

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

12 JOHN YOUNG,) CV 07-03190 RSWL (AJWx)
13 Plaintiff,)
14 v.) **ORDER Re: PLAINTIFF'S
15 MOTIONS IN LIMINE** [312,
313, 314, 315, 316, 317,
318, 319, 320]
16 ARON WOLFE, et al.,)
17 Defendants.)

I. INTRODUCTION

Currently before the Court are Plaintiff John Young's ("Plaintiff") Motions in Limine ("MIL") Nos. 1, 2, 3, 5, 6, 7, 9, 10, and 11 [312, 313, 314, 315, 316, 317, 318, 319, 320] against Defendants Aron Wolfe, Christina Martinez, and Robert Ochoa (collectively, "Defendants"). 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**
Plaintiff's Motion in Limine #1 [312].

1 2. The Court **DENIES** Plaintiff's Motion in Limine #2
2 [313].

3 3. The Court **GRANTS IN PART, DENIES IN PART**
4 Plaintiff's Motion in Limine #3 [314].

5 4. The Court **DENIES** Plaintiff's Motion in Limine #5
6 [315].

7 5. The Court **DENIES** Plaintiff's Motion in Limine #6
8 [316].

9 6. The Court **DENIES** Plaintiff's Motion in Limine #7
10 [317].

11 7. The Court **DENIES** Plaintiff's Motion in Limine #9
12 [318].

13 8. The Court **GRANTS IN PART, DENIES IN PART**
14 Plaintiff's Motion in Limine #10 [319].

15 9. The Court **GRANTS IN PART, DENIES IN PART**
16 Plaintiff's Motion in Limine #11 [320].

17 A. **Plaintiff's Motion in Limine #1**

18 As an initial matter, Plaintiff seems to change
19 and/or fails to specify what evidence he seeks to
20 exclude in MIL #1. While Plaintiff names categories of
21 evidence (all adverse character evidence including prior
22 arrests, discipline history in jail or in prison,
23 Plaintiff's rap lyrics, prior complaints Plaintiff has
24 filed, and inmate appeals Plaintiff has lodged), he does
25 not specifically state what evidence or testimony he
26 seeks to exclude. Plaintiff then appears to focus only
27 on excluding evidence of Plaintiff's and Plaintiff's
28 witnesses' criminal history to attack their character.

1 However, Plaintiff does not name which witness and what
2 specific evidence he is seeking to exclude.

3 Additionally, Plaintiff's MIL #3 and #10 also seek
4 to exclude evidence of Plaintiff's prior convictions and
5 arrests as well as Plaintiff's alleged prior criminal
6 activity prior to the date of the incident. However, in
7 Plaintiff's Reply, he states MIL #1 is not to exclude
8 criminal convictions but instead seeks to exclude: 1)
9 activities while in Plaintiff's present state of
10 incarceration including disciplinary charges or
11 infractions; 2) rap lyrics written by the Plaintiff; 3)
12 Plaintiff had or having a "strike" or that Plaintiff was
13 a member of a gang; 4) Plaintiff having made other
14 complaints of misconduct; 5) Plaintiff having filed
15 other civil actions; and 6) comments made on behavioral
16 forms about Plaintiff. Plaintiff does not provide
17 information as to specific disciplinary charges or rap
18 lyrics he seeks to exclude.

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

28 The "Rule 403 weighing process is primarily for the

1 district court to perform . . . and broad discretion
2 [is] afforded them in balancing probative value against
3 prejudice." Longnecker v. General Motors Corp., 594
4 F.2d 1283, 1286 (9th Cir. 1979). In making this
5 determination, the court must consider whether the
6 prejudice is unfair. Unfair prejudice "means an undue
7 tendency to suggest decision on an improper basis,
8 commonly, though not necessarily, an emotional one."
9 Cohn v. Papke, 655 F.2d 191, 194 (9th Cir. 1981).

10 Under Fed. R. Evid. 404(a), applicable in civil as
11 well as criminal cases, evidence of an individual's
12 character is not admissible "for the purpose of proving
13 that he acted in conformity therewith on a particular
14 occasion." Fed. R. Evid. 404(a)(3), however, provides
15 that "evidence of a witness's character may be admitted
16 under Rules 607, 608, and 609." Rule 404(b) also
17 provides that evidence of wrongful acts can be
18 introduced as "proof of motive, opportunity, intent,
19 preparation, plan, knowledge, identity, or absence of
20 mistake or accident." Fed. R. Evid. 404(b).

21 "Rule 404(b) is 'one of inclusion which admits
22 evidence of other crimes or acts relevant to an issue in
23 the trial, except where it tends to prove only criminal
24 disposition.'" Heath v. Cast, 813 F.2d 254, 259 (9th
25 Cir. 1987). If a trial judge determines that the
26 balancing "weighs in favor of admitting the evidence, he
27 should ordinarily instruct the jury carefully as to the
28 limited purpose for which the evidence is admitted."

1 U.S. v. Sangrey, 586 F.2d 1312, 1314 (9th Cir. 1978).

2 Pursuant to Rule 608, "a witness's credibility may
3 be attacked or supported by testimony about the
4 witness's reputation for having a character for
5 truthfulness or untruthfulness, or by testimony in the
6 form of an opinion about that character." Fed. R. Evid.
7 608(a). Additionally, "extrinsic evidence is not
8 admissible to prove specific instances of a witness's
9 conduct in order to attack or support the witness's
10 character for truthfulness." Fed. R. Evid. 608(b).
11 However, on cross-examination they may be inquired into
12 if they are probative of the character for truthfulness
13 or untruthfulness of a witness. Id.

14 While Rule 404(a) prohibits evidence of a person's
15 character to prove a person acted in accordance with
16 that character trait, Rule 404(b) allows evidence of a
17 crime, wrong, or other act for a different purpose such
18 as proving motive, opportunity, intent, preparation,
19 plan, knowledge, identity, absence of mistake, or lack
20 of accident.

21 Therefore, Plaintiff's MIL #1 is **GRANTED IN PART**,
22 **DENIED IN PART**. The Court will allow evidence of
23 Plaintiff's and Plaintiff's witnesses' criminal activity
24 and other acts for purposes of establishing bias and
25 impeachment of Plaintiff (should he choose to testify).
26 The evidence is excluded for all other purposes.

27 **B. Plaintiff's Motion in Limine #2**

28 Plaintiff requests the Court take judicial notice

1 of the possible punishment Plaintiff faced in the 2005
2 criminal case where Plaintiff was charged with
3 violations of California Penal Code § 243(c)(2) and § 69
4 stemming from the May 15, 2004 incident. California
5 Penal Code § 243(c)(2) states that possible punishment
6 for battery on a peace officer may be imprisonment of
7 not more than one year or a \$10,000 fine, or pursuant to
8 section 1170(h), for sixteen months, or two or three
9 years, or by both the fine and imprisonment. California
10 Penal Code § 69 lists the possible punishment as a fine
11 up to \$10,000, up to one year in county jail, or both.
12 Section 1170 states that changes by the act that added
13 this subdivision applies to any person sentenced on or
14 after October 1, 2011. Cal. Pen. Code § 1170.

15 Defendants dispute this request arguing Plaintiff
16 did not provide what facts he intends to present to the
17 jury in regards to this request, that these sections did
18 not apply at the time Plaintiff was charged and
19 acquitted, that the Penal Codes fail to account for the
20 variety of sentencing options available, and this is
21 irrelevant to any issue in trial.

22 A court may take judicial notice of a fact that is
23 not subject to reasonable dispute because it "can be
24 accurately and readily determined from sources whose
25 accuracy cannot reasonably be questioned." Fed. R.
26 Evid. 201(b)(2). A court "must take judicial notice if
27 a party requests it and the court is supplied with the
28 necessary information." Fed. R. Evid. 201(c)(2).

1 Plaintiff has failed to provide the Court with
2 sufficient evidence as to the relevance of the possible
3 sentences for these violations except to state in his
4 Reply that it is relevant to damages. Walker v.
5 Woodford, 454 F. Supp. 2d 1007, 1023 (S.D. Cal. 2006)
6 affirmed in part 393 F. App'x 514, 2010 WL 3448559,
7 certiorari denied 562 U.S. 1233 (2011). Additionally,
8 this information is subject to reasonable dispute
9 because while the possible sentences are listed in the
10 Penal Codes, it is disputed whether these were the
11 actual sentences Plaintiff faced in his criminal trial
12 since section 1170 applies to sentences after October 1,
13 2011 and Plaintiff's criminal trial was in 2005. The
14 Court has not been provided with the necessary
15 information as to the "possible sentences" Plaintiff
16 faced in the criminal trial. Therefore, Plaintiff's MIL
17 #2 is **DENIED**.

18 **C. Plaintiff's Motion in Limine #3**

19 Plaintiff's MIL #3 seeks to exclude evidence of
20 prior arrests and convictions, however Plaintiff does
21 not identify in his MIL which of the five incidents he
22 listed were only arrests or also convictions. In
23 Plaintiff's Reply, he lists the five incidents and
24 states they are Plaintiff's convictions. Based on
25 Plaintiff's representations to the Court, it appears the
26 five incidents all led to convictions.

27 Fed. R. Evid. 609 states that to attack a witness's
28 character for truthfulness by evidence of a criminal

1 conviction, if the crime was punishable by death or by
2 imprisonment for more than one year, the evidence must
3 be admitted subject to Rule 403. Additionally, for any
4 crime regardless of punishment, a court must admit the
5 evidence if the court "can readily determine that
6 establishing the elements of the crime required
7 proving—or the witness's admitting—a dishonest act or
8 false statement." Fed. R. Evid. 609(a)(2). If more
9 than ten years have passed from the conviction or
10 release from confinement, evidence of the conviction is
11 only admissible if "1) its probative value, supported by
12 specific facts and circumstances, substantially
13 outweighs its prejudicial effect; and 2) the proponent
14 gives an adverse party reasonable written notice of the
15 intent to use it so that the party has a fair
16 opportunity to contest its use." Fed. R. Evid. 609(b).

17 In regards to their admissibility, Plaintiff lists
18 the first conviction as possession of burglary tools in
19 Arizona 2000 and Defendants argue Plaintiff admitted it
20 was a conviction for possession of forgery instruments.
21 Pursuant to Fed. R. Evid. 609(b), evidence of this
22 conviction is allowed for the limited purpose of
23 impeachment of Plaintiff (should he choose to testify)
24 and bias against Defendants. Plaintiff's conviction for
25 receipt/concealing stolen property (045506) on November
26 10, 2004 will also be allowed. Fed. R. Evid. 609(b).
27 This conviction is probative because Plaintiff's
28 incarceration at the time of the May 15, 2004 incident

1 was because of this arrest and conviction.

2 Plaintiff's convictions for criminal threats on
3 October 23, 2008 and residential burglary on August 13,
4 2010 (PA065631) will be excluded. While Fed. R. Evid.
5 608 states that evidence of a criminal conviction must
6 be admitted for attacking a witness's character for
7 truthfulness, it must be admitted subject to Fed. R.
8 Evid. 403. The nature of the convictions are not
9 relevant for purposes of impeachment or bias. Moreover,
10 the prejudicial impact these convictions would have
11 outweigh any probative value that exists. The
12 misdemeanor conviction for possession of burglary tools
13 in Los Angeles County is also excluded because it is not
14 admissible for impeachment since possession of burglary
15 tools does not involve dishonesty or false statements.
16 Medrano v. City of Los Angeles, 973 F.2d 1499, 1507 (9th
17 Cir. 1992). Based on the foregoing, Plaintiff's MIL #3
18 is **GRANTED IN PART, DENIED IN PART.**

19 **D. Plaintiff's Motion in Limine #5**

20 Plaintiff seeks to exclude Defendants from offering
21 any evidence not previously disclosed pursuant to
22 Federal Rules of Civil Procedure ("FRCP") 26. Plaintiff
23 does not offer what exact evidence or testimony he is
24 seeking to exclude and as such cannot identify any
25 prejudice or disruption of trial that would result from
26 permitting this unknown evidence. Ball v. Cnty. of Los
27 Angeles, No. 2:13-cv-07739-CAS (FFMx), 2015 WL 1467179,
28 at *2 (C.D. Cal. 2015).

1 A motion in limine "should rarely seek to exclude
2 broad categories of evidence, as the court is almost
3 always better situated to rule on evidentiary issues in
4 their factual context during trial." *Id.*; see Sperberg
5 v. Goodyear Tire & Rubber Co., 519 F.2d 708, 712 (6th
6 Cir. 1975). All evidence should have been disclosed
7 pursuant to FRCP 26 and 37. If Defendants attempt to
8 introduce evidence or witnesses during trial in
9 violation of FRCP 26 or 37, Plaintiff can raise his
10 objections at the time of trial. Therefore, Plaintiff's
11 MIL #5 is **DENIED**.

