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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NAKIA MCCLAIN,
Plaintiff,
vs.
L. GONZALES, et al.,
Defendants.

Case No. 1:07-cv-00945 JLT (PC)

PRETRIAL ORDER

Deadlines:
Motions in Limine: 12/30/11
Oppositions to Motions in Limine:
1/15/12
Trial Submissions: 1/6/12
Jury Trial: 1/31/12, 9:00 a.m.
Courtroom 6

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Following the Court’s order granting Defendant’s Motion for summary judgment, (Doc. 75), the remaining claims for trial include Plaintiff’s Eighth Amendment claims of excessive force against Defendants Gonzales, Thomas, and Beltran and his First Amendment claims of retaliation against Defendants Gonzales and Thomas. Upon consideration of the parties’ comments at hearing, the parties’ pretrial statements, and the file in this case, the Court issues the following pretrial order.

A. JURISDICTION / VENUE

Plaintiff seeks relief under 42 U.S.C. § 1983. The Court therefore has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343. In addition, Plaintiff’s claims arise out of events that occurred at the California State Prison at Corcoran (CSP-Cor). Accordingly, venue is proper

1 in the United States District Court for the Eastern District of California sitting in Fresno. 28 U.S.C.
2 § 1391.

3 **B. JURY TRIAL**

4 Plaintiff included a demand for jury trial in his amended complaint. Defendants also included
5 a demand for jury trial in their answer. Accordingly, trial will be by jury.

6 **C. UNDISPUTED FACTS**

- 7 1. Plaintiff is an inmate in the lawful custody of the California Department of
8 Corrections and Rehabilitation (CDCR) who, at all times relevant to this action, was
9 housed at the California State Prison (CSP-Cor) at Corcoran, California.
- 10 2. Defendants Gonzales, Thomas, and Beltran were correctional officers at California
11 State Prison at Corcoran during all relevant times in the complaint.
- 12 3. Plaintiff submitted an inmate grievance against Medical Technical Assistant
13 Osborne on August 21, 2006, and an inmate grievance against Correctional Officer
14 Aguilar two months later, on October 29, 2006.
- 15 4. On October 30, 2006, Plaintiff was escorted from his exercise area back to his cell
16 by Defendants Gonzales and Beltran.
- 17 5. On October 30, 2006, Defendants Gonzales, Thomas, and Beltran participated in
18 using force against Plaintiff
- 19 6. Plaintiff was handcuffed at the exercise area by Defendant Gonzales.
- 20 7. Plaintiff fell to the floor near his cell door.
- 21 8. On October 30, 2006, Defendant Beltran placed leg restraints on Plaintiff and aided
22 Defendant Gonzales in using force on Plaintiff
- 23 9. On October 30, 2006, Defendant Gonzales put handcuffs on Plaintiff

24 **D. DISPUTED FACTS**

- 25 1. Whether Defendant Gonzales handcuffed Plaintiff too tightly while escorting him
26 to his cell.
- 27 2. Whether Defendant Gonzales caused Plaintiff to fall to the floor or whether Plaintiff
28 dropped to the floor of his own volition.

- 1 3. Whether Defendant Gonzales pinned Plaintiff to the floor after he fell.
- 2 4. Whether Defendant Gonzales dragged Plaintiff away from the cell door.
- 3 5. Whether any Defendant closed the cell door on Plaintiff while Plaintiff was laying
- 4 on the ground.
- 5 6. Whether Defendants Gonzales, Thomas, and Beltran use of force against Plaintiff
- 6 a reasonable and necessary use of force.
- 7 7. Whether Defendant Beltran’s placing leg restraints on Plaintiff was a reasonable and
- 8 necessary use of force.
- 9 8. Whether Defendants Gonzales and Thomas took any adverse action against Plaintiff
- 10 on October 30, 2006.
- 11 9. Whether Defendants Gonzales and Thomas were aware of Plaintiff’s protected
- 12 activity.
- 13 10. Whether Defendants Gonzales and Thomas acted in furtherance of a legitimate
- 14 penological purpose on October 30, 2006.
- 15 11. Whether Plaintiff suffered any injury as a result of the events of October 30, 2006.
- 16 12. The extent of Plaintiff’s damages.

17 **E. DISPUTED EVIDENTIARY ISSUES**

18 Though both sides anticipate, in general, making evidentiary objections at the time of trial and
19 will insist on compliance with the rules of evidence, neither side has identified any specific evidentiary
20 issue at this time.

