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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM DENIS MCCANN,  
Plaintiff,  
v.  
DAVID JUPINA, et al.,  
Defendants.

Case No. [16-cv-03244-JSC](#)

**ORDER RE MOTIONS IN LIMINE**

Re: Dkt. Nos. 85, 86, 87, 88, 90

United States District Court  
Northern District of California

Plaintiff William D. McCann sues Defendants Dr. David Jupina and Tri Valley Orthopedics & Sports Medicine Group, Inc. for medical malpractice. Now pending before the Court is the parties' motions in limine. (Dkt. Nos. 85, 86, 87, 88, and 90.) Having had the opportunity to review the parties' briefing and having had the benefit of oral argument at the pretrial conference on October 12, 2017, the Court denies Defendants' motions in limine one and two, and grants Defendants' motion three as stated on the record. The Court also grants Defendants' motion in limine four: the MIRCA applies.

The Court's tentative view is to deny Plaintiff's motion in limine one to exclude character evidence. While the motion did not identify any particular evidence, at oral argument Plaintiff explained he was seeking to exclude a 2005 state conviction for filing a false tax return. The Court's tentative view is that the conviction is admissible pursuant to Federal Rule 609(a)(2) which permits attacking a witness's character for truthfulness by requiring the admittance of a criminal conviction "for any crime regardless of the punishment...if the court can readily determine that establishing the elements of the crime required proving – or a witness admitting – a dishonest act or false statement. See U.S. v. Leyva, 659 F.2d 118, 121 (9th Cir. 1981) (defendant's prior conviction of misdemeanor welfare fraud would have been admissible to impeach and Rule

1 403 has no application due to the specificity of Rule 609(a)(2)). The Court notes, however, that  
2 Rule 609(b) provides that if a conviction is more than 10 years old, or more than 10 years has  
3 elapsed since the release from confinement, whichever is later, a Rule 403(b) analysis does apply  
4 and the proponent of using the conviction must give written notice of his intent to do so. See Fed.  
5 R. Evid. 609(b); American Home Assur. Co. v. American President Lines, Ltd., 44 F.3d 774, 779  
6 (9th Cir. 1994).

7 Plaintiff may file a supplemental brief on the admissibility of the conviction by October  
8 19, 2017. Defendants shall file a response by October 26, 2017.

9 This Order disposes of Docket Nos. 85, 86, 87, and 88.

10 **IT IS SO ORDERED.**

11 Dated: October 12, 2017

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14 JACQUELINE SCOTT CORLEY  
15 United States Magistrate Judge  
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