12 **E. Plaintiff's Motion in Limine #6**

13 Plaintiff requests the Court limit testimony of
14 defense witnesses to actual knowledge of events at the
15 time of events in 2004 and 2005. Plaintiff seeks to
16 exclude evidence which he has failed to specifically
17 identify to the Court and which is not proper at the
18 motion in limine stage. Based on Plaintiff's MIL #6,
19 "it is impossible for the Court to determine the precise
20 scope of evidence" Plaintiff seeks to exclude. William
21 Hablinski Architecture v. Amir Const. Inc., No. CV-03-
22 6365-CAS (RNBx), 2005 WL 4658149, at *13-14 (C.D. Cal.
23 2005). The Court cannot speculate what questions will
24 be asked and how any witness will answer these
25 questions. Plaintiff's request encompasses too broad a
26 category to rule on at this juncture. Therefore,
27 Plaintiff may raise any objections to evidence offered
28 by Defendants or testimony he believes is inadmissible

1 at the time of trial. Thus, Plaintiff's MIL #6 is
2 **DENIED.**

3 **F. Plaintiff's Motion in Limine #7**

4 Plaintiff seeks to admit testimony of Deputy
5 Shannon ("Shannon") from his trial testimony during
6 Plaintiff's criminal trial in 2005. Defendants argue
7 the testimony should be excluded because it does not
8 satisfy any exception to the hearsay rule and does not
9 satisfy the residual exception.

10 Fed. R. Evid. 804(a)(4) states that a declarant is
11 unavailable as a witness if the declarant cannot be
12 present or testify because of death. Fed. R. Evid.
13 804(a)(4). If a declarant is unavailable, former
14 testimony will not be excluded by the hearsay rule if
15 the testimony: "(A) was given as a witness at a trial,
16 hearing, or lawful deposition, whether given during the
17 current proceeding or a different one; and (B) is now
18 offered against a party who had—or, in a civil case,
19 whose predecessor in interest had—an opportunity and
20 similar motive to develop it by direct, cross-, or
21 redirect examination." Fed. R. Evid. 804(b)(1).

22 A hearsay statement not covered by a hearsay
23 exception under Rules 803 or 804 will not be excluded
24 if: "(1) the statement has equivalent circumstantial
25 guarantees of trustworthiness; (2) it is offered as
26 evidence of a material fact; (3) it is more probative on
27 the point for which it is offered than any other
28 evidence that the proponent can obtain through

1 reasonable efforts; and (4) admitting it will best serve
2 the purposes of these rules and the interests of
3 justice." Fed. R. Evid. 807(a). Additionally, the
4 statement will only be admissible if before trial, the
5 party seeking to admit the statement gives the adverse
6 party "reasonable notice of the intent to offer the
7 statement and its particulars." Fed. R. Evid. 807(b).

8 This residual exception to the hearsay rule "should
9 be used only in extraordinary circumstances where the
10 court is satisfied that the evidence offers guarantees
11 of trustworthiness and is material, probative and
12 necessary in the interest of justice." U.S. v. Tome, 61
13 F.3d 1446, 1452 (10th Cir. 1995)(internal citations and
14 quotation marks omitted). Courts have "considerable
15 discretion in applying the residual exception to the
16 hearsay rule." Page v. Barko Hydraulics, 673 F.2d 134,
17 140 (5th Cir. 1982).

18 Under Rule 804, Shannon is unavailable because he
19 has passed away. However, Plaintiff has failed to show
20 that the prosecutor in Plaintiff's criminal trial is a
21 predecessor in interest to Defendants in this case and
22 that the prosecution had a similar motive to develop
23 Shannon's testimony. Plaintiff was prosecuted by the
24 district attorney's office and Defendants did not have
25 any representatives on their behalf at the time of
26 Plaintiff's criminal trial. Hannah v. City of Overland,
27 Mo., 795 F.2d 1385, 1390 (8th Cir. 1986). Additionally,
28 the prosecutor's objective and motive in questioning

1 Shannon was to prove that Plaintiff assaulted the
2 sheriff's officers, not whether Defendants' use of force
3 was objectively reasonable. *Id.* The prosecutor did not
4 have a similar motive in questioning Shannon on the same
5 matter that Defendants would question Shannon if he were
6 available. Lloyd v. American Export Lines, Inc., 580
7 F.2d 1179, 1187 (3rd Cir. 1978). The testimony is not
8 allowed under Fed. R. Evid. 804.

9 Under Rule 807, Plaintiff has failed to provide the
10 Court with evidence on how Shannon's testimony is
11 evidence of a material fact. Plaintiff does not specify
12 what parts of the testimony he seeks to elicit.
13 Plaintiff's counsel first states he intends to offer
14 "almost all" of Shannon's testimony and then in his
15 Reply, states he intends to offer all of Shannon's
16 testimony. It is Plaintiff's responsibility to provide
17 Defendants and this Court with the specific testimony he
18 seeks to introduce and provide how it is evidence of a
19 material fact and more probative on the point for which
20 it is offered than any other evidence. Plaintiff has
21 failed to do so and therefore, Plaintiff's MIL #7 is
DENIED.

22 **G. Plaintiff's Motion in Limine #9**

23 Plaintiff seeks to exclude evidence that he was
24 housed in the "Discipline" module of the Men's Central
25 Jail ("MCJ") and the reasons an inmate may be housed in
26 the "Discipline" module on the grounds that it is
27 irrelevant, prejudicial, and impermissible character

1 evidence. Defendants counter that the "Discipline"
2 module should be admissible because it is not being
3 offered to show character; rather, the evidence is being
4 offered to show Defendants' state of mind.

5 Plaintiff's housing in the "Discipline" module is
6 not being used to show Plaintiff acted in accordance
7 with a character trait. Additionally, its probative
8 value is not substantially outweighed by a danger of
9 unfair prejudice because this evidence is not being
10 offered to show character, but rather Defendants' state
11 of mind on the date of the incident.

12 Therefore, Plaintiff's MIL #9 is **DENIED**. However,
13 Defendants are precluded from using Plaintiff's housing
14 in the "Discipline" module to establish character and
15 action in conformity with such character.

16 **H. Plaintiff's Motion in Limine #10**

17 Plaintiff seeks to exclude evidence of Plaintiff's
18 alleged criminal activity prior to and following the May
19 15, 2004 incident because it would violate Fed. R. Evid.
20 403 and 404. Defendants argue evidence of Plaintiff's
21 encounters with LASD are probative to show Plaintiff's
22 potential bias and the 2004 conviction is particularly
23 probative because that was the basis for Plaintiff's
24 incarceration at the time of the incident with
25 Defendants.

26 Pursuant to Rule 608, "a witness's credibility may
27 be attacked or supported by testimony about the
28 witness's reputation for have a character for

1 truthfulness or untruthfulness, or by testimony in the
2 form of an opinion about that character." Fed. R. Evid.
3 608(a). Additionally, "extrinsic evidence is not
4 admissible to prove specific instances of a witness's
5 conduct in order to attack or support the witness's
6 character for truthfulness." Fed. R. Evid. 608(b).
7 However, on cross-examination they may be inquired into
8 if they are probative of the character for truthfulness
9 or untruthfulness of a witness. Id.

10 While Rule 404(a) prohibits evidence of a person's
11 character to prove a person acted in accordance with
12 that character trait, Rule 404(b) allows evidence of a
13 crime, wrong, or other act for a different purpose such
14 as proving motive, opportunity, intent, preparation,
15 plan, knowledge, identity, absence of mistake, or lack
16 of accident. Plaintiff's criminal activity prior to the
17 May 15, 2004 incident will be allowed for the limited
18 purpose of impeachment (if Plaintiff testifies), bias
19 against Defendants, and Plaintiff's damages. Peraza,
20 722 F.2d at 1457; Bordeharay, 2016 WL 7260920 at *3.
21 They are excluded for all other purposes. Plaintiff's
22 criminal activity after the May 15, 2004 is excluded for
23 all purposes because it is irrelevant and even if it was
24 relevant, its probative value is substantially
25 outweighed by the prejudicial effect it may have subject
26 to Fed. R. Evid. 403. Therefore, Plaintiff's MIL #10 is
27 **GRANTED IN PART, DENIED IN PART.**

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1 **I. Plaintiff's Motion in Limine #11**

2 Plaintiff seeks to admit the prior testimony of
3 Michael Sutton ("Sutton"), who was also an inmate in the
4 "Discipline" module at the time of the May 15, 2004
5 incident. Sutton testified at Plaintiff's prior
6 criminal trial in 2005 and during the second trial for
7 this case in 2013. As an initial matter, Plaintiff's
8 MIL #11 only requests the admission of Sutton's trial
9 testimony from the 2005 criminal trial and second trial
10 in this case in August 2013. It then appears in
11 Plaintiff's Reply, he adds that he also wants to admit
12 Sutton's deposition testimony taken by Defendants
13 sometime in 2008. Plaintiff did not request Sutton's
14 deposition testimony be admitted in his original MIL and
15 does not provide this Court with what portions of the
16 deposition he seeks to introduce and its relevance;
17 thus, the request to admit Sutton's 2008 deposition
18 testimony is **DENIED**.

19 Fed. R. Evid. 804(a)(5) states that a declarant is
20 unavailable as a witness if he is absent from the
21 hearing and the proponent of the statement has been
22 unable to procure the declarant's attendance by process
23 or other reasonable means. Before a witness will be
24 deemed unavailable under Rule 804(a)(5), the proponent
25 of a statement must show a good-faith effort to procure
26 the witness's attendance at trial. If a declarant is
27 unavailable, former testimony will not be excluded by
28 the rule of hearsay if the testimony: "(A) was given as

1 a witness at a trial, hearing, or lawful deposition,
2 whether given during the current proceeding or a
3 different one; and (B) is now offered against a party
4 who had—or, in a civil case, whose predecessor in
5 interest had—an opportunity and similar motive to
6 develop it by direct, cross-, or redirect examination.”
7 Fed. R. Evid. 804(b)(1).

8 Plaintiff attempted to locate Sutton by searching
9 the Board of Parole Hearing’s website, hiring an
10 investigator, and attempting to contact Sutton’s mother.
11 Plaintiff asserts he has attempted to contact Sutton
12 from June 2016, approximately eight-nine months prior to
13 the start of trial. While Plaintiff has been
14 unavailable to locate Sutton, his efforts have not been
15 unreasonable. U.S. v. Thomas, 705 F.2d 709, 712 (4th
16 Cir. 1983). It does not appear Plaintiff had Sutton’s
17 address or information that would help him locate
18 Sutton. U.S. v. Winn, 767 F.2d 527, 530 (9th Cir.
19 1985). Therefore, Sutton is unavailable under Rule
20 804(a)(5)’s definition of unavailability.

21 However, Plaintiff has failed to show that the
22 prosecutor in Plaintiff’s 2005 criminal trial is a
23 predecessor in interest to Defendants in this case and
24 that the prosecution had a similar motive to develop
25 Sutton’s testimony. Plaintiff was prosecuted by the
26 district attorney’s office and Defendants did not have
27 any representatives on their behalf at the time of
28 Plaintiff’s criminal trial. Hannah, 795 F.2d at 1390.

1 Additionally, the prosecutor's objective and motive in
2 questioning Sutton was to prove that Plaintiff assaulted
3 the sheriff's officers, not whether Defendants' use of
4 force was objectively reasonable. Id. The prosecutor
5 did not have a similar motive in questioning Sutton on
6 the same matter that Defendants would question Sutton if
7 he were available. Lloyd, 580 F.2d at 1187. Therefore,
8 Plaintiff's request to admit Sutton's testimony from the
9 2005 criminal trial is **DENIED**.

10 Defendants were represented at this case's second
11 trial in August 2013. Defendants had the opportunity
12 and motive to develop Sutton's testimony. This meets
13 the requirements of Rule 804 and Plaintiff's request to
14 admit Sutton's testimony from the August 2013 civil
15 trial is **GRANTED**. However, if not already done so,
16 Plaintiff must disclose to Defendants and this Court
17 what parts of Sutton's testimony from the August 2013 he
18 seeks to offer during trial so that Defendants have an
19 opportunity to review it prior to trial. Therefore,
20 Plaintiff's MIL #11 is **GRANTED IN PART, DENIED IN PART**.

21 **IT IS SO ORDERED.**

22 DATED: March 14, 2017

S/ RONALD S.W. LEW

23 **HONORABLE RONALD S.W. LEW**

24 Senior U.S. District Judge

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