UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON STRIBLING, Plaintiff, v. LUCERO, Defendant.	No. 2:16-cv-1438-TLN-EFB P ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On October 5, 2018, the court issued a Pretrial Order. ECF No. 38. Plaintiff has filed objections. ECF No. 39. As explained below, plaintiff's objections are overruled.

Plaintiff's first objection is to the statement in the Pretrial Order that plaintiff "admitted to Gunderson being there." *Id.* at 1. The objection is overruled for the reason stated in the Pretrial Order itself. ECF No. 38 at 2 n.1. Although plaintiff questioned in his pretrial statement whether Gunderson was "even present the day of the incident?" (ECF No. 35 at 2), plaintiff's sworn complaint (ECF No. 1 at 5) admits to Gunderson's presence.

Plaintiff next objects to the first undisputed fact listed in the Pretrial Order, which states that plaintiff is serving a sentence for second degree robbery. *See* ECF No. 38 at 1. Plaintiff does not actually dispute the truth of the statement, but rather, objects that the court "has no proof" and is just "trying to incriminate" plaintiff. ECF No. 39 at 1. To the contrary, the court is simply

trying to narrow the issues for trial. Absent a genuine dispute regarding this fact, plaintiff's objection is overruled. If plaintiff objects to the admissibility of his conviction he shall present that objection to the trial judge in an appropriate in limine motion and a timely objection at trial.

Finally, plaintiff objects that the Pretrial Order does "not correctly and accurately not[e] all the true disputes." ECF No. 39. The Pretrial Order does not restate every disputed factual and evidentiary issue that plaintiff identified in his pretrial statement (ECF No. 35 at 1-3) because not all of them are material. The Pretrial Order does however, include the disputed factual and evidentiary issues that may be relevant at trial. Plaintiff's objection therefore, is overruled.

Accordingly, IT IS HEREBY ORDERED that plaintiff's objections to the Pretrial Order (ECF No. 39) are overruled.

DATED: February 8, 2019.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE