FINAL RULINGS ON KAISER DEFENDANTS' MOTIONS IN LIMINE

Jennifer Robi v Merck & Co. et al, BC628589

KAISER DEFENDANTS' MOTIONS IN LIMINE

The Court hereby rules on Kaiser Defendants' Motions in Limine as follows:

1) Kaiser Defendants' motion in limine No. 1 to Exclude Evidence of Damages is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

2) Kaiser Defendants' motion in limine No. 2 to Exclude Medical Testimony from Plaintiff, Her Family and Lay Witnesses is This motion in limine is plagued by the same defects noted by the Court of Appeal in *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659:

> "On the other hand, many of the motions filed by Amtech were not properly the subject of motions in limine, were not adequately presented, or sought rulings which would merely be declaratory of existing law or would not provide any meaningful guidance for the parties or witnesses. For example, motion No. 19 sought to "... exclude any testimony of the plaintiffs which is speculative." No factual support or argument was presented to suggest the nature and type of speculative testimony which Amtech expected to be elicited from plaintiffs. Motions No. 8, 20 and 21 sought to exclude evidence of prior incidents unless an appropriate foundation was established to show the relevance of such evidence or that the prior incidents were similar in nature to the incident involved in the suit. Again, no factual support was presented in connection with the motions, meaning the court would have to rule in a vacuum. Motion No. 7, previously referred to, sought to limit the opinions of plaintiffs experts to those "rendered at deposition and in written reports." Again, there was no supporting evidence to suggest what opinions had been rendered at the depositions, leaving the court and the parties to guess what opinions during trial may be included within the scope of the ruling. Motion No. 6 sought an order precluding plaintiffs from calling any witnesses "not previously identified in plaintiffs' discovery responses." Absent a meaningful and expressed belief that this may occur, this was a meaningless motion unless and until plaintiffs attempted to call such witnesses."

(*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 670–671.)

For the same reasons stated in *Kelly v. New West Federal Savings*, Kaiser Defendants' motion in limine No. 2 is not specific enough for the Court to make a meaningful order. As Kaiser freely admits, "Defendants do not identify any specific evidence or testimony to exclude at this point." (11/27/24 Joint Status Report re Motions in Limine, p. Kaiser – 1.) As such, the motion in limine also fails to comply with Local Rule 3.57. (CA R LOS ANGELES SUPER CT Rule 3.57(a)(1) ["Motions made for the purpose of precluding the mention or display of inadmissible and prejudicial matter in the presence of the jury must be accompanied by a declaration that includes the following: (1) Specific identification of the matter alleged to be inadmissible and

prejudicial."].) Instead of identifying the specific evidence that the motion seeks to exclude, this motion in limine amounts to little more than a restatement of the law and general legal principles. The moving party fails to demonstrate that there are no circumstances which would permit admission of this evidence. The Court declines to rule on this motion in limine in a vacuum. Accordingly, Kaiser Defendants' motion in limine No. 2 is **DENIED**. The moving party may at trial assert an objection to the introduction of specific evidence if and when this issue arises.

3) Kaiser Defendants' motion in limine No. 3 to Limit Expert Testimony is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p. Kaiser-4.)

4) Kaiser Defendants' motion in limine No. 4 to Exclude Discussion of MICRA Limitation is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

5) Kaiser Defendants' motion in limine No. 5 to Exclude Any Witnesses, Evidence Or Contentions Not Disclosed In Responses To Discovery is nearly identical to Motion No. 6 in *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, which "sought an order precluding plaintiffs from calling any witnesses 'not previously identified in plaintiffs' discovery responses.' " (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 670–671.) The Court of Appeal criticized this motion in limine as follows: "Absent a meaningful and expressed belief that this may occur, this was a meaningless motion unless and until plaintiffs attempted to call such witnesses." (*Ibid*.)

For the same reasons stated in *Kelly v. New West Federal Savings*, the motion in limine here is not specific enough for the Court to make a meaningful order. The motion fails to identify what specific evidence the moving party seeks to exclude. The motion fails to identify a single witness whose name appears on the witness list who allegedly was not disclosed in discovery. The motion also fails to identify a single document or exhibit that appears on the exhibit list which allegedly was not disclosed in discovery. Nor has the moving party attached any responses to interrogatories or other written discovery. Thus, the record is devoid of evidence of what discovery was propounded prior to trial, what witnesses were disclosed in discovery, what witnesses were not disclosed in discovery, what documents were exchanged in discovery, and what documents were withheld during discovery.

Instead, this motion in limine amounts to little more than a restatement of the law and general legal principles. The Court declines to rule on this motion in limine in a vacuum. Accordingly, the motion in limine is **DENIED**. The moving party may renew this motion in limine by immediately filing and serving a new motion that satisfies all of the following requirements:

(1) The new motion must clearly identify the anticipated witness testimony or exhibit that the motion seeks to exclude.
(2) The new motion must attach evidence of the discovery that the moving party propounded prior to trial.

(3) The new motion must identify and attach the universe of the opposing party's responses.

If such a motion is filed, the opposing party must immediately file and serve an opposition that includes all evidence necessary to correct or supplement the record regarding the exchange of discovery (attaching for example additional responses that the opposing party produced during the exchange of discovery and other contexts in which the opposing party may have disclosed the information sought, such as deposition transcripts).

Only with a proper record will the Court be able to ascertain whether a party has willfully withheld discovery such that a sanction of exclusion is appropriate.

6) Kaiser Defendants' motion in limine No. 6 to Exclude Evidence, Testimony And Reference To Any Other Medical Malpractice Action In Which Kaiser Foundation Hospitals, Southern California Permanente Medical Group, and Robin B. Scanlon, M.D. Were Named As Defendants is improper and unnecessary because it does not seek to exclude specific, identifiable evidence. As Kaiser Defendants freely concede in the Joint Statement, "Defendants do not identify any specific evidence or testimony to exclude at this point." (11/27/24 Joint Status Report re Motions in Limine, p. Kaiser – 5.) Hence, this motion in limine is **DENIED** at this juncture. The parties may of course make appropriate objections to improper arguments at trial, and the Court will rule on such objections with the benefit of context. In any event, Plaintiff states that "Plaintiff does not anticipate introducing this type of evidence, as Dr. Scanlon testified that she has never been sued." (11/27/24 Joint Status Report re Motions in Limine, p. Kaiser – 6.) The Court requests that if Plaintiff learns of any evidence that would fall within the ambit of this motion in limine, Plaintiff should discuss the issue with Defendants and the Court outside the presence of the jury before seeking to introduce it at trial.

7) Kaiser Defendants' motion in limine No. 7 to Preclude Cumulative Testimony of Plaintiff's Experts and Lay Witnesses is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

8) Kaiser Defendants' motion in limine No. 8 to Exclude Evidence Unsupported by Standard of Care Opinion Testimony and Evidence of Standard of Care Opinion is improper and unnecessary because it does not seek to exclude specific, identifiable evidence. As Kaiser Defendants freely concede in the Joint Statement, "Defendants do not identify any specific evidence or testimony to exclude at this point." (11/27/24 Joint Status Report re Motions in Limine, p. Kaiser – 8.) Hence, this motion in limine is **DENIED** at this juncture. The parties may of course make appropriate objections to improper arguments at trial, and the Court will rule on such objections with the benefit of context and identification of the precise evidence to which Kaiser is objecting.

9) Kaiser Defendants' motion in limine No. 9 to Exclude Criticisms of Conduct Not Falling Below the Standard of Care is improper and unnecessary because it does not seek to exclude specific, identifiable evidence. As Kaiser Defendants freely concede in the Joint Statement, "Defendants do not identify any specific evidence or testimony to exclude at this point." (11/27/24 Joint Status Report re Motions in Limine, p. Kaiser – 8.) Hence, this motion in limine is **DENIED** at this juncture. The parties may of course make appropriate objections to improper

arguments at trial, and the Court will rule on such objections with the benefit of context and identification of the precise evidence to which Kaiser is objecting.

10) Kaiser Defendants' motion in limine No. 10 is missing. Kaiser Defendants have never filed a motion in limine No. 10.

11) Kaiser Defendants' motion in limine No. 11 to Exclude Unauthenticated and Hearsay Evidence is **MOOT** in light of the parties' resolution of this motion in limine by way of stipulation. (11/27/24 Joint Status Report regarding Motions in Limine, p.3; Joint In Limine Evidentiary Stipulations.)

For all motions in limine that have been denied, the moving party may renew the objection to the introduction of the evidence at trial, and the Court will rule on the evidentiary objection anew in the context of the other evidence that is presented at trial.

For all motions in limine that have been granted, the moving party must proceed with caution because if the moving party opens the door, then the Court may well reconsider its ruling and allow the evidence to be admitted after all.

KAISER DEFENDANTS TO DOWNLOAD THE **SIGNED** FINAL RULING AND TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: January 8, 2025

Elaine Lu
Judge of the Superior Court
Elaine Lu / Judge