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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Western Alliance Bank,
Plaintiff,
vs.
Richard Jefferson,
Defendant.

2:14-cv-00761 JWS
ORDER AND OPINION
[Re: Motion at Docket 149]

Richard Jefferson,
Counter-claimant,
vs.
Western Alliance Bank,
Counter-defendant.

Richard Jefferson,
Third-party plaintiff,
vs.
Theodore Kritza & Michelle Lee
Kritza,
Third-party defendants.

1 **I. MOTION PRESENTED**

2 At docket 149 defendant, counter-claimant, and third-party plaintiff Richard
3 Jefferson (“Jefferson”) filed a motion *in limine* to exclude what he refers to as “the
4 12/20/13 letter.”¹ Third-party defendants Theodore Kritza and Michelle Lee Kritza
5 (collectively, “Kritza”) filed an opposition at docket 155; plaintiff and counter-defendant
6 Western Alliance Bank (“Alliance”) filed an opposition at docket 156. Jefferson filed a
7 combined reply at docket 168. Oral argument was requested, but would not assist the
8 court.

9 **II. BACKGROUND**

10 The court has described the background giving rise to this litigation in detail in
11 the order at docket 183. It need not be repeated here. Suffice it to say, for purposes of
12 the present motion, that Alliance sued Jefferson to recover an unpaid debt. Alliance’s
13 complaint alleges that attached to its complaint are “individual loan and change in terms
14 agreements comprising the Loan Agreement.”² The ultimate document is the 12/20/13
15 letter,³ which Alliance alleges is a forbearance agreement between Alliance and
16 Jefferson under which Jefferson would make a \$50,000 principal reduction payment in
17 exchange for Alliance’s promise to forbear from exercising its remedies under the loan
18 documents. Jefferson’s alleged breach of the terms of the 12/20/13 letter is the
19 operative default at issue in Alliance’s case against Jefferson.⁴

20 **III. DISCUSSION**

21 Jefferson argues that the 12/20/13 letter should be excluded pursuant to
22 Evidence Rule 403. That rule states that “[t]he court may exclude relevant evidence if
23 its probative value is substantially outweighed by a danger of,” among other things,

24 _____
25 ¹Doc. 149 at 1. For purposes of consistency, the court will do the same.

26 ²Doc. 1-3 at 4 ¶ 8.

27 ³Doc. 1-4 at 82-85.

28 ⁴Doc. 1-3 at 4 ¶¶ 10-13.

1 “unfair prejudice, confusing the issues,” or “misleading the jury.”⁵ “Unfair prejudice is an
2 undue tendency to suggest decision on an improper basis, commonly, though not
3 necessarily, an emotional one. The Rule requires that the probative value of the
4 evidence be compared to the articulated reasons for exclusion and permits exclusion
5 only if one or more of those reasons substantially outweigh the probative value.”⁶
6 “Unless trials are to be conducted as scenarios, or unreal facts tailored and sanitized
7 for the occasion, the application of Rule 403 must be cautious and sparing. Its major
8 function is limited to excluding matter of scant or cumulative probative force, dragged in
9 by the heels for the sake of its prejudicial effect.”⁷

10 Jefferson does not seriously dispute the probative value of the alleged
11 forbearance agreement, nor could he. Instead, Jefferson asserts that the 12/20/13
12 letter “makes reference to amendments that do not exist, and have never existed,” and
13 falsely implies that two loans that were paid off were outstanding.⁸ Jefferson also
14 claims that he is not bound by the terms of the 12/20/13 letter because of Alliance’s
15 misrepresentations. Jefferson does not elaborate on how the letter might unduly
16 suggest the decision of any issue on an improper basis, or how the jury might be
17 confused or misled by the letter.

18 Jefferson has not shown that the probative value of the 12/20/13 letter is
19 substantially outweighed by a danger of unfair prejudice, confusing the issues, or
20 misleading the jury. Although Jefferson contends that his evidence shows that some
21 statements in the letter are false or misleading, he does not explain why the jury might
22 be incapable of weighing that evidence alongside the 12/20/13 letter and making

23
24 ⁵Fed. R. Evid. 403.

25 ⁶*United States v. Anderson*, 741 F.3d 938, 950 (9th Cir. 2013) (citations and internal
26 quotation marks omitted).

27 ⁷*United States v. Hankey*, 203 F.3d 1160, 1172 (9th Cir. 2000) (quoting *United States v.*
Mills, 704 F.2d 1553, 1559 (11th Cir.1983)).

28 ⁸Doc. 149 at 13-14.

