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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD GIDDENS,

Plaintiff,

vs.

TIM MATTOS, et al.,

Defendants.

No. 2:14-cv-00943-TLN-AC

FINAL PRETRIAL ORDER

Trial Date: March 6, 2023
TIME: 9:00 a.m.

This Court held a Final Pretrial Conference on December 1, 2022. Plaintiff Richard Giddens is proceeding pro se. Defendants Tim Mattos and Michael Urlaub are represented by Danielle Lewis from Selman Breitman, LLP. After the hearing, the Court makes the following findings and orders:

I. JURISDICTION / VENUE

This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff asserts claims arising under the laws of the United States, including 42 U.S.C. § 1983 and the Fourth Amendment of the United States Constitution. This Court has supplemental jurisdiction over Plaintiff’s claims arising under state law pursuant to 28 U.S.C. § 1367, because those claims are so related to the federal claims that they form part of the same case or controversy under Article

1 III of the United States Constitution.

2 Venue is appropriate in the Eastern District of California, Sacramento Division, under 28
3 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim
4 occurred in this judicial district.

5 **II. SETTLEMENT CONFERENCE**

6 At the Final Pretrial Conference, both parties agreed to a settlement conference. The
7 Court scheduled a settlement conference to occur before Magistrate Judge Newman on February
8 16, 2023 at 9:00 a.m.

9 **III. JURY OR NON-JURY TRIAL**

10 The parties have demanded a jury trial. Accordingly, this matter shall be tried before a
11 jury. The Court shall empanel eight (8) jurors.

12 **IV. UNDISPUTED FACTS**

13 Because the parties did not submit a plain and concise statement of undisputed facts as
14 required by Local Rule 281(b)(3), the Court proceeds as if there are no undisputed facts.

15 **V. DISPUTED FACTUAL ISSUES**

16 The parties presented the following as disputed facts:

17 **A. Plaintiff**

18 PLAINTIFF'S DISPUTED FACTUAL ISSUES ARE SOURCED FROM STATE TRIAL
19 AND DEPOSITION TRANSCRIPTS OUTLINED IN PLAINTIFF'S OPPOSITION TO
20 SUMMARY JUDGMENT "STATEMENT OF DISPUTED AND UNDISPUTED FACTS"
21 PAGES 16, 17, 18, 19, 20.

22 **B. Defendants**

23 Plaintiff claims Mattos, during the arrest, unreasonably (1) "grabbed" Plaintiff, (2)
24 "slammed" his head into the wall, and (3) "threw" him to the ground. (ECF No. 39 at 7.) The
25 Court has ruled that while the parties agree Plaintiff resisted during the arrest, the jury must make
26 the credibility determinations as to the "degree of Plaintiff's physical resistance" and "the degree
27 of force used against him" by Commander Mattos. (ECF No. 112 at 14.) Each of the Plaintiff's
28 state law claims are also predicated on these specific determinations. (*Id.* at 17, 18, 19.)

1 Defendants dispute Plaintiff's contentions that his head was slammed into a wall and that
2 he was thrown to the ground. Defendants further dispute that the force used against Plaintiff
3 during the subject arrest was unreasonable. Instead, Defendants maintain that any and all force
4 used was objectively reasonable and, in fact, necessary, given Plaintiff's physical resistance.
5 Defendants further dispute the extent of the damages claimed by Plaintiff.

6 **C. DISPUTED EVIDENTIARY ISSUES & MOTIONS IN LIMINE**

7 The Court sets a filing deadline for motions in limine of February 6, 2023, with opposition
8 briefs due by February 13, 2023.

9 **D. SEPARATE TRIAL OF ISSUES**

10 Nothing anticipated at this time.

11 **E. WITNESSES**

12 The parties' lists of prospective witnesses are memorialized in the Joint Final Pretrial
13 Conference Statement and are incorporated herein.

14 A. No other witnesses will be permitted to testify unless: (1) the party offering the
15 witness demonstrates that the witness is for the purpose of rebutting evidence which could not be
16 reasonably anticipated at the Final Pretrial Conference, or (2) the witness was discovered after the
17 Final Pretrial Conference and the proffering party makes the showing required in section B
18 below.

19 B. Upon the post-pretrial discovery of witnesses, the attorney shall promptly inform
20 the Court and opposing parties of the existence of the unlisted witnesses so that the Court may
21 consider at trial whether the witnesses shall be permitted to testify. The evidence will not be
22 permitted unless: (1) the witnesses could not reasonably have been discovered prior to pretrial;
23 (2) the Court and opposing counsel were promptly notified upon discovery of the witnesses; (3) if
24 time permitted, counsel proffered the witnesses for deposition; and (4) if time did not permit, a
25 reasonable summary of the witnesses' testimony was provided by opposing counsel.

26 **F. EXHIBITS — SCHEDULES AND SUMMARIES**

27 The parties' lists of proposed exhibits are memorialized in the Joint Final Pretrial
28 Conference Statement and are incorporated herein.

1 **Plaintiff’s exhibits shall be listed numerically. Defendant’s exhibits shall be listed**
2 **alphabetically.** The parties shall use the standard exhibit stickers provided by the Court Clerk’s
3 Office: pink for Plaintiffs and blue for Defendants. After three letters, note the number of letters
4 in parenthesis (i.e., “AAA(4)”) to reduce confusion during the trial. All multi-page exhibits
5 shall be fastened together and each page within the exhibit shall be numbered. All photographs
6 shall be marked individually. The list of exhibits shall not include excerpts of depositions which
7 may be used to impeach witnesses.

8 Each party may use an exhibit designated by the other. In the event that Plaintiff and
9 Defendants offer the same exhibit during trial, that exhibit shall be referred to by the designation
10 the exhibit is first identified. The Court cautions the parties to pay attention to this detail so that
11 all concerned will not be confused by one exhibit being identified with both a number and a letter.

12 A. The Court will not permit introduction of other exhibits unless: (1) the party
13 proffering the exhibit demonstrates that the exhibit is for the purpose of rebutting evidence which
14 could not be reasonably anticipated at the Pretrial Scheduling Conference, or (2) the exhibit was
15 discovered after the Pretrial Scheduling Conference and the proffering party makes the showing
16 required in paragraph “B” below.

17 B. Upon the post-pretrial discovery of exhibits, the attorneys shall promptly inform
18 the Court and opposing counsel of the existence of such exhibits so that the Court may consider at
19 trial their admissibility. The exhibits will not be received unless the proffering party
20 demonstrates: (1) the exhibits could not reasonably have been discovered prior to pretrial; (2) the
21 Court and counsel were promptly informed of their existence; (3) counsel forwarded a copy of the
22 exhibit(s) (if physically possible) to opposing counsel. If the exhibit(s) may not be copied, the
23 proffering counsel must show that he or she has made the exhibit(s) reasonably available for
24 inspection by opposing counsel.

25 C. As to each exhibit, each party is ordered to exchange a copy identical to the
26 Court’s copy, or other reproduction of the exhibit(s) in a three-ring binder(s) **no later than one**
27 **week before trial.**

28 D. The attorney or representative for each party is directed to present one copy of the

1 exhibit(s) and exhibit list to the Court Clerk's Office, **no later than 3:00 p.m., one week before**
2 **trial**, or at such earlier time as may be ordered by the Court. The Court shall be presented with a
3 copy of the exhibit(s) in a 3-ring binder(s) with a side tab identifying each exhibit by number or
4 letter. Each binder shall be no larger than three inches in width and have an identification label
5 on the front and side panel.

6 E. It is the duty of counsel to ensure that witnesses have access to a copy of exhibit(s)
7 if needed.

8 **G. DISCOVERY DOCUMENTS**

9 A. Lodging Deposition Transcripts and Video Files

10 It is the duty of counsel to ensure that any deposition transcripts which are to be used at
11 trial have been lodged with the Clerk of the Court **one week prior to trial**. Counsel are
12 cautioned that a failure to discharge this duty may result in the Court precluding use of the
13 deposition or imposition of such other sanctions as the Court deems appropriate.

14 B. Use of Depositions

15 The parties are ordered to file with the Court and exchange between themselves **not later**
16 **than one week before trial** a statement designating portions of depositions intended to be offered
17 or read into evidence (except for portions to be used only for impeachment or rebuttal).

18 C. Interrogatories and Admissions

19 To the extent the parties intend to offer or read into evidence any portions of Answers to
20 Interrogatories or Admissions, a statement designating those discovery responses shall also be
21 filed and exchanged **not later than one week before trial** (except portions to be used only for
22 impeachment or rebuttal).

23 **H. FURTHER DISCOVERY OR MOTIONS**

24 Pursuant to the Court's Pretrial Scheduling Order, all discovery and law and motion was
25 to have been conducted so as to be completed as of the date of the Final Pretrial Conference.
26 That Order is confirmed. The parties are free to engage in informal agreements regarding
27 discovery and law and motion matters. However, any such agreements will not be enforceable in
28 this Court.

1 **I. AGREED STATEMENTS — JOINT STATEMENT OF CASE**

2 Because the parties cannot agree on a joint statement of the case, the Court will prepare its
3 own short statement of the case to be read to the jury at trial.

4 **J. PROPOSED JURY INSTRUCTIONS, VOIR DIRE, VERDICT FORM**

5 A. Jury Instructions

6 Counsel are directed to meet and confer and to attempt to agree upon a joint set of jury
7 instructions. Counsel shall use the Ninth Circuit Model Jury Instructions and any revisions.
8 Alternate instruction or authority may only be used if a Ninth Circuit Model Jury Instruction is
9 unavailable. All instructions shall be, to the extent possible, concise, understandable, and free
10 from argument. *See* Local Rule 163(c). **Parties shall also note that any modifications of**
11 **instructions from statutory authority, case law or from any form of pattern instructions**
12 **must specifically state the modification by underlining additions and bracketing deletions.**
13 Pursuant to Local Rule 163, jury instructions shall be filed with the Court **one week before trial.**

14 If the parties are unable to agree to a joint filing, the parties may submit separate filings.

15 B. Verdict Form

16 The parties must file a joint verdict form(s) concurrently with proposed jury instructions
17 **one week before trial.** If necessary, a special verdict or interrogatories shall be included for all
18 factual disputes submitted to the jury that must be resolved before questions of law can be
19 decided, and for any other issue on which specific responses are desired. *See* Local Rule 163(e).

20 If the parties are unable to agree to a joint filing, the parties may submit separate filings.

21 C. Voir Dire

22 The parties shall submit proposed voir dire questions to the Court. The Court reserves the
23 right to conduct all examination of prospective jurors. Pursuant to Local Rule 162.1, the voir dire
24 questions shall be filed with the Court **one week before trial.**

25 If the parties are unable to agree to a joint filing, the parties may submit separate filings.

26 **K. AUDIO/VISUAL EQUIPMENT**

27 The parties are required to notify the Courtroom Deputy Clerk, Michele Krueger, **twenty-**
28 **one (21) days before trial**, if they wish to reserve and arrange for orientation with all parties on

1 the Court's mobile audio/visual equipment for presentation of evidence. There will be one date
2 and time for such orientation.

3 **L. DATE AND LENGTH OF TRIAL**

4 Trial is scheduled for **Monday, March 6, 2023**. The estimated length of trial is five (5)
5 days, but the Court will allow up to seven (7) days for trial. The parties are to email Michele
6 Krueger, Courtroom Deputy Clerk, at mkrueger@caed.uscourts.gov or call 916-930-4163 by
7 **February 13, 2023**, to ascertain the status of the trial date.

8 **M. TIME LIMITS FOR OPENINGS, CLOSINGS, AND REBUTTAL**

9 Pursuant to the parties' requests, the Court grants Plaintiff 30 minutes for opening, 5
10 minutes for closing, and 3 minutes for rebuttal. The Court grants Defendants 30 minutes for
11 opening and 45 minutes for closing.

12 **N. AMENDMENT BY INTERLINEATION**

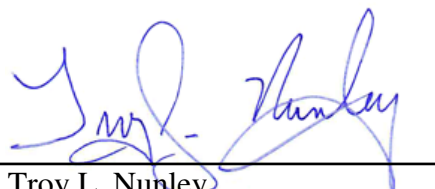
13 The Court amends by interlineation the Joint Pretrial Statement, ECF No. 121, page 3, line
14 28 to read: "arrest without probable cause and the fact that the officers used excessive force,
15 causing trauma that was video".

16 **O. OBJECTIONS TO PRETRIAL ORDER**

17 Each party is granted **fourteen (14) days** from the entry of this Final Pretrial Order to
18 object to any part of the order or to request augmentation to it. A Final Pretrial Order will be
19 modified only upon a showing of manifest injustice. If no objection or modifications are made,
20 this Order will become final without further order of the Court and shall control the subsequent
21 course of the action, pursuant to Rule 16(e) of the Federal Rules of Civil Procedure.

22 IT IS SO ORDERED.

23 **DATE: DECEMBER 8, 2022**

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25
26 
27 Troy L. Nunley
28 United States District Judge