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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TROY COACHMAN,

Plaintiff,

v.

SEATTLE AUTO MANAGEMENT INC.
dba MERCEDES BENZ OF SEATTLE and
AL MONJAZEB,

Defendant.

Case No. 17-187RSM

ORDER RE: MOTIONS IN LIMINE

I. INTRODUCTION

This matter comes before the Court on Plaintiff Troy Coachman’s Motions in Limine (Dkt. #26), Defendants Seattle Auto Management Inc. dba Mercedes Benz of Seattle and Al Monjazeb (“Defendants”)’s Motions in Limine (Dkt. #25), and Motions in Limine stipulated by the parties (Dkt. #27). For the reasons set forth below, these Motions are GRANTED, DENIED, and DEFERRED.

II. STIPULATED MOTIONS IN LIMINE

The Court will first address the agreed Motions in Limine (Dkt. #27) listed as follows:

1. Evidence or argument excluded by an order in limine must not be presented to the jury without prior leave from the Court.

- 1 2. Non-party fact witnesses are excluded from the courtroom until excused by the
2 Court.
- 3 3. Evidence of unemployment compensation is inadmissible.
- 4 4. Statements of apology or remorse regarding the decision to terminate Plaintiff's
5 employment are inadmissible.
- 6 5. Counsel shall not offer at trial documents not previously disclosed without prior
7 leave from the Court.
- 8 6. Counsel shall not comment regarding the size of any law firm or the number of
9 attorneys involved in litigation.
- 10 7. Counsel shall not make reference to the substance of pre-trial motions in the
11 presence of the jury.
- 12 8. Expert reports are not admissible.
- 13 9. Counsel shall not make reference to the taxability of any jury award.
- 14 10. Counsel shall not comment regarding the choice to call or not call any witness.
- 15 11. Counsel shall provide the names of witnesses they plan to call the next court day at
16 the end of each day of trial.

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20 The Court finds that many of these Motions reflect standard practices of the Court, and they are
21 otherwise reasonable given the nature of this case. These Motions are GRANTED.

22 **III. PLAINTIFF'S MOTIONS IN LIMINE**

- 23 1. Plaintiff first moves to permit the parties to show any and all exhibits in opening
24 statements. Defendants respond that they dispute the admissibility of certain exhibits.
25 Parties are permitted to refer to admissible evidence to be presented at trial, but not to
26 show exhibits where there is a genuine dispute as to admissibility. Such exhibits will
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1 only be published to the jury after ruling by the Court. The Court does not know what
2 exhibits are at issue, and, out of caution, concludes that the parties may not show any
3 exhibit or portion of an exhibit where admissibility is disputed. However, the Court
4 finds the parties may show demonstrative exhibits such as timelines to the jury so long
5 as they make clear that such is not evidence. This Motion is GRANTED IN PART
6 AND DENIED IN PART.
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8 2. Plaintiff seeks to use videotaped deposition clips of Defendants' 30(b)(6) witness
9 during opening statements. This Motion is DENIED. The jury is not well-served
10 hearing actual testimony in the opening statement out of context, and it is entirely
11 within the Court's discretion to limit the use of this evidence. *See Doe v. City of San*
12 *Diego*, 12CV689-MMA (DHB), 2014 WL 11997809, at *6 (S.D. Cal. July 25, 2014).
13 Parties are free to describe the content of such clips to the jury.
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15 3. Plaintiff moves to permit use of a video clip of himself during his opening statement.
16 This Motion is DENIED for the same reasons as Plaintiff's Motion #2 above. Plaintiff
17 admits in his Motion that "the video will fairly demonstrate Mr. Coachman's ability to
18 speak and nothing more." Dkt. #26 at 9. The issue of the admissibility of such a clip
19 outside opening statement is not properly before the Court, but the Court is inclined to
20 disallow such a clip because Mr. Coachman is available to testify in person and
21 presumably can demonstrate speaking with the aid of his voice prosthetic if necessary
22 for his case.
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25 4. Plaintiff seeks to preclude hearsay testimony from witnesses speaking to coworkers
26 Kris Capps and Amy Topping's complaints of Mr. Coachman's job performance.
27 Defendants contend that these individuals have been identified as witnesses and can
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1 testify as to their own observations. Defendants further contend that such complaints
2 were relevant, even though Defendants became aware of them after Plaintiff was
3 terminated, because they were part of the consideration for how Plaintiff could return to
4 work. The Court finds that a ruling on this issue may be moot if these coworkers
5 testify, and otherwise can be resolved at trial. This Motion is DEFERRED.
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7 5. Plaintiff moves to preclude after-acquired evidence of his alleged misconduct on FRE
8 403 grounds. The Court believes such evidence is likely more prejudicial than
9 probative, but will reserve judgment until after Defendants have made an evidentiary
10 proffer outside the presence of the jury. This Motion is DEFERRED.
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12 6. Plaintiff seeks to preclude Defendants from presenting evidence that he failed to request
13 an accommodation at the time of his return to work, arguing that Defendants had a duty
14 to engage in the interactive process before terminating him, and that any evidence is
15 more prejudicial than probative. Defendants point to the Ninth Circuit's model jury
16 instruction on this issue. Under the ADA, an employer must be on notice of the need
17 for accommodation before the duty to accommodate arises. This can occur either by the
18 employee making a request for accommodation, or circumstances where the employer
19 should know about the disability and where the employee's disability itself prevents
20 such a request being made. *See Barnett v. U. S. Air, Inc.*, 228 F.3d 1105, 1112 (9th Cir.
21 2000) (en banc), *vacated on other grounds*, 535 U.S. 391 (2002); *Caniano v. Johnson*
22 *Controls, Inc.*, 1999 U.S. App. LEXIS 20648, *3 (9th Cir. 1999). Defendants' duty to
23 accommodate may be said to have continued after a prior accommodation of unpaid
24 medical leave if Plaintiff had asked for a different accommodation, or if Defendants'
25 had notice that further accommodation was needed. *Humphrey v. Mem'l Hosp. Ass'n*,

