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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

FRANK CORNEJO, et al.,)	Case No.: 1:15-cv-000993 - JLT
)	
Plaintiffs,)	ORDER GRANTING IN PART DEFENDANT’S
)	MOTION IN LIMINE
v.)	
)	(Doc. 48)
OCWEN LOAN SERVICING, LLC, et al.,)	
)	
Defendants.)	
)	

The defendants contend Dora Cornejo seeks to testify as to matters about which she lacks personal knowledge. On this basis, they seek to preclude her from doing so.

I. Legal Standards Governing Motions in Limine

“Although the Federal Rules of Evidence do not explicitly authorize in limine rulings, the practice has developed pursuant to the district court’s inherent authority to manage the course of trials.” Luce v. United States, 469 U.S. 38, 40 n. 2 (1984). The Ninth Circuit explained motions in limine “allow parties to resolve evidentiary disputes ahead of trial, without first having to present potentially prejudicial evidence in front of a jury.” Brodit v. Cabra, 350 F.3d 985, 1004-05 (9th Cir. 2003) (citations omitted).

Importantly, motions in limine seeking the exclusion of broad categories of evidence are disfavored. See Sperberg v. Goodyear Tire and Rubber Co., 519 F.2d 708, 712 (6th Cir. 1975). The Court “is almost always better situated during the actual trial to assess the value and utility of

1 evidence.” Wilkins v. Kmart Corp., 487 F. Supp. 2d 1216, 1218 (D. Kan. 2007). The Sixth Circuit
2 explained, “[A] better practice is to deal with questions of admissibility of evidence as they arise [in
3 trial]” as opposed to ruling on a motion in limine. Sperberg, 519 F.2d at 712. Nevertheless, motions in
4 limine are “an important tool available to the trial judge to ensure the expeditious and evenhanded
5 management of the trial proceedings.” Jonasson v. Lutheran Child & Family Services, 115 F.3d 436,
6 440 (7th Cir. 1997).

7 “[A] motion in limine should not be used to resolve factual disputes or weigh evidence,” C & E
8 Services, Inc. v. Ashland Inc., 539 F. Supp. 2d 316, 323 (D. D.C. 2008), because that is the province of
9 the jury. See Reeves v. Sanderson Plumbing Products, 530 U.S. 133, 150 (2000).

10 Moreover, the rulings on the motions in limine made here does not preclude either party from
11 raising the admissibility of the evidence discussed here, if a change of circumstances occurs that would
12 make the evidence admissible. In this event, the proponent of the evidence **SHALL** raise the issue
13 outside the presence of the jury. Finally, the rulings made here are binding on all parties.

14 **II. Defendants’ Motion in Limine**

15 The defendants anticipate that Dora Cornejo will offer testimony upon which she lacks personal
16 knowledge. (Doc. 48 at 3) They note that at her deposition, she repeatedly answered “I don’t recall” to
17 questions posed to her. Id. When they asked her whether there were documents that could refresh her
18 recollection, she referred only to her previously made document production. Id. However, at the
19 deposition, the defendants contend they reviewed the documents from her production with her and this
20 did not refresh her recollection or the documents upon which she relied constituted hearsay. Id.

21 The plaintiffs oppose the motion and argue that Ms. Cornejo gave extensive testimony and the
22 defendants cite to limited portions of her testimony as problematic. Thus, they argue Ms. Cornejo’s
23 testimony should not be excluded.

24 **A. A witness must have personal knowledge**

25 Federal Rules of Evidence Rule 602 precludes a witness from testifying except as to matters
26 within her personal knowledge. A witness can establish she has personal knowledge by testifying
27 about how she heard, saw or did something that is relevant to the case.

