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**FILED**  
**SAN MATEO COUNTY**

AUG 13 2021

Clerk of the Superior Court  
By [Signature]  
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

[REDACTED],

Plaintiff,

v.

[REDACTED]. et al.

Defendants.

Case No.: [REDACTED]

**TENTATIVE RULINGS ON  
MOTIONS IN LIMINE**

Pretrial Conf. Date: August 23, 2021  
Time: 2:00 p.m.  
Trial Date: October 6, 2021  
Dept.: 4  
Judge: Nancy L. Fineman

1 Pursuant to this Court's Pretrial Order dated March 29, 2021, the parties submitted their  
2 Motions in Limine. The Court has reviewed the motions and oppositions and issues these tentative  
3 rulings. These rulings are tentative and can be changed any time before or during trial. *Scott v.*  
4 *C.R. Bard, Inc.* (2014) 231 Cal.App.4th 763, 784; *Cristler v. Express Messenger Systems, Inc.*  
5 (2009) 171 Cal.App.4th 659, 669-671.  
6

7 The parties are to appear in person at the Pretrial Conference. If there is any reason that  
8 personal appearance is not possible, the attorney shall email Department 4 by August 19, 2021,  
9 copy all counsel, and explain the reason why.

10 The Court also wishes to discuss the timing on the hearing on the motion to bifurcate, which  
11 is currently set for hearing on October 5, 2021, the day before trial is scheduled to begin

12 **PLAINTIFF'S MOTIONS IN LIMINE**

13  
14 **No. 1: Motion to Exclude Irrelevant Evidence on Plaintiff's Medical Condition**

15 To the extent that Plaintiff seeks to exclude her surgical history, OBGYN information and  
16 sexual information, the motion is GRANTED subject to an offer of proof by Defendants that the  
17 information is relevant.

18 To the extent that Plaintiff seeks to preclude evidence of her sister's disability, that request  
19 is DENIED because she put her sister's disability at issue. Second Amended Complaint ¶ 66  
20 (Defendants wrongfully terminated Plaintiff because of "her sister's disability").  
21

22 To the extent that Plaintiff seeks to exclude other medical information, the motion is DENIED  
23 without prejudice because the request is too general. General motions without adequate support are  
24 not sufficient. *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 670. The information  
25 provided by Plaintiff does not provide the Court with sufficient information to determine whether it  
26 should be excluded. If Plaintiff has other specific areas that she seeks to exclude, she should  
27 specifically identify them. She should provide the specific testimony or exhibit (or portion thereof)  
28 that she is requesting be excluded.

1           **No. 2: Motion to Uphold Plaintiff’s Right to Present Me Too Evidence on Defendants**

2           This motion is related to Defendants’ Motions in Limine Nos. 1-6 and the Court rules on the  
3 motions together.

4           It is undisputed that proper “me too” evidence is admissible. The parties dispute the scope of  
5 the “me too” evidence that can be admitted at this trial and also the foundational requirements for the  
6 evidence. The Court of Appeal recently described the scope of permissible “me too” evidence:

7           Courts have sanctioned the use of “me too” evidence, which is evidence of an employer's  
8 alleged gender bias “in the form of harassing activity against women employees other than  
9 the plaintiff” in certain circumstances. (*Pantoja v. Anton* (2011) 198 Cal.App.4th 87, 92, 129  
10 Cal.Rptr.3d 384 (*Pantoja*.) Where evidence of workplace discrimination is proffered to cast  
11 doubt on an employer's stated justification for an adverse employment action, for example,  
12 “me too” evidence can be admissible to show intent or motive, which could establish that the  
13 employer's stated reason was a pretext. (*Johnson v. United Cerebral Palsy/Spastic Children's*  
14 *Foundation (Johnson)* (2009) 173 Cal.App.4th 740, 760, 93 Cal.Rptr.3d 198.) The “me-too”  
15 doctrine, however, does not permit a plaintiff to present evidence of discrimination against  
16 employees outside of the plaintiff's protected class to show discrimination or harassment  
17 against the plaintiff. (*Hatai v. Department of Transportation* (2013) 214 Cal.App.4th 1287,  
18 1297–1298, 154 Cal.Rptr.3d 659, disapproved of on other grounds in *Williams v. Chino Valley*  
19 *Independent Fire District* (2015) 61 Cal.4th 97, 115, 186 Cal.Rptr.3d 826, 347 P.3d 976.)  
20 Although “me too” evidence can be admissible to prove intent, motive, and the like with  
21 respect to the plaintiff's own protected class, it is never admissible to prove an employer's  
22 propensity to harass. (*Pantoja*, at p. 111, 129 Cal.Rptr.3d 384.)

23 *Pinter-Brown v. Regents of University of California* (2020) 48 Cal.App.5th 55, 96.

24           *Pinter-Brown*, citing *Johnson*, also explained in the context of DFEH complaints, the  
25 similarity that is necessary between the proffered “me too” evidence and the plaintiff’s case:

26           With respect to the DFEH complaints, the question the court must consider in deciding  
27 whether to admit evidence of discrimination raised by other employees is “ ‘fact based and  
28 depends on many factors, including how closely related the evidence is to the plaintiff's  
circumstances and theory of the case.’ ” (*Johnson, supra*, 173 Cal.App.4th at p. 767, 93  
Cal.Rptr.3d 198; citing *Sprint/United Management Co. v. Mendelsohn* (2008) 552 U.S. 379,  
387, 128 S.Ct. 1140, 170 L.Ed.2d 1.) In *Johnson*, for example, the plaintiff claimed she was  
wrongly terminated for being pregnant. (*Johnson*, at p. 744, 93 Cal.Rptr.3d 198.) The  
appellate court held the trial court should have admitted declarations of four employees who  
worked at the same office and under the same three supervisors as the plaintiff, and who also  
alleged they were fired for being pregnant. (*Id.* at pp. 767–768, 93 Cal.Rptr.3d 198.)

29 *Pinter-Brown*, 48 Cal.App.5th at 97. In *Pantoja*, the Court of Appeal held that “me too” evidence  
30 based upon bias against women was admissible under Evidence Code § 1101(b) and thus not

1 precluded under Evidence Code § 1101(a), in a case alleging gender bias. 198 Cal.App.4th at 114.  
2 The evidence may show intent or motive, the plaintiff is not required to be aware of the incidents, and  
3 the evidence can be used to rebut defense evidence that the company has a policy of not tolerating  
4 harassment. *Id.* at 114-117; see *id.* at 93-94 (describing the trial court's motion in limine rulings,  
5 which the Court of Appeal found were in error). A plaintiff is not entitled to present evidence of  
6 discrimination against employees outside of the plaintiff's protected class to show discrimination  
7 against the plaintiff. *Hatai*, 214 Cal.App.4th at 1297. The Court may still exclude such evidence  
8 under Evidence Code § 352. *Pantoja*. at 114.

9 Plaintiff alleges that she is a ~~57-year-old female of Hispanic~~ descent. Second Amended  
10 Complaint ¶ 6. She alleges that she had a disability of chronic pain in her left shoulder and lower  
11 back, stress and anxiety, and because her sister was seriously ill. ¶¶ 54, 56-58. She alleges wrongful  
12 termination of a result of her "sex, race, disability, and her sister's disability." Second Amended  
13 Complaint ¶ 66. She alleges retaliation based upon reporting wage and hour law violations and other  
14 complaints. ¶¶ 28-31, 101.

15 Defendants also object to the evidence coming in through hearsay. "Except as provided by  
16 law, hearsay evidence is inadmissible." Evidence Code § 1200(b). Evidence of harassment of others  
17 is subject to the limitations of the hearsay rule. *Beyda v. City of Los Angeles* (1998) 65 Cal.App.4th  
18 511, 521. If a document is hearsay, then secondary evidence of a document, e.g. through testimony,  
19 is also inadmissible. *Pinter-Brown*, 48 Cal.App.5th at 96.

20 Plaintiff identifies 25 reports of alleged workplace harassment, discrimination or retaliation  
21 made to ~~her~~ from January 2010 to March 2018. Plaintiff MIL No. 2 at 3 citing ~~Wong~~ Decl. Exs. 1-  
22 25. Defendants in opposition argues that the incidents are dissimilar. Opposition to Plaintiff's MIL  
23 No. 2 at 2-4. The Court does not have sufficient information. Therefore, Plaintiff is to fill in the  
24 following chart with the appropriate information. The first entry should be the strongest evidence of  
25 similarity followed by the second strongest evidence etc. Defendant should fill in any contrary  
26 evidence or argument in the last column. **Plaintiff shall file and serve the chart on or before**  
27 **August 19, 2021 and Defendant shall file and serve the chart by noon on August 23, 2021 and**  
28 **bring a copy to the Pretrial Conference.**

	Name of Witness or Exhibit No. (attach exhibit to the chart). If hearsay, the hearsay exception.	Gender, Ethnicity or Disability of Employee	Nature of complaint; whether Plaintiff claims failure to investigate	Whether <del>Victory</del> or <del>others</del> were involved in the incident (identify which person)	The office where the incident took place and the date of the incident.	Defendants' response
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7						
8	Etc.					

Similarly, for Plaintiff's claim of the failure of Defendants to investigate, the Court needs more information. Plaintiff shall be prepared to make an offer of proof at the Pretrial Conference.

**No. 3: Motion to Exclude After-Acquired Evidence Relating to Plaintiff's Resume**

Plaintiff seeks to exclude evidence that she submitted a resume in her application to [REDACTED], which stated that she had a "MA," or master's degree with all but the thesis completed. In fact, she was two or three classes short of completing all her coursework. Plaintiff claims that this reference is "mere puffery," and not wrongdoing "of such severity that the employee in fact would have been terminated on those grounds alone if the employer had known of it." Plaintiff MIL No. 3 citing *McKennon v. Nashville Banner Pub. Co.* (1995) 513 U.S. 352, 361-362. She claims that Defendants knew she had not finished her masters' program, it is not relevant and the evidence should be excluded under Evidence Code § 352.

Defendants argue that Plaintiff is bringing a motion for summary through this motion in limine and that the evidence is relevant to credibility as well as to the after-acquired evidence defense. CACI 2506. Defendants claim that [REDACTED]' employee handbook requires an employee to be "truthful and accurate in all you say and do" and [REDACTED] testified about the importance of hiring qualified candidates based on proper qualifications. Ewins Decl., Ex. 6.

The Court DENIES the motion. The Court finds that the issue of the materiality of this misrepresentation and what [REDACTED] would have done if it had known should be decided by the jury.

1           **No. 4: Motion to Exclude Collateral Source Payments**

2           The Court GRANTS this unopposed motion.

3           **No. 5: Motion to Exclude Alternative Stressors**

4           Plaintiff seeks to exclude evidence of “alternative stressors,” on the basis of Evidence Code §  
5 352 and the right to privacy. Defendants argue that Plaintiff has put her mental state in controversy  
6 and that the conditions that she claims were caused by Defendants existed prior to her employment  
7 with IPass.

8           For the reasons set forth in the Court’s order on Plaintiff’s motion to quash deposition  
9 subpoenas seeking Plaintiff’s medical records, heard on August 10 2021, the motion is DENIED.

10           **No. 6: Motion to Exclude Plaintiff’s Performance at Other Employers**

11           In the introduction to this motion, Plaintiff requests exclusion of evidence of post-  
12 employment, MIL No. 6 at 1, but in the body, she requests exclusion of pre and post-employment, *id.*  
13 at 2. The motion is DENIED without prejudice because the request is too general. General motions  
14 without adequate support are not sufficient. *Kelly v. New West Federal Savings* (1996) 49  
15 Cal.App.4th 659, 670. At the Pretrial Conference, Plaintiff shall identify the exact type of evidence  
16 she wants excluded.

17           **No 7: Motion to Preclude Reference to “Independent” Medical Examination**

18           The examination by Defendants shall be referred to as a “mental examination.”

19           **DEFENDANTS’ MOTIONS**

20           **Nos. 1, 2, 5, 6: Motions to Exclude Various “Me Too Evidence”**

21           The Court incorporates by reference its tentative on Plaintiff’s Motion in Limine No. 1.

22           **Nos. 3 and 4: Motions re [REDACTED]**

23           Defendants seek to preclude “me too” evidence from [REDACTED] (No. 3) and evidence  
24 about her settlement (No. 4).  
25

26           Based upon the information presented, the Court DENIES the motion as to [REDACTED]’s  
27 evidence of gender discrimination, since both Plaintiff and [REDACTED] are the same gender, GRANT  
28

1 it as to disability as the disabilities appear to be different, and reserves ruling on the retaliation. The  
2 parties can discuss this retaliation evidence at the Pretrial Conference.

3 The Court does not see an opposition to No. 4. The Court GRANTS that motion as the  
4 settlement agreement is not relevant and not admissible. Evidence Code §§ 1152, 1154. Mediation  
5 evidence is also excluded. Evidence Code § 1119. Moreover, the Court excludes the evidence  
6 under Evidence Code § 352 as any probative value is substantially outweighed by the probability  
7 that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of  
8 undue prejudice, of confusing the issues, or of misleading the jury.

10 **No. 7: Motion to Exclude Plaintiff's Alleged "Complaints"**  
11 **of Wage and Hour Violations**

12 The motion is DENIED. Defendants did not bring a motion for summary adjudication on  
13 the retaliation claims and the evidence they seek to preclude relates to that claim. *Amtower v.*  
14 *Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1593-4; see also *R&B Auto Center Inc. v.*  
15 *Farmers Group Inc.* (2006) 140 Cal.App.4th 327, 371; *Stein-Brief Group Inc. v. Home Indemnity*  
16 *Co.* (1998) 65 Cal.App.4th 364, 369.

18 **No. 8: Motion to Exclude Backpay Damages**

19 The Court DENIES the motion as it has not been conclusively established that Plaintiff  
20 would have been terminated. Defendants may make that argument, but it has not yet been  
21 established.

22 **No. 9: Motion to Exclude PMQ Opinion Testimony**

23 Defendants' motion is too general and is, therefore, DENIED without prejudice. General  
24 motions without adequate support are not sufficient. *Kelly v. New West Federal Savings* (1996) 49  
25 Cal.App.4th 659, 670. The Court cannot make a blanket ruling, but must rule on specific questions  
26  
27  
28

1 or issues. The Court refers the parties to the ruling on the motion to compel further responses from  
2 the PMQ, which tentative will be posted on August 16, 2021.

3 **No. 10: Motion to Preclude Evidence of Defendants' Financial Condition**

4 The Court does not see an opposition from Plaintiff on this motion. The motion is  
5 GRANTED. Civil Code §§ 3294, 3295. The Court also considers this motion as a request to  
6 bifurcate the punitive damage phase of the trial from the remainder of the trial and GRANTS that  
7 request. Civil Code § 3295(d).  
8

9 **No. 11: Motion to Exclude Lay Witnesses from the Courtroom**

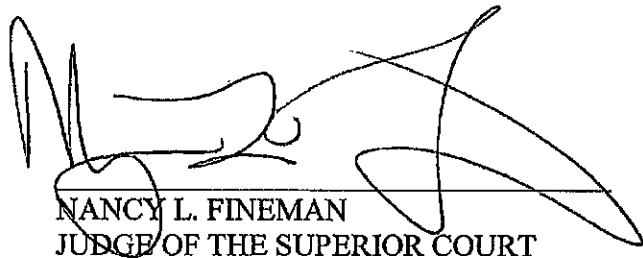
10 The motion to exclude lay witnesses from the courtroom is GRANTED. Evidence Code §  
11 777. Plaintiff, the individual defendant, and one corporate representative from each corporate  
12 defendant are not excluded. Evidence Code § 777(b),(c).  
13

14 Defendants cite no authority to allow experts to remain in the courtroom. If however, the  
15 purpose of the request is to allow the experts to listen to testimony for foundational purposes  
16 pursuant to *People v. Sanchez* (2016) 63 Cal.4th 665 or rebuttal, then the expert may remain in the  
17 courtroom during the relevant time. Otherwise, the experts are excluded.

18 **No. 12: Motion to Exclude Insurance**

19 The Court does not see an opposition to No. 12. The motion is GRANTED. Evidence Code  
20 § 1155.  
21

22  
23 Dated: August 13, 2021

24   
25 NANCY L. FINEMAN  
26 JUDGE OF THE SUPERIOR COURT  
27  
28