

1 behalf of Plaintiff, and Supervising Deputy Attorney General Monica Anderson and
2 Deputy Attorney General Erin Doering appeared on behalf of Defendants. The following
3 pretrial order now issues.

4 **I. Jurisdiction and Venue**

5 The Court has subject matter jurisdiction over this federal civil rights action. 28
6 U.S.C. §§ 1331 and 1343(a)(3).

7 Venue is proper under 28 U.S.C. § 1391 because the conduct allegedly occurred
8 in this judicial district.

9 **II. Jury Trial**

10 The parties have demanded a jury trial.

11 **III. Brief Summary of Parties' Positions**

12 Because many of the relevant facts are in dispute, the Court here briefly
13 summarizes its understanding of the parties' respective positions.

14 Plaintiff alleges he was classified as a Sensitive Needs Yard ("SNY") inmate from
15 2000 to February 2011. In January 2011, Plaintiff was transferred from Salinas Valley
16 State Prison ("SVSP") to Pleasant Valley State Prison ("PVSP") due to enemy concerns
17 with members of the Northern Riders gang at SVSP. Upon his transfer, Plaintiff received
18 a threat of harm from inmate Robert Siordia, the leader of the Northern Riders at PVSP
19 with whom Plaintiff had had enemy concerns in the past. During his January 19, 2011
20 Unit Classification Committee ("UCC") hearing, at which Plaintiff's housing placement
21 would be determined, Plaintiff relayed his fears regarding inmate Siordia and the
22 Northern Riders to Defendants. Defendant Walker, who was Chairperson of the
23 committee, told Plaintiff he was "out of places to go" and would have to "man up."
24 Defendant Walker instructed officers to retrieve Siordia from his housing unit and place
25 him in a holding cell adjacent to Plaintiff so that the two could "work out their issues."
26 Immediately after the hearing, Plaintiff was moved to Facility A, the same unit where
27 Siordia was housed. For two days, members of the Northern Riders gang loitered
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1 outside of Plaintiff's cell, rendering Plaintiff too afraid to leave his cell for meals. On
2 January 20, 2011, Plaintiff, overcome with fear and stress, slit his own wrist and was
3 transferred out of the unit.

4 Defendants acknowledge that inmate Siordia was classified as Plaintiff's enemy in
5 2005, but point out he was removed from Plaintiff's enemy list at Plaintiff's request in
6 2008, and was not on Plaintiff's enemy list between 2008 and the January 19, 2011
7 hearing. Defendants deny that Plaintiff raised any concerns about Siordia or the
8 Northern Riders during his UCC hearing—if he had, Defendants would have followed set
9 procedures to investigate and resolve the safety concerns. They would not have
10 exposed Plaintiff to a plausible risk of harm. In any event, the only unit for Plaintiff, an
11 SNY prisoner, was where he was placed, Facility A. Plaintiff was not harmed by any
12 inmate in Facility A. His only wounds were self-inflicted.

13 **IV. Undisputed Facts**

14 The Court believes the following facts are not in dispute and it intends to submit
15 them to the jury as stipulated facts:

- 16 1. Plaintiff was incarcerated within the California Department of Corrections and
17 Rehabilitations ("CDCR") and housed at Pleasant Valley State Prison
18 ("PVSP") at the time of the events giving rise to the claims at issue here.
- 19 2. Plaintiff was classified as a Sensitive Needs Yard (SNY) inmate continuously
20 from 2000 to and through February 2011.
- 21 3. Facility A at PVSP is a SNY.
- 22 4. At times material to the claims at issue, Defendants Davis, Spralding, Prokop,
23 and Fellows were employed by PVSP as Correctional Counselors, and
24 Defendant Walker was employed by PVSP as a Correctional Captain.
- 25 5. Though denying that they acted or failed to act as Plaintiff alleges, to the
26 extent they so acted, Defendants would have been acting under color of state
27 law.

- 1 6. On January 6, 2011, Plaintiff was transferred from Salinas Valley State Prison
2 ("SVSP") to PVSP and placed in an orientation cell.
- 3 7. On January 19, 2011, Plaintiff was brought before the Facility A Unit
4 Classification Committee ("UCC") at PVSP for an initial program review.
- 5 8. Defendant Walker was the Chairperson of the January 19, 2011 UCC.
- 6 9. Defendant Fellows was the Recorder for the January 19, 2011 UCC hearing
7 and charged with preparing a "Form 128-G Chrono" to document the meeting.
- 8 10. Following the UCC meeting, Plaintiff was moved to Housing Unit Two in
9 Facility A at PVSP.
- 10 11. On January 20, 2011, at Housing Unit Two, Plaintiff cut his left wrist.
- 11 12. On January 20, 2011, Plaintiff was transported from Housing Unit Two to the
12 PVSP Emergency Treatment Center and admitted into a suicide watch crisis
13 bed for observation and treatment.
- 14 13. Plaintiff was subsequently transferred into the custody of the Department of
15 State Hospitals at Vacaville, California, for mental health care.

