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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ADIL HIRAMANEK, et al.,
Plaintiffs,
v.
L. MICHAEL CLARK, et al.,
Defendants.

Case No. 5:13-cv-00228-RMW

FINAL PRETRIAL ORDER

Re: Dkt. Nos. 671, 675-678, 684-685, 688-689

At the final pretrial conference in this matter, the court requested supplemental briefing on several matters. That briefing and more has now been received. The court rules as follows.

I. LODGING OF EXHIBITS

As stated in this court’s prior orders, the parties must provide the court with copies of any proposed, case-in-chief trial exhibits in advance of trial.¹ The court needs to see those exhibits so that it can rule on any evidentiary objections. By **3:30 pm on Friday, July 29, 2016**, plaintiffs shall lodge with the undersigned judge’s courtroom deputy electronic copies of any exhibits that they plan to offer in their case-in-chief at trial.

It appears that the only two exhibits on which defendant seeks to rely are two state court

¹ See Dkt. No. 649 at 2:5-6; Dkt. No. 658 at 6:18-19.

1 orders declaring Mr. Hiranek a vexatious litigant which have already been filed on ECF.² See
2 Dkt. No. 676. If the court is mistaken about defendant's submissions, defendant must also comply
3 with the July 29, 2016 lodging deadline. Upon a party's request, the court can return the storage
4 medium (e.g. a thumb drive or DVD) used to deliver the exhibits, after the court has copied the
5 storage medium's contents.

6 **II. TRIAL SCHEDULE**

7 The trial of plaintiffs' claims against defendant Miller will commence with jury selection
8 at 9:00 a.m. on Tuesday, August 2, 2016. The proceedings will commence each day at 9:00 a.m.
9 with appropriate meal and rest breaks except on August 5 when the hours of the session may have
10 to be modified. The presentation of the case should be completed on or before August 5. If for
11 some unexpected reason the presentation of the case has not been completed by August 5, the trial
12 will resume on August 15.

13 Mr. Hiranek asserts that Ms. Hiranek has a doctor's appointment scheduled for
14 August 3, 2016 at 10 a.m. Dkt. No. 688 Ex. A. Nevertheless, Mr. Hiranek asserts that
15 "Plaintiffs' [sic] do not have the option of a fourth rescheduled trial date." Dkt. No. 688 at 3. If
16 Ms. Hiranek is unable to reschedule her doctor's appointment, the court will consider adjusting
17 the schedule for August 3.³

18 Each side will be allotted 8 hours of presentation time, including opening statements, but
19 not including closing statements or jury selection. Any time a party takes seeking to present
20 inadmissible material may be deducted from that party's presentation time. Similarly, if any party
21 makes repeated, meritless objections, the court may deduct time from the objecting party's
22 allotment.

23 **III. JURY SELECTION AND VOIR DIRE**

24 The court will question potential jurors and will take the parties' proposals for voir dire
25 questions into account in determining which questions it will ask. The voir dire process the court
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27 ² The admissibility of these orders is addressed below.
28 ³ The court notes that Ms. Hiranek did not attend the July 15, 2016 pretrial conference and thus
did not discuss her own scheduling preferences at the time.

1 will use is as follows. The court will initially examine twenty prospective jurors and then allow
2 counsel for each side up to ten minutes for follow-up questions. After the parties exercise any
3 challenges for cause (to be done at sidebar outside the hearing of the prospective jurors), the
4 courtroom deputy will hand the parties a list with the prospective jurors numbered one through the
5 number of prospective jurors who remain after challenges for cause. The parties will then pass the
6 list between themselves exercising up to three peremptory challenges (three per side maximum). A
7 pass does not count as a challenge. After the parties exercise their peremptory challenges, the
8 examined jurors will be asked to return to the public seats in the courtroom and the eight who will
9 serve as the jury will be called back to the jury box by the courtroom deputy. The jurors will be
10 the first eight unchallenged prospective jurors on the list provided to the parties.

11 **IV. EXAMINATION AND PRESENTATION OF EVIDENCE**

12 The court is aware that both plaintiffs are representing themselves and that Mr. Hirananeck
13 has been assisting Ms. Hirananeck in preparation of this case. Plaintiffs must understand that Mr.
14 Hirananeck cannot act as Ms. Hirananeck's attorney, but the court will allow some leeway to assist
15 Ms. Hirananeck in presenting her case. The plaintiffs may call each other as witnesses.

16 Alternatively, the court will allow the Hirananecks to provide their direct testimony in a narrative
17 fashion, assuming they limit their narratives to relevant testimony. If they fail to do so, they will
18 be required to ask themselves questions or announce the intended subject matter of testimony to
19 come so that the court can determine the testimony's relevance to issues remaining in the case. For
20 example, testimony regarding alleged failure to accommodate a disability is irrelevant to issues
21 remaining in the case.

22 **V. WITNESS OBJECTIONS**

23 The court finds that the witnesses who have been properly disclosed such that the parties
24 would not be unfairly surprised by their testimony are Adil Hirananeck, Roda Hirananeck, and
25 Beth Miller.

26 Defendant's motion to exclude the testimony of David Merritt, Ed Summerfield, and Shiv
27 Paletti in plaintiffs' case in chief is GRANTED. Dkt. No. 671. Among other discovery abuses,
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1 plaintiffs failed to supplement their responses to defendant’s interrogatory number 16, which
2 requested that plaintiffs “IDENTIFY each individual other than YOU whom YOU contend has
3 knowledge of MILLER’s alleged discriminatory bias.” Dkt. No. 671-3 Ex. E at 10. The only name
4 Mr. Hiranamek identified in response was Caitlyn Burgess, *id.* at 11, and plaintiff’s attempt to
5 incorporate a list of dozens of names by reference denied defendant adequate disclosure. This
6 failure to supplement with specific names violated Fed. R. Civ. P. 26(e).

7 Defendant’s motion to exclude the testimony of Dr. Cipoletti is also GRANTED. Dkt. No.
8 685. Plaintiffs have failed to show how Dr. Cipoletti’s testimony is relevant to plaintiffs’ claims
9 against Miller.

10 The court’s rulings do not preclude the parties from offering witnesses to testify solely for
11 impeachment purposes. The court warns, however, that impeachment is narrowly defined to
12 evidence attacking the credibility of a witness. A witness offered solely for impeachment will not
13 be allowed to provide testimony that has independent relevance to the merits of the case. *See*
14 *Kempf v. Barrett Business Services, Inc.*, 336 Fed.Appx. 658 (9th Cir. 2009) (nonprecedential)
15 (excluding testimony not offered “solely” for impeachment); *Clear-View Techs., Inc. v. Rasnick*,
16 No. 13-CV-02744-BLF, 2015 WL 3509384, at *6 (N.D. Cal. June 3, 2015) (same).

17 Plaintiffs’ motions to exclude defendant Miller’s testimony or exhibits, Dkt. Nos. 684 &
18 689, are DENIED. Plaintiffs have not shown why they should be granted leave to file additional
19 motions in limine. Moreover, plaintiffs’ argument that Miller did not adequately disclose that she
20 might testify is frivolous. To the extent that Miller provides trial testimony that is inconsistent
21 with her deposition testimony, plaintiffs may use her deposition testimony to impeach her.

22 **VI. ADMISSIBILITY OF VEXATIOUS LITIGANT ORDERS**

23 The court has reviewed defendant’s offer of proof concerning the state court orders
24 declaring plaintiff a vexatious litigant, Dkt. No. 676. While this court agrees that the state court
25 orders may be relevant to plaintiffs’ motive for pursuing litigation against Miller as well as Mr.
26 Hiranamek’s credibility, the risk of waste of time likely outweighs the orders’ probative value
27 under Rule 403. Accordingly, defendant will not be allowed to introduce the orders or Mr.

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1 Hiranek's status as a vexatious litigant unless Mr. Hiranek opens the door to such evidence
2 by discussing adverse actions that the state court took against him or his mother. If Mr. Hiranek
3 suggests at trial that the state courts have taken any action against him other than the alleged
4 denial of the use of the restroom at issue here, the orders may become admissible.

5 **VII. DEFENDANT'S MOTION FOR TERMINATING SANCTIONS**

6 Defendant requests that terminating sanctions, or, alternatively, preclusion of witnesses
7 and exhibits, be imposed on plaintiffs due to plaintiffs' continued failure to provide adequate
8 disclosures. Dkt. No. 677. The court is sympathetic to defendants' position. Hiding the small
9 number of witnesses and exhibits that a party actually intends to rely on at trial among hundreds of
10 irrelevant entries is an abuse of the discovery process. Nevertheless, it appears that in light of the
11 court's rulings above, the court has already granted much of the relief defendant seeks, and the
12 court is not currently prepared to take the step of imposing terminating sanctions. Accordingly,
13 defendant's motion, Dkt. No. 677, as well as plaintiffs' request for another case management
14 conference, Dkt. No. 678, are DENIED as moot.

15 **IT IS SO ORDERED.**

16 Dated: July 28, 2016



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18 Ronald M. Whyte
United States District Judge

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