28 It appears that one of the defendants’ concern centers around what documents were sent by Ms.

1 Cornejo and when. From the excerpts of the testimony submitted by the parties, it is unclear to the
2 Court whether Ms. Cornejo currently knows this. For example, when asked what documents were
3 faxed by Ernest Cortez, she replied, “The documents that were requested.” (Doc. 49-1 at 14) The
4 defendants’ attorney attempt to clarify what documents this included and Ms. Cornejo responded, “I
5 can’t remember exactly what documents, but the ones requested by – by them.” Id. Again, the attorney
6 attempted to find out what documents were sent by Mr. Cortez and Ms. Cornejo answered, “I don’t
7 recall the list [of documents].” Id. When the attorney asked Ms. Cornejo whether there were
8 documents that refresh her recollection, she referred to her document production. Id. at 14-15. From
9 the excerpts provided, however, the Court cannot determine whether Ms. Cornejo was ever able to
10 identify the document produced even after reviewing the document production.

11 In addition, Ms. Cornejo was inconsistent about whether there were additional documents
12 submitted after the initial set of documents were provided. (Doc. 49-1 at 16) Also, when asked when
13 the profit and loss statement was submitted and despite it being dated April 22, 2015¹, she could not say
14 when it was prepared or when it was sent. Id. at 19. However, she agreed that it could not have been
15 submitted on April 16, 2015. Id. at 20.

16 Also, when asked about when a particular conversation occurred in which Diane Cortez, Ms.
17 Melissa and the plaintiff spoke to a representative of Ocwen, Ms. Cornejo could not recall the date.
18 (Doc. 9-1 at 11) When asked the date of the conversation, she replied, “I couldn’t tell you the date.
19 They’re in the transcripts.” Id. This was clarified to indicate that when Ms. Cornejo referred to
20 “transcripts,” she was referring to notes. (Doc. 49-1 at 11-12) However, it is unclear whether she
21 prepared the notes or whether Diana Cortez did so. Moreover, it is unclear, if the notes contain the
22 date, whether the notes refresh Ms. Cornejo’s recollection as to the date or whether she simply relies
23 upon the notes as accurate.

24 On the other hand, the “timeline” prepared by Diana Cortez is not based upon anyone’s
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26 ¹ The plaintiffs assert that a “critical date to the allegations is April 28, 2015, the date on which Mrs. Cornejo submitted
27 additional documents in to Ocwen in response to a last minute request from Ocwen for a new Profit and Loss Statement and
28 Tax Return. Mrs. Cornejo testified that she remembered those documents and participated in their creation.” (doc. 50 at 3)
However, the excerpt of Ms. Cornejo’s deposition provided by the plaintiffs does not indicate she recalls the April 28, 2015
date. Rather, she indicates only when one document “was made.” (Doc. 51-1 at 5) The excerpted transcript does not
indicate that it was sent on April 28, 2016. Id.

1 recollection of the events. (Doc. 49-1 at 24-26) Instead, it is a summary of Ms. Cornejo’s interpretation
2 of the “compiled documents” and the dates on which Diana Cortez determined that the events occurred.
3 Id. Once again, from her deposition, it does not appear that the timeline refreshed Ms. Cornejo’s
4 recollection but, instead, she simply relies upon it as if it were accurate without any showing that it is
5 accurate.

6 The Court agrees that Ms. Cornejo—and every other witness—may testify *only* based upon his
7 or her personal knowledge. It appears that Ms. Cornejo, though she was present when certain events
8 occurred, no longer can recall when they occurred or, indeed, exactly what occurred. For example, she
9 knows that documents were sent to Ocwen but cannot say exactly what documents were sent or when.

10 Likewise, she is not permitted to testify about hearsay statements, which includes information
11 contained in the timeline or notes provided by Diana Cortez or Ernest Cortez or statements that they
12 say were made by Ocwen representatives. The requirement that a witness have personal knowledge of
13 the facts about which she testifies and that she refrain from testifying to inadmissible hearsay
14 statements, is not limited to Ms. Cornejo; this is required of all witnesses.

15 Thus, the defendants’ motion in limine is **GRANTED in PART** and **DENIED in PART** as
16 follows:

17 1. Ms. Cornejo may testify only from her personal knowledge on all topics. Before she
18 testifies about which documents were sent to Ocwen and when, her counsel SHALL demonstrate,
19 outside the presence of the jury that she provided this information at her deposition, whether from her
20 own unassisted memory or from her memory after it was refreshed. However, she is not precluded
21 from testifying in total.

22
23 IT IS SO ORDERED.

24 Dated: September 15, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE