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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JAMISI J. CALLOWAY,
Plaintiff,
v.
C/O HAYWARD and
C/O OAKS,
Defendants.

1:08-cv-01896-LJO-GSA-PC

**MEMORANDUM DECISION AND ORDER RE
DEFENDANTS' MOTIONS IN LIMINE
(ECF Nos. 207, 210.)**

I. FACTUAL AND PROCEDURAL BACKGROUND

Jamisi J. Calloway ("Plaintiff"), a state prisoner proceeding pro se, brings this civil rights action under 42 U.S.C § 1983, against defendants Correctional Officer Hayward and Correctional Officer Oaks (collectively, "Defendants"), for use of excessive force in violation of the Eighth Amendment to the United States Constitution.

Plaintiff alleges as follows. On May 7, 2008, at the California Substance Abuse Treatment Facility and State Prison ("SATF"), Plaintiff was escorted by wheelchair to the Emergency Room, which was ten to twenty blocks away from Plaintiff's housing unit. At the E.R., Plaintiff was assaulted by Defendants. As Plaintiff stood up from his wheelchair to be weighed, C/O Hayward grabbed Plaintiff's right bicep and began deliberately hurting him. Plaintiff released himself from C/O Hayward's tight grip. C/O Hayward jumped away in self-

1 defense and began striking Plaintiff in the head and face. C/O Oaks struck Plaintiff on his back
2 and head. Plaintiff went in and out of consciousness and could not defend himself. Plaintiff's
3 handcuffs were taken off of one hand, and his other hand was stomped. Both arms were
4 twisted behind his back, and both shoulders were dislocated.

5 Defendants deny that they used excessive force against Plaintiff.

6 This case is scheduled for jury trial to commence on January 31, 2017. Currently
7 before the Court are Defendants' motions in limine filed on January 10, 2017. (ECF Nos. 207,
8 210.) On January 19, 2017, Plaintiff filed an opposition to the motions. (ECF No. 217.)

9 The Court found the matters suitable for decision on the papers and took them under
10 submission pursuant to Local Rule 230(g). (See ECF No. 222.) For the following reasons, the
11 Court (1) GRANTS Defendants' motions in limine numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13,
12 and 14; (2) GRANTS IN PART and DENIES IN PART Defendants' motion in limine number
13 16; (3) GRANTS IN PART Defendants' motion in limine number 12 and RESERVES the
14 ruling in part; (4) DENIES without prejudice Plaintiffs' motion in limine number 18; and (5)
15 DEFERS RULING on motions in limine numbers 15 and 17.

16 **II. LEGAL STANDARDS**

17 **A. Motions in Limine**

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

26 Motions in limine that exclude broad categories of evidence are disfavored and such
27 issues are better dealt with during trial as the admissibility of evidence arises. See, e.g., Brown
28 v. Kavanaugh, No. 1:08-cv-01764-LJO, 2013 WL 1124301, at *2 (E.D. Cal. Mar. 18, 2013)

1 (citing Sperberg v. Goodyear Tire & Rubber, Co., 519 F.2d 708, 712 (6th Cir. 1975)); see also
2 In re Homestore.com, Inc., No. CV 01-11115 RSWL CWX, 2011 WL 291176, at *2 (C.D. Cal.
3 Jan. 25, 2011) (holding that motions in limine should “rarely seek to exclude broad categories
4 of evidence, as the court is almost always better situated to rule on evidentiary issues in their
5 factual context during trial”). Some evidentiary issues are not accurately and efficiently
6 evaluated by the trial judge in a motion in limine, and it is necessary to defer ruling until during
7 trial when the trial judge can better estimate the impact of the evidence on the jury. Jonasson,
8 115 F.3d at 440.

9 **B. Federal Rules of Evidence**

10 “Evidence is relevant if (a) it has any tendency to make a fact more or less probable
11 than it would be without the evidence; and (b) the fact is of consequence in determining the
12 action. **Fed. R. Evid. 401.** “Irrelevant evidence is not admissible.” **Fed. R. Evid. 402.** “The
13 court may exclude relevant evidence if its probative value is substantially outweighed by a
14 danger of one or more of the following: unfair prejudice, confusing the issues, misleading the
15 jury, undue delay, wasting time, or needlessly presenting cumulative evidence. **Fed. R. Evid.**
16 **403.**

17 “Evidence of a crime, wrong, or other act is not admissible to prove a person’s character
18 in order to show that on a particular occasion the person acted in accordance with their
19 character.” **Fed. R. Evid. 404(b)(1).** “This evidence may be admissible for another purpose,
20 such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of
21 mistake, or lack of accident.” **Fed. R. Evid. 404(b)(2).**

22 Evidence of offers to compromise and conduct or statements made during settlement
23 negotiations about the claim are inadmissible to prove liability or amount of claim, or to
24 impeach a prior inconsistent statement. **Fed. R. Evid. 408(a).**

25 “Evidence that a person was or was not insured against liability is not admissible to
26 prove whether the person acted negligently or otherwise wrongfully. But the court may admit
27 this evidence for another purpose, such as proving a witness's bias or prejudice or proving
28 agency, ownership, or control.” **Fed. R. Evid. 411.**

1 “Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible
2 to prove specific instances of a witness's conduct in order to attack or support the witness's
3 character for truthfulness. But the court may, on cross-examination, allow them to be inquired
4 into if they are probative of the character for truthfulness or untruthfulness of: (1) the witness;
5 or (2) another witness whose character the witness being cross-examined has testified about.”
6 **Fed. R. Evid. 608(a).** “If a witness's character for truthfulness is attacked by evidence of a
7 criminal conviction for a crime that, in the convicting jurisdiction, was punishable by death or
8 by imprisonment for more than one year, evidence of the criminal conviction must be admitted,
9 subject to Rule 403, in a civil case or in a criminal case in which the witness is not a
10 defendant.” **Fed. R. Evid. 609(a)(1)(A).**

11 “If a witness is not testifying as an expert, testimony in the form of an opinion is limited
12 to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly
13 understanding the witness's testimony or to determining a fact in issue; and (c) not based on
14 scientific, technical, or other specialized knowledge within the scope of Rule 702. **Fed. R.**
15 **Evid. 701.** “A witness who is qualified as an expert by knowledge, skill, experience, training,
16 or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific,
17 technical, or other specialized knowledge will help the trier of fact to understand the evidence
18 or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the
19 testimony is the product of reliable principles and methods; and (d) the expert has reliably
20 applied the principles and methods to the facts of the case. **Fed. R. Evid. 702.**

21 “Hearsay” means a statement that: (1) the declarant does not make while testifying at
22 the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter
23 asserted in the statement. **Fed. R. Evid. 801(c).** “Hearsay is not admissible unless any of the
24 following provides otherwise: • a federal statute; • these rules; or • other rules prescribed by the
25 Supreme Court. **Fed. R. Evid. 802.**

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1 **III. ANALYSIS OF DEFENDANTS' MOTIONS IN LIMINE**

2 **1. First Motion in Limine**

3 Defendants' first motion in limine seeks to preclude Plaintiff from referring to
4 dismissed Defendants or claims and unrelated claims and individuals. Plaintiff opposes the
5 motion, arguing that the evidence is relevant to his claims and should be allowed under Rule
6 404(b) for proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence
7 of mistake, or lack of accident. Plaintiff also argues that the evidence should be allowed under
8 Rules 608 and 609, for impeachment during cross examination.

9 Defendants' motion is GRANTED. Fed. R. Evid. 401, 402. This case proceeds only on
10 Plaintiff's excessive force claim against defendants Hayward and Oaks. Testimony or evidence
11 about dismissed Defendants or claims and unrelated claims and individuals is irrelevant and is
12 excluded.

13 **2. Second Motion in Limine**

14 Defendants' second motion in limine seeks to preclude Plaintiff from offering hearsay
15 medical opinions. Plaintiff opposes the motion because he was denied expert witnesses in this
16 case to offer medical opinions, and it would be unjust to preclude him from offering hearsay
17 medical opinions under Rule 404(b).

18 Defendants' motion is GRANTED. Fed. R. Evid. 701. Plaintiff may not introduce
19 evidence of statements made by medical providers not at trial unless the statements fall within a
20 specific exception to the hearsay rule. Plaintiff is not qualified to render an expert opinion on
21 his medical issues. Plaintiff may not testify as to any medical matter which requires scientific,
22 technical, or other specialized knowledge, which generally includes any ultimate diagnosis, a
23 cause and effect relationship, internal injuries, and interpretation of x-ray films or other medical
24 records. However, as a non-expert witness, Plaintiff may testify as to what he saw or felt
25 relating to his medical needs or condition.

26 **3. Third Motion in Limine**

27 Defendants' third motion in limine seeks to preclude Plaintiff from making any
28 reference to Defendants' involvement in other lawsuits or incidents. Plaintiff opposes the

1 motion, arguing that he has a right to refer to Defendants' personnel files and all complaints
2 against them from any and all sources relating to acts of aggressive behavior, violence,
3 excessive force, attempted violence, racial and gender bias, sexual orientation bias, coercive
4 conduct, and fabrication of charges and evidence.

5 Defendants' motion is GRANTED. Fed. R. Evid. 403, 404(b). Defendants' involvement
6 in other lawsuits or incidents is not admissible to prove Defendants' character in order to show
7 that on a particular occasion they acted in accordance with their character. Moreover, the Court
8 finds that the probative value of this evidence is substantially outweighed by a danger of unfair
9 prejudice to Defendants. Therefore, Plaintiff may not refer to Defendants' involvement in
10 other lawsuits or alleged incidents of assault or excessive force.

11 **4. Fourth Motion in Limine**

12 Defendants' fourth motion in limine seeks to preclude Plaintiff from offering his
13 interpretation or opinion of various CDCR and Corcoran regulations and policies. Defendants
14 anticipate that Plaintiff will attempt to offer opinion testimony about his interpretation of
15 Defendants' and other staff members' compliance with CDCR regulations and procedures.
16 Plaintiff opposes the motion, asserting that he is proceeding pro se and was denied expert
17 witnesses. Plaintiff argues that he should be allowed to offer his interpretation or opinion of
18 various CDCR Regulations and policies.

19 Defendants' motion is GRANTED. Fed. R. Evid. 701. Plaintiff is not qualified to give
20 his opinions about the CDCR's regulations and policies, their intent, whether Defendants
21 followed them, or what Defendants should have done instead.

22 **5. Fifth Motion in Limine**

23 Defendants' fifth motion in limine seeks to preclude Plaintiff from making references to
24 alleged racial discrimination that does not directly pertain to this action. Plaintiff opposes the
25 motion, arguing that he has a right to bring evidence of alleged racial discrimination by
26 Defendants not pertaining to this action, because it is relevant to the moral turpitude of
27 Defendants in acting with excessive force.

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1 Defendants' motion is GRANTED. Fed. R. Evid. 401, 402, 403, 404(b). The probative
2 value of the evidence Plaintiff seeks to bring is substantially outweighed by a danger of unfair
3 prejudice to Defendants. Moreover, this case only proceeds on Plaintiff's claims of excessive
4 force, so evidence of racial discrimination is irrelevant to Plaintiff's claims. Plaintiff's equal
5 protection claim was dismissed from this case. Therefore, Plaintiff is precluded from bringing
6 evidence at trial to show racial discrimination by Defendants.

7 **6. Sixth Motion in Limine**

8 Defendants' sixth motion in limine seeks to exclude evidence or testimony of offers to
9 compromise. Defendants seek to preclude Plaintiff from offering or eliciting testimony or
10 mentioning in front of the jury any offers to compromise or statements made during settlement
11 negotiations. Defendants argue that this evidence is inadmissible under Rule 408, irrelevant to
12 any issue in the case, and prejudicial to Defendants because a party may offer to settle a case
13 for reasons completely unrelated to the merits of the case. Plaintiff opposes the motion,
14 arguing that he should be allowed to discuss the dollar amounts offered by the parties to settle
15 the case, to show that Defendants tried to minimize their responsibility for the excessive force
16 conduct.

17 Defendants' motion is GRANTED. Although Plaintiff questions Defendants' motives
18 in participating in settlement negotiations, Defendants are entitled to an order precluding any
19 evidence or mention of settlement-related issues or offers to compromise.

20 **7. Seventh Motion in Limine**

21 Defendants' seventh motion in limine seeks to exclude evidence that the state may pay
22 the judgment or reimburse Defendants if judgment is rendered against them. Defendants argue
23 that such evidence is inadmissible under Rule 411, is irrelevant to the issues in this case, and is
24 prejudicial to Defendants because a jury is more inclined to deliver a verdict against a
25 defendant if it believes that he is indemnified, as opposed to the defendant alone being required
26 to satisfy the judgment. Plaintiff opposes the motion because the jury should be able to find
27 out that CDCR tends not to hold their employees accountable for findings of guilt for using
28 excessive force.

1 Defendants' motion is GRANTED. Fed. R. Evid 411. The court concurs with
2 Defendants that such evidence is inadmissible, irrelevant, and prejudicial to Defendants.

3 **8. Eighth Motion in Limine**

4 Defendants' eighth motion in limine seeks to preclude Plaintiff from making reference
5 to allegedly antagonistic statements attributed to defendant Hayward during the escort from the
6 housing unit to the hospital. Defendants argue that such evidence should be excluded under
7 Rule 403 as more prejudicial than probative, and that Plaintiff has not claimed that the alleged
8 use of excessive force was motivated by racial bias. Plaintiff opposes the motion, arguing that
9 the statements are relevant to the discriminatory conduct which led to excessive force being
10 used against Plaintiff. Plaintiff argues that such conduct is in violation of CDCR policy and
11 procedure which prohibits inmates and employees from disrespecting others or inciting
12 violence.

13 Defendants' motion is GRANTED. Fed. R. Evid. 403. Evidence of antagonistic
14 statements made by either of the Defendants is precluded at trial because the probative value of
15 such evidence is substantially outweighed by the possibility of unfair prejudice to Defendants.

16 **9. Ninth Motion in Limine**

17 Defendants' ninth motion in limine seeks to exclude references to alleged sexual assault
18 or other alleged instances of excessive force by peace officers against Plaintiff. Defendants
19 argue that such evidence is irrelevant to the excessive force claim at issue in this case, and such
20 evidence would be unfairly prejudicial to Defendants under Rules 401 and 403. Plaintiff
21 opposes the motion because past acts by CDCR officers are relevant to the reason that Plaintiff
22 was singled out for excessive force.

23 Defendants' motion is GRANTED. Fed. R. Evid. 401, 402, 403. Evidence of sexual
24 assault or excessive force incidents by Defendants or other officers against Plaintiff, other than
25 the incident at issue, are not relevant facts of consequence to determining whether Defendants
26 acted against Plaintiff on May 7, 2008. Further, the probative value of such evidence is
27 outweighed by the danger of unfair prejudice to Defendants.

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1 **10. Tenth Motion in Limine**

2 Defendants' tenth motion in limine seeks to preclude Plaintiff from making allegations
3 about officers falsifying documents, pursuant to Rules 402, 403, and 404. Plaintiff opposes the
4 motion, arguing that he should be able to introduce evidence that Defendants and other officers
5 cover up evidence to justify their use of force and hide the truth of what really happened on
6 May 7, 2008 after the excessive force incident.

7 Defendants' motion is GRANTED. Fed. R. Evid. 402, 403, 404. Evidence of
8 falsification of documents after the excessive force incident on May 7, 2008, is not relevant to
9 whether Defendants used excessive force, and shall not be allowed. In the event that such
10 evidence is found to have relevance to Plaintiff's claims, the evidence shall be precluded on
11 issues of possible indication of guilt or liability by Defendants.

12 **11. Eleventh Motion in Limine**

13 Defendants' eleventh motion in limine seeks to limit Plaintiff's reliance on Dr. Wang's
14 written testimony responses, because Dr. Wang was dismissed from this case in 2013 and
15 therefore his written discovery responses constitute inadmissible hearsay. Defendants argue
16 that such evidence is inadmissible and may not be used except to impeach Dr. Wang, if he
17 testifies. Plaintiff opposes the motion, arguing that evidence of Dr. Wang's failure to house
18 him and treat his serious medical needs is relevant to the excessive force incident of May 7,
19 2008, because it shows the frustration of officers not being trained to deal with high risk
20 medical patients.

21 Defendants' motion is GRANTED. Fed. R. Evid. 401, 402, 608. Dr. Wang's written
22 testimony concerning his failure to house Plaintiff or failure to provide adequate medical care is
23 inadmissible hearsay and is not relevant to whether defendants Hayward and Oaks used
24 excessive force against Plaintiff on May 7, 2008. However, under Rule 608, such evidence
25 may be used to impeach Dr. Wang if he testifies.

26 **12. Twelfth Motion in Limine**

27 Defendants' twelfth motion in limine seeks to preclude Plaintiff from offering opinion
28 testimony concerning his medical records or medical condition, pursuant to Rules 701 and 702

1 of the Federal Rules of Evidence. Plaintiff opposes the motion, arguing that he should be
2 permitted to offer such evidence, because he has personal knowledge of the facts of his medical
3 records and conditions, and he will be prejudiced because the Court denied him an expert
4 witness.

5 Defendants' motion is GRANTED in part, with the ruling RESERVED in part. Fed. R.
6 Evid. 701. As for Plaintiff's interpretation of x-ray films or other medical records, Plaintiff
7 does not have the scientific, technical, or other specialized knowledge to give his opinions.
8 Therefore, testimony by Plaintiff interpreting his medical records shall be precluded. As for
9 Plaintiff's testimony about or offering of evidence concerning his medical condition, the Court
10 shall reserve a ruling until questioning or testimony at trial. As a non-expert witness, Plaintiff
11 may testify as to what he saw or felt relating to his medical needs or condition.

12 **13. Thirteenth Motion in Limine**

13 Defendants' thirteenth motion in limine seeks to preclude Plaintiff from offering
14 testimony or evidence about his alleged history of chest pains or the adequacy of care provided
15 at CDCR health care facilities, because such evidence is irrelevant to whether Defendants used
16 excessive force against him on May 7, 2008. Plaintiff opposes the motion, arguing that
17 evidence of his distress from health issues before Defendants used excessive force is relevant to
18 show Defendants' motive for disregarding Plaintiff's health prior to the use of excessive force
19 on May 7, 2008.

20 Defendants' motion is GRANTED. Fed. R. Evid. 401, 402. This case now proceeds
21 only on Plaintiff's claim that Defendants used excessive force against him. Whether Plaintiff
22 has a history of chest pains or whether CDCR facilities provided adequate medical care to
23 Plaintiff or other inmates is irrelevant to whether excessive force was used. Any motive that
24 Defendants had for disregarding Plaintiff's health before they used excessive force against him
25 is not relevant to his claim for excessive force.

26 **14. Fourteenth Motion in Limine**

27 Defendants' fourteenth motion in limine seeks to preclude any and all references to
28 allegations of excessive force or injuries and staging of inmate fights not directly relevant to

1 this action, pursuant to Rules 401, 403, and 404(b). Plaintiff opposes the motion, arguing that
2 it shows a pattern of behavior at CDCR's Corcoran State Prison. Plaintiff argues that these bad
3 acts show the criminal thinking of Corcoran officers and Defendants' similar conduct. Plaintiff
4 also argues that such evidence shows Defendants' motive and opportunity in staging their
5 attack against Plaintiff on May 7, 2008, after isolating him away from his housing unit and
6 witnesses.

7 Defendants' motion is GRANTED. Fed. R. Evid. 410, 402, 403, 404. Evidence of
8 excessive force, injuries, or staging of inmate fights by Defendants that are unrelated to
9 Defendants' use of excessive force on May 7, 2008, are excluded as unfairly prejudicial to
10 Defendants. In addition, such evidence is inadmissible to prove Defendants' character in order
11 to show that on May 7, 2008, they acted in accordance with their character. However, such
12 evidence may be admissible for another purpose, such as proving motive, opportunity, intent,
13 preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

14 **15. Fifteenth Motion in Limine**

15 Defendants' fifteenth motion in limine seeks to exclude Plaintiff's trial exhibits on the
16 exhibit list provided in Plaintiff's pretrial statement. Defendants identify five categories or
17 entries on the exhibit list: (1) California State Prison-Corcoran Acute Care Hospital-Radiology
18 Report for Jamisi J. Calloway, (2) Physician's Orders and Medication Signed by Dr. Wang, (3)
19 Mr. Calloway's medical records, (4) Mr. Calloway's mental health records, and (5) Mr.
20 Calloway's RVR Appeal Forms and Records. Defendants object to the use of unauthenticated
21 documents; documents identified by Defendants as potential trial exhibits, trial exhibits, or joint
22 exhibits; irrelevant hearsay records; Plaintiff's health records; and all other documents subject
23 to applicable objections. Plaintiff opposes the motion, asserting that he is proceeding pro se
24 and the only trial exhibits he has are records provided to him by the State.

25 The Court shall defer its ruling on this motion in limine until trial, after the parties have
26 submitted their trial exhibits.

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1 **16. Sixteenth Motion in Limine**

2 Defendants' sixteenth motion in limine seeks leave under Rule 403 to introduce
3 evidence of Plaintiff's prior convictions and length of sentence, for impeachment purposes,
4 including that Plaintiff is serving a life sentence for his 2002 felony conviction in Contra Costa
5 County for attempted voluntary manslaughter, assault with a firearm, and attempted carjacking.
6 Defendants assert that they do not seek to introduce evidence or facts of Plaintiff's specific
7 crimes, but rather to elicit testimony about the dates of his convictions and length of
8 incarceration. Plaintiff opposes the motion, objecting that his prior convictions and the length
9 of his sentence have nothing to do with this civil action, and he is not a defendant on trial.
10 Plaintiff requests that if the Court grants this motion in limine, the Court allow Plaintiff to offer
11 evidence of his actual innocence.

12 Defendants' motion is GRANTED IN PART and DENIED IN PART. Fed. R. Evid.
13 403, 609. Defendants are granted leave under Rule 609 to introduce evidence, for
14 impeachment purposes, that Plaintiff was convicted of one of more felonies. However,
15 Defendants are denied leave to introduce evidence of the dates of Plaintiff's convictions or the
16 length of his sentence. Plaintiff is not permitted to offer evidence of his innocence.

17 **17. Seventeenth Motion in Limine**

18 Defendants' seventeenth motion in limine seeks to exclude testimony from Plaintiff's
19 experts and require an offer of proof before their testimony. Plaintiff opposes this motion,
20 arguing that such testimony should not be excluded, asserting that he is proceeding pro se and
21 has been continually denied the appointment of expert witnesses on his behalf.

22 The Court shall defer a ruling on this motion in limine until trial. No expert witnesses
23 have been subpoenaed, and the Court shall defer its ruling until the Court knows whether these
24 witnesses will appear.

25 **18. Eighteenth Motion in Limine**

26 Defendants' eighteenth motion in limine seeks to dismiss this case for Plaintiff's failure
27 to exhaust administrative remedies before filing suit. (ECF No. 207.) Plaintiff opposes the

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1 motion, arguing that he exhausted all of his available remedies before filing suit. (ECF No. 217
2 at 19-20 ¶XVIII.)

3 Section 1997e(a) of the Prison Litigation Reform Act of 1995 (PLRA) provides that
4 “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any
5 other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until
6 such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners
7 are required to exhaust the available administrative remedies prior to filing suit. Jones v. Bock,
8 549 U.S. 199, 211, 127 S.Ct. 910, 918-19 (2007); McKinney v. Carey, 311 F.3d 1198, 1199-
9 1201 (9th Cir. 2002).

10 This motion is DENIED without prejudice, pending any factual finding by the jury.
11 Defendants may renew their motion post verdict.

12 **IV. CONCLUSION**

13 Based on the foregoing, IT IS HEREBY ORDERED that:

- 14 1. Defendants’ motions in limine numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, and 14
15 are GRANTED;
- 16 2. Defendants’ motion in limine number 16 is GRANTED IN PART and DENIED
17 IN PART;
- 18 3. Defendants’ motion in limine number 12 is GRANTED IN PART, with the
19 ruling RESERVED IN PART;
- 20 4. Defendants’ motion in limine number 18 is DENIED without prejudice; and
- 21 5. The rulings on motions in limine numbers 15 and 17 are DEFERRED.

22
23 IT IS SO ORDERED.

24 Dated: January 24, 2017

25 /s/ Lawrence J. O’Neill
26 UNITED STATES CHIEF DISTRICT JUDGE
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28