

FILED
SAN MATEO COUNTY

DEC 5 2022

Clerk of the Superior Court
By Edward J. ...
DEPUTY CLERK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

[REDACTED],
Plaintiff,
v.
[REDACTED], et al.
Defendants.

and related cross actions.

) Case No. **[REDACTED]**
) **TENTATIVE RULINGS ON MOTIONS IN**
) **LIMINE AND OTHER MATTERS**
)
) **Pretrial Conf.: Dec. 13, 2022 at 10:00 a.m.**
) **Trial Date: January 4, 2023 at 9:00 a.m.**

1 Although required by this Court's May 24, 2022 Pretrial Order and requests by the Department 4
2 clerk, this Court has not received courtesy copies of the pretrial documents in the manner required by the
3 order. The Court did receive Plaintiff's Motions in Limines and some opposition to Defendants'
4 Motions in Limine, but they were not provided in the format requested. In the future, counsel shall
5 comply with the Court's orders regarding trial and pretrial, which orders make the Court's preparation
6 easier.
7

8 TENTATIVE RULINGS ON MOTIONS IN LIMINE

9 These rulings are tentative and can be changed any time before or during trial. *Scott v. C.R.*
10 *Bard, Inc.* (2014) 231 Cal.App.4th 763, 784; *Cristler v. Express Messenger Systems, Inc.* (2009) 171
11 Cal.App.4th 659, 669-671.
12

13 The Court is ruling on the motions filed in November 2022 and not any that were filed in April
14 of 2022. If the Court should be ruling on any motions filed in April of 2022, the party shall notify
15 Department 4 and all parties by December 7, 2022 at 11:00 a.m.
16

17 The Court GRANTS all joinders.

18 PLAINTIFF'S MOTIONS IN LIMINE

19 **No. 1 to Exclude All Non-Party Witnesses from the Courtroom Prior to Testifying**

20 The motion to exclude lay witnesses from the courtroom is GRANTED. Evidence Code § 777.
21 Plaintiff, the individual defendant, and one corporate representative from each corporate defendant are
22 not excluded. Evidence Code § 777(b),(c). Further, if any expert wishes to listen to specific testimony
23 to support his/her opinion or rebut another expert, the expert may listen to that testimony subject to any
24 party raising any objection.

25 **No. 2 to Exclude Any Expert Opinions Not Disclosed or Testified to At Deposition**

26 The motion is too general for the Court to rule. *Kelly v. New West Federal Savings* (1996) 49
27 Cal.App.4th 659. No testimony is identified. The Court follows the law, e.g. *Easterby v. Clark* (2009)
28 171 Cal.App.4th 772, 780; *Jones v. Moore* (2000) 80 Cal.App.4th 557; *Kennemur v. State of California*

1 (1982) 133 Cal.App.3d 907 and their progeny, in ruling on motions regarding work experts performed
2 after their depositions or was not disclosed.

3 **No. 3 to Exclude Witnesses, Documents and Other Evidence Not Properly Disclosed in the**
4 **Course of Pre-trial Discovery**

5 The motion is too general for the Court to rule. *Kelly v. New West Federal Savings* (1996) 49
6 Cal.App.4th 659. The parties filed joint and witness lists on November 29, 2022 yet Plaintiff fails to
7 identify any witness or document that was not properly disclosed.

8 **No. 4 to Bar Defendants from Discussing Plaintiff's Finances**

9 ~~Plaintiff~~ does not oppose this motion and ~~Defendant~~ opposes it to the extent that Plaintiff seeks to
10 exclude evidence rebutting her financial loss. The Court DENIES the motion to the extent Plaintiff
11 seeks to exclude evidence to rebut any claim of damages to her business or any financial loss. Since
12 Plaintiff states in the Pretrial Statement that she is not making any claim for past or future loss of wages
13 or earning capacity, there should not be any need for this evidence.

14 The Court GRANTS the motion as to evidence of "financial wealth" as that term is understood in
15 CACI 117.

16 **No. 5 to Exclude Evidence Suggesting Plaintiff's Wound Was Self-Inflicted**

17 Plaintiff seeks to preclude Defendants from introducing evidence regarding: inferences that her
18 wound was self-inflicted. Based upon the information provided by the parties, the Court is unable to
19 rule on the motions without further information.

20 The Court starts with the basic evidentiary principles. No evidence is admissible except relevant
21 evidence. Evidence Code § 350. Relevant evidence means "evidence, including evidence relevant to
22 the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any
23 disputed fact that is of consequence to the determination of the action." *Id.* § 210. Even relevant
24 evidence may be excluded "if its probative value is substantially outweighed by the probability that its
25 admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue
26 prejudice, of confusing the issues, or of misleading the jury." *Id.* § 352.

27 "One of the elements of a fair trial is the right to offer relevant and competent evidence on a
28 material issue. Subject to such obvious qualifications as the court's power to restrict cumulative and

1 rebuttal evidence, and to exclude unduly prejudicial matter, denial of this fundamental right is almost
2 always considered reversible error.” 3 Witkin, *Cal. Evid.* 5th Presentation § 3 (2022) (citations and
3 reference to other sections omitted). There is no exception for unpleasant subject matter. *Id.* However,
4 evidence is excluded when the inference is remote or conjectural. *Id.* at § 155 citing *Savarese v. State*
5 *Farm Mut. Auto. Ins. Co.* (1957) 150 Cal.App.2d 518, 520 (“Of course, the building of inference upon
6 inference may often result in a progressive weakening of logical sequence, and lead to an ultimate
7 conclusion which is untenable on the basis of the facts proven. When an ultimate inference is thus
8 remote from the evidence, it should be rejected.”).

9 Evidence can either be direct or circumstantial, with both having the same effect. CACI 202.
10 “The general test of relevancy of indirect evidence is whether it tends logically, naturally, and by
11 reasonable inference to prove or disprove a material issue.” 1 Witkin, *Cal. Evid.* Circum Evid at § 26
12 quoting *People v. Jones* (1954) 42 Cal.2d 219, 222, 266.

13 A court must disallow cross-examination of a witness that lacks a good faith basis, invites
14 unsupported speculation and exposes the jury to inadmissible hearsay. *People v. Lomax* (2010) 49
15 Cal.4th 530, 580 (Supreme Court rejected defendant’s claim that his cross-examination was curtailed
16 finding “the trial court properly prevented counsel from asking questions that lacked a good faith basis
17 and invited jury speculation on claims that would not be given any evidentiary support”); *People v.*
18 *Lillard* (1963) 219 Cal.App.2d 368, 379 (“These ‘did you know that’ questions designed not to obtain
19 information or test adverse testimony but to afford cross-examining counsel a device by which his own
20 unsworn statements can reach the ears of the jury and be accepted by them as proof have been
21 repeatedly condemned.”); 3 Witkin, *Cal. Evid.* Presentation at § 186 (“A question that in its statement
22 assumes the existence of certain facts that are actually in issue and not proved or admitted may be
23 excluded.”); *Cal. Civ. Ctrm. Hbook. & Desktop Ref.* § 32:20 (2021 ed.).

24 Therefore, as a preliminary matter, Defendants are to make an offer of proof regarding the
25 evidence that they will introduce to support the conclusion that Plaintiff’s wound is self-inflicted to
26 allow the Court to make a ruling that the Defendants have a good faith basis for asking the questions. A
27 possible cause is insufficient to establish causation. *Waller v. FAC US LLC* (2020) 48 Cal.App.5th 888.
28 “A possible cause only becomes ‘probable’ when, in the absence of other reasonable causal

1 explanations, it becomes more likely than not that the injury was a result of its action. This is the outer
2 limit of inference upon which an issue may be submitted to the jury.” *Id.* at 895 quoting *Jones v. Ortho*
3 *Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396, 403.

4 **DEFENDANT [REDACTED] MOTIONS IN LIMINE**

5 **No. 1 to Bar Witnesses From Testifying at Trial Who Were Known and Not Disclosed**

6 See Ruling on Plaintiff’s Motion in Limine No. 3.

7 **No. 2 to Limit Testimony Relating to Medical Damages to the Reasonable Market Rate**

8 **Under Howell**

9 The motion is too general for the Court to rule as Defendant does not identify any specific
10 evidence she seeks to exclude. *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659. The
11 parties do not identify whether Plaintiff has insurance or is uninsured, obtained services on a lien basis
12 or in some other manner. The parties should further meet-and-confer to see if there is any dispute about
13 the amount of the reasonable and necessary medical expenses after reading the Court’s tentative. See
14 also *Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541 and *Corenbaum v. Lampkin*
15 (2013) 215 Cal.App.4th 1308.

16 The Court provides a general overview regarding its view regarding the admissibility of medical
17 bills. “Damages for past medical expenses are limited to the lesser of (1) the amount paid or incurred
18 for past medical expenses and (2) the reasonable value of the services.” *Corenbaum* at 1325-26. For
19 any bills that have been paid or will be paid by insurance, a plaintiff may not recover more than that
20 amount. *Howell* at 555. It is possible, but probably not particularly fruitful for a defendant to argue that
21 an amount less than the negotiated rate is the reasonable amount. *Corenbaum* at 1330-31.

22 If the plaintiff is not covered by medical insurance, then the full amount of the medical bills is
23 relevant and admissible but the plaintiff must show additional evidence that the amount is reasonable.

24 In sum, when a plaintiff is not insured, medical bills are relevant and admissible to prove both
25 the amount incurred and the reasonable value of medical services provided. (*Bermudez [v. Ciolek*
26 *(2015)]*, *supra*, 237 Cal.App.4th [1311] at p. 1335, 1337, 188 Cal.Rptr.3d 820; *Kattuzhinsky [v.*
27 *Perry (2007)]*, *supra*, 152 Cal.App.4th [1288] at pp. 1295-1296, 62 Cal.Rptr.3d 309 [bills for
28 charges incurred by the plaintiff were admissible “as they reflected on the nature and extent of
plaintiffs’ injuries and were therefore relevant to [the jury’s] assessment of an overall general
damage award”].) But the uninsured plaintiff also must present additional evidence, generally in
the form of expert opinion testimony, to establish that the amount billed is a reasonable value for

1 the service rendered. (*Bermudez*, at pp. 1336, 1338, 188 Cal.Rptr.3d 820.) Thus, if the plaintiff
2 has an expert who can competently testify that the amount incurred and billed is the reasonable
3 value of the service rendered, he or she should be permitted to introduce that testimony. The
4 defendant may then test the expert's opinion through cross-examination and present his or her
5 own expert opinion testimony that the reasonable value of the service is lower. A jury could,
6 based on this "wide-ranging inquiry," best decide the reasonable value of the medical treatment,
7 which is likely to be the cap on the uninsured plaintiff's medical damages. (*Id.* at pp. 1330-1331,
8 1338, 188 Cal.Rptr.3d 820.)

9 *Pebley v. Santa Clara Organics, LLC* (2018) 22 Cal.App.5th 1266, 1275–1276 (brackets in citations
10 added).

11 In addition, the plaintiff must also show that he or she has actually incurred the liability to pay
12 for the medical expenses. *Qaadir v. Figueroa* (2021) 67 Cal.App.5th 790, 804, as modified (Aug. 16,
13 2021), review denied (Nov. 10, 2021). "Thus, in cases where the plaintiff did not receive treatment
14 through his or her health insurance plan and the bill remains unpaid at trial, the question on whether the
15 full medical bill is admissible turns on the amount for which the plaintiff is liable." *Id.* The trial court
16 in *Qaadir* committed harmless error by not requiring the plaintiff to make this showing. *Id.* at 805-806.
17 In *Pebley*, the plaintiff's treating doctor provided his expert opinion that the medical costs were
18 reasonable and customary in the community based upon his familiarity with the costs for his own
19 patients and hundreds of other cases. *Pebley* at 1278. On cross-examination, plaintiff's treating doctor
20 testified that there is an expectation that a private patient with a large bill would pay it, the plaintiff had
21 not yet paid the bill, and while he does not always receive 100% of the billed amount but that he does
22 not routinely discount his bills. *Id.* at 1279. In *Qaadir*, the Court of Appeal held that it was error for the
23 trial court to sustain objections to whether plaintiff's counsel referred plaintiff to the treating doctors.
24 "We agree the referral evidence was relevant to the question of the reasonable value of the lien-
25 physicians' medical care because it may show bias or financial incentives on the part of the lien-
26 physicians. If a lien-physician wants future referrals from a lawyer and understands that the lawyer
27 benefits from inflating a client's medical bills, that incentive might encourage the lien-physician to
28 inflate its current bill to please the lawyer and win future referrals." *Qaadir* at 808 citing Evidence
Code, §§ 210, 350. The error was found to be harmless because defense counsel "ably explored the
lien-physician' incentive to inflate their bills due to the nature of the liens." *Id.*

1 Evidence of Plaintiff's insured status is excluded to "avert confusion of the issues, or to prevent
2 misleading or prejudicing the jury." *Qadir* at 810 citing *Pebley* at 1278 and Evidence Code § 352.

3 **No. 3 to Preclude Evidence and Argument Pursuant to the Reptile Theory**

4 The Court GRANTS the motion to prohibit "reptile theory" arguments, which are improper
5 appeals to a jury's emotions by arguing a defendant's conduct threatens the community's safety." *Russell*
6 *v. Department of Corrections and Rehabilitation* (2021) 72 Cal.App.5th 916, 941, reh'g denied (Jan. 13,
7 2022), review denied (Mar. 9, 2022) citing *Regalado v. Callaghan* (2016) 3 Cal.App.5th 582, 599.

8 The Court GRANTS to preclude any Golden Rule argument. Cotchett & Fineman, *Persuasive*
9 *Opening Statements and Closing Arguments*, § 3.7 (CEB 2019).

10 The Court DENIES the motion as to any effort to stop closing argument from being vigorous.
11 The Court expects that the parties know the outer bounds of advocacy and that they will conduct their
12 voir dire, make their opening statement and closing arguments within the law's parameters. See
13 Cotchett & Fineman at Chapter 3.

14 **[REDACTED] C.'S MOTIONS IN LIMINE**

15 **No. 1 re Vicarious Liability for Other Defendant, [REDACTED]**

16 DENIED. Motions in limine are not to displace a dispositive motion. *Amtower v. Photon*
17 *Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1593-4; see also *R&B Auto Center Inc. v. Farmers Group*
18 *Inc.* (2006) 140 Cal.App.4th 327, 371; *Stein-Brief Group Inc. v. Home Indemnity Co.* (1998) 65
19 Cal.App.4th 364, 369. [REDACTED]'s motion seeks to have the Court make a legal ruling that [REDACTED] is not
20 an agent of another defendant, [REDACTED]. If [REDACTED] wanted that ruling, it should have brought a dispositive
21 motion rather than a motion in limine. Plaintiff on page 2:11-17 of her opposition identifies evidence
22 that she believes supports her agency allegations, thus providing an offer of proof.

23 **No. 2 to Preclude Plaintiff's Experts**

24 The Court cannot locate an opposition to this motion. The parties shall argue it at the Pretrial
25 Conference.

26 **By 2:00 p.m. on Thursday, December 8, 2022, the parties shall email Department 4**
27 **and each other as to any tentative rulings that they wish to contest. If the Court and opposing**
28

1 **counsel does not receive notice by that time, the tentative ruling will be adopted at the Pretrial**
2 **Conference.**

3 **PRETRIAL CONFERENCE**

4 The parties are reminded that the Pretrial Conference is in person and that the Court is located at
5 800 North Humboldt Street, Courtroom G, San Mateo, CA 94401.

6 **STATEMENT OF THE CASE**

7 The Court will give the proposed joint Statement of the Case filed November 29, 2022.

8 **JURY INSTRUCTIONS**

9 The parties filed proposed Jury Instructions, but not in the format required by the Pretrial Order.
10 The parties need to provide the actual instruction with all blanks filled in and decisions made about
11 bracketed material. If there is not agreement, which is true of some instructions, the parties are to put
12 the reasons for their instructions and the oppositions to the other parties' instructions behind the
13 proposed instruction. The jury instructions can be submitted after the Pretrial Conference.

14 **STIPULATIONS**

15 The parties shall meet-and-confer before the Pretrial Conference and advise the Court of the
16 exhibits to which they stipulate can be admitted pre-trial. The parties shall also meet-and-confer about
17 any stipulations about factual issues that they can reach to shorten the trial.

18 **JURY QUESTIONNAIRE**

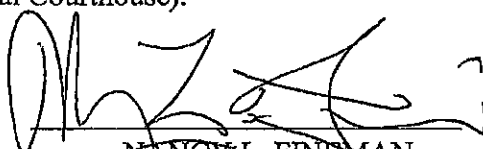
19 The Court will consider giving a questionnaire of two pages if the parties can demonstrate that it
20 will shorten voir dire. Some of your questions should be deleted in light of *Unzueta v. Akopyan* (2022)
21 85 Cal.App.5th 67 and the scope of permissible voir dire. The parties are responsible for copying the
22 questionnaires and would be expected to be able to copy and review them over a long lunch hour. The
23 Court and the parties can discuss whether a questionnaire shall be used at the Pretrial Conference. The
24 parties shall be prepared to identify the cases in which they have used a questionnaire, the nature and
25 length of the case, and the total length of voir dire.

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JURY SELECTION

Jury selection will take place in the Redwood City Courthouse, 400 County Center, Redwood City, CA 94063 in a courtroom to be assigned. The parties shall be prepared to present Opening Statements in Redwood City or San Mateo (Central Courthouse).

Dated: December 3, 2022



NANCY L. FINEMAN
Judge of the Superior Court