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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORY BALDWIN,
Plaintiff,
v.
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,
Defendants.

Civ. No. 2:09-cv-00711 KJM AC

ORDER

On September 4, 2014 the court conducted a final pretrial conference. Rachael Smith and Randall Haimovici appeared for plaintiff Gregory Baldwin; Diana Esquivel appeared for the defendants.

After hearing the parties' presentations, and good cause appearing, the court makes the following findings and orders:

JURISDICTION/VENUE

Jurisdiction is predicated on 28 U.S.C. § 1331. Jurisdiction and venue are not contested.

TRIAL BEFORE A MAGISTRATE JUDGE

The parties shall meet and confer to discuss whether they will consent to trial before a magistrate judge and shall inform the court of any consent no later than September 15, 2014.

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1 JURY/NON-JURY

2 The parties have timely requested a jury trial, and the jury shall consist of 8 jurors.

3 UNDISPUTED FACTS

4 1. Plaintiff Gregory Baldwin is a prisoner in the custody of the California Department of
5 Corrections and Rehabilitation (CDCR).

6 2. At the relevant time periods, defendant Barton was a Sergeant and defendants Fannon
7 and Gray were Correctional Officers at High Desert State Prison (HDSP) in Susanville,
8 California; they were acting under color of state law.

9 3. On January 24, 2008, Baldwin was transferred to HDSP.

10 4. When Baldwin was transferred, he was approved to be housed in the gym rather than in
11 a cell.

12 5. On February 29, 2008, Fannon and Gray were housing officers in Building 5 on
13 Facility B at HDSP, where Baldwin was housed.

14 6. On February 29, 2008, Fannon told Baldwin that he was being moved to the gym.

15 7. Baldwin said he was not going to the gym.

16 8. Fannon told Baldwin to pack up his belongings; Baldwin complied with this order.

17 9. About thirty minutes later, Fannon and Gray came to Baldwin's cell, put him in waist
18 restraints and escorted him to the Program Office so he could talk to a Sergeant about his housing
19 assignment.

20 10. During this escort Baldwin was wearing a soft cervical neck brace.

21 11. Barton was in the Facility B gym on February 29, 2008, supervising the placement of
22 inmates.

23 12. Barton met with Baldwin in the program office.

24 13. As a Sergeant, Barton did not have the authority to make or change housing
25 assignments.

26 14. Correctional officers did not have the authority to make or change housing
27 assignments.

28 15. A classification committee decides where an inmate will be housed.

1 16. Before Barton's interaction with Baldwin in the Program Office on February 29,
2 2008, Barton did not know Baldwin and was unaware of any injury or medical condition Baldwin
3 had.

4 17. Barton told Fannon and Gray to escort Baldwin to the gym.

5 18. During the escort to the gym, Fannon and Gray walked on either side of Baldwin,
6 holding Baldwin's bicep area.

7 19. Baldwin was still wearing his soft cervical neck brace.

8 20. Barton followed behind the escort.

9 21. As they neared the entrance to the gym, Baldwin stopped walking and said he was not
10 going into the gym.

11 22. Fannon and Gray put Baldwin against the wall outside of the gym.

12 23. After a few minutes, Fannon and Gray took Baldwin into the gym.

13 24. Gray and Fannon released Baldwin, and Gray removed Baldwin's restraints.

14 25. Baldwin said he needed medical assistance.

15 26. Medical staff came to the gym and attended to Baldwin.

16 27. Baldwin was placed on a backboard and gurney and taken to the medical unit on the
17 yard and later to the prison hospital for examination.

18 28. Baldwin had no further interaction with Barton, Fannon or Gray after he was taken
19 out of the gym on February 29, 2008.

20 DISPUTED FACTUAL ISSUES

21 1. Considering all the circumstances, did Fannon and Gray use reasonable and necessary
22 force when they put Baldwin against the wall outside and later inside the gym on February 29,
23 2008?

24 2. Did Barton fail to protect Baldwin from Fannon's and Gray's use of force on February
25 29, 2008?

26 3. Did defendants' conduct on February 29, 2008 aggravate or exacerbate any pre-existing
27 injury of plaintiff's?