16 **V. Disputed Facts**

- 17 1. Whether Defendants Davis, Spradling, and Prokop were present at the
18 January 19, 2011 UCC hearing.
- 19 2. Whether Plaintiff advised Defendants during the January 19, 2011 UCC
20 hearing that he was transferred to PVSP because of safety concerns involving
21 the Northern Riders gang at SVSP.
- 22 3. Whether Plaintiff informed Defendants during the January 19, 2011 UCC
23 hearing that he had safety concerns concerning Northern Riders gang leader
24 Robert Siordia and his associates.
- 25 4. Whether Plaintiff advised Defendants during the January 19, 2011 UCC
26 hearing that Siordia had given him a verbal warning not to come to the PVSP
27 SNY at Facility A.

- 1 5. Whether one of the Defendants at the January 19, 2011 UCC hearing told
- 2 Plaintiff he had nowhere else to go and so needed to work out his issues with
- 3 Siordia.
- 4 6. Whether on January 19, 2011, Defendants told Siordia or caused him to be
- 5 told that Plaintiff had accused him of threatening Plaintiff.
- 6 7. Whether Plaintiff and Siordia were placed into adjacent holding cells and told
- 7 by, or on behalf of, Defendants to “work out” their issues.
- 8 8. Whether Defendants knew Siordia and the Northern Riders gang posed a
- 9 substantial risk to Plaintiff’s safety.
- 10 9. Whether Facility A was the only facility at PVSP where Plaintiff could have
- 11 been housed.
- 12 10. Whether Defendants knew or had reason to know Plaintiff would harm himself
- 13 if housed in Facility A.
- 14 11. Whether Plaintiff was taken forcibly to Facility A after the January 19, 2011
- 15 UCC hearing.
- 16 12. Whether Defendants’ actions or inactions caused Plaintiff’s physical, mental or
- 17 emotional injuries.

18 **VI. Disputed Evidentiary Issues**

19 **A. Plaintiff**

20 Plaintiff intends to file motions in limine to bar Defendants from presenting

21 evidence of or making reference to: 1) Plaintiff’s criminal history; 2) the criminal history of

22 Plaintiff’s witnesses; 3) Plaintiff’s prison disciplinary record; 4) Plaintiff’s history of

23 administrative appeals and litigation unrelated to the instant lawsuit; and 5) any

24 documents not previously disclosed to Plaintiff.

25 Plaintiff reserves the right to file a motion in limine to bar testimony of Defendants’

26 expert witnesses if it is revealed through deposition that their opinions are based in

27 whole or in part on materials that should have been produced during discovery and

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1 which were withheld from Plaintiff.

2 At this time, Plaintiff does not object to any of Defendants' proposed witnesses.
3 Plaintiff anticipates objecting to Defendants' proposed trial exhibits.

4 **B. Defendants**

5 **1. Witnesses**

6 Defendants object to any testimony by any witness regarding Plaintiff's alleged
7 enemy concerns with the Northern Riders gang.

8 **2. Documentary Evidence**

9 Defendants plan to object to Plaintiff's introduction of the following documentary
10 evidence:

- 11 1. Copies of Plaintiff's mental health care appeals/complaints between 2011 and
12 2015.
- 13 2. Classification committee hearing documents that post-date the January 19,
14 2011 hearing at issue.
- 15 3. Administrative appeals that post-date the January 19, 2011 hearing at issue.
- 16 4. Any administrative grievances that are not related to Plaintiff's enemy
17 concerns with Siordia except if and as Plaintiff demonstrates they were seen
18 by Defendants.
- 19 5. Sections of the CDCR Department Operations Manual that were not in effect
20 at the relevant time.
- 21 6. The declarations of any incarcerated witnesses who do not testify at trial.
- 22 7. Any evidence regarding Plaintiff's alleged concerns with the Northern Riders
23 prison gang.
- 24 8. Any inmate witness declarations that are not based on actual first-hand
25 knowledge.

26 Defendants also reserve objections to specific testimony and exhibits until such
27 time as Defendants have had the opportunity to hear such testimony and examine such
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1 exhibits.

2 **VII. Relief Sought**

3 Plaintiff seeks compensatory damages in the amount of \$650,000 and punitive
4 damages in the amount of \$650,000. Plaintiff also seeks costs and attorneys' fees. In
5 the event the jury finds that Plaintiff's constitutional rights were violated but Plaintiff
6 suffered no quantifiable damages, Plaintiff requests nominal damages.

7 Defendants seek judgment in their favor and costs.

8 **VIII. Points of Law**

9 **A. Liability and Linkage Under the Civil Rights Act**

10 In order to prevail under section 1983, Plaintiff must first demonstrate a violation
11 of his federally protected constitutional rights. Havas v. Thornton, 609 F. 2d 372, 374
12 (9th Cir. 1979); Rutherford v. City of Berkeley, 780 F. 2d 1333, 1446 (9th Cir. 1986);
13 Baker v. McCollan, 443 U.S. 137, 140 (1979).

14 Plaintiff must prove that each Defendant acted "under color of state law," 42
15 U.S.C. § 1983, and that each individual defendant personally participated in the
16 constitutional violation—that each of the individual defendants either performed
17 affirmative acts, or failed to perform legally required duties, which violated Plaintiff's
18 constitutional rights. Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988); Johnson v.
19 Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

20 Plaintiff must prove the unlawful conduct of each defendant. Vague and
21 conclusory claims concerning the involvement of official personnel in civil rights
22 violations are not sufficient. Ivey v. Board of Regents of the Univ. of Alaska, 673 F.2d
23 266, 268 (9th Cir. 1982). Under 42 U.S.C. § 1983, there must be an actual connection or
24 link between the actions of the defendants and the deprivation suffered by the Plaintiff.
25 See Monell v. Dep't of Social Services, 426 U.S. 658 (1978); Rizzo v. Goode, 423 U.S.
26 362 (1976).

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1 **B. Eighth Amendment Failure to Protect**

2 Prison officials have a duty to protect prisoners from violence at the hands of
3 other inmates. Farmer v. Brennan, 511 U.S. 825, 833 (1994). The failure of prison
4 officials to protect inmates may rise to the level of an Eighth Amendment violation when
5 “(1) the deprivation alleged is ‘objectively, sufficiently serious’ and (2) the prison officials
6 had a ‘sufficiently culpable state of mind,’ acting with deliberate indifference.” Hearns v.
7 Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005) (quoting Farmer, 511 U.S. at 834).

8 With regard to the first prong, an inmate making a failure to protect claim satisfies
9 the “sufficiently serious deprivation” requirement by “show[ing] that he is incarcerated
10 under conditions posing a substantial risk of serious harm.” Lemire v. California Dep’t of
11 Corr. & Rehab., 726 F.3d 1062, 1075 (9th Cir. 2013) (quoting Farmer, 511 U.S. at 834).
12 While it is true that the determination of the point at which a risk of harm becomes
13 sufficiently substantial to implicate the Eighth Amendment has not been fleshed out,
14 Estate of Ford v. Ramirez-Palmer, 301 F.3d 1043, 1050-51 (9th Cir. 2002) (citing
15 Farmer, 511 U.S. at 834), “[t]he objective question of whether a prison officer’s actions
16 have exposed an inmate to a substantial risk of serious harm is a question of fact, and
17 as such must be decided by a jury if there any room for doubt.” Lemire, 726 F.3d at
18 1075-76 (citations omitted). Moreover, in order to satisfy the objective prong, “it is
19 enough for the inmate to demonstrate that he was exposed to a substantial risk of some
20 range of serious harms; the harm he actually suffered need not have been the most
21 likely result among this range of outcomes.” Id. at 107.

22 To satisfy the second prong, deliberate indifference, Defendants must have been
23 aware of facts from which the inference could be drawn that a substantial risk of harm
24 exists, and they must also have drawn and disregarded that inference. Farmer, 511 U.S.
25 at 837. While mere negligence on the part of Defendants is not enough to prove liability,
26 id. at 836, a prison official does “not escape liability if the evidence show[s] he merely
27 refused to verify underlying facts that he strongly suspected to be true, or declined to
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1 confirm inferences of risk that he strongly suspected to exist.” Id. at 843, n. 8.

2 **C. Qualified Immunity**

3 Government officials enjoy qualified immunity from civil damages unless their
4 conduct violates “clearly established statutory or constitutional rights of which a
5 reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).
6 Resolving a claim of qualified immunity requires courts to determine whether the facts
7 alleged, when taken in the light most favorable to the plaintiff, violated a constitutional
8 right, and if so, whether the right was clearly established. Saucier v. Katz, 533 U.S. 194,
9 201 (2001). While often beneficial to address in that order, courts have discretion to
10 address the two-step inquiry in the order they deem most suitable under the
11 circumstances. Pearson v. Callahan, 555 U.S. 223, 236 (2009).

12 “The principles of qualified immunity shield an officer from personal liability when
13 an officer reasonably believes that his or her conduct complies with the law.” Pearson,
14 555 U.S. at 244. Therefore, “[i]f the [defendant’s] mistake as to what the law requires is
15 reasonable . . . the [defendant] is entitled to the immunity defense.” Saucier v. Katz, 533
16 U.S. at 205. Qualified immunity protects “all but the plainly incompetent or those who
17 knowingly violate the law.” Malley v. Briggs, 475 U.S. 335, 341 (1986).

18 **D. Punitive Damages**

19 Plaintiff has the burden of proving by a preponderance of the evidence what, if
20 any, punitive damages should be awarded. Ninth Circuit Model Civil Jury Instructions §
21 5.5 (2008). The jury must find that Defendants’ conduct was “motivated by evil motive or
22 intent, or . . . involve[d] reckless or callous indifference to the federally protected rights of
23 others.” Smith v. Wade, 461 U.S. 30, 56 (1986). Acts or omissions which are malicious,
24 wanton, or oppressive support an award of punitive damages. Dang v. Cross, 422 F.3d
25 800, 807-08 (9th Cir. 2005).

26 **E. Federal Rules of Evidence**

27 Federal Rules of Evidence 608 and 609 provide that evidence of a witness’s prior
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1 felony conviction or instance of conduct demonstrating a propensity to lie may be used
2 to impeach that witness's testimony. Federal Rule of Evidence 404(b) provides that
3 evidence of prior crimes, wrongs, or acts cannot be used to prove the character of the
4 person in order to show conduct in conformity with that character trait. Such prior acts
5 may be admissible for other purposes only, such as proof of motive, opportunity, intent,
6 preparation, plan, knowledge, identity, or absence of mistake or accident.

7 **IX. Abandoned Issues**

8 Plaintiff abandons the prayer in his first amended complaint that Defendants be
9 ordered to produce a complete record of the January 19, 2011 UCC hearing.

10 Defendants have not abandoned any issues.

11 **X. Witnesses**

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

17 **A. Plaintiff's Requested Witnesses**

18 Plaintiff intends to call the following witnesses at trial¹:

- 19 1. Plaintiff Earl Warner
- 20 2. Inmate Robert Siordia
- 21 3. Inmate Paul Salcido
- 22 4. Custodian of Plaintiff's Medical Records (in the event Defendants do
23 not stipulate to their authenticity)
- 24 5. Custodian of Plaintiff's Central File (in the event Defendants do not
25 stipulate to its authenticity)

27 ¹ Plaintiff timely filed a motion for the attendance of incarcerated witnesses Robert Siordia, Paul Salcido,
28 Van-Albert Siegrist, and Chad Galvin. (ECF No. 181.) The Court granted Plaintiff's motion in part (ECF No.
191), and will issue writs of Habeas Corpus ad Testificandum for inmates Salcido and Siordia prior to trial.

1 At the pretrial conference, Plaintiff withdrew his previously stated intention to call
2 a medical expert.

3 **B. Defendants' Requested Witnesses**

- 4 1. Defendant D. Davis
- 5 2. Defendant W. Fellows
- 6 3. Defendant R. Prokop
- 7 4. Defendant R. Spralding
- 8 5. Defendant A. Walker
- 9 6. Expert witness Dr. K. B. Olsen, Senior Psychologist and Enhanced
10 Outpatient Program Director at the California Substance Abuse
11 Treatment Facility ("CSTAF")
- 12 7. Expert witness Dr. R. Kim Kumar, Chief Medical Executive at SVSP.
- 13 8. Expert witness F. Douthat, Correctional Counselor III ("CC III") at PVSP
14 and custodian of Plaintiff's Central File and Medical Records (if needed)

15 Defendants reserve the right to list additional witnesses, including expert and
16 rebuttal witnesses, as deemed appropriate at the time of trial.

17 **XI. Exhibits**

18 The following is a list of documents or other exhibits that the parties expect to
19 offer at trial. NO EXHIBIT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE
20 ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS
21 ORDER SHOULD BE MODIFIED TO PREVENT "MANIFEST INJUSTICE." Fed. R. Civ.
22 P. 16(e); Local Rule 281(b)(11). Nothing herein is intended to reflect on the admissibility
23 of such documents.

24 **A. Joint Exhibits**

25 Per their pretrial statements, the parties both intend to offer the following exhibits:

- 26 1. Plaintiff's relevant medical and mental health records.
- 27 2. Plaintiff's CDCR 812-C non-confidential enemy list from 2005 to 2015.

- 1 3. The January 19, 2011 CDCR 128G classification committee chrono.
- 2 4. Plaintiff's CDCR chronological movement history.

3 The parties are directed to ensure against duplication of exhibits by offering
4 additional joint exhibits where possible.

5 **B. Plaintiff's Exhibits**

6 Plaintiff intends to introduce the following exhibits:

- 7 1. Copies of Plaintiff's formal mental health care appeals/complaints between
8 2011 and 2015;
- 9 2. Documents pertaining to classification committee hearings Plaintiff has been
10 involved in between 2010 and 2017;
- 11 3. Documents pertaining to administrative appeals/complaints Plaintiff has
12 submitted concerning classification committee actions between 2010 and
13 2017;
- 14 4. Plaintiff's relevant central file records;
- 15 5. California Department of Corrections and Rehabilitation Department
16 Operations Manual (D.O.M.) Chapter 3, Article 22; Chapter 4, Article(s) 28, 33,
17 37; Chapter 5, Articles 3-4, 6-8, 11, 22, 46 and 53; Chapter 6, Articles 2, 5, 7,
18 9; Chapter 7, Articles 1, 3-5; Chapter 9, Articles 2, 7; and other portions as are
19 relevant to the claims and defenses in this action;
- 20 6. Declarations of incarcerated witnesses as submitted in support of Plaintiff's
21 opposition to Defendants' Motion for Summary Judgment.

22 **C. Defendants' Exhibits**

23 Defendants intend to introduce the following exhibits:

- 24 1. Abstracts of Judgment representing felony convictions and sentences of
25 Plaintiff's inmate witnesses;
- 26 2. April 25, 2008 CDCR 128B General Chrono noting Plaintiff's request to
27 remove Siordia from his enemy list;

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- 1 3. October 8, 2015 CDCR 128B General Chrono noting Plaintiff's request to add
- 2 Siordia back onto his enemy list;
- 3 4. Abstract(s) of Judgment representing Plaintiff's felony conviction(s) and
- 4 sentence(s);
- 5 5. Plaintiff's CDCR 128G Classification Chronos from SVSP between 2008 and
- 6 2011.

7 **XII. Discovery Documents**

8 **A. Plaintiff's Discovery Documents**

9 Plaintiff expects to offer the following:

- 10 1. Defendant Davis' Responses to Plaintiff's Interrogatories (Set No. 1), dated
- 11 August 22, 2016.
- 12 2. Defendant Fellows' Responses to Plaintiff's Interrogatories (Set No. 1), dated
- 13 August 22, 2016.
- 14 3. Defendant Prokop's Responses to Plaintiff's Interrogatories (Set No. 1), dated
- 15 August 22, 2016.
- 16 4. Defendant Spradling's Responses to Plaintiff's Interrogatories (Set No. 1),
- 17 dated August 22, 2016.
- 18 5. Defendant Walker's Responses to Plaintiff's Interrogatories (Set No. 1), dated
- 19 August 22, 2016.
- 20 6. Responses to Plaintiff's Request for Admissions to Defendant Walker, dated
- 21 August 22, 2016.
- 22 7. Defendants' Responses to Plaintiff's Motion/Request for Production of
- 23 Documents, dated August 22, 2016.
- 24 8. Defendants' Disclosure of Expert Witness Information, dated December 21,
- 25 2016.
- 26 9. Declaration of D. Davis in Support of Defendants' Privilege Log and
- 27 Supplemental Responses to Plaintiff's Motion/Request for Production of
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1 Documents, dated December 27, 2016.

2 10. Defendants' Supplemental Responses to Plaintiff's Motion/Request for
3 Production of Documents, dated December 27, 2016.

4 11. Plaintiff's Interrogatories and Requests for Production of Documents, dated
5 December 31, 2016.

6 12. Defendants' Amended Supplemental Responses to Plaintiff's First Set of
7 Interrogatories to Defendant Walker, dated January 27, 2017.

8 13. Expert Report of Dr. Kumar, dated January 9, 2017.

9 14. Expert Report of Kenneth Brent Olsen Psy.D., dated December 21, 2016.

10 Plaintiff reserves the right to offer deposition transcripts for inmate Siordia and
11 Defendants Walker and Fellows, or portions thereof, at the time of trial.