1 239 F.3d 1128, 1138 (9th Cir. 2001). However, Defendants are entitled to explain why
2 such was not the case, including the fact that Plaintiff did not ask for a different
3 accommodation. To deny Defendants that fuller explanation would likely confuse the
4 jury. Such evidence is more probative than prejudicial. This Motion is DENIED.

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6 7. Plaintiff seeks to preclude evidence of an offer of reinstatement at trial. There appears
7 to be a genuine factual dispute whether the offer was unconditional. An unconditional
8 offer of reinstatement tolls the accrual of back pay from the date of the offer. *Ford*
9 *Motor Co. v. E.E.O.C.*, 458 U.S. 219, 231-232 (1982). The Court finds that this issue
10 can be dealt with at trial or after trial, that the evidence is more probative than
11 prejudicial, and that an offer of proof is unnecessary. This Motion is DEFERRED.

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13 8. Plaintiff argues that he should be permitted to call adverse witnesses, use leading
14 questions, and limit Defendants' cross examination of their own witnesses during
15 Plaintiff's case-in-chief. First, Plaintiff seeks an order preventing Defendants from
16 expanding cross examination beyond the scope of Plaintiff's direct examination during
17 Plaintiff's case-in-chief, citing Fed. R. Evid. 611(b). Defendants agree that "as a
18 general proposition, the scope of cross-examination should not exceed the boundaries of
19 direct examination," but argue that Rule 611(b) expressly contemplates the Court
20 allowing inquiry as if on direct examination at its discretion. The Court is not inclined
21 to allow Defendants to conduct direct examination during Plaintiff's case-in-chief
22 without stipulation between the parties. This part of Plaintiff's Motion is GRANTED.
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24 Second, Plaintiff seeks an advanced ruling that two witnesses, former HR Administrator
25 Dee Lopez, and former General Manager Jason Graham, are hostile witnesses.
26 Defendants disagree only about Mr. Graham, citing certain evidence. The Court agrees
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1 Plaintiff may treat Mr. Lopez as a hostile witness, but will defer ruling on Mr. Graham
2 until Plaintiff has established at trial that he is a hostile witness. This part of Plaintiff's
3 Motion is GRANTED IN PART.

4 9. Plaintiff seeks to preclude blanket submission of his medical records, and offers the
5 alternative of submitting his own summary of such records. Defendants reject that
6 offer. Defendants also point out that "Plaintiff is seeking substantial non-economic
7 damages," that "he intends to rely on the testimony of his treating experts to support his
8 claim," and that "Plaintiff's medical records contain relevant information related to
9 underlying causes of Plaintiff's emotional distress (*e.g.*, family history and health
10 history) that go to the damages case." Dkt. #31 at 10. Plaintiff has failed to convince
11 the Court that medical records, generally speaking, are irrelevant to this case or should
12 not be seen by the jury. On the other hand, the Court does not see how "thousands" of
13 pages of medical records could possibly be relevant. The Court finds that neither party
14 has presented an adequate solution to the problem, and encourages the parties to either
15 agree on a summary of the records or limit the use of such exhibits to those truly
16 required to prove the claims and defenses so as to reduce delays for objections. The
17 Court will entertain specific objections at trial. This Motion is DENIED.

