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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARIO TORRES,

Plaintiff,

v.

MIKE HANSEN and DANIEL SMITH,

Defendants.

Case No. [16-cv-06607-SI](#)

**ORDER REFERRING PARTIES TO A
DECEMBER 6, 2023 SETTLEMENT
CONFERENCE WITH MAGISTRATE
JUDGE SPERO AND SETTING
FURTHER STATUS CONFERENCE
FOR DECEMBER 15, 2023**

On November 15, 2023, after a three day trial and two days of deliberations, the jury reached a verdict as to some of plaintiff's claims but deadlocked on one claim as to one defendant. The jury reached the following verdict: (1) on Claim 1, Warrantless Entry of Apartment, the jury found in favor of defendants Hansen and Smith; (2) on Claim 2, Excessive Force Prior to Handcuffing, the jury found in favor of defendant Smith and could not reach a verdict as to defendant Hansen; and (3) on Claim 3, Excessive Force After Handcuffing, the jury found in favor of defendant Hansen. In response to questioning from the Court, the jury stated that they could not reach agreement on the deadlocked claim and that further deliberations on Claim 2 as to defendant Hansen would be fruitless. The jury also wrote the following on the verdict form:

We the jury would like it to be noted for the record that the events of July 4, 2012, could have been better with different actions from both parties. The defendants had the ability to verbalize directions and warnings to de-escalate the situation. The plaintiff had the ability to let the officers do their job as community caregivers.

Verdict Form at 5, Dkt. No. 262.


The Court has researched the question of whether the Court can accept a partial verdict and declare a mistrial on the deadlocked claim. Based upon the Court's review of the case law, the Court concludes that it has the discretion to do so when accepting a partial verdict would not risk an inconsistent verdict on the deadlocked claim. *See Sanchez v. City of Chicago*, 880 F.3d 349, 361

1 (7th Cir. 2018) (holding district court did not abuse its discretion to accept partial verdict in favor
2 of one officer on claims of excessive force and improper arrest where jury deadlocked on claims of
3 excessive force against another officer because “a finding concerning whether Garcia had probable
4 cause to arrest Sanchez and whether Garcia used excessive force in making that arrest would have
5 no effect on whether Felix used excessive force on Sanchez in the jail”); *Pumphrey v. K.W.
6 Thompson Tool Co.*, 62 F.3d 1128, 1134 (9th Cir. 1995) (noting “whether to limit issues in new trial
7 is within trial court’s discretion”) (citing *d’Hedouville v. Pioneer Hotel Co.*, 552 F.2d 886, 897 (9th
8 Cir. 1977)); *see also Erhart v. BofI Fed. Bank*, No. 15-CV-02287-BAS-NLS, 2022 WL 3160730, at
9 *2 (S.D. Cal. Aug. 8, 2022) (“When a jury reaches an agreement on some but not all issues, the
10 court has discretion to accept the partial verdict, order a limited retrial, or retry all the issues.”); *Opal
11 Labs Inc. v. Sprinklr, Inc.*, No. 3:18-CV-01192-HZ, 2022 WL 526167, at *1 (D. Or. Jan. 7, 2022)
12 (considering whether partial retrial was appropriate after jury deadlocked on some but not all
13 claims); *Kerman v. City of New York*, 261 F.3d 229, 242 n.9 (2d Cir. 2001); *Robertson Oil Co. v.
14 Phillips Petroleum Co.*, 871 F.2d 1368, 1375 n.5 (8th Cir. 1989); *Bridges v. Chemrex Specialty
15 Coatings, Inc.*, 704 F.2d 175, 180 (5th Cir. 1983).

16 Here, the Court is inclined to find that it is appropriate to accept the jury’s partial verdict
17 because a jury could reach different – and not inconsistent – verdicts about plaintiff’s claims of
18 excessive force prior to handcuffing against defendants Smith and Hansen (Claim 2), and Claims 1
19 and 3 are independent of Claim 2. However, at this time the Court reserves judgment on that
20 question and finds that it is appropriate to REFER the parties to a settlement conference with
21 Magistrate Judge Spero to take place on December 6, 2023 by zoom. Judge Spero’s chambers will
22 contact the parties to schedule the conference. The Court also sets a further status conference with
23 this Court for December 15, 202 at 3:00 p.m.

24
25 **IT IS SO ORDERED.**

26 Dated: November 16, 2023

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28 _____
SUSAN ILLSTON
United States District Judge