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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FRANK S. HALL,

No. 2:05-cv-02332-MCE-GGH

Plaintiff,

v.

AMENDED SECOND FINAL PRETRIAL
ORDER

COUNTY OF SACRAMENTO,
et al.,

TRIAL DATE: **May 3, 2010**
TIME: **9:00 a.m.**

Defendants.

_____ /

Pursuant to Court Order, a Final Pretrial Conference was held on March 18, 2010. Gerald Filice appeared as counsel for Plaintiff. David A. Melton and Colleen R. Howard appeared as counsel for Defendants. After hearing, the Court makes the following findings and orders:

I. JURISDICTION/VENUE

Jurisdiction is predicated upon 28 U.S.C. sections 1331 and 1343. Jurisdiction and venue are not contested.

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1 II. JURY

2 Both parties timely demanded a jury trial pursuant to
3 Rule 38(b) of the Federal Rules of Civil Procedure.

4 III. UNDISPUTED FACTUAL ISSUES

5 Plaintiff, himself a Registered Nurse Practitioner, was
6 booked into the Sacramento County Main Jail on November 18,
7 2003, after being arrested for driving under the influence. He
8 tested .18 on the breathalyzer test. Prior to his arrest,
9 Plaintiff had been drinking vodka alone in his apartment.
10 Plaintiff was diagnosed with bipolar depression and hypomania in
11 June 2003 and was prescribed Depakote. Plaintiff did not take
12 his Depakote as prescribed, but instead he took it as needed to
13 control hypomanic episodes because he could not afford to refill
14 his prescription and had to conserve the medication.

15 When Plaintiff was first booked into the Main Jail, he was
16 evaluated by the jail nurse who checked off that Plaintiff was a
17 Jail Psychiatric Services (JPS) referral because Plaintiff
18 mentioned that he was prescribed Depakote.

19 After his initial evaluation, Plaintiff then went to the
20 pat down area where he got into an altercation with two
21 sheriff's deputies. During that altercation, Plaintiff hit his
22 forehead on the ground. After that, Plaintiff went to get
23 photographed. Plaintiff then saw another jail nurse about his
24 forehead.

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1 Plaintiff was then put in the sobering cell. After several
2 hours, sheriff's deputies found Plaintiff in a fetal position
3 having what appeared to be a seizure. The jail nurse responded
4 with smelling salts, but concluded that Plaintiff did not have a
5 seizure and had faked a seizure. At that time, no further
6 treatment was provided to Plaintiff, and he did not receive his
7 medication, nor an examination by a medical doctor.

8 After an altercation in the sobering cell between Plaintiff
9 and Defendant Deputy Burnette, Plaintiff was taken to Sutter
10 General Hospital for lacerations to his head, one of which was 4
11 inches long. Defendant Deputy Burnette and another sheriff's
12 deputy were taken to Kaiser Hospital for treatment.

13 IV. DISPUTED FACTUAL ISSUES

14 The remaining claim(s) for trial is/are:

15 **Defendants' Contentions:**

16 Defendants contend that during the pat-down procedure,
17 Plaintiff was raising his hands towards the sheriff's deputy's
18 face and using profanities. Because Plaintiff was acting in a
19 threatening manner, the sheriff's deputy placed Plaintiff in a
20 control hold.

21 Later when Plaintiff was placed in the sobering cell, he
22 was acting belligerent, using profanities, and was kicking and
23 pounding at the door. This was the first time Plaintiff request
24 his medication.

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1 After Plaintiff's fake seizure, he started kicking and
2 pounding at the door again. Later, Defendant Deputy Burnette
3 entered the sobering cell to retrieve another inmate. When
4 Defendant Deputy Burnette entered the sobering cell, he
5 instructed Plaintiff to stay back and that he was attending to
6 another inmate. Plaintiff quickly approached Defendant Deputy
7 Burnette and raised his hands towards Defendant Deputy Burnette
8 in a threatening manner. Defendant Deputy Burnette instructed
9 Plaintiff to lower his hands and step back. Plaintiff then
10 tried to punch Defendant Deputy Burnette in the face. Defendant
11 Deputy Burnette blocked the punch, and took Plaintiff down to
12 the ground. Defendant Deputy Burnette with the help of another
13 sheriff's deputy attempted to gain control of Plaintiff.
14 Plaintiff struck Defendant Deputy Burnette several times in the
15 head, and Defendant Deputy Burnette then struck Plaintiff four
16 to six times in the head and face. Finally, the sheriff's
17 deputies managed to gain control of Plaintiff. After Plaintiff
18 was controlled, he was placed in a prostraint chair with a spit
19 mask.

20 **Plaintiff's Contentions:**

21 When Plaintiff was evaluated by the jail nurse who checked
22 off that Plaintiff was a Jail Psychiatric Services (JPS)
23 referral because Plaintiff mentioned that he was prescribed
24 Depakote and suffered from hypomania.

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1 Plaintiff then went to the pat down area where there was some
2 physical conflict with two Sheriff's deputies. Plaintiff was
3 forced down on the floor by a deputy and hit his forehead,
4 causing a laceration.

5 Plaintiff was then put in the sobering cell. For several
6 hours, Plaintiff demanded of the deputies that they give him his
7 medication. He demanded to see a lawyer. As he detoxed from
8 alcohol, and the manic phase of his condition increased,
9 Plaintiff was increasingly agitated, yelling and swearing at the
10 deputies and pounding on the door when they ignored him or
11 refused his requests for his Depakote medication. Deputy
12 Burnette (and the other deputies in the intake loop) personally
13 witnessed Plaintiff's increasingly agitated and violent
14 behavior.

15 Later, Defendant Deputy Burnette approached the sobering
16 cell. While still outside the cell, with the door closed,
17 Burnette and Plaintiff had a verbal altercation. Plaintiff's
18 demeanor was combative. Plaintiff was standing about 1 foot
19 inside the doorway. When Defendant Deputy Burnette entered the
20 sobering cell, a physical altercation immediately ensued, and
21 Plaintiff was subjected to a leg sweep by Burnette, knocking him
22 to the floor. On top of Plaintiff, Burnette punched Plaintiff
23 repeatedly in the face. Plaintiff managed to get off a few
24 punches himself. With the intervention of several additional
25 deputies, Plaintiff was put in restraints.

26 ///

1 After Plaintiff was controlled, he was placed in a prostraint
2 chair with a spit mask, while blood ran down his face - he was
3 bleeding profusely.

4 Defendants Sheriff's Department and Sacramento County
5 appear to have established the following practices and/or
6 policies which are relevant to the medical and psychiatric
7 conditions of Plaintiff:

8 - First, a JPS referral such as received by Plaintiff from
9 the intake nurse did not result in a prompt examination and
10 evaluation of Plaintiff by trained psychiatric personnel - the
11 intake nurses had little or no training in psychiatric matters
12 and routinely deferred all such questions to the Jail
13 psychiatric personnel. Moreover, the type of JPS referral given
14 Plaintiff was documented in the form of a piece of paper that
15 was placed into an out box by the intake nurse to be retrieved
16 the next day by JPS personnel. There was no policy or practice
17 of calling the JPS personnel at the Jail to advise them of a JPS
18 referral, except where the arrestee/patient stated to the intake
19 nurse that he or she was suicidal.

20 - Second, nurses in the intake area relied on Sheriff's
21 Deputies to watch the arrestee/patients in the sobering cell and
22 inform them of any matters that might affect the medical
23 condition of the arrestee/patients.

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1 Although the booking loop had been designed (by Plaintiff's
2 expert, Tim Twomey, who then was an officer in the Sheriff's
3 Department) with a one-way window between the nurse's station
4 and the sobering cell, so that the nurses could watch the
5 arrestee/patients in order to comply with the American Medical
6 Association's mandate to constantly monitor arrestee/patients
7 who were detoxing, the window was installed backwards,
8 preventing the nurses from seeing into the sobering cell. The
9 response from Defendants Sheriff's Department and Sacramento
10 County? They covered up the window with cardboard rather than
11 fixing it, to prevent the arrestee/patients from seeing into the
12 nurses' station! Although the Sheriff's Deputies have now
13 become the initial guardians of the health of arrestee/patients
14 held in the sobering cell, they are not trained to do so, and
15 instead take the position that the health of the patients is the
16 duty of the nurses. The nurses, in turn, pass the buck
17 regarding JPS referrals to the JPS staff. The result is that no
18 one in the intake loop takes responsibility for monitoring the
19 condition of arrestee/patients who are not suicidal.

20 - Third, the Jail has a policy or practice that nurses in
21 the intake loop do not supply arrestee/patients with medication
22 while in the sobering cell, except heart medication and smelling
23 salts.

24 Plaintiff's expert, Timothy Twomey, will testify that it
25 was a violation of proper police practices for Burnette to open
26 the cell door, since he was well aware that a fight would ensue.

1 Burnette was in total control of Plaintiff while the door was
2 closed. The proper procedure would have been to assemble a CERT
3 team to extract Plaintiff from the cell, without injury to any
4 person.

5 The medical and psychiatric policies and practices at the
6 Jail, such as the refusal to provide him prompt medical and
7 psychiatric treatment, directly caused Plaintiff to spin out of
8 control emotionally and led to the altercations discussed above.

9 All issues of fact remaining in dispute are subject to
10 proof at the time of trial.

11 V. WITNESSES

12 Plaintiff anticipates calling the witnesses listed on
13 Attachment "A".

14 Defendants anticipate calling the witnesses listed on
15 Attachment "B".

16 Each party may call a witness designated by the other.

17 A. No other witnesses will be permitted to testify
18 unless:

19 (1) The party offering the witness demonstrates that
20 the witness is for the purpose of rebutting evidence which could
21 not be reasonably anticipated at the Final Pretrial Conference,
22 or

23 (2) The witness was discovered after the Final
24 Pretrial Conference and the proffering party makes the showing
25 required in "B" below.

26 ///

1 B. Upon the post-pretrial discovery of witnesses, the
2 attorney shall promptly inform the Court and opposing parties of
3 the existence of the unlisted witnesses so that the Court may
4 consider at trial whether the witnesses shall be permitted to
5 testify. The evidence will not be permitted unless:

6 (1) The witnesses could not reasonably have been
7 discovered prior to pretrial;

8 (2) The Court and opposing counsel were promptly
9 notified upon discovery of the witnesses;

10 (3) If time permitted, counsel proffered the
11 witnesses for deposition;

12 (4) If time did not permit, a reasonable summary of
13 the witnesses' testimony was provided by opposing counsel.

14 VI. EXHIBITS - SCHEDULES AND SUMMARIES

15 At present, Plaintiff contemplates by way of exhibits those
16 listed on Attachment "C".

17 At present, Defendants contemplate by way of exhibits those
18 listed on Attachment "D".

19 **Plaintiff's exhibits shall be listed numerically.**

20 **Defendants' exhibits shall be listed alphabetically.** The
21 parties shall use the standard exhibit stickers provided by the
22 Court Clerk's Office: pink for Plaintiff and blue for
23 Defendants. After three letters, note the number of letters in
24 parenthesis (i.e., "AAA(4)" to reduce confusion during the
25 trial.

26 ///

1 All multi-page exhibits shall be stapled or otherwise fastened
2 together and each page within the exhibit shall be numbered.

3 All photographs shall be marked individually. The list of
4 exhibits shall not include excerpts of depositions which may be
5 used to impeach witnesses.

6 Each party may use an exhibit designated by the other. In
7 the event that Plaintiff and Defendants offer the same exhibit
8 during trial, that exhibit shall be referred to by the
9 designation the exhibit is first identified. The Court cautions
10 the parties to pay attention to this detail so that all
11 concerned, including the jury, will not be confused by one
12 exhibit being identified with both a number and a letter.

13 A. No other exhibits will be permitted to be introduced
14 unless:

15 (1) The party proffering the exhibit demonstrates
16 that the exhibit is for the purpose of rebutting evidence which
17 could not be reasonably anticipated at the Pretrial Scheduling
18 Conference, or

19 (2) The exhibit was discovered after the Pretrial
20 Scheduling Conference and the proffering party makes the showing
21 required in paragraph "B", below.

22 B. Upon the post-pretrial discovery of exhibits, the
23 attorneys shall promptly inform the Court and opposing counsel
24 of the existence of such exhibits so that the Court may consider
25 at trial their admissibility. The exhibits will not be received
26 unless the proffering party demonstrates:

1 (1) The exhibits could not reasonably have been
2 discovered prior to pretrial;

3 (2) The Court and counsel were promptly informed of
4 their existence;

5 (3) Counsel forwarded a copy of the exhibit(s) (if
6 physically possible) to opposing counsel. If the exhibit(s) may
7 not be copied, the proffering counsel must show that he has made
8 the exhibit(s) reasonably available for inspection by opposing
9 counsel.

10 C. As to each exhibit, each party is ordered to exchange
11 a copy identical to the Court's copy, or other reproduction of
12 the exhibit(s) in a three-ring binder(s) by **April 19, 2010**. The
13 attorney or representative for each party is directed to present
14 the original and two (2) copies of the exhibit(s) and exhibit
15 list to the Court Clerk's Office, no later than **3:00 p.m.**,
16 **April 19, 2010**, or at such earlier time as may be ordered by the
17 Court. **NO EXCEPTIONS.**

18 D. **The Court shall be presented with a copy of the**
19 **exhibit(s) in a 3-ring binder(s) with a side tab identifying**
20 **each exhibit by number or letter. Each binder shall be no**
21 **larger than three inches in width and have an identification**
22 **label on the front and side panel.**

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1 VII. DISCOVERY DOCUMENTS

2 A. Filing Depositions. It is the duty of counsel to
3 ensure that any deposition which is to be used at trial has been
4 lodged with the Clerk of the Court. In addition, two unmarked
5 copies of the transcripts must be delivered to the Court Clerk's
6 Office. Counsel are cautioned that a failure to discharge this
7 duty may result in the Court precluding use of the deposition or
8 imposition of such other sanctions as the Court deems
9 appropriate.

10 B. Use of Depositions. The parties are ordered to file
11 with the Court and exchange between themselves by **April 19, 2010**
12 a statement designating portions of depositions intended to be
13 offered or read into evidence (except for portions to be used
14 only for impeachment or rebuttal).

15 C. Interrogatories. The parties are ordered to file with
16 the Court and exchange between themselves by **April 19, 2010** the
17 portions of Answers to Interrogatories which the respective
18 parties intend to offer or read into evidence at the trial
19 (except portions to be used only for impeachment or rebuttal).

20 VIII. FURTHER DISCOVERY OR MOTIONS

21 Pursuant to the Court's Pretrial Scheduling Order, all
22 discovery and law and motion was to have been conducted so as to
23 be completed as of the date of the Final Pretrial Conference.
24 That Order is confirmed.

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1 The parties are free to engage in informal agreements regarding
2 discovery and law and motion matters. However, any such
3 agreements will not be enforceable in this Court.

4 IX. AGREED STATEMENTS - JOINT STATEMENT OF CASE

5 It is mandatory the parties shall file a short, jointly-
6 prepared statement concerning the nature of this case that will
7 be read to the jury at the commencement of trial (**NO**
8 **EXCEPTIONS**). The joint statement of the case shall include in
9 plain concise language the claims of Plaintiff and claims of
10 other parties, if any, and the corresponding defenses to the
11 claims. The purpose of the joint statement of the case is to
12 inform the jury at the outset, what the case is about. The
13 statement must be filed with the Court by **April 19, 2010**.

14 X. PROPOSED JURY INSTRUCTIONS, VOIR DIRE, VERDICT FORM

15 A. Jury Instructions

16 Counsel are directed to meet and confer and to attempt to
17 agree upon a joint set of jury instructions. Counsel shall use
18 the Ninth Circuit Model Jury Instructions and any revisions.
19 Alternate instruction or authority may only be used if a Ninth
20 Circuit Model Jury Instruction is unavailable. The joint set of
21 instructions must be filed by **April 19, 2010** and shall be
22 identified as the "Jury Instructions Without Objection."

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1 All instructions shall be, to the extent possible, concise,
2 understandable, and free from argument. See Local Rule 163(c).
3 Parties shall also note that any modifications of instructions
4 from statutory authority, case law or from any form of pattern
5 instructions must specifically state the modification by
6 underlining additions and bracketing deletions.

7 B. Verdict Form

8 The parties must file a joint verdict form(s) concurrently
9 with proposed jury instructions by **April 19, 2010**. If
10 necessary, a special verdict or interrogatories shall be
11 included for all factual disputes submitted to the jury that
12 must be resolved before questions of law can be decided, and for
13 any other issue on which specific responses are desired. See
14 Local Rule 163(e).

15 C. Voir Dire

16 The parties shall submit proposed voir dire questions to
17 the Court. The Court reserves the right to conduct all
18 examination of prospective jurors. Notwithstanding this
19 reservation, the Court will permit each side up to ten (10)
20 minutes to conduct voir dire, if desired. The voir dire
21 questions shall be filed with the Court by **April 19, 2010**.

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1 D. Submission of Documents to the Court

2 At the time of filing their respective proposed jury
3 instructions, verdict form(s), and voir dire questions, counsel
4 shall also electronically mail to the Court in digital format
5 and compatible with Microsoft Word or WordPerfect, the proposed
6 jury instructions and verdict form(s). **These documents should**
7 **be sent to mceorders@caed.uscourts.gov.**

8 XI. AUDIO/VISUAL EQUIPMENT

9 The parties are required to **file electronically** a joint
10 request to the Courtroom Deputy Clerk, Stephanie Deutsch, by
11 **April 12, 2010** if they wish to reserve and arrange for
12 orientation with all parties on the Court's mobile audio/visual
13 equipment for presentation of evidence. There will be one date
14 and time for such orientation.

15 XII. SETTLEMENT CONFERENCE

16 A Settlement Conference is set before Judge Kendall J.
17 Newman on **March 31, 2010, at 10:30 a.m.**

18 Each party is directed to have a principal capable of
19 disposition at the Settlement Conference or to be fully
20 authorized to settle the matter on any terms at the Settlement
21 Conference.

22 Each party is directed to submit to the chambers of Judge
23 Kendall J. Newman confidential settlement conference statements
24 not later than **March 25, 2010.**

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1 Such statements are neither to be filed with the clerk nor
2 served on opposing counsel. However, each party shall notify
3 the other party that the statement has been submitted to the
4 judge's chambers.

5 XIII. DATE AND LENGTH OF TRIAL

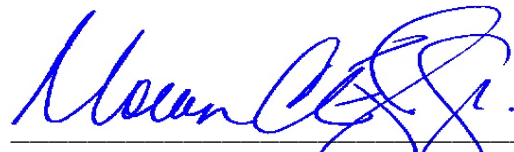
6 A trial is scheduled for **May 3, 2010**. The estimated length
7 of trial is **eleven (11) days**. The trial will consist of **eight**
8 **(8) jurors**. Counsel are to email Stephanie Deutsch, Courtroom
9 Deputy Clerk, at mceorders@caed.uscourts.gov, or call at (916)
10 930-4207, by **April 19, 2010** to ascertain the status of the trial
11 date.

12 XIV. OBJECTIONS TO PRETRIAL ORDER

13 Each party is granted five (5) court days from the date of
14 this Final Pretrial Order to object to any part of the order or
15 to request augmentation to it. A Final Pretrial Order will be
16 modified only upon a showing of manifest injustice. If no
17 objection or modifications are made, this Order will become
18 final without further order of the Court and shall control the
19 subsequent course of the action, pursuant to Rule 16(e) of the
20 Federal Rules of Civil Procedure.

21 IT IS SO ORDERED.

22 Dated: March 25, 2010

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25 MORRISON C. ENGLAND, JR.
26 UNITED STATES DISTRICT JUDGE