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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALLEN ELSETH, by his guardians)	
ad litem, Roger Elseth and)	2:08-cv-02890-GEB-CMK
Patricia Ann Elseth,)	
)	
Plaintiff,)	<u>DECISION FINALIZING "FINAL</u>
)	<u>PRETRIAL ORDER" AND</u>
v.)	<u>ADDRESSING IN LIMINE MOTIONS</u>
)	
Deputy Probation Officer Jeff)	
Elorduy, individually,)	
)	
Defendant.)	
_____)	

Each party moves in limine concerning certain evidence, and Plaintiff also argues in an in limine motion that two of Defendant's jury instructions are not applicable in this case. (Pl.'s Mot. in Limine 1:24-2:2, ECF No. 145.) Defendant counters that "in limine motions are not the appropriate vehicle for challenging proposed jury instructions." (Def.'s Opp'n 2:3-4, ECF No. 156.) Defendant further argues: "Because the motion in limine filed by Plaintiff deal[s] with jury instructions rather than evidence, Defendant respectfully requests that the Court deny Plaintiff's motion in limine." Id. 2:16-17. I contemplate issuing tentative jury instructions in a separate filing, and therefore a tentative decision on the content of jury instructions is not issued in this decision. However, I will amend lines 1-9 of page 2 of the Final Pretrial Order ("FPO") by replacing that portion of the FPO with the

1 discussion in the paragraph below commencing with the sentence beginning
2 on line 10 and ending on line 22. Defendant's objections to the FPO are
3 overruled, and as Plaintiff states in his response to Defendant's
4 objections the fourteenth amendment standard applies to Plaintiff's
5 excessive force claim. To the extent that the other portion of
6 Plaintiff's response could be construed as an objection to the FPO, it
7 is unclear and therefore overruled.

8 The above referenced portion of the FPO is replaced by the
9 following amendment which ends concluding that the fourteenth amendment
10 standard applies to Plaintiff's excessive force claim. "The status of
11 the detainees determines the appropriate standard for evaluating
12 conditions of confinement. The eighth amendment applies to 'convicted
13 prisoners.' By contrast, the more protective fourteenth amendment
14 standard applies to conditions of confinement when detainees, whether or
15 not juveniles, have not been convicted." Gary H. v. Hegstrom, 831 F.2d
16 1430, 1432 (9th Cir. 1987). California Welfare & Institution Code § 203
17 reveals that California's juvenile justice system is noncriminal; this
18 statute prescribes: "An order adjudging a minor to be a ward of the
19 juvenile court shall not be deemed a conviction of a crime for any
20 purpose, nor shall a proceeding in the juvenile court be deemed a
21 criminal proceeding." Therefore, the fourteenth amendment standard
22 applies to Plaintiff's excessive claim. Because of these rulings on the
23 objections to the FPO, the FPO is now a final order.

24 Each in limine motion is addressed below.

25 **A. Plaintiff Allen Elseth's Motion in Limine**

26 Plaintiff Allen Elseth seeks exclusion of "[a]ny reference to
27 Plaintiff being a convicted adult on the grounds he was a juvenile
28 offender, in juvenile detention, not a convicted adult." (Pl.'s Mot. in

1 Limine 1:20-21.) Plaintiff does not offer any legal support for this
2 request. However, since nothing filed suggests that Defendant has any
3 basis for indicating that Plaintiff was a convicted adult at the time of
4 the alleged excessive force, it is unclear why Plaintiff is concerned
5 about this issue, and why an in limine ruling is necessary. Therefore,
6 the motion is DENIED.

7 **B. Defendant's Motions in Limine**

8 **1) Motion in Limine No. 1**

9 Defendant "moves to preclude Dr. Angela Rosas from testifying
10 at trial and to exclude her Report and all references thereto." (Def.'s
11 Mot. in Limine ("Mot.") 2:3-4, ECF No. 147.) However, the motion does
12 not provide a sufficient factual context to justify an in limine ruling
13 and is therefore DENIED.

14 **2) Motion in Limine No. 2**

15 Defendant also moves to exclude "[t]estimony from Plaintiff
16 and/or his witnesses regarding whether the force used was excessive or
17 unreasonable." (Mot. 9:6-7.) The scope of this motion is unclear,
18 therefore, it is DENIED.

19 **3) Motion in Limine No. 3**

20 Defendant moves to "[e]xclude any and all reference to
21 Plaintiff incurring lost wages and/or loss of future earning capacity as
22 a result of the alleged actions of ELORDUY." (Mot. 10:25-26.) Plaintiff
23 responds that he "has no objection, but does assert the right to
24 presumed damages, pain and suffering in an amount to be determined, and
25 punitive damages." (Pl.'s Opp'n 10, ECF No. 151.) Therefore, this
26 portion of Defendant's is GRANTED.

27 Defendant also replies with the unsupported argument that the
28 Court should "reject Plaintiff's argument that compensatory damages are

1 recoverable absent a showing of actual damages." (Def.'s Reply 6:7-8,
2 ECF No. 164.) This response is therefore disregarded, and to the extent
3 this response should be characterized as a motion, it is DENIED.

4 **4) Motion in Limine No. 4**

5 Defendant seeks to "[e]xclude any and all opinion and
6 testimony regarding diagnosis or treatment of Plaintiff's mental state
7 subsequent to December 5, 2006." (Mot. 12:3-4.) Defendant argues
8 "Plaintiff has not disclosed an expert qualified to testify regarding
9 the diagnosis and treatment of his mental state subsequent to December
10 5, 2006." Id. 12:19-20. Defendant also argues "Plaintiff is not an
11 expert and thus cannot offer a conclusion about his own medical
12 condition." Id. 13:1-2. Plaintiff counters that the referenced evidence
13 is "potentially relevant to damages for pain and suffering." (Pl.'s
14 Opp'n 12.)

15 Since it is unclear what evidence this motion concerns, it is
16 DENIED.

17 **5) Motion in Limine No. 5**

18 Defendant seeks exclusion of "evidence regarding what, if any,
19 disabilities Plaintiff may have and any rehabilitative services he
20 believes he should have received from the Sacramento County Probation
21 Department." (Mot. 13:8-10.) Plaintiff does not offer any argument
22 regarding this motion in his opposition brief. (Pl.'s Opp'n 13-14.)

23 Defendant argues that "[w]hether the Probation Department
24 provided sufficient rehabilitative services to Plaintiff while he was
25 housed at Juvenile Hall does not tend [to] make the existence of a fact
26 pertaining to whether ELORDUY used excessive force on December 5, 2006
27 more or less probable." (Mot. 13:24-28.) Since Plaintiff has failed to
28

1 explain why this referenced evidence is relevant to his excessive force
2 claim, this portion of Defendant's motion in limine number 5 is GRANTED.

3 However, Defendant does not explain why evidence "regarding
4 what, if any, disabilities Plaintiff may have" should be excluded and
5 fails to offer authority supporting this request. Therefore, this
6 portion of Defendant's motion in limine number 5 is DENIED.

7 **6) Motion in Limine No. 6**

8 Defendant seeks to "[e]xclude any and all references to
9 reports prepared by the Sacramento County Grand Jury." (Mot. 14:15.)
10 Defendant argues these reports are not relevant and are therefore
11 inadmissible, since "[n]one of these documents have anything to do with
12 Defendant JEFF ELORDUY or the allegation that ELORDUY used excessive
13 force on Plaintiff on December 5, 2006[.]" Id. 14:28-15:2. Defendant
14 also argues "introducing them would confuse the jury and result in an
15 undue waste of time." Id. 15:11-12. Plaintiff fails to address this
16 motion in his opposition brief. (Pl.'s Opp'n 14.)

17 Since Plaintiff has not explained how the referenced reports
18 are relevant to Plaintiff's excessive force claim, Defendant's motion in
19 limine number 6 is GRANTED in regards to the specific reports referenced
20 in the motion.

21 **7) Motion in Limine No. 7**

22 Defendant seeks to "[e]xclude evidence and argument regarding
23 whether Plaintiff was subjected to excessive or unauthorized uses of
24 force at times other than December 5, 2006." (Mot. 15:15-16.) Defendant
25 argues "[a]lleged incidents of excessive force occurring on other dates
26 that involve employees of the Probation Department who are not parties
27 to this litigation are entirely irrelevant to whether ELORDUY's alleged
28 use of force . . . on December 5, 2006 violated Plaintiff's

1 constitutional rights." Id. 15:28-16:3. Defendant argues such
2 information should be precluded under Federal Rules of Evidence 401-403
3 since it is irrelevant, unduly prejudicial, is likely to confuse the
4 jury, and would result in an undue consumption of time. Id. 16:4-12.
5 Plaintiff fails to address this motion in his opposition brief. (Pl.'s
6 Opp'n 15.)

7 Since Plaintiff has not explained how the referenced alleged
8 incidents of excessive force are relevant to his excessive force claim,
9 Defendant's motion in limine number 7 is GRANTED.

10 **8) Motion in Limine No. 8**

11 Defendant seeks to "[e]xclude any and all evidence, argument
12 and reference to whether Plaintiff received adequate or necessary
13 medical and/or mental health treatment while in the custody of the
14 Sacramento County Probation Department." (Mot. 16:20-22.) Defendant
15 argues, *inter alia*, that this evidence is irrelevant to Plaintiff's
16 excessive force claim. Id. 17:4-15. Plaintiff fails to address this
17 motion in his opposition brief. (Pl.'s Opp'n 15-16.)

18 Since Plaintiff has not explained how this evidence is
19 relevant to his excessive force claim, Defendant's motion in limine
20 number 8 is GRANTED.

21 **9) Motion in Limine No. 9**

22 Defendant seeks to "[e]xclude all evidence, argument and
23 reference to whether employees of the Sacramento County Probation
24 Department, including Defendant, complied with child abuse reporting
25 requirements." (Mot. 18:12-15.) Defendant argues that "[b]ased on
26 Plaintiff's pretrial filings, it appears that he intends to try to
27 assert . . . that [Elorduy] is liable for failing to report suspected
28 child abuse." Id. 18:28-19:1. Defendant argues "[n]o discovery was

1 conducted into the issue of reporting suspected child abuse nor did
2 ELORDUY have an opportunity to file a dispositive motion on such a claim
3 because such a claim was not alleged in the [operative complaint]." Id.
4 19:14-17. Plaintiff fails to address this motion in his opposition
5 brief. (Pl.'s Opp'n 16-17.)

6 This claim is not alleged in the operative complaint.
7 Plaintiff raised this argument for the first time in his opposition
8 brief to Defendants' motion for summary adjudication. (Opp'n 6:10-17,
9 ECF No. 129; Order 11:1-16, ECF No. 132.) Plaintiff's request to allege
10 a new claim was denied in the Order granting Defendants' motion for
11 summary adjudication. (Order 8:19-9:3, ECF No. 132.) Since Plaintiff has
12 failed to explain how evidence of whether employees of the Sacramento
13 County Probation Department, including Defendant, complied with child
14 abuse reporting requirements is relevant to Plaintiff's sole remaining
15 excessive force claim, Defendant's motion in limine number 9 is GRANTED.

16 **10) Motion in Limine No. 10**

17 Defendant seeks to "[e]xclude any and all evidence, argument
18 and reference to treatment of, or injuries allegedly received by,
19 persons other than Plaintiff, including any information regarding other
20 cases or matters filed regarding those issues or consent decrees adopted
21 in other cases." (Mot. 19:24-26.) Defendant argues this evidence "is not
22 relevant to whether ELORDUY used excessive force on December 5, 2006."
23 Id. 20:13-14. Defendant also argues this evidence is unduly prejudicial,
24 will confuse the jury, and will result in an undue consumption of time
25 at trial. Id. 20:18-24. Plaintiff fails to address this motion in his
26 opposition brief. (Pl.'s Opp'n 17-18.) Since Plaintiff has not
27 demonstrated that this evidence is relevant to his excessive force
28 claim, Defendant's motion in limine number 10 is GRANTED.

1 **11) Motion in Limine No. 11**

2 Defendant seeks to “[e]xclude reference to whether Plaintiff
3 was subjected to verbal or emotional abuse by employees of Sacramento
4 County, including Defendant.” (Mot. 21:8-9.) Defendant argues that
5 “whether individuals who are not parties to this litigation subjected
6 anyone to verbal or emotional abuse is entirely irrelevant to
7 Plaintiff’s excessive force claim against ELORDUY[.]” Id. 21:14-16.
8 Defendant also argues “Plaintiff did not allege in his [FAC] that he was
9 subjected to verbal and/or emotional abuse by ELORDUY” and therefore,
10 “he should not be allowed to now offer evidence at trial in support of
11 such a claim.” Id. 21:17-21. Plaintiff fails to address this motion in
12 his opposition brief. (Pl.’s Opp’n 18.)

13 This motion is granted except to the extent that it concerns
14 anything ELORDUY allegedly said during the time he allegedly subjected
15 Plaintiff to the excessive force about which Plaintiff complains in this
16 action.

17 **12) Motion in Limine No. 12**

18 Defendant seeks to “[e]xclude all evidence, argument, and
19 reference to whether Plaintiff was denied ‘basic needs,’ or proper
20 education, programming and/or services for juveniles.” (Mot. 22:3-4.)
21 Defendant argues Plaintiff included allegations regarding the juvenile
22 justice system in his operative complaint; however, “Plaintiff did not
23 tie that information to any allegations against any of the Defendants
24 named in this matter, let alone the only remaining Defendant[.]” Id.
25 22:10-13. Plaintiff fails to address this motion in his opposition
26 brief. (Pl.’s Opp’n 18-19.) Since these allegations have not been
27 shown relevant to Plaintiff’s sole remaining claim, Defendant’s motion
28 in limine number 12 is GRANTED.

1 **13) Motion in Limine No. 13**

2 Defendant seeks to “[e]xclude any . . . reference to the
3 action or inaction of former Defendants Verne Speirs, Dr. Richard
4 Saxton, and David Gordon.” (Mot. 23:14-15.) Defendant argues “[e]vidence
5 regarding what Chief Probation Officer Verne Speirs did or did not do in
6 overseeing the general conditions of juvenile hall has no bearing on the
7 excessive force claim asserted against ELORDUY.” Id. 23:28-24:2.
8 Defendant also argues “the actions or inactions of Dr. Saxton in
9 treating Plaintiff and/or other juveniles and the actions or inactions
10 of David Gordon in overseeing the education of Plaintiff and/or other
11 juveniles has no bearing on the excessive force claim asserted against
12 ELORDUY.” Id. 24:2-6. Plaintiff fails to address this motion in his
13 opposition brief. (Pl.’s Opp’n 19-20.)

14 Plaintiff’s claims against Saxton and Gordon were dismissed
15 with prejudice in an Order filed April 15, 2010. (Order 13:2-5, ECF No.
16 95.) Further, Speirs was granted summary adjudication of Plaintiff’s
17 claim against him in an Order filed February 24, 2011. (Order 11:17-22,
18 ECF No. 132.) Plaintiff has not demonstrated that the referenced
19 evidence is relevant to his excessive force claim against Defendant.
20 Therefore, Defendant’s motion in limine number 13 is GRANTED.

21 **14) Motion in Limine No. 14**

22 Defendant seeks to “[e]xclude testimony from residents of
23 Juvenile Hall and their parents who were not witnesses to the events
24 that allegedly took place on December 5, 2006.” (Mot. 24: 16-17.)
25 Defendant argues “[t]estimony from witnesses who did no[t] observe the
26 events of December 5, 2006, but are instead called to testify about the
27 alleged use of force on other wards at other times by other employees of
28 the Probation Department should not be allowed as it is entirely

1 irrelevant." Id. 25:2-6. Defendant also argues that "[e]ven if the
2 witnesses were going to testify about the use of force by ELORDUY on
3 them to try to prove his conduct on this occasion, such evidence should
4 not be allowed as it would be unduly prejudicial to Defendant, would
5 mislead the jury, and would necessitate the undue consumption of time."
6 Id. 25:7-10. Additionally, Defendant argues that under Federal Rule of
7 Evidence 404 (a) and (b), "extrinsic evidence of specific instances of
8 conduct is inadmissible to prove action in conformity therewith." Id.
9 25:13-15.

10 Plaintiff fails to address this motion in his opposition
11 brief. (Pl.'s Opp'n 20-21.) Since Plaintiff has failed to demonstrate
12 how the referenced evidence is relevant, Defendant's motion in limine
13 number 14 is GRANTED.

14 **15) Motion in Limine No. 15**

15 Defendant seeks to "[e]xclude the Declarations of Dr. Angela
16 Rosas and Kevin Adamson." (Mot. 25:23.) Defendant argues, *inter alia*,
17 that these declarations are inadmissible hearsay under Federal Rules of
18 Evidence 801 and 802 and if Plaintiff wishes to bring forth relevant,
19 non-hearsay, evidence from these individuals, he is perfectly able to
20 call them to the stand during trial." Id. 26:6-8, 12-20. Defendant
21 further argues Adamson's "Declaration also contains hearsay within
22 hearsay under F.R.E., Rule 805 because it contains Mr. Adamson's account
23 of statements allegedly made by Plaintiff's parent's." Id. 26:13-15.

24 Plaintiff does not address these arguments in his opposition
25 brief. (Pl.'s Opp'n 21.) Plaintiff argues he "has in fact delivered the
26 statements, a couple of days, at most, late, by mistake, inadvertence,
27 or excusable neglect." Id. This argument appears directed at another
28 motion Defendant filed, in which Defendant argues Plaintiff failed to

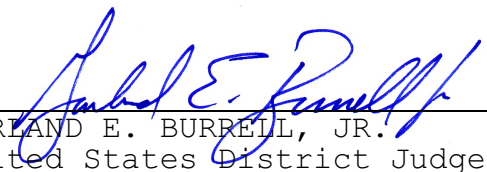
1 timely exchange his exhibits with Defendant as required by the Final
2 Pretrial Order. (Def.'s Objections to Pl.'s Trial Exs. 2:4-3:3, ECF No.
3 148.) The factual record is insufficient to justify a ruling, therefore
4 Defendant's motion in limine number 15 is DENIED.

5 **16) Motion in Limine No. 16**

6 Defendant seeks to "[e]xclude the 'Grades and Evaluations',
7 'Miscellaneous letters', 'Sacramento County Child Protective Services'
8 and Sacramento Superior Court Order for conditions Pertaining to Allen
9 Elseth' documents referenced in Plaintiff's Exhibit List, including all
10 references thereto." (Mot. 27:4-7.) Plaintiff fails to address this
11 motion in his opposition brief. (Pl.'s Opp'n 21.)

12 Defendant argues "the document identified as 'Grades and
13 Evaluations' in the Joint Pretrial Report was not identified as a
14 document he intended to rely upon at trial nor was it ever produced
15 during discovery[,] in violation of Rule 26(a)(1)(A)(ii), and the
16 "failure to produce those items was not justified, nor was it harmless
17 because it prevented Defendant from exploring their relevance." Id.
18 27:17-23. Although it is unclear whether the referenced evidence is
19 relevant, and/or whether Defendant can support their non production,
20 this portion of Defendant's motion in limine number 16 has not been
21 shown to be supported by a sufficient factual context to justify a an in
22 limine decision. Therefore, the motion is DENIED.

23 Dated: August 24, 2011

24
25 
26 GARLAND E. BURRELL, JR.
27 United States District Judge
28