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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN YOUNG,)	CV 07-03190 RSWL (AJWx)
)	
Plaintiff,)	ORDER Re: DEFENDANTS'
)	MOTIONS IN LIMINE [305,
v.)	306, 307, 308, 309, 310,
)	311]
ARON WOLFE, et al.,)	
)	
Defendants.)	
)	

I. INTRODUCTION

Currently before the Court are Defendants Aron Wolfe, Christina Martinez, and Robert Ochoa, (collectively, "Defendants") Motions in Limine ("MIL") Nos. 1 through 7 [305, 306, 307, 308, 309, 310, 311]. Having reviewed all papers submitted pertaining to these Motions, the Court **NOW FINDS AND RULES AS FOLLOWS:**

1. The Court **GRANTS IN PART, DENIES IN PART** Defendants' Motion in Limine #1 [305].
2. The Court **GRANTS** Defendants' Motion in Limine #2 [306].
3. The Court **GRANTS IN PART, DENIES IN PART**

1 Defendants' Motion in Limine #3 [307].

2 4. The Court **GRANTS** Defendants' Motion in Limine #4
3 [308].

4 5. The Court **GRANTS** Defendants' Motion in Limine #5
5 [309].

6 6. The Court **GRANTS** Defendants' Motion in Limine #6
7 [310].

8 7. The Court **GRANTS** Defendants' Motion in Limine #7
9 [311].

10 **A. Defendants' Motion in Limine #1**

11 Defendants' MIL #1 seeks to preclude Plaintiff John
12 Young ("Plaintiff") from calling witnesses and
13 presenting evidence not previously disclosed in
14 Plaintiff's disclosures or discovery responses. These
15 include: 1) photographs of Plaintiff (Plaintiff's
16 Exhibit 3); 2) Notice of Claim (Plaintiff's Exhibit 4);
17 3) Los Angeles Sheriff's Department ("LASD") Inmate
18 Assault Load Sheet (Plaintiff's Exhibit 34); 4) Report
19 of the Citizen's Commission on Jail Violence
20 (Plaintiff's Exhibit 37); and 5) Statement of Attorney's
21 Fees (Plaintiff's Exhibit 44).

22 Under Federal Rules of Civil Procedure ("FRCP") 37,
23 the party facing exclusion of evidence has the burden of
24 showing that a failure to comply with FRCP 26 was
25 "substantially justified or harmless." R&R Sails v.
26 Insurance Co. of Pennsylvania, 673 F.3d 1240, 1246 (9th
27 Cir. 2012)(citing Torres v. City of L.A., 548 F.3d 1197,
28 1213 (9th Cir. 2008)); see also Yeti by Molly, Ltd. v.

1 Deckers Outdoor Corp., 259 F.3d 1101, 1107 (9th Cir.
2 2001). When parties seek to exclude evidence based on
3 FRCP 26 and 37, courts employ the five factor analysis
4 set forth in Southern States Rock and Fixture, Inc. v.
5 Sherwin-Williams Co., 318 F.3d 592, 597 (4th Cir. 2003).
6 The factors are: (1) the surprise to the party against
7 whom the evidence would be offered; (2) the ability of
8 that party to cure the surprise; (3) the extent to which
9 allowing the evidence would disrupt the trial; (4) the
10 importance of the evidence; and (5) the non-disclosing
11 party's explanation for its failure to disclose the
12 evidence.

13 Defendants are seeking to preclude evidence that
14 should not be a surprise to them. Plaintiff's
15 photographs of his injuries, notice of claim, assault
16 load sheet, report of the commission on jail violence,
17 and statement of attorney's fees should not present an
18 element of surprise to Defendants. Plaintiff has
19 brought a claim for injuries received as a result of
20 alleged force by Defendants. Therefore, factor one
21 weighs in favor of Plaintiff.

22 Under factor two, Plaintiff could have avoided this
23 Motion in Limine by producing the aforementioned
24 documents during the course of pre-trial discovery. The
25 failure to produce, along with a failure to update
26 discovery pursuant to FRCP 26, has led to this dispute.
27 Furthermore, once Plaintiff placed these items of
28 evidence on his Exhibit List, it should have been cured

1 by further production. The Statement of Attorney's Fees
2 Defendants seek to exclude was produced to Defendants on
3 February 22, 2017, the day after the Final Pretrial
4 Conference. Based on the foregoing, factor two
5 partially weighs in favor of Defendants.

6 The evidence sought to be excluded is presently on
7 Plaintiff's Exhibit List for trial. The evidence is not
8 voluminous and should not present significant delays or
9 disruptions at trial. Therefore, factor three weighs in
10 favor of Plaintiff.

11 Factor four analyzes the importance of the
12 evidence. In this case, the evidence seems to be
13 evident of Plaintiff's excessive force and malicious
14 prosecution claims. However, Plaintiff failed to file
15 an Opposition to Defendants' MIL #1. A party's failure
16 to file a required document or the failure to file it
17 within the deadline may be deemed consent to the
18 granting or denial of a motion. L.R. 7-12.¹ Therefore,
19 it is difficult to ascertain whether Plaintiff believes
20 this evidence is important or whether such proof may be
21 offered through other evidence. Plaintiff failed to
22 offer the Court any evidence of the importance of these
23 exhibits. This is not the first trial in this case. If
24 Plaintiff intended on introducing this evidence at
25 trial, he had ample opportunity and time to produce the
26 evidence to Defendants. To date, Plaintiff has not

27
28 ¹ The Court notes that Plaintiff also failed to file an
Opposition to Defendants' MIL #2, #4, #5, #6, or #7.

1 produced the evidence in dispute except for the
2 Statement of Attorney's Fees. Therefore, factor four
3 weighs in favor of Defendants.

4 The final factor analyzes the Plaintiff's
5 explanation for not disclosing the evidence at issue.
6 However, Plaintiff failed to file an Opposition to
7 Defendants' MIL #1. Therefore, there is absolutely no
8 explanation at present for Plaintiff's failure to
9 produce. Factor five weighs in favor of Defendants.

10 A majority of the Sherwin-Williams factors weigh in
11 Defendants' favor. Plaintiff's failure to disclose
12 evidence in his possession contradicts the clear
13 dictates of FRCP 26 and 37. However, Plaintiff did
14 produce the Statement of Attorney's Fees to Defendants.
15 As such, Defendants' MIL #1 is **GRANTED IN PART, DENIED**
16 **IN PART**. Plaintiff will be allowed to introduce the
17 Statement of Attorney's Fees (Plaintiff's Exhibit 44).
18 All other evidence that is the subject of this Motion in
19 Limine will be excluded.

20 **B. Defendants' Motion in Limine #2**

21 Defendants' MIL #2 seeks to preclude Plaintiff from
22 making any reference to complaints against Defendants
23 regarding unrelated incidents to this case involving the
24 use of force including: training records of the
25 individual Defendants and other LASD personnel;
26 Defendants' involvement in any other incidents involving
27 inmates or citizens' complaints for use of force
28 (including related testimony pursuant to issues arising

1 under Monell v. New York City Dept. of Social Services,
2 436 U.S. 658, 691 (1978)); any interrogatory discovery
3 responses from Defendants (served pursuant to protective
4 order); and/or other evidence with regard to force
5 incidents unrelated to the present case due to its low
6 probative value under Federal Rules of Evidence ("Fed.
7 R. Evid.") 403.

8 Under Rule 403, the probative value of such
9 evidence is substantially outweighed by the prejudicial
10 nature of the evidence. The jury may infer that other
11 complaints leveled against Defendants indicates a level
12 of culpability that is unwarranted. Furthermore, this
13 Court already dismissed all Monell related claims.
14 Therefore, any introduction of such testimony would be
15 irrelevant. Thus Defendants' MIL #2 is **GRANTED**.

16 **C. Defendants' Motion in Limine #3**

17 Defendants' MIL #3 seeks to preclude Plaintiff from
18 presenting evidence of medical treatment and/or expenses
19 and attorney's fees. Defendants argue such evidence is
20 outside the realm of lay witness testimony as well as
21 prejudicial, and thus, should be excluded pursuant to
22 Fed. R. Evid. 701, 702, and 403. Plaintiff alleges
23 Defendants were provided with Plaintiff's retainer
24 agreement for representation in Plaintiff's criminal
25 case in accordance with the Court's Order during the
26 Final Pretrial Conference held on February 21, 2017.
27 Defendants acknowledge they were provided a Statement of
28 Attorney's Fees on February 22, 2017, one day after the

1 Final Pretrial Conference and one day after Defendants
2 filed this Motion in Limine. However, Defendants
3 maintain that MIL #3 should be granted in its entirety
4 because: 1) Plaintiff failed to timely disclose such
5 evidence; 2) Defendants were not afforded the
6 opportunity to develop discovery and/or retain an expert
7 to provide necessary testimony regarding the
8 reasonableness of such fees; and 3) Defendants would be
9 unduly prejudiced by their inability to conduct further
10 discovery.

11 When parties seek to exclude evidence based on FRCP
12 26 and 37, courts employ the five factor analysis set
13 forth in Sherwin-Williams. Defendants are seeking to
14 preclude evidence that should not be a surprise to them.
15 The evidence of medical treatment and expenses incurred
16 should not present an element of surprise to Defendants
17 because Plaintiff has brought a claim for injuries
18 received as a result of alleged force by Defendants.
19 Further, Defendants now have the Statement of Attorney's
20 Fees in their possession. Thus, factor one weighs in
21 favor of Plaintiff.

22 Plaintiff could have avoided the present Motion in
23 Limine by producing the aforementioned documents during
24 the course of pre-trial discovery. The failure to
25 produce, along with a failure to update discovery
26 pursuant to FRCP 26, led to the present dispute.
27 Furthermore, once Plaintiff placed this evidence on his
28 Exhibit List, it should have been cured by further

1 production. However, Plaintiff produced the Statement
2 of Attorney's Fees. Yet, Plaintiff could have cured the
3 surprise by timely disclosing the statement. Thus,
4 factor two weighs partially in favor of Defendants.

5 Only the Statement of Attorney's Fees is on
6 Plaintiff's Exhibit List for trial. Therefore, it is
7 unclear if the evidence is voluminous and would present
8 significant delays or disruptions at trial. Thus,
9 factor three weighs in favor of Defendants.

10 Factor four analyzes the importance of the
11 evidence. In this case, the evidence seems to be
12 evident of Plaintiff's excessive force and malicious
13 prosecution claims. Plaintiff filed a Partial
14 Opposition to Defendants' MIL #3 stating he provided
15 Defendants with the Statement of Attorney's Fees.
16 However, Plaintiff's Partial Opposition fails to state
17 whether the remaining evidence that is the subject of
18 this Motion in Limine is important or whether such proof
19 may be offered through other evidence. Factor four
20 weighs in favor of Defendants.

21 The final factor analyzes Plaintiff's explanation
22 for not disclosing the evidence at issue. Plaintiff did
23 not offer any explanation for the untimely disclosure of
24 the Statement of Attorney's Fees and lack of disclosure
25 of the other evidence in dispute. Factor five weighs in
26 favor of Defendants.

27 In sum, Defendants have established that a majority
28 of the Sherwin-Williams factors weigh in their favor for

1 the evidence not previously disclosed. Plaintiff's
2 failure to disclose evidence of medical treatment and/or
3 expenses in his possession contradicts the clear
4 dictates of FRCP 26 and 37. However, Defendants were
5 provided the Statement of Attorney's Fees and did not
6 state they need additional time in light of the new
7 evidence. Therefore, Defendants' MIL #3 is **GRANTED IN**
8 **PART, DENIED IN PART**. Evidence of medical treatment
9 and/or expenses will be excluded, however the Statement
10 of Attorney's Fees will be allowed.

11 **D. Defendants' Motion in Limine #4**

12 Defendants' MIL #4 seeks to exclude evidence of
13 newspaper articles or media reports regarding inmate
14 assaults and/or murders in the County of Los Angeles
15 jails. Defendants assert such evidence is inadmissible
16 hearsay, would be highly prejudicial, and would lead to
17 confusion of the jury and therefore should be excluded.

18 "Newspaper articles have been held inadmissible
19 hearsay as to their content." Larez v. City of Los
20 Angeles, 946 F.2d 630, 642 (9th Cir. 1991). Where a
21 party seeks to introduce a newspaper article, television
22 program or other media reports "for the truth of the
23 matter asserted, they clearly constitute hearsay."
24 Green v. Baca, 226 F.R.D. 624, 638 (C.D. Cal. 2005).
25 Newspaper articles are inadmissible hearsay and have the
26 likelihood of confusing the jury.² Therefore,

27
28 ² See also Eisenstadt v. Allen, 113 F.3d 1240, 1997 WL
211313, at *2 (9th Cir. April 28, 1997)(unpublished
opinion)(citing Larez, 946 F.2d at 642); AFMS LLC v. United

1 Defendants' MIL #4 is **GRANTED**.

2 **E. Defendants' Motion in Limine #5**

3 Defendants' MIL #5 seeks to preclude Plaintiff from
4 presenting evidence regarding Monell related issues.
5 Specifically, Defendants seek to exclude LASD Policy
6 manual provisions specifically related to force or use
7 of force, or evidence of Defendants' training thereon,
8 and reports by agencies relating to incidents or conduct
9 unrelated to the force incident involving Plaintiff
10 except with regard to the policies specifically relating
11 to the use of force disclosed by Defendants in
12 discovery. Defendants seek to specifically exclude
13 Plaintiff's exhibit entitled "Report of the Citizen's
14 Commission on Jail Violence, Including Exhibits."
15 Defendants argue that the dismissal of the Monell
16 related claims renders all such Monell related evidence
17 inadmissible. Furthermore, Defendants contend that
18 Plaintiff has not previously produced this report to
19 Defendants.

20 Evidence is relevant if "it has any tendency to
21 make a fact more or less probable than it would be
22 without the evidence," and "the fact is of consequence
23 in determining the action." Fed. R. Evid. 401.
24 Evidence that is not relevant is inadmissible. Fed. R.
25 Evid. 402. However, under Rule 403, the court may
26 exclude relevant evidence if its probative value is

28 Parcel Service Co., 105 F. Supp. 3d 1061, 1070 (C.D. Cal.
2015)(citing Larez, 946 F.2d at 642).

1 substantially outweighed by a danger of unfair
2 prejudice. Fed. R. Evid. 403.

3 This evidence is not relevant to any issues
4 pertaining to Plaintiff's excessive force or malicious
5 prosecution claims. This Court dismissed all Monell
6 related claims on August 6, 2009. Therefore, any
7 introduction of such testimony would be irrelevant and
8 unfairly prejudicial. Quintanilla v. City of Downey, 84
9 F.3d 353, 356 (9th Cir. 1996). Therefore, Defendants'
10 MIL #5 is **GRANTED**.

11 **F. Defendants' Motion in Limine #6**

12 Defendants' MIL #6 seeks to preclude Plaintiff from
13 presenting testimony and evidence concerning other
14 lawsuits implicating LASD and/or its former Sheriff, Lee
15 Baca. Defendants argue this evidence is irrelevant and
16 prejudicial, and therefore should be excluded. Further,
17 Defendants claim the dismissal of the Monell related
18 claims renders all such related evidence inadmissible.

19 Under Fed. R. Evid. 403, evidence concerning other
20 lawsuits implicating LASD and/or its form Sheriff, Lee
21 Baca should be excluded. This evidence is not relevant
22 to any issues pertaining to Plaintiff's excessive force
23 or malicious prosecution claims. Even if any of this
24 evidence was relevant, the probative value of such
25 evidence is substantially outweighed by the prejudicial
26 nature of the evidence as the jury may use such evidence
27 to infer Defendants' culpability. Moreover, this Court
28 already dismissed all Monell related claims. Therefore,

1 any introduction of such testimony would be irrelevant
2 and unfairly prejudicial. Quintanilla, 84 F.3d at 356.
3 Therefore, Defendants' MIL #6 is **GRANTED**.

4 **G. Defendants' Motion in Limine #7**

5 Defendants' MIL #7 seeks to preclude all testimony,
6 newspaper articles, and media accounts regarding officer
7 involved shootings and/or use of force issues around the
8 County. Defendants assert such evidence is irrelevant,
9 inadmissible hearsay, highly prejudicial, and would lead
10 to confusion of the jury.

11 Under Fed. R. Evid. 403, this evidence is not
12 relevant to any issues pertaining to Plaintiff's
13 excessive force or malicious prosecution claims.
14 Additionally, even if any of this evidence was relevant,
15 the probative value of such evidence is substantially
16 outweighed by the prejudicial nature of the evidence as
17 the jury may use such evidence to infer Defendants'
18 culpability. Pursuant to Larez and Green, such evidence
19 is irrelevant, inadmissible hearsay, and has the
20 likelihood of confusing the jury. Therefore,
21 Defendants' MIL #7 is **GRANTED**.

22 **IT IS SO ORDERED.**

23 DATED: March 14, 2017

S/ RONALD S.W. LEW

HONORABLE RONALD S.W. LEW

Senior U.S. District Judge