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8	UNITED STATI	ES DISTRICT COURT
9	FOR THE EASTERN I	DISTRICT OF CALIFORNIA
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11	JOHN CLINT DRAPER,	No. 2:10-CV-0032 KJM EFB
12	Plaintiff,	
13	v.	AMENDED ORDER
14	D. ROSARIO, et al.,	
15	Defendant.	
16		
17	On March 20, 2014, the court conduct	ed a final pretrial conference. Victor Meng, Robert
18	O'Leary and Judson Lobdell appeared for plat	intiff Draper, who was present in court; David
19	Carrasco and Rene Lucaric appeared telephon	ically for defendant Rosario.
20	After hearing, and good cause appear	ing, the court makes the following findings and
21	orders:	
22	JURISDICTION/VENUE	
23	Jurisdiction is predicated on 28 U.S.C.	. § 1343(a). Jurisdiction and venue are not
24	contested.	
25	JURY/NON-JURY	
26	The parties have requested a jury trial	and agree to an eight member jury.
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1	UNDISPUTED FACTS
2	1. California State Prison-Solano is a medium security institution operated by the
3	California Department of Corrections and Rehabilitation (CDCR).
4	2. On September 9, 2009, plaintiff John Clint Draper was an inmate housed in Building
5	Four at CSP-Solano.
6	3. Draper was classified as mobility impaired and was authorized to use a cane.
7	4. Defendant David Rosario was a correctional officer assigned to CSP-Solano and on
8	September 9, 2009 was working as a floor officer in Building Four.
9	5. Correctional Officer Pyong Chan Lee was working as the control booth officer and
10	Correctional Officer Eddie Coulter was working as a floor officer in Building Four on September
11	9, 2009.
12	6. Coulter, Lee and Rosario were the only officers assigned to working in Building Floor
13	during the morning of September 9, 2009.
14	7. Around 11:30 a.m., Rosario ordered Draper to report to the office in Building Four.
15	8. When Draper reported to the office, Coulter and Rosario were there and Lee was in
16	the control booth.
17	9. Rosario talked to Draper about the latter's work performance as a porter.
18	10. Draper disagreed with Rosario's assessment and the two got into a verbal exchange in
19	the dayroom outside the office.
20	11. Rosario ordered Draper to drop his cane and put his hands behind his back so Rosario
21	could handcuff Draper.
22	12. Draper complied and Rosario handcuffed him
23	13. The incident involving Draper and Rosario took place in the Day Room of Building
24	Four, immediately in front of the sally port grill gate.
25	14. Lee activated his personal alarm as the result of the incident and CDCR officers
26	arrived in response.
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1	DISPUTED FACTUAL ISSUES ¹
2	1. Whether Rosario slammed Draper into the sally port grill gate in Building Four.
3	2. Whether Draper jumped off the sally port grill gate and launched himself backwards at
4	Rosario in an attempt to assault Rosario.
5	3. Whether Rosario slammed Draper's head into the ground while Draper was face down
6	on the ground.
7	4. Whether Draper suffered any injury as the result of the incident or, if he did, the extent
8	of any injuries.
9	5. Whether a registered nurse adequately examined Draper after the incident.
10	SPECIAL FACTUAL INFORMATION
11	None applicable.
12	DISPUTED EVIDENTIARY ISSUES/MOTIONS IN LIMINE
13	The parties will submit their motions in limine in accordance with the schedule set below,
14	except for plaintiff's request to obtain the attendance of incarcerated witnesses, which shall be
15	addressed according to the schedule set by ECF No. 130.
16	The parties' motions on limine are due by April 7, oppositions due by April 14, and any
17	replies by April 21, 2014. The parties should inform the court whether resolution of any of the
18	motions might require an evidentiary presentation.
19	STIPULATIONS/AGREED STATEMENTS
20	The parties have stipulated as to the following facts:
21	1. Rosario acted under color of state law.
22	2. The medical records offered as plaintiff's exhibits 1-60 and defendants' exhibits 7-35
23	are authentic.
24	3. The photographs of Building Four taken on January 22, 2014 and offered as plaintiff's
25	exhibit 66 and defendant's exhibit 35 are authentic.
26	¹ The court acknowledges plaintiff's claim that the question whether a post-incident interview
27	with plaintiff was properly handled is in dispute, but does not include that in the disputed facts as
28	it is not part of the claim itself, but rather may provide a basis for a jury instruction or other action. As the parties observed, this will be addressed during the motions in limine.

1	4. Defendant's proposed exhibits 1-6, documents from plaintiff's central file, are	
2	authentic.	
3	RELIEF SOUGHT	
4	Plaintiff seeks compensatory or nominal damages, punitive damages, costs and attorneys'	
5	fees. Defendant seeks a judgment in his favor and an award of costs.	
6	POINTS OF LAW	
7	The parties shall alert the court to disputes about the applicable law and legal standards.	
8	Trial briefs addressing these points more completely shall be filed with this court no later than	
9	seven days prior to the date of trial in accordance with Local Rule 285.	
10	ABANDONED ISSUES	
11	The court granted defendant's motions to dismiss Draper's claim that his Fourteenth	
12	Amendment right to procedural due process was violated, that his Eighth Amendment right was	
13	violated by prison officials' deliberate indifference to his serious medical needs, and that he was	
14	subjected to a biased disciplinary hearing.	
15	<u>WITNESSES</u>	
16	Plaintiff intends to call the following witnesses:	
17	John Clint Draper	
18	Richard Shepard, CDC No. H40705	
19	Frank Thompson, Jr. CDC No. C07772	
20	Mario Thompson, CDC No. T54097	
21	James Fowler, Correctional Sergeant	
22	Allen Peel, Correctional Sergeant	
23	John Edward Mitchell, CDC No.H38255	
24	Michael Dwayne Haynes, CDC No. J78758	
25	Dr. Martin Chenevert—expert witness	
26	Custodians of records	
27	Grant Fine, potential impeachment witness	
28	Defendant intends to call the following witnesses:	
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1	David Rosario				
2	Pyong Chun Lee				
3	Edward Coulter				
4	Dr. Bruce Barnett—rebuttal expert				
5	Custodians of records.				
6	Each party may call any witnesses designated by the other.				
7	A. The court will not permit any other witness to testify unless:				
8	(1) The party offering the witness demonstrates that the witness is for the purpose				
9	of rebutting evidence that could not be reasonably anticipated at the pretrial				
10	conference, or				
11	(2) The witness was discovered after the pretrial conference and the proffering				
12	party makes the showing required in "B," below.				
13	B. Upon the post pretrial discovery of any witness a party wishes to present at trial,				
14	the party shall promptly inform the court and opposing parties of the existence of the unlisted				
15	witnesses so the court may consider whether the witnesses shall be permitted to testify at trial.				
16	The witnesses will not be permitted unless:				
17	(1) The witness could not reasonably have been discovered prior to the				
18	discovery cutoff;				
19	(2) The court and opposing parties were promptly notified upon discovery				
20	of the witness;				
21	(3) If time permitted, the party proffered the witness for deposition; and				
22	(4) If time did not permit, a reasonable summary of the witness's testimony				
23	was provided to opposing parties.				
24	EXHIBITS, SCHEDULES AND SUMMARIES				
25	Plaintiff's exhibits are identified on attachment A. At trial, plaintiff's exhibits shall be				
26	listed numerically.				
27	Defendant's exhibits are identified on attachment B. At trial, defendant's exhibits shall be				
28	listed alphabetically.				
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1	The court encourages the parties to generate a joint exhibit list to the extent possible.
2	Joint Exhibits shall be identified as JX and listed numerically, e.g., JX-1, JX-2.
3	All exhibits must be premarked.
4	The parties must prepare exhibit binders for use by the court at trial, with a side tab
5	identifying each exhibit in accordance with the specifications above. Each binder shall have an
6	identification label on the front and spine.
7	The parties must exchange exhibits no later than twenty-eight days before trial. Any
8	objections to exhibits are due no later than fourteen days before trial.
9	A. The court will not admit exhibits other than those identified on the exhibit lists
10	referenced above unless:
11	1. The party proffering the exhibit demonstrates that the exhibit is for the purpose
12	of rebutting evidence that could not have been reasonably anticipated, or
13	2. The exhibit was discovered after the issuance of this order and the proffering
14	party makes the showing required in Paragraph "B," below.
15	B. Upon the discovery of exhibits after the discovery cutoff, a party shall promptly
16	inform the court and opposing parties of the existence of such exhibits so that the court may
17	consider their admissibility at trial. The exhibits will not be received unless the proffering party
18	demonstrates:
19	1. The exhibits could not reasonably have been discovered earlier;
20	2. The court and the opposing parties were promptly informed of their existence;
21	3. The proffering party forwarded a copy of the exhibits (if physically possible) to
22	the opposing party. If the exhibits may not be copied the proffering party must
23	show that it has made the exhibits reasonably available for inspection by the
24	opposing parties.
25	DEPOSITION TRANSCRIPTS
26	Counsel must lodge the sealed original copy of any deposition transcript to be used at trial
27	with the Clerk of the Court no later than fourteen days before trial.
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1	FURTHER DISCOVERY OR MOTIONS
2	Discovery closed on October 6, 2012. The court granted plaintiff's motion to reopen
3	discovery and set a new discovery deadline of January 31, 2014.
4	The parties do not anticipate additional discovery.
5	AMENDMENTS/DISMISSALS
6	As noted above, several claims were dismissed during the course of the litigation.
7	SETTLEMENT
8	On February 6, 2014, he parties attended a settlement conference conducted by the
9	Honorable Dale A. Drozd. The case did not settle and the parties do not believe a further
10	settlement conference will be helpful.
11	JOINT STATEMENT OF THE CASE
12	The parties should submit a joint statement of the case fourteen days before trial.
13	SEPARATE TRIAL OF ISSUES
14	The parties do not seek a separate trial of any issues.
15	IMPARTIAL EXPERTS/LIMITATION OF EXPERTS
16	Not applicable.
17	ATTORNEYS' FEES
18	. Plaintiff will seek attorneys' fees if he is the prevailing party.
19	ESTIMATED TIME OF TRIAL/TRIAL DATE
20	Jury trial is set for May 5, 2014 at 9:00 a.m. in Courtroom Three before the Honorable
21	Kimberly J. Mueller. Trial is anticipated to last three to four days. The parties are directed to
22	Judge Mueller's trial schedule outlined at the "important information" link located on her web
23	page on the court's website.
24	PROPOSED JURY VOIR DIRE AND PROPOSED JURY INSTRUCTIONS
25	The parties shall file any proposed jury voir dire seven days before trial. Each party will
26	be limited to ten minutes of jury voir dire.
27	The court directs counsel to meet and confer in an attempt to generate a joint set of jury
28	instructions and verdicts. The parties shall file any such joint set of instructions fourteen days 7

