

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Asora v. Ugwueze, et al.

Asora · No. 1:19-cv-01350-JLT-CDB · Decided April 22, 2025

SUMMARY

This document is a Second Amended Pretrial Order in Aerith Natalia Asora v. G. Ugwueze, et al., a federal civil rights action in the Eastern District of California involving alleged deliberate indifference to serious medical needs, medical negligence, and battery. It identifies the parties’ undisputed and disputed facts and legal issues, anticipated witnesses and exhibits, discovery materials, requested relief, and trial procedures. The order sets a jury trial for August 26, 2025, and establishes related filing and exchange deadlines.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jennifer L. Thurston
DECIDED	April 22, 2025
DOCKET	1:19-cv-01350-JLT-CDB
DISPOSITION	other
PROCEDURAL POSTURE	Second amended pretrial order governing a pending 42 U.S.C. § 1983 prisoner civil-rights action and related state-law medical-negligence and battery claims before a scheduled jury trial.
STANDARD OF REVIEW	For motions in limine, the court stated that evidence should be barred only when the moving party establishes that it is clearly inadmissible for any valid purpose. For appointment of an expert under Federal Rule of Evidence 706, the court stated that appointment is appropriate only when an expert would assist the trier of fact in deciding an issue or understanding specialized evidence, and not to act as a party advocate or circumvent the in forma pauperis statute.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Aerith Natalia Asora v. G. Ugwueze, Arietta, Hashemi, Igbinosa, Kokor, Pacheco

TOPICS

civil procedure

discovery dispute

expert testimony

prisoners rights

PRACTICE AREAS

civil rights

prisoner civil rights

medical negligence

evidence

civil procedure

QUESTIONS PRESENTED

1. What issues, facts, witnesses, exhibits, and deadlines should govern the upcoming jury trial?
2. What standard should govern anticipated motions in limine?
3. Whether Plaintiff had shown grounds for appointment of an impartial medical expert under Federal Rule of Evidence 706.
4. Whether Plaintiff was entitled to appointment of counsel to assist with locating and presenting witnesses.
5. Whether Plaintiff, proceeding pro se, was entitled to attorney's fees.

HOLDINGS

1. A motion in limine should be granted and the challenged evidence barred only if the moving party establishes that the evidence is clearly inadmissible for any valid purpose.
2. Plaintiff had not demonstrated that appointment of an impartial expert was necessary at that time, so the request was denied without prejudice to filing a formal motion within the applicable motion-in-limine deadlines.
3. Plaintiff's renewed request for appointment of counsel was denied for the reasons stated in the court's prior orders.
4. Plaintiff, proceeding pro se, is not entitled to attorney's fees.

KEY QUOTATIONS

"The court will grant a motion in limine, and thereby bar use of the evidence in question, only if the moving party establishes that the evidence clearly is not admissible for any valid purpose." (at 6)

"Expert witnesses should not be appointed where they are not necessary or significantly useful for the trier of fact to comprehend a material issue in a case." (at 17)

"The assistance of an expert witness would be unnecessary under these circumstances." (at 18)

FACTUAL BACKGROUND

Plaintiff is incarcerated and was housed at the California Substance Abuse Treatment Facility in Corcoran from approximately January 2015 through December 2016. She alleges that prison medical providers were deliberately indifferent to serious medical needs, committed medical negligence, and that Defendant Ugwueze committed battery. The disputed factual matters include the adequacy of medical treatment, medication-related injuries and allergic reactions, diagnosis and treatment of pancreatic and spinal conditions, and whether providers caused or failed to respond to Plaintiff's injuries.

PROCEDURAL HISTORY

The court held a pretrial conference on July 15, 2024, and issued an amended pretrial order on August 21, 2024. After continuing the trial because Plaintiff anticipated major surgery, the court permitted limited additional discovery but denied Defendants' request to file a summary-judgment motion. The court issued this second amended pretrial order setting trial deadlines, identifying undisputed and disputed matters, regulating witnesses and exhibits, addressing anticipated motions in limine, and denying Plaintiff's renewed requests for appointed counsel and an appointed expert without prejudice to a formal expert motion.

DISPOSITION

other

CASES CITED

- Luce v. United States, 469 U.S. 38, 40 n. 2 (1984)
- Jonasson v. Lutheran Child and Family Services, 115 F.3d 436, 440 (7th Cir. 1997)
- Arellano Jr. v. Hodge, 2017 WL 2692875, at *1 (S.D. Cal. Jun. 22, 2017)
- Gorton v. Todd, 793 F. Supp. 2d 1171, 1181 (E.D. Cal. 2011)
- Dixon v. Ylst, 990 F.2d 478, 480 (9th Cir. 1993)
- Estelle v. Gamble, 429 U.S. 97, 104 (1983)
- Torbert v. Gore, 2016 WL 3460262, at *2 (S.D. Cal. Jun. 23, 2016)
- Levi v. Dir. Of Corr., 2006 WL 845733, at *1 (E.D. Cal. Mar. 31, 2006)
- Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2002)
- McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992)
- WMX Technologies, Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc)
- Hadsell v. IRS, 107 F.3d 750, 752 (9th Cir. 1997)
- Tedder v. Odel, 890 F.2d 210, 211-12 (9th Cir. 1989) (per curiam)
- Kay v. Ehrler, 499 U.S. 432, 435 (1991)

