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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 ANTHONY JOHNSON,) Case No.: 1:09-cv-01264-BAM (PC)
12 Plaintiff,)
13 v.) ORDER GRANTING IN PART AND DENYING IN
14 L. GONZALEZ, et al.,) PART DEFENDANTS' MOTION IN LIMINE #1
15 Defendants.) ORDER GRANTING DEFENDANTS' MOTIONS
16) IN LIMINE #2, #3, #4, AND #5.
) (ECF No. 150)
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17 **I. Introduction**

18 Plaintiff Anthony Johnson ("Plaintiff") is a state prisoner proceeding pro se and in forma
19 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's
20 claim of excessive force in violation of the Eighth Amendment to the United States Constitution
21 against Defendant Gonzales (erroneously sued as L. Gonzalez) and Defendant Murrieta arising out of
22 an alleged assault following the takedown of Plaintiff by Defendant Gonzales on June 9, 2008. A jury
23 trial is set for April 28, 2015.

24 On April 1, 2015, Defendants filed their motions in limine. (ECF No. 150.) Plaintiff filed an
25 opposition on April 15, 2015. (ECF No. 170.) Defendants' motions for limine came on for hearing on
26 April 21, 2015, before the Honorable Barbara A. McAuliffe, United States Magistrate Judge. Plaintiff
27 appeared telephonically on his own behalf. Timothy Delgado and Maureen Onyeagbako of the
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1 Attorney General's Office of California appeared telephonically on behalf of Defendants Gonzales and
2 Murrieta. Having considered the moving papers, as well as the arguments of the parties, the Court
3 issues the following order.

4 **II. Defendants' Motions in Limine**

5 **A. Allegations at Issue**

6 On June 9, 2008, Defendants Gonzales and Murrieta were escorting Plaintiff back to his cell
7 from the law library. Defendants were trying to engage Plaintiff in conversation, making threats and
8 using profanity. Defendant Gonzales began pulling on Plaintiff's left arm, telling him to speed up and
9 walk faster. Plaintiff's hands were handcuffed behind his back and he was holding his legal mail.
10 Plaintiff responded that he could not go any faster and that he was losing his grip on the envelope he
11 was holding because Defendant Gonzales was pulling on his arm. Defendant Gonzales slammed
12 Plaintiff to the ground with enough force that "Plaintiff's head was busted." (ECF No. 1, ¶ 17.) Plaintiff
13 was struck by Defendants Gonzales and Murrieta numerous times before losing consciousness. When
14 Plaintiff regained consciousness, Correctional Officers Beltran and Blevins escorted him to the
15 medical clinic for treatment.

16 Plaintiff's claim is limited to the time period after the initial takedown by Defendant Gonzales
17 and his allegations that Defendants Gonzales and Murrieta struck him numerous times before he lost
18 consciousness.

19 **B. Motion in Limine: Standard**

20 A party may use a motion in limine to exclude inadmissible or prejudicial evidence before it is
21 actually introduced at trial. *See Luce v. United States*, 469 U.S. 38, 40 n. 2 (1984). "[A] motion in
22 limine is an important tool available to the trial judge to ensure the expeditious and evenhanded
23 management of the trial proceedings." *Jonasson v. Lutheran Child and Family Services*, 115 F.3d
24 436, 440 (7th Cir. 1997). A motion in limine allows the parties to resolve evidentiary disputes before
25 trial and avoids potentially prejudicial evidence being presented in front of the jury. *Brodit v.*
26 *Cambra*, 350 F.3d 985, 1004-05 (9th Cir. 2003).

1 Motions in limine that exclude broad categories of evidence are disfavored, and such issues are
2 better dealt with during trial as the admissibility of evidence arises. *Sperberg v. Goodyear Tire &*
3 *Rubber, Co.*, 519 F.2d 708, 712 (6th Cir. 1975). Additionally, some evidentiary issues are not
4 accurately and efficiently evaluated by the trial judge in a motion in limine and it is necessary to defer
5 ruling until trial when the judge can better estimate the impact of the evidence on the jury. *Jonasson*,
6 115 F.3d at 440.

7 **C. Defendants' Motion in Limine #1**

8 Defendants move to preclude Plaintiff from introducing evidence and testimony regarding the
9 propriety of the initial takedown and a knee injury allegedly sustained during the initial takedown.

10 The issue for trial is whether or not Defendants used excessive force following the initial
11 takedown of Plaintiff. Therefore, the *propriety* of the initial takedown is not relevant. Fed. R. Evid.
12 401. However, Plaintiff is not precluded from introducing evidence and testimony regarding the
13 entirety of the incident, including events before and after the takedown, to provide context for the jury.

14 With regard to the knee injury, Plaintiff has not attributed his knee pain and injury to the initial
15 takedown. Therefore, such allegations are relevant to this action and Plaintiff's claim for damages.
16 Fed. R. Evid. 401. Plaintiff is not precluded from providing testimony regarding what happened and
17 how he was injured.

18 Nonetheless, Plaintiff is not a qualified medical expert and may not offer any opinion evidence
19 regarding his medical records or his medical condition, including diagnosis, opinions, inferences or
20 causation. As a non-expert, Plaintiff may testify only as to what he saw or felt relating to his injuries.
21 Plaintiff may not testify as to any medical matter that requires scientific, technical, or other specialized
22 knowledge. Fed. R. Evid. 701, 702.