before trial, identified as "Jury Instructions and Verdicts Without Objection." To the extent the
 parties are unable to agree on all or some instructions and verdicts, their respective proposed
 instructions are due fourteen days before trial.

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

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

12 <u>MISCELLANEOUS</u>

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Trial briefs are due seven days before trial.

14 OBJECTIONS TO PRETRIAL ORDER

Each party is granted fourteen days from the date of this order to file objections to the
same. If no objections are filed, the order will become final without further order of this court.
DATED: April 3, 2014.

TRICT JUDGE UNITED S

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ATTACHMENT A PLAINTIFF'S EXHIBIT LIST			
#	Date	Document	Bates Number
		Plaintiff's Medical Records	
1.	January 25, 1994	X-Ray Request	DRAPER002302
2.	December 12, 2007	Radiology Report	DRAPER001463
3.	May 6, 2008	Radiology Report	DRAPER000494
4.	December 10, 2008	Interdisciplinary Progress Notes	DRAPER000148
5.	December 22, 2008	Comprehensive Accommodation Chrono	DRAPER000531
6.	August 20, 2009	Interdisciplinary Progress Notes	DRAPER000126
7.	August 26, 2009	Radiology Report	DRAPER000492
8.	September 9, 2009	Medical Report of Injury or Unusual Occurrence	Dkt. 70-3 at 13
9.	September 11, 2009	Health Care Services Request Form	Dkt. 65-1 at 21
10.	September 17, 2009	Interdisciplinary Progress Notes	DRAPER000124-
11.	September 17, 2009	Physician's Orders	DRAPER000623
12.	September 28, 2009	Radiology Report	DRAPER000490
13.	September 28, 2009	Radiology Report	DRAPER000491
14.	October 20, 2009	Health Services Request Form	Dkt. 65-1 at 20
15.	October 29, 2009	Radiology Report	DRAPER000489
16.	November 1, 2009	Health Services Request Form	Dkt. 65-1 at 19
17.	November 5, 2009	Interdisciplinary Progress Notes	DRAPER003786
18.	November 16, 2009	Radiology Report	DRAPER000487
19.	November 16, 2009	Radiology Report	DRAPER000488
20.	November 22, 2009	Health Services Request Form	Dkt. 65-1 at 18
21.	June 8, 2010	Health Care Servies Request Form	DRAPER003784
22.	July 21, 2010	Report by Salinas Valley Radiologists, Inc.	DRAPER000486
23.	July 29, 2010	Physician Request for Services	Dkt. 65-1 at 7
24.	July 29, 2010	Interdisciplinary Progress Notes	Dkt. 65-1 at 8
25.	June 8, 2010	Health Care Services Request Form	DRAPER003784
26.	July 21, 2010	Report by Salinas Valley Radiologists, Inc.	DRAPER000486
27.	February 9, 2011	Primary Care Provider Progress Note	DRAPER003795

#	Date	Document	Bates Number
28.	May 23, 2011	Health Care Services Request Form	Dkt. 65-1 at 14
29.	November 1, 2011	Primary Care Provider Progress Note	DRAPER000114
30.	January 20, 2012	Encounter Form: Musculoskeletal Complaint (Non-Traumatic)	DRAPER000096-8
31.	January 31, 2012	Physician Request for Services	DRAPER000553
32.	January 31, 2012	Primary Care Provider Progress Note	DRAPER000094
33.	February 29, 2012	Primary Care Provider Progress Note	Dkt. 65-1 at 5
34.	March 5, 2012	Health Care Services Request Form	DRAPER000085
35.	March 8, 2012	Report by Valley Radiology Medical Associates, Inc.	DRAPER000481- 483
36.	April 11, 2012	Primary Care Provider Progress Note	DRAPER000084
37.	May 2, 2012	Interdisciplinary Progress Notes	DRAPER000082
38.	May 9, 2012	Interdisciplinary Progress Notes	DRAPER000081
39.	May 16, 2012	Interdisciplinary Progress Notes	DRAPER000080
40.	May 23, 2012	Interdisciplinary Progress Notes	DRAPER000076
41.	June 25, 2012	Health Care Services Request Form	DRAPER000074
42.	July 10, 2012	Primary Care Provider Progress Note	DRAPER000073
43.	July 10, 2012	Refusal of Examination and/or Treatment	DRAPER000547
44.	August 1, 2012	Primary Care Provider Progress Note	DRAPER000068- 69
45.	August 31, 2012	Medical Progress Note	DRAPER000064- 65
46.	September 11, 2012	Primary Care Provider Progress Note	DRAPER000062
47.	September 30, 2012	Electromyography/Nerve Conduction Study	DRAPER000474- 80
48.	October 11, 2012	Primary Care Provider Progress Note	DRAPER000061
49.	November 21, 2012	Primary Care Provider Progress Note	DRAPER000058
50.	January 25, 2013	Encounter Form: Musculoskeletal Complaint (Non-Traumatic)	DRAPER000053- 55
51.	January 29, 2013	Health Care Services Request Form	DRAPER000051
52.	February 6, 2013	Refusal of Examination and/or Treatment	DRAPER000538
53.	April 4, 2013	Health Care Services Request Form	DRAPER002429
54.	April 15, 2013	Primary Care Provider Progress Note	DRAPER000048
55.	June 7, 2013	Encounter Form: Musculoskeletal Complaint (Non-Traumatic)	DRAPER000039- 41

PLAINTIFF JOHN CLINT DRAPER'S EXHIBIT LIST CASE NO. 2:10-CV-00032-KJM-EFB sf-3397311

56. 57. 58. 59.	June 11, 2013		
58.	0 1 1 1 2 0010	Primary Care Provider Progress Note	DRAPER000037
	October 15, 2013	Health Care Services Request Form	DRAPER001467
50	October 17, 2013	Encounter Form: Musculoskeletal Complaint (Non-Traumatic)	DRAPER001468 69
59.	December 4, 2013	Health Care Services, Physician Request for Services	DRAPER002427
60.	December 9, 2013	Report by California Correctional Health Care Services	DRAPER002296 97
		Miscellaneous	
61.		Diagram of Building Four, California State Prison, Solano	
62.		California Department of Corrections and Rehabilitation, Adult Institutions, Program, and Parole, Operations Manual	
63.		California Department of Corrections and Rehabilitation, Richard A. McGee Correctional Training Center, Cadet Handbook	
64.	September 9, 2009	Videotape Interview of John Clint Draper	
65.	September 30, 2009	Videotape Interview of John Clint Draper	
66.	January 22, 2014	Photographs of California State Prison, Solano	
67.		Rule 1006 Summary of Medical Records Concerning Right Upper Extremity	
		Medical Text	
68.		Renfree K.J., and T.W. Wright, <i>Anatomy</i> and biomechanics of the acromioclavicular and sternoclavicular joints, Clin. Sports Med. 2003;22: 219–237	
69.		Shaffer B.S., <i>Painful conditions of the acromioclavicular joint</i> , J. Am. Acad. Orthop. Surg. 1999;7(3):176	
70.		Koehler, Scott M., <i>Acromioclavicular joint injuries</i> , UpToDate, available online at http://www.uptodate.com (May 13, 2013)	
71.		Koehler, Scott M., <i>Acromioclavicular joint disorders</i> , UpToDate, available online at http://www.uptodate.com (January 14, 2014)	
<u> </u>	riff John Clint Draper's 1		

#	Date	Document	Bates Number
72.		Miller, Marc L., <i>Muscle examination in the</i> <i>evaluation of weakness</i> , UpToDate, available online at http://www.uptodate.com (August 23, 2012)	
73.		Jing Jin, et al., Factors affecting therapeutic compliance: A review from the patient's perspective, 4 Ther. & Clin. Risk Mgmt. 269 (February 2008)	
74.		Alex J. Mitchell and Thomas Selmes, Why don't patients take their medicine? Reasons and solutions in psychiatry, 13 Advances in Psychiatric Treatment 336 (2007)	
75.		Silk, K.R., <i>Personality disorders</i> , in: A. Skodol (Ed.), UpToDate (2014)	
76.		Carol S. North M.D., M.P.E., and Sean H. Yutzy M.D., <i>The Psychiatric Diagnosis</i> , In	
		Goodwin and Guze's Psychiatric Diagnosis (6th Ed.) (Oxford University Press, Inc. 2010)	
		,	
	tiff John Clint Draper's I No. 2:10-cv-00032-KJM-EF 7311		

ATTACHMENT B

No. Date **Document** Reference **Plaintiff's Central File Documents** October 16, 1991 1. Abstract of Judgment **DRAPER002555** 2. September 9, 2009 **Rules Violation Report** DRAPER0002790-95 3. September 9, 2009 Medical Report of Injury Dkt. 70-3 at 13 4. September 9, 2009 Inmate Account of Excessive Force Dkt. 70-3 at 42 5. September 16, 2009 Incident Commander's Review/Critique Dkt. 70-3 at 44-53 6. October 7, 2009 Dkt. 70-3 at 36-41 Memorandum on Interviews with Inmates **Plaintiff's Medical File Documents** 7. April 23, 2003 Radiology Report DRAPER000497 8. December 4, 2006 Radiology Report DRAPER000496 9. April 30, 2008 Physician Order DRAPER000650 10. April 30, 2008 Interdisciplinary Progress Note **DRAPER000152** May 6, 2008 11. Radiology Report **DRAPER000494** 12. December 10, 2008 Physician's Order **DRAPER000642** 13. December 10, 2008 Interdisciplinary Progress Note **DRAPER000148** 14. August 20, 2009 Interdisciplinary Progress Note **DRAPER000126** 15. August 26, 2009 Radiology Report **DRAPER000492** 16. September 26, 2009 Interdisciplinary Progress Note DRAPER000124-25 17. September 28, 2009 Radiology Report DRAPER000490 18. September 28, 2009 Radiology Report DRAPER000491 19. October 29, 2009 Radiology Report **DRAPER000489** 20. November 5, 2009 Interdisciplinary Progress Note **DRAPER003786** 21. November 16, 2009 Radiology Report **DRAPER000487** 22. November 16, 2009 Radiology Report **DRAPER000488** 23. January 6, 2010 Interdisciplinary Progress Note 24. June 9, 2010 Interdisciplinary Progress Note 25. July 27, 2010 **MRI** Report DRAPER000486 26. July 29, 2010 Health Care Services Request Dkt. 65-1 at 7

DEFENDANT'S TRIAL EXHIBITS—AMENDED LIST

No.	Date	Document	Reference
27.	July 29, 2010	Interdisciplinary Progress Note	Dkt. 65 at 11
28.	August 11, 2010	Interdisciplinary Progress Note	
29.	January 20, 2011	Interdisciplinary Progress Note	
30.	January 11, 2011	Reasonable Accommodation Request	DRAPER003793-94
31.	February 9, 2011	Primary Care Provider Progress Note	DRAPER003795
32.	February 11, 2011	Health Care Services Request	Dkt. 65-1 at 15
33.	March 8, 2012	X-ray Reports	DRAPER000481-83

OtherExhibits

54. January 22, 2014 Thous of merdent Scene, CSI-Solano	34.	January 22, 2014	Photos of Incident Scene, CSP-Solano
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3/24/2014