

1 not requested or identified in the order shall not be available at trial, except to prevent
2 manifest injustice.

3 5. The Court addressed Defendant's motion in limine number 1. Dkt. #82. The
4 motion seeks to exclude Plaintiff's annual reviews from evidence. For reasons stated on the
5 record, the Court cannot at this time conclude that the reviews are irrelevant or confusing,
6 and therefore **denied** the motion.

7 6. The Court addressed Defendant's motion in limine number 2. Dkt. #83. For
8 reasons stated on the record, the Court **granted** the motion on hearsay grounds.

9 7. The Court addressed Defendant's motion in limine number 3. Dkt. #92. The
10 Court **denied** the motion with respect to evidence that Plaintiff was denied a final year of
11 employment after she did not receive tenure. The Court **granted** the motion with respect to
12 evidence that Dr. Young made errors in the application submitted by Plaintiff's husband.

13 8. The Court addressed Defendant's motion in limine number 4. Dkt. #84. The
14 motion concerned a sexual harassment claim made by Ms. Webb against Mr. Lester. For
15 reasons stated on the record, the Court **granted** the motion.

16 9. The Court addressed Defendant's motion in limine number 5. Dkt. #85.
17 Because Plaintiff stated she does not intend to use the statements concerning her performance
18 during trial, the Court **denied** the motion as moot. If Plaintiff decides during trial that the
19 statements become relevant, she should raise the issue with defense counsel before
20 mentioning the statements in front of the jury.

21 10. The Court addressed Defendant's motion in limine number 6. Dkt. #86. For
22 reasons stated on the record, the Court **granted** the motion and concluded that the EEOC
23 determination letter is admissible, but that references to Plaintiff's retaliation claim should
24 be redacted from the letter. Following the hearing, the reviewed *Gilchrist v. Jim Slemons*
25 *Import, Inc.*, 803 F.2d 1488 (1986). *Gilchrist* does not control because the determination
26 letter in this case finds "that there is reasonable cause to believe" that a violation has
27 occurred. Dkt. #86-2. The letter is therefore akin to the probable cause findings deemed
28 admissible under *Plummer v. Western Int'l Hotels Co.*, 656 F.2d 502, (9th Cir. 1981). The

1 parties are instructed to agree on a redacted form of the EEOC letter. The parties should also
2 agree on a limiting instruction. In crafting the instruction, the parties should consider the
3 instruction given in *Gilchrist*. See 803 F.2d at 1500-01.

4 11. The Court addressed Defendant's motion in limine number 7. Dkt. #87.
5 Because the motion did not identify specific damages evidence, the Court **denied** the motion.
6 The parties are instructed to confer about Plaintiff's damages claims. If Plaintiff intends to
7 make damages claims that Defendant believes to be inappropriate, Defendant should raise
8 this issue at the final conference.

9 12. The Court addressed Defendant's motion in limine number 8. Dkt. #88. For
10 reasons stated on the record, the Court concluded that the exhibit with handwritten notes is
11 admissible and **denied** the motion. This ruling is based on Plaintiff's assertion that she does
12 not seek to admit the handwritten statements to prove the truth of the matter asserted in those
13 statements. The parties are instructed to redact Plaintiff's handwritten statements from the
14 document. The other handwritten statements may be submitted as part of this exhibit to the
15 jury. The parties should remind the Court of the need to provide a limiting instruction when
16 this exhibit is admitted.

17 13. The Court addressed Defendant's motion in limine number 9. Dkt. #89.
18 Because Plaintiff does not intend to present evidence concerning statements made by the
19 ASU ombudsman, the Court **denied** the motion as moot. If Plaintiff decides that such
20 statements become relevant during trial, she should raise that issue with Defendant before
21 mentioning the statements in front of the jury.

22 14. The Court addressed Defendant's motion in limine number 10. Dkt. #91. The
23 parties agree that the motion is **moot** with respect to witnesses Barbara Kerr, Steven Wirkus,
24 Anne Klein, and Nan Ellin because Plaintiff does not intends to call them as witnesses. The
25 Court will **deny** the motion with respect to David Rhoads, Mary Romero, Nancy Armstrong,
26 and Sharon Crowley. Mr. Rhoads was disclosed in Plaintiff's initial disclosure statement as
27 a person with information about discriminatory and retaliatory treatment of Plaintiff. Ms.
28 Romero was disclosed in Plaintiff's initial disclosure statement as a person with knowledge

1 regarding the soundness of Plaintiff's scholarship, her contribution to the school of justice
2 studies as a teacher and scholar, and as a witness "to meetings Plaintiff had with Zatz and
3 Provine." Ms. Romero was also disclosed in Plaintiff's ninth supplemental disclosure
4 statement as a person expected to testify regarding Plaintiff's reputation as a respected
5 teacher and scholar in the school of justice studies, and to testify that Plaintiff complained
6 to her about Dean Young's discrimination in her fourth year review. Ms. Armstrong was
7 disclosed in Plaintiff's initial disclosure statement as a person who can testify to the strength
8 of Plaintiff's tenure case, and as a person familiar with Plaintiff's scholarship. The
9 disclosure also noted that Ms. Armstrong was an outside reviewer for the Plaintiff's tenure
10 case. Ms. Crowley was disclosed in Plaintiff's ninth supplemental disclosure statement as
11 a person who served on the personnel committee during Plaintiff's fourth year review. The
12 disclosure stated that Ms. Crowley was expected to testify about Plaintiff's reputation as a
13 teacher and scholar in the department of English, about the difficult work climate in the
14 department, and that Plaintiff had conversations with her during the course of her
15 employment at ASU concerning discrimination in the process of Plaintiff's review. The
16 Court concludes that these are sufficient disclosures for purposes of Rule 26(a). If Defendant
17 sought to obtain additional information regarding the knowledge or potential testimony of
18 these individuals, Defendant could have served additional discovery or deposed them. If
19 Defendant thought the disclosures made by Plaintiff were too cryptic, Defendant could have
20 raised that issue with the Court.

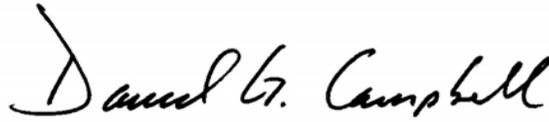
21 15. The Court addressed Defendant's motion in limine number 11. Dkt. #90. For
22 reasons stated on the record, the Court **denied** the motion.

23 16. The Court provided the parties with proposed preliminary jury instructions and
24 voir dire questions. Dkt. #107. These will be addressed at the final conference to be held
25 on **November 12, 2009**.

26 17. The Court also directed the parties to engage in settlement talks before
27 **September 11, 2009**. Magistrate Judge David K. Duncan has been chosen by random draw
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1 for the purpose of a settlement conference. The parties are directed to contact Magistrate
2 Judge Duncan's chambers to schedule a hearing date and time.

3 DATED this 24th day of July, 2009.

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10 David G. Campbell
11 United States District Judge
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