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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RANDALL EDGAR WILLIAMS,)	1:08-cv-1523 OWW GSA
)	
Plaintiff,)	FINAL PRETRIAL ORDER
)	
v.)	Motion in Limine Date:
)	8/20/10 11:00 Ctrm. 3
MICHAEL J. TROEHLER, City of)	
Fresno Police Officer,)	Trial Date: 8/31/10 9:00
)	Ctrm. 3 (JT-5 days)
Defendant.)	
)	
)	
)	

I. JURISDICTION AND VENUE

1. Jurisdiction exists under 28 U.S.C. § 1331 and 42 U.S.C. § 1983, et seq.

II. JURY/NON-JURY

1. The parties request a jury trial on all triable issues.

III. FACTS

A. Undisputed Facts

1. At all times relevant to this action, Defendant Michael Troehler was acting in the course and scope of his employment as a police officer for the City of Fresno, and acting under color of law.

2. On August 25, 2006, Defendant issued Plaintiff a

1 citation for violation of California Vehicle Code §§ 22350
2 (speeding); 52002 (no plates); 76028a (no insurance); and
3 California Penal Code § 148a (delaying, resisting and obstructing
4 an officer in the performance of his duties).

5 3. Following his arrest, Plaintiff was taken by Defendant
6 to University Medical Center for medical attention.

7 B. Disputed Facts

8 1. Whether the force used by Defendant Troehler was
9 objectively reasonable under the circumstances he confronted,
10 from the perspective of a reasonable police officer on the scene.

11 2. Whether Plaintiff resisted arrest.

12 3. The nature and extent of Plaintiff's injuries and
13 damages.

14 4. Whether Defendant Troehler's acts were malicious,
15 oppressive, or in reckless disregard of Plaintiff's rights.

16 IV. DISPUTED EVIDENTIARY ISSUES

17 A. Plaintiff's Anticipated Motions in Limine.

18 1. To preclude evidence not produced in discovery.

19 2. To preclude improper comments regarding damages,
20 including any inquiry, comment or argument before the jury that
21 suggests jurors as taxpayers will be paying the amount of any
22 damages awarded.

23 3. To preclude evidence of collateral payments.

24 4. To preclude Defendant's retained experts, Harold L.
25 Seymour, Ph.D., and Paul J. Markovitz, M.D., Ph.D., from opining
26 with regard to Plaintiff's bipolar disorder or his medication.

27 5. To preclude Defendant's retained experts from
28 testifying at trial as to ultimate facts, the credibility of

1 witnesses, legal conclusions, past experiences or claims of
2 success; and from giving opinions that lack foundation.

3 6. To preclude evidence of any other lawsuits or claims
4 made by or against Plaintiff, including but not limited to the
5 criminal prosecution arising out of the subject incident.

6 7. To preclude evidence including questions regarding
7 Plaintiff's prior contacts with law enforcement for any reason,
8 or disputes with other persons.

9 8. To exclude confidential medical records and testimony
10 concerning injuries or conditions unrelated to the claims made in
11 this action.

12 9. To exclude post-incident investigation reports.

13 10. To exclude evidence relating to Plaintiff's liability
14 expert, Darren Hise's personnel actions and pending litigation.

15 11. To exclude evidence relating to any purported incident
16 of domestic violence involving Plaintiff or his wife;

17 12. To exclude witnesses not disclosed timely in discovery
18 or pursuant to Rule 26.

19 13. To exclude evidence relating to any purported substance
20 abuse by Plaintiff.

21 14. Plaintiff reserves the right to file any other
22 necessary motions in limine in accordance with the schedule set
23 by the court.

24 B. Defendant's Anticipated Motions in Limine.

25 1. To preclude evidence not produced in discovery.

26 2. To preclude improper comments regarding damages
27 including any inquiry, comment or argument before the jury that
28 suggests that jurors should base plaintiffs' damages on an amount

1 that the jurors would charge to endure similar injuries.

2 3. To preclude evidence of liability insurance.

3 4. To preclude evidence of indemnification of Defendant
4 Officer Troehler by his employer.

5 5. To exclude Plaintiff's retained expert, Darren Hise,
6 from rendering opinions regarding police practices and procedures
7 based on lack of qualifications to do so.

8 6. To preclude Plaintiff's retained expert from testifying
9 at trial as to ultimate facts, the credibility of witnesses,
10 legal conclusions, past experiences or claims of success; and
11 from giving opinions that lack foundation.

12 7. To preclude evidence of any other lawsuits against
13 Defendants, or any other City of Fresno Police Department
14 Officer.

15 8. To preclude evidence that is protected by California
16 Penal Code § 832.7 and § 832.8, and California Evidence Code
17 § 1040 and § 1043, and the officers' rights to privacy, including
18 questions regarding personnel matters, prior complaints
19 concerning job performance or prior disciplinary issues as to the
20 Defendant officer or any other City of Fresno Police Department
21 officer who testifies in this matter.

22 9. Defendants reserve the right to file any other
23 necessary motions in limine in accordance with the schedule set
24 by the court.

25 V. SPECIAL FACTUAL INFORMATION

26 A. Plaintiffs.

27 1. Plaintiff contends that he was beaten by Defendant
28 Troehler and sustained injuries to his head, left ear, and neck

1 as a result of the beating and to his right wrist by reason of
2 the handcuffs as used by Defendant Troehler.

