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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 JOHNATHAN HILL,

11 Plaintiff,

12 vs.

13 C/O J. CLARK and

14 C/O A. RIVAS,

15 Defendants.
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1:13-cv-00386-EPG-PC

ORDER FOLLOWING TELEPHONIC
HEARING HELD ON FEBRUARY 3, 2016

ORDER ADDRESSING DEFENDANTS'
MOTIONS IN LIMINE
(ECF No. 75.)

ORDER ADDRESSING PLAINTIFF'S
MOTIONS IN LIMINE
(ECF Nos. 76, 78.)

ORDER GRANTING DEFENDANTS'
MOTION TO BIFURCATE TRIAL
(ECF No. 74; also resolves ECF No. 73.)

ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTENDANCE OF
INMATE WITNESS
(ECF No. 55.)

**Jury Trial: April 12, 2016 at 8:30 a.m.
Courtroom 10 (EPC)**

24 **I. BACKGROUND**

25 Johnathan Hill ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis*
26 with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with
27 Plaintiff's original Complaint, filed on March 18, 2013, against defendant C/O J. Clark for use
28 of excessive force in violation of the Eighth Amendment, and C/O A. Rivas for failure to

1 protect Plaintiff in violation of the Eighth Amendment.¹ This case is scheduled for trial on
2 April 12, 2016 at 8:30 a.m. before Magistrate Judge Erica P. Grosjean.

3 **II. FEBRUARY 3, 2016 TELEPHONIC HEARING**

4 On February 3, 2016 at 10:00 a.m., a telephonic hearing was held before Magistrate
5 Judge Erica P. Grosjean to hear the parties' motions *in limine*, Defendants' motion to bifurcate,
6 and Plaintiff's motion for the attendance of an incarcerated witness.² Plaintiff appeared
7 telephonically on his own behalf, and Deputy District Attorney Joanna Hood appeared
8 telephonically on behalf of Defendants.

9 **A. Motions In Limine**

10 **1. Lay Witnesses**

11 Defendants brought a motion under Federal Rules of Evidence 701 to preclude Plaintiff
12 from offering any testimony regarding a diagnosis, opinions, inferences, or causation; any
13 opinion testimony regarding his medical records, medical condition, or alleged injuries; and
14 any opinions or inferences from any medical records or diagnostic studies.

15 Rule 701 of the Federal Rules of Evidence provides:

16 If a witness is not testifying as an expert, testimony in the form of
17 an opinion is limited to one that is:

18 (a) rationally based on the witness's perception;

19 (b) helpful to clearly understanding the witness's testimony or to
determining a fact in issue; and

20 (c) not based on scientific, technical, or other specialized
21 knowledge within the scope of Rule 702.

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25 ¹ On January 24, 2014, Magistrate Judge Gary Austin issued an order dismissing all other claims
26 and defendants from this action, based on Plaintiff's failure to state a claim under § 1983. (ECF No. 17.)

27 ² On September 10, 2015, Plaintiff filed a motion for the attendance of an incarcerated witness.
28 (ECF No. 55.) On January 12, 2016, Defendants filed motions *in limine*, and on January 13, 2016 and January 21,
2016, Plaintiff filed motion *in limine*. (ECF Nos. 75, 76, 78.) On January 12, 2016, Defendants filed a motion to
bifurcate the trial. (ECF No. 74.)

1 The Court found Defendants' request to be vague. Plaintiff's testimony at trial will be
2 evaluated under Rule 701. Plaintiff may testify about what he felt, the extent of any injuries,
3 and any opinions about causation based on his personal observation and perception. However,
4 Plaintiff will not be permitted to give a medical opinion or interpret medical records that
5 require expert testimony. Thus, Defendants' motion is granted in part and denied in part.

6 **2. Evidence Regarding Dismissed or Irrelevant Claims and Defendants**

7 Defendants seek to preclude Plaintiff from presenting any evidence regarding
8 defendants, claims, or events that were dismissed from this case or are irrelevant.

9 The Court found this request vague and overbroad and ordered as follows. Plaintiff
10 may not argue that individuals dismissed from this case are liable in this case or violated any
11 rule or law including constitutional standards. Any evidence about those dismissed individuals
12 will only be admitted if relevant to Plaintiff's claims against Officer Clark for excessive force
13 or Officer Rivas for failure to protect. That said, any individuals who were present and
14 potentially witnessed the events may be relevant insofar as what they know or how they
15 reacted, which could shed light on Plaintiff's claims.