23 Accordingly, Defendants' motion in limine #1 is GRANTED IN PART and DENIED IN
24 PART. Plaintiff may not challenge the propriety of the initial takedown. However, Plaintiff may
25 provide evidence and testimony regarding the context of what happened before and after the initial
26 takedown and the injuries he sustained. He may not testify as to any medical matter that requires
27 scientific, technical or other specialized testimony.
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1 **D. Motion in Limine #2**

2 According to his pretrial statement, Plaintiff intends to introduce the declarations of inmates
3 Mario Richard Madrid and Hayward Mayhan. By motion in limine #2, Defendants seek to exclude the
4 declarations of these inmate witnesses as inadmissible hearsay. Fed. R. Evid. 801, 802.

5 Inmates Madrid and Mayhan will be transported and available for trial. As these inmates are
6 proposed trial witnesses, Plaintiff may elicit any relevant testimony from them at trial and the
7 declarations are unnecessary.

8 Accordingly, Defendants' motion in limine #2 is HEREBY GRANTED.

9 **E. Motion in Limine #3**

10 Defendants ask the Court to exclude any testimony about other lawsuits in which they, or other
11 officials employed by the California Department of Corrections and Rehabilitation, are named as
12 defendants. Defendants also ask that Plaintiff and any of his witnesses be precluded from testifying
13 about or inferring that Defendants are currently a party to any lawsuit, or that they have been in the
14 past. Defendants contend that this testimony is not relevant and is therefore inadmissible. Fed. R.
15 Evid. 401, 402. Defendants further contend that even if this testimony is relevant, it would improperly
16 confuse the jury and its probative value, if any, is substantially outweighed by the danger of unfair
17 prejudice. Fed. R. Evid. 403.

18 Plaintiff claims that both Defendants, but mainly Defendant Gonzales, have a history of
19 assaulting inmates. To the extent Plaintiff generally intends to offer evidence that these Defendants or
20 other CDCR officials have been sued, such evidence is of no consequence in determining whether or
21 not Defendants used excessive force in this instance. Fed. R. Evid. 401(b). As discussed at the
22 hearing, lawsuits in which any defendant or prison official was found not liable is probative of nothing
23 and therefore irrelevant. Given the lack of relevance, general evidence regarding other lawsuits
24 brought against Defendants or CDCR officials will not be permitted.

25 Accordingly, Defendants' motion in limine #3 is HEREBY GRANTED.

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1 **F. Motion in Limine #4**

2 Defendants ask the Court to preclude Plaintiff from questioning them about any matters
3 contained in their personnel records, including information of a personal nature, as well as any
4 information concerning any disciplinary actions or complaints filed against them. Among other
5 things, Defendants contend that any disciplinary actions or prisoner complaints against them are
6 irrelevant to this case. Fed. R. Evid. 401, 402.

7 The Court finds that evidence of any disciplinary actions or other prisoner complaints against
8 Defendants are irrelevant to this action because they necessarily will involve different facts and
9 circumstances. Fed. R. Evid. 401, 402.

10 To the extent Plaintiff seeks to introduce evidence or testimony regarding disciplinary actions,
11 complaints and investigations as character evidence, he may not do so. Evidence of a crime, wrong, or
12 other act is not admissible to prove a person's character in order to show that on a particular occasion
13 the person acted in accordance with the character. Fed. R. Evid. 404(b)(1). However, this evidence
14 may be admissible for another purpose, such as "proving motive, opportunity, intent, preparation,
15 plan, knowledge, identity, absence of mistake, or lack of accident." Fed. R. Evid. 404(b)(2).

16 "The Ninth Circuit has held that evidence may be admitted pursuant to 404(b) if '(1) the
17 evidence tends to prove a material point; (2) the other act is not too remote in time; (3) the evidence is
18 sufficient to support a finding that defendant committed the other act; and (4) (in certain cases) the act
19 is similar to the offense charged.'" *United States v. Cherer*, 513 F.3d 1150, 1157 (9th Cir. 2008)
20 (quoting in part *United States v. Romero*, 282 F.3d 683, 688 (9th Cir. 2002)). If evidence satisfies
21 Rule 404(b), "the court must then decide whether the probative value is substantially outweighed by
22 the prejudicial impact under Rule 403." *Id.* The proponent of the disputed evidence bears the burden of
23 demonstrating its admissibility under the foregoing test.

24 As discussed at the hearing, Plaintiff makes no showing that the evidence he intends to offer
25 tends to prove a material point or is sufficient to support a finding that Defendants committed any
26 prior bad acts. Plaintiff has not sufficiently demonstrated that any prior bad act or use of excessive
27 force by Defendants occurred. Establishing such evidence likely would result in a mini-trial during
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1 the course of testimony. Plaintiff therefore has failed to meet his burden of proof pursuant to Rule
2 404(b). Additionally, the probative value of such evidence is substantially outweighed by the danger
3 of unfair prejudice to Defendants, undue delay, confusion of the issues, and misleading the jury. Fed.
4 R. Evid. 403.

5 Accordingly, Defendants' motion in limine #4 is HEREBY GRANTED.

6 **G. Motion in Limine #5**

7 Defendants seek to preclude evidence or testimony regarding settlement discussions. Any
8 attempt by Plaintiff to introduce evidence of settlement negotiations to prove liability is prohibited by
9 Federal Rule of Evidence 408. *Green v. Baca*, 226 F.R.D. 624, 640 (C.D. Cal. 2005); Fed. R. Evid.
10 408. As discussed at the hearing, Plaintiff may not call defense counsel as witness to question him
11 about statements made in connection with this action.

12 Accordingly, Defendants' motion in limine #5 is HEREBY GRANTED.

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14 IT IS SO ORDERED.

15 Dated: April 22, 2015

16 /s/ Barbara A. McAuliffe
17 UNITED STATES MAGISTRATE JUDGE
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