3 2. Plaintiff was transported from the scene to UMC
4 following the incident. Prior to being transported, photographs
5 were taken of Plaintiff's head and face depicting injuries to his
6 face, the left side of his head and neck, his left and left
7 shoulder. Plaintiff next sought medical care for matters which
8 he relates to the incident in December 2006 for left ear pain.
9 Then in March of 2007 when he saw his family practitioner, Dr.
10 Sukhbir Manjal who at that time ordered x-rays of his wrist and
11 MRI of his neck.

12 3. The MRI revealed severe degenerative disc disease at
13 C6-7 and he was referred to Dr. Ali Najafi, a neurosurgeon. Soon
14 thereafter, Dr. Najafi performed a cervical fusion which
15 procedure was necessitated by the degenerative condition of
16 Plaintiff's neck, not the subject incident.

17 4. Plaintiff was also referred to Dr. Hongshik Han, a hand
18 and plastic surgeon. Plaintiff had arthritic changes in both
19 wrists but left wrist joint was essentially destroyed, most of
20 the ligament was torn off and worn, indicating it was a chronic
21 condition. The right wrist had a tear but there was no evidence
22 of degeneration, so Dr. Han believed it was relatively recent in
23 origin. In June 2007, Dr. Han performed a right wrist
24 arthroscopy which revealed a right ligament tear but no arthritis
25 which indicated that the ligament could be repaired. The repair
26 could not be done until after the cervical fusion. In January
27 2008, Dr. Han surgically repaired the torn ligament and
28 reinforced it with wires and pinned the wrist to allow the

1 ligament to recover.

2 5. Williams was placed in a cast while his wrist was
3 recovering. He had problems with the cast and the wires. His
4 recovery was difficult and he removed some of the wires himself.
5 He reinjured his hand. In October 2008, Dr. Han performed what
6 he referred to as a "salvage" procedure, a proximal row
7 carpectomy, on the right wrist which involves removal of four
8 bones in the wrist reducing it to a single joint. The surgery
9 was successful in dramatically reducing if not eliminating the
10 right wrist pain.

11 6. In connection with the above summarized injuries and
12 treatment, Plaintiff is claiming the following expenses:

13	University Medical Center (08/25/06)	\$ 293.11
14	CCFMG (08/25/06)	\$ 154.00
15	Calif. Imaging Institute (03/08/07)	\$ 343.00
16	Hongshik Han, M.D. (05/03/07)	\$ 658.00
17	Pacific Medical (05/03/07)	\$ 200.00
18	Clovis Community Hospital (06/18/07)	\$ 558.70
19	Clovis Community Hospital (06/22/07)	\$6,394.08
20	Hongshik Han, M.D. (06/26/07)	\$1,450.00
21	Hongshik Han, M.D. (11/27/07)	\$ 250.00
22	Hongshik Han, M.D. (12/27/07)	\$ 155.00
23	Clovis Community Hospital (01/10/08)	\$1,173.85
24	Clovis Community Hospital (01/14/08)	\$11,321.95
25	Hongshik Han, M.D. (01/15/08)	\$2,550.00
26	Hongshik Han, M.D. (01/29/08)	\$ 100.00
27	Advanced Medical Imaging (03/31/08)	\$ 92.00
28	Hongshik Han, M.D. (05/29/08)	\$ 155.00

1	Clovis Community Hospital (10/21/08)	\$ 334.99
2	Clovis Community Hospital (10/24/08)	\$8,666.60
3	Hongshik Han, M.D. (10/28/08)	\$5,150.00
4	Advanced Medical Imaging (12/02/08)	\$ 92.00
5	Hand to Shoulder Rehabilitation	\$8,013.00
6	Community Medical Providers	
7	(Sukhbir Manja, M.D)	\$ 240.00
8	Sears Optical	\$ 399.98
9	TOTAL	\$48,745.26

10 B. Defendants

11 1. When Plaintiff was seen at University Medical Center
 12 following the incident he was noted to have a superficial
 13 laceration to his right eyebrow and abrasion. He did not
 14 complain of neck pain, wrist pain or shoulder pain. He returned
 15 to work immediately after his release from custody. He did not
 16 seek further medical treatment until December of 2006, four
 17 months after his arrest.

18 2. Medical records reveal that Plaintiff had prior
 19 complaints of the same nature as his complaints after the
 20 incident. Prior to the incident he was seen for neck and arm
 21 pain, and a bulging disc in his neck. He was also seen for
 22 problems related to both hands; and had carpal tunnel surgery in
 23 1998. Plaintiff's surgeon, Dr. Han, testified that Mr. Williams
 24 has an explosive personality to the point where Dr. Han and his
 25 staff had concerns that Plaintiff would become violent. At one
 26 point during his recovery from surgery, Mr. Williams became so
 27 angry he pounded his truck with his fist, damaging a wire that
 28 Dr. Han had inserted into his wrist during surgery. According to

1 Dr. Han, Plaintiff's violent reaction prevented his wrist from
2 healing thereby necessitating a second surgery.

3 3. Plaintiff has a long history of taking numerous
4 addictive controlled substances including Vicodin, Valium, Darvon
5 and Darvocet; and a history of being prescribed multiple
6 psychotropic medications. Defense experts in psychology and
7 psychopharmacology concur that Mr. Williams has borderline
8 personality disorder. Borderline personality presents with
9 extreme anger problems, bouts of depressed mood, anxiety and
10 impaired judgment. Individuals with this disorder tend to feel
11 persecuted for no reason, are highly and inappropriately reactive
12 to stress and tend to over-respond with rage and anger. Mr.
13 Williams' problems with anger are well documented in the medical
14 records and prior and subsequent contacts with law enforcement.

15 VI. RELIEF SOUGHT

16 1. Plaintiff seeks general damages, special damages,
17 punitive damages, attorneys' fees pursuant to 42 U.S.C. § 1988,
18 and costs of suit.

19 2. Defendant seeks a defense verdict, and costs of suit
20 and attorney's fees pursuant to 42 U.S.C. § 1988 should he
21 prevail in this action.

22 VII. DISPUTED ISSUES OF LAW

23 A. Plaintiffs Summary of Claims.

24 1. Plaintiff is making three legal claims, all arising out
25 of the same set of facts, to wit: (1) civil rights violation
26 pursuant to 42 U.S.C. § 1983 for excessive force; (2) assault and
27 battery; and (3) negligence.

28 ///

1 Excessive Force.

2 2. Every person has the right not to be subjected to
3 unreasonable or excessive force while being arrested, even though
4 such arrest is otherwise made in accordance with due process.
5 While an officer has a right to use such force as is necessary
6 under the circumstances to effect the arrest, the degree of force
7 is limited to that which a reasonable and prudent officer would
8 have applied under the circumstances disclosed in the case.

9 3. Whether the force used was unnecessary, unreasonable or
10 violent is an issue to be determined in light of all the
11 surrounding circumstances. Factors to consider in determining
12 whether an officer used excessive force are the severity of the
13 crime at issue, whether the Plaintiff posed a reasonable threat
14 to the safety of the officer or others, and whether the Plaintiff
15 was actively resisting detention or attempting to escape. (Model
16 Jury Instructions, 9th Circuit, No. 11.4).

17 4. It is Plaintiff's contention that Defendant's
18 initiation of force and continued use of force upon Plaintiff in
19 connection with this traffic stop was unnecessary and
20 unreasonable. Plaintiff did not actively resist detention nor
21 attempt to escape.

22 Assault and Battery.

23 5. Under California law, as set out in CACI 1305, battery
24 by a police officer requires Plaintiff establish the following:

- 25 a. That Defendant intentionally touched Plaintiff;
26 b. That defense used unreasonable force to arrest
27 Plaintiff;
28 c. That Plaintiff did not consent to the use of that

1 force;

2 d. That Plaintiff was harmed; and

3 e. That Defendant's use of unreasonable force was a
4 substantial factor in causing Plaintiff's harm.

5 6. A person being arrested has a duty not to use force to
6 resist the officer unless the officer is using unreasonable
7 force. In deciding whether Defendant used unreasonable force,
8 the jury must determine the amount of force that would have
9 appeared reasonable to a police officer in Defendant's position
10 under the same or similar circumstances and should consider the
11 following factors, among others: (1) the seriousness of the crime
12 at issue; (2) whether Plaintiff reasonably appeared to pose an
13 immediate threat to the safety of Defendant; and (3) whether
14 Plaintiff was actively resisting arrest or attempting to evade
15 arrest. (CACI 1305).

16 7. Plaintiff contends that at the time Defendant initiated
17 his use of force, Plaintiff was attempting to comply with
18 Defendant's demand for evidence of insurance. Plaintiff had not
19 threatened Defendant, verbally or by gesture. Defendant
20 continued to use force, striking Plaintiff about his head and
21 neck, while Plaintiff was on the ground and not doing anything
22 except trying not to get injured. Plaintiff made no effort to
23 strike back or otherwise threaten Defendant; Plaintiff engaged in
24 no force whatsoever.

25 8. California Penal Code § 834a provides that a person who
26 "should have knowledge, that he is being arrested by a peace
27 officer, it is the duty of such person to refrain from using
28 force of any weapon to resist such arrest." Plaintiff did not

1 use any force nor any weapon.

2 Negligence.

3 9. Under California law, to prevail on a theory of
4 negligence, Plaintiff must establish that Defendant was
5 negligent; that Plaintiff was harmed; and that Defendant's
6 negligence was a substantial factor in causing Plaintiff's harm.
7 (CACI 400). A person is negligent if he does something that a
8 reasonably careful person would not do in the same situation or
9 fails to do something that a reasonably careful person would do
10 in the same situation. (CACI 401).

11 10. Defendant undertook the use of force when he knew that
12 Plaintiff was still trying to eliminate the issue of his
13 insurance. Defendant did not explain to Plaintiff that if he
14 refused to sign the citation he would be arrested. In failing to
15 explain to Plaintiff the consequence of refusing to sign the
16 citation, Defendant created the need to physically arrest
17 Plaintiff. There is no evidence Plaintiff heard or understood he
18 was being placed under arrest when he pulled his arm away from
19 Defendant, who was grabbing him from behind. Defendant used
20 force to trip Plaintiff onto the ground and then started kneeling
21 him about his head and neck until he could get Plaintiff's arms
22 out from underneath Plaintiff's body and put handcuffs on him.

23 B. Defendants

24 Federal Claims.

25 Fourth Amendment Unreasonable Search and Seizure Claim.

26 1. Plaintiff claims that Officer Troehler used excessive
27 force in affecting his arrest on August 25, 2006. Under the
28 Fourth Amendment, a police officer may use such force that is

1 objectively reasonable under the totality of the circumstances.
2 *Graham v. Connor*, 490 U.S. 386, 397 (1989). An unreasonable
3 seizure occurs when a law enforcement officer uses excessive
4 force in making a lawful arrest. Factors to consider in
5 determining whether an officer used excessive force are the
6 severity of the crime at issue, whether the Plaintiff posed a
7 reasonable threat to the safety of the officer or others, and
8 whether the Plaintiff was actively resisting detention or
9 attempting to escape. *Blanford v. Sacramento County*, 406 F.3d
10 1110, 1115 (9th Cir. 2005). An officer need not avail himself of
11 the least intrusive means of responding to a situation; he need
12 only act within a range of conduct that is reasonable. *Scott v.*
13 *Henrich*, 39 F.3d 912, 915 (9th Cir. 1994).

14 2. Plaintiff was confrontational from the onset of his
15 contact with Officer Troehler. He was subject to arrest when he
16 refused to sign the traffic citation and walked away from Officer
17 Troehler. Officer Troehler told him he was under arrest and
18 attempted to take him into custody by grabbing his arm, but
19 Plaintiff pulled away, escalating the situation. Plaintiff
20 continued to resist after Troehler took him to the ground.
21 Officer Troehler was concerned because Plaintiff had a sharp
22 edged tool on him; and there were other subjects that could
23 possibly intervene. He needed to get the situation under control
24 quickly. He applied 2-3 knee strikes to the side of Plaintiff's
25 head to distract Williams and gain control. As soon as Mr.
26 Williams stopped resisting, Officer Troehler stopped striking him
27 and applied the handcuffs. It is Defendant's contention that
28 under the totality of the circumstances, the force used was

1 necessary and reasonable.

2 Qualified Immunity Defense.

3 3. Qualified immunity protects Section 1983 defendants
4 "from liability for civil damages insofar as their conduct does
5 not violate clearly established statutory or constitutional
6 rights of which a reasonable person would have known." *Harlow v.*
7 *Fitzgerald*, 457 U.S. 800, 818 (1982). "As the qualified immunity
8 defense has evolved, it provides ample protection for all but the
9 plainly incompetent or those who knowingly violate the law."
10 *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

11 4. The threshold question which a court must consider in
12 ruling upon the defense of qualified immunity is, "[t]aken in the
13 light most favorable to the party asserting injury, do the facts
14 alleged show the officer's conduct violated a constitutional
15 right?" *Saucier v. Katz*, 533 U.S. 194, 201 (2001). If the
16 Plaintiff's factual allegations establish a violation of the
17 Plaintiff's federal rights, then the court must proceed to the
18 second determination as to whether the right was "clearly
19 established." *Id.*; *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th
20 Cir. 2001).

21 5. It is Defendant's position that a reasonable officer in
22 Officer Troehler's position could have believed that the force
23 used was lawful under the circumstances.

24 Punitive Damages.

25 6. Plaintiff is seeking an award of punitive damages.
26 Punitive damages are only proper under 42 U.S.C. § 1983 when the
27 Defendant's conduct is shown to be motivated by evil motive or
28 intent when it involves a reckless or callous indifference to

1 federally protected rights of others. *Smith v. Wade*, 461 U.S.
2 30, 56 (1983). Defendant submits that there is no evidence to
3 support plaintiff's claim for punitive damages.

4 State Claims.

5 Assault and Battery.

6 7. An officer is entitled to use reasonable force to
7 detain a person when he or she has reasonable cause to believe
8 that person has committed a crime. Plaintiff has the burden of
9 proving unreasonable force. *Edson v. City of Anaheim*, 63
10 Cal.App.4th 1269, 1272 (1998).

11 8. An officer who makes or attempts to make an arrest is
12 not required to retreat or cease from his or her efforts because
13 of the resistance or threat of resistance of the person being
14 arrested. California Penal Code § 835a.

15 Negligence.

16 9. The elements of a negligence claim are: (1) a legal
17 duty to conform to a standard of conduct to protect the
18 plaintiff; (2) a failure to meet this standard of conduct; (3)
19 causation; and (4) damages. *Ladd v. County of San Mateo*, 12
20 Cal.4th 913, 917 (1996). Defendant contends that he acted as a
21 reasonable officer would act under similar circumstances.

22 VIII. ABANDONED ISSUES

23 1. Plaintiff withdrew his claim for intentional infliction
24 of emotional distress (third claim for relief) when Defendant
25 filed a motion to compel disclosure of psychiatric records and an
26 independent psychiatric examination. Defendant was denied the
27 discovery requested based on Plaintiff's withdrawal of this
28 claim. Plaintiff is also not making a claim for business losses.

IX. WITNESSES

A. Plaintiffs

1. Edward Brady
31 E. Saginaw #20
Fresno, CA
2. John Camacho
3325 W. Church
Fresno, CA
3. Eduardo Cerda
646 N. Virginia
Farmersville, CA
4. Dr. Hongshik Han
7005 N. Maple Avenue
Fresno, CA
5. Darren Hise
P. O. Box _____
Merced, CA
6. Robert Hooks
4591 N. Blackstone
Fresno, CA
7. Dr. Sukhbir S. Manjal
1570 E. Herndon
Fresno, CA
8. Mark Paulson
5250 N. Brooks
Fresno, CA
9. Able Ramirez
3835 N. Thorne
Fresno, CA
10. Jesus Rios
564 S. Cedar
Fresno, CA
11. Christina Servin
3040 N. Bliss
Fresno, CA
12. Michael Troehler
13. Randall Williams
132 N. Peach
Clovis, CA

///

1 14. Sandra Williams
2 132 N. Peach
3 Clovis, CA

3 B. Defendants

4 1. Eduardo Cerda
5 646 N. Virginia
6 Farmersville, CA

6 2. Alberto Jiminez
7 17504 W. Shaw
8 Kerman, CA 93630 (last known address)

8 3. Robert Oldham
9 9835 N. Backer Ave.
10 Fresno, CA 93720

10 4. Jesus Rios
11 564 S. Cedar Apt. F
12 Fresno, CA

12 5. Abel Ramirez
13 3835 N. Thorne, Apt. G
14 Fresno, CA

14 6. Christina Maria Servin
15 3040 N. Bliss
16 Fresno, CA

16 7. Sandra Williams
17 132 N. Peach
18 Clovis, CA

18 8. Randall Williams
19 132 N. Peach
20 Clovis, CA

20 9. Officer D. Dodd
21 Clovis Police Department
22 1233 Fifth Street
23 Clovis, CA 93612

22 10. Officer S. Griffith
23 Clovis Police Department
24 1233 Fifth Street
25 Clovis, CA 93612

25 11. Officer G. Cartwright
26 Clovis Police Department
27 1233 Fifth Street
28 Clovis, CA 93612

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- 1 12. Officer Brent Hershberger
2 Clovis Police Department
3 1233 Fifth Street
4 Clovis, CA 93612
- 5 13. Officer J. Boldt
6 Clovis Police Department
7 1233 Fifth Street
8 Clovis, CA 93612
- 9 14. Officer Mike Lichti
10 Clovis Police Department
11 1233 Fifth Street
12 Clovis, CA 93612
- 13 15. Oscar Sandoval
14 402 N. Glenn #201
15 Fresno, CA
- 16 16. Domingo Santiago
17 2611 E. Clay
18 Fresno, CA
- 19 17. Jose Jacobo
20 139 W. Saginaw, #M
21 Fresno, CA
- 22 18. Isidro Del Rio
23 3916 E. Buckingham
24 Fresno, CA
- 25 19. Paul Hickley
26 Fresno County Public Defender's Office
27 2220 Tulare Street, Ste. 300
28 Fresno, CA 93721
20. Kenneth Taniguchi
 Fresno County Public Defender's Office
 2220 Tulare Street, Ste. 300
 Fresno, CA 93721
21. Deanne VonBerg
 Fresno County Public Defender's Office
 2220 Tulare Street, Ste. 300
 Fresno, CA 93721
22. Deborah Harper
 Fresno County Public Defender's Office
 2220 Tulare Street, Ste. 300
 Fresno, CA 93721
23. Elizabeth Diaz
 Fresno County Public Defender's Office
 2220 Tulare Street, Ste. 300
 Fresno, CA 93721

- 1 24. Maribel Cuevas
 7005 N. Maple Avenue, Ste. 108
- 2
- 3 25. Officer Michael Burrow
 Fresno Police Department
 2323 Mariposa
4 Fresno, CA
- 5 25. Officer John Chandler
 Fresno Police Department
6 2323 Mariposa
 Fresno, CA
- 7
- 8 26. Officer Ken Dodd
 Fresno Police Department
 2323 Mariposa
9 Fresno, CA
- 10 27. Sgt. Eric Eide
 Fresno Police Department
11 2323 Mariposa
 Fresno, CA
- 12
- 13 28. Officer Peter Flores
 Fresno Police Department
14 2323 Mariposa
 Fresno, CA
- 15 29. Officer Don McKenzie
 Fresno Police Department
16 2323 Mariposa
 Fresno, CA
- 17
- 18 30. Officer Jason Musser
 Fresno Police Department
19 2323 Mariposa
 Fresno, CA
- 20 31. Officer Maria Mustafich
 Fresno Police Department
21 2323 Mariposa
 Fresno, CA
- 22
- 23 32. Officer Michael Orndoff
 Fresno Police Department
24 2323 Mariposa
 Fresno, CA
- 25 33. Officer Tim Stewart
 Fresno Police Department
26 2323 Mariposa
 Fresno, CA

27 ///

28

1 34. Officer Michael Troehler
2 Fresno Police Department
3 2323 Mariposa
4 Fresno, CA

5 35. Officer Bill Trollinger
6 Fresno Police Department
7 2323 Mariposa
8 Fresno, CA

9 Expert

10 36. Joseph Callanan
11 Specialized Training Consultants
12 2900 N. Government Way, PMB #324
13 Coeur d'Alene, ID 83815

14 37. Harold L. Seymour, Ph.D.
15 Clinical and Forensic Psychology
16 5740 N. Palm Avenue, Ste. 105
17 Fresno, CA 93704

18 38. Paul J. Markovitz, M.D., Ph.D.
19 7409 North Cedar Avenue, suite 101
20 Fresno, CA 93720

21 Non-Retained

22 39. Kevin Wingert, M.D.
23 Clovis Medical Providers
24 681 Medical Center Drive West, Ste. 103
25 Clovis, CA 93711

26 40. Hongshik Han, M.D.
27 7005 N. Maple Avenue, Ste. 108
28 Fresno, CA 93720

41. Richard Weinberg, M.D.
Central California Ear, Nose & Throat Medical Group
1351 E. Spruce
Fresno, CA 93720

42. Ron Santore, P.A.
Central California Faculty Medical Group
4910 Clinton Way, Ste. 101
Fresno, CA 93727

43. Lindsay Pimentel
Hand to Shoulder Rehab, Inc.
7005 N. Maple Avenue, Ste. 104
Fresno, CA

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- 1 44. Perminder Bhatia, M.D.
2 Neuro-Pain Medical Center
3 736 E. Bullard Avenue, Ste. 101
4 Fresno, CA 93710
- 5 45. Serenity Holder, Paramedic
6 American Ambulance
7 2911 E. Tulare
8 Fresno, CA 93721
- 9 46. James Garza, EMT
10 American Ambulance
11 2911 E. Tulare
12 Fresno, CA 93721
- 13 47. Kelly Houts, R.N.
14 Community Regional Medical Center
15 Fresno, CA

16 Counsel are each ordered to submit a list of witnesses to
17 the court along with a copy for use by the Courtroom Deputy
18 Clerk, on the same date and at the same time as the list of
19 exhibits are to be submitted as ordered below.

20 CAUTION

21 Counsel are cautioned that expert witnesses, including
22 percipient experts, must be designated as such. No witness, not
23 identified as a witness in this order, including "rebuttal"
24 witnesses, will be sworn or permitted to testify at trial.

25 X. EXHIBITS, SCHEDULES AND SUMMARIES

26 The following is a list of documents or other exhibits that
27 the parties expect to offer at trial.

28 CAUTION

 Only exhibits so listed will be permitted to be offered into
evidence at trial, except as may be otherwise provided in this
order. No exhibit not designated in this pretrial order shall be
marked for identification or admitted into evidence at trial.

///

1 A. Plaintiff's Exhibits

- 2 1. Photographs of the scene.
3 2. Photographs of Plaintiff's injuries.
4 3. Defendant Troehler's incident report.
5 4. Citation issued by Defendant to Plaintiff.
6 5. Plaintiff's insurance cards.
7 6. Fresno Police Department policies and procedures.
8 7. Aerial map/photo of scene.
9 8. Medical bills.

10 B. Defendant's Exhibits

- 11 1. Photographs taken of the scene of the incident.
12 2. Photographs of Plaintiff taken after the subject
13 incident.
14 3. All police reports from case no. 06-76260, including
15 reports prepared by officer Troehler, Officer Orndoff and Officer
16 Flores.
17 4. Fresno Police Department event report no. 06-BE0436.
18 5. All medical records concerning Plaintiff's injury
19 claims, subpoenaed or obtained through discovery.
20 6. Fresno Police Department Standing Orders produced
21 pursuant to a stipulated protective order.
22 7. March 23, 2009 - Order for Disciplinary Action to
23 Darren Hise.
24 8. May 13, 2008 - Summary of Oral Reprimand to Darren
25 Hise.
26 9. August 25, 2008 - memorandum regarding meeting with
27 Darren Hise.
28 10. April 11, 2008 - written reprimand to Darren Hise.

1 11. January 19, 2007 - written reprimand to Darren Hise.

2 12. Deposition transcript of Darren Hise taken in the case
3 of *Muldrew v. County of Fresno*, case no. 1:09-cv-0023 OWW DLB.

4 13. Clovis Police Reports dated July 5, 1996, September 16,
5 2003, February 24, 2005, May 26, 2005, December 8, 2005, May 17,
6 2007 regarding Randall Williams.

7 14. Internal Affairs statement of Randall Williams.

8 15. Notice to appear.

9 16. Misdemeanor Advisement, waiver of rights, and plea form
10 dated 6/13/08.

11 XI. DISCOVERY DOCUMENTS

12 Only specifically designated discovery requests and
13 responses will be admitted into evidence. Any deposition
14 testimony shall be designated by page and line and such
15 designations filed with the Court on or before August 6, 2010.
16 The opposing party shall counter-designate by line and page from
17 the same deposition and shall file written objections to any
18 question and answer designated by the opposing party and filed
19 with the court on or before August 16, 2010.

20 Written discovery shall be identified by number of the
21 request. The proponent shall lodge the original discovery
22 request and verified response with the courtroom deputy one day
23 prior to trial. The discovery request and response may either be
24 read into evidence, or typed separately, marked as an exhibit, as
25 part of the exhibit marking process, and offered into evidence.

26 1. Officer Troehler's Special Interrogatories, Set No. 1;
27 and Plaintiff's responses.

28 2. Officer Troehler's Request for Production, Set No. 1;

1 and Plaintiff's response, and further response.

2 3. Depositions and attached exhibits of all persons
3 deposed in this case.

4 4. Rule 26 disclosures of the parties.

5 5. Documents produced pursuant to subpoenas or deposition
6 notices.

7 XII. STIPULATIONS

8 1. The parties entered into a Stipulated Protective Order
9 pertaining to certain documents produced by Defendants that are
10 deemed confidential. The use of these documents at trial will be
11 addressed at the time of the pre-trial conference.

12 XIII. AMENDMENTS - DISMISSALS

13 1. Although no formal dismissal was filed, Plaintiff's
14 third claim for relief in the First Amended Complaint which
15 alleges intentional infliction of emotional distress, and
16 negligent infliction of emotional distress, were withdrawn.
17 Also, Sandra Williams has been dismissed as a party in this case.

18 XIV. FURTHER TRIAL PREPARATION

19 A. Trial Briefs.

20 Counsel are directed to file a trial brief in this matter
21 ten days prior to the date of commencement of trial, as provided
22 by Local Rule 285, Local Rules of Practice for the Eastern
23 District of California. No extended preliminary statement of
24 facts is required. The brief should address disputed issues of
25 substantive law, disputed evidentiary issues of law that will not
26 be resolved in limine, and any other areas of dispute that will
27 require resolution by reference to legal authority.

28 ///

1 B. Duty of Counsel To Pre-Mark Exhibits.

2 1. Counsel for the parties are ordered to meet and conduct
3 a joint exhibit conference on August 18, 2010, at 10:00 a.m. at
4 the law offices of Weakley, Arendt & McGuire Law Offices, 1630
5 East Shaw Avenue, Suite 176, Fresno, California for purposes of
6 pre-marking and examining each other's exhibits and preparing an
7 exhibit list. All joint exhibits will be pre-marked JX1-JX50;
8 all of the plaintiff's exhibits will be pre-marked with numbers
9 51-150; all of defendant's exhibits will be pre-marked with
10 numbers 151-250.

11 2. Each and every page of each and every exhibit shall be
12 individually Bates-stamped for identification purposes, and
13 paginated with decimals and arabic numerals in seriatim; i.e.,
14 1.1, 1.2, 1.3

15 3. Following such conference, each counsel shall have
16 possession of four (4) complete, legible sets of exhibits, for
17 use as follows:

18 a. Two (2) sets to be delivered to the Courtroom
19 Deputy Clerk, Renee Gaumnitz, no later than 4:00 p.m. on August
20 27, 2010, an original for the court and one for the witness.

21 b. One (1) set to be delivered to counsel for the
22 opposing party and one (1) set to be available for counsel's own
23 use.

24 4. Counsel are to confer to make the following
25 determination as to each of the exhibits proposed to be
26 introduced into evidence and prepare separate indexes, one
27 listing joint exhibits, one listing each party's exhibits:

28 a. Joint exhibits, i.e., any document which both

1 sides desire to introduce into evidence, will be marked as a
2 joint exhibit (JX), and numbered JX1-____. Joint exhibits shall
3 be listed as such in the exhibit list in a column that notes they
4 are admitted into evidence without further foundation;

5 b. As to any exhibit, not a joint exhibit, to which
6 there is no objection to its introduction into evidence, the
7 exhibit will be marked as Plaintiff's Exhibit ____, or Defendant's
8 Exhibit ____ in evidence, and will be listed in the exhibit list
9 as the exhibit of the offering party;

10 c. The exhibit list shall include columns for noting
11 objections to exhibits. The first column will list any
12 objections as to foundation; i.e., Plaintiff's Foundation 2 -
13 "not authenticated."

14 d. The exhibit list shall include a second column for
15 noting substantive objections to exhibits based on any other
16 grounds; i.e., "hearsay, improper opinion, irrelevant."

17 e. The exhibit list shall include a description of
18 each exhibit on the left-hand side of the page, and the three
19 columns outlined above (as shown in the example below).

20 List of Exhibits

<u>Exhibit #</u>	<u>Description</u>	<u>Admitted In Evidence</u>	<u>Objection To Foundation</u>	<u>Other Objection</u>
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22
23 f. The completed exhibit list shall be delivered to
24 Renee Gaumnitz CRD on or before August 27, 2010, at 4:00 p.m.

25 g. If originals of exhibits cannot be located, copies
26 may be used, however, the copies must be legible and accurate.
27 If any document is offered into evidence that is partially not
28 legible, the Court sua sponte will exclude it from evidence.

1 C. Discovery Documents.

2 1. Counsel shall file a list of discovery documents with
3 Renee Gaumnitz CRD at the same time and date as the witness and
4 exhibit lists are lodged with her, unless the discovery documents
5 are marked as exhibits, which counsel intend to use at trial by
6 designating by number, the specific interrogatory, request for
7 admission, or other discovery document. Counsel shall comply
8 with the directions of subsection XII (above) for introduction of
9 the discovery document into evidence.

10 D. Motions In Limine.

11 1. The motions in limine shall be filed by August 6, 2010,
12 and any responses shall be filed by August 16, 2010. The Court
13 will conduct a hearing on motions in limine in this matter on
14 August 20, 2010, at 11:00 a.m. in Courtroom 3, Seventh Floor,
15 before the Honorable Oliver W. Wanger United States District
16 Judge, at which time all evidentiary objections, to the extent
17 possible, will be ruled upon, and all other matters pertaining to
18 the conduct of the trial will be settled.

19 E. Trial Documents.

20 1. Exhibits To Be Used With Witness. During the trial of
21 the case, it will be the obligation of counsel to provide
22 opposing counsel not less than forty-eight hours before the
23 witness is called to the witness stand, the name of the witness
24 who will be called to testify and to identify to the Court and
25 opposing counsel any exhibit which is to be introduced into
26 evidence through such witness that has not previously been
27 admitted by stipulation or court order or otherwise ruled upon,
28 and to identify all exhibits and other material that will be

1 referred to in questioning of each witness. If evidentiary
2 problems are anticipated, the parties must notify the court at
3 least twenty-four hours before the evidence will be presented.

4 F. Counsel's Duty To Aid Court In Jury Voir Dire.

5 1. Counsel shall submit proposed voir dire questions, if
6 any, to Renee Gaumnitz CRD at rgaumnitz@caed.uscourts.gov on or
7 before August 26, 2010, at 4:00 p.m. Counsel shall also prepare
8 a joint "statement of the case" which shall be a neutral
9 statement, describing the claims and defenses for prospective
10 jurors, to be used in voir dire.

11 2. In order to aid the court in the proper voir dire
12 examination of the prospective jurors, counsel are directed to
13 lodge with the Court the day before trial a list of the
14 prospective witnesses they expect to call if different from the
15 list of witnesses contained in the Pre-Trial Order of the Court.
16 Such list shall not only contain the names of the witnesses, but
17 their business or home address to the extent known. This does
18 not excuse any failure to list all witnesses in the Pre-Trial
19 Order.

20 3. Counsel shall jointly submit, to Renee Gaumnitz CRD the
21 Friday before trial, a neutral statement of the claims and
22 defenses of the parties for use by the court in voir dire.

23 G. Counsel's Duty To Prepare And Submit Jury Instructions.

24 1. All proposed jury instructions shall be filed and
25 served on or before August 30, 2010, by 4:00 p.m. Jury
26 instructions shall be submitted in the following format.

