WO

NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Jeffrey Green,

Plaintiff,

v.

City of Phoenix, et al.,

Defendant.

No. CV-15-02570-PHX-DJH

ORDER

Before the Court is the parties' Notice of Deposition Designations (Doc. 112). On February 26, 2019, Defendant moved for leave to take a videotaped trial deposition of Lt. Joe Tomory. (Doc. 103). Plaintiff filed a Response opposing Defendant's Motion (Doc. 105), and the Court did not permit Defendant to file a Reply. (Doc. 104). The Court granted Defendant's Motion on March 6, 2019, and ordered the deposition of Lt. Tomory to commence on or before March 20, 2019, and ordered that no later than March 27, 2019, the parties shall file a notice that contained the portions of the deposition transcript each party intended to offer at trial and "[a]ll objections to the offered portions of the deposition, which shall identify by page and line number the portion to which objection is made and shall state the grounds of objection specifically;" all responses to the stated objections; and Lt. Tomory's deposition transcript. (Doc. 106 at 4) (emphasis in original)).

Plaintiff has provided general objections to Lt. Tomory's deposition. (Doc. 112 at 57). Specifically, Plaintiff claims that Lt. Tomory testified in his deposition that he was fearful of Plaintiff and this fear prompted Lt. Tomory to carry a secondary

weapon while at work. (*Id.*) Plaintiff argues that this information was not disclosed during discovery; therefore, this Court should exclude Lt. Tomory's deposition pursuant to Federal Rule of Civil Procedure 37(c)(1). (*Id.*) Defendant counters that Lt. Tomory was disclosed in Defendant's Initial Disclosures, in which Defendant provided that Lt. Tomory would testify regarding any information or knowledge he had regarding Plaintiff's allegations and any meetings, conversations, interviews he had relevant to Plaintiff's complaint. (*Id.*) Thus, Defendant argues that the Initial Disclosure statement was broad enough to include Lt. Tomory's statements concerning his decision to carry a secondary weapon while at work. (*Id.*) The Court agrees. Here, Plaintiff knew that Lt. Tomory would testify as to his interactions with Plaintiff and if Plaintiff wanted to know the specifics of that potential testimony, he could have disposed Lt. Tomory during discovery. Accordingly, the Court overrules Plaintiff's general objections.

The parties filed their transcript designations, objections, and responses using a table, the Court will follow suit starting with Defendant's designations, Plaintiff's objections, and Defendant's response to Plaintiff's objections.

DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
5:15 to 14:18	OBJECTIONS 12:20-25; 13:1 Objection: hearsay, Rule 802; relevance and undue prejudice, Rules 401, 403 13:15-25 Objection: relevance, undue prejudice, Rules 401, 403 14:1-18; Objection: relevance, undue	RESPONSE 12:20-25 and 13:1 Statements not hearsay since not offered to prove the truth of the matter asserted but offered to show their effect on Tomory, i.e., his reason for reaching out to Plaintiff – Rule 801, <i>U.S. v. Payne</i> , 944 F.2d 1458, 1472 (9 th Cir. 1991); <i>U.S. v. Lopez</i> , 913 F.3d 807, 826 (2019). 13:15-25; 14:1-18	Hearsay: Objection Overruled. The testimony is being offered to show that Lt. Tomory intended to act as a type of unofficial mentor to Plaintiff. Thus, the testimony is being offered to show its effect on Lt. Tomory as the listener, rather than for the truth of the matter asserted.
		,	

1	DEFENDANT'S	PLAINTIFF'S	DEFENDANT'S	COURT'S
2	DESIGNATIONS	OBJECTIONS	RESPONSE	RULING
2		prejudice, Rules	Exception to hearsay	Relevance: Objection
3		401, 403	rule – present sense	Overruled. The Court
4			impression Rule 803(1) Tomory is entitled to	finds the testimony relevant as it concerns
_			testify as to his	the nature of the
5			observations of	relationship between
6			Plaintiff's demeanor.	Lt. Tomory and Plaintiff.
7			Disclosure of his	Fiamum.
8			testimony was made in	Undue Prejudice:
0			Defendant's Initial	Objection Overruled.
9			Disclosure Statement	The Court does not
10			on 7/7/16 which stated	find any risk of undue
10			that he would testify	prejudice.
11			regarding any information or	
12			knowledge he has	
12			regarding Plaintiff's	<u>13:15–14:18</u>
13			allegations and any	
14			meetings,	Relevance: Objection
14			conversations,	Overruled. The Court
15			interviews he had	finds the testimony relevant as it concerns
16			relevant to Plaintiff's	Lt. Tomory's
10			complaint.	professional
17			Furthermore, the	interactions with
18			following audio recordings of meetings	Plaintiff.
10			and transcripts of	
19			meetings Tomory	<u>Undue Prejudice</u> :
20			attended with Plaintiff	Objection Overruled. The Court does not
20			and Finley were	find any risk of undue
21			disclosed on 1/9/17 in	prejudice.
22			Defendant's 5 th	FJ
22			Supplemental Disclosure:	
23			Disclosure:	
24			December 7, 2012	
			(PHX002329 –	
25			002330) Finley Green	
26			Tomory	
27			December 10, 2012 (PHX002331 –	
			002341) Finley Green	
28			Tomory	
			J	

1	DEFENDANT'S	PLAINTIFF'S	DEFENDANT'S	COURT'S
2	DESIGNATIONS	OBJECTIONS	RESPONSE December 11, 2012	RULING
3			(PHX002342 –	
4			002343) Finley Green	
			(Tomory)	
5			December 12, 2012 (PHX002344 –	
6			002353) Finley Green	
7			Tomory Henry	
8			January 4 and January	
9			15, 2013 (PHX002366 - 002381) Finley Green	
10			(Tomory) Clarke	
			January 17, 2013 (#1)	
11			(PHX002382 - 002384) Finley Green Tomory	
12			January 17, 2013 (#2)	
13			(PHX002385 - 002391)	
14			Finley Green Tomory	
15			Clarke Pace	
			January 18, 2013 (PHX002392 - 002419)	
16			Finley Green Tomory	
17			February 1, 2013	
18			(PHX002420 - 002423) Finley Green Tomory	
19			February 22, 2013	
20			(PHX002424 - 002465)	
21			Finley Green Tomory	
			March 4, 2013	
22			(PHX002466 - 002468) Finley Green (Tomory)	
23			Henry	
24			March 15, 2013	
25			(PHX002469 - 002495) Finley Green Tomory	
26			Faulkner	
			March 22, 2013	
27			(PHX002496 - 002528)	

1	DEFENDANT' DESIGNATION		DEFENDANT'S RESPONSE	COURT'S RULING
2	DESIGNATION	OBJECTIONS	Finley Green Tomory	KULING
3			Leuschner	
4			April 5, 2013	
5			(PHX002529 – 002534) Finley Green	
6			Tomory	
			April 23, 2013	
7			(PHX002535 – 002537) Finley Green	
8			Tomory	
9			April 25, 2013	
10			(PHX002538 –	
11			002540) Finley Green Tomory	
12			April 29, 2013	
13			(PHX002541 – 002542) Finley Green	
14			Tomory	
			The above describes his	
15			interactions with and observations of	
16			Plaintiff during the	
17			relevant time period.	
18			A description of	
19			Plaintiff's behavior does not constitute	
20			unfair prejudice. See,	
			Batiz v. Am. Commer. Sec. Servs., 776	
21			F.Supp.2d 1087, 1092	
22			(C.D.Cal. 2011);	
23			<i>United States v. Allen,</i> 341 F.3d 870, 886 (9 th	
24			Cir. 2003). Plaintiff's	
25			conduct, i.e., being	
			upset over minor issues such as receiving an	
26			expectations memo is	
27			relevant to the decision to have Plaintiff	
28			undergo work fitness	
			evaluations and	

1	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
2	2231311111111	02020110110	ultimately transfer him from the Robbery Unit.	Relino
4	15:3 starting with ""Did" to 15:22	Objection: relevance, undue	A description of Plaintiff's behavior	<u>15:3–22</u>
5	Did to 13.22	prejudice, Rules 401 and 403	does not constitute unfair prejudice. See,	Relevance: Objection Overruled. The Court
6		anu 403	Batiz v. Am. Commer. Sec. Servs., 776	finds the testimony relevant as it concerns
7 8			F.Supp.2d 1087, 1092 (C.D.Cal. 2011);	Lt. Tomory's professional
9			(C.D.Cai. 2011); <i>United States v. Allen</i> , 341 F.3d 870, 886 (9 th	interactions with Plaintiff on a specific
10			Cir. 2003). Plaintiff's conduct, i.e., being	occasion.
11			upset over minor issues such as receiving an	<u>Undue Prejudice</u> : Objection Overruled.
12			expectations memo is relevant to the decision	The Court does not find any risk of undue
1314			to have Plaintiff undergo work fitness	prejudice.
15			evaluations and ultimately transfer him	
16			from the Robbery Unit.	
17	16:3 to 20:5	16:3-25	Plaintiff's conduct, i.e.,	16:3-25
1819		Objection:	being upset over minor issues such as receiving	Relevance: Objection Overruled. The Court
20		relevance, Rules 401 and 403	an expectations memo is relevant to the	finds the testimony relevant as it concerns
21			decision to have Plaintiff undergo work	Lt. Tomory's professional
22			fitness evaluations and ultimately transfer him	interactions with
23			from the Robbery Unit.	Plaintiff on a specific occasion.
2425				<u>Undue Prejudice:</u> Objection Overruled.
26				The Court does not find any risk of undue
27				prejudice.

1 2	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
3	20:14 to 26:2			20:14-26:2
4				Plaintiff does not
5				object; therefore, the Court finds this
6				testimony may be offered.
7	26:16 to 27:5	26:1-5; 26:16-25	26:1-5; 26:16-25	<u>26:1–5</u>
8		Objection: hearsay, Rule 802; relevance,	The statements not	No party is offering
10		undue prejudice, Rules 401 and 403	hearsay since not offered to prove the truth of the matters	26:3-5; therefore, the Court will not address
11		27:1-5	asserted but offered to	objections regarding that section.
12		Objection: hearsay, Rule 802; relevance,	show their effect on Tomory, i.e., why he	Additionally, 26:1-2 is the end of answer to a
13		undue prejudice, Rules 401 and 403	was sitting in on meetings between	question. The answer in its entirety is 25:23-
14		Ruics 401 and 405	Plaintiff and Lt. Finley. Rule 801. <i>U.S. v.</i>	26:2. Thus, it appears that Plaintiff is only
15 16			Payne, 944 F.2d 1458, 1472 (9 th Cir. 1991);	objecting to the last two lines of the
17			<i>U.S. v. Lopez</i> , 913 F.3d 807, 826 (2019).	answer. The Court will overrule that
18				objection.
19			There is foundation for the question. Tomory	<u>26:16–27:5</u>
20			is asked to testify as to his observations as to	<u>Hearsay</u> : Objection Overruled. The
21			whether the meetings which he attended kept	testimony is being offered to show why
22			the lines of communication open	Lt. Tomory attended
23 24			between Plaintiff and Finley.	monthly meetings between Plaintiff and
25			Timey.	Lt. Finley. Thus, the testimony is being
26				offered to show its effect on Lt. Tomory,
27				rather than for the truth of the matter
28				asserted.

1		DEFENDANT'S	PLAINTIFF'S	DEFENDANT'S	COURT'S
2		DESIGNATIONS	OBJECTIONS	RESPONSE	RULING Relevance: Objection
3					Overruled. The Court
4					finds the testimony relevant as it concerns
5					interactions between
6					Lt. Tomory and Plaintiff.
7					Undue Prejudice:
8					Objection Overruled.
9					The Court does not find any risk of undue
10	_				prejudice.
11		27:20 to 27:22	Objection: hearsay, Rule 802;	There is foundation for the question. Tomory	<u>27:20–27:22</u>
			foundation, Rule	is asked to testify as to	Hearsay: Objection
12			602	his observations as to whether the meetings	Overruled. The question is not asking
13				which he attended kept	Lt. Tomory to repeat
14				the lines of communication open	an out-of-court statement. It is simply
15				between Plaintiff and	asking whether Lt.
16				Finley.	Tomory's presence in the monthly meetings
17				Statements not hearsay since not offered to	was helpful.
18				prove the truth of the matters asserted but	Relevance: Objection
19				offered to show their	Overruled. The Court finds the testimony
20				effect on Tomory, i.e., why he was sitting in	relevant as it concerns interactions between
21				on meetings between	Lt. Tomory and
22				Plaintiff and Lt. Finley. Rule 801. <i>U.S. v.</i>	Plaintiff.
23				Payne, 944 F.2d 1458, 1472 (9th Cir. 1991);	<u>Undue Prejudice</u> :
24				<i>U.S. v. Lopez</i> , 913 F.3d	Objection Overruled. The Court does not
25				807, 826 (2019).	find any risk of undue
26					prejudice.
27		28:1 to 29:3	Objection:	Tomory is testifying as	28:1-29:3
28			relevance, undue prejudice, Rules 401	to his personal observations and	Hearsay: Objection
20			and 403; hearsay,	interaction with	Overruled. The

1	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
2		Rule 802; lacks	Plaintiff during	majority of this
3		foundation, Rule	monthly meetings. His	testimony is not out-
4		602	observations as to Plaintiff's behavior	of-court statements, rather it is Lt. Tomory
5			angry, emotional form	recounting his
			the basis for sending	personal observations
6			Plaintiff for work	and experiences at
7			fitness evaluations and ultimately his transfer	these meetings.
8			from the Robbery Unit.	However, Lt. Tomory
			A 31.31.41	does state at 28:23-24
9			Additionally, statements by party	that Plaintiff was "calling Troy a liar,
10			opponent are not	he's unethical." Thus,
11			hearsay. Rule 801(d).	it is an out-of-court
			Statement by Plaintiff that he accused Finley	statement by Plaintiff. However, this was a
12			of being unethical and	statement made by
13			a liar are not offered to	Plaintiff and thus is
14			prove such, but to	not hearsay under
15			describe Plaintiff's conduct during those	801(d)(2)(a).
			meetings.	Relevance: Objection
16				Overruled. The Court
17			Supervisor impressions of Plaintiff's behavior	finds the testimony relevant as it concerns
18			are relevant to the	interactions between
			honesty of the belief	Lt. Tomory and
19			that Plaintiff's behavior	Plaintiff.
20			needed to be evaluated.	Undue Prejudice:
21				Objection Overruled.
				The Court does not
22				find any risk of undue prejudice.
23				
24				<u>Lacks Foundation</u> : Objection Overruled.
25				Lt. Tomory is
				describing events that he witnessed and was
26				present for.
27				r

1	DEFENDAN' DESIGNATION		DEFENDANT'S RESPONSE	COURT'S RULING
2	29:20 starting v		Foundation is	29:20-30:23
3	"I'm talking"	" to relevance, undue	established because	
4	30:23	prejudice, Rules 401	Tomory's testimony recounts his	Hearsay: Objection Overruled. This
5		and 403; hearsay, Rule 802; lacks	observations of	testimony is not out-
6		foundation, Rule	Plaintiff's conduct	of-court statements,
		602	during meetings between Plaintiff and	rather it is Lt. Tomory recounting his
7			Finley at which he was	personal observations
8			present. Additionally,	and experiences at these meetings.
9			statements by party opponent are not	these meetings.
10			hearsay. Rule 801(d).	Relevance: Objection Overruled. The Court
11			Statement by Plaintiff that he accused Finley	finds the testimony
12			of being unethical and	relevant as it concerns
			a liar are not offered to prove such, but to	interactions between Lt. Tomory and
13			describe Plaintiff's	Plaintiff.
14			conduct during those	Undue Prejudice:
15			meetings.	Objection Overruled.
16			See, Defendant's	The Court does not find any risk of undue
17			disclosure on 7/7/16 and 1/9/17 listed above.	prejudice.
18				
			Question is not leading because it does not	Lacks Foundation:
19			suggest an answer. The	Objection Overruled.
20			question can be	Lt. Tomory is describing events that
21			answered either "yes", "no" or "I don't recall."	he witnessed and was
22			If the question had	present for.
23			been phrased "You did take safety precautions	
			for yourself didn't	
24			you?" that would have been leading. The	
25			question posed was not.	
26			See, Rule 611. This	
27			testimony describes for the jury Tomory's	
28			observations of	
			Plaintiff's conduct in	

1	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
2	DESIGNATIONS	ODJECTIONS	the workplace and his	RULING
3			interactions with	
4			Plaintiff and its effect	
			on him. The testimony is relevant because it	
5			shows the level of	
6			fear/anxiety Plaintiff's	
7			conduct had on those who interacted with	
8			him. The testimony is	
9			not <u>unfairly</u> prejudicial.	
			See, Rule 403.	
10	31:1 to 32:17 up to	Objection:	Foundation is	29:20-30:23
11	"there was a	relevance, undue	established because	
12	potential for that, yes."	prejudice, Rules 401 and 403; hearsay,	Tomory's testimony recounts his	Hearsay: Objection Overruled. This
13	<i>y</i> co.	Rule 802; lacks	observations of	testimony is not out-
14		foundation, Rule	Plaintiff's conduct	of-court statements, rather it is Lt. Tomory
		602	during meetings between Plaintiff and	recounting his
15			Finley at which he was	personal observations
16			present.	and experiences at these meetings and
17			See, Defendant's	about the location of
18			disclosure on 7/7/16	Lt. Tomory's
			and 1/9/17 listed above.	secondary weapon.
19			The testimony is	Relevance: Objection
20			relevant because it shows the level of	Overruled. The Court finds the testimony
21			fear/anxiety Plaintiff's	relevant as it concerns
22			conduct had on those who interacted with	interactions between
23			him. The testimony is	Lt. Tomory and Plaintiff.
			not <u>unfairly</u> prejudicial.	
24			See, Rule 403.	<u>Undue Prejudice</u> : Objection Overruled.
25				The Court does not
26				find any risk of undue
27				prejudice.
28				<u>Lacks Foundation</u> : Objection Overruled.
۷٥				Lt. Tomory is

1 2	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
3				describing events that he witnessed and was
4				present for.
5				
6	39:23 to 40:4	39:23-25; 40:1-4	This objection is nonsensical. This is a	<u>39:23–40:4</u>
7		Objection: non- disclosure, relevance	question posed by Plaintiff's counsel and	This was a question posed to Lt. Tomory
8		and prejudice, Rules	Tomory's response.	by Plaintiff's counsel.
9		401 and 403; hearsay, Rule 802;	This was a deposition in lieu of live trial	Prior to this deposition, all parties
10		lacks foundation, Rule 602	testimony. If counsel didn't want to hear the	were aware that this deposition was in lieu
11			answer he should not	of Lt. Tomory
12			have asked the question.	testifying at trial. Thus, it is akin to
13			See, Defendant's	Plaintiff's counsel objecting to his own
14			disclosure on 7/7/16 and 1/9/17 listed above.	question at trial. The Court finds that
15				Plaintiff waived any
16			If Plaintiff's counsel didn't believe that such	objections to questions he asked Lt. Tomory
17			testimony was relevant he should not have	and the answers Lt.
18			asked the question.	Tomory thereby provided.
19			Furthermore, such	Nonetheless, the Court
20			testimony was not unfairly prejudicial.	will address the merits of Plaintiff's
21			See, United States v. Allen, 341 F.3d 870,	objections.
22			886 (9 th Cir. 2003);	Hearsay: Objection
23			Batiz v. Am. Commer. Sec. Servs., 776	Overruled. This is not out-of-court
24			F.Supp.2d 1087, 1092 (C.D.Cal. 2011).	statements.
25			(C.D.Cai. 2011).	Relevance: Objection
26				Overruled. The Court finds the testimony
27				relevant as it concerns interactions between

1	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
2	DESTOTATION (S		TEST OT USE	Lt. Tomory and
3				Plaintiff.
4				<u>Undue Prejudice</u> :
5				Objection Overruled. The Court does not
6				find any risk of undue prejudice.
7				Lacks Foundation:
8				Objection Overruled.
9				Lt. Tomory is describing events that
10				he witnessed and was
11				present for. Nondisclosure:
12				Objection Overruled.
13				Defendant disclosed Lt. Tomory and
14				provided that he
15				would testify as to his "interactions with and
16				observations of Plaintiff during
17				Plaintiff's tenure with
18				the PPD Robbery Unit."
19				
	47:20 to 49:10	Objection: non- disclosure, relevance	This objection is nonsensical. This is a	<u>47:20–49:10</u>
20		and prejudice, Rules	question posed by	Plaintiff waived this
21		401 and 403; hearsay, Rule 802;	Plaintiff's counsel and Tomory's response.	objection by agreeing to include this portion
22		lacks foundation, Rule 602	This was a deposition in lieu of live trial	of testimony. (<i>See</i> Doc. 112 at 75).
23		Rule 002	testimony. If counsel	Doc. 112 at 13).
24			didn't want to hear the answer he should not	
25			have asked the	
26			question.	

1		DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
2		225131(111131(6)	02020110110	See, Defendant's	ROLLING
3				disclosure on 7/7/16 and 1/9/17 listed above.	
4				and 1/9/17 fisted above.	
5				If Plaintiff's counsel didn't believe that such	
6				testimony was relevant	
7				he should not have	
8				asked the question.	
				Furthermore, such testimony was not	
9				unfairly prejudicial.	
10				See, United States v. Allen, 341 F.3d 870,	
11				886 (9 th Cir. 2003);	
12				Batiz v. Am. Commer.	
13				Sec. Servs., 776 F.Supp.2d 1087, 1092	
14				(C.D.Cal. 2011).	
15				The testimony is	
16				responsive to the question and does not	
				constitute hearsay.	
17	-				
18		49:16 to 49:23			49:16-23
19					Plaintiff does not
20					object; therefore, the Court finds this
21					testimony may be
22					offered.
23		50:20 to 52:5	51:1-25; 52:1-5	This objection is	<u>51:1–52:5</u>
24			Objection: non-	nonsensical. This is a	This was a question
			disclosure,	question posed by Plaintiff's counsel and	posed to Lt. Tomory
25			relevance, undue prejudice, Rules 401	Tomory's response.	by Plaintiff's counsel. Prior to this
26			and 403; hearsay,	This was a deposition in lieu of live trial	deposition, all parties
27			Rule 802; lacks	testimony. If counsel	were aware that this
28				didn't want to hear the answer he should not	deposition was in lieu of Lt. Tomory

1	DEFENDANT'S	PLAINTIFF'S	DEFENDANT'S	COURT'S
2	DESIGNATIONS	OBJECTIONS foundation Puls	have asked the	RULING
3		foundation, Rule 602	question.	testifying at trial. Thus, it is akin to
		-	•	Plaintiff's counsel
4			See, Defendant's	objecting to his own
5			disclosure on 7/7/16 and 1/9/17 listed above.	question at trial. The
6			and 1/9/17 fisted above.	Court finds that Plaintiff waived any
			If Plaintiff's counsel	objections to questions
7			didn't believe that such	he asked Lt. Tomory
8			testimony was relevant he should not have	and the answers Lt.
9			asked the question.	Tomory thereby provided.
			-	provided.
10			Furthermore, such testimony was not	Nonetheless, the Court
11			unfairly prejudicial.	will address the merits of Plaintiff's
12			See, <i>United States v</i> .	objections.
			Allen, 341 F.3d 870,	
13			886 (9 th Cir. 2003); Batiz v. Am. Commer.	Hearsay: Objection
14			Sec. Servs., 776	Overruled. This testimony is not out-
15			F.Supp.2d 1087, 1092	of-court statements.
			(C.D.Cal. 2011).	D 1 011 11
16			The testimony is	Relevance: Objection Overruled. The Court
17			responsive to the	finds the testimony
18			question and does not	relevant as it concerns
			constitute hearsay.	interactions between
19				Lt. Tomory and other officers regarding
20				their interactions with
21				Plaintiff.
22				Undue Prejudice:
				Objection Overruled.
23				The Court does not
24				find any risk of undue prejudice.
25				Lacks Foundation:
26				Objection Overruled.
				Lt. Tomory is
27				describing events that he witnessed and was
28				present for.

1	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
2	DESIGNATIONS	ODJECTIONS	KESI ONSE	
3				Nondisclosure: Objection Overruled.
4				Defendant disclosed
5				Lt. Tomory and provided that he
				would testify as to his
6				"interactions with and
7				observations of Plaintiff during
8				Plaintiff's tenure with
9				the PPD Robbery Unit."
10				Ont.
11	52:22 to 53:17	52:22-25	This objection is	<u>52:22–25</u>
		Objection: non-	nonsensical. Plaintiff's counsel asked a	This is two lines of an
12		disclosure, relevance	question at 52:6 but	answer to a question
13		and prejudice, Rules	objected to the	by Plaintiff's counsel.
14		401 and 403; hearsay, Rule 802;	beginning of Tomory's answer but not the rest.	Prior to this deposition, all parties
15		lacks foundation,	Completion under Rule	were aware that this
		Rule 602	106 requires 52:22-25	deposition was in lieu
16			to be admitted.	of Lt. Tomory testifying at trial.
17			See, Defendant's	Thus, it is akin to
18			disclosure on 7/7/16 and 1/9/17 listed above.	Plaintiff's counsel objecting to his own
19			and 1/9/17 fisted above.	question at trial. The
20			If Plaintiff's counsel didn't believe that such	Court finds that
			testimony was relevant	Plaintiff waived any objections to questions
21			he should not have	he asked Lt. Tomory
22			asked the question.	and the answers Lt. Tomory thereby
23			Furthermore, such	provided.
24			testimony was not unfairly prejudicial.	
25			See, <i>United States v</i> .	Nonetheless, the Court will address the merits
			Allen, 341 F.3d 870,	of Plaintiff's
26			886 (9 th Cir. 2003); Batiz v. Am. Commer.	objections.
27			Sec. Servs., 776	Hearsay: Objection
28				Overruled. This is not

1	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
2	DESIGNATIONS	OBJECTIONS	F.Supp.2d 1087, 1092	an out-of-court
3			(C.D.Cal. 2011).	statement.
4			The testimony is	Relevance: Objection
5			responsive to the	Overruled. The Court
			question and does not	finds the testimony
6			constitute hearsay.	relevant as it concerns interactions between
7				Lt. Tomory and other
8				officers regarding their interactions with
9				Plaintiff.
10				Undue Prejudice:
11				Objection Overruled.
				The Court does not find any risk of undue
12				prejudice.
13				Lacks Foundation:
14				Objection Overruled.
15				Lt. Tomory is describing events that
16				he witnessed and was
17				present for.
				Nondisclosure: Objection Overruled.
18				Defendant disclosed
19				Lt. Tomory and provided that he
20				would testify as to his
21				"interactions with and observations of
22				Plaintiff during
23				Plaintiff's tenure with
24				the PPD Robbery Unit."
25	72:9 to 73:13			<u>72:9–72:13</u>
26				Plaintiff does not
27				object; therefore, the Court finds this
28			l	Court finds tills

1 2	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
3				testimony may be offered.
4 5 6 7 8 9 10 11 12 13	76:4 to 76:8	Objection: questions of counsel are <u>not</u> evidence	Questions of counsel are the predicate for the answer given by Tomory at 76:25-77:13. If Plaintiff's counsel did not want to hear the answer he should not have asked the question. This was a trial deposition.	Plaintiff is offering 76:2–15; thus, the Court finds Plaintiff has waived this objection. (See Doc. 112 at 76). Additionally, 76:4–8 is a question posed to Lt. Tomory by Defendant's counsel, which Lt. Tomory answers at 76:25–77:13.
14 15 16 17 18 19 20 21 22 23 24 25 26 27	76:25 to 77:13	Objection: non-disclosure, relevance and prejudice, Rules 401 and 403; hearsay; Rule 802; lacks foundation, Rule 602	The answer by Tomory is in direct response to Plaintiff's counsel's question. Tomory was asked whether he believed that the cause of tension between Plaintiff and Finley was because of issues regarding Candice Wilson and responded that the issue regarding Candice Wilson was not the sole reason for the tension that there were multiple issues. If counsel didn't want to hear the answer he should not have asked the question.	The Court finds that Plaintiff has waived this objecting by agreeing to allow this testimony to be offered. (See Doc. 112 at 76).

1	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
2	DESIGNATIONS	OBJECTIONS	See, Defendant's	RULING
3			disclosure on 7/7/16	
4			and 1/9/17 listed above.	
5			If Plaintiff's counsel	
6			didn't believe that such testimony was relevant	
7			he should not have	
			asked the question.	
8			Furthermore, such	
9			testimony was not unfairly prejudicial.	
10			See, United States v.	
11			<i>Allen</i> , 341 F.3d 870, 886 (9 th Cir. 2003);	
12			Batiz v. Am. Commer.	
13			Sec. Servs., 776 F.Supp.2d 1087, 1092	
			(C.D.Cal. 2011).	
14			The testimony is	
15			responsive to the	
16			question and does not constitute hearsay.	
17			constitute nearsay.	
18	81:2 to 82:25	82:10-19	This objection is	<u>82:10–19</u>
19			nonsensical. This is a question posed by	The Court finds that
20		Objection: hearsay, Rule 801	Plaintiff's counsel and	Plaintiff has waived
21		itule 501	Tomory's response. This was a deposition	this objecting by agreeing to allow this
22			in lieu of live trial	testimony to be
			testimony. If counsel didn't want to hear the	offered. (See Doc. 112 at 76).
23			answer he should not	
24			have asked the question.	
25			Furthermore, if	
26			Plaintiff's counsel	
27			didn't believe that such	
28			testimony was relevant he should not have	
20			asked the question.	

1	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
3			Plaintiff's objection to Tomory's answer violates Rule 106.	
4 5	88:7 to 88:10			88:7-88:10
6 7 8				Plaintiff does not object; therefore, the Court finds this testimony may be offered.
9	00.14 / 00.24			
10 11 12 13	88:14 to 88:24			Plaintiff does not object; therefore, the Court finds this testimony may be offered.
14 15 16 17 18 19 20 21 22 23 24 25 26 27	89:11 to 95:6	Objection: non-disclosure, relevance, undue prejudice, Rules 401 and 403; hearsay, Rule 802; lacks foundation, Rule 602	All of these questions were asked by Plaintiff's counsel in a trial deposition. If counsel did not want to hear the answer he should not have asked the question. Any testimony referring to statements made by Plaintiff is either not hearsay (Rule 801(d)(2)(A) as a statement by a party opponent or is offered to show their effect on Tomory and the actions he took. Furthermore, such testimony was not unfairly prejudicial. See, <i>United States v. Allen</i> , 341 F.3d 870,	89:11–95:6 This testimony is comprised of questions posed to Lt. Tomory by Plaintiff's counsel. Prior to this deposition, all parties were aware that this deposition was in lieu of Lt. Tomory testifying at trial. Thus, it is akin to Plaintiff's counsel objecting to his own question at trial. The Court finds that Plaintiff waived any objections to questions he asked Lt. Tomory and the answers Lt. Tomory thereby
28			886 (9 th Cir. 2003); Batiz v. Am. Commer.	provided.

1	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
2	DESIGNATIONS	ODJECTIONS	Sec. Servs., 776	Nonetheless, the Court
3			F.Supp.2d 1087, 1092	will address the merits
			(C.D.Cal. 2011).	of Plaintiff's
4			,	objections.
5			See, Defendant's	
			disclosure on 7/7/16	Hearsay: Objection
6			and 1/9/17 listed above.	Overruled. The initial
7			If Plaintiff's counsel	question is whether Lt. Tomory recorded his
			didn't believe that such	conversations with
8			testimony was relevant	Plaintiff. The next
9			he should not have	question is why Lt.
			asked the question.	Tomory started
10				recording the
11			Furthermore, such	conversations. Lt.
			testimony was not unfairly prejudicial.	Tomory then explains
12			See, <i>United States v</i> .	why he was recording
13			Allen, 341 F.3d 870,	the conversations; thus, the statements
			886 (9 th Cir. 2003);	are not being offered
14			Batiz v. Am. Commer.	for the truth of the
15			Sec. Servs., 776	matter asserted; but
			F.Supp.2d 1087, 1092	rather to explain Lt.
16			(C.D.Cal. 2011).	Tomory's state of
17				mind when he made
1.0				the decision to record
18				his conversations.
19				Relevance: Objection
20				Overruled. The Court
20				finds the testimony
21				relevant as it concerns
22				interactions between
<i></i>				Lt. Tomory and Plaintiff.
23				riamum.
24				<u>Undue Prejudice</u> :
∠ +				Objection Overruled.
25				The Court does not
26				find any risk of undue
				prejudice.
27				<u>Lacks Foundation</u> :
28				Objection Overruled.
20				Lt. Tomory is

1	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
2				describing events that he witnessed and was
4				present for.
5				Nondisclosure: Objection Overruled.
6				Defendant disclosed
7				Lt. Tomory and provided that he
8				would testify as to his "interactions with and
9				observations of
10				Plaintiff during Plaintiff's tenure with
11				the PPD Robbery
				Unit."
12	107:23 to 108:2	Objection: non-	All of these questions	<u>107:23–108:2</u>
13		disclosure, relevance, undue	were asked by Plaintiff's counsel in a	This is a question
14		prejudice, Rules 401 and 403; hearsay,	<u>trial</u> deposition. If counsel did not want to	posed to Lt. Tomory by Plaintiff's counsel.
15		Rule 802; lacks	hear the answer he	It is difficult to
16		foundation, Rule 602	should not have asked the question. Any	understand why Plaintiff would object
17			testimony referring to	to the introduction of
18			statements made by Plaintiff is either not	the question, but not object to Lt. Tomory's
19			hearsay (Rule	answer, 108:12-
20			801(d)(2)(A) as a statement by a party	109:5. Additionally, prior to this
21			opponent or is offered	deposition, all parties were aware that this
22			to show their effect on Tomory and the actions	deposition was in lieu
23			he took.	of Lt. Tomory testifying at trial.
24			Furthermore, such	Thus, it is akin to
25			testimony was not unfairly prejudicial.	Plaintiff's counsel objecting to his own
26			See, United States v.	question at trial. The
			<i>Allen</i> , 341 F.3d 870, 886 (9 th Cir. 2003); , or	Court finds that Plaintiff waived any
27			Batiz v. Am. Commer.	objections to questions
28			Sec. Servs., 776	he asked Lt. Tomory and the answers Lt.

