d at 803.

20 Under Federal Rule of Civil Procedure 59(a)(1), the court may grant a new trial
21 “on all or some of the issues ... (A) after a jury trial, for any reason for which a new trial has
22 heretofore been granted in an action at law in federal court.” Because “rule 59 does not specify
23 the grounds on which a motion for a new trial may be granted,” district courts must look to
24 “grounds that have been historically recognized.” *Zhang v. Am. Gem Seafoods, Inc.*, 339 F.3d
25 1020, 1035 (9th Cir. 2003). These include a verdict that is contrary to the weight of the evidence
26 or is based on false or perjurious evidence; an excessive award of damages; or unfairness to the
27 to the moving party. *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 729 (9th Cir. 2007). A court may
28 order a new trial if an erroneous evidentiary ruling substantially prejudiced a party or if its

1 instructions were erroneous or inadequate. *Harper v. City of Los Angeles*, 533 F.3d 1010, 1030
2 (9th Cir. 2008); *Jazzabi v. Allstate Ins. Co.*, 278 F.3d 979, 985 n.24 (9th Cir. 2002). “The grant
3 of a new trial is ‘confided almost entirely to the exercise of discretion on the part of the trial
4 court.” *Murphy v. City of Long Beach*, 914 F.2d 183, 186 (9th Cir. 1990). Even though in the
5 Rule 59 context “the trial court may weigh the evidence and credibility of the witnesses,” it
6 should not grant a new trial “merely because it might have come to a different result from that
7 reached by the jury.” *Roy v. Volkswagen of Am., Inc.*, 896 F.2d 1174, 1176 (9th Cir. 1990)
8 (internal quotation marks omitted).

9 When a party brings both a JMOL and a motion for a new trial, “the trial judge
10 should rule on the motion for judgment. Whatever his ruling thereon he should also rule on the
11 motion for a new trial, indicating the grounds of his decision.” *Montgomery Ward & Co. v.*
12 *Duncan*, 311 U.S. 243, 253 (1940).

13 B. Punitive Damages and the Evidence

14 Punitive damages are available in a civil rights action only “when the defendant’s
15 conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous
16 indifference to the federally protected rights of others.” *Smith v. Wade*, 461 U.S. 30, 56 (1983);
17 *Prison Legal News v. Babeu*, 933 F. Supp. 2d 1188, 1214 (D. Ariz. 2013), *affirmed by* ___ F.
18 App’x ___, 2014 WL 228942 (9th Cir. Jan. 22, 2014).

19 [T]he most important indicium of the reasonableness of a punitive
20 damages award is the degree of reprehensibility of the defendant’s
21 conduct. We have instructed courts to determine the
22 reprehensibility of a defendant by considering whether: the harm
23 caused was physical as opposed to economic; the tortious conduct
24 evinced an indifference to or a reckless disregard of the health or
25 safety of others; the target of the conduct had financial
vulnerability; the conduct involved repeated actions or was an
isolated incident; and the harm was the result of intentional malice,
trickery, or deceit, or mere accident. The existence of any one of
these factors weighing in favor of a plaintiff may not be sufficient
to sustain a punitive damages award; and the absence of all of them
renders any award suspect.

26 *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003) (internal quotation marks
27 & citations omitted). In this case, defendant’s acts did not cause physical harm or otherwise
28 impact plaintiff’s health and safety nor was there any evidence she had engaged in multiple acts

1 of retaliatory conduct. While there was evidence that defendant did not follow the proper
2 procedure for removing an inmate from a job assignment, there was also evidence that she did not
3 do so directly in plaintiff's case, but rather was the catalyst for the actions that ultimately resulted
4 in plaintiff's removal from his job on the recycling crew. While there is a power disparity
5 between the parties, if that were a sufficient basis for a finding of reprehensibility, all successful
6 inmate plaintiffs would be entitled to punitive damages. That cannot be the rule. *Compare*
7 *Ramirez v. Ferguson*, 2011 WL 1157997, at *18 (W.D. Ark. Mar. 29, 2011) (punitive damages
8 appropriate where deputies abused their power over unresisting inmate by spraying him with
9 pepper spray, taking him to ground, restraining him and then lifting him by restraints and
10 dropping him to ground while laughing and taunting). Without downplaying the severity of any
11 retaliation for an inmate's exercise of his right of access to the courts, in this case, viewing the
12 evidence in the light most favorable to the verdict, the court declines to grant plaintiff's motion
13 for a judgment as a matter of law. Even after weighing the evidence, the court does not find
14 plaintiff is entitled to a new trial on the issue of punitive damages, as it does not find the verdict
15 on punitive damage to be against the weight of the evidence.

