

1 and unusual punishment; (2) failure to summon and provide medical care in violation of
2 Cal. Gov. Code § 845.6; (3) negligence; (4) deliberate indifference in conducting a liver
3 biopsy; (5) violation of rights by threats, intimidation, or coercion in violation of Cal. Civ.
4 Code § 52.1; (6) inadequate post-biopsy recovery; (7) wrongful death; and (8) loss of
5 companionship. After the close of discovery, Defendants filed a Motion for Summary
6 Judgment (ECF No. 182), to which the Court issued its Memorandum and Order on
7 March 21, 2018. ECF No. 203. The Court granted the motion regarding Plaintiffs' Sixth
8 Cause of Action for inadequate post-biopsy recovery, but otherwise denied Defendants'
9 requests. Order, ECF No. 203, at 2:4-7.

10 Presently before the Court is Defendants' Motion for Reconsideration, contending
11 that the Court made several clear errors of law in ruling on Defendants' Motion for
12 Summary Judgment. See Mot. Recon., ECF No. 204. For the reasons that follow,
13 Defendants' Motion for Reconsideration is GRANTED in part and DENIED in part.²
14

15 **BACKGROUND**³

16
17 Decedent Robert Staggs was incarcerated at SCC beginning on August 5, 2008.
18 He was diagnosed with Hepatitis C virus ("HCV") in 1980 and began to experience
19 worsening symptoms associated with his HCV diagnosis in May 2009, during his prison
20 term. Those worsening symptoms included pruritus, darkened urine, and open sores.
21 Plaintiffs allege that Decedent's symptoms became so extreme that they gave him
22 insomnia and interfered with his ability to participate in regular daily activities. According
23 to Plaintiffs, while Decedent's symptoms pointed to acute liver failure, Defendants only
24 gave him pain medication and other treatments intended to mask the symptoms instead
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26 ² Because oral argument would not be of material assistance, the Court ordered this matter
submitted on the briefs. E.D. Cal. Local Rule 230.

27 ³ The following facts are derived from this Court's earlier order (ECF No. 203) as well as the
28 parties' respective briefings, statements of disputed and undisputed facts, and Plaintiffs' Fourth Amended
Complaint.

1 of properly diagnosing and addressing the underlying problems. In June 2009,
2 Defendant Bangi, one of the SCC doctors, administered a blood test to Decedent that
3 showed an increase in Decedent's alpha-feta protein ("AFP") level from 11 to 35, while a
4 normal value is between zero and eight. Following this result, Defendants continued to
5 give Decedent only painkillers and did not repeat the AFP test or give him further
6 treatment at that time. In July 2009, Defendant Bangi ordered an MRI of Decedent's
7 liver. That test was administered on August 30 of that year and showed a possible
8 lesion.

9 On December 8, 2009, Decedent submitted a 602-inmate appeal form to the SCC
10 Healthcare Appeals Office requesting medical attention for his symptoms. He received a
11 denial of his request on December 21, 2009, which he appealed two days later. On
12 December 26, 2009, Decedent went "man-down" in his cell, and was taken to the Sonora
13 Regional Medical Center hospital where he received an ultrasound and a CT scan. Both
14 tests indicated cirrhosis and several lesions in Decedent's liver, including one five-
15 centimeter lesion. In January 2010, Defendants St. Clair and Allen scheduled a biopsy
16 of Decedent's liver that Defendant Bangi had originally ordered in October 2009. After
17 two hospitals refused to perform the biopsy on Decedent because of the high risks
18 involved in biopsying a liver like Decedent's with ascites fluid in the peritoneal cavity,
19 DHM agreed to administer the procedure. Plaintiffs assert that Decedent was at a higher
20 risk for acute liver bleeding because of his condition.

21 Decedent's liver biopsy was performed at DHM on January 22, 2010. Plaintiffs'
22 expert opined that the "universal protocol" for liver biopsies requires the patient to
23 "remain immobile in a supine position" for "three to four hours immediately following the
24 procedure" to help stop internal bleeding, even if the liver is otherwise healthy. However,
25 it is undisputed that Defendants forced Decedent to leave his hospital bed less than an
26 hour after the biopsy so he could be transported back to SCC. The next day, Decedent
27 was unable to urinate, his abdomen became swollen and distended, and he soon began
28 to vomit. No prison personnel came to Decedent's aid until the afternoon of the following

1 day, January 24, 2010. At that point, Decedent was transferred to the Operating
2 Housing Unit at SCC, and on January 25, 2010, he was taken to the San Joaquin
3 Medical Center for emergency treatment. His biopsy results were returned the next day
4 and confirmed hepatocellular carcinoma. Decedent was transferred to the California
5 Medical Facility in Vacaville on February 4, 2010, where he died on February 12, 2010.
6 Plaintiffs' expert opined that the immediate cause of Decedent's death was "blood loss
7 into his peritoneum" resulting from the liver biopsy performed on January 22, 2010. His
8 official causes of death on his death certificate were hepatocellular carcinoma and end
9 stage liver disease.

10 Regarding the facts described above, Plaintiffs allege the following action or
11 inaction by each named Defendant:

- 12 • Dr. St. Clair: screened out Decedent's 602 inmate appeal for "abuse of the
13 appeal procedure"; approved Decedent's liver biopsy despite knowing
14 about Decedent's elevated risk for complications; failed to cause Decedent
15 to be included in the HCV screening program and failed to cause him to be
16 referred to a specialist despite HCV treatment protocols.
- 17 • Dr. Bangi: prescribed Decedent painkillers to mask his symptoms instead
18 of treating his liver disease; scheduled Decedent's liver biopsy despite
19 knowing about Decedent's elevated risk for complications.
- 20 • Dr. Allen: approved Decedent's liver biopsy despite knowing about
21 Decedent's elevated risk for complications; failed to cause Decedent to be
22 referred to a specialist.
- 23 • Dr. Russin: administered Decedent's October 2009 MRI scan and failed to
24 diagnose a tumor based on that test; failed to administer a multiphase MRI
25 that would have revealed Decedent's hepatocellular carcinoma.
- 26 • Dr. Krpan: prescribed Decedent painkillers to mask his symptoms instead
27 of treating his liver disease; ordered Decedent's liver biopsy despite
28 knowledge of Decedent's heightened risk for complications.

- 1 • Dr. Sattah: administered Decedent’s liver biopsy despite knowledge of
2 Decedent’s heightened risk for complications; performed the biopsy in a
3 way that further increased risk to Decedent.
- 4 • Doctor’s Hospital of Manteca: under a theory of respondeat superior for
5 Sattah’s conduct, performed Decedent’s liver biopsy and discharged
6 Decedent from the hospital too soon after the procedure was completed.

7 Plaintiffs’ first claim for relief alleges that Defendants St. Clair, Bangi, Krpan,
8 Allen, and certain Doe Defendants violated Decedent’s constitutional rights by providing
9 him such inferior medical treatment that it constituted cruel and unusual punishment in
10 violation of the Eighth Amendment. ECF No. 117 at 17-18. Plaintiffs’ second claim
11 alleges that certain Doe Defendants failed to summon and provide proper medical care
12 for Decedent in violation of Cal. Gov. Code § 845.6. Id. at 18-19. Plaintiffs’ third claim
13 for relief alleges negligence against Defendants Krpan, Bangi, Sattah, DHM, and Doe
14 Defendants, claiming they violated the standard of care by failing to provide adequate
15 testing and treatment of Decedent’s medical condition. Id. at 19-20. In their fourth claim,
16 Plaintiffs allege deliberate indifference against Defendants Krpan, Allen, St. Clair,
17 Sattah, Bangi, DHM, and other Doe Defendants in their decision to conduct a liver
18 biopsy on Decedent. Id. at 20-21. Plaintiffs’ fifth claim for relief alleges that Doe
19 Defendants utilized threats, intimidation, and coercion against Decedent in violation of
20 Cal. Civ. Code § 52.1 to force him to leave his hospital bed after the biopsy. Id. at 21.
21 Plaintiffs’ sixth claim for relief alleges deliberate indifference against Defendants DHM,
22 Sattah, and other Does arising from their release of Decedent from the hospital less than
23 one hour after his liver biopsy. Id. In the seventh claim for relief, Plaintiff Melissa
24 Staggs, Decedent’s daughter, alleges wrongful death under Code Civ. Pro. § 377.60. Id.
25 at 22. In the eighth claim for relief, Plaintiffs Linnie Staggs and Melissa Staggs,
26 Decedent’s mother and daughter, respectively, allege loss of companionship. Id. at 23.

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1 of the district court. Turner v. Burlington N. Santa Fe R.R., 338 F.3d 1058, 1063 (9th Cir.
2 2003).

4 ANALYSIS

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6 In their Corrected Fourth Amended Complaint, Plaintiffs allege various violations
7 against fifteen separate defendants, eight of whom are specifically named, and seven of
8 whom consist of groups of Doe Defendants. ECF No. 117. Defendants' present Motion
9 for Reconsideration addresses reconsideration by party, rather than by claim, and the
10 Court takes the same approach here.

11 A. Defendant Dr. Sattah

12 By way of this present motion, Defendants argue that the Court made several
13 clear errors of law in denying summary judgment in favor of Dr. Mario Sattah
14 ("Dr. Sattah") on Plaintiffs' Section 1983 deliberate indifference claim. As an initial
15 matter, Defendants argue that reconsideration is warranted because the Court
16 mistakenly analyzed Dr. Sattah's entitlement to qualified immunity when he never moved
17 for such immunity. Mot. Recon. at 3:25–4:5. Defendants are correct in that Dr. Sattah
18 did not move for summary judgment on grounds of qualified immunity. As a result, the
19 Court's analysis concerning the applicability of immunity as to Dr. Sattah, found between
20 pages 11:25 and 13:16 in the earlier Order (ECF No. 203), was indeed unnecessary.
21 Therefore, Defendants' Motion for Reconsideration is GRANTED with regard Plaintiffs'
22 deliberate indifference claim against Dr. Sattah. However, upon reconsideration, the
23 Court affirms its previous holding that summary judgment in favor of Dr. Sattah is not
24 appropriate for this claim.

25 Defendants reiterate several contentions made in their prior motion, namely that
26 Dr. Sattah is a private radiologist, not a state doctor, and is therefore entitled to summary
27 judgment on Plaintiffs' deliberate indifference claim. Mot. Recon. at 4:6-10 (citing Defs.'
28 Memo. ISO MSJ, ECF No. 182-2, at 5-7). In their Motion for Summary Judgment,

1 Defendants argued that because Central Valley Imaging (“CVI”) alone, not DHM or the
2 California Department of Corrections and Rehabilitation (“CDCR”), employed Dr. Sattah,
3 he must be considered a private doctor. See Defs.’ Memo. ISO MSJ at 5:14–7:5. To
4 further support this contention here, Defendants point to Plaintiffs’ failure to ascertain the
5 formal contracts between Dr. Sattah, DHM, and/or CVI. Mot. Recon. at 4:8-15. Without
6 these contracts, Defendants argue, no genuine dispute concerning Dr. Sattah’s status as
7 a private doctor exists. Id. The Court disagrees for the same reasons delineated in the
8 previous Order, in that “[w]hether a private physician who contracted with the state to
9 treat inmates is acting under color of state law is a fact-intensive inquiry.” ECF No. 203
10 at 12:9-11. As part of this fact-intensive inquiry, a jury could find that Dr. Sattah was a
11 state-actor under either the joint action or nexus tests. Id. at 1-10. That Plaintiffs did not
12 submit specific documents delineating the contractual boundaries of Dr. Sattah’s
13 relationship with these various entities does not inherently show the lack of a genuine
14 dispute—a conclusion especially true since it is undisputed that Dr. Sattah performed
15 Decedent’s liver biopsy at DHM’s facility. The contractual circumstances that led Dr.
16 Sattah to perform the biopsy in question are part of the fact-intensive inquiry that the
17 Court found necessary for determination by a jury.

18 Defendants also contend that Plaintiffs failed to carry their burden in showing that
19 Dr. Sattah had knowledge of the riskiness of the procedure as administered on
20 Decedent’s liver. Mot. Recon. at 6:11–7:4. The Court previously held that the question
21 of Dr. Sattah’s knowledge of the risks associated with Decedent’s liver biopsy was a
22 disputed question of fact inappropriate for determination on summary judgment. ECF
23 No. 203 at 18:14-19. Here, because Defendants raise no new evidence or laws to
24 support altering the Court’s prior ruling on this matter, their present request likewise fails.
25 Apart from the narrow issue of qualified immunity as to Dr. Sattah, discussed supra,
26 Defendants in essence ask the Court to revisit its prior decisions simply because they
27 disagree with the outcome.

28 Therefore, Defendants’ Motion for Reconsideration on Plaintiffs’ deliberate

1 indifference claim against Dr. Sattah is GRANTED. However, upon reconsideration,
2 Court affirms its original holding, and Defendants' request for summary judgment on
3 Plaintiff's deliberate indifference claim against Dr. Sattah is DENIED.

4 **B. Defendant DHM**

5 Defendants contend that the Court erred in finding that DHM could be held
6 liable under a theory of respondeat superior for Dr. Sattah's conduct in performing
7 Decedent's liver biopsy because Dr. Sattah was neither an employee or agent of DHM.
8 Mot. Recon. at 7:5-8, 19-21. As discussed in the prior Order, and for the same reasons
9 delineated above, determination of the relationship between Dr. Sattah and DHM
10 requires a fact-intensive inquiry, which makes it inappropriate for determination on
11 summary judgment. Defendants do not meet the requisite standards for reconsideration
12 on this issue, and repetitive assertions that the Court's prior decision constituted clear
13 errors of law, absent new arguments or evidence, are insufficient. For these reasons,
14 Defendants' Motion for Reconsideration regarding Defendant DHM is DENIED.