27 2. Proposed jury instructions, including verdict forms,
28 shall be submitted via e-mail to dpell@caed.uscourts.gov

1 formatted in WordPerfect for Windows X3. Counsel shall be
2 informed on all legal issues involved in the case.

3 3. The parties are required to jointly submit one set of
4 agreed upon jury instructions. To accomplish this, the parties
5 shall serve their proposed instructions upon the other fourteen
6 days prior to trial. The parties shall then meet, confer, and
7 submit to the Court the Friday before the trial is to commence,
8 one complete set of agreed-upon jury instructions.

9 4. If the parties cannot agree upon any instruction, they
10 shall submit a supplemental set of instructions designated as not
11 agreed upon by August 30, 2010, at 4:00 p.m.

12 5. Each party shall file with the jury instructions any
13 objection to non-agreed upon instructions proposed by any other
14 party. All objections shall be in writing and shall set forth
15 the proposed instruction objected to in its entirety. The
16 objection should specifically set forth the objectionable matter
17 in the proposed instruction and shall include a citation to legal
18 authority explaining the grounds for the objection and why the
19 instruction is improper. A concise statement of argument
20 concerning the instruction may be included. Where applicable,
21 the objecting party shall submit an alternative proposed
22 instruction covering the subject or issue of law.

23 6. Format. The parties shall submit one copy of each
24 instruction. The copy shall indicate the party submitting the
25 instruction, the number of the proposed instruction in sequence,
26 a brief title for the instruction describing the subject matter,
27 the text of the instruction, the legal authority supporting the
28 instruction, and a legend in the lower lefthand corner of the

1 instruction: "Given," "Given As Modified," "Withdrawn" and
2 "Refused" showing the Court's action with regard to each
3 instruction and an initial line for the judge's initial in the
4 lower right-hand corner of the instruction. Ninth Circuit Model
5 Jury Instructions should be used where the subject of the
6 instruction is covered by a model instruction.

7 7. All instruction should be short, concise,
8 understandable, and neutral statements of the law. Argumentative
9 or formula instructions will not be given, and should not be
10 submitted.

11 8. Parties shall, by italics or underlining, designate any
12 modifications of instructions from statutory authority, or any
13 pattern instruction such as the Model Circuit Jury Instructions
14 or any other source of pattern instructions, and must
15 specifically state the modification made to the original form
16 instruction and the legal authority supporting the modification.

17 9. Proposed verdict forms shall be jointly submitted or if
18 the verdict forms are unagreed upon, each party shall submit a
19 proposed verdict form. Verdict forms shall be submitted to the
20 Courtroom Deputy Clerk on the first day of the trial.

21 10. Failure to comply with these rules concerning the
22 preparation and submission of instructions and verdict forms may
23 subject the non-complying party and/or its attorneys to
24 sanctions.

25 XV. USE OF LAPTOP COMPUTERS/POWERPOINT FOR
26 PRESENTATION OF EVIDENCE

27 1. If counsel intends to use a laptop computer for
28 presentation of evidence, they shall contact Renee Gaumnitz CRD

1 at least one week prior to trial. The Courtroom Deputy Clerk
2 will arrange a time for any attorney to bring any laptop to be
3 presented to someone from the Court's Information Technology
4 Department, who will provide brief training on how the parties'
5 electronic equipment interacts with the court's audio/visual
6 equipment. If counsel intend to use PowerPoint, the resolution
7 should be set no higher than 1024 x 768 when preparing the
8 presentation.

9 2. ALL ISSUES CONCERNING AUDIO-VISUAL MATERIALS AND
10 COMPUTER INTERFACE WITH THE COURT'S INFORMATION TECHNOLOGY SHALL
11 BE REFERRED TO THE COURTROOM DEPUTY CLERK.

12 XVI. FURTHER DISCOVERY OR MOTIONS

13 1. Discovery is closed.

14 XVII. SETTLEMENT

15 1. Settlement negotiations have been exhausted.

16 XVIII. SEPARATE TRIAL OF ISSUES

17 1. As to the amount of punitive damages, if any, the
18 amount will be tried in a second phase of a continuous trial
19 before the same jury.

20 XIX. IMPARTIAL EXPERTS, LIMITATIONS OF EXPERTS

21 1. None.

22 XX. ATTORNEYS' FEES

23 1. Plaintiff seeks attorney's fees under 42 U.S.C. § 1988.
24 2. Defendant also reserves the right to move for an award
25 of attorney fees under § 1988; and to contest any claim to
26 attorney fees.

27 XXI. ESTIMATE OF TRIAL TIME

28 1. Five days.

1 XXII. TRIAL DATE

2 1. August 31, 2010, at 9:00 a.m., in Courtroom 3, on the
3 Seventh Floor.

4 XXIII. NUMBER OF JURORS AND PEREMPTORY CHALLENGES

5 1. There will be an eight person jury, each side has four
6 peremptory challenges.

7 XXIV. AMENDMENT OF FINAL PRETRIAL ORDER

8 1. The Final Pretrial Order shall be reviewed by the
9 parties and any corrections, additions, and deletions shall be
10 drawn to the attention of the Court immediately. Otherwise, the
11 Final Pretrial Order may only be amended or modified to prevent
12 manifest injustice pursuant to the provisions of Fed. R. Civ. P.
13 16(e).

14 XXV. MISCELLANEOUS

15 1. Not applicable.

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17 IT IS SO ORDERED.

18 Dated: July 27, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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