21 Plaintiff’s Evidentiary Issues

22 Plaintiff states generally that he anticipates disputes concerning Defendants’ evidence resulting
23 from hearsay, relevance, lack of authentication as well as further disputes regarding discovery
24 propounded by Plaintiff and Defendant’s “untrustworthy actions” regarding this production.

25 Defendants’ Evidentiary Issues

- 26 1. Should Plaintiff or any other incarcerated witnesses testify, Defendants will seek to
- 27 impeach such witnesses by presenting evidence of prior felony convictions and/or
- 28 specific instances of conduct demonstrating their propensity to lie.

- 1 2. Should Plaintiff offer evidence of intangible injuries such as impairment of reputation,
2 personal humiliation, and mental anguish and suffering, Defendants will seek to
3 introduce evidence of the length of Plaintiff’s sentence to show that any injury to his
4 reputation would be measured only by his loss of standing within the prison
5 community.
- 6 3. Defendants will object to the testimony of any witnesses not listed in Plaintiff’s pretrial
7 disclosure.
- 8 4. Defendants will object to Plaintiff’s exhibits as hearsay to the extent that there is no
9 applicable hearsay exception.
- 10 5. To the extent it is cumulative and irrelevant, Defendants will object to Plaintiff’s
11 intended testimony of incarcerated witnesses.
- 12 6. Plaintiff has listed discovery materials, declarations of the Defendants, and declarations
13 of inmate witnesses as exhibits. These materials may be used only to the extent
14 permitted by the rules of evidence.
- 15 7. Plaintiff alleges psychological and physical injuries. Generally, expert medical
16 testimony is necessary to establish whether Plaintiff suffered any mental or physical
17 harm as a result of the alleged retaliation and use of force. Plaintiff has not identified
18 any expert medical witnesses, and there is nothing in the record indicating that he is
19 qualified as an expert medical witness. In the absence of proof from a medical expert,
20 Plaintiff lacks competent medical evidence to make out a *prima facie* case of whether
21 he suffered any mental or physical harm as a result of the alleged retaliation and use of
22 force.

23 **F. SPECIAL FACTUAL INFORMATION**

24 None.

25 **G. RELIEF SOUGHT**

26 Plaintiff seeks \$350,000 in compensatory damages and \$200, 000 in punitive damages.

27 Defendants pray for judgment in their favor with an award of costs of the action.

28 **H. POINTS OF LAW**

1 **1. Section 1983**

2 The Civil Rights Act under which this action was filed provides a cause of action against any
3 “person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the
4 United States or other person within the jurisdiction thereof to the deprivation of any rights,
5 privileges, or immunities secured by the Constitution and laws [of the United States.]” 42 U.S.C.
6 § 1983. To prove a violation of § 1983, a plaintiff must establish that (1) the defendant deprived him
7 of a constitutional or federal right, and (2) the defendant acted under color of state law. West v.
8 Atkins, 487 U.S. 42, 48 (1988); Collins v. Womancare, 878 F.2d 1145, 1147 (9th Cir. 1989). “A
9 person deprives another of a constitutional right, within the meaning of section 1983, if he does an
10 affirmative act, participates in another’s affirmative acts, or omits to perform an act which he is
11 legally required to do that causes the deprivation of which [the plaintiff complains].” Leer v.
12 Murphy, 844 F.2d 628, 633 (9th Cir. 1993) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.
13 1978)). In other words, there must be an actual causal connection between the actions of each
14 defendant and the alleged deprivation. See Rizzo v. Goode, 423 U.S. 362, 370-71 (1976).

15 **2. Eighth Amendment Excessive Force Claim**

16 The Cruel and Unusual Punishments Clause of the Eighth Amendment protects prisoners
17 from the use of excessive physical force. Wilkins v. Gaddy, 130 S. Ct. 1175, 1178 (2010) (per
18 curiam); Hudson v. McMillian, 503 U.S. 1, 8-9 (1992). What is necessary to show sufficient harm
19 under the Eighth Amendment depends upon the claim at issue, with the objective component being
20 contextual and responsive to contemporary standards of decency. Hudson, 503 U.S. at 8 (quotation
21 marks and citations omitted). For excessive force claims, the core judicial inquiry is whether the
22 force was applied in a good-faith effort to maintain or restore discipline, or maliciously and
23 sadistically to cause harm. Wilkins, 130 S. Ct. at 1178 (quoting Hudson, 503 U.S. at 7) (quotation
24 marks omitted).

25 Not every malevolent touch by a prison guard gives rise to a federal cause of action. Wilkins,
26 130 S. Ct. at 1178 (quoting Hudson, 503 U.S. at 9) (quotation marks omitted). Necessarily excluded
27 from constitutional recognition is the de minimis use of physical force, provided that the use of force
28 is not of a sort repugnant to the conscience of mankind. Wilkins, 130 S. Ct. at 1178 (quoting

1 Hudson, 503 U.S. at 9-10) (quotations marks omitted). In determining whether the use of force was
2 wanton and unnecessary, courts may evaluate the extent of the prisoner’s injury, the need for
3 application of force, the relationship between that need and the amount of force used, the threat
4 reasonably perceived by the responsible officials, and any efforts made to temper the severity of a
5 forceful response. Hudson, 503 U.S. at 7 (quotation marks and citations omitted).

6 While the absence of a serious injury is relevant to the Eighth Amendment inquiry, it does
7 not end it. Hudson, 503 U.S. at 7. The malicious and sadistic use of force to cause harm always
8 violates contemporary standards of decency. Wilkins, 130 S. Ct. at 1178 (quoting Hudson, 503 U.S.
9 at 9) (quotation marks omitted). Thus, it is the use of force rather than the resulting injury which
10 ultimately counts. Wilkins, 130 S. Ct. at 1178.

11 **3. First Amendment violation based on Plaintiff’s claim of retaliation**

12 A plaintiff may state a claim for a violation of his First Amendment rights due to retaliation
13 under section 1983. Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995). A viable claim of
14 retaliation in violation of the First Amendment consists of five elements: “(1) An assertion that a
15 state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected
16 conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5)
17 the action did not reasonable advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d
18 559, 567 (9th Cir. 2005); accord Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009).

19 A plaintiff suing for retaliation under section 1983 must allege that “he was retaliated against
20 for exercising his constitutional rights and that the retaliatory action does not advance legitimate
21 penological goals, such as preserving institutional order and discipline.” Barnett v. Centoni, 31 F.3d
22 813, 816 (9th Cir. 1994). The plaintiff does not need to show actual inhibited or suppressed speech,
23 but that there was a chilling effect upon his speech. Rhodes, 408 F.3d at 569. The burden is on the
24 plaintiff to plead and prove the absence of any legitimate correctional goals for the alleged conduct.
25 Pratt, 65 F.3d at 807. An allegation of retaliation against a prisoner’s First Amendment right to file a
26 prison grievance is sufficient to support a claim under section 1983. Bruce v. Ylst, 351 F.3d 1283,
27 1288 (9th Cir. 2003). The correct inquiry is “whether an official’s acts would chill or silence a
28 person of ordinary firmness from further First Amendment activities.” Rhodes, 408 F.3d at 569

1 (citations omitted).

2 **4. Punitive Damages**

3 The Plaintiff has the burden of proving what, if any, punitive damages should be awarded by
4 a preponderance of the evidence. NINTH CIRCUIT MODEL CIVIL JURY INSTRUCTIONS § 5.5 (2009).
5 The jury must find that the defendant’s conduct is “motivated by evil motive or intent, or . . .
6 involves reckless or callous indifference to the federally protected rights of others.” Smith v. Wade,
7 461 U.S. 30, 56 (1986). See also Larez v. Holcomb, 16 F.3d 1513, 1518 (9th Cir. 1994).

8 **I. ABANDONED ISSUES**

9 None.

10 **J. WITNESSES**

11 The following is a list of witnesses that the parties expect to call at trial, including rebuttal
12 and impeachment witnesses. NO WITNESS, OTHER THAN THOSE LISTED IN THIS SECTION,
13 MAY BE CALLED AT TRIAL UNLESS THE PARTIES STIPULATE OR UPON A SHOWING
14 THAT THIS ORDER SHOULD BE MODIFIED TO PREVENT “MANIFEST INJUSTICE.” Fed.
15 R. Civ. P. 16(e); Local Rule 16-281(b)(10).

16 Plaintiff anticipates calling the following witnesses at trial:

- 17 1. Inmate Kevin Fields
- 18 2. Defendant L. Gonzales
- 19 3. Defendant J.C. Thomas
- 20 4. Defendant Beltran

21 Defendant anticipates calling the following witnesses at trial:

- 22 1. Correctional Officer L. Gonzales;
- 23 2. Correctional Officer E. A. Belton;
- 24 3. Correctional Officer J. Thomas;
- 25 4. Correctional Sergeant R. Peters;
- 26 5. Correctional Officer A. Smith;
- 27 6. Medical Technical Assistant C. Bowe (formerly known as C. Sullivan);
- 28 7. Registered Nurse D. Montoya , percipient and expert witness designated pursuant

1 to Fed. R. Civ. P. 26(a)(2);

2 8. Correctional Sergeant M. Robicheaux, expert witness designated pursuant to Fed.
3 R. Civ. P. 26(a)(2);

4 9. Correctional Sergeant F. Martinez, expert witness designated pursuant to Fed. R.
5 Civ. P. 26(a)(2);

6 10. V. Amirpour, M.D., expert witness designated pursuant to Fed. R. Civ. P.
7 26(a)(2).

8 **K. EXHIBITS, SCHEDULES AND SUMMARIES**

9 The following is a list of documents or other exhibits that the parties expect to offer at trial.

10 NO EXHIBIT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE ADMITTED
11 UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS ORDER SHOULD
12 BE MODIFIED TO PREVENT “MANIFEST INJUSTICE.” Fed. R. Civ. P. 16(e); Local Rule 16-
13 281(b)(11).

14 **Plaintiff’s Exhibits**

- 15 1. Medical records from CSP Corcoran and Mercy Hospital
16 2. Documents regarding his 602 appeal
17 3. Declarations of inmate witnesses
18 4. Copies of specific state regulations
19 5. Excerpts from Plaintiff’s prison central file
20 6. Copies of past orders issued by Defendants
21 7. Copies of local prison policies and procedures
22 8. Other documents from Defendant’s discovery responses

23 **Defendant’s Exhibits**

- 24 1. Plaintiff’s Health Care Services Request forms, dated January 10, 2006, through
25 December 4, 2007;
26 2. Plaintiff’s Physicians’ Progress Notes, dated January 23, 2005, through December
27 15, 2006;1.
28 3. Plaintiff’s Physicians’ Orders, dated January 14, 2005, through December 18,

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- 2006;
- 4. Plaintiff's comprehensive Accommodation Chronos, dated August 7, 2006, through January 26, 2007;
- 5. Plaintiff's Medication Administration Records, dated January 2005, through December 2007;
- 6. Plaintiff's Emergency Care Flow Sheets, dated February 28, 2005, through January 11, 2007.
- 7. Plaintiff's Radiology Reports and Consultations;
- 8. Plaintiff's Orthopedic Clinic Notes, dated November 29, 2006, through July 26, 2007;
- 9. Plaintiff's Inpatient Records for Hospital Admissions on April 21, 2005, May 2, 2006, June 28, 2006, August 26, 2006, September 22, 2006, September 30, 2006, October 30, 2006, November 30, 2006, December 17, 2006, and January 11, 2007.
- 10. Plaintiff's Mental Health Placement Records, dated August 26, 2006, through December 17, 2006; and
- 11. Plaintiff's Mental Health Progress Notes, for the years 2005, 2006, and 2007.

On or before **December 12, 2011**, each party shall provide the other with a copy of any exhibit not previously produced during discovery. No later than **January 10, 2011**, each party shall provide to the other side, a complete set of pre-marked exhibits that the party intends to use at trial.

In addition, the original and four copies of all trial exhibits, along with exhibit lists, shall be submitted to the Courtroom Deputy no later than **January 10, 2011**.¹ Plaintiff's exhibits shall be pre-marked and numbered sequentially beginning with 1 through 500 (e.g., Exhibit 1, Exhibit 2, etc.). Defendants's exhibits shall be pre-marked and numbered sequentially beginning with 501 (e.g., Exhibit 501, Exhibit 502, etc.).

The Parties shall number each page of any exhibit exceeding one page in length.

¹Original for the Courtroom Deputy, one copy for the Court, one copy for the court reporter, one copy for the witness stand and one to retain for themselves.

1 **L. DISCOVERY DOCUMENTS**

2 The following is a list of discovery documents – portions of depositions, answers to
3 interrogatories, and responses to requests for admissions – that the parties expect to offer at trial.
4 NO DISCOVERY DOCUMENT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE
5 ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS
6 ORDER SHOULD BE MODIFIED TO PREVENT “MANIFEST INJUSTICE.” Fed. R. Civ. P.
7 16(e); Local Rule 281(b)(12).

8 Should either party wish to rely upon any deposition testimony, the party SHALL lodge the
9 original transcript of any deposition with the Courtroom Deputy no later than **January 10, 2012**.

10 Plaintiff anticipates offering the following discovery documents at trial:

- 11 1. Plaintiff’s Deposition lodged with the court August 31, 2010 (Doc. 54).
12 2. Discovery responses provided from interrogatories and requests for admissions, as
13 needed.

14 Defendant anticipates offering the following discovery documents at trial:

- 15 1. Plaintiff’s Deposition, lodged with the court August 31, 2010 (Doc. 54).

16 **M. FURTHER DISCOVERY OR MOTIONS**

17 Discovery closed in this action on June 30, 2010. (Doc. 44).

18 Any party may file motions in limine. The purpose of a motion in limine is to establish in
19 advance of the trial that certain evidence should not be offered at trial. Although the Federal Rules
20 do not explicitly provide for the filing of motions in limine, the court has the inherent power to hear
21 and decide such motions as a function of its duty to expeditiously manage trials by eliminating
22 evidence that is clearly inadmissible for any purpose. Luce v. United States, 469 U.S. 38, 41 n.4
23 (1984); Jonasson v. Lutheran Child and Family Services, 115 F. 3d 436, 440 (7th Cir. 1997). The
24 court will grant a motion in limine, and thereby bar use of the evidence in question, only if the
25 moving party establishes that the evidence clearly is not admissible for any valid purpose. Id.
26 All motions in limine must be served on the other party, and filed with the Court, by **December 23,**
27 **2011**. The motion must clearly identify the nature of the evidence that the moving party seeks to
28 prohibit the other side from offering at trial. Any opposition to the motion must be served on the

1 other party, and filed with the Court, by **January 6, 2012**. The Court will decide all motions in
2 limine upon the written submissions. The parties are reminded that they may still object to the
3 introduction of evidence during trial.

4 **N. STIPULATIONS**

5 The parties have not agreed upon any stipulations at this time.

6 **O. AMENDMENTS/DISMISSALS**

7 None at this time.

8 **P. SETTLEMENT NEGOTIATIONS**

9 On August 29, 2011, Plaintiff filed a motion requesting a settlement conference (Doc. 77),
10 however based on Defendants statement that settlement negotiations would not be useful at this
11 juncture, the Court, on September 14, 2011, denied Plaintiff's motion. (Doc. 86).

12 **Q. AGREED STATEMENT**

13 Plaintiff intends to file a proposed statement of the case.

14 **R. SEPARATE TRIAL OF ISSUES**

15 As is this Court's standard practice, the Court will bifurcate the issue of punitive damages. If
16 the jury finds that the Defendant is liable for punitive damages, the Court will conduct a second
17 phase of trial on the amount of punitive damages.

18 **S. EXPERTS**

19 The Court has considered Plaintiff's motion (Doc. 79) for the appointment of an expert
20 witness and has denied Plaintiff's motion. (Doc. 87).

21 **T. ATTORNEYS' FEES**

22 Plaintiff is proceeding pro se and is not entitled to attorney's fees. Defendant is seeking
23 attorneys' fees and costs.

24 **U. TRIAL DATE / ESTIMATED LENGTH OF TRIAL**

25 Jury trial is set for **January 31, 2012**, at 09:00 a.m. before the Honorable Jennifer L.
26 Thurston in Courtroom 6, 7th Floor, United States Courthouse, 2500 Tulare Street, Fresno,
27 California. Trial is expected to last no longer than two days.

28 **V. TRIAL PREPARATION AND SUBMISSIONS**

1 1. Trial Briefs

2 The parties are relieved of their obligation under Local Rule 285 to file trial briefs. If any
3 party wishes to file a trial brief, he must do so in accordance with Local Rule 285 and be filed on or
4 before **January 6, 2012**.

5 2. Jury Voir Dire

6 The parties are required to file their proposed voir dire questions, in accordance with Local
7 Rule 162.1, on or before **January 6, 2012**.

