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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JANE DOE,

Plaintiff,

vs.

BRIAN WARNER, a.k.a. MARILYN MANSON,

Defendant.

CASE NO. 21STCV20202

DEFENDANT BRIAN WARNER'S COMBINED OPPOSITION TO PLAINTIFF'S MOTIONS IN LIMINE NOS. 1-7

The Hon. Gregory Keosian, Dept. 61

Hearing
Date: October 3, 2023
Time: 9:00 a.m.

Trial Date: October 3, 2023
Action Filed: May 28, 2021

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Brian Warner submits this Combined Opposition to Plaintiff Jane Doe's Motions in Limine Nos. 1-7.

Warner addresses each of Plaintiff's motions below, but first, he asks the Court to not put any weight on Plaintiff's improper attempt to smear him across her motions—under the guise of the litigation privilege—with repeated defamatory and unsupported references to him being a "serial sex offender." Plaintiff offers no evidence to support that false claim, and Warner has not once been adjudicated in any court (civil or criminal) to have committed any such offense. Also, as Plaintiff knows, one of Warner's accusers publicly recanted her allegations against him, stating that she had been manipulated by others into making the false claims.[1] In any event, the scandalous claims have no relevance to the legal or evidentiary questions at issue, nor Plaintiff's claims, and they should be disregarded.

For the reasons below, all of Plaintiff's motions should be denied.

II. PLAINTIFF'S MOTION IN LIMINE NO. 1 SHOULD BE DENIED

Plaintiff's Motion in Limine No. 1 duplicates the arguments in her Motion for Evidence Sanctions, which also seeks to preclude Warner from testifying at trial. That motion will be fully briefed and heard before the Court gets to this motion, and this motion should be denied for the same reasons.

As will be explained more fully in Warner's opposition to the Motion for Evidence Sanctions,[2] Plaintiff's effort to exclude him from testifying is a tactical abuse designed to railroad him, avoid scrutiny of her false ten-year-old claims, and prevent the jury from receiving highly relevant rebuttal evidence.

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[1] *See* Etan Vlessing, *Marilyn Manson Accuser Ashley Smithline Recants Sexual Abuse Allegations,* The Hollywood Reporter (Feb. 24, 2023), *available at* https://www.hollywoodreporter.com/tv/tv-news/marilyn-manson-accuser-ashley-smithline-false-claims-1235333623/.

[2] Like Plaintiff, Warner incorporates by reference his forthcoming briefing and evidence in opposition to Plaintiff's Motion for Evidence Sanctions.

Contrary to Plaintiff's arguments, Warner's waiver of his Fifth Amendment rights did not come too late. Rather, he gave her ***one month more*** notice than the court of appeals has said would be sufficient in this situation to avoid unfair prejudice and surprise to an opposing party at trial. *See Fuller v. Superior Court*, 87 Cal. App. 4th 299, 310 (2001) ("The deadline for waiving the [Fifth Amendment] privilege could be set as late as, for instance, 10 days before trial."). Applying the principles from other cases where defendants faced the same "dilemma" of choosing between their Fifth Amendment rights and fully defending a civil action, Plaintiff cannot show prejudice because Warner notified her of his waiver 13 days before fact discovery closed, 41 days before trial, and he offered his deposition, which she had scheduled and will take before these motions are heard.

Nor can Plaintiff claim she reasonably relied on Warner's previous invocation of the Fifth Amendment when she failed to conduct her own third-party discovery for two years. That is because Warner's earlier responses expressly reserved his right to waive the privilege on a later date, as permitted by caselaw—a right Plaintiff did not challenge for the last year and a half. Not only that, but the parties also previously stipulated to continue the trial to April 2024—which Warner is still willing to do if Plaintiff wants more time—but Plaintiff withdrew her stipulation in the middle of the hearing on it, and she is the one insisting on charging forward while preventing the jury from receiving highly relevant evidence. This is significant because before binding an opposing party to earlier discovery responses, as Plaintiff seeks to do, Code of Civil Procedure section 2030.310(c)(3) requires the propounding party to show any claimed prejudice cannot be cured "by a continuance to permit further discovery"—a showing Plaintiff does not even try to make.

Plaintiff also omits that she surprised Warner with a new, undisclosed claim at her September 7, 2023 deposition, when she testified that she is continuing to "recover" new memories from more than ten years ago, one of which includes Warner allegedly locking her in a soundproof room in his apartment (which did not have such a room). Given Plaintiff is making up new 11th-hour claims weeks before trial, it would be even more improper to keep Warner from introducing the evidence and information that he disclosed more than a month before trial, or to

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keep him from introducing evidence to rebut the brand new claims.

