

Tentative Minute Order re Motions *in Limine*

Plaintiff Pedro Avalon Pasaran (“Pasaran”) and defendant United States (“Government”) move the Court for relief by way of Motions *in Limine*. The Court now enters its rulings.

I. Pasaran’s Motion *in Limine*.

Pasaran moves to exclude evidence that his driver’s license was suspended. (Docket No. 29.) He relies on California Vehicle Code § 40832 which bars evidence of either suspension or revocation of a driver’s license in any civil proceeding.

The Motion is meritorious and is unopposed.

The Motion is granted.

II. Government’s Motion *in Limine*.

A. Motion *in Limine* No. 1: Witness Exclusions.

The Government seeks to exclude Pasaran’s accident reconstruction expert Timothy J. Reust (“Reust”), his treating physicians, and a late disclosed lay witness. (Docket No. 23.) Pasaran has filed an opposition (Docket No. 32), and the Government replied (Docket No. 33.)

Reust. Rule 26(a)(2) of the Federal Rules of Civil Procedure requires that each expert file a report:

Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report--prepared and signed by the witness--if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

- (i) a complete statement of all opinions the witness will express and the basis and reasons for them;
- (ii) the facts or data considered by the witness in forming them;
- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;
- (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- (vi) a statement of the compensation to be paid for the study and testimony in the case.

(Fed. R. Civ. P. 26(a)(2)(B) (emphasis supplied).)

Reust has not submitted a report. Parson's Rebuttal Designation provides some on the required information, but not all. (See Docket No. 23-2.) Conspicuously absent is a statement of Reust's opinions and the bases and reasons therefor. The failure to make the required disclosure compels exclusion. Fed. R. Civ. P. 37(c)(1); Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1105-06 (9th Cir. 2001).

Treating Physicians. Pasaran's initial Rule 26 disclosure identifies five physicians who will testify to the "Nature and extent of Plaintiff's injuries." (Docket No. 23-1.) Where a full report is not required, less detailed disclosures are required:

- Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:
- (i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and
 - (ii) a summary of the facts and opinions to which the witness is expected to testify.

(Fed. R. Civ. P. 26(a)(2)(C) (emphasis supplied).) While Pasaran's disclosure describes the general nature of the expected testimony, it fails to provide the required summary of the facts and opinions. Again, the failure to make the required disclosure compels exclusion. Fed. R. Civ. P. 37(c)(1). The fact that a treating physician has not made disclosure would not bar the physician from

testifying as a percipient witness. Shapardon v. West Beach Estates, 172 F.R.D. 415, 416-17 (D. Hawai'i 1997).

Irene Alatore. On December 19, 2022, Pasaran identified Irene Alatore (“Alatore”) as a witness. No Rule 26 disclosure was previously made. In the absence of a showing the such a failure was harmless or substantially justified, Alatore is also excluded. The failure to make the required disclosure compels exclusion. Fed. R. Civ. P. 37(c)(1).

The Courts appreciate Pasaran’s counsel’s recent difficulties. However, they do not justify these highly prejudicial failures to make essential disclosures.

The Motion is granted

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Counsel are ordered to advise the parties and all witnesses of the Court’s rulings so that there are no inadvertent violations of this Order.