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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Stephanie McCollum,
Plaintiff,
v.
UPS Ground Freight Incorporated, et al.,
Defendants.

No. CV-11-0961-PHX-DGC

ORDER

The Court held a final conference with the parties on January 10, 2013. During the conference, the Court addressed Defendants’ Motion in Limine to Preclude Evidence of Alleged Mistakes in Defendants’ Driver’s Log Books and Any Reference to Federal Motor Carrier Safety Regulations Section 395.8. Doc. 108. The Court took the motion under advisement, and will now grant it in part and deny it in part.

The Court previously has understood Plaintiff to be asserting that the inaccurate log books were relevant to punitive damages because they help explain the fatigue Mr. Duenas allegedly was suffering on the day of the accident – fatigue Plaintiff claims caused the accident. As the Court said in ruling on Defendants’ motion for reconsideration of the summary judgment ruling, “Plaintiff alleges that financial incentives led Mr. Duenas to falsify his log books by driving when he should have been out of service and understating the length of time for vehicle safety inspections. . . . Log books that inaccurately report the length of time that Mr. Duenas was in service, if motivated by financial interests as Plaintiff alleges, may demonstrate that Mr. Duenas

1 allowed himself to become so fatigued that he drove through the intersection on a red
2 light.” Doc. 86 at 3.

3 At the conference on January 10, 2013, however, Plaintiff’s counsel asserted that
4 the log books are relevant to punitive damages for other reasons: (1) the log books show
5 that Duenas and Maldonado did not conduct safety inspections of their truck, or
6 conducted only cursory inspections, demonstrating that they ignored safety; (2) the log
7 books contain blank information in areas where Duenas and Maldonado were required to
8 record the results of inspections, again showing a disregard for safety; (3) the log books
9 show that Duenas and Maldonado sometimes failed to record the total miles they drove in
10 a day and the total miles the truck travelled in a day; and (4) the books show significantly
11 different times for when the truck arrived in Phoenix on the day of the accident.

12 Points one and two are not related to driver fatigue. They may show that the
13 drivers were not inspecting the truck as required, but a lack of inspections would not
14 contribute to fatigue.

15 The third point shows that Duenas and Maldonado were not recording total
16 mileage on some days, but that too is unrelated to fatigue. The log books contain
17 complete time records for when each driver was driving, in the sleeper berth, off duty, or
18 on duty and not driving, and Plaintiff’s counsel does not claim that these time entries are
19 inaccurate. Plaintiff’s counsel instead argued at the conference that these entries show
20 that Duenas and Maldonado were driving when they should have been conducting
21 inspections – that they accurately reflect the actual driving time. When the drivers’
22 activities for each 24-hour period can be seen in the log books, the absence of total
23 mileage in the books cannot be said to reflect behavior that would cause fatigue. Time in
24 the driver’s seat, not total mileage, is relevant to fatigue.

25 The fourth point shows that Duenas and Maldonado recorded different times for
26 when they arrived in Phoenix on the day of the accident. Duenas recorded 12:45 p.m.
27 and Maldonado recorded 8:30 a.m. This four-hour discrepancy could be indicative of
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1 fatigue. It certainly is more of a discrepancy than can be attributed to different watches.
2 And because the log entries were made on the day they arrived in Phoenix, it cannot
3 reasonably be attributed to faded memories.

4 With this understanding of the log books in mind, the Court must consider their
5 relevance to punitive damages – the only issue on which Plaintiff seeks to present them.
6 Arizona courts have recognized an “overarching principle . . . that the conduct giving rise
7 to punitive damages must be a proximate cause of the harm inflicted.” *Saucedo ex rel.*
8 *Sinaloa v. Salvation Army*, 24 P.3d 1274, 1279 (Ariz. App. 2001). “The proximate cause
9 of an injury is defined in Arizona as ‘that which, in a natural and continuous sequence,
10 unbroken by any efficient intervening cause, produces an injury, and without which the
11 injury would not have occurred.’” *Id.* at 1278 (quoting *Robertson v. Sixpence Inns of*
12 *Am., Inc.*, 789 P.2d 1040, 1047 (Ariz. 1990)).

13 Plaintiff does not contend that the lack of inspections or any resulting safety
14 problems caused or contributed to the accident. Indeed, Plaintiff previously admitted that
15 a bald tire on the truck was not a proximate cause of the accident. Doc. 81 at 8. Plaintiff
16 instead claims that Duenas was driving while fatigued and failed to see or respond to the
17 red light. Log book entries that reflect a lack of inspections and a disregard for the safety
18 conditions of the truck therefore cannot be said to be a proximate cause of Plaintiff’s
19 injuries. Nor can the absence of total mileage entries be said to reflect activities that
20 contributed to the accident when the log books themselves show the activities of the
21 drivers for the full 24-hour period of each day. The lack of inspections and total mileage
22 entries did not, in a natural and continuous sequence, produce the accident. Stated
23 differently, a reasonable jury could not conclude that the accident would not have
24 occurred if Duenas and Maldonado had inspected the truck or recorded their total
25 mileage. Because these inaccuracies are not evidence of events that proximately caused
26 Plaintiff’s injuries, they are not relevant to punitive damages. *Saucedo*, 24 P.3d at 1279.
27 The Court will grant the motion in limine on these inaccuracies.
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1 The same is not true of the discrepancies in arrival time. The four-hour difference
2 between Duenas' and Maldonado's contemporaneous log books could be viewed as
3 evidence of fatigue. The Court therefore will deny the motion in limine with respect to
4 these entries. Plaintiff may present the page from each driver's log book that reflects this
5 discrepancy, assuming proper evidentiary foundations are laid. The pages may not be
6 used to argue the points that have been excluded above.

7 Given this ruling, the Court also concludes that the motion in limine should be
8 granted with respect to Plaintiff's desired reference to 49 C.F.R. § 395.8. The regulation
9 required Defendants to maintain accurate log books with respect to specific categories of
10 information, and would be relevant if the jurors were asked to review the log books and
11 compare the drivers' entries to the requirements of the regulation, something that will not
12 occur given the Court's ruling above. The Court concludes that admission of the
13 regulation would unnecessarily complicate the jury's task and may result in confusion
14 when there is little or no evidence to which it applies. The Court also concludes that the
15 reference to criminal prosecution in the regulation could result in unfair prejudice that
16 substantially outweighs the very limited probative value of the regulation. The Court
17 therefore will exclude the regulation under Rule 403.¹

18 **IT IS ORDERED** that Defendants' motion in limine (Doc. 108) is **granted in**
19 **part and denied in part** as set forth above.

20 Dated this 11th day of January, 2013.

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24 _____
25 David G. Campbell
United States District Judge

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27 ¹ Given the rulings in this order, the Court also wishes to make clear, if it has not
28 in prior orders, that evidence of the bald tire will not be admissible. As noted, Plaintiff
concedes that the bald tire did not cause or contribute to the accident, and it therefore is
not relevant on the question of punitive damages under *Saucedo*.