

1 the first trial addressing Plaintiff's retaliation claim and the second trial addressing Plaintiff's
2 deliberate indifference claims. (Doc. 203 at 8.) The Court also granted Defendants' request
3 to bifurcate the liability and punitive damages stages of the case. (Doc. 203 at 8.) The Court
4 has scheduled a jury trial on Plaintiff's retaliation claim for May 9, 2011 through May 13,
5 2011 in the Sacramento Division of the Eastern District of California. (Doc. 205.)

6 Plaintiff's retaliation claim alleges that Dangler, an Inmate Appeals Coordinator,
7 retaliated against Plaintiff for exercising his constitutional right to administratively appeal
8 a disciplinary proceeding. (Doc. 1.) While a prisoner at High Desert State Prison, Plaintiff
9 received a Rule Violation Report ("RVR") resulting in a disciplinary proceeding on June 15,
10 2005, in which Plaintiff was found to have conspired to murder correctional officers. (Doc.
11 123 at 3.) At the conclusion of that disciplinary proceeding, Plaintiff was assessed 48 months
12 at the Secured Housing Unit ("SHU") at California State Prison, Corcoran ("Corcoran").
13 (Doc. 123 at 3.) On July 17, 2005, Plaintiff submitted an initial grievance appealing that
14 disposition. (Doc. 1 ¶ 36; Doc. 123 at 3.) Plaintiff was transferred to the SHU facility at
15 Corcoran on August 30, 2005. (Doc. 212 at 2.)

16 On September 6, 2005, Plaintiff filed a grievance against Dangler for improperly
17 screening and delaying processing of his initial grievance. (Doc. 1 ¶ 37; Doc. 123 at 3.)
18 Plaintiff alleges that this grievance against Dangler led to an Internal Affairs Directive. (Doc.
19 1 ¶ 37; Doc. 123 at 3.) On January 25, 2006, the initial grievance related to the RVR was
20 granted, after a review found that although Plaintiff may have known of a conspiracy to
21 attack police officers, the evidence failed to support that he was an "active conspirator."
22 (Doc. 142 at 6.) Dangler signed the decision granting Plaintiff's initial grievance. (Doc. 123
23 at 15, Doc. 142 at 7.) After Plaintiff's initial grievance was granted, the disciplinary
24 proceeding was dismissed, the 48 months in SHU was suspended, and Plaintiff was returned
25 to general population. (Doc. 1 ¶¶ 38-39; Doc. 123 at 3.) The RVRs issued to each of
26 Plaintiff's alleged co-conspirators were also dismissed. (Doc. 212 at 8-9; Doc. 215 at 8-10.)

27 Plaintiff alleges that in retaliation for Plaintiff's grievance filed against Dangler for
28 mishandling Plaintiff's initial grievance, Dangler "reassessed" Plaintiff's assignment by

1 sending a memorandum on April 27, 2006, resulting in Plaintiff's return to SHU. (Doc. 1 ¶
2 40; Doc. 123 at 3.) Plaintiff also alleges that Dangler altered the form that Dangler had earlier
3 signed, replacing the word "granted" with "denied." (Doc. 142 at 7.) Dangler contends that
4 he was unaware of Plaintiff's grievance against him at that time. (Doc. 100 at 23.) Dangler
5 further asserts that the decision to return Plaintiff to SHU was supported by legitimate
6 penological grounds—confidential memoranda allegedly indicated that Plaintiff indeed had
7 conspired to murder correctional officers—and was affirmed by the Institutional Classification
8 Committee. (Doc. 100 at 22-23; Doc. 123 at 3.)

9 Plaintiff suffers from a seizure disorder, which requires close observation and routine
10 seizure medication. (Doc. 142 at 10.) While at SHU, Plaintiff allegedly complained to a nurse
11 on June 5, 2006 that he was having a seizure and requested hospitalization. (Doc. 142 at 10.)
12 The nurse allegedly advised that Plaintiff was to be watched and referred to the yard nurse
13 in the morning. (Doc. 142 at 10.) Plaintiff alleges that prison officials ignored his and other
14 inmates' subsequent pleas for medical assistance, and that Plaintiff had a seizure, allegedly
15 suffering serious injuries including "a dislocated shoulder, lacerations, bruises, cranial injury,
16 and extreme pain." (Doc. 1 ¶¶ 48-54; Doc. 142 at 10.) It is undisputed that Plaintiff had a
17 seizure, fell, and dislocated his shoulder. (Doc. 142 at 10.)