1	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
2	DESIGNATIONS	ODJECTIONS	F.Supp.2d 1087, 1092	Tomory thereby
3			(C.D.Cal. 2011).	provided.
4			See, Defendant's	Nonetheless, the Court
5			disclosure on 7/7/16 and 1/9/17 listed above.	will address the merits of Plaintiff's
6				objections.
7			If Plaintiff's counsel didn't believe that such	Hearsay: Objection
8			testimony was relevant he should not have	Overruled. This is a
9			asked the question.	question, it is not an out-of-court statement.
10				Relevance: Objection
11				Overruled. The Court finds the question and
12				answer to be relevant
13				as it concerns what information Lt.
14				Tomory documented
15				in his supervisory notes.
16				<u>Undue Prejudice</u> :
17				Objection Overruled. This is a question;
18				thus, the Court does
19				not find any risk of undue prejudice.
20				Lacks Foundation:
21				Objection Overruled. This is a question.
22				Nondisclosure:
23				Objection Overruled. This is a question.
24				Time is a question.
25	108:12 to 109:5			<u>108:12–109:5</u>
26				Plaintiff does not
27				object; therefore, the Court finds this
				testimony may be offered.
28				offered.

1	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
2	110:14 to 110:17	Objection: non-	All of these questions	110:14–17
3		disclosure,	were asked by	
4		relevance, undue	Plaintiff's counsel in a	This is a question posed to Lt. Tomory
5		prejudice, Rules 401 and 403; hearsay,	<u>trial</u> deposition. If counsel did not want to	by Plaintiff's counsel.
6		Rule 802; lacks	hear the answer he	Prior to this
		foundation, Rule	should not have asked	deposition, all parties
7		602	the question. Any testimony referring to	were aware that this deposition was in lieu
8			statements made by	of Lt. Tomory
9			Plaintiff is either not	testifying at trial.
			hearsay (Rule 801(d)(2)(A) as a	Thus, it is akin to Plaintiff's counsel
10			statement by a party	objecting to his own
11			opponent. Furthermore,	question at trial. The
12			such testimony was not unfairly prejudicial.	Court finds that Plaintiff waived any
13			See, <i>United States v</i> .	objections to questions
			Allen, 341 F.3d 870,	he asked Lt. Tomory
14			886 (9 th Cir. 2003); Batiz v. Am. Commer.	and the answers Lt. Tomory thereby
15			Sec. Servs., 776	provided.
16			F.Supp.2d 1087, 1092	Nonetheless, the Court
17			(C.D.Cal. 2011).	will address the merits
			See, Defendant's	of Plaintiff's
18			disclosure on 7/7/16	objections.
19			and 1/9/17 listed above.	Hearsay: Objection
20			If Plaintiff's counsel	Overruled. This is a
21			didn't believe that such	question, it is not an out-of-court statement.
			testimony was relevant he should not have	
22			asked the question.	Relevance: Objection
23				Overruled. The Court finds the question and
24				answer to be relevant.
25				<u>Undue Prejudice</u> :
26				Objection Overruled.
				This is a question;
27				thus, the Court does not find any risk of
28				undue prejudice.

1 2	DEFENDANT'S DESIGNATIONS	PLAINTIFF'S OBJECTIONS	DEFENDANT'S RESPONSE	COURT'S RULING
3 4 5 6				Lacks Foundation: Objection Overruled. This is a question. Nondisclosure: Objection Overruled. This is a question.
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	110:23 to 112:3	Objection: non-disclosure, relevance, undue prejudice, Rules 401 and 403; hearsay, Rule 802; lacks foundation, Rule 602	All of these questions were asked by Plaintiff's counsel in a trial deposition. If counsel did not want to hear the answer he should not have asked the question. Any testimony referring to statements made by Plaintiff is either not hearsay (Rule 801(d)(2)(A) as a statement by a party opponent. Furthermore, such testimony was not unfairly prejudicial. See, United States v. Allen, 341 F.3d 870, 886 (9th Cir. 2003); Batiz v. Am. Commer. Sec. Servs., 776 F.Supp.2d 1087, 1092 (C.D.Cal. 2011). See, Defendant's disclosure on 7/7/16 and 1/9/17 listed above. If Plaintiff's counsel didn't believe that such testimony was relevant he should not have asked the question.	This is an answer to Plaintiff's counsel's question, 110:14–17. Prior to this deposition, all parties were aware that this deposition was in lieu of Lt. Tomory testifying at trial. Thus, it is akin to Plaintiff's counsel objecting to his own question at trial. The Court finds that Plaintiff waived any objections to questions he asked Lt. Tomory and the answers Lt. Tomory thereby provided. Nonetheless, the Court will address the merits of Plaintiff's objections. Hearsay: Objection Overruled. Lt. Tomory is explaining his state of mind at that time; thus, it is not an out-of-court statement.

1	DEFENDANT'S	PLAINTIFF'S	DEFENDANT'S	COURT'S
2	DESIGNATIONS	OBJECTIONS	RESPONSE	RULING
				Relevance: Objection
3				Overruled. Lt. Tomory
4				is describing his
_				impressions of Plaintiff. Therefore,
5				the Court finds the
6				answer to be relevant.
7				
′				<u>Undue Prejudice</u> :
8				Objection Overruled. The Court does not
9				find any risk of undue
-				prejudice.
10				<u>Lacks Foundation</u> :
11				Objection Overruled.
10				Lt. Tomory is
12				describing events that
13				he witnessed and was
14				present for.
				Nondisclosure:
15				Objection Overruled.
16				Defendant disclosed Lt. Tomory and
				provided that he
17				would testify as to his
18				"interactions with and
				observations of
19				Plaintiff during
20				Plaintiff's tenure with the PPD Robbery
21				Unit."
				•
22				

The Court will now address Plaintiff's designations, Defendant's objections, and Plaintiff's response to Defendant's objections.

