

## IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

FRANCESCO SGAMBELLONE, Plaintiff,	LACV135736
vs.	DEFENDANT'S FIRST MOTION IN LIMINE
STATE OF IOWA, Defendant.	

Defendant State of Iowa, pursuant to Iowa Rule of Evidence 5.104 moves the Court in limine to issue an Order prior to the commencement of trial directing Plaintiff, through any representative, Plaintiff's counsel, and any witnesses called to testify by Plaintiff (including cross-examination of a witness called by Defendant), to refrain from directly or indirectly making any reference to the matters enumerated below in the presence of any juror, including during voir dire, opening statements, the presentation of evidence, cross-examination, and closing arguments, until the Court has the opportunity to rule on the admissibility thereof. Defendant further moves the Court to order Plaintiff's counsel to advise their client and each witness called by Plaintiff regarding the Court's limitation on evidence and testimony and this Motion. If the matters enumerated below are mentioned it would be so prejudicial that Defendant would not receive a fair trial and an admonition to the jury would not cure the prejudice.

## STANDARD FOR THE INTRODUCTION OF EVIDENCE

The decision to admit evidence at trial requires a two-step inquiry: (1) is the evidence relevant and (2) if so, is its probative value substantially outweighed by the dangers of unfair prejudice or confusion. *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000). Pursuant to Iowa Rule of Evidence 5.401, "relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." "Evidence which is not relevant is not admissible at trial." Iowa R. Evid. 5.40 (emphasis added). However, the converse proposition (i.e., that relevant evidence must be admissible) is not necessarily true. *Graber*, 616 N.W.2d at 637. Even relevant evidence should not be admitted when "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . ." Id. (quoting Iowa R. Evid. 5.403). "Probative value" measures the strength and force of the

relevant evidence. *State v. Castaneda*, 621 N.W.2d 435, 440 (Iowa 2001) (citing *State v. Plaster*, 424 N.W.2d 226, 231 (Iowa 1988)).

Pursuant to Iowa Rule of Evidence 5.403, “unfair prejudice” is evidence that “appeals to the jury’s sympathies, arouses its sense of horror, provokes its instincts to punish, or triggers other mainsprings of human action [that] may cause a jury to base its decision on something other than established propositions in the case.” *State v. Rodriguez*, 636 N.W.2d 234, 240 (Iowa 2001) (quoting *Plaster*, 424 N.W.2d at 231). Unfair prejudice arises when evidence prompts the jury to make a decision on an improper basis. *Graber*, 616 N.W.2d at 638. Defendant moves in limine to exclude all the items below and states the following in support of its Motion:

### I. SUBSEQUENT REMEDIAL MEASURES

Plaintiff may seek to introduce evidence or argument regarding the fact that the State changed training processes or procedures after the incident in question. Such evidence is inadmissible under Iowa Rule of Evidence 5.407, which states in relevant part: When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct. Iowa R. Evid. 5.407.

### II. CUMULATIVE TESTIMONY

Plaintiff seeks to introduce testimony from his wife and business associates regarding how this accident has affected him and his life. See Plaintiff’s Witness List. Such testimony should be excluded under Iowa Rule of Evidence 5.403, which states in relevant part:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following . . . wasting time, or needlessly presenting cumulative evidence.

Iowa R. Evid. 5.403.

Cumulative evidence is “evidence of the same kind, to the same point.” *Larson v. Meyer & Meyer*, 288 N.W. 663, 667 (Iowa 1939) (quoting 1 Greenleaf on Evidence, § 2) (internal quotation marks omitted). “Thus, if a fact is attempted to be proved by the verbal admission of the party, evidence of another admission of the same fact is cumulative.” *Id.* Plaintiff is likely planning on testifying about how his life has changes since the advent of the incident in question. Thus, any additional testimony on the same matter from his wife and associates would clearly be

cumulative and waste the time of the parties, the jury, and the Court. Defendant requests the Court limit the testimony to only one person r that can testify regarding Plaintiff's alleged changes since the incident in question.

### III. UNDISCLOSED DAMAGES AND DISCOVERY

The trial court has the power to exclude evidence for failure to supplement discovery. *Lawson v. Kurtzhals*, 792 N.W.2d 251, 258 (Iowa 2010); Iowa R. Civ. P. 1.517(3). Pursuant to Iowa Rule of Civil Procedure 1.503(4)(a)(3), Plaintiff is under a duty to supplement or amend his discovery responses regarding “[a]ny matter that bears materially upon a claim.” Allowing Plaintiff to present evidence that was undisclosed, without giving Defendants adequate time to prepare to meet that evidence, would unfairly prejudice Defendants and require them to respond to a moving target. See Iowa R. Evid. 5.403.

A party defending a claim is entitled, upon appropriate request, to be informed of the amount of the claim. Iowa R. Civ. P. 1.503; *Gordon v. Noel*, 356 N.W.2d 559, 564 (Iowa 1984). This includes discovery of amounts claimed for separate elements of damages. *Gordon*, 356 N.W.2d at 564 (citations omitted); see also Iowa R. Civ. P. 1.509(2)(a) (“Interrogatories may relate to any matters which can be inquired into under rule 1.503, including a statement of the specific dollar amount of money damages claimed, the amounts claimed for separate items of damage . . .”). It is Plaintiff’s burden to timely provide this information and Defendants are entitled to such information. See *Wade v. Grunden*, 743 N.W.2d 872 (Table), 2007 WL 4322226, at \*4 (Iowa Ct. App. 2007) (unpublished) (citing *Gordon*, 356 N.W.2d at 564).

There is no requirement that Defendants file a motion to compel or that an order compelling such discovery be made before the Court can enter an order in limine precluding such evidence. See *id.* at \*4-5 (affirming district court granting of motion in limine precluding evidence on some damages). In *Lawson*, 792 N.W.2d at 258, the Iowa Supreme Court observed that the defendant had “attempted to determine the amount of damages claimed through both interrogatories and in a deposition of [the plaintiff].” Furthermore, “[t]he discovery deadline passed with no supplementation of [plaintiff’s] prior answers.” *Id.* Although the plaintiff “finally provided the amount of damages claimed” just days before trial, the district court excluded evidence of damages not previously disclosed, and the Iowa Supreme Court affirmed. *Id.* at 258-59.

Here, Plaintiff has submitted a supplement to his interrogatories on March 26, 2021, on the literal eve of trial. The trial scheduling order, entered herein on January 23, 2019 ordered that discovery close 30 days before trial. Plaintiff was required to supplement his interrogatories by March 7, 2021. Plaintiff has failed to timely supplement, and all information contained in that supplement must not be allowed in during trial. Furthermore, any damages and costs associated therein, must be not be admissible at trial.

RELIEF REQUESTED

Based on the foregoing, Defendant respectfully requests the Court grant the above captioned motion in its entirety and enter an order prohibiting Plaintiff from introducing such prohibited evidence.

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