16 C. Punitive Damages and the Verdict

17 Plaintiff alleges he is entitled to a new trial on punitive damages because the jury
18 did not actually address the issue on the verdict form. ECF No. 125 at 2. He is incorrect: the
19 verdict form shows the jury foreman wrote "no" in response to question three, which was ". . . do
20 you find plaintiff is entitled to punitive damages against defendant Fields?" ECF No. 120 at 2.
21 Because the jury answered question three "no," they did not move to question four. *Id.*

22 D. Punitive Damages and the Jury Instructions

23 Relying on the Ninth Circuit's pattern jury instruction, the court instructed the jury
24 as follows, in pertinent part:

25 If you find for the plaintiff, you may, but are not required to,
26 award punitive damages. The purposes of punitive damages are to
27 punish a defendant and to deter similar acts in the future. Punitive
damages may not be awarded to compensate a plaintiff.

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1 The plaintiff has the burden of proving by a preponderance
2 of the evidence that punitive damages should be awarded, and, if
3 so, the amount of any such damages.

4 You may award punitive damages only if you find that the
5 defendant's conduct that harmed the plaintiff was malicious,
6 oppressive or in reckless disregard of the plaintiff's rights. Conduct
7 is malicious if it is accompanied by ill will, or spite, or if it is for
8 the purpose of injuring the plaintiff. Conduct is in reckless
9 disregard of the plaintiff's rights if, under the circumstances, it
10 reflects complete indifference to the plaintiff's safety or rights, or if
11 the defendant acts in the face of a perceived risk that its actions will
12 violate the plaintiff's rights under federal law. An act or omission
13 is oppressive if the defendant injures or damages or otherwise
14 violates the rights of the plaintiff with unnecessary harshness or
15 severity, such as by the misuse or abuse of authority or power or by
16 the taking advantage of some weakness or disability or misfortune
17 of the plaintiff.

18 ECF No. 116 at 20; Ninth Circuit Manual of Model Civil Jury Instructions, 5.5 Punitive
19 Damages.

20 Plaintiff argues this jury instruction was inadequate because it did not inform the
21 jury it could award punitive damages if it found Fields was motivated by evil motive or intent.
22 *Smith*, 461 U.S. at 50. ECF No. 125 at 6.

23 Although a court has "substantial latitude" in formulating jury instruction, those
24 instructions must correctly state the law and cover the issues raised at trial. *Clem v. Lomeli*,
25 566 F.3d 1177, 1181 (9th Cir. 2009); *Brewer v. City of Napa*, 210 F.3d 1093, 1997 (9th Cir.
26 2000). When an instruction is challenged, the court must consider the instructions as a whole to
27 determine whether they were "misleading or inadequate to guide the jury's deliberations"
28 *United States v. Johnson*, 680 F.3d 1140, 1147 (9th Cir. 2012) (citation omitted). "[U]se of a
model jury instruction does not preclude a finding of error." *Dang v. Cross*, 422 F.3d 800, 805
(9th Cir. 2005) (quoting *United States v. Warren*, 984 F.2d 325, 328 (9th Cir. 1993)). However,
harmless errors do not require a new trial. *Tritchler v. Cnty of Lake*, 358 F.3d 1150, 1154 (9th
Cir. 2004).

In this case, plaintiff did not object to the court's instruction. Under Rule 51(d)(1),
"a party may assign as error: (A) an error in an instruction actually given, if that party properly

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1 objected” In the absence of a contemporaneous instruction, the court may “consider a plain
2 error . . . if the error affects substantial rights.” FED. R. CIV. P. 51(d)(2).

3 Plaintiff has not shown there was error, or if there was error, that it affected
4 substantial rights. It is true the instruction on punitive damages did not explicitly mention evil
5 intent or motive as a basis for finding punitive damages, but the definition of “malicious”—
6 actions “accompanied by ill will, or spite, or . . . for the purpose of injuring the plaintiff”—
7 adequately conveyed the idea of evil intent or motive. Plaintiff is not entitled to a new trial
8 because of jury instructional error.

9 IT IS THEREFORE ORDERED:

- 10 1. Plaintiff’s motion for declaratory and injunctive relief, ECF No. 123, is denied;
11 2. Plaintiff’s motion for a judgment as a matter of law, ECF No. 124, is denied;

12 and

- 13 3. Plaintiff’s motion for a new trial, ECF No. 125, is denied.

14 DATED: April 30, 2014.

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18 UNITED STATES DISTRICT JUDGE
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