12 **B. Defendants' Discovery Documents**

13 Defendants reserve the right to offer Plaintiff's deposition transcript, or portions
14 thereof, and appended exhibits at the time of trial for purposes of impeachment.
15 Defendants are not aware of any other discovery documents to be offered at trial.

16 Defendants object to the introduction of their discovery responses as listed in
17 Plaintiff's pretrial statement to the extent that these documents may be used for any
18 purpose other than impeachment.

19 To the extent that Plaintiff seeks to object to the use of discovery documents not
20 disclosed or which were "withheld from Plaintiff," (ECF No. 180 at p. 5), Defendants
21 request that any documents that were equally available to Plaintiff be allowed into
22 evidence should the need arise at trial. (See ECF No. 48 at p. 2:18-19.)

23 **XIII. Further Discovery or Motions**

24 **A. Plaintiff's Requests**

25 Plaintiff filed a motion for the attendance of incarcerated witnesses. (ECF No.
26 181.) On July 26, 2017, the Court granted in part and denied in part Plaintiff's request.
27 (ECF No. 191.) Writs ad testificandum will be issued for inmates Siordia and Salcido at
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1 the appropriate time.

2 On June 9, 2017, Plaintiff filed a motion to continue trial to accommodate the
3 schedule of his proposed expert witness. (ECF No. 182.) On June 22, 2017, Plaintiff
4 withdrew this motion. (ECF No. 186.)

5 On June 13, 2017, Plaintiff requested leave to reopen discovery for the limited
6 purpose of taking the depositions of Defendants. Defendants opposed the request. On
7 June 23, 2017, the Court held a telephonic discovery dispute conference and granted
8 Plaintiff's request to reopen discovery to depose Defendants Walker and Fellows only.
9 (ECF No. 188.) The parties were given the opportunity to file a formal motion contesting
10 the Court's decision; neither did so.

11 **B. Other**

12 Plaintiff and Defendants have agreed to take the depositions of inmate Robert
13 Siordia, Defendants Fellows and Walker, and expert witness Kumar on mutually
14 agreeable dates.

15 The parties anticipate no other discovery or motion activity beyond motions in
16 limine.

17 **XIV. Stipulations**

18 The parties stipulate to the authenticity of Plaintiff's medical records, the
19 documents contained in Plaintiff's central file, the documents provided in Defendants'
20 discovery responses, and the 2011 CDCR DOM. The undisputed facts set forth above
21 are stipulated to.

22 **XV. Amendments/Dismissals**

23 In his pretrial statement, Plaintiff moved to amend the pleadings to add a due
24 process claim. (ECF No. 180 at 12.) At the pretrial conference, Plaintiff recanted that
25 intent.

26 **XVI. Settlement Negotiations**

27 The parties have stated a willingness to engage in renewed settlement
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1 negotiations prior to trial. The Court has issued a separate order setting a settlement
2 conference for August 16, 2017. (ECF No. 195.)

3 **XVII. Agreed Statements**

4 None.

5 **XVIII. Separate Trial of Issues**

6 Defendants seek to bifurcate and separately try issues of liability and damages.
7 Plaintiff objects.

8 The Court may order a separate trial on the issues of liability and damages for
9 convenience, to avoid prejudice, or to expedite the proceedings. Fed. R. Civ. P. 42(b).
10 The decision to bifurcate is committed to the discretion of the trial court. Davis & Cox v.
11 Summa Corp., 751 F.2d 1507, 1517 (9th Cir. 1985). Courts consider factors such as
12 juror confusion, prejudice to the parties, and separability of the issues. Rios v. Tilton, No.
13 2:07-cv-0790-KJN, 2016 WL 29567 (E.D. Cal. Jan. 4, 2016).

14 Here, the issue is whether Defendants knew or should have known of the
15 substantial risk of harm Plaintiff allegedly faced if housed in Facility A at PVSP. Insofar
16 as Plaintiff's injuries reflect somewhat on the nature of the risk that he believed he faced
17 and hence on the credibility of his claims that he warned Defendants of his fears, the
18 Court finds that a single trial on the issues of liability and general damages will be most
19 efficient and economical and least likely to create confusion. Accordingly the Court will
20 not bifurcate the issues of liability and general damages. It will, however, bifurcate the
21 issue of punitive damages if, at the first phase of trial, the jury finds Defendants liable for
22 punitive damages. A second phase of trial will then be convened to determine the
23 amount of punitive damages.

24 **XIX. APPOINTMENT OF COUNSEL**

25 On January 20, 2017, the Court granted Plaintiff's request for the appointment of
26 counsel. (ECF Nos. 143 & 161.)

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1 **XX. ATTORNEY'S FEES**

2 Each party seeks to recover attorney's fees and costs if he or they prevail. Local
3 Rule 293.

4 **XXI. FURTHER TRIAL PREPARATION**

5 **A. Trial Exhibits**

6 The parties should exchange their trial exhibits with each other no later than
7 August 11, 2017.

8 Plaintiff and Defendants shall submit the original and five copies of all trial
9 exhibits, along with exhibit lists, to Judge Seng's chambers in Fresno no later than
10 September 15, 2017. Plaintiff's exhibits shall be pre-marked with numbers preceded by
11 the designation "P-___" (e.g., P-1, P-2). Defendants' exhibits shall be pre-marked with
12 letters preceded by the designation "D-___" (e.g. D-A, D-B).

13 The parties are required to meet and confer to agree upon and identify their joint
14 exhibits, if any. Joint exhibits must be pre-marked with numbers preceded by the
15 designation "J-___" (e.g., J-1, J-2), and counsel shall submit the original and five copies of
16 the joint trial exhibits, with exhibit lists, no later than September 15, 2017.

17 **B. Motions in Limine Hearing and Briefing Schedule**

18 Any party may file a motion in limine. The purpose of a motion in limine is to
19 establish in advance of the trial that certain evidence should not be offered at trial.
20 Although the Federal Rules do not explicitly provide for the filing of motions in limine, the
21 Court has the inherent power to hear and decide such motions as a function of its duty to
22 expeditiously manage trials by eliminating evidence that is clearly inadmissible for any
23 purpose. Luce v. United States, 469 U.S. 38, 41 n.4 (1984); Jonasson v. Lutheran Child
24 and Family Servs., 115 F. 3d 436, 440 (7th Cir. 1997). The Court will grant a motion in
25 limine, and thereby bar use of the evidence in question, only if the moving party
26 establishes that the evidence clearly is not admissible for any valid purpose. Id.;
27 Hawthorne Partners v. AT & T Tech., Inc., 831 F. Supp. 1398, 1400 (N.D. Ill. 1993).

1 All motions in limine must be served on the other party/parties, and filed with the
2 Court, by August 25, 2017. Any motion in limine must clearly identify the nature of the
3 evidence that the moving party seeks to prohibit the other side from offering at trial.

4 Any opposition to a motion in limine must be served on the other party, and filed
5 with the Court, by September 1, 2017.

6 If and as it deems necessary, the Court will hear telephonic arguments on
7 motions in limine, on September 20, 2017 at 10:30 a.m. Counsel shall appear
8 telephonically by calling **(888) 204-5984** and entering access code **4446176#**. Rulings
9 on said motions will be issued on or before the morning of trial.

10 Whether or not a party files a motion in limine, that party may still object to the
11 introduction of evidence during the trial.

12 **C. Other**

13 The parties are relieved of their obligation under Local Rule 285 to file trial briefs.
14 If they nevertheless wish to file briefs, they must do so on or before September 15, 2017.

15 The Court will prepare the verdict form and give the parties an opportunity to
16 review it on the morning of trial. If the parties wish to submit a proposed verdict form for
17 consideration, they must do so on or before September 15, 2017.

18 Proposed jury instructions shall be submitted on or before September 15, 2017.
19 All jury instructions must be submitted in duplicate: one set will indicate which party
20 proposes the instruction, with each instruction numbered or lettered, and containing
21 citation of supporting authority, and the customary legend, i.e., "Given, Given as
22 Modified, or Refused," showing the Court's action, with regard to each instruction; one
23 set will be an exact duplicate of the first, except it will not contain any identification of the
24 party offering the instruction or supporting authority or the customary legend of the
25 Court's disposition. The parties shall provide the Court with a copy of their proposed jury
26 instructions via e-mail at: **mjsorders@caed.uscourts.gov**. The Court will prepare the
27 jury instructions for the parties' review on the morning of trial. In selecting proposed
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1 instructions, the Court shall use Ninth Circuit Model Civil Jury Instructions to the extent
2 possible.

3 Proposed voir dire questions, if any, shall be filed on or before September 15,
4 2017. Local Rule 162.1.

5 The parties may serve and file a non-argumentative, brief statement of the case
6 suitable for reading to the jury at the outset of jury selection on or before September 15,
7 2017. The Court will consider the parties' statements but will finalize the statement. The
8 parties will be provided with the opportunity to review the Court's prepared statement on
9 the morning of trial.

10 The parties shall submit a copy of any proposed videotape or DVD to Judge
11 Seng's chambers in Fresno by 4:00 p.m. on September 15, 2017. If a written transcript
12 of audible words on the tape is available, the Court requests that the transcript be
13 submitted along with the videotape or DVD, solely for the aid of the Court.

