



1           The court denies defendants’ motion to the extent they argue Calhoun’s delayed  
2 response is irrelevant. The reasonableness inquiry in which the jury will engage is an objective  
3 one. *See Brigham City, Utah v. Stuart*, 547 U.S. 398, 404 (2006) (“An action is ‘reasonable’  
4 under the Fourth Amendment, regardless of the individual officer’s state of mind as long as the  
5 circumstances, viewed *objectively*, justify [the] action.” (emphasis and brackets in original)). At  
6 the same time, Officer Calhoun’s perceptions of the objective facts are relevant. *See Rowland v.*  
7 *Perry*, 41 F.3d 167, 172–73 (4th Cir. 1994) (in reviewing qualified immunity inquiry, noting an  
8 officer’s “perceptions of the objective facts of the incident in question” are relevant). Officer  
9 Calhoun’s late response is relevant to his perceptions of the facts in question because the delay  
10 may have affected those perceptions. Although a jury will have to make several inferences to get  
11 from any evidence of the late response to the consequential fact of an unfocused mind, the  
12 relevance standard is low and the judge’s role is limited in applying it. Once properly instructed,  
13 it will be the jury’s province to weigh the evidence and decide which side’s theory of the case to  
14 believe.

## 15       II.     Evidence of Termination/Circumstances Surrounding Termination

### 16           A.     Cross-Examination

17           The court grants defendants’ motion to the extent plaintiffs seek to cross-examine  
18 Officer Calhoun to elicit details of the sexual misconduct underlying his termination because  
19 those details are not relevant to the issues at trial and have a high likelihood of confusing the  
20 issues. *See Fed. R. Evid.* 401, 404. Plaintiffs, however, are not prohibited from asking Officer  
21 Calhoun questions probing his truthfulness in connection with his employment, given that his  
22 credibility will be critical to the jury’s determination of the case. *See Fed. R. Evid.* 608(b); *Nat’l*  
23 *Mgmt. Servs., Inc. v. Qwest Dex, Inc.*, 219 F. App’x 658, 659-60 (9th Cir. 2007) (affirming district  
24 court’s permitting cross-examination of witness about acts underlying his bar disciplinary  
25 proceedings but excluding nature of the proceedings, the entities involved, and the penalties  
26 imposed); *Lewy v. S. Pac. Transp. Co.*, 799 F.2d 1281, 1299 (9th Cir. 1986) (Rule 608(b) allows  
27 cross-examination on specific instances of conduct “that would be probative on the issue of []  
28 credibility,” but “the rule expressly authorizes courts to limit such questioning ‘in [their]

1 discretion.”); *Stringer v. City of San Pablo*, No. C 07-3544 CW (MEJ), 2009 WL 302616, at \*2  
2 (N.D. Cal. Feb. 6, 2009) (“a specific act of misconduct, offered to attack the witness' character for  
3 truthfulness, can be elicited only on cross-examination of the witness”).

4 B. Impeachment

5 The court denies defendants' motion to the extent plaintiffs seek to use extrinsic  
6 evidence for purposes of impeachment by prior inconsistent statements under Federal Rule of  
7 Evidence 608. Courts may admit extrinsic evidence to impeach a witness if the evidence goes to  
8 witness's credibility. *Smith v. California*, 350 F. App'x 178, 180 (9th Cir. 2009) (not abuse of  
9 discretion to admit witness's inmate status reports because they were not being introduced to  
10 prove the truth of the matter asserted but rather to impeach witness's prior testimony that he was  
11 not a disruptive inmate); *Ellis v. Navarro*, No. C 07-5126 SBA PR, 2012 WL 3580284, at \*7  
12 (N.D. Cal. Aug. 17, 2012) (“the admissibility of extrinsic evidence offered ‘for other grounds of  
13 impeachment (such as contradiction, prior inconsistent statement, bias and mental capacity)’ is  
14 governed by Rules 402 and 403”). If extrinsic evidence contradicts Officer Calhoun's testimony,  
15 plaintiffs may use it for the sole purpose of impeachment.

16 C. Reputation/Opinion

17 The court denies defendant's motion to the extent plaintiffs seek to offer opinion  
18 or reputation evidence of Officer Calhoun's character for truthfulness. “A witness's credibility  
19 may be attacked or supported by testimony about the witness's reputation for having a character  
20 for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character.”  
21 Fed. R. Evid. 608(a). If plaintiffs can establish an adequate foundation for a witness's knowledge  
22 of Officer Calhoun's truthfulness or untruthfulness, that evidence is admissible under Rule  
23 608(a). *See United States v. Holt*, 486 F.3d 997, 1002 (7th Cir. 2007) (noting, while it is within  
24 the trial court's discretion to prohibit cross-examination of a police officer as to whether he had  
25 been suspended to call into question his credibility, plaintiff “could have used Rule 608(a) and  
26 called a member of the department to testify directly about his opinions or reputation of [the  
27 credibility of the officer].”). Though a criminal case, the evidentiary principles in *Holt* have been  
28 applied in the civil context. *See Junkert v. Massey*, No. 06-3243, 2009 WL 1161654, at \*4 (C.D.

1 Ill. Apr. 24, 2009) (citing *Holt* with approval); *Maples v. Vollmer*, No. CIV 12-0294 JB/RHS,  
2 2013 WL 1677104, at \*10 (D.N.M. Mar. 31, 2013) (citing *Holt* with approval in a §1983 case).

3           However, Rule 608(a) may not be used as a vehicle for admitting specific bad acts.  
4 No witness may testify about the reasons for Officer Calhoun's termination, to the extent they  
5 qualify as specific acts governed by Rule 608(b). See *Martin v. Jones*, No. 09 C 1690, 2013 WL  
6 3754017, at \*6 (N.D. Ill. July 16, 2013) ("The limitations in [Rule 608(a)] to opinion and  
7 reputation evidence mean that a character witness cannot be used as a subterfuge for getting  
8 specific acts of untruthfulness in front of the jury.") (internal citations omitted); *Behler v. Hanlon*,  
9 199 F.R.D. 553, 559 (D. Md. 2001) ("On direct examination, the character witness may give the  
10 basis for the opinion or reputation testimony, but may not testify as to specific acts.").

11           These tentative rulings assume that testimony does not open the door to allow  
12 questions they otherwise preclude. The court anticipates providing the jury with limiting  
13 instructions consistent with these rulings.

14           As the parties have been advised previously, each ruling on a motion in limine is  
15 made without prejudice and is subject to proper renewal, in whole or in part, during trial. If a  
16 party wishes to contest a pretrial ruling, it must do so through a proper motion or objection, or  
17 otherwise forfeit appeal on such grounds. See Fed. R. Evid. 103(a); *Tennison v. Circus Circus*  
18 *Enters., Inc.*, 244 F.3d 684, 689 (9th Cir. 2001) ("Where a district court makes a tentative in  
19 limine ruling excluding evidence, the exclusion of that evidence may only be challenged on  
20 appeal if the aggrieved party attempts to offer such evidence at trial.") (alteration, citation and  
21 quotation omitted).

22           IT IS SO ORDERED.

23 DATED: January 22, 2015.

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26 UNITED STATES DISTRICT JUDGE  
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