PLAINTIFF'S	DEFENDANT'S	PLAINTIFF'S	COURT'S
DESIGNATIONS	OBJECTIONS	RESPONSE	RULING
7:20 to 10:15	No objection	None.	7:20–10:15

1	·	PLAINTIFF'S DESIGNATIONS	DEFENDANT'S OBJECTIONS	PLAINTIFF'S RESPONSE	COURT'S RULING
2 3 4					Defendant does not object; therefore, the Court finds this testimony may be offered.
5					offered.
6 7		24:20-25	No objection	None.	<u>24:20–25</u>
8					Defendant does not object; therefore, the
9					Court finds this
10					testimony may be offered.
11		44:3 to 45:10	Relevance – Rule 401	None.	44:3-45:10
12			As to Tomory's respect for the EEOC		Relevance: Objection
13					Sustained. Lt. Tomory's impressions
14					of the EEOC are irrelevant. Therefore,
15					the Court finds 45:1–2 to be irrelevant and
16 17					this testimony is
18					precluded from being introduced.
19		46:6 to 47:3	No objection	None.	46:6–47:3
20			3		Defendant does not
21					object; therefore, the Court finds this
22					testimony may be
23					offered.
24		49:9 to 51:15	No objection if 49:11 to 49:15 removed –	Agreed.	<u>49:9–51:15</u>
25			comments by counsel		Plaintiff's counsel has
26				This testimony is	agreed not to offer: 49:11–15.
27			No objection if 50:9 to 50:19 removed –	relevant because it demonstrates that	Additionally, Plaintiff's counsel has
28			comments by	Tomory's alleged	agreed to offer, for

counsel; lacks foundation; assumes facts not in evidence; relevance; Rule 403, 611(a), 104(b) No objection if 47:20-49:10 are included for completeness - Rule 106 No objection if 47:20-49:10 are included for completeness - Rule 106 So:9-19 Comments by Counsel: Objection Overruled. Plaintiff's counsel is asking a question. Lacks Foundation: Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of overruled. Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	1	PLAINTIFF'S	DEFENDANT'S	PLAINTIFF'S	COURT'S
foundation; assumes facts not in evidence; relevance; Rule 403, 611(a), 104(b) No objection if 47:20-49:10 are included for completeness – Rule 106 No objection if 47:20-49:10 are included for completeness – Rule 106 Repeated to the testing of	2	DESIGNATIONS	OBJECTIONS	RESPONSE	RULING
facts not in evidence; relevance; Rule 403, 611(a), 104(b) No objection if 47:20-49:10 are included for completeness – Rule 106 No objection if 47:20-49:10 are included for completeness – Rule 106 Lacks Foundation: Objection Overruled. Plaintiff s counsel; asking a question. Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	3		*	, ,	•
relevance; Rule 403, 611(a), 104(b) relevance; Rule 403, 611(a), 104(b) No objection if 47:20-49:10 are included for completeness – Rule 106 relevance; Rule 403, 611(a), 104(b) Agreed. So:9-19 Comments by Counsel: Objection Overruled. Plaintiff's counsel is asking a question. Lacks Foundation: Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance; Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the			· ·		ŕ
Agreed. Agreed. Agreed. Agreed. No objection if 47:20-49:10 are included for completeness – Rule 106 Lacks Foundation: Objection Overruled. Plaintiff's counsel is asking a question. Lacks Foundation: Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	4		· · · · · · · · · · · · · · · · · · ·		
Agreed. No objection if 47:20-49:10 are included for completeness – Rule 106 Lacks Foundation: Objection Overruled. Plaintiff's counsel is asking a question. Lacks Foundation: Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff ynysically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory, shew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	5		611(a), 104(b)		will address
Agreed. No objection if 47:20-49:10 are included for completeness – Rule 106 Comments by Counsel: Objection Overruled. Plaintiff's counsel is asking a question. Lacks Foundation: Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the					
No objection if 47:20-49:10 are included for completeness – Rule 10 11 12 13 14 15 16 17 18 19 20 21 21 22 23 24 25 26 27 No objection if 47:20-49:10 are included for completeness – Rule 106 Comments by Counsel: Objection Overruled. Plaintiff's counsel is asking a question. Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	6			Agrand	to that testimony only.
47:20-49:10 are included for completeness – Rule 106 106 117 12	7		No objection if	Agreed.	50.9_19
included for completeness – Rule 10 11 12 13 14 15 16 17 18 19 20 21 21 22 23 24 25 26 27 included for completeness – Rule 106 included for completeness – Rule 106 Comments by Counsel: Objection Overruled. Plaintiff's counsel is asking a question. Lacks Foundation: Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	0				30.5-15
100 111 12 13 14 15 16 17 18 19 20 21 21 22 23 24 25 26 27 106 106 106 107 106 Diverruled. Plaintiff's counsel is asking a question. Lacks Foundation: Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	8		included for		Comments by
counsel is asking a question. Lacks Foundation: Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	9		_		
11 12 12 13 14 15 16 16 17 18 18 19 19 19 19 19 19 19 19 19 19 19 19 19	10		106		
Lacks Foundation: Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	10				
Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	11				question.
Objection Overruled. Lt. Tomory is answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	12				Lacks Foundation:
answering a question regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the					
regarding his knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	13				· · · · · · · · · · · · · · · · · · ·
knowledge. Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	14				
Assumes Facts Not in Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the					-
Evidence: Objection Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	15				
Overruled. Lt. Tomory previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	16				
previously answered that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	17				
that he didn't know of Plaintiff physically attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	1 /				· · · · · · · · · · · · · · · · · · ·
attacking anyone. Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	18				*
Thus, the Court finds that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	10				
that there were facts regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the					9
regarding the absence of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	20				′
of accusations of violence in the record. Relevance: Objection Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	21				
23 24 25 26 27 28 29 20 20 20 21 21 22 23 24 25 26 27 26 27 27 28 28 29 20 20 20 20 20 20 20 20 20 20 20 20 20					0 0
24 25 26 27 28 29 20 20 20 21 22 23 24 25 26 27 28 28 29 20 20 20 21 21 22 22 23 24 25 26 27 26 27 27 28 28 29 20 20 20 20 20 20 20 20 20 20 20 20 20	22				violence in the record.
Overruled. Whether Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	23				D 1 Oli di
Lt. Tomory knew that there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	24				
there had been no prior accusations regarding Plaintiff committing acts of physical violence in the	24				
26 accusations regarding Plaintiff committing acts of physical violence in the	25				
Plaintiff committing acts of physical violence in the	26				
violence in the					Plaintiff committing
28 Violence in the	27				
∠ ∪	28				violence in the

