

FILED
SAN MATEO COUNTY

SEP 12 2022

Clerk of the Superior Court
By Edward Doai
DEPUTY CLERK

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

[REDACTED] GON,

Plaintiff,

v.

[REDACTED], et al.

Defendants.

Case No. ~~2022-00000~~

**TENTATIVE RULINGS ON MOTIONS IN
LIMINE AND OTHER MATTERS**

Pretrial Conf.: Sept. 19, 2022 at 2:00 p.m.
Trial Date: October 5, 2022 at 9:00 a.m.

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TENTATIVE RULINGS ON MOTIONS IN LIMINE

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

The Court appreciates the parties working together to agree on the Statement of the Case, jury instructions and the verdict form, and to efficiently present the information to the Court.

PLAINTIFF'S MOTIONS IN LIMINE

No. 1 to Exclude Expert Testimony Referring to or Relying Upon "Case Specific" Inadmissible Evidence under *People v. Sanchez*

The motion is too general for the Court to rule as Plaintiff does not identify any specific evidence she seeks to exclude. *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659. There is no question that *People v. Sanchez* (2016) 63 Cal.4th 665 applies to expert testimony and that medical records are hearsay. However, there are many exceptions that make portions of medical records admissible. See e.g. *Simons, California Evidence Manual* §§ 2:49, 2:57-2:20, 4:31 (2022). The parties shall meet-and-confer regarding stipulations on all exhibits, including redactions to exhibits containing medical records. Generally, entire medical records are not admissible because there is hearsay without an exception contained therein.

No. 2 to Exclude Entries in Medical Records Not Relevant to Issues at Trial

The Court does not see an opposition to this motion in the binder. The listed conditions appear to be the type of medical conditions that are irrelevant to this type of case and should be redacted. The parties are to meet and confer regarding these redactions and Defendant is to explain any reasons that these medical records should be admitted.

No. 3 to Limit Testimony of William Hoddick M.D. to Radiology

The motion is DENIED. Based upon the deposition excerpts Plaintiff provided, the Court finds that ~~William Hoddick~~'s experience in the trauma center provides a basis for his opinion regarding the nature of the accident and whether that is the type of accident which he has seen cause back injuries of

1 the type suffered by Plaintiff. Plaintiff can vigorously cross-examine him to challenge his opinions and
2 the basis for them.

3 **DEFENDANTS' MOTIONS**

4 **No. 1 to Exclude Evidence of Liability Insurance**

5 The unopposed motion is GRANTED.

6 **No. 2 to Exclude Counsel from Asking Jurors Questions Regarding Interest/Ownership in**
7 **Stock in Insurance Companies**

8 The Court refers the parties to Wegner, Fairbanks & Epstein, *Cal. Prac. Guide Civ. Trials & Ev.*
9 §§ 5:236 *et seq.* (TRG Oct. 2021 update) for the permissible scope of voir dire regarding financial
10 interests in insurance companies.

11 **No. 3 Motion to Exclude References to the Wealth and/or Poverty of Any of the Litigants**

12 The unopposed motion is GRANTED.

13 **No. 4 to Exclude Lay Testimony to Establish Medical Causation**

14 The motion is too general for the Court to rule as Defendant does not identify any specific
15 evidence she seeks to exclude. *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659.

16 To the extent that the evidence relates to a matter beyond common experience and will assist the
17 trier of fact, for example a medical diagnosis, expert testimony is required. Evidence Code § 801(a); 1
18 Witkin, *California Evidence*, Opinion § 46 (5th ed. 2022).

19 To the extent, however, that the injury is based upon common experience or rationally based on
20 the perception of the witness, expert testimony is not necessary. Evidence Code § 800; see e.g. *Martin*
21 *v. Siller* (1936) 17 Cal.App.2d 153, 158 (“Where the eye strikes the pipe end and an injury to the eye
22 results, expert testimony is required to determine the exact character of the injury before it can be
23 decided that the pipe end produced the injury.’ Neither authority nor logic supports this statement.
24 Common reasoning tells us that if the eye strikes the end of a pipe, and an injury to the eye results,
25 expert testimony is unnecessary.”); *Latty v. Wolfe* (1927) 85 Cal.App. 332, 343 (plaintiff could testify
26 about her “physical condition prior to and following the accident as indicative of the effect that the
27 injuries she received in the accident had upon her body or her mind.”). The fact that Plaintiff’s parents
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1 are doctors does not change this analysis, but would probably foreclose them from providing medical
2 opinions if a demand for disclosure of experts was made and the parents were not disclosed.

3 **No. 5 to Exclude Reference to the Existence of No- Existence of Any Settlement Offers**

4 The unopposed motion is GRANTED.

5 **No. 6 to Exclude Witnesses, Damages and Documents Not Identified or Disclosed During**
6 **Discovery or Before the Discovery Cutoff**

7 The motion is too general for the Court to rule as Defendant does not identify any specific
8 evidence she seeks to exclude . *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659. If the
9 information was requested and not provided, then the Court would most likely preclude the evidence. If
10 the evidence was not known at the time of the response, the Court would probably allow the evidence.
11 The parties should meet-and-confer on this issue so that there are no surprises at trial.

12 **No. 7 to Exclude Questioning of Defendant's Retained Experts Regarding their Income**

13 The Court GRANTS the motion as to the amount of the experts' total compensation. The Court
14 will allow questions regarding the percentage of income that an expert obtains from expert witness fees
15 in relationship to his/her total income. The Court makes this decision based upon Evidence Code § 352
16 finding that although the evidence has some relevance, that relevance is substantially outweighed by the
17 undue consumption of time the evidence would take to present, both direct and cross-examine, and the
18 substantial danger of confusing the issues or of misleading the jury

19 **No. 8 to Exclude the Introduction of Medical Bills that Have Been Written Off**

20 The motion is too general for the Court to rule as Defendant does not identify any specific
21 evidence she seeks to exclude . *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659. The
22 parties do not identify whether Plaintiff has insurance or is uninsured, obtained services on a lien basis
23 or in some other manner. The parties should meet-and-confer to see if there is any dispute about the
24 amount of the reasonable and necessary medical expenses. See *Howell v. Hamilton Meats & Provisions,*
25 *Inc.* (2011) 52 Cal.4th 541 and *Corenbaum v. Lamplin* (2013) 215 Cal.App.4th 1308.

26 The Court provides a general overview regarding its view regarding the admissibility of medical
27 bills. "Damages for past medical expenses are limited to the lesser of (1) the amount paid or incurred
28 for past medical expenses and (2) the reasonable value of the services." *Corenbaum* at 1325-26. For

1 any bills that have been paid or will be paid by insurance, a plaintiff may not recover more than that
2 amount. *Howell* at 555. It is possible, but probably not particularly fruitful for a defendant to argue that
3 an amount less than the negotiated rate is the reasonable amount. *Corenbaum* at 1330-31.

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

6 In sum, when a plaintiff is not insured, medical bills are relevant and admissible to prove both
7 the amount incurred and the reasonable value of medical services provided. (*Bermudez [v. Ciolek*
8 (*2015*)], *supra*, 237 Cal.App.4th [1311] at p. 1335, 1337, 188 Cal.Rptr.3d 820; *Katiuzhinsky [v.*
9 *Perry (2007)*], *supra*, 152 Cal.App.4th [1288] at pp. 1295-1296, 62 Cal.Rptr.3d 309 [bills for
10 charges incurred by the plaintiff were admissible “as they reflected on the nature and extent of
11 plaintiffs' injuries and were therefore relevant to [the jury's] assessment of an overall general
12 damage award”].) But the uninsured plaintiff also must present additional evidence, generally in
13 the form of expert opinion testimony, to establish that the amount billed is a reasonable value for
14 the service rendered. (*Bermudez*, at pp. 1336, 1338, 188 Cal.Rptr.3d 820.) Thus, if the plaintiff
15 has an expert who can competently testify that the amount incurred and billed is the reasonable
16 value of the service rendered, he or she should be permitted to introduce that testimony. The
17 defendant may then test the expert's opinion through cross-examination and present his or her
18 own expert opinion testimony that the reasonable value of the service is lower. A jury could,
19 based on this “wide-ranging inquiry,” best decide the reasonable value of the medical treatment,
20 which is likely to be the cap on the uninsured plaintiff's medical damages. (*Id.* at pp. 1330-1331,
21 1338, 188 Cal.Rptr.3d 820.)

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

24 In addition, the plaintiff must also show that he or she has actually incurred the liability to pay
25 for the medical expenses. *Qaadir v. Figueroa* (2021) 67 Cal.App.5th 790, 804, as modified (Aug. 16,
26 2021), review denied (Nov. 10, 2021). “Thus, in cases where the plaintiff did not receive treatment
27 through his or her health insurance plan and the bill remains unpaid at trial, the question on whether the
28 full medical bill is admissible turns on the amount for which the plaintiff is liable.” *Id.* The trial court
in *Qaadir* committed harmless error by not requiring the plaintiff to make this showing. *Id.* at 805-806.
In *Pebley*, the plaintiff's treating doctor provided his expert opinion that the medical costs were
reasonable and customary in the community based upon his familiarity with the costs for his own
patients and hundreds of other cases. *Pebley* at 1278. On cross-examination, plaintiff's treating doctor
testified that there is an expectation that a private patient with a large bill would pay it, the plaintiff had

1 not yet paid the bill, and while he does not always receive 100% of the billed amount but that he does
2 not routinely discount his bills. *Id.* at 1279. In *Qaadir*, the Court of Appeal held that it was error for the
3 trial court to sustain objections to whether plaintiff's counsel referred plaintiff to the treating doctors.
4 "We agree the referral evidence was relevant to the question of the reasonable value of the lien-
5 physicians' medical care because it may show bias or financial incentives on the part of the lien-
6 physicians. If a lien-physician wants future referrals from a lawyer and understands that the lawyer
7 benefits from inflating a client's medical bills, that incentive might encourage the lien-physician to
8 inflate its current bill to please the lawyer and win future referrals." *Qaadir* at 808 citing Evidence
9 Code, §§ 210, 350. The error was found to be harmless because defense counsel "ably explored the
10 lien-physician' incentive to inflate their bills due to the nature of the liens." *Id.* Accordingly in this
11 case, Plaintiff must introduce evidence that he has incurred these bills and Defendant has latitude in
12 cross-examination to demonstrate that Plaintiff is not liable for the amounts.

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

15 **No. 9 to Exclude Duplicative Witnesses**

16 Based upon the argument, it appears that Defendant seeks to limit the number of medical experts.
17 The Court does have the power to exclude cumulative experts. "The court may, at any time before or
18 during the trial of an action, limit the number of expert witnesses to be called by any party." Evidence
19 Code, § 723; *Horn v. General Motors Corp.* (1976) 17 Cal.3d 359, 371 (trial court did not abuse its
20 discretion in precluding defendants from calling fifth expert when they failed to show how the additional
21 evidence was not cumulative and evidence was truly cumulative).

22 While the Court has the discretion to preclude cumulative evidence that a party wishes to present
23 regarding an element of a cause of action, *Belfiore-Braman v. Rotenberg* (2018) 25 Cal.App.5th 234,
24 248-250, the Court may not impose overly restrictive limitations on the introduction of evidence that
25 limit a party from fully and fairly setting forth the theory of the case. *Monroy v. City of Los Angeles*
26 (2008) 164 Cal.App.4th 248, 266-267. The number of witnesses a party wishes to call is not
27 determinative. *Rodriguez v. McDonnell Douglas Corp.* (1978) 87 Cal.App.3d 626, 663 disapproved of
28 on other grounds by *Coito v. Superior Court* (2012) 54 Cal.4th 480 ("It is also asserted that the

1 testimony of eight doctors was unnecessarily cumulative. The assertion is without merit. Each doctor
2 called by the plaintiffs testified in substantial part to different aspects of the medical care that had been
3 provided from the time of the accident to time of trial. That testimony, too, was highly relevant on the
4 issue of damages.”) The Court should not preclude experts when they have different emphasis or focus.
5 *Monroy* at 266-267. The testimony of someone who is testifying based upon personal observation may
6 be different than a retained expert. *McGee v. Cessna Aircraft Co.* (1983) 139 Cal.App.3d 179, 192
7 (expert “was an independent observer and not subject to the same challenge against objectivity”).

8 The Court needs more information before it can enter a meaningful order on what evidence is
9 allowed and what evidence if any, is precluded as cumulative; general motions without adequate support
10 are not sufficient. *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 670. Defendant
11 provides no information for the Court to determine if Plaintiff’s experts are cumulative. Therefore, the
12 parties are to meet-and-confer to reach agreements if possible and, if not, file a joint motion with the
13 Court that discusses each expert and opinion which defendant seeks to exclude. Plaintiff’s response is to
14 demonstrate facts showing that the testimony is not cumulative.

15 **No. 10 to Exclude References to Medical Treatment and Expense Prior to Establishing**
16 **their Reasonableness, Necessity and Causal Relationship to the Accident**

17 Plaintiff states that the motion will be withdrawn. Therefore, the Court has not ruled on the
18 motion.

19 **No. 11 to Exclude Plaintiff’s Evidence of the Amount of Plaintiff’s Medical Bills Absent**
20 **Proper Foundation**

21 See ruling on Defendants’ Motion in Limine No. 8.

22 **By 2:00 p.m. on Thursday, September 15, 2022, the parties shall email Department 4 and**
23 **each other as to any tentative rulings that they wish to contest. If the Court and opposing counsel**
24 **does not receive notice by that time, the tentative ruling will be adopted at the Pretrial**
25 **Conference.**

26 **PRETRIAL CONFERENCE**

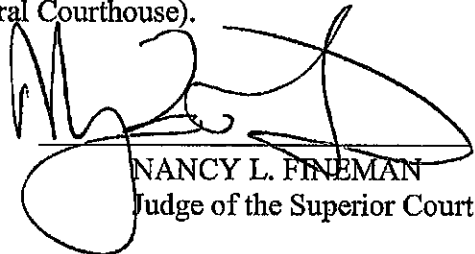
27 The parties are reminded that the Pretrial Conference is in person and that the Court is located at
28 800 North Humboldt Street, Courtroom G, San Mateo, CA 94401.

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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: September 12, 2022



NANCY L. FINEMAN
Judge of the Superior Court