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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

No. 2:90-cv-0520 LKK JFM P

vs.

EDMUND G. BROWN, JR., et al.,

Defendants.

ORDER

_____ /

Pursuant to court order, this matter came on for status conference on July 31, 2013 to address matters related to scheduling evidentiary hearing on pending motions filed by plaintiffs. Michael Bien, Esq., appeared as counsel for plaintiffs. Patrick R. McKinney, Deputy Attorney General, appeared as counsel for defendants.

The three motions at bar raise issues concerning (1) access to intermediate inpatient hospital care for class members on death row at San Quentin State Prison (San Quentin); (2) the use of segregated housing and administrative segregation for members of the plaintiff class; and (3) use of force and disciplinary proceedings involving members of the plaintiff class. At the status conference, given considerations of the court’s calendar and witness availability, with one caveat discussed infra the parties agreed that the first and third sets of issues should be heard together and agreed to try those issues on September 26 and 27, 2013,

1 October 1 and 2, 2013, October 16 and 17, 2013, and, if necessary, the week of October 22
2 through 25, 2013. The court has reserved all of those dates. The court has also reserved
3 November 5-8, 13-15¹, and 19-22, 2013 for evidentiary hearing on issues presented by the
4 administrative segregation motion.²

5 The parties jointly requested an extension of the deadlines set in the court's July
6 10, 2013 order for the filing of plaintiffs' reply briefs and completion of depositions to an
7 including August 23, 2013. That will be the order of the court.

8 At the status conference, counsel for defendants suggested that, in defendants'
9 view, there are no factual disputes presented by the use of force/disciplinary proceedings motion
10 and that following the filing of the reply brief that motion be submitted for oral argument only.
11 If plaintiffs and defendants agree that the motion may be submitted without an evidentiary
12 hearing, not later than fourteen days after the filing of plaintiffs' reply brief they shall file a
13 stipulation so stating together with a joint statement of undisputed facts.

14 In their opposition to plaintiffs' use of force motion, defendants request that the
15 court reconsider its April 5, 2013 decision to strike the report of defendants' expert, Steve J.
16 Martin (ECF No. 4279), reinstate the report, "and give it full evidentiary weight." Defs.' Opp. to
17 Motion Related to Use of Force and Disciplinary Measures, filed July 24, 2013 (ECF No. 4704)
18 at 18. In the alternative, defendants contend that if the court "affirms its prior decision striking
19 Mr. Martin's report, it must dismiss Plaintiffs' motion based on lack of evidence" because
20 "Plaintiffs' expert relies heavily on isolate use-of-force incidents identified and question by Mr.

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23 ¹ The parties understand that November 13-15, 2013 will not be available if a criminal
24 case presently set for trial on those dates in fact proceeds to trial as set.

25 ² The parties estimated a total of forty hours, with perhaps additional hours required
26 depending on rebuttal evidence, for hearing on all of the matters at bar. At the suggestion of the
parties, ten days have been reserved for only two of the three matters, and nine days have been
reserved for the remaining matter. Recognizing the importance of a thorough exploration of all
relevant issues, the court also encourages counsel to be efficient in their use of court time.

1 Martin while developing his initial report.” Id. Defendants contend neither party should be
2 permitted to rely on evidence identified initially in the Martin report stricken by the court. Id.

3 Defendants have appealed this court’s April 5, 2013 order. See Notice of Appeal
4 filed May 3, 2013 (ECF No. 4577). The appeal is pending in the United States Court of Appeals
5 for the Ninth Circuit. See USCA Docket Number 13-15931. Even if this court were inclined to
6 reconsider its decision to strike Mr. Martin’s report, which it is not, the filing of the notice of
7 appeal from the April 5, 2013 order may preclude it from doing so. See City of Los Angeles,
8 Harbor Div. v. Santa Monica Baykeeper, 254 F.3d 882, 885-86 (9th Cir. 2001) and cases cited
9 therein (jurisdiction over matters appealed from “is transferred from a district court to a court of
10 appeals upon the filing of a notice of appeal.”) Defendants’ request for reinstatement of the
11 stricken report of Steve J. Martin will be denied. The court will not, at this time, reach the
12 question of whether denial of defendants’ request to reconsider the order striking Mr. Martin’s
13 report requires some limitation on the admissibility of the report of plaintiffs’ expert, Eldon
14 Vail.³

15 In accordance with the above, IT IS HEREBY ORDERED that:

16 1. The time for completion of discovery and filing of plaintiffs’ reply briefs is
17 extended to August 23, 2013.

18 2. Hearing on plaintiffs’ motions concerning access to intermediate inpatient
19 hospital care for class members on death row at San Quentin State Prison and use of force and
20 disciplinary proceedings involving members of the plaintiff class is set to commence on
21 September 26, 2013 at 9:15 a.m. and shall continue, as necessary on September 27, 2013,
22 October 1 and 2, 2013, October 16 and 17, 2013, and October 22 through 25, 2013, until
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24 ³ The parties are informed that the court would be receptive to a new report from Mr.
25 Martin prepared following one or more new tours conducted in the presence of plaintiffs’
26 counsel. In view of the disputes that have attended preparation of expert reports on this issue,
the parties may wish to explore the feasibility of one or more joint prison tours by Mr. Martin
and Mr. Vail followed by submission of new reports that rest on the same factual foundation.


1 completed. Motions in limine for said motions shall be filed not later than September 12, 2013,
2 oppositions shall be filed not later than September 19, 2013, and motions in limine will be heard
3 at the start of the hearing on September 26, 2013.

4 3. If plaintiffs and defendants agree that plaintiffs' motion concerning use of
5 force and disciplinary proceedings may be submitted without an evidentiary hearing, not later
6 than September 6, 2013, they shall file a stipulation so stating together with a joint statement of
7 undisputed facts.

8 4. Hearing on plaintiffs' motion concerning administrative segregation is set to
9 commence on November 5, 2013 at 10:30 a.m. and shall continue, as necessary, on November 6-
10 8, 13-15, and 19-22, 2013. Motions in limine for said motion shall be filed not later than
11 October 22, 2013, oppositions to motions in limine shall be filed not later than October 29, 2013,
12 and motions in limine will be heard at the start of the hearing on November 5, 2013.

13 5. Defendants' July 24, 2013 request for reconsideration of the court's April 5,
14 2013 order striking the report of Steve J. Martin is denied.

15 DATED: August 1, 2013.

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19 LAWRENCE K. KARLTON
20 SENIOR JUDGE
21 UNITED STATES DISTRICT COURT
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