1	PLAINTIFF'S	DEFENDANT'S	PLAINTIFF'S	COURT'S
2	DESIGNATIONS	OBJECTIONS	RESPONSE	RULING
3				workplace is relevant.
4	53:18 to 55:2	No objection	None.	<u>53:18–55:2</u>
5				Defendant does not object; therefore, the
6				Court finds this
7				testimony may be offered.
8	(1.17), (2.15)	N. 1	A 1	(1.15. (2.15
9	61:17 to 63:15	No objection if extended to 63:22 for	Agreed.	61:17-63:15
10		completeness – Rule 106		Plaintiff has agreed to also offer 63:16–22.
11				Thus, Defendant does not object; therefore,
12				the Court finds 61:17–
13				63:22 may be offered.
14	68:10-25	Hearsay – Rule 801	This testimony goes to Tomory's state of	<u>68:10–25</u>
15 16			mind, is <u>not</u> offered for	Hearsay: Objection Overruled. The
17			the truth of the underlying statement	question is asking
18			and consequently is <u>not</u> hearsay.	what Lt. Tomory knew; thus, the
19			,	testimony is being offered to show Lt.
20				Tomory's state of
21				mind at that time.
22				
23	72:13-18	No objection if	Agreed.	<u>72:13–18</u>
24		extended to 72:22 for completeness - Rule		Plaintiff has agreed to
25		106		also offer 72:19–22. Thus, Defendant does
26				not object; therefore, the Court finds 72:13–
27				22 may be offered.
28		<u> </u>	<u> </u>	

1 2	PLAINTIFF'S DESIGNATIONS	DEFENDANT'S OBJECTIONS	PLAINTIFF'S RESPONSE	COURT'S RULING
3 4 5 6 7 8	76:2-15	No objection if 76:25 to 77:13 is included for completeness - Rule 106	Agreed.	76:2–15 Plaintiff has agreed to also offer 76:25–77:13. Thus, Defendant does not object; therefore, the Court finds 76:2–15 and 76:25–77:13 may be offered.
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	77:17-21	Not relevant to any issue in this case whether Tomory witnessed tension between Green and Saflar – Rule 401; Motion in Limine #10 (Doc 77); Order regarding Motions in Limine (Doc 92) at page 6 lines 12 - 24.	This testimony is relevant because Tomory claims he witnessed conflict between Sgt. Green and his peers—including Sgt. Safler. This testimony explains the tension.	Relevancy: Objection Overruled. The question is asking whether there was tension between Plaintiff and fellow officer. Therefore, the Court finds this testimony relevant. Defendant's MIL #10: Objection Overruled. The Court's Order on Defendant's MIL #10 prevented Plaintiff from arguing a claim for hostile work environment. (Doc. 92 at 6). It does not prevent Plaintiff from introducing evidence that there was tension between Plaintiff and a fellow officer.
25262728	81:2-6	No objection if 81:7 through 82:25 is included for completeness - Rule 106	Agreed.	Plaintiff has agreed to also offer 81:7–82:25. Thus, Defendant does not object; therefore,

1 2		PLAINTIFF'S DESIGNATIONS	DEFENDANT'S OBJECTIONS	PLAINTIFF'S RESPONSE	COURT'S RULING
3	•				the Court finds 81:7–82:25 may be offered.
5	•	83:2 to 84:17	Irrelevant as to relationship between Faulkner and Lazelle	This testimony is relevant because it is probative of	83:2–84:17 Relevancy: Objection
6			- Rule 401	Commander Faulkner's bias in favor of his	Overruled. Plaintiff has previsouly argued
7				"cousin" Lt. Jeff Lazell and against Sgt. Green,	that as Plaintiff filed an EEOC charge
9				whom Sgt. Green previously filed an	against Lt. Jeff Lazell in 2009. Plaintiff
10				EEOC Charge against.	argued that due to the close relationship
11					between Lt. Lazell and Commander Faulkner,
12 13					Commander Faulkner—who was in
14					charge of the Robbery Unit—retaliated
15					against Plaintiff to get back at him for filing
16					an EEOC charge against Lt. Lazell. Thus, this Court finds
17 18					the relationship between Lt. Lazell
19					and Commander Faulkner to be
20					relevant.
21 22		87:23 to 88:24	No objection	None.	87:23-88:24
23					Defendant does not object; therefore, the
24					Court finds this testimony may be
25					offered.
2627		100:16 to 104:25	No objection if 103:4 to 103:17 removed	Agreed.	100:16-104:25
28			and deposition Ex. 1 is stipulated into		Plaintiff has agreed not to offer 103:4–17. Thus, Defendant does

1 2	PLAINTIFF'S DESIGNATIONS	DEFENDANT'S OBJECTIONS	PLAINTIFF'S RESPONSE	COURT'S RULING
3 4		evidence		not object; therefore, the Court finds 100:16–103:3 and
5				103:18–104:25 may be offered. Additionally,
6				the parties have stipulated to enter
7				deposition Ex. 1 into evidence.
8	113:6-14	Objection –	This is relevant	113:6–14
10		relevance; hearsay; lacks foundation;	because it is probative of Commander	Argumentative:
11		calls for speculation; form; argumentative	Faulkner's bias in favor of his cousin Lt.	Objection Sustained. Plaintiff's counsels
12		- Rules 401, 801, 602, 701, 403, 611	Jeff Lazell and against Sgt. Green, whom Jeff	question summarizes his interpretation of
13			filed an EEOC Charge of Discrimination	the evidence and recites facts.
14 15			against.	Defendant's counsel objected during the
16				deposition on argumentative
17				grounds, and Plaintiff's counsel
18				choose not to rephrase the question at that
19				time. Thus, the Court finds 113:6–14 to be
20				argumentative and this testimony is precluded
22				from being introduced.
23	114:9-17	Hearsay – Rule 801	Commander Faulkner's statements are a	<u>114:9–17</u>
24			statement by an "agent of a party opponent"	The Court has excluded the question
25			under Fed. R. Evid. 801 (d)(2)(D) and	which this testimony is an answer to;
26 27			consequently are <u>not</u> hearsay by definition.	therefore, this testimony is also
28				excluded.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28

PLAINTIFF'S DESIGNATIONS	DEFENDANT'S OBJECTIONS	PLAINTIFF'S RESPONSE	COURT'S RULING
115:1-10	Hearsay – Rule 801	Withdrawn.	<u>115:1–10</u>
			Plaintiff has agreed not to offer this testimony.

Accordingly,

IT IS ORDERED that the following portions of Lt. Tomory's Deposition can be offered at trial: 5:15–14:18; 15:3–15:22; 16:03–20:5; 20:14–26:2; 24:20–25; 26:16–27:5; 27:20–22; 28:1–29:3; 29:20–30:23; 31:1–32:17; 39:23–40:4; 44:3–25; 45:3–10; 46:6–47:3; 47:20–49:10; 49:16–52:5; 52:22–55:2; 61:17–63:22; 68:10–25; 72:9–73:13; 76:2–15; 76:25–77:13; 77:17–21; 81:2–82:25; 83:2–84:17; 87:23–88:24; 89:11–95:6; 100:16–103:3; 103:18–104:25; 107:23–108:2; 108:12–109:5; 110:14–17; and 110:23–112:3.

Dated this 1st day of April, 2019.

Honorable Diane J. Humetewa United States District Judge