15 **C. Defendants Dr. Bangi, Dr. Krpan, Dr. St. Clair, and Dr. Allen**

16 The present motion seeks reconsideration of the Court's decision denying
17 Defendants Dr. Edwin Bangi, Dr. John Krpan, Dr. Jack St. Clair, and Dr. Curtis Allen
18 (collectively "SCC Defendants") requests for summary judgment. Mot. Recon. at 9:2–
19 14:2. Defendants' contentions in support of reconsideration include, in part, that
20 Plaintiffs lack sufficient evidence to show that SCC Defendants fell below the proper
21 medical standard of care (*id.* at 10:3-6), and that the Court erroneously cited to "Morales,
22 723 F. Supp. 2d at 423" in support of denying SCC Defendants' summary judgment.
23 Mot. Recon. at 10:7-13. The Court concedes that it gave an incomplete citation—an
24 error which led to Defendants' confusion on this matter—in that the prior Order intended
25 to cite to Morales v. Monagas for the proposition that "[i]n a medical malpractice case,
26 issues of deviation from the medical standard of care are questions of fact that must be
27 decided by the jury." 723 F. Supp. 2d 416, 423 (D.P.R. 2010) (citing Cortes-Irizarry v.
28 Corp. Insular de Seguros, 111 F.3d 184, 189 (1st Cir.1997)).

1 As discussed in the Court's earlier Order, each SCC Defendant played a role in
2 providing medical care to Decedent either before, during, and/or after the performance of
3 the liver biopsy that immediately preceded his death. The Court previously found that
4 whether each SCC Defendant met the respective medical standard of care was a
5 question for a jury, and nothing in Defendants' present motion raises new evidence or
6 law sufficient to call for reconsideration of this finding. Therefore, Defendants' Motion for
7 Reconsideration is DENIED regarding the SCC Defendants.^{5, 6}

8 **D. All Defendants**

9 Finally, all Defendants move for reconsideration on the grounds that the Court
10 misapplied California's so-called "lost chance" theory of liability. Mot. Recon. at 14:4–
11 16:6. In support of their bid for reconsideration, Defendants again rely on Bromme v.
12 Pavitt, 5 Cal. App. 4th 1487 (1992) for the proposition that Plaintiffs cannot recover as a
13 result of Decedent's death because he was already terminally ill at the time his liver
14 biopsy procedure. Mot. Recon. at 14:9-15. Defendants introduce no other cases to
15 support their reconsideration request, and as Plaintiffs correctly note, simply reiterate the
16 arguments raised in their earlier motion. Nor have they shown any new facts or new
17 circumstances that would make it manifestly unjust for the Court not to change its mind.
18 See Pyramid, 882 F.2d at 369. Consequently, Defendants' Motion for Reconsideration
19 fails.

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24 ⁵ Defendants also argue that the Court erred in allowing Plaintiffs to untimely raise a new theory
25 of liability, namely Plaintiffs' contention that SCC Defendants did not refer Decedent to a specialist despite
26 CDCR protocols requiring such a referral. Mot. Recon. at 12:16–14:2. However, Defendants' contentions
are not well taken, as they simply reiterate arguments previously presented to the Court. See Defs.' Reply
ISO MSJ, ECF No. 198, at 12:5–15:6.

27 ⁶ Defendants correctly note that the Court's earlier Order incorrectly listed the date of Decedent's
28 transfer date to SCC as January 8, 2004 when the correct date is August 5, 2008. Mot. Recon. at 13:17–
14:2; see also ECF No. 203 at 2:11. However, despite Defendants' assertions to the contrary, the Court
does not find that its error formed a manifest injustice to Defendants.

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CONCLUSION

For the reasons set forth above, Defendants' Motion for Reconsideration, ECF No. 204, is GRANTED in part and DENIED in part. Defendants' Motion is GRANTED with regard to the Plaintiffs' deliberate indifference claim against Dr. Sattah. However, upon reconsideration, the Court affirms its original holding in DENYING Defendants' request for summary judgment on this claim. As to the remaining contentions raised in the Motion, Defendants' requests for reconsideration are DENIED.

IT IS SO ORDERED.

Dated: January 29, 2019


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE