

1 affirmative defense as required under Federal Rules of Civil Procedure 8(b); (2) GBS failed to
2 disclose evidence or witnesses in support of a set-off affirmative defense, as required under
3 Federal Rules of Civil Procedure 16(a)(1); (3) argument or evidence related to set-off requires
4 expert testimony, and GBS has not disclosed and does not have an expert to present a proper set-
5 off analysis; (4) any evidence GBS could present on a set-off is inherently speculative, and (5)
6 allowing GBS to claim ‘offsetting’ damages without having previously disclosed such evidence
7 to the SJVIA, would result in unfair prejudice to the SJVIA, would confuse the issues, would
8 mislead the jury, and would result in wasted time and undue delay in violation of Federal Rules of
9 Evidence, 403.” (ECF No. 118, p. 2.)

10 However, on February 4, 2020, the Court granted the SJVIA’s “Motion for
11 Reconsideration Re: the Court’s Ruling (1) Denying Plaintiff’s Motion *in Limine* No. 2 to
12 Exclude Argument or Evidence of Collateral Source Payments; and (2) Granting Defendant’s
13 Motion *in Limine* No. 1 that Evidence of premiums SJVIA has Charged to Make up for its Deficit
14 Position is Relevant and Admissible.” (ECF No. 117.) In granting the motion for reconsideration,
15 the Court reversed its prior ruling which had held the collateral source rule inapplicable to
16 evidence of premiums the SJVIA collected since December 31, 2016, to make up for an alleged
17 funding shortfall. Through its order granting the motion for reconsideration, the Court granted
18 the SJVIA’s Motion *in Limine* No. 2 on collateral source payments while simultaneously denying
19 GBS’s cross motion seeking an affirmative ruling that evidence of premiums collected to make
20 up a funding shortfall was not precluded by the collateral source rule. The Court specifically
21 found that “the collateral source rule should apply in this case to prevent evidence of premiums or
22 payments from members or participating entities after December 31, 2016 to reduce or eliminate
23 plan underfunding that GBS allegedly caused.” (ECF No. 125, p. 14.) As the SJVIA’s motion *in*
24 *limine* seeks to exclude that same evidence for different reasons, the Court finds the motion is
25 moot and DENIES it on that basis.

26 \\\

27 \\\

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Accordingly, for the reasons set forth above, the SJVIA’s “Motion *in Limine* to Exclude Evidence or Argument of Set-Off or Other Unpled Affirmative Defenses” (ECF No. 118) is DENIED AS MOOT.

IT IS SO ORDERED.

Dated: February 11, 2020

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE