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MOTION IN LIMINE

PLEADING

PROJECT DESCRIPTION

Prepare a motion in limine to exclude expert testimony and an expert report (an appraisal) where the expert and its report were not timely disclosed in a case pending in Nevada State Court.

Applicable jurisdiction: Nevada

Flat Fee Price for Project: \$500

Hours Billed to Attorney's Client: 7.9 Hours

Attorney Profit: (Billed @ \$185/hr) \$962

Area of Law: Litigation

Application Period: 3 Days

Project Completed: 5 Days

REGISTER FOR FREE

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[Redacted]

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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[Redacted]

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CASE NO.: DEPT. NO.

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Plaintiff.

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[Redacted]

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Defendant.

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MOTION IN LIMINE TO EXCLUDE DEFENDANT'S UNTIMELY EXPERT APPRAISAL REPORT AND ANY TESTIMONY FROM DEFENDANT'S EXPERT

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[Introduction – Redacted at Request of Attorney]

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MEMORANDUM OF POINTS AND AUTHORITIES

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I.

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STATEMENT OF FACTS

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The deadline to disclose experts was August 1, 2017. Discovery concluded on October 2,

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2017. The Defendant, Wells Fargo Bank, failed to timely disclose any expert. The trial is set for

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November 30, 2017. On October 20, 2017, the Defendant disclosed for the first time its expert

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appraisal witness and his expert appraisal report.

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In the instant motion, Plaintiff seeks a motion in limine to exclude the expert report and any

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testimony from the Defendant's expert since it was not timely produced.

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II.

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LEGAL ARGUMENT

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A. Legal Standard for Motions in Limine

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Motions in limine have long been used to seek to exclude or admit evidence in advance

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of trial. The Nevada Supreme Court has tacitly approved the use of a district court's

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discretionary authority to rule on the admissibility of evidence prior to trial. *State ex rel. Dept. of*

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Highway v. Nevada Aggregates & Asphalt Co., 92 Nev. 370, 551 P.2d 1095 (1976). NRC

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16(c)(3) permits this Court to make "advance rulings . . . on the admissibility of evidence at the

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pre-trial conference. Moreover, a district court enjoys broad discretion in determining whether

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evidence should be admitted. *Prabhu v. Levine*, 112 Nev. 1538, 1548, 930 P.2d 103, 110 (Nev.

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1996).

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NRS 48.035(1) provides, "[a]lthough relevant, evidence is not admissible if its probative

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value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or

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of misleading the jury." The trial judge is vested with the discretion to simplify the issues to

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exclude even relevant evidence if its probative value is substantially outweighed by the danger

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that it will confuse the issues or mislead the jury. NRS 48.035(1); *see also, Prabhu*, P.2d at 110.

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If the court should determine that evidence is unduly prejudicial, the evidence should be deemed

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inadmissible at trial. *Id.*

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B. Defendant's Expert Appraisal Report and Expert Testimony Should Be Excluded

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As Disclosure Was Untimely Pursuant to NRC P 16.1(a)(2) and NRC P 37(c)(1).

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NRC P 16.1(a)(2)(A) provides that "a party shall disclose to other parties the identity of

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any person who may be used at trial to present evidence under NRS 50.275, 50.285 and

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50.305[.]" effectively requiring the disclosure of witnesses who will provide expert testimony. A

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party who fails to disclose information required by Rule 16.1, without substantial justification, is

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not permitted to use the undisclosed evidence at trial. NRC P 37(c)(1); NRC P 16.1(c)(3) (where a

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party fails to reasonably comply with Rule 16.1, the Court shall prohibit "the use of any witness,

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document or tangible thing which should have been disclosed"); *Hansen v. Universal Health*

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Servs. of Nev., Inc., 115 Nev. 24, 29, 974 P.2d 1158, 1161 (1999) (holding that where a party

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disclosed new experts two (2) months prior to trial "the district court did not abuse its discretion

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in refusing to allow a party's untimely-designated experts to testify"); *Murphy v. FDIC*, 106

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Nev. 26, 29-30, 787 P.2d 370, 372 (1990) (finding that district court did not abuse its discretion

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to exclude expert witness where party failed "to adhere to applicable discovery rules")

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disapproved on other grounds by *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121

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Nev. 812, 820, 123 P.2d 748, 753 (2005); *Turner v. Richards*, 126 Nev. 764, 367 P.3d 829

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(2010) (holding "the district court did not abuse its discretion by excluding documentary

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evidence that was not prejudiced to respondents during discovery"); *Freeman v. Fischer*, 2009

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WL 1490776 *4-6, slip op. (Nev. 2009) (holding it was within the district court's discretion to

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grant motion in limine to exclude expert report which was produced after close of discovery).

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Additionally, Rule 16.1(a)(2) "serves to place all parties on an even playing field to prevent trial

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by ambush or unfair surprise." *Sanders v. Sears-Page*, 131 Nev. Adv. Op. 50, 354 P.3d 201, 212

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(Nev. App. 2015).

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Here, the trial is set for November 30, 2017. The deadline to disclose experts was August

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1, 2017. Discovery closed on October 2, 2017. On October 20, 2017, the Defendant disclosed,

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for the first time, its expert witness and his expert appraisal report approximately one (1) month

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prior to trial. Defendant failed to timely disclose any expert during discovery, much less this

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expert witness and his expert appraisal report. Therefore, as a matter of law the untimely expert

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witness and expert appraisal report disclosure, which was disclosed more than two and a half

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months after the deadline to disclose experts, should be excluded from trial.

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C. Plaintiff Will be Prejudiced if Defendant is Allowed to Have its Expert Testify at

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Trial and/or Have His Expert Appraisal Report Admitted as Evidence.

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Defendant's dilatory expert disclosure of the expert appraisal report and expert testimony

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has, and will, cause significant prejudice to Plaintiff. Any contention that untimely expert

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witness and expert report disclosures can be allowed in at any time pursuant to NRC P

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16.1(a)(2)(C) would make the deadlines of requirements of NRC P 16.1(a) completely

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meaningless. The entire purpose of expert disclosure deadlines and discovery deadlines is to

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avoid what is happening now – Defendant's use of evidence and testimony not disclosed during

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discovery to be presented at trial.

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There is significant prejudice to Plaintiff caused by Defendant's unjustified late

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disclosure. This prejudice precludes Plaintiff's from (1) taking Defendant's expert's deposition;

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(2) obtaining a rebuttal expert; (3) conducting alternative discovery in light of expert opinions,

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(4) reliance upon no expert opinions in deciding what discovery to undertake; and (5) legal

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research and preparation of Plaintiff's motion for summary judgment on the basis of lack of

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expert opinions. Defendant's late disclosure was not substantially justified and the prejudice is

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evident. Defendant's untimely conduct warrants the exclusion of Defendant's late appraisal

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report and expert testimony in this case since Defendant did not disclose any expert's or expert

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reports during discovery.

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D. Defendant Should Be Sanctions Pursuant to NRC P 16.1(c)(3) and NRC P 37(c)(1).

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III.

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CONCLUSION

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Based on the foregoing, Plaintiff respectfully requests that this Court grant Plaintiff's

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Motion In Limine To Exclude Defendant's Expert Appraisal Report And Any Testimony From

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Defendant's Expert. Plaintiff further requests that it be awarded attorneys' fees and costs related

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to filing this Motion.

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DATED this ____ day of October, 2017.

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By: /s/

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Time Card

Lawclerk Name: [Redacted]

Project Name: Motion in Limine To Exclude Untimely Expert Disclosure

Date Submitted: October 26, 2017

Date Services Rendered	Amount of Time (in 1/10 of an hour)	Description of Services Rendered
October 24, 2017	1.6	Analysis relevant statutory and caselaw regarding motions in limine for untimely expert disclosures including NRC P 16.1, NRC P 37, NRS 48, and Nevada Supreme Court and District Court decisions.
October 25, 2017	1.4	Additional analysis regarding binding Nevada Supreme Court and District Court caselaw regarding motions in limine for untimely expert disclosures.
October 25, 2017	2.6	Begin drafting Motion in Limine to Exclude Defendant's Expert
October 26, 2017	2.3	Supplement Motion in Limine to Exclude Defendant's Expert with additional analysis.
TOTAL	7.9 hours	