



1 This court reviews de novo those portions of the proposed  
2 findings of fact to which an objection has been made. 28 U.S.C.  
3 § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business  
4 Machines, 656 F.2d 1309, 1313 (9th Cir. 1981); see also Dawson v.  
5 Marshall, 561 F.3d 930, 932 (9th Cir. 2009). As to any portion  
6 of the proposed findings of fact to which no objection has been  
7 made, the court assumes its correctness and decides the matter on  
8 the applicable law. See Orand v. United States, 602 F.2d 207,  
9 208 (9th Cir. 1979). The magistrate judge's conclusions of law  
10 are reviewed de novo. See Britt v. Simi Valley Unified School  
11 Dist., 708 F.2d 452, 454 (9th Cir. 1983).

12 The court has reviewed the applicable legal standards and,  
13 good cause appearing, concludes that it is appropriate to adopt  
14 the findings and recommendations. The Court finds that the bent  
15 front bead sight is, at minimum, relevant to Defendant's  
16 credibility as a witness. However, the Court agrees that  
17 Plaintiff's requested adverse inference instruction should be  
18 denied. The Court therefore adopts the magistrate judge's  
19 recommendations with the following additions:

- 20 1. The findings and recommendations are ADOPTED IN FULL.
- 21 2. Plaintiff's motion for sanctions is GRANTED IN PART AND  
22 DENIED IN PART WITHOUT PREJUDICE. Plaintiff may renew his motion  
23 at trial, depending upon whether Defendant's testimony or  
24 Defendant's expert testimony opens the door to reconsideration of  
25 the need for an adverse inference instruction. Defendant is  
26 precluded from offering non-expert and expert evidence in his  
27 case-in-chief regarding whether the front bead sight was bent and  
28 whether it caused the shot to go errant.

1           3.    Plaintiff's requested instruction will not be given.  
2    The Court may give a modified jury instruction that concerns the  
3    failure to preserve evidence and an inference with respect to  
4    Defendant Guzman's credibility if it finds that such an  
5    instruction is needed.  Plaintiff may include a modified  
6    instruction in his proposed jury instructions for the Court's  
7    consideration.

8           4.    Officer Lindsey's testimony is limited to the  
9    statements made in his report.

10           IT IS SO ORDERED.

11    Dated:   July 5, 2017

  
JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE

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