

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-00884-CMA-STV

CHAYCE AARON ANDERSON,

Plaintiff,

v.

JASON SHUTTERS,

Defendant.

~~PROPOSED~~ SCHEDULING ORDER

**1. DATE OF CONFERENCE
AND APPEARANCES OF COUNSEL AND PRO SE PARTIES**

Date of Conference: Friday, August 10, 2018 commencing at 9:30 a.m. in Courtroom C203, Second Floor of the Alfred A. Arraj United States Courthouse, 901 19th Street, Denver, Colorado

Appearing for Plaintiff: Christopher J. Casolaro
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Appearing for Defendant:

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2. STATEMENT OF JURISDICTION

This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1323⁴³ and 42 U.S.C. § 1983.

Defendant Shutters denies the Court has jurisdiction for any other purpose,

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff:

Plaintiff, Chayce Anderson, asserts an excessive force claim in violation of the Fourth Amendment. In August 2015, Defendant Shutters forcefully arrested Plaintiff and aggressively applied handcuffs to Plaintiff. Defendant Shutters overcranked the handcuffs and failed to properly lock the handcuffs. At no point did Plaintiff resist arrest or attempt to run away. Plaintiff complied with every request by Defendant Shutters and the other officers at the scene of the arrest. Plaintiff has suffered swelling, bruising, and nerve damage as a direct result of Defendant Shutters' actions.

b. Defendant:

Defendant Shutters filed an Answer, Defenses, and Affirmative Defenses to Plaintiff's Amended Complaint denying the substantive allegations, and setting forth the following Affirmative Defenses.

DEFENSES AND AFFIRMATIVE DEFENSES

1. The Second Amended Complaint fails to state a claim on which relief may be granted.

2. Plaintiff is not entitled to any relief being sought or claimed in the Complaint under any of the legal theories asserted therein.

3. To any extent, the Court concludes this Defendant acted under color of state law with respect to Plaintiff, this Defendant is entitled to absolute immunity, qualified immunity, or both such immunities, as well as common law and statutory immunities, with respect to some or all of Plaintiff's claim against him.

4. Plaintiff's claim against this Defendant, or some of them, are barred, in whole or in part, by the failure of personal participation on the part of Defendant.

5. On information and belief, Plaintiff failed to mitigate his damages, if any.

6. On information and belief, some or all of Plaintiff's injuries and damages, if any, were either pre-existing or not aggravated by any action or omission of or by this Defendant, nor proximately caused by or related to any act or omission of this Defendant.

7. All or part of Plaintiff's claim never achieved the level of any constitutional violation sufficient to state a claim under 42 U.S.C. § 1983.

8. At all times pertinent herein, this Defendant acted in accordance with all common law, statutory and constitutional obligations, and without any intent to cause Plaintiff harm. This Defendant also lacked the requisite intent to establish any claim against Plaintiff in this matter. The claim of the Plaintiff also fails to establish any basis

for concluding that this Defendant acted or failed to act in a willful and wanton manner. This Defendant also possess or possessed a reasonable good faith belief in the lawfulness of all his conduct.

9. Plaintiff's injuries and damages, if any, in whole or in part, were proximately caused by his own acts or omissions, either in combination with one another or independent of one another.

10. Plaintiff's injuries and damages, if any, were proximately caused by the acts or omissions of third parties over whom this Defendant possessed no ability to control or right of control.

11. To any extent, any action or inaction on the part of this Defendant was in any way involved in any detention of the Plaintiff by anyone, any action or inaction by this Defendant was privileged under applicable law, including the privilege of police officers to use reasonable physical force to affect an arrest, keep a subject in custody, and defend themselves and others.

12. In all respects, this Defendant behaved in accordance with applicable legal authority in all actions or inactions associated with Plaintiff, negating any claim of liability asserted by Plaintiff against him.

13. Plaintiff's claim is barred in whole or in part by the doctrines of consent, estoppel and waiver.

14. This Defendant never breached any obligation or responsibility to anyone associated with any property or liberty interest of any party in relation to this matter.

15. Plaintiff cannot satisfy all or some of the prerequisites to a grant of injunctive relief in this matter. Any request for injunctive relief is moot.

16. This Defendant is not liable for any punitive damages pursuant to state or federal law and no Defendant could become liable for any such damages.

17. Plaintiff's claim is barred pursuant to the Colorado Governmental Immunity Act.

18. Any claim for punitive or exemplary damages against any individual Defendant in any individual capacity is barred, limited, reduced, or in the alternative, unconstitutional and in violation of the rights of such individual Defendant under the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

19. Plaintiff's injuries, if any, are *de minimus* and therefore do not constitute a violation of his Constitutional rights.

4. UNDISPUTED FACTS

1. None.

5. COMPUTATION OF DAMAGES

Plaintiff seeks entry of an Order from this Court granting judgment against Defendant from the following damages:

- a. Compensatory damages in the amount of ^{at least} \$25,000.
- b. Punitive damages in the amount of \$75,000.

Defendant denies Plaintiff is entitled to any damages whatsoever. Further, Defendant does not claim any damages at this time but reserves the right to seek damages and attorneys' fees pursuant to the applicable authority.

**6. REPORT OF PRECONFERENCE DISCOVERY
AND MEETING UNDER FED. R. CIV. P. 26(f)**

a. Date of Rule 26(f) meeting. July 18, 2018.

b. Names of each participant and party he/she represented.

1. Attorneys for Plaintiff:

Christopher J. Casolaro
Ll. Rhyddid Watkins
Heather Campbell Burgess
Travis Jordan

2. Attorneys for Defendant:

Mark S. Ratner

c. Statement as to when Rule 26(a)(1) disclosures were made or will be made.

Rule 26(a)(1) disclosures will be made by on or before August 17, 2018.

d. Proposed changes, if any, in timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1).

The parties have not agreed to any change in the timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1).

e. Statement concerning any agreements to conduct informal discovery:

The parties have not agreed to conduct informal discovery.

f. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system.

The parties agreed to the use of a unified exhibit numbering system. As of this date, no other specific procedures have been suggested by any Party.

g. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

The parties do not anticipate that their claims or defenses will involve extensive electronically stored information.

h. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case.

The parties have engaged in and continue to engage in settlement negotiations.

7. CONSENT

All parties have not consented to the exercise of jurisdiction of a magistrate judge.

8. DISCOVERY LIMITATIONS

a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules.

The Parties agree to apply the presumptive limits of Fed. R. Civ. P. 30(a)(2)(i).

b. Limitations which any party proposes on the length of depositions.

The Parties agree to apply the presumptive limits of Fed. R. Civ. P. 30(d)(1), except upon motion and good cause being shown to expand the presumptive limits.

c. Limitations which any party proposes on the number of requests for production and/or requests for admission.

The parties propose the presumptive limits for requests for production and requests for admission apply.

d. Other Planning or Discovery Orders

The parties do not propose other planning or discovery orders.

9. CASE PLAN AND SCHEDULE

a. Deadline for Joinder of Parties and Amendment of Pleadings:

The parties agree that the deadline for Joinder of Parties and Amendment of Pleadings shall be September 28, 2018.

b. Discovery Cut-off:

The parties agree that the Discovery Cut-off should be February 18, 2019.

c. Dispositive Motion Deadline:

The parties agree that the Dispositive Motion Deadline should be March 18, 2019.

d. Expert Witness Disclosure:

- 1. The parties shall identify anticipated fields of expert testimony, if any.**

At this time, Plaintiff intends to retain experts in the following fields: handcuff injuries, nerve damage.

At this time, Defendant intends to provide rebuttal experts to those experts listed by the Plaintiff.

- 2. Limitations which the parties propose on the use or number of expert witnesses.**

The parties propose a limit of 2 expert witnesses.

- 3. Plaintiff shall designate all experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2) on or before.**

Plaintiff

~~The parties~~ shall designate all experts and provide opposing counsel with all information specified in Fed. R. Civ. P. 26(a)(2) on or before December 18, 2018.

- 4. Defendant shall designate all experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before January 18, 2019.**

S. February 1, 2019 for all rebuttal experts.

e. Identification of Persons to Be Deposed:

Plaintiff initially plans on deposing the following individuals:

1. Defendant Jason Shutters
2. A to be named Larimer County Police Officer
3. A to be named Larimer County Police Officer
4. A to be named doctor from Poudre Valley Hospital in Fort Collins, Colorado
5. Michael Lenskold

Defendant initially plans on deposing the following individuals:

- 1. Plaintiff

- f. **Deadline for Interrogatories:**

All written discovery shall be served by January 18, 2019. Responses to written discovery are due no later than 30 days after they are served.

- g. **Deadline for Requests for Production of Documents and/or Admissions:**

All written discovery shall be served by January 18, 2019. Responses to written discovery are due no later than 30 days after they are served.

10. DATES FOR FURTHER CONFERENCES

[The magistrate judge will complete this section at the scheduling conference if he or she has not already set deadlines by an order filed before the conference.]

- a. Status conferences will be held in this case at the following dates and times:

- b. A final pretrial conference will be held in this case on 5/13/19 at 10:30 o'clock a.m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than seven (7) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

- a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement.

None

- b. **Anticipated length of trial and whether trial is to the court or jury.**

The parties agree on a jury trial of between two (2) and three (3) days.

- c. **Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facilities at 212 N. Wahsatch Street, Colorado Springs, Colorado 80903-3476; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado 81501-**

2520; or the U.S. Courthouse/Federal Building, 103 Sheppard Drive, Durango, Colorado 81303-3439.

The parties do not believe that any pretrial proceedings may be more efficiently or economically conducted in the District Court's facilities at this time.

12. NOTICE TO COUNSEL AND PRO SE PARTIES

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1(c) by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a).

Counsel and unrepresented parties are reminded that any change of contact information must be reported and filed with the Court pursuant to the applicable local rule.

13. AMENDMENTS TO SCHEDULING ORDER

This Scheduling Order may be altered or amended only upon a showing of good cause.

DATED at Denver, Colorado, this 05th day of August, 2018.

BY THE COURT:



United States Magistrate Judge

APPROVED:

s/ Mark S. Ratner

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