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1 SPECIAL FACTUAL INFORMATION

2 None applicable.

3 DISPUTED EVIDENTIARY ISSUES

4 The parties have listed several disputed evidentiary issues. Motions in limine are due
5 September 22, with oppositions due September 29. Motions in limine will be decided before
6 jury selection on the first day of trial.

7 STIPULATIONS/AGREED STATEMENTS

8 The parties stipulate to the authenticity of plaintiff's records from his central and medical
9 files, absent a dispute about when a record was created or whether it was altered. The parties also
10 stipulate to the authenticity of medical records produced via subpoena. The parties may object to
11 the admissibility of these records on other grounds.

12 They do not believe a trial on agreed statements is appropriate.

13 RELIEF SOUGHT

14 Plaintiff seeks compensatory and punitive damages. Defendants seek judgment in their
15 favor and costs.

16 POINTS OF LAW

17 The parties shall alert the court to disputes about the applicable law and legal standards.
18 Trial briefs addressing these points more completely shall be filed with this court no later than
19 seven days prior to the date of trial in accordance with Local Rule 285.

20 ABANDONED ISSUES

21 None.

22 WITNESSES

23 Plaintiff may call the following witnesses:

24 Gregory Baldwin

25 Robert Barton

26 Michael Gray

27 James Fannon

28 Dr. Jan Mensink

1 Dr. Manprit Dhillon

2 Nurse J. Daniels

3 Nurse R. Shaw

4 Correctional Officer David Hurd

5 Correctional Officer D. Burch

6 Correctional Officer M. Barnes

7 Correctional Lieutenant D. Dharlingue

8 Correctional Sergeant T. Hays

9 Correctional Sergeant K. Bond

10 Defendants may call the following witnesses:

11 Gregory Baldwin

12 Robert Barton

13 James Fannon

14 Michael Gray

15 Correctional Officer David Hurd

16 Correctional Officer D. Burch

17 Correctional Officer M. Barnes

18 Nurse J. Daniels

19 Nurse R. Shaw

20 Correctional Lieutenant D. Dharlingue

21 Correctional Officer C. Hougland

22 Correctional Lieutenant D. Spangle

23 Dr. Rogelio Ortega

24 Custodian of Records for plaintiff's central file and medical records.

25 Each party may call any witnesses designated by the other.

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- 1 A. The court will not permit any other witness to testify unless:
2 (1) The party offering the witness demonstrates that the witness is for the purpose
3 of rebutting evidence that could not be reasonably anticipated at the pretrial
4 conference, or
5 (2) The witness was discovered after the pretrial conference and the proffering
6 party makes the showing required in “B,” below.

7 B. Upon the post pretrial discovery of any witness a party wishes to present at trial,
8 the party shall promptly inform the court and opposing parties of the existence of the unlisted
9 witnesses so the court may consider whether the witnesses shall be permitted to testify at trial.
10 The witnesses will not be permitted unless:

- 11 (1) The witness could not reasonably have been discovered prior to the
12 discovery cutoff;
13 (2) The court and opposing parties were promptly notified upon discovery
14 of the witness;
15 (3) If time permitted, the party proffered the witness for deposition; and
16 (4) If time did not permit, a reasonable summary of the witness’s testimony
17 was provided to opposing parties.

18 EXHIBITS, SCHEDULES AND SUMMARIES

19 Plaintiff’s exhibits are identified on attachment A. At trial, plaintiff’s exhibits shall be
20 listed numerically.

21 Defendant’s exhibits are identified on attachment B. At trial, defendant’s exhibits shall
22 be listed alphabetically.

23 The court encourages the parties to generate a joint exhibit list to the extent possible.
24 Joint Exhibits shall be identified as JX and listed numerically, e.g., JX-1, JX-2.

25 All exhibits must be premarked.

26 The parties must prepare exhibit binders for use by the court at trial, with a side tab
27 identifying each exhibit in accordance with the specifications above. Each binder shall have an
28 identification label on the front and spine.

1 The parties must exchange exhibits no later than twenty-eight days before trial. Any
2 objections to exhibits are due no later than fourteen days before trial.

3 A. The court will not admit exhibits other than those identified on the exhibit lists
4 referenced above unless:

- 5 1. The party proffering the exhibit demonstrates that the exhibit is for the purpose
6 of rebutting evidence that could not have been reasonably anticipated, or
- 7 2. The exhibit was discovered after the issuance of this order and the proffering
8 party makes the showing required in Paragraph "B," below.

9 B. Upon the discovery of exhibits after the discovery cutoff, a party shall promptly
10 inform the court and opposing parties of the existence of such exhibits so that the court may
11 consider their admissibility at trial. The exhibits will not be received unless the proffering party
12 demonstrates:

- 13 1. The exhibits could not reasonably have been discovered earlier;
- 14 2. The court and the opposing parties were promptly informed of their existence;
- 15 3. The proffering party forwarded a copy of the exhibits (if physically possible) to
16 the opposing party. If the exhibits may not be copied the proffering party must
17 show that it has made the exhibits reasonably available for inspection by the
18 opposing parties.

19 DEPOSITION TRANSCRIPTS

20 Counsel must lodge the sealed original copy of any deposition transcript to be used at trial
21 with the Clerk of the Court no later than fourteen days before trial.

22 FURTHER DISCOVERY OR MOTIONS

23 None anticipated.

24 AMENDMENTS/DISMISSALS

25 None anticipated.

26 SETTLEMENT

27 The parties have engaged in informal settlement discussions and will inform the court if
28 they believe a court-convened settlement conference would be helpful. The parties shall exhaust

1 the possibility of settlement and report any settlement to the court no later than September 15,
2 2014.

3 MOTIONS IN LIMINE

4 As noted above, motions in limine will be decided the first day of trial.

5 As the court advised the parties, it is this court's practice to admit the fact and date of a
6 felony conviction. Other facts about the felony, including the name and nature of the crime of
7 conviction and the sentence length, are unfairly prejudicial. These facts are inadmissible unless
8 the proponent establishes that, in the circumstances of this case, specific facts about the
9 conviction are relevant to show dishonesty or undermine credibility and their admission would
10 not be unfairly prejudicial.

11 The parties advised the court at the final pretrial conference that they have made
12 stipulations as to other matters of evidence. The parties should file any stipulations as soon as
13 possible.

14 JOINT STATEMENT OF THE CASE

15 The parties shall prepare a joint statement of the case to be read to the jury and file it
16 seven days before trial.

17 SEPARATE TRIAL OF ISSUES

18 Defendant seeks bifurcation of the question of punitive damages.

19 IMPARTIAL EXPERTS/LIMITATION OF EXPERTS

20 Not applicable.

21 ATTORNEYS' FEES

22 The parties do not anticipate seeking attorneys' fees.

23 ESTIMATED TIME OF TRIAL/TRIAL DATE

24 Jury trial is set for October 6, 2014 at 9:00 a.m. Trial is anticipated to last two to three
25 days. The parties are directed to Judge Mueller's trial schedule outlined at the "important
26 information" link located on her web page on the court's website.

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1 PROPOSED JURY VOIR DIRE AND PROPOSED JURY INSTRUCTIONS

2 The parties shall file any proposed jury voir dire seven days before trial. Each party will
3 be limited to ten minutes of jury voir dire.

4 The court directs counsel to meet and confer in an attempt to generate a joint set of jury
5 instructions and verdicts. The parties shall file any such joint set of instructions fourteen days
6 before trial, identified as "Jury Instructions and Verdicts Without Objection." To the extent the
7 parties are unable to agree on all or some instructions and verdicts, their respective proposed
8 instructions are due fourteen days before trial.

9 Counsel shall e-mail a copy of all proposed jury instructions and verdicts, whether agreed
10 or disputed, as a word document to kjmorders@caed.uscourts.gov no later than fourteen days
11 before trial; all blanks in form instructions should be completed and all brackets removed.

12 Objections to proposed jury instructions must be filed seven days before trial; each
13 objection shall identify the challenged instruction and shall provide a concise explanation of the
14 basis for the objection along with citation of authority. When applicable, the objecting party
15 shall submit an alternative proposed instruction on the issue or identify which of his or her own
16 proposed instructions covers the subject.

17 MISCELLANEOUS

18 Trial briefs are due seven days before trial.

19 OBJECTIONS TO PRETRIAL ORDER

20 Each party is granted fourteen days from the date of this order to file objections to the
21 same. If no objections are filed, the order will become final without further order of this court.

22 DATED: September 9, 2014.

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25 UNITED STATES DISTRICT JUDGE
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