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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THE ESTATE OF JASON ALDERMAN;  
JUDY EDENS, an individual; A.K., by and  
through his guardian ad litem NENA  
CHAVEZ; and S.A., by and through his  
guardian ad litem STEPHANIE ELLIOTT,

Plaintiffs,

v.

CITY OF BAKERSFIELD;  
BAKERSFIELD POLICE  
DEPARTMENT; OFFICER CHAD  
GARRETT, an individual; OFFICER  
RICK WIMBISH, an individual; and  
DOES 1-50,

Defendants.

No. 1:16-cv-00994-DAD-JLT

ORDER DENYING DEFENDANTS’  
MOTION TO BIFURCATE MONELL  
CLAIMS

(Doc. No. 41)

Plaintiffs, the Estate of decedent Jason Alderman, A.K., by and through his guardian ad litem Nena Chavez, and S.A., by and through his guardian ad litem Stephanie Elliott, (“plaintiffs”) brought this civil rights action against defendants the City of Bakersfield, Bakersfield Police Department, officer Chad Garrett (“officer Garrett”), and Officer Rick Wimbish (“officer Wimbish”) (hereinafter jointly “defendants”). Following the Final Pretrial Conference held on July 16, 2018 (Doc. No. 40), defendants have moved to bifurcate the issue of the liability of officers Chad Garrett and Rick Wimbish from plaintiffs’ *Monell* claims brought

1 against the City of Bakersfield for purposes of trial. (Doc. No. 41.) Plaintiffs filed an opposition  
2 on August 6, 2018. (Doc. No. 45.) Defendants filed a reply on August 9, 2018. (Doc. No. 46.)  
3 Having considered the parties’ briefings and for the reasons explained below, the court will deny  
4 defendants’ motion to bifurcate.

### 5 **BACKGROUND**

6 This case involves the death of Jason Alderman (“decedent” or “Mr. Alderman”), who  
7 was shot by Bakersfield Police Department (“BDP”) officer Chad Garrett on August 22, 2015.  
8 Officer Rick Wimbish was also present during the incident. Mr. Alderman was shot as he was  
9 attempting to exit a restaurant after breaking into it. Plaintiffs initiated this suit on July 11, 2016  
10 and describe the six causes of action they have brought pursuant to 42 U.S.C. § 1983 and state  
11 law as follows: (1) violation of civil rights – 42 U.S.C § 1983; (2) violation of civil rights –  
12 *Monell* claim; (3) violation of civil rights – familial relationship; (4) violation of civil rights –  
13 familial relationship (*Monell*); (5) violation of California Civil Code § 52.1; and (6) wrongful  
14 death – negligence. (*See* Doc. No. 1 at 6–13.)

15 Notably, in the two years following the initiation of this action by the filing of the  
16 complaint, neither party has filed any dispositive motions.

### 17 **LEGAL STANDARDS**

18 Federal Rule of Civil Procedure 42(b) states that district courts “may order a separate trial  
19 of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims” for  
20 purposes of convenience, avoiding prejudice, economy, or expediency. Fed. R. Civ. P. 42. “Rule  
21 42(b) . . . confers broad discretion upon the district court to bifurcate a trial, thereby deferring  
22 costly and possibly unnecessary proceedings pending resolution of potentially dispositive  
23 preliminary issues.” *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002);  
24 *see also Estate of Lopez v. Suhr*, No. 15-CV-01846-HSG, 2016 WL 1639547, at \*4 (N.D. Cal.  
25 Apr. 26, 2016) (“Rule 42(b) confers broad authority and gives the district court virtually  
26 unlimited freedom to try the issues in whatever way trial convenience requires.”) (internal  
27 citations omitted). A district court’s decision of whether to bifurcate a trial is reviewed for an

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1 abuse of discretion. *Hangerter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1021 (9th Cir.  
2 2004).

3 The determination of whether to bifurcate a trial should be based on factors including  
4 “potential prejudice to the parties, potential confusion to the jury, and the relative convenience  
5 and economy which would result.” *Green v. Baca*, 226 F.R.D. 624, 630 (C.D. Cal. 2005), *order*  
6 *clarified*, No. CV 02-204744MMMMANX, 2005 WL 283361 (C.D. Cal. Jan. 31, 2005); *see also*  
7 *Clark v. I.R.S.*, 772 F. Supp. 2d 1265, 1269 (D. Haw. 2009) (decision to bifurcate should be based  
8 on whether the issues are significantly different; whether the issues are tried before a jury or the  
9 court; whether discovery favors bifurcation; whether the evidence on the issues overlaps; and  
10 whether bifurcation will prejudice the party opposing the motion). “Absent some experience  
11 demonstrating the worth of bifurcation, separation of issues for trial is not to be routinely  
12 ordered.” *Afshar v. City of Sacramento*, No. CIV S-04-1088LKKJFB, 2007 WL 779748, at \*1  
13 (E.D. Cal. Mar. 14, 2007) (internal quotations and citations omitted).

#### 14 **DISCUSSION**

15 The court is not persuaded that the benefits of bifurcation outweigh its potential  
16 complexities and likelihood of prejudice to plaintiffs. Defendants argue that the court should  
17 bifurcate the issue of the defendant officers’ liability from the *Monell* claims to prevent evidence  
18 of prior shootings or lawsuits from unfairly influencing the question of whether the individual  
19 officers’ use of force was reasonable in this instance. (Doc. No. 41-1 at 15–16.) Defendants also  
20 argue that “a finding of no liability on the party [sic] of individual officers will serve as a bar to  
21 consideration of any *Monell* issues against the employing municipality . . . .” (*Id.* at 16.) Finally,  
22 defendants argue that there is a significant risk of confusion and prejudice if the court were to  
23 simultaneously try both the individual liability and *Monell* claims. Each of these arguments are  
24 considered in turn below.

25 The use of limiting instructions has been recognized as an effective manner to prevent the  
26 jury’s consideration of prejudicial evidence. The defense correctly contends that evidence of  
27 prior officer-involved shootings should not be considered in determining whether the individual  
28 officers’ use of force was excessive in this instance. *See Gates v. Rivera*, 993 F.2d 697, 700 (9th

1 Cir. 1993) (holding that evidence as to whether the police officer had previously shot anyone  
2 should have been excluded in the trial of a § 1983 action alleging excessive force, as the  
3 “question to be resolved was whether, objectively, his use of force had been excessive.”)<sup>1</sup>  
4 However, the court can prevent the jury’s consideration of prior officer-involved shootings in  
5 determining individual liability by giving limiting instructions. *See Rodriguez v. Cty. of Los*  
6 *Angeles*, 891 F.3d 776, 806–07 (9th Cir. 2018) (“Though some of the evidence relevant to the  
7 *Monell* claims was irrelevant to individual liability, the district court’s many limiting instructions  
8 cured any possible prejudice.”); *Velazquez v. City of Long Beach*, 793 F.3d 1010, 1028 (9th Cir.  
9 2015) (district court’s concern of permitting evidence implicating Rule 404(b) could “have been  
10 cured short of categorical exclusion by an appropriate limiting instruction.”). “Ordinarily, a  
11 cautionary instruction is presumed to have cured prejudicial impact.” *Dubria v. Smith*, 224 F.3d  
12 995, 1002 (9th Cir. 2000). The court finds that the potential prejudice of evidence of prior  
13 officer-involved shootings can be cured by limiting instructions and thus, this argument does not  
14 weigh in favor of bifurcation.

15 Defendants’ argument that plaintiffs will be unable to prevail on *Monell* claims without a  
16 finding of liability on the part of the individual officers in this case (Doc. No. 41-1 at 16) is  
17 subject to question under some recognized circumstances.

18 [W]e explicitly rejected a municipality's argument that it could not  
19 be held liable as a matter of law because the jury had determined that  
20 the individual officers had inflicted no constitutional injury. If a  
21 plaintiff established he suffered constitutional injury by the City, the  
fact that individual officers are exonerated is immaterial to liability  
under § 1983.

22 *Gibson v. County of Washoe*, 290 F.3d 1175, 1186 n.7 (9th Cir. 2002) (internal quotations and  
23 citations omitted), *overruled on other grounds in Castro v. County of Los Angeles*, 833 F.3d 1060  
24 (9th Cir. 2016) (en banc); *see also Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1139 (9th Cir.  
25 2012); *Fairley v. Luman*, 281 F.3d 913, 916–17 (9th Cir. 2002); *M.H. v. County of Alameda*, 62

26 \_\_\_\_\_  
27 <sup>1</sup> Evidence of prior complaints of excessive force against a defendant officer may not be admitted  
28 to prove character, but may be admissible to show that the municipality had “proof of  
knowledge” in the context of a *Monell* claim. *Velazquez v. City of Long Beach*, 793 F.3d 1010,  
1028 (9th Cir. 2015).

1 F. Supp. 3d 1049, 1082, 1085 (N.D. Cal. 2014).

2 In this case, the court cannot conclude that plaintiff's *Monell* claims are solely premised  
3 on a theory that first require a finding of liability on the part of defendant officers Garrett and  
4 Wimbish. Because neither party engaged in any substantive pretrial motion practice, the court is  
5 limited to the allegations of plaintiff's complaint in identifying plaintiffs' theories of *Monell*  
6 liability. In that regard, the complaint alleges both policies of action and inaction by the City of  
7 Bakersfield that, if proven, may constitute constitutional injuries to plaintiffs independent of  
8 defendant officers Garrett and Wimbish. *See Fairley*, 281 F.3d at 917. For example, plaintiffs'  
9 complaint alleges that the City of Bakersfield engaged in misconduct in investigating decedent's  
10 death, including improperly withholding information from plaintiffs and backdating the autopsy  
11 report (Doc. No. 1 at ¶¶ 24–27) and that such misconduct was part of an official custom or policy  
12 (*id.* at ¶ 51–52). If proven, this allegation may suffice as the basis for an independent  
13 constitutional injury inflicted by the defendant City that is unaffected by potential exoneration of  
14 the individual officers. *See Fairley*, 281 F.3d at 916. This example alone warrants declining to  
15 bifurcate the trial, as exoneration of the individual officers in the first phase of a bifurcated trial  
16 would not preclude a jury verdict imposing *Monell* liability on the City in the second phase of the  
17 trial.

18 Without assurance that resolution of the first phase of the trial could be dispositive of the  
19 entire case, bifurcating the *Monell* claims from the individual claims appears to have no purpose  
20 other than resulting in duplicative proceedings undermining judicial economy. Defendants argue  
21 that there is a significant risk of confusion if the court were to simultaneously try both the  
22 individual liability and *Monell* claims, in part due to the multitude of facts relating to prior  
23 incidents of alleged officer impropriety. (Doc. No. 41-1 at 17–18). However, any confusion or  
24 prejudice that defendants may face can be combatted with limiting jury instructions and will  
25 certainly be less significant than precluding plaintiffs from presenting a theory of *Monell* liability  
26 for which the municipality may be liable, independent of the individual defendants.

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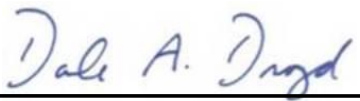
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For the reasons set forth above, defendants' motion to bifurcate the *Monell* claims (Doc. No. 41) for purposes of trial is denied.

IT IS SO ORDERED.

Dated: August 28, 2018

  
UNITED STATES DISTRICT JUDGE