

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

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

FORREST M. RICHARDSON,)	
)	2:10-cv-00025-GEB-EFB
Plaintiff,)	
)	
v.)	<u>ORDER RE: PLAINTIFF'S MOTION</u>
)	<u>IN LIMINE NO. 5*</u>
J. MENDEZ,)	
)	
Defendant.)	
_____)	

Plaintiff seeks to exclude "any testimony or argument from or related to [Plaintiff's] treating physicians to the extent that such testimony or argument purports to link [Plaintiff's] complaints of injuries from the subject incident with the possibility of litigation over those injuries or that incident." (Pl.'s Mot. in Limine No. 5, 1:20-23, ECF No. 87.) Plaintiff indicates that "[a]t least one of [Plaintiff's treating] physicians, Dr. Jason Huffman, has remarked in his notes that he believes that [Plaintiff's] medical complaints of injuries following that incident may be motivated at least in part by the fact that [Plaintiff] has filed claims against CDCR officials . . . arising from this incident[,]" and argues that "[s]uch opinions are inadmissible as lacking in foundation and unduly prejudicial." (Id. at 2:9-13.) Plaintiff further argues:

There is no basis upon which a physician can conclude, to a reasonable degree of medical

* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 certainty, that a patient's injuries are motivated
2 by litigation. To be sure, it might be permissible
3 for a physician to opine on the degree of pain or
4 other effects that might be reasonably attributed
5 to a physical injury, or to render an opinion as to
6 whether a particular patient's subjective
7 complaints are out of the ordinary or could be
8 exaggerated in light of the clinical findings the
9 physician makes about the patient's physical
10 injuries. However, the supposed underlying
11 motivation for those alleged disparities or
12 exaggerations - such as the fact that the patient
13 is involved in litigation - is beyond the
14 physician's expertise and is without foundation for
15 him or her to opine about. Physicians are supposed
16 to diagnose and treat injuries and can reasonably
17 be expected to consider whether complaints are
18 exaggerated, but they should not be permitted to
19 formulate opinions about the alleged reasons for
20 any purported exaggeration by the patient. The
21 latter is wholly outside their function and
22 expertise.

23 (Id. at 3:20-4:2.)

24 Defendant rejoins:

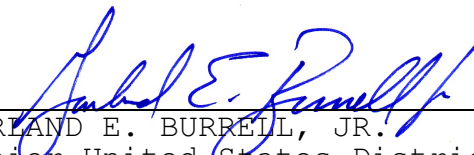
25 As Plaintiff's former treating physician, Dr.
26 Huffman may present his opinion of causation,
27 diagnosis and prognosis derived from his treatment
28 of Plaintiff. Defendant disclosed Dr. Huffman as an
29 un-retained expert. He will not be testifying
30 pursuant to Rule 702, but rather as a percipient
31 witness. Dr. Huffman's opinions were formed during
32 the course of his evaluation and he may testify as
33 to his observations made during the same.

34 The evidence and testimony of Dr. Huffman's
35 opinion is not barred by Rule 403. The probative
36 value of such testimony far outweighs the danger of
37 undue prejudice or misleading the jury. Plaintiff
38 claims to have suffered permanent injuries to his
39 back (and right knee and shoulder) as a result of
40 the incident on February 13, 2007. Defendant
41 submits that Plaintiff's complaints were not
42 attributable to the subject incident. . . . Dr.
43 Huffman was the first orthopedist to evaluate
44 Plaintiff after the incident. . . . Thus, the
45 opinion of Dr. Huffman, and any other treating
46 physician, as to causation, diagnosis, and
47 prognosis derived from the treatment of Plaintiff
48 has high probative value.

49 (Def.'s Opp'n to Pl.'s Mots. in Limine 13:12-14:1, ECF No. 92.)

1 Since it is unclear what precise evidence is involved in this
2 motion, it is denied. See Weiss v. La Suisse, Soc'y D'Assurances Sur La
3 Vie, 293 F. Supp. 2d 397, 407-08 (S.D.N.Y. 2003) (denying motion to
4 exclude evidence for a "lack[] of specificity[,] " stating "[n]o
5 particular documents or testimony have been identified in the motion");
6 see also Lego v. Stratos Int'l, Inc., No. C 02-03743 JW, 2004 WL
7 5518162, at *1 (N.D. Cal. Nov. 4, 2004) (denying in limine motion
8 "because the requested relief is too vague").

9 Dated: August 16, 2013

10
11 
12 _____
13 GARIAND E. BURRELL, JR.
14 Senior United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28