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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GILBERTO FAJARDO,
Plaintiff,
v.
CITY OF BAKERSFIELD, et al.,
Defendants.

Case No. 1:16-cv-00699-BAK

PRETRIAL ORDER

Designation of deposition testimony: February 25, 2022

Motions *in limine*: February 18, 2022

Response to motions *in limine*: February 25, 2022

Reply in support of motions *in limine*: March 3, 2022

Jury instructions, proposed verdict form, agreed statement of case, stipulations to be read to the jury: March 4, 2022

Counter-designation of deposition testimony: March 4, 2022

Hearing on motions *in limine*: March 10, 2022 at 2:00 PM in Courtroom 10 (EPG) (telephonic appearance permitted)

Lodge original deposition transcripts; March 11, 2022

List of discovery documents: March 11, 2022

Hearing on jury instructions, verdict form, outstanding pretrial issues: March 18, 2022, at 2:00 PM in Courtroom 10 (EPG) (telephonic appearance permitted)

Lodge prospective witness lists: March 21, 2022

Jury Trial: March 21, 2022 at 8:30 AM in Courtroom 10 (EPG)

1 This civil rights action proceeds on the complaint filed by Plaintiff Gilberto Fajardo
2 (“Plaintiff”) on May 17, 2016, alleging claims against the City of Bakersfield, Juan Orozco,
3 Lindy DeGeare (“Defendants”), and Does 1-10, inclusive, for (1) excessive force in violation of
4 the Fourth Amendment; (2) excessive force in violation of the Substantive Due Process clause of
5 the Fourteenth Amendment; (3) *Monell* liability against Defendant City of Bakersfield based on
6 failure to train, ratification, and an unconstitutional policy, custom, and/or practice; (4) battery
7 under state law; (5) negligence under state law; and (6) excessive force in violation of
8 California’s Bane Act. (ECF No. 1.) Plaintiff’s claims arise out of an incident on May 17, 2015,
9 when Defendants Orozco and DeGeare fired gunshots into a car where Plaintiff had been
10 sleeping, striking Plaintiff and causing permanent injury, including paralysis. (ECF No. 1.) The
11 parties have consented, pursuant to 28 U.S.C. § 636(c)(1), to have a United States Magistrate
12 Judge conduct all further proceedings in this case. (ECF Nos. 8, 9.)¹

13 On January 12, 2022, the parties filed a joint pretrial statement. (ECF No. 65.) On January
14 21, 2021, the Court held a pretrial conference. Counsel Dale K. Galipo, David K. Cohn, and
15 Marcel F. Sincich appeared for Plaintiff. Counsel Heather S. Cohen and Michael G. Marderosian
16 appeared for Defendants.

17 Having reviewed the parties’ joint pretrial statement, the Court now issues this pretrial
18 order.

19 **I. JURISDICTION AND VENUE**

20 Jurisdiction and venue are not contested. The court has subject matter jurisdiction over
21 Plaintiff’s claims arising under 42 U.S.C. § 1983 pursuant to 28 U.S.C. §§ 1331 and 1343, and
22 supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367. Venue is
23 proper pursuant to 28 U.S.C. § 1391(b)(1), (2).

24 **II. JURY TRIAL**

25 Plaintiff has invoked his right to a jury trial of all triable issues.

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28 ¹ On January 19, 2022, Defendants filed a motion to withdraw their consent to proceed before a magistrate judge.
(ECF No. 66.) The motion is currently pending before District Judge Dale A. Drozd. (ECF No. 69.)

1 **III. ESTIMATED LENGTH OF TRIAL**

2 Plaintiff estimates that trial will take 8-10 days. Defendant estimates that trial will take 10-
3 12 days.

4 **IV. TRIAL DATE**

5 Trial will be March 21, 2022, at 8:30 a.m., before U.S. Magistrate Judge Erica P. Grosjean
6 in Courtroom 10 (EPG) at the Robert E. Coyle United States Courthouse, 2500 E. Tulare Street,
7 Fresno, CA 93721.

8 **V. FACTS AND EVIDENTIARY ISSUES**

9 **A. Undisputed Facts**

- 10 1. The City of Bakersfield is a municipal entity, a political subdivision of the State of
11 California.
- 12 2. Defendant Orozco at all times relevant to the incident, was acting within the
13 course and scope of his Bakersfield Police Department employment duties and
14 under the color of state law.
- 15 3. Defendant DeGeare at all times relevant to the incident, was acting within the
16 course and scope of her Bakersfield Police Department employment duties and
17 under the color of state law.
- 18 4. The incident giving rise to this litigation occurred on May 17, 2015 in the parking
19 lot at 600 Planz Road in Bakersfield, California.

20 **B. Disputed Evidentiary Issues**

21 The parties intend to file motions *in limine* and/or trial briefing on the following issues.

22 *Plaintiff's Statement*

- 23 1. Exclude the District Attorney's findings and conclusions;
- 24 2. Exclude any conclusion by Bakersfield Police Department that the shooting was
25 within policy or justified;
- 26 3. Exclude toxicology results;
- 27 4. Exclude speculative testimony as to how drugs might have caused Mr. Fajardo to
28 behave on the day of the incident;

1 5. Exclude speculative testimony as to Mr. Fajardo’s subjective state of mind, such as
2 “playing dumb” during the incident;

3 6. Exclude information unknown to Officers Orozco and DeGeare at the time of the
4 incident, including criminal history and incarceration history, prior interaction with law
5 enforcement, and any prior use of drugs or alcohol, including any law enforcement contact, arrest,
6 incarceration, conviction, and drug or alcohol use subsequent to the incident;

7 7. Exclude impermissible character evidence regarding Guillermina Loera or her
8 family;

9 8. Exclude statements made by Mr. Fajardo prior to receiving his *Miranda*
10 admonitions and while he was acutely hospitalized under significant pain medication;

11 9. Exclude any reference to a gang neighborhood, or any history of crime in the
12 neighborhood;

13 10. Exclude mention of non-related shootings in which law enforcement have been
14 shot;

15 11. Exclude or limit testimony of Curtis Cope regarding speculative threat to the
16 community, what the defendants would have done in a different scenario, or analysis based on
17 information unknown.

18 12. Exclude or limit testimony of Jason Droll, Ph.D.

19 13. Exclude or limit testimony of Kris Mohandie, Ph.D.

20 14. Exclude or limit testimony of Michael A. Knox.

21 15. Exclude or limit testimony of Dario Hernandez.

22 16. Exclude or limit testimony of Rod Englert.

23 17. Exclude or limit testimony of Swathi Kobe, Ph.D.

24 18. Exclude or limit testimony of Harvey L. Edmonds, M.D., FAAN.

25 19. Exclude or limit testimony of Edward L. Bennett.

26 20. Exclude or limit testimony of Stephanie Rizzardi.

27 At the pretrial conference, Plaintiff’s counsel also gave oral notice of a motion *in limine* to
28 exclude evidence of Plaintiff’s subsequent arrest.

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1 *Defendants' Statement*

- 2 1. Exclude reference to the fact that Plaintiff was partially acquitted of some of the
3 crimes alleged during the criminal trial.
- 4 2. Exclude any reference to allegedly wrongful acts by *other* law enforcement
5 officers or agencies (i.e., Ferguson, Tamir, Rice, etc.).
- 6 3. Exclude any reference to any Bakersfield Police Department Policies, including
7 but not limited to the policy regarding shooting at moving vehicles.
- 8 4. Exclude any evidence pertaining to *Monell* claims (other incidents, IA
9 investigations or complaints into either Defendant or any other officer, any other use of force by
10 the Defendants and/or anyone from Bakersfield Police Department, adequacy/sufficiency of
11 training, etc.).
- 12 5. Exclude other IA reports pertaining to other matters.
- 13 6. Exclude reference to the Bakersfield Police Department or its officers as the
14 “deadliest police force in America” and/or the use of such other inflammatory terms.
- 15 7. Exclude the Plaintiff’s life care plan.
- 16 8. Exclude any evidence or argument that either the Department of Justice, the FBI,
17 or any other agency is investigating the City of Bakersfield Police Department.
- 18 9. Exclude and/or limit the testimony of Roger Clark.
- 19 10. Exclude and/or limit the testimony of Rene Castaneda.
- 20 11. Exclude and/or limit the testimony of David Patterson, M.D.
- 21 12. Exclude and/or limit the testimony of Deborah Pearlman RN.
- 22 13. Exclude and/or limit the testimony of Tamarah Hunt.
- 23 14. Exclude and/or limit the testimony of Michael Freeman M.D.
- 24 15. Exclude non- party witnesses from the courtroom.
- 25 16. Exclude any golden rule argument.
- 26 17. Exclude past economic damages.
- 27 18. Exclude particular future economic damages.
- 28 19. Exclude particular exhibits identified by Plaintiff.
20. Exclude inflammatory/graphic photographs

1 21. Exclude any reference to the Stipulated Judgment entered into with the
2 Department of Justice.

3 Defendants plan to use computer technology, including electronic presentation of
4 evidence, audio recordings, and video recordings, at the time of trial.

5 **VI. RELIEF SOUGHT**

6 Plaintiff seeks general and special damages, including for his loss of enjoyment of life,
7 past and future medical expenses, and physical and mental pain and suffering, pursuant to his 42
8 U.S.C. § 1983 claim for excessive force in violation of the Fourth Amendment. Plaintiff also
9 seeks damages pursuant to his claim for excessive force in violation of the Bane Act. Further,
10 Plaintiff seeks damages pursuant to his state law claims for battery, negligence, and the Bane
11 Act. Additionally, Plaintiff seeks punitive damages pursuant to his federal excessive force claim.
12 Plaintiff seeks attorneys' fees under state and federal law. Plaintiff also seeks to recover past
13 medical expenses, future medical expenses and care, past and future loss of earnings, past and
14 future pain, suffering, loss of enjoyment of life, disfigurement, inconvenience, grief, anxiety,
15 humiliation, costs of suit and interests.

16 Defendants contend that all actions taken were entirely lawful and reasonable.
17 Defendants seek dismissal of this case, costs, and attorneys' fees under 42 U.S.C. § 1988 and 42
18 U.S.C. § 1927, Federal Rule of Civil Procedure 54, Local Rules 292 and 293, and all other
19 applicable statutes and rules.

20 **VII. POINTS OF LAW**

21 Fourth Amendment Excessive Force

22 *Plaintiff's Statement*

23 Defendant DeGeare used excessive force against Plaintiff in violation of his Fourth
24 Amendment rights and 42 U.S.C. § 1983 when she shot Plaintiff. Defendant Orozco used
25 excessive force against Plaintiff in violation of his Fourth Amendment rights and 42 U.S.C. §
26 1983 when he forcibly ripped the handles off of the vehicle Plaintiff occupied, and struck the
27 vehicle's windshield with his baton, and was an integral participator in Defendant DeGeare's use
28 of excessive force. At the time of the shots, Plaintiff posed no immediate threat of death or
serious bodily injury to anyone, Plaintiff had not committed any serious crime, this initial

1 incident began with a check-the-welfare call, there were less-lethal alternatives to taking Plaintiff
2 into custody, and no verbal warning was ever given to Plaintiff that deadly force was going to be
3 used. Further, Defendant DeGeare is required to justify every shot.

4 Plaintiff seeks compensatory damages, punitive damages and reasonable attorney's fees
5 under this claim. *See Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1103-05 (9th Cir. 2014).

6 Elements:

- 7 1. Defendants acted under color of law;
- 8 2. Defendants used excessive force against Plaintiff; and
- 9 3. Defendants' use of excessive force was a cause of injury, damage, loss, or harm
10 to Plaintiff.

11 *See Ninth Circuit Manual of Model Jury Instructions*, No. 9.3, 9.25.

12 *Defendants' Statement*

13 The Fourth Amendment protects an individual's right to be subjected only to force that
14 "is objectively reasonable under the circumstances." *Boyd v. Benton County*, 374 F.3d 773 (9th
15 Cir. 2004).

16 In the context of a Fourth Amendment excessive force claim against a police officer,
17 "[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge's
18 chambers'...violate the Fourth Amendment." *Graham v. Connor*, 490 U.S.386, 390 (1989).
19 Instead, the amount of force used is evaluated on a standard of objective reasonableness. *Id.* at
20 388. The *Graham* Court specifically stated that reasonableness is judged from the perspective of
21 a reasonable officer on the scene rather than with the 20/20 vision of hindsight. *Id.* at 396-397.
22 The factors in the reasonableness inquiry include: "(1) the severity of the crime at issue, (2)
23 whether the suspect poses an immediate threat to the safety of the officers or others, and (3)
24 whether he is actively resisting arrest or attempting to evade arrest by flight." *Smith v. City of*
25 *Hemet*, 394 F.3d 689, 701 (9th Cir. 2005) (en banc) (quoting *Graham v. Connor*, 490 U.S. 386,
26 396 (1989)). "[A]n additional factor . . . is the availability of alternative methods of capturing or
27 subduing a suspect." *Id.* at 703. These factors are non-exhaustive. *Id.* The determination of
28 reasonableness requires balancing the "nature and quality of the intrusion on the individual's
Fourth Amendment interests against the countervailing governmental interests at stake" from the

1 "perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."
2 *Graham*, 490 U.S. at 396 (internal citation omitted).

3 *See also* Ninth Circuit Model Jury Instruction 9.25.

4 Battery

5 *Plaintiff's Statement*

6 Defendants DeGeare and Orozco used unreasonable force against Plaintiff when
7 Defendant DeGeare shot Plaintiff without warning, when Plaintiff posed no immediate threat of
8 death or serious bodily injury, when Plaintiff had committed no serious crime and the initial
9 incident began with "check-the-welfare" call, and when Defendant Orozco forcibly ripped the
10 handles off of the vehicle that Plaintiff occupied and struck the windshield of that vehicle with
11 his baton *See Yount v. City of Sacramento*, 43 Cal. 4th 885, 902 (2008); *Munoz v. City of Union*
12 *City*, 120 Cal. App. 4th 1077, 1102 n.6 (2004); CACI 1305 (Battery by Peace Officer).

13 Defendant DeGeare is required to justify every shot. The City is vicariously liable pursuant to
14 Cal. Gov. Code § 815.2(a) ("A public entity is liable for injury proximately caused by an act or
15 omission of an employee of the public entity within the scope of his employment if the act or
16 omission would, apart from this section, have given rise to a cause of action against that
employee or his personal representative.").

17 Plaintiff seeks compensatory damages and reasonable attorney fees under this claim. *See*
18 CACI 3921.

19 Elements:

- 20 1. Defendant DeGeare and/or Defendant Orozco used deadly force against Plaintiff;
- 21 2. Defendant DeGeare and/or Defendant Orozco's use of deadly force was not
22 necessary to defend human life; and
- 23 3. Defendant DeGeare and/or Defendant Orozco use of unreasonable force was a
24 substantial factor in causing Mr. Fajardo's harm, injury, or damage.

25 *See* CACI 1305B (2021 Edition); *Munoz v. City of Union City*, 120 Cal. App. 4th 1077,
26 1102 n.6 (2004).

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1 *Defendants' Statement*

2 To state a claim for battery, Plaintiff must allege "(1) defendant intentionally performed
3 an act that resulted in a harmful or offensive contact with the plaintiff's person; (2) plaintiff did
4 not consent to the contact; and (3) the harmful or offensive contact caused injury, damage, loss
5 or harm to plaintiff." *Bailey v. County of San Joaquin*, 671 F. Supp. 2d 1167, 1174 (E.D. CA
6 2009) (quoting *Brown v. Ransweiler*, 171 Cal. App. 4th 516, 526-27 (2009)) (internal citations
7 and quotation marks omitted). However, when a state law battery claim is brought against a
8 police officer, "a plaintiff must prove that the peace officer's use of force was unreasonable . . .
9 based on the facts and circumstances confronting the peace officer." *Bailey*, 671 F. Supp. 2d at
10 1174 (internal quotation marks omitted); *Saman v. Robbins*, 173 F.3d 1150, 1157 n.6 (9th Cir.
11 1999).

12 Negligence

13 *Plaintiff's Statement*

14 Plaintiff contends that Defendant DeGeare and/or Defendant Orozco, while acting in the
15 course and scope of their employment as City of Bakersfield Police Department police officers,
16 were negligent in their tactics and use of force against Plaintiff, including Defendant DeGeare's
17 pre-shooting tactics and use of deadly force. *See Hayes v. Cnty. of San Diego*, 57 Cal. 4th 622,
18 635-8 (Cal. 2013); see also CACI 440.

19 The City is vicariously liable pursuant to Cal. Gov. Code § 815.2(a) ("A public entity is
20 liable for injury proximately caused by an act or omission of an employee of the public entity
21 within the scope of his employment if the act or omission would, apart from this section, have
22 given rise to a cause of action against that employee or his personal representative.").

23 Plaintiff seeks compensatory damages. *See* CACI 3921.

24 Elements:

- 25 1. Defendant DeGeare and/or Defendant Orozco used deadly force;
- 26 2. Defendant DeGeare and/or Defendant Orozco's use of deadly force was not
27 necessary to defend human life; and
- 28 3. Defendant DeGeare and/or Defendant Orozco's use of deadly force was a cause
of Plaintiff's injury, harm, or damages.

1 See CACI 400, 401, 440 (2021 Edition, May 2021 Supplement).

2 *Defendants' Statement*

3 To prevail on a common law claim of negligence against a police officer, Plaintiff must
4 show that (1) the officer owed plaintiff a duty of care; (2) the officer breached the duty by failing
5 "to use such skill, prudence, and diligence as other members of profession commonly possess
6 and exercise," (3) there was a "proximate causal connection between the [officer's] negligent
7 conduct and the resulting injury" to the plaintiff; and (4) the officer's negligence resulted in
8 "actual loss or damage" to the plaintiff. *Harris v. Smith*, 157 Cal. App. 3d 100, 104 (1984). "To
9 prevail on the negligence claim, Plaintiff must show that the *Defendant officers acted*
10 *unreasonably and that the unreasonable behavior harmed Plaintiff. Robinson v. City of San*
11 *Diego*, 954 F. Supp. 2d 1010 (S.D. CA 2013) (internal quotation marks and citation omitted).

12 See CACI Jury Instruction 400 and 401.

13 Violation of the Bane Act (Cal. Civ. Code § 52.1)

14 Plaintiff contends that Defendant DeGeare and/or Defendant Orozco, while acting in the
15 course and scope of their employment as City of Bakersfield Police Department police officers,
16 violated the Bane Act, Ca. Civ. Code, § 52.1. Further, Plaintiff alleges that the City of
17 Bakersfield is vicariously liable for Defendants DeGeare and Orozco's actions. See Cal. Govt.
18 Code §§815.2(a); 820(a). Section 52.1 does not require a showing of "threats, intimidation and
19 coercion" separate from an underlying constitutional violation. See *Reese v. Cty. of Sacramento*,
20 888 F.3d 1030, 1042 (9thCir. 2018); see also *Cornell v. City and County of San Francisco* 225
21 Cal.Rptr.3d at 382-83 (2017) (holding that "[n]othing in the text of the statute requires that the
22 offending 'threat, intimidation or coercion' be 'independent' from the constitutional violation
23 alleged" and "that the use of excessive force can be enough to satisfy the 'threat, intimidation or
24 coercion' element of Section 52.1."). Further, the Bane Act requires "a specific intent to violate
25 the arrestee's right to freedom from unreasonable seizure." *Cornell*, 225 Cal.Rptr.3d at 384. A
26 reckless disregard for a person's constitutional rights is evidence of a specific intent to deprive
27 that person of those rights. *Reese*, 888 F.3d at 1045.

28 Plaintiff seeks compensatory damages, punitive damages and reasonable attorneys' fees
under this claim.

1 Elements:

2 1. Defendant DeGeare and/or Defendant Orozco used excessive force against
3 Plaintiff;

4 2. Defendant DeGeare and/or Defendant Orozco intended to violate Plaintiff's right
5 to be free from excessive force by demonstrating a reckless disregard for Plaintiff's
6 constitutional rights to be free from excessive force; and

7 3. Defendant DeGeare and/or Defendant Orozco's use of excessive force was a
8 cause of harm to Plaintiff.

9 *See Reese*, 888 F.3d at 1042, 1045; *Cornell*, 225 Cal.Rptr.3d at 382-84.

10 Plaintiff believes that qualified immunity does not absolve the Defendants from liability
11 based on the disputed and undisputed facts of this case. Further, this case is not barred under
12 *Heck*.

13 *Defendants' Statement*

14 The Bane Act, California Civil Code § 52.1, prohibits all people from interfering "by
15 threat, intimidation, or coercion . . . with the exercise or enjoyment [*28] by any individual or
16 individuals of rights secured by the Constitution or laws of the United States, or of the rights
17 secured by the Constitution or laws of this state." Cal. Civ. Code § 52.1(a).

18 The Bane Act requires a showing that an officer had "a specific intent to violate the
19 arrestee's right to freedom from unreasonable seizure." *Reese*, 888 F.3d at 1043,
20 (quoting *Cornell*, 17 Cal. App. 5th at 801). The plaintiff must show that the officer "intended not
21 only the force, but its unreasonableness, its character as more than necessary under the
22 circumstances." *Reese*, 888 F.3d at 1045 (internal quotation marks omitted). Reckless disregard
23 is sufficient to show specific intent. *Id.*; see *S.T. by & through Niblett v. City of Ceres*, 2018 U.S.
24 Dist. LEXIS 149372, 2018 WL 4193192, at *14 (E.D. CA Aug. 31, 2018) (holding that a jury
25 could find that officers acted with reckless disregard for a decedent's rights when they shot him
26 in the back as he fled).

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1 Defendants’ Affirmative Defenses

2 *Qualified Immunity*

3 “Qualified immunity shields officers from civil liability so long as their conduct does not
4 violate *clearly established* statutory or constitutional rights of which a reasonable person would
5 have known.” *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (emphasis added) (internal
6 quotations and citations omitted); *see also Pearson v. Callahan*, 555 U. S. 223 (2009)(holding
7 that officers were entitled to qualified immunity because their entry did not violate clearly
8 established law, irrespective of whether it was unlawful); *Brouseau v. Haugen*, 543 U.S. 194,
9 198 (2004) (“Qualified immunity shields an officer from suit when he or she makes a decision
10 that, even if constitutionally deficient, reasonably misapprehends the law governing the
11 circumstances confronted.”). The Supreme Court has repeatedly observed that “qualified
12 immunity protects all but the plainly incompetent or those who knowingly violate the law.”
13 *Sheehan*, 135 S. Ct. at 1774 (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). “An officer
14 cannot be said to have violated a clearly established right unless the right’s contours were
15 sufficiently definite that any reasonable official in [his] shoes would have understood that he was
16 violating it,’ meaning that ‘existing precedent...placed the statutory or constitutional question
17 beyond debate.’” *Id.* (internal citations omitted). When conducting the analysis, the Court must
18 not “define clearly established law at a high level of generality”; rather, the “dispositive question
19 is whether the violative nature of *particular* conduct is clearly established.” *Mullenix*, 136 S. Ct.
20 at 308.

21 *Resisting Arrest/Obstruction*

22 Defendants contend that they were justified in their use of force and in their detention
23 and arrest of Plaintiff because Plaintiff was obstructing an investigation and resisting arrest. *See*
24 *also* Cal. Penal Code § 834a; Cal. Gov Code § 845.8.

25 *Plaintiff Assaulted Police/Self Defense/Defense of Others*

26 Defendants contend that they were justified in their use of force and in their detention
27 and arrest of Plaintiff because Plaintiff assaulted a police officer and/or they were acting in self-
28 defense and/or in defense of others.

See CACI Jury Instruction 1304.

1 *Justified/Reasonable Use of Force*

2 Defendants contend that the use of force was justified based on the conduct of Plaintiff.
3 *See* Cal. Penal Code §835a.

4 *Comparative Fault of Plaintiff*

5 Defendants contend that the Plaintiff’s injuries were caused by the Plaintiff in whole or in
6 part and, as such, there should be an offset to the extent the Defendants are determined to have
7 any fault whatsoever.

8 *See* CACI 405; 406.

9 *Good Faith*

10 Defendants contend they are not liable because they were acting in good faith. *See* Cal.
11 Gov. Code § 820.6

12 *Heck v. Humphrey*

13 Defendants contend that the Plaintiff’s claims are barred under *Heck v. Humphrey*.

14 **VIII. ABANDONED ISSUES**

15 The Joint Pretrial Statement states that Plaintiff is not pursuing a Fourteenth Amendment
16 claim for relief. On October 29, 2019, Magistrate Judge Jennifer L. Thurston entered an order
17 approving the parties’ stipulation to dismiss Plaintiff’s Third Claim for Municipal Liability –
18 Ratification (42 U.S.C. § 1983); Fourth Claim for Municipal Liability – Inadequate Training (42
19 U.S.C. § 1983); and Fifth Claim for Municipal Liability – Unconstitutional Custom, Practice or
20 Policy (42 U.S.C. § 1983). (ECF No. 52.)

21 **IX. WITNESSES**

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

27 *Plaintiff’s Witnesses*

- 28 1. Gilbert Fajardo; c/o Plaintiff’s counsel.
 2. Orozco, Juan, Officer; c/o Defense counsel.

- 1 3. Poteete-DeGeare, Lindy, Officer; c/o Defense counsel.
- 2 4. Barrier, Douglas, Officer; c/o Defense counsel.
- 3 5. Brown, E., Officer; c/o Defense counsel.
- 4 6. Carruesco, Gary, Sergeant; c/o Defense counsel.
- 5 7. Cecil, J., Crime Lab Supervisor; c/o Defense counsel.
- 6 8. Cegielski, Donald, Detective; c/o Defense counsel.
- 7 9. Felgenhauer, Jason, Officer; c/o Defense counsel.
- 8 10. Feola, Christopher, Detective; c/o Defense counsel.
- 9 11. Flores, Anthony, Crime Lab Technician; c/o Defense counsel.
- 10 12. Hall, Officer; c/o Defense counsel.
- 11 13. Hayes, Jaime, Officer; c/o Defense counsel.
- 12 14. Maddox, Officer; c/o Defense counsel.
- 13 15. McCauley, Nathan, Detective; c/o Defense counsel.
- 14 16. McIntyre, Frank, Officer; c/o Defense counsel.
- 15 17. Orozco, Jaime, Officer; c/o Defense counsel.
- 16 18. Peterson, Renee; c/o Defense counsel.
- 17 19. Spencer, Jeanne; c/o Defense counsel.
- 18 20. Sporer, Kenneth; c/o Defense counsel.
- 19 21. Vasquez, George; c/o Defense counsel.
- 20 22. Wedeking-White, L.; c/o Defense counsel.
- 21 23. White, CST; c/o Defense counsel.
- 22 24. Killian, Bill; 3112 Erwin St., Bakersfield, CA 93307.
- 23 25. Loera, Guillermina; 500 9th St. McFarland, CA.
- 24 26. Lopez, Gustavo; 3108 Erwin St., Bakersfield, CA 93307.
- 25 27. Martinez, Mayerling; 1601 Lotus Lane, Apt 05.
- 26 28. Osenbaugh, Ronald; 3212 Timothy Street, Bakersfield, CA 93304.
- 27 29. Oxford, Lily; 3500 Reeder Ave., Bakersfield, CA 93309.
- 28 30. Pimentel, Maria; 1626 Belmont Street.
31. Rodriquez, Juan; 3205 Timothy Street, Bakersfield, CA 93304.

- 1 32. Shepard, Robby; 3201 Timothy Street, Bakersfield, CA 93307.
- 2 33. Tomlinson, Danielle; 2613 Loch Ness Court, Bakersfield, CA 93306.
- 3 34. Tomlinson, John 2613 Loch Ness Court, Bakersfield, CA 93306.
- 4 35. Castañeda, René; 4652 East Carmen Avenue, Fresno, CA 93703.
- 5 36. Clark, Roger; 10207 Molino Road, Santee, CA 92071.
- 6 37. Freeman, M. Brandon, M.D., Ph.D.; 2701 Chester Avenue, Suite 103, Bakersfield,
7 CA 93301.
- 8 38. Hunt, Tamorah, Ph.D.; 1851 E. First Street, Suite 1160, Santa Ana, CA 92705
- 9 39. Perlman, Deborah, R.N.; 19197 Golden Valley Road, #231, Santa Clarita, CA
10 91387.
- 11 40. Peterson, David, M.D.; 310 N. Indian Hill Blvd., #127, Claremont, CA 91711.
- 12 41. Dow, Aaron; Bakersfield Fire Department; 2101 H St, Bakersfield, CA 93301.
- 13 42. Olsen, Michael; Bakersfield Fire Department; 2101 H St, Bakersfield, CA 93301.
- 14 43. Windh, Randall; Bakersfield Fire Department; 2101 H St, Bakersfield, CA 93301.
- 15 44. Hernandez, Felipe; Hall Ambulance; 1001 21st Street, Bakersfield, CA 93301.
- 16 45. Lamas, Peter; Hall Ambulance; 1001 21st Street, Bakersfield, CA 93301.
- 17 46. Strader, Jaime; Hall Ambulance, 1001 21st Street, Bakersfield, CA 93301.
- 18 47. Swerdfeger, Allen; Hall Ambulance, 1001 21st Street, Bakersfield, CA 93301.
- 19 48. Villalva, Deanna; Hall Ambulance, 1001 21st Street, Bakersfield, CA 93301.
- 20 49. Wolfe, Jeffrey; Hall Ambulance, 1001 21st Street, Bakersfield, CA 93301.
- 21 50. Yadon, Scott; Hall Ambulance, 1001 21st Street, Bakersfield, CA 93301.
- 22 51. Ortega, Arturo; AMR Ambulance; 1055 W Ave J, Lancaster, CA 93534.
- 23 52. Hernandez, Brill; AMR Ambulance; 1055 W Ave J, Lancaster, CA 93534.
- 24 53. Cardenas, Luis; AMR Ambulance; 1055 W Ave J, Lancaster, CA 93534.
- 25 54. Young, Amy; AMR Ambulance; 1055 W Ave J, Lancaster, CA 93534.
- 26 55. Perry, Sara; AMR Ambulance; 1055 W Ave J, Lancaster, CA 93534.
- 27 56. Medina, Albert; AMR Ambulance; 1055 W Ave J, Lancaster, CA 93534.
- 28 57. Vargas, Gustavo; AMR Ambulance; 1055 W Ave J, Lancaster, CA 93534.
58. Thornton, Keith; AMR Ambulance; 1055 W Ave J, Lancaster, CA 93534.

- 1 59. Cox, Kyrsten; AMR Ambulance; 1055 W Ave J, Lancaster, CA 93534.
- 2 60. Goodloe-Rollain, Jerod; AMR Ambulance; 1055 W Ave J, Lancaster, CA 93534.
- 3 61. Aguirre, David, M.D.; 1700 Mt. Vernon Ave., Bakersfield, CA 93306.
- 4 62. Carney, Scott, M.D.; 1700 Mt. Vernon Ave., Bakersfield, CA 93306.
- 5 63. Kaur, Amanpreet, M.D.; 1700 Mt. Vernon Ave., Bakersfield, CA 93306.
- 6 64. Kumar, Monica, M.D.; 1600 W. Ave. J, Lancaster, CA 93534.
- 7 65. Maheedy, Mohammed, M.D.; 1700 Mt. Vernon Ave., Bakersfield, CA 93306.
- 8 66. Meyer, William, M.D.; 2201 Mt. Vernon Ave. #221, Bakersfield, CA 93306.
- 9 67. Munoz, Augustine, M.D.; 1700 Mt. Vernon Ave., Bakersfield, CA 93306.
- 10 68. Ngo, Tri, M.D.; 1700 Mt. Vernon Ave., Bakersfield, CA 93306.
- 11 69. Rivera, Mark, M.D.; 1700 Mt. Vernon Ave., Bakersfield, CA 93306.
- 12 70. Wexner, Sage, M.D.; 1700 Mt. Vernon Ave., Bakersfield, CA 93306.

Defendants' Witnesses

- 13 1. Defendant Juan Orozco, who can be contacted through Defendants' counsel of
14 record, Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.
- 15 2. Defendant Lindy (DeGeare) Poteete, who can be contacted through Defendants'
16 counsel of record, Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.
- 17 1. Donald Ceglielski, who can be contacted through Defendants' counsel of record,
18 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.
- 19 2. Nathan McCauley, who can be contacted through Defendants' counsel of record,
20 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.
- 21 5. Christopher Feola, who can be contacted through Defendants' counsel of record,
22 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.
- 23 6. Lisa Wedeking-White, who can be contacted through Defendants' counsel of
24 record, Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.
- 25 7. Douglas Barrier, who can be contacted through Defendants' counsel of record,
26 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.
- 27 8. Jason Felgenhauer, who can be contacted through Defendants' counsel of record,
28 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

1 9. Manuel Ornelas, who can be contacted through Defendants' counsel of record,
2 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

3 10. Aaron Dow, Bakersfield Fire Department, 2101 H. St., Bakersfield, CA 93301.

4 11. Michael Olsen, Bakersfield Fire Department, 2101 H. St., Bakersfield, CA 93301.

5 12. Randall Windh, Bakersfield Fire Department, 2101 H. St., Bakersfield, CA 93301.

6 13. Felipe Hernandez, Hall Ambulance, 2001 O Street, Bakersfield, CA 93301.

7 14. Peter Lamas, Hall Ambulance, 2001 O Street, Bakersfield, CA 93301.

8 15. Record custodian for Hall Ambulance, 2001 O Street, Bakersfield, CA 93301.

9 16. George Vasquez, who can be contacted through Defendants' counsel of record,
10 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

11 17. Robby Shepard, 3201 Timothy Street, Bakersfield, CA.

12 18. Anthony Flores, who can be contacted through Defendants' counsel of record,
13 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

14 19. Billy Killian, 3112 Erwin Street, Bakersfield, CA.

15 20. Lily Oxford, 600 Planz Road, Bakersfield, CA.

16 21. Jaime Orozco, who can be contacted through Defendants' counsel of record,
17 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

18 22. Danielle Tomlinson, 2613 Loch Ness Court, Bakersfield, CA.

19 23. Kenneth Sporer, who can be contacted through Defendants' counsel of record,
20 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

21 24. Guillermina Loera, 502 High Street, Delano, CA.

22 25. Meghan Coffey, Kern Medical Center, 1700 Mt. Vernon Ave, Bakersfield, CA.

23 26. Robert Horacio, 2800 Pacheco Road, Bakersfield, CA.

24 27. Richard Bittleson, who can be contacted through Defendants' counsel of record,
25 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

26 28. Jeffrey Cecil, who can be contacted through Defendants' counsel of record,
27 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

28 29. Arreaza Hector, Kern County Medical Center, 1700 Mt. Vernon Avenue,
Bakersfield, CA 93306.

1 30. Nosheen Hasan, Kern County Medical Center, 1700 Mt. Vernon Avenue,
2 Bakersfield, CA 93306.

3 31. Rasha Kuran, Kern County Medical Center, 1700 Mt. Vernon Avenue, Bakersfield,
4 CA 93306.

5 32. Record custodian for Kern County Medical Center, 1700 Mt. Vernon Avenue,
6 Bakersfield, CA 93306.

7 33. Dario Hernandez, 5100 Gasoline Alley Drive, Bakersfield, Ca 93313.

8 34. Dr. Joseph Gomes, Kern County Medical Center, 1700 Mt. Vernon Avenue,
9 Bakersfield, CA 93306.

10 35. Dr. Gregory Fernandez, Kern County Medical Center, 1700 Mt. Vernon Avenue,
11 Bakersfield, CA 93306.

12 36. Rochelle Block, Kern County Medical Center, 1700 Mt. Vernon Avenue,
13 Bakersfield, CA 93306.

14 37. Curtis Cope (Expert), who can be contacted through Defendants' counsel of record,
15 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

16 38. Michael Knox (Expert), who can be contacted through Defendants' counsel of
17 record, Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

18 39. Rod Englert (Expert), who can be contacted through Defendants' counsel of record,
19 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

20 40. Jason Droll (Expert), who can be contacted through Defendants' counsel of record,
21 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

22 41. Harvey Edmonds (Expert), who can be contacted through Defendants' counsel of
23 record, Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

24 42. Kris Mohandie (Expert), who can be contacted through Defendants' counsel of
25 record, Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

26 43. Swathi Kode (Expert), who can be contacted through Defendants' counsel of record,
27 Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

28 44. Ed Bennett (Expert), who can be contacted through Defendants' counsel of record,
Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

1 45. Stephanie Rizzardi (Expert), who can be contacted through Defendants' counsel of
2 record, Marderosian & Cohen, 1260 Fulton Street, Fresno, CA 93721.

3 **X. TRIAL EXHIBITS**

4 The following is a list of documents or other exhibits that the parties expect to offer at
5 trial. **NO EXHIBIT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE**
6 **ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS**
7 **ORDER SHOULD BE MODIFIED TO PREVENT "MANIFEST INJUSTICE."** *See* Fed. R.
8 Civ. P. 16(e); Local Rule 281(b)(11).

9 *Plaintiff's Exhibits*

- 10 1. Audio in Ambulance during Transport
- 11 2. Bakersfield Police Department Radio Traffic Transcript
- 12 3. Bakersfield Police Department Radio Communication Clips
- 13 4. Bakersfield Police Department Use of Force Policy 300
- 14 5. Bakersfield Police Department Vehicle Pursuit Policy 314
- 15 6. Bakersfield Police Department CAD Call Hardcopy
- 16 7. Kern Regional Crime Laboratory Reports
- 17 8. Castaneda – Analysis of Damages Present Along Right Side of Fajardo Vehicle
- 18 9. Castaneda – Analysis_Englert Re-Enactment Draft
- 19 10. Castaneda – Reconstruction Analysis Report
- 20 11. Jaime Orozco Interview Audio
- 21 12. Jaime Orozco Interview Transcript
- 22 13. Juan Orozco Criminal Trial Transcript (02.01.2018)
- 23 14. Juan Orozco Interview Audio (05.18.2015)
- 24 15. Juan Orozco Interview Audio (05.20.2015)
- 25 16. Juan Orozco Interview Transcript (05.18_20.2015)
- 26 17. Juan Orozco Preliminary Hearing Transcript (11.30.2015)
- 27 18. Juan Rodriguez Interview Audio
- 28 19. Juan Rodriguez Interview Transcript
20. Lindy DeGeare Criminal Trial Transcript (01.30.2018)

- 1 21. Lindy DeGeare Criminal Trial Transcript (01.31.2018)
- 2 22. Lindy DeGeare Interview Audio on 05.17.2015
- 3 23. Lindy DeGeare Interview Audio on 05.18.2015
- 4 24. Lindy DeGeare Interview Audio on 05.20.2015
- 5 25. Lindy DeGeare Interview Drawing
- 6 26. Lindy DeGeare Interview Transcripts (05.17_18_20.2015)
- 7 27. Lindy DeGeare Preliminary Hearing Transcript (11.30.2015)
- 8 28. Lindy DeGeare Preliminary Hearing Transcript (12.18.2015)
- 9 29. Sergeant Donald Cegielski Trial Testimony Transcript
- 10 30. Photographs from Mr. Killian's Residence
- 11 31. Photographs of Car and Accident
- 12 32. Photographs of Casings and Impact
- 13 33. Photographs of Certificate of Title
- 14 34. Photographs of Clothing
- 15 35. Photographs of Evidence Placards
- 16 36. Photographs of Evidence Recovered
- 17 37. Photographs of Gilberto Fajardo at the Scene
- 18 38. Photographs of Gilberto Fajardo's Decubitus Ulcers and Pressure Sores
- 19 39. Photographs of Gilberto Fajardo's Injuries
- 20 40. Photographs of Impacts in route
- 21 41. Photographs of Officer Vehicle
- 22 42. Photographs of Officers
- 23 43. Photographs of Reenactment by Officer DeGeare
- 24 44. Photographs of Reenactment by Officer Orozco
- 25 45. Photographs of Transport Vans
- 26 46. Photographs of Nissan
- 27 47. Photographs of Scene
- 28 48. Photographs of Trajectory and Impact
49. Scene Videos

- 1 50. Gilberto Fajardo's Medical Records
- 2 51. Gilberto Fajardo's Billing Records
- 3 52. Gilberto Fajardo's Life Care Plan
- 4 53. Gilberto Fajardo's Future Medical Care Costs
- 5 54. Gilberto Fajardo's X-Ray Images
- 6 55. Relevant Portions of POST Learning Domain 20
- 7 56. Images of Incident Reconstruction
- 8 57. Medical Illustrations
- 9 58. Demonstratives used by Experts
- 10 59. Exhibits to Depositions
- 11 60. Exhibits to Expert Reports
- 12 61. Chart of Gilberto Fajardo's Economic Losses

Defendants' Exhibits

- 13 1. Photographs/Videos of Scene, Vehicle, and Evidence
- 14 2. Audio Interviews of Plaintiff
- 15 3. Audio Interviews of Billy Joe Killian
- 16 4. Audio Interviews of Lily Oxford
- 17 5. CAD Report
- 18 6. Videos from Drone during reenactment
- 19 7. Radio Traffic
- 20 8. Hall Ambulance Records
- 21 9. American Ambulance Records
- 22 10. Select KMC Records
- 23 11. Sect South High School Records
- 24 12. 911 Calls
- 25 13. Nissan Altima
- 26 14. Photographs taken by Jason Droll
- 27 15. Photographs taken by Michael Knox
- 28 16. Photographs taken by Rod Englert

- 1 17. Mr. Fajardo's clothing and shoes from the incident
- 2 18. Evidence collected at scene (projective from Gilberto Fajardo, Mushroomed copper
- 3 jacket, 3 lugar spent casings).
- 4 19. Audio interview of Brenda Gonzales
- 5 20. Audio interview of Danielle Tomlinson
- 6 21. Audio interview of Guillermena Loera
- 7 22. Audio interview of Hector Sanchez
- 8 23. Audio interview of Juan Rodriguez
- 9 24. Audio interview of Erica Miller
- 10 25. Audio interviews of Lily Oxford
- 11 26. Audio interview of Maria Pimentel
- 12 27. Audio interview of Marilyn Martinez
- 13 28. Audio interview of Robby Shephard
- 14 29. Audio interview of Ronald Osenbaugh
- 15 30. Images of Incident Reconstruction
- 16 31. Medical Illustrations
- 17 32. Demonstratives used by Experts
- 18 33. Exhibits to Depositions
- 19 34. Exhibits and Photographs attached to and/or contained in Defendants' experts' reports.

20 **XI. DISCOVERY DOCUMENTS TO BE OFFERED AT TRIAL**

21 Plaintiff does not expect to offer any portions of depositions, answers to interrogatories,
22 and/or responses to requests for admission, other than for impeachment purposes. Plaintiff
23 currently is unaware of any witness who will be unavailable for trial.

24 Defendants identify the following discovery documents to be offered at trial:

- 25 1. Plaintiff's Responses to Interrogatories propounded by City of Bakersfield
- 26 2. Plaintiff's Responses to Interrogatories propounded by Juan Orozco
- 27 3. Plaintiff's Responses to Interrogatories propounded by Lindy DeGeare
- 28 4. Plaintiff's Complaint

1 Defendants also reserve the right to use depositions and criminal trial testimony for
2 purposes of impeachment.

3 **XII. FURTHER DISCOVERY OR MOTIONS**

4 Plaintiff does not request further discovery or any additional pretrial motions, other than
5 potential motions *in limine* for the issues identified above.

6 Defendants have filed a motion to continue the trial and a motion to withdraw consent to
7 magistrate jurisdiction. (ECF Nos. 66, 67.) Defendants intend to file various motions *in limine*.
8 The motions *in limine* that are currently contemplated are set forth above. Defendants also intend
9 to file a motion to bifurcate the amount of punitive damages from liability issue of the named
10 officers, and will file a Federal Rule of Civil Procedure 50 motion.

11 **XIII. STIPULATIONS**

12 Plaintiff is willing to stipulate that the above-listed undisputed facts require no proof.
13 Defendants are not willing to stipulate on any issues.

14 **XIV. AMENDMENTS/DISMISSALS**

15 There are no requested amendments to pleadings, dismissals, additions or substitutions of
16 parties, or dispositions as to defaulting parties.

17 **XV. SETTLEMENT NEGOTIATIONS**

18 The parties went to mediation before Judge Otero. There was a mediator's proposal, but
19 the case did not settle. Plaintiff would be open to continued settlement discussions if Defendants
20 believe that would be meaningful. Defendants state they will notify Plaintiffs' counsel and the
21 Court in the event they believe a settlement conference would be beneficial.

22 **XVI. AGREED STATEMENT**

23 The parties do not have any agreed statements.

24 **XVII. SEPARATE TRIAL OF ISSUES**

25 Plaintiff would agree to sever trial as to the amount of punitive damages, but contends that
26 entitlement to punitive damages, *i.e.* whether Defendants DeGeare and Orozco's actions were
27 malicious, oppressive or in reckless disregard of Plaintiff's rights, is an issue that should be tried
28 with liability. Plaintiff is not agreeable to sever damages from liability.

Defendants seek bifurcation of any award of punitive damages, in the event the jury finds

1 that punitive damages should be awarded.

2 **XVIII. IMPARTIAL EXPERTS/LIMITATION OF EXPERTS**

3 The parties do not seek appointment of impartial expert witnesses or a limitation on the
4 number of expert witnesses.

5 **XIX. ATTORNEYS' FEES**

6 If Plaintiff is successful at trial, Plaintiff's counsel will file a motion seeking
7 reimbursement for reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and as permitted by
8 the Bane Act and Cal. Civ. Code §1021.

9 Defendants seek to recover of costs and attorneys' fees under 42 U.S.C § 1988 and 42
10 U.S.C § 1927, Federal Rule of Civil Procedure 54, Local Rules 292 and 293, and all other
11 applicable statutes and rules.

12 **XX. SPECIAL HANDLING OF TRIAL EXHIBITS**

13 The parties do not anticipate any issues regarding special handling of trial exhibits.

14 **XXI. TRIAL PROTECTIVE ORDER**

15 The parties do not seek a trial protective order.

16 **XXII. FURTHER TRIAL PREPARATION**

17 **A. Motions *In Limine* Hearing and Briefing Schedule**

18 The parties anticipate filing pretrial motions. The parties may file up to ten (10) motions
19 *in limine* per side, up to a total of forty (40) pages in length per side. Responses to motions *in*
20 *limine* shall also be limited to forty (40) pages in length per side. The parties may also file an
21 additional motion *in limine* regarding treatment of Plaintiff's subsequent arrest that may be up to
22 fifteen (15) pages in length per side.

23 The Court orders the parties' counsel to meet and confer on anticipated motions *in limine*
24 and to distill evidentiary issues. This Court further orders the parties to file motions *in limine* as to
25 only important, critical matters, keeping in mind that most evidentiary issues can be resolved
26 easily with a conference among the Court and counsel.

27 The parties, after meaningful and genuine meet and confer efforts, shall file and serve
28 their motions *in limine* no later than **February 18, 2022**. Any response to motions *in limine* shall
be filed no later than **February 25, 2022**. Any reply in support of a motion *in limine* shall be filed

1 no later than **March 3, 2022**. The Court will conduct a hearing on the motions *in limine* on
2 **March 10, 2022, at 2:00 PM, in Courtroom 10 (EPG)**. The Court grants telephonic
3 appearances, with each party wishing to so appear directed to use the following dial-in number
4 and passcode: 1-888-251-2909; passcode 1024453.

5 Moving and opposition papers must be brief, succinct, and well-organized. The Court
6 encourages each party to consolidate their respective motions *in limine* in a single document,
7 organized by number, and to file oppositions in a single document responding to the numbered
8 issues under the same corresponding headers. For example, if a defendant has five evidentiary
9 issues, it would file one motion that has five headers: Motion *in limine* No. 1; Motion *in limine*
10 No. 2, and so on; and, in response, plaintiff would file one opposition document organized in the
11 same way. Said another way, in order to maintain a well-organized docket in preparation for trial,
12 the Court discourages parties from filing multiple motions *in limine* in a string of separate docket
13 entries.

14 **B. Proposed Jury Instructions and Verdict Forms**

15 The parties shall meet and confer regarding jury instructions and a verdict form for use at
16 trial. The parties, no later than **March 4, 2022**, shall file and serve all agreed-on jury instructions
17 and an agreed-on verdict form and identify such as the agreed-on jury instructions and verdict
18 form.

19 No later than **March 4, 2022**, Plaintiff may file and serve his proposed jury instructions
20 and identify such as jury instructions upon which the parties could not agree. No later than
21 **March 4, 2022**, Defendant may file and serve their proposed jury instructions and identify such
22 as jury instructions upon which the parties could not agree.

23 All jury instructions SHALL indicate the party submitting the instruction (i.e.,
24 joint/agreed-on, Plaintiff's, or Defendants'), the number of the proposed instruction in sequence,
25 a brief title for the instruction describing the subject matter, the text of the instruction, and the
26 legal authority supporting the instruction.

27 All jury instructions and verdict forms SHALL be e-mailed as a Microsoft Word
28 attachment to **epgorders@caed.uscourts.gov** no later than **March 4, 2022**. Jury instructions and
verdict forms will not be given or used unless they are so e-mailed to the Court. The Court will

1 not accept a mere list of numbers of form instructions from the Ninth Circuit Model Jury
2 Instructions, CACI, BAJI, or other instruction forms. The proposed jury instructions must be in
3 the form and sequence which the parties desire to be given to the jury. All blanks to form
4 instructions must be completed. Irrelevant or unnecessary portions of form instructions must be
5 omitted.

6 Ninth Circuit Model Jury Instructions shall be used where the subject of the instruction is
7 covered by a model instruction. Otherwise CACI or BAJI instructions shall be used where the
8 subject of the instruction is covered by CACI or BAJI. All instructions shall be short, concise,
9 understandable, and neutral and accurate statements of the law. Argumentative or formula
10 instructions will not be given and must not be submitted. Quotations from legal authorities
11 without reference to the issues at hand are unacceptable.

12 The parties shall, by italics or underlining, designate any modification of instructions from
13 statutory or case authority, or any pattern instruction, such as the Ninth Circuit Model Jury
14 Instructions, CACI, BAJI, or any other source of pattern instructions, and must specifically state
15 the modification made to the original form instruction and the legal authority supporting the
16 modification.

17 No later than **March 4, 2022**, the parties may file and serve meaningful written objections
18 to disputed jury instructions proposed by another party. All objections shall be in writing, shall set
19 forth the proposed instruction objected to in its entirety, shall specifically set forth the
20 objectionable matter in the proposed instruction, and shall include a citation to legal authority to
21 explain the grounds for the objection and why the instruction is improper. A concise argument
22 concerning the instruction may be included. Where applicable, the objecting party shall submit an
23 alternative proposed instruction covering the subject or issue of law.

24 The Court will conduct a hearing on jury instructions, the verdict form, and any other
25 outstanding pretrial issues on **March 18, 2022, at 2:00 PM in Courtroom 10 (EPG)**. The Court
26 grants telephonic appearances, with each party wishing to so appear directed to use the following
27 dial-in number and passcode: 1-888-251-2909; passcode 1024453.

28 ///

///

1 **C. Agreed Summary of the Case**

2 The parties shall serve and file, no later than **March 4, 2022**, a joint or individual non-
3 argumentative, brief statement of the case which is suitable for reading to the jury at the outset of
4 jury selection. The Court will consider the parties’ statements but may draft its own statement.
5 The parties will be provided with the opportunity to review the Court’s prepared statement on
6 March 18, 2022. The contents of the summary shall not be deemed to be evidence or an
7 admission or stipulation by any party as to any contested fact or issue.

8 **D. Voir Dire**

9 The Court will conduct a brief *voir dire* examination of the prospective jurors, after which
10 Counsel will be given an opportunity to conduct brief *voir dire* examination. To aid the Court in
11 conducting *voir dire*, counsel should lodge with the Court on the first morning of trial a list of all
12 prospective witnesses, including rebuttal witnesses, that counsel reasonably expect to call. The
13 purpose of the list is to advise the prospective jurors of possible witnesses to determine if a
14 prospective juror is familiar with any potential witness.

15 **E. Stipulations to be Read to Jury**

16 The parties are directed to file, no later **March 4, 2022**, any stipulations that are to be read
17 to the jury.

18 **F. Trial Exhibits**

19 **1. Duty of Counsel to Pre-Mark Exhibits**

20 No later than **February 25, 2022**, the parties shall exchange their proposed exhibits to the
21 extent they have not already done so. The parties’ counsel shall meet and confer to pre-mark and
22 examine trial exhibits and to prepare exhibit lists, to the extent they have not already done so.

23 All of Plaintiff’s exhibits shall be pre-marked with the prefix “PX” and numbered
24 sequentially beginning with 100 (e.g., PX-100, PX-101, etc.). All of Defendants’ exhibits shall be
25 pre-marked with the prefix “DX” and numbered sequentially beginning with 200 (e.g., DX-200,
26 DX 201, etc.)

27 **2. Submission of Trial Exhibits**

28 The original and three copies of all trial exhibits along with exhibit lists shall be submitted
to the Courtroom Deputy no later than **March 17, 2022**, in binders as described below. The

1 parties' counsel should note that, pursuant to Local Rule 281(b)(11), only those exhibits listed in
2 the parties' pretrial statement will be permitted to be offered into evidence. Therefore, any
3 exhibits submitted which are not listed in the pretrial statement will not be admitted without a
4 showing of good cause or the parties' stipulation.

5 Counsel shall create seven (7) complete, legible sets of exhibits in binders as follows:

- 6 (1) Four sets of binders to be delivered to the Courtroom Deputy on **March 17, 2022**,
7 for the Court's use; and,
- 8 (2) One set for each party's counsel's use.

9 If the parties desire, they may have an additional set of binders to be used for the purpose
10 of questioning witnesses. All copies submitted to the Court must be legible.

11 3. Exhibit Lists

12 No later than **March 4, 2022**, the parties shall file and serve their final lists of respective
13 pre-marked exhibits. Only those exhibits that are identified in the parties' joint pretrial statement
14 may appear on the final exhibit list. Further, no exhibit, other than those listed in the final exhibit
15 list, may be admitted at trial unless the parties stipulate or upon a showing that this order should
16 be modified to prevent "manifest injustice." Fed. R. Civ. P. 16(e).

17 4. Objections

18 This Court will address objections to exhibits as they arise during trial.

19 5. Post-Trial Exhibit Retention

20 Counsel who introduced exhibits at trial shall retrieve the original exhibits from the
21 Courtroom Deputy following the verdict in the case. The parties' counsel shall retain possession
22 of and keep safe all exhibits until final judgment and all appeals are exhausted.

23 6. Discovery Documents

24 The parties shall file a final list of all discovery documents the party intends to use at trial,
25 indicating whether each discovery document has previously been lodged with the Clerk. If the
26 discovery document has not been previously lodged, the party shall so lodge the document with
27 the Courtroom Deputy by **March 11, 2022**.

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1 **7. Deposition Testimony**

2 Deposition testimony shall be designated by page and line number, with such designation
3 to be filed and served no later than **February 25, 2022**. Any counter-designation as to the same
4 deposition (also set out by page and line number) shall be filed and served no later than **March 4,**
5 **2022**. The original certified transcript of any deposition identified in a designation or counter-
6 designation shall be lodged with the Courtroom Deputy no later than **March 11, 2022**.

7 **G. Use of Video and Computers**

8 Any party wishing to use a videotape or DVD for any purpose during trial shall lodge a
9 copy of the video with the Courtroom Deputy no later than **March 4, 2022**. If a written transcript
10 of audible words on the tape or DVD is available, the Court requests that the transcript be lodged
11 with the Court, solely for the aid of the Court.

12 If any party intends to use a laptop computer for presentation of evidence or intends to use
13 any other audio/visual equipment belonging to the Court, that party shall contact the Courtroom
14 Deputy no later than **March 11, 2022**, so that any necessary arrangements and/or training may be
15 scheduled.

16 The parties shall meet and confer regarding remote testimony by any witness and inform
17 the Court of the status of their discussions at the March 10, 2021 hearing on motions *in limine*.

18 **H. Order of Witnesses**

19 To make the trial operate efficiently and smoothly, each counsel has the continuing
20 obligation to advise opposing counsel as to what witnesses he or she intends to call twenty-four
21 (24) hours prior to calling that witness.

22 **XXIII. OBJECTIONS TO PRETRIAL ORDER**

23 Any party may, within **ten (10) calendar days** after the date of this Order, file and serve
24 written objections to any of the provisions of this Order. Such objections shall specify the
25 requested modifications, corrections, additions, or deletions.

26 **XXIV. RULES OF CONDUCT DURING TRIAL**

- 27 1. All participants in the trial shall conduct themselves in a civil manner.
28 2. Counsel shall advise their respective clients and witnesses not to discuss any
aspect of the case in the common areas of the courthouse accessible to jurors, such as the lobby,

1 the elevators, the hallways, and the cafeteria.

2 3. Counsel may use visual aids in presenting opening and closing statements. Any
3 visual aids shall be shown to opposing counsel before the respective statement is made.

4 4. Counsel shall have his or her witnesses readily available to testify so that there are
5 no delays in the presentation of evidence to the trier of fact.

6 5. At the close of each trial day, counsel shall disclose his or her anticipated
7 witnesses and order of presentation for the next day, so that any scheduling or evidentiary issues
8 may be raised at that time.

9 6. Before approaching a witness, counsel shall secure leave of court to approach the
10 witness.

11 7. Before approaching a witness with a writing, counsel shall first show the writing to
12 opposing counsel.

13 8. An exhibit shall not be published to the jury until it has been admitted into
14 evidence and counsel has secured leave of court to publish the exhibit.

15 **XXV. COMPLIANCE WITH THIS ORDER**

16 Compliance with this order and its requirements is mandatory. This Court will strictly
17 enforce the requirements of this pretrial order, especially those pertaining to motions *in limine*,
18 jury instructions and a verdict form. Counsel and parties are subject to sanctions for failure to
19 fully comply with this order and its requirements. This Court will modify this order “only to
20 prevent manifest injustice.” Fed. R. Civ. P. 16(e).

21 IT IS SO ORDERED.

22 Dated: January 24, 2022

23 /s/ Eric P. Gray
24 UNITED STATES MAGISTRATE JUDGE