8 3. Statement of the Case

9 The parties SHALL file a non-argumentative, brief statement of the case which is suitable for
10 reading to the jury at the outset of jury selection on or before **January 6, 2012**. The Court will
11 consider the parties' statements but, as necessary, will draft its own statement. The parties will be
12 provided with the opportunity to review the Court's prepared statement on the morning of trial.

13 4. Jury Instructions

14 Defendants shall file proposed jury instructions as provided in Local Rule 163 on or before
15 **January 6, 2012**. If Plaintiff also wishes to file proposed jury instructions or object to those
16 proposed by Defendants, he must do so on or before **January 13, 2012**.

17 In selecting proposed instructions, the parties shall use Ninth Circuit Model Civil Jury
18 Instructions to the extent possible. All jury instructions must be submitted in duplicate: One set will
19 indicate which party proposes the instruction, with each instruction numbered or lettered, and
20 containing citation of supporting authority, and the customary legend, i.e., "Given, Given as
21 Modified, or Refused," showing the Court's action, with regard to each instruction. One set will be
22 an exact duplicate of the first, except it will not contain any identification of the party offering the
23 instruction or supporting authority or the customary legend of the Court's disposition. Defendants
24 shall provide the Court with a copy of their proposed jury instructions via e-mail at
25 jltorders@caed.uscourts.gov. If Plaintiff elects to file any proposed jury instructions, he may file
26 those, as normal, under this case number with the Clerk of the Court.

27 5. Verdict Form

28 Defendants shall file a proposed verdict form as provided in Local Rule 163 on or before

1 **January 6, 2012.** If Plaintiff also wishes to file a proposed verdict form or object to the one filed by
2 Defendants, he must do so on or before **January 13, 2012.**

3 **W. OBJECTIONS TO PRETRIAL ORDER**

4 Any party may, within 10 days after the date of service of this order, file and serve written
5 objections to any of the provisions set forth in this order. Such objections shall clearly specify the
6 requested modifications, corrections, additions or deletions.

7 **X. MISCELLANEOUS MATTERS**

8 Plaintiff's Miscellaneous Matters:

9 Plaintiff requests that he be unrestrained while before the jury and that he be allowed to wear
10 "non-prison" clothing during trial. (Doc. 80 at 13). Plaintiff additionally requests the ability to use
11 the same technology as defense counsel. (Doc. 80 at 13). The Court notes that should it grant
12 Plaintiff's request to wear "non-prison" clothing it will be Plaintiff's responsibility to arrange for the
13 clothing to be available at the time of trial and at Plaintiff's own expense.

14 The Court **DENIES** Plaintiff's request to be completely unshackled. As long as he is
15 compliant and not disruptive, he will be permitted to have his hands unshackled.

16 Because Plaintiff will be required to remain seated, due to his shackling, the Court **ORDERS**
17 that defense counsel and others at counsels' table will remain seated also. Defendants object to the
18 requirement that they remain seated *unless* the Court instructs the jury that they have been ordered to
19 remain seated. Because the Court finds that raising this issue with the jury unnecessarily and
20 prejudicially reminds jurors of Plaintiff's custody status, the Court **OVERRULES** Defendants'
21 objections.

22 Any use of courtroom technology by either side **SHALL** be only through the limited
23 assistance of the courtroom staff. Thus, both sides should be prepared to present their cases without
24 the use of courtroom technology to the extent possible.

25 Plaintiff's custody status is an element of his claim. Therefore, whether he wears prison or
26 non-prison clothes while before the jury, is not prejudicial or beneficial to him. However, if Plaintiff
27 provides his own non-prison clothing and wearing these clothes is permitted by his custodians, the
28 Court **GRANTS** his request to wear non-prison clothing. However, if the clothes are not available at

1 the time of trial, undue delay would be caused by changing clothes or his custodians will not permit
2 Plaintiff to wear non-prison clothes or, then the Court will reconsider this order and the request will
3 be DENIED at that time.

4 Defendant's Miscellaneous Matters:

5 Claims of Privilege: To the extent that Plaintiff attempts to obtain, by subpoena or otherwise,
6 ECFCR departmental records containing personal information relating to any Defendant, Defendants
7 will claim privilege as found at California Code of Regulations, Title 15, section 3450(e).

8 **Y. COMPLIANCE**

9 Strict compliance with this order and its requirements is mandatory. All parties and their
10 counsel are subject to sanctions, including dismissal or entry of default, for failure to fully comply
11 with this order and its requirements.

12 IT IS SO ORDERED.

13 Dated: November 8, 2011

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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