What's more, Warner did not invoke the privilege in response to all discovery in November 2021, and Plaintiff offers no reason he should be precluded from testifying about topics to which he never invoked the privilege.

Finally, while Plaintiff has not shown that Warner misused the discovery process, even if she had, she has not justified jumping straight to the extreme remedy of excluding his testimony. The "discovery statutes evince an incremental approach to discovery sanctions, starting with monetary sanctions and ending with the ultimate sanction of termination." *Victor Valley Union High Sch. Dist. v. Superior Ct. of San Bernadino Cnty.*, 91 Cal. App. 5th 1121, 1158 (2023). Generally, only monetary sanctions can be imposed in the absence of a prior court order compelling discovery. *See New Albertsons, Inc. v. Superior Court*, 168 Cal. App. 4th 1403, 1428 (2008) ("The statutes state that the court may impose an issue, evidence, or terminating sanction . . . only if a party fails to obey a court order compelling discovery."). This "statutory requirement" provides that "potentially severe sanction[s] will be reserved for those circumstances where the party's discovery obligation is clear and the failure to comply with that obligation is clearly apparent." *Id.* at 1423. Thus, "[e]xcept for in cases of extreme misconduct and when other viable options are unavailable, a trial court abuses its discretion when a sanctions order deprives a party of any right to defend the action upon its merits and was designed not to accomplish the purposes of discovery but designed to punish the party for not fully complying with its discovery obligations." *Victor Valley Union High Sch. Dist.*, 91 Cal. App. 5th at 1159.

Here, there is absolutely no justification for the extreme remedy Plaintiff seeks. Not only did Warner not violate a court order, but he also tried in good faith to follow appellate precedent when navigating the "dilemma" of choosing between his Fifth Amendment rights and fully defending himself in this case. *Fuller*, 87 Cal. App. 4th at 306. Under *Fuller*'s guidance, Warner could have potentially waited until "10 days before trial" to waive the privilege, but he instead waived it 41 days before trial (and during the discovery period) to ensure he was providing more than enough notice to Plaintiff. *Id.* at 310.

Thus, this is far from the case of "extreme misconduct" that justifies excluding Warner's

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testimony. Rather, that sanction would result in an impermissible windfall to Plaintiff and "have the unacceptable effect of penalizing [Warner] for exercising [his] constitutional privilege." *Fuller*, 87 Cal. App. 4th at 309. Plaintiff's motion should be denied.

III. PLAINTIFF'S MOTION IN LIMINE NO. 2 SHOULD BE DENIED

Plaintiff's Motion in Limine No. 2 to preclude "late disclosed witnesses" likewise duplicates the arguments in her Motion for Evidence Sanctions, which will be fully briefed and heard before the Court gets to this motion. Again, this motion should be denied for the same reasons.

For efficiency, Warner incorporates his response above, as well as his forthcoming briefing and evidence in opposition to Plaintiff's Motion for Evidence Sanctions, which will address Plaintiff's arguments and authority in great detail.

On top of those arguments, the witnesses targeted by this motion have information to rebut Plaintiff's new claim about being locked in a soundproof room in Warner's apartment (which did not have such a room). Plaintiff asserted this new claim for the first time on September 7, 2023, ***weeks after*** Warner identified these witnesses in amended discovery responses. Plaintiff offers no reason Warner should be precluded from calling witnesses to testify about the new claim.

Moreover, these witnesses were known to Plaintiff before Warner identified them in discovery. Messrs. White and Vrenna were Warner's bandmates in 2011, Mr. Ciulla was his manager, and Ms. Walters was his personal assistant. Thus, it should not surprise Plaintiff that they would be witnesses to the veracity of her claim that she "effectively moved in" with Warner in 2011. (FAC ¶ 13.) In fact, Plaintiff explicitly discusses Mr. Ciulla and Ms. Walters ***in her Complaint*** as having been around in 2011 (*id.* ¶¶ 26, 28-29), and her Complaint also reveals her familiarity with Mr. White (*id.* ¶ 22). Thus, the real reason behind Plaintiff's motion is not that she was "surprised" by new witnesses whom she did not seek discovery from, but that she saw a strategic—though misguided—chance to try to silence Warner at trial, and keep the jury from hearing any rebuttal evidence to her false claims. Her Motion in Limine No. 2 should be denied.