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21 10. Finally, Plaintiff moves to permit his expert witness Judy Clark to attend all of trial
22 despite the witness exclusion rule. Plaintiff's basis is that it "may be necessary to
23 present rebuttal testimony" because "Defendants are expected to change or revise their
24 claims... and to attack Ms. Clark's statements regarding industry standards." Dkt. #26
25 at 20. Plaintiff has failed to present sufficient evidence or argument to establish that
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1 this expert's presence in the courtroom during Defendants' case is "essential to
2 presenting [Plaintiff's] claim or defense." FRE 615. This Motion is DENIED.

3 **IV. DEFENDANTS' MOTIONS IN LIMINE**

- 4 1. Defendants first move to exclude opinion testimony from witnesses Marie Repanich,
5 MS, CCC-SLP, Carol Stimson, ARN,; and Alison Leahy, RN, "that Plaintiff could
6 perform the essential functions of his position when he was allegedly released to return
7 to work on January 2, 2015." Dkt. #25 at 2. The Court concludes that these witnesses
8 can testify as to what Plaintiff could or could not do physically. Plaintiff's counsel can
9 connect those physical abilities to Plaintiff's job description via additional questioning
10 or argument. Witnesses cannot speculate outside their knowledge. Defendants can
11 attack via cross examination any testimony they believe is unsupported. This Motion is
12 DENIED.
- 13 2. Defendants move to exclude speculative testimony from Ms. Stimson and Ms. Leahy
14 that Plaintiff could communicate clearly on January 2, 2015. Plaintiff successfully
15 argues that these medical providers have a basis for forming opinions on this subject.
16 Medical providers routinely offer testimony about the future condition of their patient,
17 testifying based on their experience and training that the patient will continue in the
18 current condition (or improve). Defendants can attack these providers' conclusions on
19 cross examination and offer testimony from other witnesses who refute those
20 conclusions. This Motion is DENIED.
- 21 3. Defendants move to exclude statements of Dr. Eduardo Mendez, one of Plaintiff's
22 treatment providers, who passed away on January 5, 2018, under the hearsay rule.
23 Plaintiff argues that the statements are in medical records that fall under an exception to
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1 hearsay, specifically FRE 803(6). The Court agrees. *See United States v. Hall*, 419 F.3d
2 980, 987 (9th Cir. 2005). Plaintiff also argues that some of the records may be offered
3 for purposes other than the truth of the matter asserted, such as notice to the employer.
4 The Court agrees this is another basis for admissibility. This Motion is DENIED.

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6 4. Defendants move to exclude undisclosed expert opinions. The Court agrees with
7 Plaintiff that this is simply a request to comply with the Federal Rules of Civil
8 Procedure and that this Motion is superfluous. In any event, it is GRANTED.

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10 5. Defendants move to exclude any legal opinions of Plaintiff's expert witness Judy Clark,
11 citing certain statements in her expert report. In response to this Motion, Plaintiff
12 indicates he does not intend to offer expert testimony consisting of legal opinions and
13 discusses the type of opinion testimony Ms. Clark will provide. The Court expects Ms.
14 Clark will be advised to be appropriately cautious with how she phrases her testimony so
15 as to avoid offering legal opinions. It appears counsel for all parties are aware of the
16 applicable legal standard. To the extent necessary, this Motion is GRANTED.

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18 6. Defendants move to exclude legal opinions of expert witness Clark regarding the
19 Washington Law Against Discrimination. Plaintiff responds that Ms. Clark will only
20 offer opinions about HR standards of care and best practices. Dkt. #33 at 9–10. The
21 Court's conclusion is the same as the above and this Motion is GRANTED.

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23 7. Defendants seek to preclude evidence of economic damages submitted after a rejection
24 of an unconditional offer of reinstatement. This mirrors a prior Motion by Plaintiff. As
25 stated above, the parties appear to disagree whether the evidence will show the offer
26 was unconditional. This issue can be dealt with at trial or after trial. This Motion is
27 DEFERRED.
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1 8. Defendants move to “exclude evidence that Defendants did not provide a reasonable
2 accommodation.” Dkt. #25 at 10. This Motion appears to mirror Plaintiff’s Motion in
3 Limine #6, above. The Court has already determined that Defendants can present
4 evidence that Plaintiff failed to request an accommodation at the time of his return to
5 work. It is unclear what other relief Defendants are seeking, unless they are seeking to
6 dismiss Plaintiff’s failure to accommodate claim in its entirety. To add further
7 confusion to this matter, Plaintiff’s citation to the Washington Pattern Jury Instructions
8 appears to set up the possibility of different standards for this claim under the WLAD
9 versus the ADA. Although Plaintiff brings a failure to accommodate claim under both
10 laws, the two are conflated in these Motions. A motion in limine is not the proper
11 vehicle for resolving this dispute. In any event, Plaintiff can proceed with his claims
12 and the Court can hear further motions at the end of Plaintiff’s case or after Defendants’
13 case. This Motion is DENIED.

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16 9. Defendants move to exclude evidence of other businesses owned by Defendant Al
17 Monjazez as irrelevant and more prejudicial than probative. Plaintiff contends that
18 evidence of Defendant’s six other car dealerships is relevant because the dealerships
19 shared HR services, and because “personnel [] transferred among Mr. Monjazez’s
20 dealerships as needed.” Dkt. #33 at 13. The Court agrees with Plaintiff that such
21 evidence is relevant to both the availability of alternate positions and the nature of the
22 company’s human resource management. Defendants have failed to show how such
23 evidence is particularly prejudicial. This Motion is DENIED.

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26 10. Defendants request bifurcation of the trial into issues of liability and punitive damages.
27 Defendants are hoping to exclude evidence of their financial condition from the first
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1 phase of trial. Plaintiff responds by showing how the financial condition of Defendants
2 is directly relevant to Defendants' ability to offer various accommodations, an issue that
3 would be in the first phase. The Court agrees with Plaintiff and finds that bifurcation
4 would serve no purpose. This Motion is DENIED.

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6 11. Defendants ask the Court to prohibit the Plaintiff from introducing excerpts of
7 deposition testimony in his opening statement. This has already been addressed by the
8 Court in Plaintiff's Motion in Limine #2 and this Motion is GRANTED.

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10 12. Defendants move to exclude theories of recovery or damages not in the pleadings.
11 Defendants give no explanation of what theories they expect Plaintiff will argue outside
12 the pleadings. Plaintiff does not appear to know what Defendants are referring to,
13 either. The Court finds this Motion too vague and premature to grant. Any issue that
14 arises at trial can be addressed at trial. This Motion is DENIED.

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16 13. Defendants move for the parties to adhere to FRE 408 and prohibit mention of
17 settlement offers or proposals. The Court agrees with Plaintiff that this is not a proper
18 subject for a motion in limine, as this rule applies to all cases. In any event, the rule of
19 evidence applies. This Motion is GRANTED.

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21 14. Defendants move to preclude Plaintiff from "mentioning or discussing any reports,
22 complaints, legal demands, lawsuits, claims, verdicts, settlements or other actions
23 pursued by any other individual against Defendants." Dkt. #25 at 14. Defendants argue
24 that other cases against Defendants are not relevant as this case has no claim premised
25 on a "pattern and practice" or "disparate impact" theory. *Id.* Plaintiff responds that he
26 has not included such evidence in his proposed exhibits, but that at trial "a permissible
27 use for this kind of other-claims evidence may arise." Dkt. # 33 at 16. The Court would
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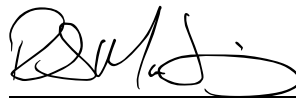
1 expect Plaintiff to have presented a more concrete response if he intended to offer this
2 kind of evidence, and agrees with Defendants that such evidence should be excluded.
3 This Motion is GRANTED.

4 15. Finally, Defendants move to preclude any “golden rule” argument asking jurors to place
5 themselves in the shoes of a party. Defendants also ask that the Court prohibit
6 statements asking the jury to serve as the “conscience of the community” or that the jury
7 “send a message” by entering a certain verdict. Plaintiff agrees that “golden rule”
8 arguments are improper with respect to damages. Dkt. #33 at 17. Plaintiff cites case
9 law supporting the position that jurors may be asked to place themselves in the shoes of
10 a party with respect to issues of liability, and that “conscience of the community” and
11 “send a message” arguments are appropriate in cases seeking punitive damages. *Id.* The
12 Court agrees with Plaintiff and will permit those arguments. *See Shultz v. Rice*, 809
13 F.2d 643, 652 (9th Cir. 1986); *Ochoa v. Santa Clara Cty. Office*, 2017 U.S. Dist. LEXIS
14 191844, *9 (N.D. Cal. Nov. 20, 2017); *Settlegoode v. Portland Pub. Schs*, 371 F.3d 503,
15 519 (9th Cir. 2004). This Motion is DENIED IN PART.

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19 **V. CONCLUSION**

20 Having reviewed the relevant briefing and the remainder of the record, the Court hereby
21 finds and ORDERS that the above Motions in Limine (Dkts. #25, #26, and #27) are
22 GRANTED, DENIED, AND DEFERRED as stated above.

23 DATED this 20th day of September 2018.

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27 RICARDO S. MARTINEZ
28 CHIEF UNITED STATES DISTRICT JUDGE