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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANNY JAMES COHEA,

Plaintiff,

v.

J. COLVIN, D. McCARGAR, S.L.
BAUGHMAN, M.A. MICHEELS, R
YAMAMOTO, SD AKIN, D. ADAMS,
A GOLD, and S. SCARSELLA,

Defendants.

No. 2:00-cv-02799-GEB-EFB

ORDER RE MOTIONS IN LIMINE

Defendants move in limine ("MIL") for a pretrial order precluding the admission of certain evidence at trial. Plaintiff did not file an opposition or statement of non-opposition to any MIL. Each MIL is addressed below.

A. Defendants Adams, Akin, Baughman, Colvin, Gold, McCargar, Micheels, and Yamamoto's MILs

MIL No. 1

Defendants Adams, Akin, Baughman, Colvin, Gold, McCargar, Micheels, and Yamamoto (collectively referred to as "Defendants") "request an order precluding Plaintiff . . . from testifying about or otherwise mentioning or referencing (1) interference with Plaintiff's access to the law library at CSP-Sac and (2) his ability to pursue a habeas corpus action."

1 (Defs.' MIL No. 1 2:12-14, ECF No. 298.) Defendants argue
2 "Plaintiff's First Amendment, 'access to court' claims have been
3 dismissed. . . . Consequently, evidence of law library access and
4 Plaintiff's habeas corpus action are [irrelevant and]
5 inadmissible." (Id. at 3:16-17, 3:25-26.) Defendants also argue
6 "[s]uch evidence should . . . be excluded" under Federal Rule of
7 Evidence ("Rule") 403. (Id. at 4:4-6.)

8 This motion lacks the preciseness and sufficient
9 factual context required for a pretrial in limine ruling. See,
10 e.g., Weiss v. La Suisse, Soc'y D'Assurances Sur La Vie, 293 F.
11 Supp. 2d 397, 407-08 (S.D.N.Y. 2003) (denying motion to exclude
12 evidence for a "lack[] of specificity[,] " stating "[n]o
13 particular documents or testimony have been identified in the
14 motion"); Colton Crane Co., LLC v. Terex Cranes Wilmington, Inc.,
15 No. CV 08-8525 PSG (PJWx), 2010 WL 2035800, at *1 (C.D. Cal. May
16 19, 2010) (stating "motions in limine should rarely seek to
17 exclude broad categories of evidence, as the court is almost
18 always better situated to rule on evidentiary issues in their
19 factual context during trial").

20 **MIL No. 2**

21 Defendants "seek an order in limine barring Plaintiff
22 from introducing evidence of [a] conspiracy between the
23 Defendants[,] " arguing such evidence is irrelevant and should be
24 excluded under Rule 403 since "conspiracy [i]s not a claim
25 preserved for trial." (Defs.' MIL No. 2 2:7-12, 3:16, 3:19-23,
26 ECF No. 299.)

27 This motion lacks the preciseness and sufficient
28 factual context required for a pretrial in limine ruling.

1 **B. Defendant Scarsella's MILs**

2 **MIL No. 1**

3 Defendant Scarsella ("Scarsella") "moves for an order
4 excluding the introduction of any evidence, argument, or
5 reference to prior settlement discussions between the parties in
6 this case[,]" arguing "any reference to settlement offers or
7 negotiations is specifically prohibited by [Rule] 408." (Def.
8 Scarsella's MILs 2:27-3:10, ECF No. 300.)

9 This in limine motion is GRANTED.

10 **MIL No. 2**

11 Scarsella "moves for an order excluding the use of any
12 exhibits identified by Plaintiff due to his failure to exchange
13 copies of his exhibits as required by the final pretrial order."
14 (Id. at 3:12-14.) Scarsella argues that Defendant's "failure to
15 exchange his exhibits . . . has . . . prejudiced [him] insofar as
16 he cannot file objections or motions in limine to the same."
17 (Id. at 3:14-16.)

18 Scarsella has not shown that a pretrial exclusion
19 ruling is an appropriate sanction for Plaintiff's failure to
20 timely exchange his trial exhibits. For example, two of
21 Plaintiff's categories of trial exhibits consist of "[a]ll [Rules
22 Violation Reports ("RVRs")] related to this case," and "[a]ll
23 grievances related to this case." (Pretrial Order 17:11-12, ECF
24 No. 255.) Defendants also identified these documents as trial
25 exhibits. (Id. at 18:2-8, 18:25-19:5.) Therefore, Scarsella has
26 not shown why he would be prejudiced by their admission even if
27 they were not exchanged in advance of trial.

1 For the stated reasons, this in limine motion is
2 DENIED.

3 **MIL No. 3**

4 Scarsella "moves for an order precluding any opinion
5 testimony from Susan Christian, Esq. whom Plaintiff identified in
6 his pretrial statement as an expert witness and/or more
7 particularly an order precluding her from testifying as to
8 whether defendants actions constituted a denial of access to the
9 courts as alleged by Plaintiff." (Scarsella's MILs 4:18-22.)
10 Scarsella argues her testimony should be excluded under Federal
11 Rule of Civil Procedure 37(c)(1) since Plaintiff failed to
12 properly disclose her as an expert witness. (Id. at 5:12-18.)

13 Scarsella has not shown that a pretrial decision on
14 this in limine motion is necessary since the Court denied
15 Plaintiff's motion to secure the attendance of certain
16 unincarcerated witnesses, including Susan Christian. (See Order
17 8:10-20, 9:1-3, June 5, 2015, ECF No. 276; Order Denying Pl.'s
18 Mot. Recons., ECF No. 295.)

19 **MIL No. 4**

20 Scarsella "moves for an order excluding all witnesses
21 from the courtroom during trial" under Rule 615 "with the
22 exception of Plaintiff and the individually named defendants."
23 (Scarsella's MILs 5:24-6:4.)

24 This in limine motion is GRANTED.

25 **MIL No. 5**

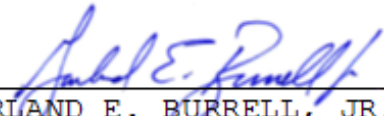
26 Scarsella "moves for an order excluding the
27 introduction of any evidence, argument, or reference to
28 California Department of Corrections and Rehabilitation ("CDCR")

1 agreeing to defend Mr. Scarsella and indemnify him against any
2 compensatory damages awarded in this matter[,]” arguing “CDCR’s
3 indemnification is not relevant because it does not affect
4 liability, damages, or any other aspect of the case[,]” and “such
5 information prejudices Mr. Scarsella, because the jury may be
6 more willing to find against him if they understand that
7 California, a faceless and ostensibly wealthy state, is footing
8 the bill.” (Id. at 6:6-18.)

9 This in limine motion is GRANTED.

10 Dated: July 17, 2015

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GARIAND E. BURRELL, JR.
Senior United States District Judge