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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

SAMMY ZAMARO	)	1:09-cv-00580- BAM (PC)
	)	
Plaintiff,	)	<b>PRETRIAL ORDER</b>
	)	
v.	)	<u>Motions In Limine Deadline</u> : February 7, 2014
	)	
G. MOONGA, et al.,	)	<u>Opposition Deadline</u> : February 18, 2014
	)	
Defendants.	)	<u>Motions In Limine Hearing</u> : February 25, 2014, at 9:00 a.m. in Courtroom 8 (BAM)
	)	
	)	<u>Jury Trial</u> : March 3, 2014, at 8:30 a.m. in Courtroom 8 (BAM)
	)	

Plaintiff Sammy Zamaro (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter proceeds against Defendants Moonga and Akanno for deliberate indifference to serious medical needs in violation of the Eighth Amendment. The matter is set for jury trial on March 3, 2014.

The parties have submitted pretrial statements, and on January 29, 2014, the Court held a telephonic trial confirmation hearing. Having reviewed the statements and the remainder of the file and having considered the issues raised at the telephonic trial confirmation hearing, the Court issues the instant Pretrial Order.

**I. Jurisdiction and Venue**

The Court has subject matter jurisdiction over this federal civil rights action. 28 U.S.C. § 1331. Venue is proper because the conduct allegedly occurred in this judicial district.

1 **II. Jury Trial**

2 Plaintiff has demanded a jury trial.

3 **III. Facts**

4 A. Plaintiff's Undisputed Facts

- 5 1. From August 7, 2007 to October 24, 2007, Plaintiff suffered serious to  
6 excruciating pain from acute liver failure and kidney failure, which ultimately  
7 resulted in surgical removal of his left kidney.
- 8 2. Defendants denied, delayed, ignored, dismissed, and minimized Plaintiff's serious  
9 medical needs while knowing that Plaintiff was in serious and excruciating pain.
- 10 3. Defendants also treated Plaintiff's medical needs inadequately and cursory,  
11 amounting to no treatment at all.
- 12 4. During the above dates, Plaintiff suffered serious and excruciating pain from  
13 migraine headaches, fever, loss of appetite, and felt physically ill. Plaintiff  
14 suffered from severe bone-ache throughout his body and was unable to hold food  
15 in his system without vomiting in violent convulsions. When Plaintiff had no  
16 food in his system he continued to experience vomiting convulsions. After about  
17 a week of these symptoms, Plaintiff's urine became very dark and bloody.
- 18 5. In 2004, Plaintiff was diagnosed with hepatitis C, a serious liver disease.
- 19 6. Defendants knew that Plaintiff had hepatitis C. The information of Plaintiff's  
20 hepatitis C existed in his medical file since 2004.
- 21 7. Plaintiff also verbally informed Defendants of his hepatitis C disease.
- 22 8. Defendants prescribed or knew that Plaintiff was prescribed and ingesting  
23 Acetaminophen (also known as Tylenol) which is universally medically known to  
24 aggravate and damage the liver of persons with the hepatitis C disease.
- 25 9. Each time Plaintiff was interviewed, reviewed or examined by Defendants,  
26 Plaintiff disclosed upon questioning that he had no allergies, but was hepatitis C  
27 positive.

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1           B.     Plaintiff's Disputed Facts

2           1.     None. Plaintiff reserves his right to dispute any factual issues Defendants may  
3 present or argue.

4           C.     Defendants' Undisputed Facts

5           1.     Plaintiff is a California prisoner serving a life term, and has been incarcerated  
6 since March 17, 1999 for being convicted of 2 counts of murder in the 2<sup>nd</sup> degree involving fire  
7 arms. He is currently housed in the "SHU" at Pelican Bay State Prison.

8           2.     Defendant Moonga is employed by the California Department of Corrections and  
9 Rehabilitation ("CDCR") as a registered nurse, and at the time pertinent to this lawsuit, was  
10 assigned to Kern Valley State Prison ("KVSP") as a registered nurse.

11          3.     Defendant Akanno is employed by the CDCR as a medical doctor, and at the time  
12 pertinent to this lawsuit, was assigned to KVSP as a medical doctor.

13          4.     The events that Plaintiff complains about occurred while he was incarcerated at  
14 KVSP.

15          5.     On April 16, 2008, Plaintiff was transferred to Pelican Bay State Prison.

16          6.     Plaintiff was diagnosed with Hepatitis C in 2004.

17          7.     Plaintiff is an affiliate/associate of a prison gang.

18          D.     Defendants' Disputed Facts

19          1.     Whether Defendants Moonga and Akanno were deliberately indifferent to  
20 Plaintiff's serious medical needs from August 7, 2007 to October 24, 2007?

21          2.     Whether Plaintiff's acute liver and kidney failure, which ultimately resulted in the  
22 surgical removal of his left kidney, were a direct result of Defendants Moonga and Akanno's  
23 care?

24          3.     Whether Defendants were aware that Plaintiff had been diagnosed in 2004 with  
25 Hepatitis C, and failed to treat him properly leading to the loss of his kidney?

26          4.     Whether Defendants were aware that Plaintiff had a urinary tract infection and  
27 allowed his urinary tract infection to go untreated?

28          5.     All other factual statements or characterizations made by Plaintiff.

1 E. Disputed Evidentiary Issues

2 Plaintiff reserves the right to object to evidentiary issues at a later date.

3 Defendants reserve objections to specific testimony and exhibits until trial.

4 Defendants anticipate that Plaintiff may try to offer opinion testimony on his medical  
5 condition, statutory or regulatory construction, or prison policies and procedures. Defendants  
6 object to any such testimony by Plaintiff because he is not qualified to render such opinions.

7 If Plaintiff or any other incarcerated witnesses testify, then Defendants will seek to  
8 impeach such witnesses by presenting evidence of prior felony convictions, pursuant to Rule 609  
9 of the Federal Rules of Evidence.

10 **IV. Relief Sought**

11 A. Plaintiff's Requested Relief

12 This is an action for monetary damages. Plaintiff seeks compensatory damages in the  
13 amount of \$1,000,000, and punitive damages in the amount of \$1,000,000. Plaintiff also seeks  
14 declaratory relief.

15 Declaratory Relief

16 "A declaratory judgment, like other forms of equitable relief, should be granted only as a  
17 matter of judicial discretion, exercised in the public interest." Eccles v. Peoples Bank of  
18 Lakewood Village, 333 U.S. 426, 431 (1948). "Declaratory relief should be denied when it will  
19 neither serve a useful purpose in clarifying and settling the legal relations in issue nor terminate  
20 the proceedings and afford relief from the uncertainty and controversy faced by the parties."  
21 United States v. Washington, 759 F.2d 1353, 1357 (9th Cir. 1985). This action is set for trial. In  
22 the event the jury returns a verdict in favor of Plaintiff, that verdict will be a finding that  
23 Plaintiff's constitutional rights were violated. Accordingly, a declaration that Defendants  
24 violated Plaintiff's rights would be unnecessary. As stated on the record during the telephonic  
25 trial confirmation hearing, Plaintiff's request for declaratory relief is DENIED.

26 B. Defendants' Requested Relief

27 Defendants seek judgment in their favor, an award of costs, and an award of reasonable  
28 attorney's fees.

1 **V. Points of Law**

2 A. Eighth Amendment – Deliberate Indifference to Medical Needs

3 A prisoner’s claim of inadequate medical care does not constitute cruel and unusual  
4 punishment in violation of the Eighth Amendment unless the mistreatment rises to the level of  
5 “deliberate indifference to serious medical needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir.  
6 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two part test for deliberate  
7 indifference requires the plaintiff to show (1) “a ‘serious medical need’ by demonstrating that  
8 failure to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary  
9 and wanton infliction of pain,’” and (2) “the defendant’s response to the need was deliberately  
10 indifferent.” Jett, 439 F.3d at 1096. A defendant does not act in a deliberately indifferent manner  
11 unless the defendant “knows of and disregards an excessive risk to inmate health or safety.”  
12 Farmer v. Brennan, 511 U.S. 825, 837 (1994). “Deliberate indifference is a high legal standard,”  
13 Simmons v. Navajo County Ariz., 609 F.3d 1011, 1019 (9th Cir. 2010); Toguchi v. Chung, 391  
14 F.3d 1051, 1060 (9th Cir. 2004), and is shown where there was “a purposeful act or failure to  
15 respond to a prisoner’s pain or possible medical need” and the indifference caused harm, Jett,  
16 439 F.3d at 1096.

17 In applying this standard, the Ninth Circuit has held that before it can be said that a  
18 prisoner’s civil rights have been abridged, “the indifference to his medical needs must be  
19 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this  
20 cause of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980), citing  
21 Estelle, 429 U.S. at 10506. “[A] complaint that a physician has been negligent in diagnosing or  
22 treating a medical condition does not state a valid claim of medical mistreatment under the  
23 Eighth Amendment. Medical malpractice does not become a constitutional violation merely  
24 because the victim is a prisoner.” Estelle, 429 U.S. at 106; see also Anderson v. County of Kern,  
25 45 F.3d 1310, 1316 (9th Cir. 1995). Even gross negligence is insufficient to establish deliberate  
26 indifference to serious medical needs. See Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir.  
27 1990). Additionally, a prisoner’s mere disagreement with diagnosis or treatment does not support  
28 a claim of deliberate indifference. Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989).

1 C. Punitive Damages

2 The plaintiff has the burden of proving what, if any, punitive damages should be  
3 awarded by a preponderance of the evidence. NINTH CIRCUIT MODEL CIVIL JURY  
4 INSTRUCTIONS § 5.5 (2008). The jury must find that the defendant’s conduct was “motivated  
5 by evil motive or intent, or . . . involves reckless or callous indifference to the federally protected  
6 rights of others.” Smith v. Wade, 461 U.S. 30, 56 (1986).

7 **VI. Abandoned Issues**

8 None.

9 **VII. Witnesses**

10 The following is a list of witnesses that the parties expect to call at trial, including  
11 rebuttal and impeachment witnesses. NO WITNESS, OTHER THAN THOSE LISTED IN  
12 THIS SECTION, MAY BE CALLED AT TRIAL UNLESS THE PARTIES STIPULATE OR  
13 UPON A SHOWING THAT THIS ORDER SHOULD BE MODIFIED TO PREVENT  
14 “MANIFEST INJUSTICE.” Fed. R. Civ. P. 16(e); Local Rule 281(b)(10).

15 A. Plaintiff’s Witnesses

- 16 1. Plaintiff
- 17 2. Correctional Officer Sgt. Juarez
- 18 3. Correctional Officer Swansey
- 19 4. Correctional Officer Martinez
- 20 5. Correctional Officer Brian
- 21 6. Registered Nurse Campos
- 22 7. Defendant Moonga
- 23 8. Defendant Akanno
- 24 9. Dr. Dennis Martinez
- 25 10. Nurse Bedi
- 26 11. Inmate Ortiz, H-91993
- 27 12. Inmate Martinez, H-18859

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1           B. Defendants' Witnesses

- 2           1. Defendant Moonga
- 3           2. Defendant J. Akanno, M.D.
- 4           3. Chief Medical Officer P. Lopez, M.D.
- 5           4. Custodian of records for CDCR or designated representative
- 6           5. Custodian of medical records for CDCR or designated representative
- 7           6. Defendants reserve the right to supplement their list of witnesses to include rebuttal
- 8           witnesses.

9           All witnesses are to be made available at **9:30 a.m.** on the day of trial.

10 **VIII. Exhibits**

11           The following is a list of documents or other exhibits that the parties expect to offer at

12 trial. NO EXHIBIT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE

13 ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS

14 ORDER SHOULD BE MODIFIED TO PREVENT "MANIFEST INJUSTICE." Fed. R. Civ. P.

15 16(e); Local Rule 281(b)(11).

16           A. Plaintiff's Exhibits

- 17           1. Plaintiff's complaint filed on February 12, 2009
- 18           2. Health Care Service Request Form – CDC 7362 dated August 12, 2007
- 19           3. Health Care Service Request Form – CDC 7362 dated August 21, 2007
- 20           4. Health Care Service Request Form – CDC 7362 dated August 28, 2007
- 21           5. Physician's Orders CDC 3221 Form dated August 28, 2007, at 1900 hours
- 22           6. CDC 7254 Form dated August 29, 2007, at 1300 hours
- 23           7. CDC 7254 Form dated August 30, 2007, at 7:30 a.m.
- 24           8. Emergency Care Flow Sheet – CDC 7403 dated August 30, 2007, at 0955 hours
- 25           9. Kern Valley State Prison – Laboratory Results dated August 30, 2007, printed at
- 26           12:03
- 27           10. Emergency Care Flow Sheet – CDC 7403 dated August 30, 2007, at 1215 hours
- 28           11. CDC 7230 Form dated August 30, 2007, at 1640 hours

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- 12. Physician's Orders – CDC 7221 Form dated August 30, 2007, at 1650 hours
- 13. Emergency Care Flow Sheet – CDC 7403 Form dated August 30, 2007, at 1840 hours
- 14. Physician's Orders – CDC 7221 Form dated August 30, 2007, at 1850 hours
- 15. Laboratory Report dated June 23, 2004
- 16. Emergency Room Report from CHW Central California Mercy Hospital Bakersfield dated August 30, 2007
- 17. Physician Request for Services Form – CDC 7243 Form dated October 31, 2007
- 18. Physician Request for Services Form – CDC 7243 Form dated August 20, 2007
- 19. Laboratory Report dated October 17, 2007, printed at 12:52 hours
- 20. All CDCR Medical Laboratory Reports dated August 30, 2007 through November 2007
- 21. All CDCR Physician Orders, Notes and Medical Forms dated August 2007 through November 2007
- 22. All CHW Central California Mercy Hospital Bakersfield Medical Forms dated August 30, 2007 through September 21, 2007
- 23. All CHW Central California Mercy Hospital Bakersfield Medical Forms dated October 24, 2007 through October 31, 2007
- 24. All Laboratory Reports from CHW Central California Mercy Hospital Bakersfield dated August 30, 2007 through September 21, 2007
- 25. All Laboratory Reports from CHW Central California Mercy Hospital Bakersfield dated October 24, 2007 through October 31, 2007
- 26. All CHW Central California Mercy Hospital Bakersfield Physician Orders, Reports, Notes dates August 30, 2007 through September 21, 2007
- 27. All CHW Central California Mercy Hospital Bakersfield Physician Orders , Reports, Notes dated October 24, 2007 through October 31, 2007
- 28. All Inmate Appeal Assignment Notice
- 29. CDCR Department Operations Manual ("DOM") Nursing Services Program Chapter 9



1 30. CDCR/DOC Operation Procedures Manual (“O.P.”)

2 B. Defendants’ Exhibits

3 1. Portions of Plaintiff’s central file, including, but not limited to:

- 4 a. Abstract of Judgment
- 5 b. All Responses to Inmate Grievance Log No. KVSP-0-08-00176 and
- 6 attachments
- 7 c. CDC 128-c
- 8 d. CDC 7219
- 9 e. CDC 154-Bed Moves

10 2. Portions of Plaintiff’s medical and mental health records from the California  
11 Department of Corrections, including, but not limited to:

- 12 a. Physician or Interdisciplinary Progress Notes
- 13 b. Physicians’ Orders
- 14 c. Mercy Medical Hospital Records dated 2007
- 15 d. Mercy Operating Room Nurse’s Notes
- 16 e. CDC 7292 Health Record Reports
- 17 f. Physicians Progress Notes, dated August – December 2007
- 18 g. Pathology Reports
- 19 h. Outpatient Medication Administration Records
- 20 i. Physicians Progress Notes dated 2007
- 21 j. Pathology Reports
- 22 k. Outpatient Medication Administration Records
- 23 l. Physicians Progress Notes, dated 2007

24 3. CDCR policies, regulations and memoranda, including:

- 25 a. Department of Corrections Operation Manual Section 52020 et seq.
- 26 b. Duty Statements for former Medical Technical Assistant
- 27 c. Health Care procedures

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1 The parties are to exchange exhibits that are not already in the possession of the other  
2 party, if they have not already done so, by **February 7, 2014**.

3 **IX. Discovery Documents to Be Used At Trial**

4 Plaintiff intends to use the following discovery documents:

- 5 1. Plaintiff's deposition
- 6 2. Defendants' answer to the complaint
- 7 3. Plaintiff's First Request for Interrogatories to Defendant G. Moonga dated May  
8 19, 2010
- 9 4. Plaintiff's First Request for Admissions to Defendant G. Moonga dated May 19,  
10 2010
- 11 5. Plaintiff's First Request for Production of Documents dated May 19, 2010
- 12 6. Defendant G. Moonga's Response to Interrogatories Propounded by Plaintiff  
13 Sammy Zamaro dated July 1, 2010
- 14 7. Defendant G. Moonga's Response to Request for Admissions Propounded by  
15 Plaintiff Sammy Zamaro dated July 1, 2010
- 16 8. Defendant G. Moonga's Response to Request for Production of Documents  
17 Propounded by Plaintiff Sammy Zamaro dated July 1, 2010
- 18 9. Defendant G. Moonga's Request for Production of Documents dated May 14,  
19 2010
- 20 10. Defendant G. Moonga's Interrogatories Propounded to Plaintiff Sammy Zamaro  
21 dated May 14, 2010
- 22 11. Defendant Jonathan F. Akanno Request for Production of Documents dated May  
23 14, 2010
- 24 12. Defendant Jonathan F. Akanno Interrogatories Propounded to Plaintiff Sammy  
25 Zamaro dated May 14, 2010
- 26 13. Plaintiff Sammy Zamaro Response to Request for Production of Documents  
27 Propounded by Defendant G. Moonga dated July 26, 2010

1 14. Plaintiff Sammy Zamaro Response to Interrogatories Propounded by Defendant  
2 G. Moonga dated July 26, 2010

3 15. Plaintiff Sammy Zamaro Response to Request for Production of Documents  
4 Propounded by Defendant Jonathan F. Akanno dated July 26, 2010

5 16. Plaintiff Sammy Zamaro Response to Interrogatories Propounded by Defendant  
6 Jonathan F. Akanno dated July 26, 2010

7 Defendants reserve the right to offer documents produced by them in the course of  
8 discovery, including Plaintiff's deposition transcript and discovery responses.

9 **X. Further Discovery or Motions**

10 Defendants intend to file motions in limine.

11 **XI. Stipulations**

12 None.

13 **XII. Amendments/Dismissals**

14 None.

15 **XIII. Settlement Negotiations**

16 The parties are scheduled to participate in a settlement conference on February 13, 2014,  
17 before Magistrate Judge Kellison in Sacramento, California.

18 **XIV. Agreed Statement**

19 None.

20 **XV. Separate Trial of Issues**

21 As ordered during the telephonic trial confirmation hearing, the punitive damages phase,  
22 if any, will be bifurcated.

23 **XVI. Impartial Experts - Limitation of Experts**

24 None.

25 **XVII. Attorneys' Fees**

26 Plaintiff is proceeding pro se and is not entitled to attorney's fees. Defendants may seek  
27 attorneys' fees and costs if Defendants prevail at trial.

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1 **XVIII. Further Trial Preparation**

2 A. Motions in Limine Hearing

3 Any party may file a motion in limine, which is a procedural mechanism to limit in  
4 advance testimony or evidence in a particular area. United States v. Heller, 551 F.3d 1108, 1111  
5 (9th Cir. 2009) (quotation marks omitted). In the case of a jury trial, the Court's ruling gives  
6 Plaintiff and Defendants' counsel advance notice of the scope of certain evidence so that  
7 admissibility is settled before attempted use of the evidence before the jury. Id. at 1111-12  
8 (quotation marks omitted). Although the Federal Rules do not explicitly provide for the filing of  
9 motions in limine, the Court has the inherent power to hear and decide such motions as a  
10 function of its duty to expeditiously manage trials by eliminating evidence that is clearly  
11 inadmissible for any purpose. Luce v. United States, 469 U.S. 38, 41 n.4 (1984).

12 The deadline for service and filing of motions in limine is **February 7, 2014**. The  
13 deadline for service and filing of an opposition, if any, is **February 18, 2014**. An order may be  
14 issued prior to trial resolving these motions. Otherwise, a motion in limine hearing will be held  
15 on **February 25, 2014, at 9:00 a.m.** in Courtroom 8 (BAM), before the undersigned.

16 B. Other

17 The parties are relieved of their obligation under Local Rule 285 to file trial briefs. If the  
18 parties wish to submit a trial brief, they must do so on or before **February 25, 2014**. The Court  
19 will prepare the verdict form, which the parties will have the opportunity to review on the  
20 morning of trial. If the parties wish to submit a proposed verdict form, they must do so on or  
21 before **February 25, 2014**.

22 Defendants may file proposed jury instructions as provided in Local Rule 163 on or  
23 before **February 25, 2014**. Defendants are only required to file proposed jury instructions  
24 relating to the substantive law underlying this action. If Plaintiff wishes to file proposed jury  
25 instructions, he must do so on or before **February 25, 2014**.

26 In selecting proposed instructions, the parties shall use Ninth Circuit Model Civil Jury  
27 Instructions to the extent possible. All jury instructions must be submitted in duplicate: One set  
28 will indicate which party proposes the instruction, with each instruction numbered or lettered,

1 and containing citation of supporting authority, and the customary legend, *i.e.*, “Given, Given as  
2 Modified, or Refused,” showing the Court’s action, with regard to each instruction. One set will  
3 be an exact duplicate of the first, except it will not contain any identification of the party offering  
4 the instruction or supporting authority or the customary legend of the Court's disposition. If  
5 filing proposed instructions, Defendants shall provide the Court with a copy of their proposed  
6 jury instructions via e-mail at: bamorders@caed.uscourts.gov.

7 Proposed voir dire questions, if any, shall be filed on or before **February 25, 2014**,  
8 pursuant to Local Rule 162.

9 The parties may serve and file a non-argumentative, brief statement of the case which is  
10 suitable for reading to the jury at the outset of jury selection on or before **February 25, 2014**.  
11 The Court will consider the parties’ statements but will draft its own statement. The parties will  
12 be provided with the opportunity to review the Court’s prepared statement on the morning of  
13 trial.

14 The original and two copies of all trial exhibits along with exhibit lists shall be submitted  
15 to Courtroom Deputy Harriet Herman no later than **February 25, 2014**. Defendants’ exhibits  
16 shall be submitted in binder form. All of Plaintiff’s exhibits shall be pre-marked with the prefix  
17 “PX” and labeled sequentially beginning with 1 (e.g., PX-1, PX-2, etc.). All of Defendants’  
18 exhibits shall be pre-marked with the prefix “DX” and labeled sequentially beginning with 1  
19 (e.g., DX-1, DX-2, etc.).

20 \*\*\*

21 FAILURE TO COMPLY WITH ALL PROVISIONS OF THIS ORDER MAY BE GROUNDS  
22 FOR THE IMPOSITION OF SANCTIONS, INCLUDING POSSIBLE DISMISSAL OF THIS  
23 ACTION OR ENTRY OF DEFAULT, ON ANY AND ALL COUNSEL AS WELL AS ON  
24 ANY PARTY WHO CAUSES NON-COMPLIANCE WITH THIS ORDER.

25 IT IS SO ORDERED.

26 Dated: January 29, 2014

27 /s/ Barbara A. McAuliffe  
28 UNITED STATES MAGISTRATE JUDGE