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Attorneys for Plaintiffs **HALEY VIDECKIS** and **LAYANA WHITE**

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

HALEY VIDECKIS and LAYANA WHITE, individuals,

Plaintiffs,

v.

PEPPERDINE UNIVERSITY, a corporation doing business in California,

Defendant.

CASE NO. 2:15-CV-00298-DDP (JCx)

[Assigned to the Hon. Dean D. Pregerson – Courtroom 9C]

PLANTIFFS' OPPOSITION TO DEFENDANTS' MOTION IN LIMINE NO. 9 TO EXCLUDE TESTIMONY AND/OR EVIDENCE OF THE REASONS FOR ANNE STONE'S DEPARTURE FROM PEPPERDINE UNIVERSITY; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed Concurrently with Oppositions to Defendant's Motions in Limine Nos. 1 thru 14; Declaration of Meredith Smith In Opposition]

Date:	June 12, 2017
Time:	10:00 a.m.
Courtroom:	9C
Pre-Trial Conf.:	July 10, 2017
Trial Date:	July 18, 2017

I. INTRODUCTION

As with many of its Motions in Limine, Pepperdine entirely ignores the legal standards applicable to this case, and seeks to parse out and isolate facts out of the context in which Plaintiffs experienced their mistreatment. When a hostile environment is claimed, an inquiry into the merits requires careful consideration of the social context and other surrounding circumstances in which the behavior occurred. Significantly, what Plaintiffs were told or heard, bears directly on their state of mind and the manner in which they experienced the totality of Pepperdine's conduct.

Anne Stone is the nutritionist who previously worked with the Pepperdine athletics department, including Plaintiffs. Ms. Stone reported the privacy violation where Ms. Scherer, another Pepperdine employee, publicly disclosed that Haley allegedly had cervical cancer.

Ms. Stone's departed from Pepperdine around the same time Plaintiffs did, and her last months at Pepperdine were intertwined with Plaintiffs'. Not only was Ms. Stone involved in witnessing and reporting the privacy violation, but she also spoke with Haley when Haley found out that the coaching staff was not allowing her to play, and Layana confided in Ms. Stone that she was also having problems with Ms. Scherer.

While Pepperdine contends that Plaintiffs never testified that Ms. Stone left Pepperdine as a result of her being sympathetic to them (See Decl. of Paula Tripp Victor In Support of Pepperdine's Motion in Limine No. 9 at ¶ 2), this argument is misleading and is not the standard by which this request is measured. In fact, Haley did testify that Ms. Stone told her why she had left Pepperdine, and that some of the reason did have to do with how Plaintiffs were generally being treated by Pepperdine staff. Decl. of Meredith Smith ("Smith Decl.") at ¶ 2, Ex. 1 (Depo. of Haley Videckis, Vol. II, 376:20-378:18--Ms. Stone advised Dr. Potts, Pepperdine's athletic director, that Karissa Scherer had grabbed Ms. Stone's phone and blocked

Haley's and Layana's phone numbers, so Ms. Stone could not contact them). Smith Decl. at ¶ 2, Ex. 1 (Depo. of Haley Videckis, Vol. II, 376:20-378:18).

At a minimum, the circumstances of Anne Stone's involvement and departure have to do with Plaintiffs' state of mind, is short and focused, and to the extent it needs admonition on hearsay grounds, if necessary, can be addressed that way.

II. MS. STONE'S TESTIMONY IS PROBATIVE

The probative value of evidence surrounding Ms. Stone's departure from Pepperdine substantially outweighs any risk of prejudice alleged. Rule 403 gives the court discretion to "exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." FED. R. EVID. 403. *See United States v. Mende, 43 F.3d 1298* (9th Cir. 1995) ("*Rule 403*, however, is 'an extraordinary remedy to be used sparingly because it permits the trial court to exclude otherwise relevant evidence.' . . . [u]nder the terms of the rule, the danger of prejudice must not merely outweigh the probative value of the evidence, but *substantially* outweigh it.") (citing *United States v. Patterson*, 819 F.2d 1495, 1505 (9th Cir. 1987); *see also United States v. Meester*, 762 F.2d 867, 874-75 (11th Cir. 1985)).

The lion's share of Pepperdine's argument for excluding evidence regarding Ms. Stone rests on the fact that Ms. Stone is not a party to this action. As with other Motions by Pepperdine, that is not the determinative standard. Pepperdine overlooks the fact that Ms. Stone was a Pepperdine employee during the time that the vast majority of events relevant to this suit took place, and interacted with Plaintiffs during that timeframe, and therefore is a witness to certain events, not the least of which involves the privacy violation by Ms. Scherer.

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While her observations of Haley and Layana's treatment at Pepperdine may not have been the primary reason she left Pepperdine, Ms. Stone will confirm her concerns about Pepperdine's treatment of Plaintiffs influencing her decision. Smith Decl. at ¶ 3.

III. DEFENDANT'S MOTION IS PREMATURE

Pepperdine's motion regarding Ms. Stone's departure from Pepperdine is premature since Ms. Stone has not been deposed and may not, ultimately, be called at trial. Most of Pepperdine's concerns can and should be addressed by objections at trial, rather than a partially informed and incomplete set of assumptions on what witnesses might say at the time of trial.

IV. CONCLUSION

The court should deny Pepperdine's motion in limine and allow evidence and testimony of the reasons for Ms. Stone's departure from Pepperdine.

Dated: May 30, 2017

Respectfully submitted,

ZUBER LAWLER & DEL DUCA LLP
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PEPPERDINE UNIVERSITY, a corporation doing business in California,

Defendant.

CASE NO. 2:15-CV-00298-DDP (JCx)

[Assigned to the Hon. Dean D. Pregerson – Courtroom 9C]

DECLARATION OF MEREDITH SMITH IN SUPPORT OF PLANTIFFS' OPPOSITION TO DEFENDANT'S MOTION IN LIMINE NO. 9

[Filed Concurrently with Oppositions to Defendants' Motions in Limine Nos. 1 thru 14]

Date: June 12, 2017
Time: 10:00 a.m.
Courtroom: 9C

Pre-Trial Conf.: July 10, 2017
Trial Date: July 18, 2017

DECLARATION OF MEREDITH SMITH

I, Meredith Smith, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am an associate with Zuber Lawler & Del Duca LLP, attorneys of record for Plaintiffs HALEY VIDECKIS and LAYANA WHITE. I have personal knowledge of the facts stated herein, and if called to testify, I could competently do so.

2. A true and correct copy of the relevant portions of the deposition of Haley Videckis is attached hereto as **Exhibit 1**.

3. On December 15, 2016, I interviewed Ms. Stone via telephone. Ms. Stone and I spoke for fifty-five minutes to an hour. Ms. Stone said that her observations of Haley and Layana's treatment at Pepperdine was not the primary reason why she left Pepperdine, but when asked if her departure from Ppperdine had anything to do with Haley and Layana, she said yes, that if the way Haley and Layana were treated is what Pepperdine is about, she did not want anything to do with it.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 30th day of May, 2017, at Los Angeles, California.

Meredith Smith

EXHIBIT 1

YOUR ELECTRONIC FILES HAVE ARRIVED

IN THE MATTER OF:

HALEY VIDECKIS AND LAYANA WHITE

VS.

PEPPERDINE UNIVERSITY

HALEY VIDECKIS

VOLUME II

JUNE 07, 2016

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12:46 1 THE WITNESS: Yes.
2 Q BY MS. VICTOR: So you went in Ann Stone's
3 office to tell her that you were going to have a test
4 done for cervical cancer. Is that correct?
12:47 5 A. Yes.
6 Q. Okay. And it was in that conversation when she
7 told you that Karissa had already told her that?
8 A. No.
9 Q. Okay. How did it come up that she told you
12:47 10 Karissa had told her?
11 A. I had the conversation with Ann like you just
12 explained. And then it was later in the week that I was
13 back in the training room and Ann asked me to come in her
14 office, and that's when she said the thing about the
12:47 15 documenting Layana and I and that Karissa had -- she said
16 "I think there's a HIPAA violation."
17 Q. Okay. So that was the second of the two times
18 you had met with Ann about that issue?
19 A. Right.
12:47 20 Q. All right. When was the last time you spoke to
21 Ann Stone?
22 A. I think back in December.
23 Q. Two thousand and?
24 A. 2015.
12:48 25 Q. '15?

12:48 1 A. Yes.
2 Q. Why did you speak to her then?
3 A. Just to see how she's doing.
4 Q. Do you have her contact information?
12:48 5 A. Yes.
6 Q. She's no longer at Pepperdine. Right?
7 A. Right.
8 Q. Did she tell you why she left Pepperdine?
9 A. She told me some details.
12:48 10 Q. What did she tell you?
11 A. She told me -- details about why she left?
12 Q. Yes.
13 A. I think she had some things happen. There was a
14 meeting with Dr. Potts that upset her.
12:49 15 Q. Did she tell you what it was about?
16 A. Yeah.
17 Q. What did she say?
18 A. That she -- she met with Dr. Potts over the fact
19 that she was in her nutrition office in the training room
12:49 20 and Karissa came up to her and took her phone and blocked
21 me and Layana's numbers and said "Don't talk to them.
22 They're off the team."
23 And she got called into Dr. Potts's office and
24 he yelled at her and said unblock their numbers.
12:50 25 Karissa -- I don't know if she said Karissa shouldn't

12:50 1 have done that, but don't -- "you shouldn't be
2 communicating with them."
3 And I don't think she liked working with the
4 other trainers.
12:50 5 Q. She said that?
6 A. She said no one said goodbye to her when she
7 left.
8 Q. Anything else she told you as to why she left or
9 circumstances around her leaving?
12:50 10 A. At the time, no.
11 Q. Well, you told me this was -- well, when did she
12 tell you these things about Dr. Potts, the meeting with
13 Dr. Potts and that nobody said goodbye? When did she
14 tell you all that?
12:51 15 A. I think in, like, October.
16 Q. What is your understanding of when she left
17 Pepperdine?
18 A. A couple weeks after we left.
19 Q. Do you know where she is now?
12:51 20 A. She told me she has some job. I don't know
21 exactly -- remember what she said she's doing.
22 Q. Do you know if she's at another university?
23 A. I don't remember.
24 Q. How did you get ahold of her? Just a cell phone
12:51 25 number?