16 **3. Other Lawsuits, Claims, or Incidents Alleging Misconduct by**
17 **Defendants**

18 Defendants seek to preclude Plaintiff from eliciting testimony or testifying about any
19 other lawsuits, claims, or incidents alleging misconduct against defendants.

20 Rule 404(b) of the Federal Rules of Evidence provides:

21 **(b) Crimes, Wrongs, or Other Acts.**

22 **(1) Prohibited Uses.** Evidence of a crime, wrong, or other act is
23 not admissible to prove a person's character in order to show that
24 on a particular occasion the person acted in accordance with the
25 character.

26 **(2) Permitted Uses; Notice in a Criminal Case.** This evidence
27 may be admissible for another purpose, such as proving motive,
28 opportunity, intent, preparation, plan, knowledge, identity,
absence of mistake, or lack of accident. On request by a
defendant in a criminal case, the prosecutor must:

(A) provide reasonable notice of the general nature of any such
evidence that the prosecutor intends to offer at trial; and

1 (B) do so before trial--or during trial if the court, for good cause,
excuses lack of pretrial notice.

2 The Court finds that Defendants' motion is related to Plaintiff's motion filed on January
3 21, 2016 (ECF No. 78) asking for modification of the Pretrial Order so Plaintiff may "offer
4 evidence of defendants' involvement, if any, in any other lawsuits, claims and/or incidents,
5 alleging misconduct."

6 Defendants' motion is granted, and Plaintiff's motion is denied. It appears that Plaintiff
7 plans to admit Defendants' prior acts to show that Defendants are the type of people who
8 commit these types of acts. Such evidence is not relevant to the claims here, and under Fed. R.
9 Evid. 403, any potential relevance is outweighed by prejudice. The jury will decide the claims
10 against Defendants based on evidence about what happened during the incident at issue in this
11 case.

12 **4. Exclusion of Offers to Compromise and Settlement Negotiations**

13 Defendants seek to exclude "evidence of any offers to compromise, as well as conduct
14 or statements made during settlement negotiations." Defendants' motion is related to
15 Plaintiff's request in his motion filed on January 21, 2016 (ECF No. 78) asking for
16 modification of the Pretrial Order to allow testimony regarding settlement discussions.

17 Defendants' motion *in limine* is granted, and Plaintiff's request is denied.

18 Rule 408(a) of the Federal Rules of Evidence provides:

19 **(a) Prohibited Uses.** Evidence of the following is not admissible-
20 -on behalf of any party--either to prove or disprove the validity or
amount of a disputed claim or to impeach by a prior inconsistent
21 statement or a contradiction:

22 **(1)** furnishing, promising, or offering--or accepting, promising
to accept, or offering to accept--a valuable consideration in
23 compromising or attempting to compromise the claim; and

24 **(2)** conduct or a statement made during compromise
negotiations about the claim--except when offered in a criminal
25 case and when the negotiations related to a claim by a public
office in the exercise of its regulatory, investigative, or
26 enforcement authority.

27 Based on Rule 408(a), nothing said during settlement discussions, or even the fact that
28 there were settlement discussions, will be admitted as evidence. There are no exceptions.

1 **5. Evidence of Defendants’ Indemnification**

2 Defendants seek to exclude evidence of Defendants’ indemnification by the state or any
3 other source. The Court invited Defendants to file a supplemental brief within five days, on the
4 question of whether potential state indemnification may be admitted when considering the
5 amount of punitive damages. Defendants did not file a supplemental brief.

6 Nevertheless, upon consideration, the Court grants Defendants’ motion to exclude
7 evidence of potential state indemnification in all stages of trial. Under Federal Rule of
8 Evidence 403, the Court finds such evidence more prejudicial than probative. The Court is also
9 guided by California Government Code § 825(b), which states:

10 The discovery of the assets of a public entity and the introduction
11 of evidence of the assets of a public entity shall not be permitted
12 in an action in which it is alleged that a public employee is liable
 for punitive or exemplary damages.

13 The possibility that a public entity may pay that part of a
14 judgment that is for punitive damages shall not be disclosed in
15 any trial in which it is alleged that a public employee is liable for
 punitive or exemplary damages, and that disclosure shall be
 grounds for a mistrial.

16 Thus, the Court grants this motion.

17 **6. Personnel Records**

18 Defendants request the Court preclude Plaintiff from questioning Defendants about any
19 matters contained in their personnel records.

20 To the extent that Plaintiff plans to admit Defendants’ prior acts to show they are the
21 type of people who commit these types of acts, Plaintiff may not do so. As discussed above,
22 “[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in
23 order to show that on a particular occasion the person acted in accordance with the character,”
24 Fed. R. Evid. 404(b)(1), and any potential relevance is outweighed by prejudice, Fed. R. Evid.
25 403. However, such evidence may be admissible for other purposes. Fed. R. Evid. 404(b)(1).

26 Therefore, Defendants’ motion is granted with respect to matters contained in their
27 personnel records about anything other than the events at issue in this case.

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1 **7. Facts of Plaintiff's Incarceration**

2 Defendants request to admit the date and length of Plaintiff's incarceration, as well as
3 that of any inmate witness. Plaintiff's motion *in limine* requests exclusion of his convictions,
4 because such evidence is prejudicial and the convictions are over ten years old.

5 Rule 609(a),(b) of the Federal Rules of Evidence provides:

6 **(a) In General.** The following rules apply to attacking a witness's
7 character for truthfulness by evidence of a criminal conviction:

8 **(1)** for a crime that, in the convicting jurisdiction, was punishable
9 by death or by imprisonment for more than one year, the
10 evidence:

11 **(A)** must be admitted, subject to Rule 403, in a civil case or in a
12 criminal case in which the witness is not a defendant; and

13 **(B)** must be admitted in a criminal case in which the witness is a
14 defendant, if the probative value of the evidence outweighs its
15 prejudicial effect to that defendant; and

16 **(2)** for any crime regardless of the punishment, the evidence must
17 be admitted if the court can readily determine that establishing
18 the elements of the crime required proving--or the witness's
19 admitting--a dishonest act or false statement.

20 **(b) Limit on Using the Evidence After 10 Years.** This
21 subdivision (b) applies if more than 10 years have passed since
22 the witness's conviction or release from confinement for it,
23 whichever is later. Evidence of the conviction is admissible only
24 if:

25 **(1)** its probative value, supported by specific facts and
26 circumstances, substantially outweighs its prejudicial effect; and

27 **(2)** the proponent gives an adverse party reasonable written
28 notice of the intent to use it so that the party has a fair
opportunity to contest its use.

 The Court shall allow Defendants to ask if Plaintiff is serving time for a felony, but
nothing more. Defendants may do the same for any inmate witnesses. More information than
that would be more prejudicial than probative. Moreover, Plaintiff's convictions were imposed
more than ten years ago, for crimes where honesty is not an element.

 The Court notes that Plaintiff will be dressed in prison uniform, and it will be readily
apparent he is incarcerated. The nature of his crime will not shed further light on his credibility
or claims in this case.

1 **8. Cell Search Receipt**

2 Plaintiff requests that Defendants authenticate a chrono 115 cell search receipt that was
3 given to Plaintiff by Officers Clark and Rivas. Defendants argue that it cannot be authenticated
4 because Defendants could not locate the chrono 115 in the records, and the signature for
5 Officer Clark on the cell search receipt possessed by Plaintiff does not appear to be Clark's
6 signature.

7 In light of Defendants' representation that they cannot authenticate the document, the
8 Court denies Plaintiff's request for authentication. However, Plaintiff may offer evidence at
9 trial to show why he believes the receipt is authentic and may cross examine defendant Clark
10 about whether the signature is his. The Court will determine at trial based on evidence and
11 testimony presented whether the chrono 115 may be admitted into evidence.

12 **B. Motion to Bifurcate Trial**

13 Defendants request bifurcation of the trial, with separate phases for liability and if
14 needed, for punitive damages. This motion is granted. During the first phase of the trial, the
15 jury shall be asked to decide liability and whether punitive damages should be awarded. If the
16 jury decides to award punitive damages, the second phase of the trial shall decide the amount of
17 punitive damages.

18 **C. Motion for Attendance of Incarcerated Witnesses**

19 Plaintiff requests the Court to transport inmate witness Dwayne Thompson T-12115, to
20 Court to testify at trial on Plaintiff's behalf. Plaintiff asserts that Thompson saw and heard the
21 assault on Plaintiff through a crack in his cell.

22 Dwayne Thompson's declaration was entered on the Court's record. (ECF No. 59-1, at
23 p. 13.) The Court has reviewed the declaration, in which Thompson declares that he witnessed
24 Officers Rivas and Clark escorting Plaintiff from the holding cage to Plaintiff's cell on January
25 29, 2012 at approximately 8:10 p.m. (Id.)

26 The Court grants Plaintiff's motion for the attendance of this inmate witness and shall
27 issue a writ to transport him to trial.

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