18 On March 25, 2011, Defendants filed the pending Motion in Limine Regarding
19 Retaliation Damages (Doc. 212). Defendants contend that the Court should bar Plaintiff,
20 during the trial on his retaliation claim, from presenting evidence of: (1) actual injury; (2)
21 events occurring while Plaintiff was housed at SHU; and (3) the dismissal of his alleged co-
22 conspirators' RVRs. (Doc. 212.) On April 8, 2011, Plaintiff filed his opposition, asserting
23 that the Court should deny Defendants' Motion in Limine because: (1) it is devoid of
24 evidentiary support; (2) Plaintiff is entitled to compensatory damages from Dangler for harm
25 occurring at SHU that was proximately caused by the retaliation; and (3) the dismissed RVRs
26 are admissible as evidence of Dangler's alleged retaliatory motive. (Doc. 215.)

DISCUSSION

I. Legal Standard for Retaliation

In the prison context, a claim of First Amendment retaliation under § 1983 requires: “(1) An assertion that a state actor took some adverse action against an inmate; (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir. 2005); see also Hines v. Gomez, 108 F.3d 265, 267 (9th Cir. 1997) (retaliation claims require an inmate to show that (1) the prison official acted in retaliation for the exercise of a constitutionally-protected right and (2) the action “advanced no legitimate penological interest.”). The prisoner has the burden of proving that “the prison authorities’ retaliatory action did not advance legitimate goals of the correctional institution or was not tailored narrowly enough to achieve such goals.” Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995) (quoting Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985)).

II. Damages

Defendants contend that Plaintiff’s recovery on the retaliation claim is limited to nominal damages. (Doc. 212 at 4.) Plaintiff asserts that he is also entitled to compensatory damages. (Doc. 215 at 2.) A §1983 damages award is intended “to compensate persons for injuries caused by the deprivation of constitutional rights.” Carey v. Phipus, 435 U.S. 247, 254 (1978). Although 42 U.S.C. § 1997e(e) of the Prison Litigation Reform Act of 1996 typically requires that an inmate suffer a physical injury before damages can be awarded for mental or emotional injury, the Ninth Circuit has held that this requirement does not apply to First Amendment claims. Canell v. Lightner, 143 F.3d 1210, 1213 (9th Cir. 1998) (“The deprivation of First Amendment rights entitles a plaintiff to judicial relief wholly aside from any physical injury he can show, or any mental or emotional injury he may have incurred. Therefore, § 1997e(e) does not apply to First Amendment Claims regardless of the form of relief sought.”). Further, § 1997e(e) permits a plaintiff’s claim for nominal, compensatory, or punitive damages if it does not allege mental or emotional injuries. Oliver v. Kelly, 289

1 F.3d 623, 627-28 (9th Cir. 2002). However, “damages based on the abstract ‘value’ or
2 ‘importance’ of constitutional rights are not a permissible element of compensatory
3 damages.” Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299, 310-11 (1986).

4 The Court will permit Plaintiff, during trial on his retaliation claim, to present limited
5 argument and evidence in support of compensatory damages. The Ninth Circuit has held that
6 the limitations imposed by § 1997e(e) do not apply to First Amendment causes of action such
7 as Plaintiff’s retaliation claim. See Canell, 143 F.3d at 1213 . Even if § 1997e(e) applied to
8 Plaintiff’s retaliation claim, Plaintiff could still seek compensatory damages because: (1)
9 Plaintiff was allegedly physically injured as a result of his retaliatory placement in SHU, and
10 (2) § 1997e(e) permits compensatory damages not predicated on alleged mental or emotional
11 injuries. Oliver, 289 F.3d at 627-28. The Court must necessarily defer making precise
12 findings on the permissible scope of Plaintiff’s damages evidence until such evidence is
13 introduced at trial, but will discuss generally admissible topics in Section III of this Order.

14 **III. Evidence of Conditions and Events at SHU and Plaintiff’s Alleged Injuries**

15 Defendants contend that evidence of conditions and events at SHU is irrelevant and
16 prejudicial, while Plaintiff asserts that such evidence is both relevant and probative. (Doc.
17 212 at 6-7; Doc. 215 at 6-8.) Defendants further argue that Plaintiff should be barred from
18 offering evidence on his alleged physical injuries sustained at SHU because Dangler was not
19 ultimately responsible for Plaintiff’s placement at SHU, Dangler could not have anticipated
20 Plaintiff’s seizure or the alleged deliberate indifference that exacerbated Plaintiff’s injuries,
21 and such evidence could allow Plaintiff to recover twice for his injuries. (Doc. 212 at 5-7.)
22 Plaintiff contends that the injuries evidence is admissible because Dangler’s retaliatory
23 conduct caused Plaintiff’s reassignment to SHU, where alleged isolated conditions prevented
24 Plaintiff from receiving treatment for his injuries. (Doc. 215 at 5-6.) Plaintiff further asserts
25 that any risk of double recovery can be cured by the Court. (Doc. 215 at 6.)

