



1 Esquivel appeared telephonically on behalf of Defendants. The motions are deemed submitted. Local  
2 Rule 230(l).

3 **I. Motions in Limine**

4 **A. Standard**

5 A party may use a motion in limine to exclude inadmissible or prejudicial evidence before it is  
6 actually introduced at trial. See Luce v. United States, 469 U.S. 38, 40 n. 2, 105 S. Ct. 460, 83 L. Ed.  
7 2d 443 (1984). “[A] motion in limine is an important tool available to the trial judge to ensure the  
8 expeditious and evenhanded management of the trial proceedings.” Jonasson v. Lutheran Child and  
9 Family Services, 115 F.3d 436,440 (7th Cir. 1997). A motion in limine allows the parties to resolve  
10 evidentiary disputes before trial and avoids potentially prejudicial evidence being presented in front of  
11 the jury, thereby relieving the trial judge from the formidable task of neutralizing the taint of  
12 prejudicial evidence. Brodit v. Cambra, 350 F.3d 985, 1004–05 (9th Cir. 2003).

13 Motions in limine that exclude broad categories of evidence are disfavored and such issues are  
14 better dealt with during trial as the admissibility of evidence arises. See, e.g., Brown v. Kavanaugh,  
15 No. 1:08–CV–01764–LJO, 2013 WL 1124301, at \*2 (E.D. Cal. Mar. 18, 2013) (citing Sperberg v.  
16 Goodyear Tire & Rubber Co., 519 F.2d 708, 712 (6th Cir. 1975); see also In re Homestore.com Inc.,  
17 No. CV 01–11115 RSWL CWX, 2011 WL 291176, at \*2 (C.D. Cal. Jan. 25, 2011) (holding that  
18 motions in limine should “rarely seek to exclude broad categories of evidence, as the court is almost  
19 always better situated to rule on evidentiary issues in their factual context during trial”); see cf. Oracle  
20 Am. Inc. v. Google Inc., No. C 10–03561 WHA, 2012 WL 1189898, at \*4 (N.D. Cal. Jan. 4, 2012)  
21 (concluding that “a broad categorical exclusion” was unwarranted). Additionally, some evidentiary  
22 issues are not accurately and efficiently evaluated by the trial judge in a motion in limine, and it is  
23 necessary to defer ruling until during trial when the trial judge can better estimate the impact of the  
24 evidence on the jury. Jonasson, 115 F.3d at 440.

25 **B. Analysis**

26 **1. Plaintiff’s Combined Motions in Limine**

27 Plaintiff’s motion in limine covered a variety of topics addressed at the October 4, 2016  
28 hearing that the Court will not completely summarize here, but the Court will outline its rulings for

1 sake of clarity. First, Plaintiff’s motion to exclude evidence or testimony that he has brought other  
2 lawsuits or that he is a “chronic claimant” is granted, for the reasons explained at the hearing.

3 Plaintiff’s other motions are granted in part and denied in part. Plaintiff moved to be permitted  
4 to testify and question Defendants and other witnesses on a number of prior bad acts, such as 602  
5 appeals, grievances, staff misconduct complaints, and several specific incidents. As found by the  
6 Court during the hearing, in general the testimony and questioning Plaintiff seeks to introduce is  
7 irrelevant and subject to Rule 404(b); or to the extent the evidence is minimally relevant, it is unfairly  
8 prejudicial, confusing, and misleading to the jury. Fed. R. Evid. 403. Much of Plaintiff’s proposed  
9 testimony and questioning is barred by Federal Rule of Evidence 404(b)(1), and the Court did not find  
10 any exception to that rule applied. Specifically, the Court rules as follows:

11 Plaintiff will *not* be permitted to testify, elicit testimony, or present evidence about any of the  
12 following matters:

13 (1) Defendant Gallagher’s and Defendant Romero’s alleged prior or subsequent bad acts,  
14 including any staff misconduct complaints, grievances, other lawsuits, or other alleged assaults,  
15 conspiracies, or retaliation by them against other inmates;<sup>1</sup>

16 (2) Allegations or theories regarding any conspiracies to “cover up” the alleged June 8,  
17 2010 assault by Defendants’ supervisor(s) or by any investigators. This includes, but is not limited to,  
18 any allegations of prior or subsequent bad acts by Lieutenant C. Waddle. Plaintiff will be permitted to  
19 elicit evidence from Lieutenant Waddle on the matters, which are identified further below.<sup>2</sup>

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22 <sup>1</sup> Plaintiff argued at the hearing that this unspecified evidence would be used to show a “pattern  
23 and practice” of improper conduct by Defendants. The Court found that this evidence did not qualify  
24 for any such exception to Rule 404(b), and instead this evidence is barred by Rule 404(b) as Plaintiff  
25 intends to use it to show a propensity to engage in the alleged conduct in this case. The Court further  
found that this evidence would specifically be highly prejudicial, confuse the issues, mislead the jury,  
and waste time, and therefore should be excluded under Rule 403.

26 <sup>2</sup> As discussed at length in the hearing, these matters are irrelevant, unfounded, and speculative.  
27 Any alleged improper conduct by any non-parties is not attributable to the Defendants here, and their  
28 introduction would be highly prejudicial to Defendants, confuse the issues, mislead the jury, and waste  
time. Fed. R. Evid. 403. Plaintiff will not be permitted to try his pending lawsuit against Lt. Waddle  
(12-cv-2074) in this lawsuit. Waddle’s conduct in relation to the June 8, 2010 incident is extremely  
limited and questioning will likewise be limited.

