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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SCANVINSKI JEROME HYMES,  
Plaintiff,  
v.  
MILTON BLISS, et al.,  
Defendants.

Case No. [16-cv-04288-JSC](#)

**ORDER RE: DEFENDANTS’  
AMENDED MOTION FOR JUDGMENT  
AS A MATTER OF LAW**

Re: Dkt. No. 251

Plaintiff Scanvinski Jerome Hymes sued five current or former San Francisco Deputy Sheriffs (collectively, “Defendants”) for the use of excessive force on July 24, 2014 while he was incarcerated at the San Francisco County jail.<sup>1</sup> (Dkt. No. 43.)<sup>2</sup> The case was tried before a jury and on December 12, 2018, the jury returned a partial verdict for the defense, finding that two of the defendants did not use excessive force. (Dkt. No. 223.) The jury could not reach a verdict as to the remaining defendants and claims. (*Id.*) Now pending before the Court is Defendants’ renewed motion for judgment as a matter of law, pursuant to Federal Rule of Civil Procedure 50(b). (Dkt. No. 251.) After careful consideration of the parties’ briefing and the trial record, the Court concludes that oral argument is unnecessary, *see* N.D. Cal. Civ. L.R. 7-1(b), and DENIES Defendants’ motion.

**DISCUSSION**

After the close of Plaintiff’s case on December 7, 2018, Defendants moved for judgment as a matter of law, pursuant to Rule 50(a). (Dkt. No. 229.) The Court denied Defendants’ motion.

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<sup>1</sup> All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. Nos. 1 & 21.)

<sup>2</sup> Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 (*Id.* at 26.) After trial, Defendants filed the instant motion under Rule 50(b) on the same  
2 substantive grounds asserted in the Rule 50(a) motion; specifically: (1) Plaintiff’s excessive force  
3 and failure to intervene claims fail; (2) Plaintiff’s supervisory liability claim against Defendant  
4 Bliss fails; (3) an adverse inference based on Defendant Jones’ invocation of the Fifth Amendment  
5 is not warranted; (4) Defendants are entitled to qualified immunity; and (5) Plaintiff’s punitive  
6 damages claim fails. (*See* Dkt. Nos. 229 & 251.)

7 In considering a motion for judgment as a matter of law, courts “must draw all reasonable  
8 inferences in favor of the *nonmoving* party,” and cannot “make credibility determinations or weigh  
9 the evidence.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000) (emphasis  
10 added). The *Reeves* Court described the Rule 50 standard of review thusly:

11 [A]lthough the court should review the record as a whole, it must  
12 disregard all evidence favorable to the moving party that the jury is  
13 not required to believe. That is, the court should give credence to  
14 the evidence favoring the nonmovant as well as that evidence  
supporting the moving party that is uncontradicted and  
unimpeached, at least to the extent that the evidence comes from  
disinterested witnesses.

15 *Id.* at 150-51 (internal quotation marks and citations omitted). Defendants’ arguments in support  
16 of their Rule 50(b) motion essentially turn the applicable standard of review on its head. In other  
17 words, Defendants’ arguments on each ground are premised on inferences drawn in *Defendants’*  
18 favor, not Plaintiff’s. As such, Defendants’ motion fails.

19 **CONCLUSION**

20 The Court DENIES Defendants’ Rule 50(b) motion for judgment as a matter of law.  
21 Defendants’ arguments in support of their motion require the Court to draw inferences in  
22 Defendants’ favor, which is contrary to the applicable standard of review. The March 28, 2019  
23 hearing is vacated as to oral argument on this motion; however, the parties shall appear on that  
24 date to discuss the issue of Defendants’ challenge to Plaintiff’s exhaustion of administrative  
25 remedies. The Court had deferred that issue until after the jury trial in light of Defendants raising  
26 the defense late in the case, but the Court neglected to address the topic at the post-trial case  
27 management conference. Accordingly, the parties shall meet and confer on or before March 26,  
28 2019 and jointly submit a written statement detailing their proposal as to how to proceed on the

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exhaustion issue.

**IT IS SO ORDERED.**

Dated: March 21, 2019

  
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JACQUELINE SCOTT CORLEY  
United States Magistrate Judge