26 Witnesses may only testify about relevant evidence, which is evidence tending to
27 prove or disprove a party’s liability theory. Fed. R. Evid. 401-402. Even if evidence is
28 relevant, it “may be excluded if its probative value is substantially outweighed by the danger

1 of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of
2 undue delay, waste of time, or needless presentation of cumulative evidence.” Fed. R. Evid.
3 403. In this case, the Court will permit limited evidence of conditions and events at SHU and
4 of Plaintiff’s injuries during trial on the retaliation claim because such evidence is both
5 relevant and more probative than prejudicial. Fed. R. Evid. 401-403. Evidence of restrictive
6 conditions at SHU could make it more likely that Dangler had a retaliatory motive in
7 allegedly reassigning Plaintiff to that facility. Further, Dangler’s allegedly retaliatory
8 reassignment of Plaintiff to SHU may have contributed to the alleged delayed treatment of
9 his seizure, making the extent of Plaintiff’s injuries relevant to Plaintiff’s potential damages.
10 However, if Plaintiff recovers damages related to his physical injuries sustained while at
11 SHU, Plaintiff will not be permitted to recover duplicative damages during his trial on his
12 deliberate indifference claims. Further, the Court finds that the conditions and events at SHU
13 and Plaintiff’s injuries are not central to Plaintiff’s retaliation claim, and therefore such
14 evidence will consume a limited amount of time at trial. To prevent these issues from
15 consuming excessive trial time, the parties are encouraged to stipulate to undisputed facts,
16 including the relevant conditions and events at SHU and any undisputed facts about
17 Plaintiff’s seizure and injuries.

18 **IV. Evidence of Dismissal of Co-Conspirators’ RVRs**

19 Defendants assert that evidence of the dismissals of RVRs issued to Plaintiff’s alleged
20 co-conspirators (the “dismissal evidence”) is irrelevant and lacks probative value. (Doc. 212
21 at 8-9.) Defendants further argue for exclusion because Plaintiff, purportedly having failed
22 to designate a witness with personal knowledge of the dismissal evidence, would need to rely
23 on inadmissible hearsay. (Doc. 212 at 8.) A witness may only testify about matters within his
24 or her personal knowledge. Fed. R. Evid. 602. As noted above, witnesses may only testify
25 about relevant evidence, and even relevant evidence may be excluded if prejudicial,
26 confusing, misleading, or cumulative. Fed. R. Evid. 401-403. Witnesses generally cannot
27 testify about out-of-court statements introduced for the truth of the matter asserted, but an
28 exception to this general hearsay rule permits the admission of business records and public

1 records and reports. Fed. R. Evid. 802, 803(6), (8). Plaintiff asserts that he has designated at
2 least two witnesses—Dangler and the custodian of records for the CDCR—with personal
3 knowledge of the dismissal evidence, and states that the custodian of records is competent
4 to introduce and authenticate the dismissal evidence as business or public records. (Doc. 215
5 at 9.)

6 The Court finds that the dismissal evidence is both relevant and probative because it
7 tends to make it less likely that Plaintiff conspired to murder peace officers. See Fed. R.
8 Evid. 401-403. Because the dismissal evidence makes it less probable that Plaintiff was
9 engaged in a conspiracy, such evidence also makes it less probable that Dangler sought to
10 return Plaintiff to SHU based upon legitimate penological grounds related to that conspiracy.
11 See Fed. R. Evid. 401-403. The Court also finds, assuming Plaintiff’s representations about
12 its designated witnesses are accurate, that Plaintiff would be able to introduce the evidence
13 while complying with the Federal Rules of Evidence. Fed. R. Evid. 401-03; 803. Therefore,
14 the Court will not exclude the dismissal evidence as this time.

15 **CONCLUSION**

16 **IT IS HEREBY ORDERED DENYING** Defendants’ Motion in Limine Regarding
17 Retaliation Damages (Doc. 212).

18 **IT IS FURTHER ORDERED** setting a status hearing before the Honorable Stephen
19 M. McNamee on **Tuesday, May 3, 2011 at 1:30 p.m. Arizona time.** Plaintiff’s counsel shall
20 initiate a conference call and secure all participants on the line before telephoning Judge
21 McNamee’s chambers at (602) 322-7555, no later than 1:25 p.m. Arizona time, on May 3,
22 2011.

23 DATED this 18th day of April, 2011.

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26 _____
27 Stephen M. McNamee
28 United States District Judge