OPINION

(PC) Asora v. Ugwueze

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 AERITH NATALIA ASORA,) Case No.: 1:19-cv-01350-JLT-CDB) 12 Plaintiff,)
SECOND AMENDED PRETRIAL ORDER) 13 v.) Deadlines:) 14 G. UGWUEZE, et al.,)
Motions in Limine Filing: July 8, 2025) Oppositions to Motions in Limine: July 18, 2025 15
Defendants.)) Trial Submissions: August 11, 2025 16)) Jury trial: August 26, 2025, at 8:30 a.m.,

3-4 days 17) estimate 18 Plaintiff brings this 42 U.S.C. § 1983 action against defendants Arietta, Hashemi, Igbinosa, 19 Kokor and Ugwueze, with claims arising under the Eighth Amendment for deliberate indifference to 20 serious medical needs, for medical negligence against those defendants plus defendant Pacheco, and 21 for battery against defendant Ugwueze. 22 On July 15, 2024, in anticipation of a November 13, 2024 jury trial, the Court conducted a 23 pretrial conference via Zoom videoconferencing. Plaintiff Aerith Natalia Asora appeared pro se; James 24 W. Walter appeared as counsel for defendants. On August 21, 2024, the Court issued an amended 25 pretrial order. (Doc. 91.) On September 30, 2024, in response to an unopposed motion from Plaintiff 26 indicating that she anticipated undergoing major surgery, the Court continued the trial to August 26, 27 2025, and remanded to the assigned magistrate judge other scheduling matters, including a Defense 28 request to re-open discovery on a limited issue. (Doc. 94.) On November 25, 2024, the magistrate 1 judge granted Defendants' request for discovery and denied their request to file a summary judgment 2 motion. (Doc. 97.) Considering the above, the Court issues this second amended pretrial order.

3 A. JURISDICTION/ VENUE

4 This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 and 5 supplemental jurisdiction for Plaintiff's claims arising under state law pursuant to 28 U.S.C. § 1367. In 6 addition, the events that gave rise to this action occurred in Corcoran, California. Accordingly, venue 7 is proper in the United States District Court for the Eastern District of California. See 28 U.S.C. 8 § 1391.

9 B. JURY TRIAL

10 Defendants demanded a jury trial in this matter. (Doc. 30.) The jury trial will consist of eight 11 jurors.

12 C. UNDISPUTED FACTS

13 Plaintiff identifies the following undisputed facts: 14 1. Plaintiff does not dispute jurisdiction. 15 2. Plaintiff acknowledges that defendants demanded a jury by trial, plaintiff is unaware of why 16 there are 8 jurors and not 12 but does not contest. 17 3. Plaintiff has been incarcerated since July 20th, 2007, not 2009 for a murder committed on

18 July 19th, 2007 in San Diego.

19 4. No dispute as to plaintiff's previous name and gender. 20 5. Plaintiff does not dispute being housed at CSATF in 2015-2016. 21 6. No dispute that plaintiff was previously housed at CSP-LAC. 22 7. No dispute, plaintiff was transferred to VSP and had spinal surgery. 23 Defendants identify the following undisputed facts: 24 1. Plaintiff has been incarcerated since 2009 after being convicted in San Diego County of 25 murder. 26 2. Plaintiff was previously known as Nathaniel Gann. Medical providers referred to Plaintiff 27 with male pronouns prior to Plaintiff receiving gender affirmation care, unaware Plaintiff 28 was transgender. 1 3. Plaintiff was housed at the California Substance Abuse Treatment Facility (SATF) in 2 Corcoran, California from January 2015 until December 29, 2016. 3 4. While at SATF, Plaintiff received medical care from the

doctors and nurses named in this 4 action, excepting Dr. Ugwueze, Chief Medical Officer at SATF, who was not involved in 5 her day-to-day care. 6 5. Prior to being housed at SATF, Plaintiff was incarcerated at California State Prison, Los 7 Angeles in Lancaster, California. 8 6. Medical personnel at the prison in Lancaster completed forms that listed Plaintiff's 9 medications and diagnoses. 10 7. Following her incarceration at SATF, Plaintiff was transferred to Valley State Prison where 11 she underwent a laminectomy and a discectomy of her back in February 2017.

12 D. DISPUTED FACTS

13 Plaintiff identifies the following disputed facts: 14 1. Defendant Ugwueze may not have been involved in the day-to-day care but was involved 15 in plaintiff's medical care from 1/13/2015 when he first approved non-formulary 16 prescription for Topamax and continued to be involved in plaintiff's care including 17 battering plaintiff physically and involved regularly with plaintiff's medical appeals and 18 dialogue with plaintiff's concerned friends. 19 2. Medical records from CSP-LAC are incomplete, hand-written and do not list all of 20 plaintiff's medications/diagnoses (mostly illegible). 21 3. Plaintiff agrees that many of the items listed by defendants are considered disputed. 22 Defendants identify the following disputed facts: 23 1. Whether Plaintiff sought medical care prior to January 13, 2015, from any SATF 24 healthcare provider. 25 2. Whether medication provided to Plaintiff caused her to become lightheaded and to 26 faint on numerous occasions and to suffer allergic reactions. And relatedly, whether it 27 caused Plaintiff to fall from her upper bunk, sustaining a frank herniation of the L4 28 disc in her spine and leading to surgery. 1 3. Whether Plaintiff was misdiagnosed with gastroesophageal reflux disease, or GERD, 2 rather than a necrotic pancreas, causing years of suffering. 3 4. Whether medical records support most of Plaintiff's claims. 4 5. Whether Plaintiff was diagnosed with epilepsy at the prison in Lancaster. 5 6. Whether Plaintiff's list of allergies included any medications dispensed by SATF 6 doctors. 7 7. Whether Dr. Kokor prescribed appropriate medications for asthma, hypertension, 8 migraine headaches, and depression when Plaintiff began treatment. 9 8. Whether Dr. Kokor's notes reflect Plaintiff's claims of back pain before December 10 2016. 11 9. Whether Dr. Kokor's notes show Plaintiff's most common complaints were 12 gastrointestinal related. And relatedly, whether Kokor referred Plaintiff to a 13 gastrointestinal specialist when her complaints of stomach pain persisted. 14 10. Whether diagnostic testing revealed an abnormality with Plaintiff's pancreas and 15 whether she received appropriate treatment as a result. 16 11. Whether a necrotic pancreas viewed on a CT scan was treated appropriately given 17 Plaintiff's symptoms. 18 12. Whether Dr. Kokor provided Plaintiff with care recommended by the specialist. 19 13. Whether Plaintiff's subsequent care from other SATF medical staff reveals a failure 20 to treat or failure to properly diagnose. 21 14. Whether Drs. Hashemi and Igbinsosa acted appropriately when presented with 22 Plaintiff's complaints of physical pain. And relatedly, whether those doctors kept 23 accurate records. 24 15. Whether the medical records support Plaintiff's complaints and recollections. 25 16. Whether Dr. Kokor's notes reveal medical providers believed Plaintiff was lying 26 about the cause of her injury. 27 17. Whether Dr. Hashemi provided Plaintiff with adequate medical care. 28

18. Whether Dr. Igbinosa and Nurse Pacheco refused Plaintiff medical care. 1 19. Whether Dr. Igbinosa accused Plaintiff of playing an April fool's joke when she 2 complained of a fall on that date. And relatedly, whether Igbinosa continued to 3 provide appropriate treatment for back pain. 4 20. Whether Nurse Arietta denied Plaintiff's requests for emergency care in July 2016. 5 21. Whether further care at SATF included use of a wheelchair and further referrals. 6 22. Whether medications provided and administered by SATF personnel accorded with 7 Plaintiff's medication list.

8 E. DISPUTED LEGAL ISSUES

9 Plaintiff identifies the following disputed legal issues: 10 1. Plaintiff disputes the lack of legal counsel, believing that an appointed attorney is the 11 only way to have a fair trial. 12 2. Plaintiff anticipates an improper motion for dismissal based upon defendants' statement 13 at the pretrial conference that they were going to file a motion for dismissal that is way 14 past the eligibility date set by this court that would prejudice plaintiff.

15 F. DISPUTED EVIDENTIARY ISSUES/MOTIONS IN LIMINE

16 Plaintiff anticipates that defendants will try to introduce improper evidence from her Central 17 File that have no relevance to the case only to prejudice the jury improperly. Further, Plaintiff believes 18 that defendants will attempt to bring forth witnesses that have nothing to contribute to the case only 19 confuse the jury such as medical professionals from VSP or other irrelevant testimony. 20 Plaintiff believes that defendants will improperly address plaintiff's conviction and term of 21 confinement, and plaintiff intends to suppress most of that information or to press for a jointly 22 approved statement on the issue, additionally the plaintiff anticipates filing a motion for how she is to 23 appear in court. Specifically, so that she can dress in a manner that does not represent her as an 24 "inmate" but rather a human being. The Court advises Plaintiff that if she wishes to appear in 25 "street clothes," she must arrange to have the clothes provided to the U.S. Marshal Service in 26 advance of the trial. She must contact the U.S. Marshal Service to determine their procedures as 27 to how and when the clothes are to be provided. 28 Defendants state they anticipate Plaintiff will attempt to introduce documentary evidence that 1 would be inadmissible due to hearsay and other objections. Defendants further anticipate issues 2 concerning the introduction of character evidence, or evidence concerning defendants' care provided 3 to other inmates, leading to objections of improper character evidence, relevance, and a lack of 4 foundation. Defendants also anticipate issues concerning the standard of care and statements 5 purportedly made to Plaintiff by non-witnesses. Defendants anticipate the issues can be addressed by 6 motion in limine. 7 Both parties intend to file motions in limine regarding the evidence to be used at trial. The 8 purpose of a motion in limine is to establish in advance of the trial that certain evidence should not be 9 offered at trial. "Although the Federal Rules of Evidence do not explicitly authorize in limine rulings, 10 the practice has developed pursuant to the district court's inherent authority to manage the course of 11 trials." *Luce v. United States*, 469 U.S. 38, 40 n. 2 (1984); *Jonasson v. Lutheran Child and Family 12 Services*, 115 F. 3d 436, 440 (7th Cir.

1997). The court will grant a motion in limine, and thereby bar 13 use of the evidence in question, only if the moving party establishes that the evidence clearly is not 14 admissible for any valid purpose. Id. The court does not encourage the filing of motions in limine 15 unless they are addressed to issues that can realistically be resolved by the court prior to trial and 16 without reference to the other evidence which will be introduced by the parties at trial. 17 In advance of filing any motion in limine, the parties SHALL meet and confer to 18 determine whether they can resolve any disputes and avoid filing motions in limine. Along with 19 their motions in limine, the parties SHALL file a certification demonstrating the parties have in 20 good faith met and conferred and attempted to resolve the dispute. Failure to provide the 21 certification may result in the court refusing to entertain the motion. 22 Any motions in limine must be filed with the court no later than July 8, 2025. The motion must 23 clearly identify the nature of the evidence that the moving party seeks to prohibit the other side from 24 offering at trial. Any opposition to the motion must be served on the other party and filed with the 25 court no later than July 11, 2025. The Court will not set a hearing on the motions in limine unless, 26 after receiving the motions, it appears a hearing is needed.

27 G. SPECIAL FACTUAL INFORMATION

28 Defendants identify (1) the date, place, and general nature of the incident, and (2) plaintiff's 1 age and the injuries sustained, as special factual information in this action.

2 H. RELIEF SOUGHT

3 Plaintiff 4 Plaintiff seeks money damages. In her First Amended Complaint, plaintiff seeks: "General

5 damages in the amount of \$3,200,000. Special Damages for loss of earning capacity and future 6 medical costs, compensatory damages in the amount of \$5,000,000 for pain and suffering and 7 emotional, psychological, spiritual distress, legal fees, and punitive [sic] damages in the amount of 8 \$250,000.00 from each defendant." 9 Plaintiff contends that defendants do not have any costs associated with this litigation, as the 10 Attorney General's Office is handling the litigation, further plaintiff's stay at CDCR is expected to end 11 in November of 2026 or earlier as she has met the Board of Parole Hearing requirements given her at 12 her consultation (and has 180 day pending credit for more good time). Therefore, defendants are 13 wrong about plaintiff's future earnings as well as medical care to be provided, i.e. plaintiff is in need of 14 a second surgery at least, that CDCR cancelled and she will have to pursue after release, enduring 15 additional pain as well as economic damages. 16 Defendants 17 Defendants seek judgment in their favor and an award of costs. On the other hand, defendants 18 assert that plaintiff "has no bills to pay for the care that was provided to her by CDCR. She further has 19 no wage loss claim. Her general or noneconomic damages are the only damages she may recover."

20 I. ABANDONED ISSUES

21 None.

22 J. WITNESSES

23 1. The following is a list of witnesses that the parties expect to call at trial, including 24 rebuttal
and impeachment witnesses. NO WITNESS, OTHER THAN THOSE LISTED IN THIS
25 SECTION, MAY BE CALLED AT TRIAL UNLESS THE PARTIES STIPULATE OR UPON
A

26 SHOWING THAT THIS ORDER SHOULD BE MODIFIED TO PREVENT “MANIFEST
27 INJUSTICE.” Fed. R. Civ. P. 16(e); Local Rule 281(b)(10). 28 1 Plaintiff’s Witnesses 2 1. Jose
Ibanez 3 2. Alexander Hochstraser 4 3. Matthew Hall 5 4. Mitchell Khan1 6 5. Pamela Cipriotti 7
6. Anthony Hales, N.P. 8 7. Chander P. Malhotra 9 8. Harold D. Segal 10 9. R. Scharffenberg 11
10. Plaintiff 12 Defendants’ Witnesses2 13 1. Catherine Arrieta, R.N., retired 14 2. Ranier
Bansuan, M.D., Valley State Prison 15 3. Harpreet Gil, Valley State Prison 16 4. Nastran Hashemi,
M.D., SATF 17 5. Ngozi Igbinosa, M.D., SATF 18 6. Teresa Jamison, L.V.N., Valley State Prison
19 7. Winfred Kokor, M.D., SATF 20 8. Michelle Pacheco, R.N., SATF 21 9. Katherine Pena,
L.V.N., Valley State Prison 22 10. C. Stronach, R.N., SATF 23 24 1 The Court has ruled on
Plaintiff’s motion (Doc. 70; Doc. 86) for attendance of incarcerated witnesses (Doc. 76). The 25
Court granted the motion as to Alexander Hochstraser and Jose Manuel Ibanez, but denied it as to
two others, including Mathew Hall, because they were not in the custody of the CDCR. Plaintiff
did not seek to have Mitchell Kahn testify at 26 trial (Doc. 70), so he will not be ordered to appear.
Plaintiff may have unincarcerated people testify at trial if they agree to do so voluntarily. The
Court previously advised Plaintiff as to how to have subpoenas issued. This procedure was set
forth 27 in the Court’s order issued on June 5, 2023. (Doc. 68 at 4-5). She did not complete this
procedure. 28 2 Plaintiff objects to defendants’ witnesses for various reasons. However, objections
to witnesses may be made by filing 1 11. Godwin Ugwueze, C.M.E., SATF 2 12. LaKenya Walls,
L.V.N., Valley State Prison 3 2. The court does not allow undisclosed witnesses to be called for
any purpose, 4 including impeachment or rebuttal, unless they meet the following criteria: 5 a. The
party offering the witness demonstrates that the witness is for the purpose of 6 rebutting evidence
that could not be reasonably anticipated at the pretrial 7 conference, or 8 b. The witness was
discovered after the pretrial conference and the proffering party 9 makes the showing required in
paragraph B, below. 10 3. Upon the post pretrial discovery of any witness a party wishes to present
at trial, the party 11 shall promptly inform the court and opposing parties of the existence of the
unlisted witnesses so the 12 court may consider whether the witnesses shall be permitted to testify
at trial. The witnesses will not be 13 permitted unless: 14 a. The witness could not reasonably have
been discovered prior to the discovery cutoff; 15 b. The court and opposing parties were promptly
notified upon discovery of the witness; 16 c. If time permitted, the party proffered the witness for
deposition; and 17 d. If time did not permit, a reasonable summary of the witness’s testimony was
provided 18 to opposing parties.

19 K. EXHIBITS, SCHEDULES, AND SUMMARIES

20 NO EXHIBIT, OTHER THAN THOSE LISTED IN ATTACHMENTS A-C, MAY BE
21 ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS

ORDER

22 SHOULD BE MODIFIED TO PREVENT “MANIFEST INJUSTICE.” Fed. R. Civ. P. 16(e);
Local

23 Rule 281(b)(11).

24 1. For a party to use an undisclosed exhibit for any purpose, they must meet the 25 following
criteria: 26 a. The party proffering the exhibit demonstrates that the exhibit is for the purpose of 27
rebutting evidence that could not have been reasonably anticipated, or 28 b. The exhibit was
discovered after the issuance of this order and the proffering party 1 makes the showing required
in paragraph 2, below. 2 2. Upon the discovery of exhibits after the discovery cutoff, a party shall
promptly inform 3 the court and opposing parties of the existence of such exhibits so that the court
may consider their 4 admissibility at trial. The exhibits will not be received unless the proffering
party demonstrates: 5 a. The exhibits could not reasonably have been discovered earlier; 6 b. The
court and the opposing parties were promptly informed of their existence; and 7 c. The proffering
party forwarded a copy of the exhibits (if physically possible) to the 8 opposing party. If the
exhibits may not be copied the proffering party must show that 9 it has made the exhibits
reasonably available for inspection by the opposing parties. 10 Plaintiff's Exhibits 11 1. Plaintiff's
Medical Records from 7-15-2014 to 6-13-2016 (Excerpts) 12 2. Plaintiff's Medical Records from
7-1-2016 to 12-29-2016 (Excerpts) 13 3. Plaintiff's Medical Records from 12-29-2016 to 2-8-
2017 (Excerpts) 14 4. Plaintiff's Medical Records from 2-12-2017 to 2-16-2017 (Excerpts) 15 5.
Plaintiff's Medical Records from 2-17-2017 to 8-8-2017 (Excerpts) 16 6. Statements from
Plaintiff's Witnesses. 17 7. Admissions and Document Request Responses from defendants. 18 8.
Inmate Appeals filed by Plaintiff and responses (Excerpts). 19 9. Inmate Accommodation Requests
(ADA/RAP reports) filed by Plaintiff (Ex. Excerpts) 20 10. Prison law Office Correspondence and
Filings (Excerpts) 21 11. California DGS (Claims) Filings and Responses (Excerpts). 22 12.
CDCR-0022 Forms and Responses (Excerpts) 23 13. Plaintiff's Psychological Records (Excerpts
Only) 24 Defendants' Exhibits 25 A. Plaintiff's medical records from CSP Los Angeles
(Lancaster). 26 B. Plaintiff's medical records from SATF. 27 C. Plaintiff's medical records from
Valley State Prison. 28 D. Plaintiff's medical records from the California Men's Colony. 1 E.
Plaintiff's inmate appeals (CDCR form 602) for medical care and the respective 2 responses to the
appeals. 3 F. Plaintiff's CDCR Central File. 4 The parties must exchange exhibits no later than
July 29, 2025. On or before July 29, 2025, 5 2024, the parties SHALL meet and confer to discuss
any disputes related to the above listed exhibits 6 and to pre-mark and examine each other's
exhibits. Any exhibits not previously disclosed in discovery 7 SHALL be provided via e-mail or
overnight delivery so that it is received by the above exhibit 8 exchange deadline. 9 1. At the
exhibit conference, the parties will determine whether there are objections to the 10 admission of
each of the exhibits and will prepare separate indexes; one listing joint exhibits, one 11 listing
Plaintiff's exhibits and one listing Defendant's exhibits. In advance of the conference, the parties
12 must have a complete set of their proposed exhibits in order to be able to fully discuss whether

13 evidentiary objections exist. Thus, any exhibit not previously provided in discovery SHALL be
14 provided at least five court days in advance of the exhibit conference. 15 2. At the conference,
the parties shall identify any duplicate exhibits, i.e., any document 16 which both sides desire to
introduce into evidence. These exhibits SHALL be marked as a joint exhibit 17 and numbered as
directed above. Joint exhibits SHALL be admitted into without further foundation. 18 All joint
exhibits will be pre-marked with numbers preceded by the designation "JT" (e.g. JT/1, 19 JT/2,
etc.). Plaintiff's exhibits will be pre-marked with numbers beginning with 1 by the designation 20
PX (e.g. PX1, PX2, etc.). Defendant's exhibits will be pre-marked with numbers beginning with
501 21 preceded by the designation DX (e.g. DX501, DX502, etc.). The parties SHALL number
each page of 22 any exhibit exceeding one page in length (e.g. PX1-1, PX1-2, PX1-3, etc.). 23 If
originals of exhibits are unavailable, the parties may substitute legible copies. If any 24 document
is offered that is not fully legible, the Court may exclude it from evidence. 25 Each joint exhibit
binder shall contain an index which is placed in the binder before the 26 exhibits. The index shall
consist of a column for the exhibit number, one for a description of the exhibit 27 and one column
entitled "Admitted in Evidence" (as shown in the example below). 28

1 INDEX OF JOINT EXHIBITS

2 EXHIBIT# DESCRIPTION ADMITTED

IN EVIDENCE

3 4 5

3. As to any exhibit which is not a joint exhibit but to which there is no objection to its
6 introduction, the exhibit will likewise be appropriately marked, i.e., as PX1, or as DX501 and
will be 7 indexed as such on the index of the offering party. Such exhibits will be admitted upon
introduction 8 and motion of the party, without further foundation. 9

4. Each exhibit binder shall contain an index which is placed in the binder before the
10 exhibits. Each index shall consist of the exhibit number, the description of the exhibit and the
three 11 columns as shown in the example below. 12

INDEX OF EXHIBITS

13

EXHIBIT# DESCRIPTION ADMITTED OBJECTION OBJECTION

14 IN FOUNDATION OTHER

EVIDENCE

15 16 17

5. On the index, as to exhibits to which the only objection is a lack of foundation, the
18 parties will place a mark under the column heading entitled "Objection Foundation." 19

6. On the index, as to exhibits to which there are objections to admissibility that are not
20 based solely on a lack of foundation, the parties will place a mark under the column heading
entitled 21 "Other Objections." 22

7. As to each exhibit which is not objected to in the index, it shall be marked and received

23 into evidence and will require no further foundation. 24 After the exhibit conference, Plaintiff and counsel for the defendants SHALL develop four 25 complete, legible sets of exhibits. The parties SHALL deliver three sets of their exhibit binders to the 26 Courtroom Clerk and provide one set to their opponent, no later than 4:00 p.m., on August 21, 2025. 27 The parties SHALL determine which of them will also provide three sets of the joint exhibits to the 28 1 Courtroom Clerk.3 2 7. The Parties SHALL number each page of any exhibit exceeding one page in length.

3 L. POST-TRIAL EXHIBIT RETENTION

4 Counsel for the Defense SHALL retrieve the original exhibits from the courtroom deputy 5 following the verdict in the case and SHALL retain possession of and keep safe all exhibits until final 6 judgment and all appeals are exhausted.

7 M. DISCOVERY DOCUMENTS

8 The following is a list of discovery documents – portions of depositions, answers to 9 interrogatories, and responses to requests for admissions – that the parties expect to offer at trial.

10 NO DISCOVERY DOCUMENT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE

11 ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS ORDER

12 SHOULD BE MODIFIED TO PREVENT “MANIFEST INJUSTICE.” Fed. R. Civ. P. 16(e); Local

13 Rule 281(b)(12).

14 Plaintiff’s Documents 15 All the discovery documents provided during the discovery process at trial, from each and every 16 defendant. 17 Defendants’ Documents 18 None, except Plaintiff’s deposition testimony may be offered for impeachment purposes.

19 N. FURTHER DISCOVERY OR MOTIONS

20 After the pretrial conference held July 15, 2024, Defendants were permitted to conduct limited 21 additional discovery. (Doc. 97.) The deadline for doing so was April 21, 2025. To the extent the parties 22 have identified additional exhibits or witnesses because of additional or new discovery, the parties may 23 inform the court of that additional information in their objections.

24 O. STIPULATIONS

25 Defendants do not believe any stipulations would be beneficial for trial. 26 27 3 In a case where an incarcerated plaintiff is proceeding pro se, the Defense shall prepare and provide the binders to the 28 Court unless the Court orders otherwise. In addition, for ease of reference during trial, the Court prefers that the parties 1 Plaintiff believes that stipulations could reduce the amount of information that the jury needs to 2 consider making the deliberation process quicker as well as the trial itself. Stipulations for example as 3 to the injury, the treatment, surgery, after-care, etc. are some examples that may benefit the trial.

4 P. AMENDMENTS/ DISMISSALS

5 Defendants do not anticipate any amendments of pleadings. 6 Defendants request Plaintiff

dismiss Dr. Ugwueze because she was not one of Plaintiff's 7 treating physicians and her only connection to this case involves her approving one of Plaintiff's 602 8 requests for additional care. 9 Plaintiff objects to the dismissal of Ugwueze as a defendant because he was the cornerstone of 10 plaintiff's care, dealt with plaintiff's contacts outside of prison, approved medications that plaintiff 11 was allergic to, and battered plaintiff in front of NP Anthony Hales.

12 Q. SETTLEMENT NEGOTIATIONS

13 Defendants indicate settlement was unsuccessful at an early settlement conference and that 14 Plaintiff's demand was much higher than they were willing to pay to resolve the matter. Plaintiff 15 indicates her willingness to settle but seems to agree that the amount the defense previously offered is 16 insufficient.

17 R. AGREED STATEMENT

18 Defendants do not believe the parties could agree to any agreed statement. 19 Plaintiff believes that an agreed upon statement could be issued, but she does not propose one.

20 S. SEPARATE TRIAL OF ISSUES

21 Defendants indicate the three-to-four-day trial estimate is too short to warrant a separate trial. 22 Plaintiff believes that a separate trial of issues would benefit the jury significantly in that the 23 medical issues are complex and the evidence overwhelming. The court disagrees. The information 24 shared thus far with the court does not demonstrate any true complexity and the amount of evidence 25 appears fairly minimal.

26 T. APPOINTMENT OF IMPARTIAL EXPERTS

27 Plaintiff requests an appointed medical specialist to testify as to the medical records and 28 procedures as well as the standard of care. Plaintiff has failed to demonstrate that appointment of an 1 expert is needed at this time. However, she may file a formal motion seeking the appointment of an 2 impartial expert within the deadlines set forth above for motions in limine. In the meanwhile, Plaintiff 3 is advised of the standards for appointment of an expert. 4 Federal Rule of Evidence 706 allows a court to appoint an expert witness on the motion of a 5 party. Fed. R. Evid. 706(a). The Court may appoint an expert witness when it will assist the trier of 6 fact to decide a fact at issue or understand evidence that is scientific, technical, or requires specialized 7 knowledge. *Arellano Jr. v. Hodge*, 2017 WL 2692875, at *1 (S.D. Cal. Jun. 22, 2017) (citations and 8 quotations omitted). "Expert witnesses should not be appointed where they are not necessary or 9 significantly useful for the trier of fact to comprehend a material issue in a case." *Id.* (citing *Gorton v. 10 Todd*, 793 F.Supp.2d 1171, 1181 (E.D. Cal. 2011)). "[E]xpert witnesses should not be appointed to 11 serve as an advocate for a party." *Id.* (citations omitted). Finally, "Rule 706 is not a means to avoid the 12 in forma pauperis statute, 28 U.S.C. § 1915, and its prohibition against using public funds to pay the 13 expenses of witnesses in a § 1983 prisoner rights action." *Id.* (citing *Dixon v. Ylst*, 990 F.2d 478, 480 14 (9th Cir. 1993)). 15 For plaintiff to prevail on her Eighth Amendment claim, she must demonstrate that defendants 16 acted with deliberate indifference to her serious medical needs. *Arellano*, at *1 (quoting *Estelle v. 17 Gamble*, 429 U.S.

97, 104 (1983)). The issue in a deliberate medical indifference claim “does not 18 demand that the jury consider complex questions concerning medical diagnosis and judgment.” Id. 19 (citing *Torbert v. Gore*, 2016 WL 3460262, at *2 (S.D. Cal. Jun. 23, 2016)) (quoting *Levi v. Dir. Of 20 Corr.*, 2006 WL 845733, at *1 (E.D. Cal. Mar. 31, 2006)). “Rather, the jury will need to consider the 21 prison official’s subjective knowledge of any risks to Plaintiff’s health.” Id. (citing *Toguchi v. Chung*, 22 391 F.3d 1051, 1057 (9th Cir. 2002)). Finally, “the determination of whether Plaintiff’s medical needs 23 were sufficiently “serious” to amount to an Eighth Amendment violation may depend on Plaintiff’s 24 testimony regarding the extent of her injuries and how her injuries impacted her daily life. Id. (citing 25 *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992), overruled on other grounds, *WMX Techs., 26 Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc) (“The existence of an injury that a reasonable 27 doctor or patient would find important and worthy of comment or treatment; the presence of a medical 28 condition that significantly affects an individual’s daily activities; or the existence of chronic and 1 substantial pain are examples of indications that a prisoner has a ‘serious’ need for medical 2 treatment.”)). “The assistance of an expert witness would be unnecessary under these circumstances.” 3 Id. 4 On the other hand, the nature of the allegations indicates that if plaintiff succeeds on her Eighth 5 Amendment claim, she will also succeed on his negligence claims. The reverse, however, is not true. 6 On the other hand, the defense is prepared to present an expert who will testify, presumably, as to the 7 standard of care. 8 Finally, under 28 U.S.C. § 1915, federal courts may permit an indigent party to file suit 9 without prepaying fees and costs. The statute does not authorize courts to subsidize expert fees, 10 however. *Hadsell v. IRS*, 107 F.3d 750, 752 (9th Cir.1997) (relying on *Tedder v. Odel*, 890 F.2d 210, 11 211–12 (9th Cir.1989) (per curiam)). Rather, an expert may be appointed only if it will help the jury 12 understand the issues; it is not for the purpose of having the expert act as an advocate for any party. 13 Further plaintiff is struggling with getting access to witnesses in particular that are 14 unincarcerated. Plaintiff requests again the appointment of counsel so that the witnesses can be located 15 and contacted to see if they are willing to testify. The Court has previously denied plaintiff’s 16 request for appointment of counsel (Doc. 38, Doc. 75). The Court again denies the request for 17 appointment of counsel for the reasons set forth previously. (Docs. 83, 75.)

18 U. ATTORNEYS’ FEES

19 Plaintiff, who is proceeding pro se, is not entitled to attorney’s fees. *Kay v. Ehrler*, 499 U.S. 20 432, 435 (1991). 21 Defendants reserve their right to seek attorney’s fees but indicate they will waive costs and 22 fees should plaintiff dismiss this action.

23 V. TRIAL DATE/ ESTIMATED LENGTH OF TRIAL/TRIAL SCHEDULE

24 Jury trial is set for August 26, 2025, at 8:30 a.m. before the Honorable Jennifer L. Thurston at 25 the Robert E. Coyle United States Courthouse, 2500 Tulare Street, Fresno, California. Trial is expected 26 to last three to four days. 27 The parties are are advised that the Court’s trial schedule, absent other Court conflicts, is as 28 follows: For the first day of trial and until jury selection is

completed, the trial day will begin at 8:30 a.m. 1 and complete around 4:30 p.m. with an hour-long lunch break. Otherwise, until the jury begins deliberating, 2 the trial day will begin at 8:00 a.m. and complete at 1:30 p.m. with no lunch break, though the trial will 3 break for two breaks during the trial day. Once the jury begins deliberating, the jury will set their own 4 schedule. In addition, should the trial proceed past the first week, trial will not convene on any Monday.

5 W. TRIAL PREPARATION AND SUBMISSIONS

6 1. Trial Briefs 7 The parties are relieved of their obligation under Local Rule 285 to file trial briefs. If any party 8 wishes to file a trial brief, they must do so in accordance with Local Rule 285 and must file the brief 9 on or before August 11, 2025. 10 2. Jury Voir Dire 11 The parties are required to file their proposed voir dire questions, in accordance with Local 12 Rule 162.1, on or before August 11, 2025.

13 3. Jury Instructions & Verdict Form 14 The defense SHALL serve their proposed jury instructions in accordance with Local Rule 163 15 and their proposed verdict form so that it is received by the plaintiff no later than July 28, 2025. The 16 parties shall conduct a conference to address the proposed jury instructions and verdict form no later 17 than August 5, 2025. If the plaintiff wishes to propose additional instructions or a different 18 verdict form, she SHALL identify them/provide them to the defense at the time of the 19 conference.⁴ At the conference, the parties SHALL attempt to reach agreement on jury instructions 20 and verdict form for use at trial. The parties shall file all agreed-upon jury instructions and verdict 21 form no later than August 11, 2025, and identify such as the agreed-upon jury instructions and verdict 22 forms. At the same time, the parties SHALL lodge via e-mail a copy of the joint jury instructions and 23 joint verdict form (in Word format) to JLTOrders@caed.uscourts.gov. 24 If and only if, the parties after genuine, reasonable, and good faith effort cannot agree 25 upon certain specific jury instructions and verdict form, the parties shall file their respective proposed 26 27 4 The defense SHALL arrange with the Litigation Coordinator so that the plaintiff can provide copies of any modified or 28 original instructions and a copy of the plaintiff's verdict form, if any, to the Litigation Coordinator, at the time of the 1 (disputed) jury instructions and proposed (disputed) verdict form no later than August 11, 2025, and 2 identify such as the disputed jury instructions and verdict forms. At the same time, the parties SHALL 3 lodge via e-mail, a copy of his/their own (disputed) jury instructions and proposed (disputed) verdict 4 form (in Word format) to JLTOrders@caed.uscourts.gov. 5 In selecting proposed instructions, the parties shall use Ninth Circuit Model Civil Jury 6 Instructions or California's CACI instructions to the extent possible. All jury instructions and verdict 7 forms shall indicate the party submitting the instruction or verdict form (i.e., joint, Plaintiff's, 8 defendant's, etc.), the number of the proposed instruction in sequence, a brief title for the instruction 9 describing the subject matter, the complete text of the instruction, and the legal authority supporting 10 the instruction. Each instruction SHALL be numbered.

11 X. OBJECTIONS TO PRETRIAL ORDER

12 Any party may, within 14 days after the date of service of this order, file and serve written 13 objections to any of the provisions set forth in this order. Each party is also granted 7 days thereafter to 14 respond to the other party's objections. Such objections shall clearly specify the requested 15 modifications, corrections, additions, or deletions.⁵ If no objections are filed, the order will become 16 final without further order of this court. 17 The parties are reminded that pursuant to Rule 16(e) of the Federal Rules of Civil Procedure 18 and Local Rule 283 of this court, this order shall control the subsequent course of this action and shall 19 be modified only to prevent manifest injustice.

20 Y. MISCELLANEOUS MATTERS

21 Defendants request the court instruct the jury as to Plaintiff's gender identity and further 22 explain that most exhibits will refer to Plaintiff with male pronouns because her gender identity was 23 unknown to all defendants in this action. Defendants indicate Plaintiff informed CDCR officials she 24 was transgendered after she transferred from SATF. Defendants request the court and Plaintiff's grace 25 as one or more of the witnesses may inadvertently refer to Plaintiff by her former name and gender. 26 27 5 As mentioned above, to the extent the parties have identified additional exhibits or witnesses because of additional or new 28 discovery, the parties may inform the court of that additional information in their objections. If they fail to do so, additional 1 || Defendants assert they, their witnesses, and defense counsel will make every effort to properly refer t 2 || Plaintiff as female, but mistakes may occur as all medical records do not reflect Plaintiff's name or 3 || gender. 4 Plaintiff wishes to review any such instruction to the jury regarding the plaintiff's gender 5 identity - further that jurors that show a prejudice to transgender people be excluded for cause from 6 || participating in the trial. Further, in the perfect world, the plaintiff would, ask that the jury not be 7 || aware of her transition from male to female and know her as a female. 8 Plaintiff realizes that she does not live in such a world and that cannot be achieved since her 9 || transition (social and physical) from male to female occurred close to the date and time of these 10 || incidents (several years later, but in terms of the litigation during). 11 With all the facts considered plaintiff understands that mistakes can be made but asks that the 12 || should consistent mis-gendering or mis-naming occur (emphasis on the mis-gendering though) that tl 13 || witness be admonished and the jury receive instruction to discredit their testimony the more they do i 14 || that the jury be allowed to consider the persistent mis-gendering as evidence of their lack of credibilit 15 || and or their dehumanization of plaintiff.

16 || Z. COMPLIANCE

17 Strict compliance with this order and its requirements is mandatory. All parties and their 18 || counsel are subject to sanctions, including dismissal or entry of default, for failure to fully comply 19 || with this order and its requirements. 20 21 IT IS SO ORDERED. Dated: _ April 22, 2025
Charis [Tourn

23 TED STATES DISTRICT JUDGE

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