14 If any counsel intends to use a laptop computer for presentation of evidence or
15 intends to use any audio/visual equipment belonging to the Court, he or she shall
16 contact Courtroom Deputy Megan Lafata at least one week prior to trial so that any
17 necessary arrangements and/or training may be scheduled.

18 **XXII. OBJECTIONS TO PRETRIAL ORDER**

19 Any party may, within **fourteen days** after this order issues, file and serve written
20 objections to any of the provisions of this Order. Such objections shall specify the
21 requested modifications, corrections, additions or deletions.

22 **XXIII. RULES OF CONDUCT DURING TRIAL**

23 **A. General Rules**

- 24 1. All participants in the trial shall conduct themselves in a civil manner. There
25 shall be no hostile interchanges between any of the participants.
- 26 2. All oral presentations shall be made from the counsel table, unless otherwise
27 permitted by the Court.

1 3. Sidebar conferences are discouraged. Legal arguments or discussion of
2 issues outside the presence of the jury should be done during recesses.

3 4. Counsel shall advise their respective clients and witnesses not to discuss any
4 aspect of the case in the common areas of the courthouse accessible to the
5 jurors, such as the lobby, the elevators, the hallways and the cafeteria.

6 **B. Jury Selection**

7 The Court will conduct voir dire to be supplemented by written questions
8 submitted by counsel prior to trial. The Court may allow brief direct questioning by
9 counsel.

10 **C. Opening Statements**

11 Counsel may use visual aids in presenting the opening statement. However, any
12 proposed visual aids shall be shown to opposing counsel before opening statement.
13 Furthermore, counsel shall submit any materials he or she intends to use in opening
14 statements to Judge Seng's Fresno chambers at least one week prior to trial.

15 **D. Case in Chief**

16 1. Counsel shall have his/her witnesses readily available to testify so that there
17 are no delays in the presentation of evidence to the trier of fact.

18 2. At the close of each trial day, counsel shall disclose his/her anticipated
19 witnesses and order of presentation for the next day, so that any scheduling or
20 evidentiary issues may be raised at that time.

21 **E. Witnesses**

22 1. Before approaching a witness, counsel shall secure leave of Court to
23 approach the witness.

24 2. Before approaching a witness with a writing, counsel shall first show the
25 writing to opposing counsel.

26 **F. Exhibits**

27 1. All exhibits shall be marked and identified in accordance with the instructions
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1 in this pretrial order.

2 2. An exhibit shall not be published to the jury until it has been admitted into
3 evidence and counsel has secured leave of Court to publish the exhibit.

4 3. The Court usually will conduct an on the record review of the exhibits that
5 have been admitted in evidence at the conclusion of each party's case in chief
6 and after each party has rested its entire case. It is, however, the parties'
7 obligation to ask the Court to do so.

8 **G. Objections**

9 1. No speaking objections or arguments are permitted in the presence of the jury.
10 Counsel shall state the specific legal ground(s) for the objection, and the Court
11 will rule based upon the ground(s) stated. The Court will permit counsel to
12 argue the matter at the next recess.

13 2. The Court will not assume that any objection made also implies with it a
14 motion to strike an answer that has been given. Therefore, counsel who has
15 made an objection, and who also wishes to have an answer stricken, shall
16 also specifically move to strike the answer.

17 **H. Closing Argument.**

18 Counsel may use visual aids in presenting the closing argument. However, any
19 proposed visual aids shall be shown to opposing counsel before closing argument.

20 **I. Trial Protective Order**

21 Plaintiff's status as a prisoner requires that he remain in leg restraints at all times
22 and subject to appropriate security measures. However, Plaintiff will not be required to
23 wear handcuffs when he appears before the jury. Furthermore, a drape will be placed
24 over Plaintiff's table so that the leg restraints are not visible to the jury.

25 Plaintiff may make arrangements with his counsel and the litigation coordinator at
26 his facility to appear at trial in courtroom attire.

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J. Writs of Habeas Corpus ad Testificandum

The Court shall separately issue writs of habeas corpus to produce Plaintiff and his inmate witnesses for trial.

**FAILURE TO COMPLY WITH ALL PROVISIONS OF THIS ORDER MAY BE
GROUNDS FOR THE IMPOSITION OF SANCTIONS ON ANY AND ALL COUNSEL
AS WELL AS ON ANY PARTY WHO CAUSES NON-COMPLIANCE WITH THIS
ORDER.**

IT IS SO ORDERED.

Dated: August 2, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE