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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK SHANE THOMPSON,

 Plaintiff,

 v.

A. GOMEZ, et al.,

 Defendants.

Case No. 1:18-cv-00125-SAB (PC)

ORDER REGARDING DEFENDANTS’
MOTIONS IN LIMINE

(ECF No. 127)

Plaintiff Mark Shane Thompson is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

This action is proceeding against Plaintiff’s excessive force claim against Defendants Gomez, Weiss, Sazo, and Gray, and on Plaintiff’s related failure to intervene claim against Defendants Johnson and Busby, arising from a takedown incident that took place on May 30, 2017.

The case is set for a jury trial on October 17, 2022.

Currently before the Court is Defendants’ motion in limine, filed September 13, 2022. Plaintiff did not file an opposition and the time to do so has expired.

I.

LEGAL STANDARD

“A motion in limine is a procedural mechanism to limit in advance testimony or evidence in a particular area.” United States v. Heller, 551 F.3d 1108, 1111 (9th Cir. 2009). A party may

1 use a motion in limine to exclude inadmissible or prejudicial evidence before it is actually
2 introduced at trial. See Luce v. United States, 469 U.S. 38, 40 n.2 (1984). “[A] motion in limine
3 is an important tool available to the trial judge to ensure the expeditious and evenhanded
4 management of the trial proceedings.” Jonasson v. Lutheran Child and Family Services, 115
5 F.3d 436,440 (7th Cir. 1997). A motion in limine allows the parties to resolve evidentiary
6 disputes before trial and avoids potentially prejudicial evidence being presented in front of the
7 jury, thereby relieving the trial judge from the formidable task of neutralizing the taint of
8 prejudicial evidence. Brodit v. Cambra, 350 F.3d 985, 1004-05 (9th Cir. 2003).

9 Motions in limine that exclude broad categories of evidence are disfavored, and such
10 issues are better dealt with during trial as the admissibility of evidence arises. Sperberg v.
11 Goodyear Tire & Rubber, Co., 519 F.2d 708, 712 (6th Cir. 1975). Additionally, some
12 evidentiary issues are not accurately and efficiently evaluated by the trial judge in a motion in
13 limine and it is necessary to defer ruling until during trial when the trial judge can better estimate
14 the impact of the evidence on the jury. Jonasson v. Lutheran Child and Family Services, 115
15 F.3d 436, 440 (7th Cir. 1997).

16 II.

17 DISCUSSION

18 Defendants seeks to exclude: (1) plaintiff from presenting any evidence other than his
19 own testimony, that of Defendants, and any exhibits included in Defendants’ pretrial statement;
20 (2) plaintiff from offering expert opinions; (3) plaintiff from questioning Defendants or any
21 CDCR witness about any matters contained in Defendants’ personnel records; (4) plaintiff from
22 presenting evidence or testimony regarding his criminal case; (5) plaintiff from presenting
23 evidence regarding the green wall; and (6) plaintiff from presenting any evidence that any
24 damages or judgment may be paid by CDCR or the State of California. Defendants also seek to
25 deem their undisputed facts as admitted.

26 A. Limitation of Evidence Presented by Plaintiff

27 Here, Plaintiff failed to comply with the Court’s trial scheduling order and has not filed a
28 pretrial statement or sought the attendance of incarcerated witnesses. The deadlines to do so

1 have long passed—July 5, 2022 for motions for attendance of witnesses (ECF No. 11) and
2 August 22, 2022 for the pretrial statement (extended from the initial deadline of August 2, 2022
3 (ECF NO. 118). Consequently, Defendants have been required to proceed to trial without the
4 benefit of knowing what documentary evidence or witnesses Plaintiff may present at trial.

5 Accordingly, because Plaintiff did not file a pretrial statement, he did not disclose to
6 Defendants any of the witnesses or exhibits he plans to introduce at trial. Thus, the Court finds
7 that Plaintiff will be precluded from introducing any exhibits or witnesses at trial, aside from his
8 own testimony, the testimony of Defendants, or any exhibits included in Defendants’ pretrial
9 statement. See, e.g., Garcia v. Garcia, No. 1:17-cv-01313-BAM (PC), 2021 WL 3616707, at *2
10 (E.D. Cal. Aug. 16, 2021) (holding that, due to pro se plaintiff’s failure to file pretrial statement,
11 plaintiff was limited to his own testimony, that of the defendants, and any exhibits identified by
12 the defendants in their pretrial statement). In addition, the Court deems as admitted the facts
13 listed in the “Undisputed Facts” of Defendants’ pretrial statement. Fed. R. Civ. P 16(c)(2). Thus,
14 by precluding this evidence and deeming Defendants’ “Undisputed Facts” as admitted,
15 Defendants will not be prejudiced by Plaintiff’s failure to disclose the evidence he plans to
16 introduce at trial.

17 Further, as it appears that Plaintiff does not know the names or locations of any witnesses
18 he might have planned to introduce at trial, the Court finds that this sanction is not overly severe.
19 The Court notes that the claims in this case involve whether Defendants used excessive force
20 against Plaintiff, and Plaintiff’s own testimony is likely to be the most central evidence to his
21 case. Thus, a trial will still enable the parties to dispose of this matter on the
22 merits. See Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002) (public policy favors
23 disposition on the merits).

24 **Ruling:** Defendants’ motion in limine to prevent from Plaintiff from presenting any
25 evidence other than his own testimony, that of Defendants, and any exhibits included in
26 Defendants’ pretrial statement is granted.

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1 **B. Expert Opinion by Plaintiff**

2 Defendants seeks to exclude Plaintiff from offering any expert opinions or testimony
3 regarding the California Department of Corrections and Rehabilitation policies and procedures
4 for (1) searching inmates; (2) use of force; or (3) prison operations. Defendants also seek to
5 preclude Plaintiff from offering any expert opinion or testimony on (4) any alleged lasting effects
6 of any alleged physical injures; (5) any alleged mental or emotional distress; and (6) any
7 opinions as to causation of mental, emotional or physical injuries.

8 “If a witness is not testifying as an expert, testimony in the form of an opinion is limited
9 to one that is: (a) rationally based on the witness’s perception; (b) helpful to clearly
10 understanding the witness’s testimony or determining a fact in issue; and (c) not based on
11 scientific, technical, or other specialized knowledge within the scope of Rule 702.” Fed. R.
12 Evid. 701.

13 As a non-expert witness, Plaintiff is not qualified to offer any expert opinions in this case
14 concerning any alleged physical injuries; or any alleged long term effects; any alleged mental or
15 emotional injuries; the search of prison inmates, use of force, or prison operations. Plaintiff has
16 no training or expertise in any of these fields.

17 Plaintiff may testify as to what he saw or felt relating to his medical needs or condition,
18 but may not testify as to any medical matter which requires scientific, technical or other
19 specialized knowledge. Plaintiff also may not testify regarding his medical records.

20 **Ruling:** Defendants’ motion is granted. Plaintiff may testify as to what he observed and
21 experienced as a result of the incident on May 20, 2017; however, Plaintiff may not testify
22 regarding a diagnosis, opinions, inferences or causation, and may not offer any opinions or
23 inferences from any medical records, medical conditions, alleged injuries, searching of inmates,
24 use of force, or prison operations.

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1 **C. Testimony Regarding Personnel Matters Involving Defendant**

2 Defendants asks to preclude Plaintiff from questioning him about any matters
3 contained in his personnel records, including information of a personal nature, as well as any
4 information concerning any disciplinary actions or complaints filed against him.

5 Evidence is relevant if it has “any tendency to make a fact more or less probably than it
6 would be without the evidence” and the fact is “of consequence in determining the action.” Fed.
7 R. Evid. 401. Federal Rule of Evidence 404(b) makes evidence of other wrongs or acts
8 inadmissible to provide “the character of a person in order to show action in conformity
9 therewith,” but may be admissible for other purposes, such as “proof of motive, opportunity,
10 intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Fed. R. Evid.
11 404(b); see also Fed. R. Evid. 405(b) (character evidence may be admissible if it is an essential
12 element of the claim).

13 Under Rule 404(b), “the district court may admit evidence of prior bad acts if it (1) tends
14 to prove a material point; (2) is not too remote in time; (3) is based upon sufficient evidence; and
15 (4) in some cases, is similar to the offense charged.” United States v. Lozano, 623 F.3d 1055,
16 1059 (9th Cir. 2010).

17 **Ruling:** Defendants’ motion is granted in part. Any evidence of prior incidents involving
18 Defendants that have no connection to whether any Defendants used excessive force on May 30,
19 2017 should be excluded, because that evidence has no relevancy to whether the alleged facts
20 here occurred. Also, evidence of a prior incident cannot be used to show a propensity to cause
21 harm to Plaintiff. Such evidence is impermissible character evidence, and is not admissible to
22 show that any Defendant acted improperly on May 30, 2017 in this case. The Court reserves
23 ruling on any questions or evidence, if any, that Plaintiff wishes to use to attack a witness's
24 credibility and/or for impeachment purposes. If Plaintiff has a proffer of evidence that any
25 witness's testimony may be impeached through evidence or questions concerning personnel
26 records, including information of a personal nature, as well as any information concerning any
27 disciplinary actions or complaints filed against him, he may request a conference to be held

1 outside of the presence of the jury. The Court will then hear the proffer, and make a ruling on
2 whether such evidence is proper.

3 **D. Evidence Regarding Plaintiff's Criminal Case**

4 Defendants seek exclude any mention of and evidence and testimony regarding Plaintiff's
5 criminal case.

6 Plaintiff was criminally charged in the Kern County Superior Court for battery by a
7 prisoner and resisting an officer based on the May 30, 2017 incident forming the basis of
8 Plaintiff's civil claims in this case.¹ Because the prosecution failed to prove its case against
9 Plaintiff beyond a reasonable doubt, the jury returned a non-guilty verdict.

10 The Ninth Circuit has explained, “[e]vidence of an acquittal is not generally admissible in
11 a subsequent civil action between the same parties since it constitutes a negative sort of
12 conclusion lodged in a finding of failure of the prosecution to sustain the burden of proof beyond
13 a reasonable doubt. Borunda v. Richmond, 885 F.2d 1384, 1387 (9th Cir. 1988). Unlike in a
14 criminal case where the standard of proof is high (beyond a reasonable doubt), the standard of
15 proof in a civil case is lower (preponderance of the evidence). See California ex re. Cooper v.
16 Mitchell Bros.’ Santa Ana Theater, 454 U.S. 90, 93 (1981) (explaining the standards of proof for
17 civil and criminal cases).

18 In this case, Plaintiff has the burden of proving to the jury by a preponderance of the
19 evidence that Defendants are liable on each of his civil rights claims. As to establishing
20 Defendants' liability on the constitutional questions to be raised at trial, the Court agrees with
21 Defendants that Plaintiff's “guilt” or “innocence” is not relevant. See, e.g., White v. McKinley,
22 2009 WL 813001, at *11 (W.D. Mo. Mar. 26, 2009) (section 1983 plaintiff's “guilt or innocence
23 in the criminal trials ... not relevant to the ultimate issues of this case whether [defendant], in bad
24 faith, deprived White of a fair trial and conspired ... to do so”), aff'd 605 F.3d 525 (8th Cir.
25 2010). Plaintiff has not shown that his acquittal is relevant to damages on his excessive
26 force claim, and assuming arguendo its admission is relevant to the use of force issue, any
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28 ¹ People v. Thompson, Kern County Superior court, Case NO. MF012783A.

1 “probative value is substantially outweighed by a danger of ... unfair prejudice ... [and/or]
2 misleading the jury.” Fed. R. Evid. 403; Borunda, 885 F.2d at 1387; see also Mullins v. City of
3 Philadelphia, 287 Fed.Appx. 201, 203-04 (3rd Cir. 2008) (“The standards of proof in the
4 criminal case and in this civil case are different.”) (affirming denial of the plaintiff’s motion to
5 admit evidence of his acquittal in subsequent civil rights action).

6 **Ruling:** Defendants’ motion in limine is granted, and Plaintiff is prevented from
7 presenting any evidence regarding his criminal conviction.

8 **E. Evidence Regarding Green Wall**

9 Defendants seek to exclude any mention, reference, or suggestion to a “Green Wall
10 Gang” of CDCR officers or staff or similar evidence or argument of corruption in CDCR,
11 general accusations of mistreatment of Plaintiff or other inmates or other complaints about
12 conditions of confinement.

13 “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than
14 it would be without the evidence; and (b) the fact is of consequence in determining the
15 action.” Fed. R. Evid. 401. Evidence that is not relevant is not admissible. Fed. R. Evid. 402.
16 Relevant evidence may be excluded “if its probative value is substantially outweighed by a
17 danger of one or more of the following: unfair prejudice, confusing the issues, misleading the
18 jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid.
19 403.

20 Here, the only issues to be decided are whether Defendants Gomez, Weiss, Sazo, and
21 Gray used excessive force and whether Defendants Johnson and Busby failed to intervene.
22 Testimony or arguments regarding “green wall camaraderie” or conspiracy amongst correctional
23 officers are not pertinent to Plaintiff’s claims of excessive force by Defendants. Fed. R. Evid.
24 401. Moreover, any evidence or arguments regarding a conspiracy or of coconspirators likely
25 would cause confusion of the issues and mislead the jury. Fed. R. Evid. 403.

26 **Ruling:** Defendants’ motion in limine to preclude testimony or argument regarding
27 “green wall camaraderie” or a conspiracy, including the use of the phrase “green wall”
28 camaraderie” is GRANTED. However, Plaintiff is not precluded from arguing that correctional

1 officers who testify and support Defendants, if any, are biased or are not truthful because of their
2 work or personal relationships with Defendants.

3 **F. Evidence State May Pay The Judgment Or Reimburse Defendants**

4 Defendants seeks to exclude Plaintiff from presenting or eliciting testimony that
5 Defendants will be indemnified by the State if judgment is rendered against them under Rule 411
6 of the Federal Rules of Evidence. Defendant submits this evidence is both irrelevant and
7 prejudicial. Jamison v. A.M. Byers Co., 330 F.2d 657, 661-662 (3d Cir. 1964). The evidence is
8 prejudicial because a jury is more inclined to find a verdict against a defendant if it believes that
9 he is indemnified than would be the case if it were understood that the defendant alone would be
10 required to satisfy the judgment. Langley v. Turner's Express, Inc., 375 F.2d 296, 297 (4th Cir.
11 1967).

12 **Ruling:** Defendants' motion in limine is granted, as information regarding whether the
13 State or CDCR would pay a verdict or reimburse Defendants for any compensatory damage
14 award, if any, is not relevant to Plaintiff's claim. Fed. R. Evid. 401.

15 **G. Deem Defendants' Undisputed Facts as Admitted**

16 Defendants move to deem the undisputed facts set forth in their pretrial statement (ECF
17 No. 119) and the pretrial order (ECF No. 125) as admitted.

18 As stated above under section A, Plaintiff failed to file a pretrial statement and did not
19 disclose any evidence he may introduce at trial. Fed. R. Civ. P. 16(c)(20)(C). Thus, it is an
20 appropriate sanction, short of dismissal, for Plaintiff's failure to adhere to court orders and
21 prosecute his case, to deem the undisputed facts set forth in Defendants' pretrial statement and
22 pretrial order admitted.

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1 **Ruling:** Defendants’ motion in limine is granted and the undisputed facts set forth in
2 their pretrial statement and the Court’s pretrial order are deemed admitted. However, this motion
3 is granted without prejudice upon a good cause showing, made outside the presence of the jury,
4 that the fact is in fact disputed. Until then, the Court grants Defendants’ motion.

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6 IT IS SO ORDERED.

7 Dated: September 29, 2022


UNITED STATES MAGISTRATE JUDGE

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