1 Assuming a proper foundation is laid and no other objections are sustained, Plaintiff will be  
2 permitted to testify, elicit testimony, or present evidence about any of the following matters:

3 (1) From the witnesses who were involved in investigating the alleged June 8, 2010 assault  
4 at issue in this case, evidence showing that there was an investigation of Plaintiff's allegations in this  
5 case, facts about how the investigation was conducted, and facts about Title 15 and appropriate  
6 investigation procedures;

7 (2) With regard to inmate Vargas, any facts about what that witness saw or heard regarding  
8 the June 8, 2010 assault;

9 (3) Alleged threats by Defendants against Plaintiff on or around June 8, 2010 that he not  
10 report or complain about the alleged assault, or not report truthfully about the assault; and

11 (4) With regard to Lieutenant C. Waddle, any facts regarding the events of June 8, 2010,  
12 and any evidence about her supervisory duties and authority generally, and about her alleged  
13 assignment of Plaintiff to Ad Seg on November 30, 2010.

14 **2. Defendants' Motions In Limine**

15 For the reasons discussed at the hearing, each of Defendants' motions in limine are granted or  
16 denied, in whole or in part, as indicated below:

17 (1) Defendants' motion to preclude Plaintiff from testifying about the cause and prognosis  
18 of his ocular and extremity conditions is granted in part and denied in part. As a non-expert witness,  
19 Plaintiff may testify as to matters in his personal experience, including what happened to him, what he  
20 saw, how he felt, and any issues or feelings he has experienced, such as pain, relating to his medical  
21 needs or condition, including any current pain or issues. However, Plaintiff may not testify as to any  
22 medical matter which requires scientific, technical, or other specialized knowledge. This generally  
23 includes any diagnosis, cause and effect relationship, and/or the interpretation of medical records. Fed.  
24 R. Evid. 701; see also Johnson v. Dunnahoe, 2013 WL 793220, \*1-2 (E.D. Cal. Mar. 4, 2013)  
25 (granting motion in limine precluding testimony by prisoner on matters within the purview of a  
26 medical expert).

27 (2) Defendants' motion to preclude Plaintiff from referring to matters concerning Officer  
28 Cruse, prison officials' purported continued harassment of Plaintiff after he was moved to another

1 yard in November 2010, and the allegations/pending lawsuit against Lieutenant Waddle (*Bryant v.*  
2 *Romero*, Case No. 1:12-cv-2074-DAD-DLB (E.D. Cal.)), is granted, except that Plaintiff may elicit  
3 testimony from Waddle as described above;

4 (3) Defendants' motion to preclude Plaintiff from testifying about his interpretation of Title  
5 15 and/or prison regulations and procedures, including his opinions regarding properly conducted  
6 investigations of staff misconduct, is granted, with the caveat explained above;

7 (4) Defendants' motion to exclude any evidence of the State's indemnification of them for  
8 any award of damages in this case is granted;

9 (5) Defendants' motion to exclude evidence or testimony regarding any offers to  
10 compromise or settle this matter is granted;

11 (6) Defendants' motion to exclude Lieutenant Waddle as a witness is denied;

12 (7) Defendants' motion to exclude Appeals Coordinator B. DaVeiga as a witness is  
13 granted;

14 (8) Defendants' motion to limit the testimony of Christine Blantz, FNP, is granted in part.  
15 Nurse Blantz may not repeat hearsay from Plaintiff, for example regarding whether there was a  
16 conspiracy to harm him by Defendants, or that Plaintiff fears for his life or is in danger while in state  
17 custody. Nurse Blantz's testimony, assuming she is properly qualified as a medical expert witness at  
18 trial, is limited to her medical opinion as contained in her expert report disclosed by Plaintiff. The  
19 Court defers to trial any ruling on the extent to which Nurse Blantz may testify regarding issues of the  
20 causation of Plaintiff's injuries;

21 (9) Defendants' motion to allow evidence of Plaintiff and other witnesses' felony  
22 convictions is granted in part and denied in part. Defendants may elicit testimony that Plaintiff is  
23 serving a sentence for a felony conviction, but not the length of his sentence. As to inmate Contreras,  
24 Levels, and Vargas, Defendants may elicit testimony concerning their felony convictions and the  
25 length of their sentences. Defendants have not sought to introduce such facts, but the Court confirms  
26 that they are precluded from eliciting facts about the nature of any witnesses' felony conviction; and

27 (10) Defendants' motion to elicit testimony from inmate Vargas' regarding his guilty  
28 finding from a disciplinary action (and any criminal charges) for assaulting Defendant Romero on

1 June 28, 2010, is granted as explained at the hearing. That is, to the extent inmate Vargas testifies that  
2 he was assaulted by Defendant Romero on June 28, 2010 in retaliation for reporting the alleged June  
3 8, 2010 assault of Plaintiff, Defendants will be permitted to attempt to impeach such testimony with  
4 any disciplinary findings or criminal convictions for this incident against inmate Vargas.

5  
6 IT IS SO ORDERED.

7 Dated: October 5, 2016

/s/ Barbara A. McAuliffe  
8 UNITED STATES MAGISTRATE JUDGE