

1
2 **UNITED STATES DISTRICT COURT**
3 **EASTERN DISTRICT OF CALIFORNIA**
4

5 **MICHAEL IOANE, et al,**

6 **Plaintiffs**

7 **v.**

8 **KENT SPJUTE, et al,**

9 **Defendants**
10

CASE NO. 1:07-CV-0620 AWI EPG

**ORDER RE: MOTION TO BIFURCATE
TRIAL OR TO CONTINUE THE TRIAL
DATE**

(Doc. 372)

11 This case stems from allegations that Defendants acted improperly in executing a search
12 warrant on Plaintiffs' home, violating Plaintiffs' constitutional rights. Part of Plaintiffs' claim is
13 that Defendants' actions caused mental suffering. Defendants' expert Dr. Ricardo Winkel
14 completed psychological examinations of both Plaintiffs, produced an expert report, and is
15 expected to testify at trial regarding Plaintiffs' mental state. The trial in this case is set to begin
16 June 7, 2016. Due to a family matter that has recently arisen, Dr. Winkel will be out of the
17 country at a memorial service from June 8 to June 20, 2016. Defendants have made a motion to
18 bifurcate the trial into liability and damages phases or to continue the trial date; Defendants
19 specify that they seek to retain the same jury for both phases of the trial. Doc. 372. Plaintiffs
20 consent to a postponement of the trial but oppose bifurcation. Doc. 376. Before Dr. Winkel's
21 scheduling conflicts arose, Defendants had made a prior motion to bifurcate, arguing it would be
22 efficient and avoid the possibility of damages testimony prejudicing the liability determination.
23 Doc. 284. Magistrate Judge Gary Austin denied the motion. Doc. 312.

24 "For convenience, to avoid prejudice, or to expedite and economize, the court may order a
25 separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party
26 claims." Fed. Rule Civ. Proc. 42(b). Bifurcating a trial into liability and damages phases is not
27 uncommon. See, e.g. Boone v. Los Angeles, 522 Fed. Appx. 402, 403 (9th Cir. 2013); M2
28 Software, Inc. v. Madacy Entm't, 421 F.3d 1073, 1088 (9th Cir. 2005); Hill v. Clark, 2016 U.S.

1 Dist. LEXIS 23366, *11 (E.D. Cal. 2016); Fahmy v. Jay-Z, 2016 U.S. Dist. LEXIS 12342, *13 n.2
2 (C.D. Cal. 2016); Petersen v. Costco Wholesale Co., 2016 U.S. Dist. LEXIS 9030, *46-47 (C.D.
3 Cal. 2016). As liability is a dispositive issue, a verdict in the first phase could “obviate[] the need”
4 for the second phase which “properly serve[s] the goals of Rule 42(b).” Allstate Ins. Co. v.
5 Breeden, 410 Fed. Appx. 6, 9 (9th Cir. 2010).

6 Defendants again argue that bifurcation would be efficient and avoid the possibility of
7 damages testimony prejudicing the liability determination. The new factor to be considered is the
8 unavailability of Dr. Winkel. In this case, Plaintiffs’ damages are solely based on mental
9 suffering. Plaintiffs do not assert any physical injuries and their claims for economic damages
10 were dismissed. Dr. Winkel’s testimony is central to Defendants’ case on this point.

11 Plaintiffs argue that presentation of the entire case, liability and damages, is likely to take
12 less than a week so there would be little time savings in bifurcating the trial. Further Plaintiffs
13 point out logistical concerns weighing against phasing. Plaintiff Michael Ioane, Sr. is currently
14 incarcerated so having two trials could potentially create problems with transportation and his
15 housing. Arranging to bring back the same jury for a second phase may also be difficult to
16 schedule.

17 In this case, the drawbacks of bifurcation outweigh the benefits. The entire case, liability
18 and damages, is expected to be short. Given Dr. Winkel’s schedule, the second phase would have
19 to take place several weeks after the first phase; the jury would not be able to immediately start the
20 second phase of trial immediately after the first. Continuing the trial until a time when all
21 witnesses are available is the preferable option.

22 The trial date of June 7, 2016 is VACATED. The pretrial conference is to be held on April
23 4, 2016. At that time, the parties are expected to be familiar with their own schedules and
24 prepared to set a new date for trial.

25 IT IS SO ORDERED.

26 Dated: March 31, 2016

27 
28 SENIOR DISTRICT JUDGE

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