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IV. PLAINTIFF'S MOTION IN LIMINE NO. 3 SHOULD BE DENIED

Before addressing Plaintiff's Motion in Limine No. 3 regarding Pola Weiss, the Court should first decide Warner's Motion in Limine No. 2 to exclude evidence related to the "Groupie" film because, if granted, it will moot this motion. Warner plans to call Pola Weiss only if Plaintiff is permitted to put on evidence related to the inflammatory and fictional "Groupie" horror film, which was made ***fifteen years*** before Plaintiff met Warner. As explained in Warner's Motion in Limine No. 2—which he incorporates by reference—the film has no tendency to prove any of Plaintiff's claims and its sole purpose is to prejudice the jury against Warner and blur the lines between the real-life Warner and his fictional shock-rock persona "Marilyn Manson."

If Plaintiff is allowed to introduce the 44-minute horror film—together with her false claim that she suspects "Warner murdered" the woman in it—Warner will need to call Pola Weiss (the paid, professional actress) to do what he can to minimize the prejudice caused, which could never be fully cured. While Plaintiff has offered to stipulate that "Defendant's position was that the 'Groupie' video had been staged and Pola Weiss was a willing participant in it" (Wolf Decl. ¶ 3), that does not come close to curing the prejudice that would be caused by introducing the lengthy inflammatory video. No authority requires Warner to accept such a stipulation, and he is not limited to one form of proof to rebut Plaintiff's false narrative.

As Warner explains in is motion to exclude the video, Ms. Weiss would testify to far more than Plaintiff's offered stipulation. She would testify that the film was "make believe," she was 21 when she acted in it, she was paid to act in it, she was not "afraid or abused," she was not "forced to do anything," she was not "hit or struck," she "actually enjoyed it," she was "role playing," and after the film was shot, she spent the rest of the evening hanging out with Warner. (*See* Interview with Pola Weiss, starting at 23:15.[3])

In short, evidence related to the "Groupie" film should not be introduced at all, but if it is, Warner should be allowed to put on evidence to rebut and minimize the prejudice that would be

[3] *Available at* https://www.youtube.com/watch?app=desktop&v=ZyXOzFOWTDk&t=773s

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caused by the false impression of the video that Plaintiff intends to convey.[4]

V. PLAINTIFF'S MOTION IN LIMINE NO. 4 SHOULD BE DENIED

Plaintiff's Motion in Limine No. 4 regarding Tony Ciulla also repeats the arguments in her Motion for Evidence Sanctions, which will be fully briefed and heard before the Court gets to this motion. Again, this motion should be denied for the same reasons.

For efficiency, Warner incorporates his responses above, as well as his forthcoming briefing and evidence in opposition to Plaintiff's Motion for Evidence Sanctions.

On top of those arguments, Mr. Ciulla (Warner's former manager) has information to rebut Plaintiff's new claim that she was locked in a soundproof room in Warner's apartment (which did not have such a room). Plaintiff asserted this claim for the first time on September 7, 2023, ***weeks after*** Warner identified Mr. Ciulla in amended discovery responses. And Mr. Ciulla has first-hand knowledge that there was no soundproof room in Warner's apartment, let alone one with a lock on it. Plaintiff offers no reason Warner should be precluded from calling Mr. Ciulla to testify about this.

Having had frequent (and sometimes daily) contact with Warner in 2011, Mr. Ciulla will also offer testimony to rebut Plaintiff's false claim that she "effectively moved in" with Warner in 2011 (FAC ¶ 13) and that Warner gave her a key to his apartment, which doubled as Warner's office and recording studio at the time. Mr. Ciulla's identity as someone who could dispute the veracity of these claims is not a surprise to Plaintiff, as her Complaint expressly identifies Mr. Ciulla by name as Warner's manager. (*Id.* ¶ 26.) That Plaintiff chose not to take his—or any other third parties' deposition—is no reason to exclude his testimony.

Mr. Ciulla's testimony can also be introduced quickly and efficiently, and thus will not result in an undue consumption of time. Moreover, in a case in which Plaintiff will no doubt try to attack Warner's credibility by arguing that he is the defendant in the case, Warner should be allowed to call third parties who can corroborate his testimony and there is no rule limiting him to

[4] Plaintiff also misrepresents certain contents of the video, which does not include "Warner forc[ing] [the actress] to drink a glass of one of the band member's urine." (Mot. at 3.)

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one form of proof. *See Evans v. Indus. Acc. Comm'n*, 71 Cal. App. 2d 244, 248-249 (1945) ("A party is entitled to call as many witnesses as he deems necessary to the establishment of his claim or defense, subject to the power of the court reasonably to limit the number who may be heard upon any one issue. Even though the proffered evidence is deemed cumulative, so long as facts testified to by a party are not conclusively established or admitted, they are open to further proof." (internal quotation marks omitted)); *People v. Smithey*, 20 Cal. 4th 936, 974 (1999) ("evidence does not become irrelevant solely because it is cumulative of other evidence").

For these reasons, Plaintiff's motion to exclude Mr. Ciulla should be denied.

VI. PLAINTIFF'S MOTION IN LIMINE NO. 5 SHOULD BE DENIED

Plaintiff's Motion in Limine No. 5 about Jeordie White also repeats the same arguments in her Motion for Evidence Sanctions, which will be fully briefed and heard before the Court gets to this motion. Again, this motion should be denied for the same reasons.

For efficiency, Warner incorporates his responses above, as well as his forthcoming briefing and evidence in opposition to Plaintiff's Motion for Evidence Sanctions.

On top of those arguments, Mr. White—like Mr. Ciulla—has information to rebut Plaintiff's false claim that Warner locked her in a soundproof room in his apartment, because Mr. White has first-hand knowledge that there was no such room in the apartment, as one of Warner's bandmates who recorded and worked with Warner at the apartment throughout 2011. Mr. White can also rebut Plaintiff's false claim that she "effectively moved in" with Warner in 2011 (FAC ¶ 13) and that Warner gave her a key to his apartment. And Mr. White—who acted in the "Groupie" film—can rebut Plaintiff's false claims about the film and testify that the persona Warner played in it is not the real Warner.

Plaintiff is familiar with Mr. White and has long known his identity as a potential witness, having referenced him by name in her own Complaint. (FAC ¶ 22.) Nothing stopped her from taking his deposition other than her decision not to. Thus, that is not a reason to exclude his testimony.

Finally, Mr. White's testimony can be introduced quickly and efficiently, and will not result in an undue consumption of time. It should also not be excluded as cumulative because in a

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case in which Plaintiff will no doubt try to attack Warner's credibility by arguing that he is the defendant in the case, Warner should be allowed to call third parties who can corroborate his testimony. *See Evans v. Indus. Acc. Comm'n*, 71 Cal. App. 2d 244, 248-249 (1945) ("A party is entitled to call as many witnesses as he deems necessary to the establishment of his claim or defense, subject to the power of the court reasonably to limit the number who may be heard upon any one issue. Even though the proffered evidence is deemed cumulative, so long as facts testified to by a party are not conclusively established or admitted, they are open to further proof." (internal quotation marks omitted)); *People v. Smithey*, 20 Cal. 4th 936, 974 (1999) ("evidence does not become irrelevant solely because it is cumulative of other evidence").

For these reasons, Plaintiff's motion to exclude Mr. White should be denied.

VII. PLAINTIFF'S MOTION IN LIMINE NO. 6 SHOULD BE DENIED

Plaintiff's Motion in Limine No. 6 about Chris Vrenna—another of Warner's bandmates—similarly repeats the arguments in her Motion for Evidence Sanctions, which will be fully briefed and heard before the Court gets to this motion. Again, this motion should be denied for the same reasons.

For efficiency, Warner incorporates his responses above, as well as his forthcoming briefing and evidence in opposition to Plaintiff's Motion for Evidence Sanctions.

On top of those arguments, Mr. Vrenna also has information to rebut Plaintiff's false claim that Warner locked her in a soundproof room in his apartment, because Mr. Vrenna has first-hand knowledge that there was no such room in the apartment, as one of Warner's bandmates who recorded and worked with Warner at the apartment throughout 2011. He can also rebut Plaintiff's false claim that she "effectively moved in" with Warner in 2011 (FAC ¶ 13) and that Warner gave her a key to his apartment.

Mr. Vrenna's identity as one of Warner's bandmates in 2011 was well-known, and should not surprise Plaintiff, who alleges she was around at times when Warner had "band practice." (FAC ¶ 13.) Nothing stopped her from taking his deposition other than her decision not to. Thus, that is not a reason to exclude his testimony.

Finally, Mr. Vrenna's testimony can be introduced quickly and efficiently, and will not

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result in an undue consumption of time. It should also not be excluded as cumulative because in a case in which Plaintiff will no doubt try to attack Warner's credibility by arguing that he is the defendant in the case, Warner should be allowed to call third parties who can corroborate his testimony. *See Evans v. Indus. Acc. Comm'n*, 71 Cal. App. 2d 244, 248-249 (1945) ("A party is entitled to call as many witnesses as he deems necessary to the establishment of his claim or defense, subject to the power of the court reasonably to limit the number who may be heard upon any one issue. Even though the proffered evidence is deemed cumulative, so long as facts testified to by a party are not conclusively established or admitted, they are open to further proof." (internal quotation marks omitted)); *People v. Smithey*, 20 Cal. 4th 936, 974 (1999) ("evidence does not become irrelevant solely because it is cumulative of other evidence").

For these reasons, Plaintiff's motion to exclude Mr. Vrenna should be denied.[5]

VIII. PLAINTIFF'S MOTION IN LIMINE NO. 7 SHOULD BE DENIED

Plaintiff's Motion in Limine No. 7 about Lindsay Usich—Warner's wife—similarly repeats the arguments in her Motion for Evidence Sanctions, which will be fully briefed and heard before the Court gets to this motion. Again, this motion should be denied for the same reasons.

For efficiency, Warner incorporates his responses above, as well as his forthcoming briefing and evidence in opposition to Plaintiff's Motion for Evidence Sanctions.

On top of those arguments, Ms. Usich has information to rebut Plaintiff's false claim that Warner locked her in a soundproof room in his apartment, because she knew Mr. Warner in 2011 and frequented his apartment at that time. She can also rebut Plaintiff's false claim that Plaintiff "effectively moved in" with Warner in 2011 (FAC ¶ 13) and that Warner gave her a key to his apartment.

What's more, while Plaintiff should not be allowed to introduce evidence of Warner's alleged "bad character" (which he disputes), Warner fears Plaintiff will frequently try to sneak such evidence in at trial, as shown by her repeated references to unproven public accusations

[5] Plaintiff wrongly states that Mr. Vrenna was in the "Groupie" film. He was not, and thus would not be asked questions on that topic.

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against him in nearly every court filing she makes. If Plaintiff succeeds and thus opens the door, Warner should be allowed to call Ms. Usich—who has loyally stood by him while he fights these false claims—to introduce evidence of his good character, including that the real Brian Warner is not the same person as his "Marilyn Manson" persona.

This testimony can be introduced quickly and efficiently, and will not result in an undue consumption of time. It should also not be excluded as cumulative because in a case in which Plaintiff will no doubt try to attack Warner's credibility by arguing that he is the defendant in the case, Warner should be allowed to call third parties who can corroborate his testimony. *See Evans v. Indus. Acc. Comm'n*, 71 Cal. App. 2d 244, 248-249 (1945) ("A party is entitled to call as many witnesses as he deems necessary to the establishment of his claim or defense, subject to the power of the court reasonably to limit the number who may be heard upon any one issue. Even though the proffered evidence is deemed cumulative, so long as facts testified to by a party are not conclusively established or admitted, they are open to further proof." (internal quotation marks omitted)); *People v. Smithey*, 20 Cal. 4th 936, 974 (1999) ("evidence does not become irrelevant solely because it is cumulative of other evidence").

For these reasons, Plaintiff's motion to exclude Ms. Usich should be denied.

IX. CONCLUSION

For the above reasons, the Court should deny Plaintiff's Motions in Limine.

DATED: September 20, 2023 KING, HOLMES, PATERNO & SORIANO, LLP

By: */s/ Howard E. King*
HOWARD E. KING
Attorneys for Defendant, BRIAN WARNER

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PROOF OF SERVICE

Jane Doe v. Brian Warner
Case No. 21STCV20202

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, Twenty-Fifth Floor, Los Angeles, CA 90067-4506.

On September 20, 2023, I served true copies of the following document(s) described as **DEFENDANT BRIAN WARNER'S COMBINED OPPOSITION TO PLAINTIFF'S MOTIONS IN LIMINE NOS. 1-7** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address jsalazar@khpslaw.com to the persons at the e-mail addresses listed in the Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 20, 2023, at Los Angeles, California.

/s/ Johanna Salazar
Johanna Salazar

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Jane Doe v. Brian Warner
Case No. 21STCV20202

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