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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 MIKE KREIDLER,

10 Plaintiff,

11 v.

12 DANNY L. PIXLER, *et al.*,

13 Defendants.

Case No. C06-0697RSL

ORDER GRANTING IN PART AND
DENYING IN PART MOTIONS *IN*
LIMINE REGARDING CRIMINAL
AND SEC MATTERS

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15 This matter comes before the Court on defendant Danny Pixler's motions *in limine*
16 to preclude four categories of evidence related to alleged prior wrongs: (1) Pixler's
17 criminal plea of guilty to the crime of conspiracy to commit wire fraud, (2) documents
18 and testimony regarding a proceeding by the United States Securities and Exchange
19 Commission ("SEC") in the United States District Court for the Southern District of
20 Florida against Pixler and Huff, (3) expunged charges against Pixler arising out of a
21 California corporate bankruptcy filing, and (4) "any other civil or criminal matters in
22 which Pixler is or was a party," with the exception of Certified's bankruptcy proceeding.
23 Motion at p. 2. At the parties' request, the Court heard oral argument in this matter on
24 April 12, 2010.

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26 ORDER GRANTING IN PART AND DENYING IN PART MOTIONS
IN LIMINE REGARDING CRIMINAL AND SEC MATTERS - 1

1 Pixler contends that evidence regarding all four matters is inadmissible under
2 Federal Rule of Evidence 404(b), which provides:

3 Evidence of other crimes, wrongs, or acts is not admissible to prove the character
4 of a person in order to show action in conformity therewith. It may, however, be
5 admissible for other purposes, such as proof of motive, opportunity, intent,
6 preparation, plan, knowledge, identity, or absence of mistake or accident

7 While Pixler contends that evidence of alleged prior wrongs is part of a “smear
8 campaign” against him, plaintiff argues that the evidence is relevant and admissible.

9 **A. Criminal Conviction.**

10 In April 2009, Pixler pled guilty to conspiracy to commit wire fraud in violation of
11 18 U.S.C. § 371. Subsequently, he was sentenced to five years in prison, and he is
12 currently serving that sentence. Pixler requests that the Court exclude any testimony or
13 reference to the case of *United States v. Pixler*, 08-60171-CR-ZLOCH, which was
14 adjudicated in the United States District Court for the Southern District of Florida. In
15 plaintiff’s pretrial statement, he identifies several documents from that matter that he
16 apparently will seek to introduce in the trial in this case, including: (1) statements made
17 during the plea bargaining process, (2) the judgment, (3) the indictment, (4) the
18 superceding information, and (5) the transcript of the sentencing. Pixler contends that
19 none of the information or documents is relevant in this case.

20 The Court considers the documents relevant and admissible. Plaintiff argues that
21 evidence regarding the prior conviction is relevant because it bears on Pixler’s credibility.
22 Federal Rule of Evidence 609(a)(2) provides that “evidence that any witness has been
23 convicted of a crime shall be admitted regardless of the punishment, if it readily can be
24 determined that establishing the elements of the crime required proof or admission of an
25 act of dishonesty or false statement by the witness.” The Court may not exclude evidence
26 that is admissible under Rule 609(a)(2) even if it is prejudicial. See, e.g., Green v. Bock

1 Laundry Mach. Co., 490 U.S. 504, 526-27 (1989). Although Pixler contends that his
2 guilty plea was a tactical choice, not a conviction, the law does not support his contention.
3 See, e.g., Boykin v. Alabama, 395 U.S. 238, 242 (1969) (explaining that a plea is “itself a
4 conviction”). Pixler contends that the crime of conspiracy to commit wire fraud does not
5 involve an act of dishonesty or false statement by him. Wire fraud involves a false
6 statement because misrepresentation is an element of the crime. See, e.g., United States
7 v. Pritchard, 773 F.2d 873, 876 (7th Cir. 1985). The crime of conspiracy involves
8 dishonesty or a false statement. 84 ALR5th 487 at p. 617 (citing Hebert v. Hartford Ins.
9 Co. of the Midwest, 649 So. 2d 631, 633 (La. Ct. App. 3d Cir. 1994) (affirming trial
10 court’s denial of a request to exclude a guilty plea; stating that crimes involving
11 conspiracy “clearly involve dishonesty or false statement”). Moreover, the crime of
12 conspiracy to commit wire fraud involves dishonesty because the conspirators conspired
13 to commit fraud. During the criminal proceeding, Pixler’s counsel stated that Pixler
14 “provided representations to his clients that they were going to be receiving insurance for
15 state workers’ comp. However, he was not providing that.” Declaration of Donald
16 Cohen (Dkt. #232), Ex. D. Evidence of the prior conviction is therefore admissible under
17 Federal Rule of Evidence 609(a)(2) for impeachment purposes.

18 Even if the conviction were not admissible under Rule 609, it would be admissible
19 under Rule 404(b), which provides that evidence of prior crimes may be admissible for
20 other purposes, including proving motive, opportunity, preparation, and plan. The prior
21 conviction is relevant to Pixler’s motives because it shows that defendants sought out
22 Cascade because they were in urgent need of another insurer. The prior conviction also
23 shows preparation, plan, knowledge, and absence of mistake or accident because in both
24 instances, Pixler allegedly collected workers’ compensation premiums from clients and
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1 diverted the premiums.

2 **B. SEC Matter.**

3 Pixler seeks to exclude evidence and testimony regarding the matter of SEC v.
4 Huff, et. al., including a Litigation Release on the SEC's website that states, "Pixler
5 consented to entry of the judgment without admitting or denying any of the allegations in
6 the complaint." Pixler's Motion at p. 4. The Litigation Release also references the fact
7 that on May 7, 2008, a district judge in the United States District Court for the Southern
8 District of Florida entered a final judgment of permanent injunction against Pixler.
9 Declaration of Diana Dearmin (Dkt. #222), Ex. 1.

10 Pixler contends that the Litigation Release is neither authenticated nor relevant.
11 The record contains very little evidence about the SEC matter or the SEC's allegations
12 against Pixler. Plaintiff has not listed any potential trial witnesses from the SEC to testify
13 regarding the document and SEC matter. In addition to the paucity of information,
14 plaintiff has not explained how the 2008 injunction is relevant to the wrongdoing in this
15 case, which primarily occurred in 2004 and 2005. For example, although the injunction
16 apparently precluded Pixler from holding a position as an officer or a director of certain
17 corporations, there is no evidence that he did so after the injunction was issued. In
18 addition to the minimal showing of relevancy, introduction of the Litigation Release
19 would be unduly prejudicial and potentially confusing for the jury. For those reasons, the
20 Court will exclude it.

21 **C. California Bankruptcy Matter.**

22 Pixler seeks to exclude any testimony, evidence, or reference to expunged charges
23 against him arising out of a California corporate bankruptcy filing in which, he contends,
24 the bankruptcy attorney failed to release checks for payment by the corporate debtor.

1 Plaintiff has not identified any documents or testimony he seeks to present regarding the
2 matter, so it appears that the issue is moot. Regardless, because the conviction was
3 expunged, plaintiff has not shown its relevance, or that its relevance would outweigh the
4 potential prejudice. Accordingly, the Court will exclude any evidence regarding or
5 reference to the matter.

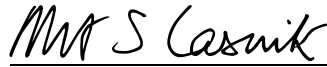
6 **D. Other Matters.**

7 Pixler's request to exclude evidence regarding "any other civil or criminal matters
8 in which Pixler is or was a party," is too vague to assess, so the Court denies that request.
9 After the parties filed their memoranda, plaintiff filed a supplemental memorandum
10 noting that on October 28, 2009, new federal criminal charges were filed against Pixler in
11 Florida for alleged federal tax violations. Plaintiff notes that he will seek to have that
12 charge, and any subsequent conviction, admitted into evidence in this case. Because there
13 has not yet been a conviction or guilty plea, the issue is premature. The Court will not
14 admit evidence of what is, at this point, just allegations. The Court may revisit the issue
15 is those circumstances change.

16 For all of the foregoing reasons, Pixler's motions *in limine* (Dkt. #219, #220) are
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1 GRANTED IN PART AND DENIED IN PART.¹

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3 DATED this 15th day of April, 2010.

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7 Robert S. Lasnik
8 United States District Judge
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21 ¹ The Court notes that the findings and conclusions in this order, like all rulings *in*
22 *limine*, are preliminary and can be revisited at trial based on the facts and evidence as
23 they are actually presented. See, e.g., Luce v. United States, 469 U.S. 38, 41 (1984)
24 (explaining that a ruling *in limine* “is subject to change when the case unfolds,
25 particularly if the actual testimony differs from what was contained in the proffer. Indeed
even if nothing unexpected happens at trial, the district judge is free, in the exercise of
26 sound judicial discretion, to alter a previous *in limine* ruling.”). Subject to these
principles, the Court issues this ruling for the guidance of the parties.

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