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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

18 JANE DOE (A Pseudonym),  
19 Plaintiff,  
20 v.  
21 DERRICK ROSE, an Individual;  
22 RANDALL HAMPTON, and  
23 Individual; RYAN ALLEN, an  
24 Individual; and DOES 1-10 Inclusive,  
25 Defendants.

Case No. CV 15-7530-MWF(JCx)

**PLAINTIFF DOE’S NOTICE OF  
MOTION AND MOTION *IN  
LIMINE* RE: PHOTOGRAPHS OF  
PLAINTIFF PRODUCED AFTER  
DISCOVERY CUTOFF (MOTION  
*IN LIMINE* NO. 1)**

**PRETRIAL CONFERENCE:**  
Date: September 19, 2016  
Time: 11:00 a.m.  
Location: Courtroom 1600  
Judge: Hon. Michael Fitzgerald

**Discovery Cutoff:** June 17, 2016  
**Trial Date:** October 4, 2016



**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Pursuant to Federal Rule of Civil Procedure 37(c) and the Federal Rules of Evidence 402 and 403, Plaintiff Jane Doe hereby submit this motion *in limine* to preclude Defendants Derrick Rose, Randall Hampton and Ryan Allen from presenting and/or offering evidence of the pictures of Plaintiff Doe in Las Vegas, Nevada.

The Court issued a scheduling order on February 25, 2016, which outlined the deadline for discovery. (See, Declaration of Brandon Anand in support of Plaintiff’s Motion *In Limine* No. 1-3 (hereinafter “Anand Decl.”), Exhibit “A”). According to the order, fact discovery was closed on June 17, 2016. *Id.* On August 25, 2016, over two months after fact discovery was closed, Defendant Rose produced pictures of Plaintiff Doe with some friends during a trip to Las Vegas, Nevada. (Anand Decl., Exhibit “B” )

Defendants Rose, Hampton and Allen plan to present and/or offer evidence to the jury at trial the pictures of Plaintiff Doe in Las Vegas, Nevada as part of their defense. Defendants Rose, Hampton and Allen never indicated during the discovery period that these pictures existed or that they planned to produce them to Plaintiff. Not only does this evidence violate the Federal Rules of Civil Procedure and the Court’s Scheduling Order, but it is also irrelevant, prejudicial to Plaintiff, and likely to confuse or mislead the jury under FRE 402 and 403.

**II. ARGUMENT**

**A. Defendants Rose, Hampton and Allen’s failure to disclose evidence it intends to use at trial during the discovery phase of this case directly violates the Federal Rules of Civil Procedure and the Court’s Scheduling Order**

Rule 37(c)(1) of the Federal Rules of Civil Procedure provides that a party that fails to disclose information required by Rule 26(a) or 26(e)(1) is not permitted

1 to use evidence at trial “unless the failure was substantially justified or is  
2 harmless.” Fed. R. Civ. P. 37(c)(1).

3 Federal Rules of Civil Procedure 26(b), 33(b), 34(b) require parties to  
4 produce relevant documents and other materials in response to an opposing party’s  
5 discovery requests. Rule 26(e) requires that a party’s initial disclosures – “must” be  
6 supplemented “in a timely manner if the party learns that in some material respect  
7 the disclosure or response is incomplete or incorrect, and if the additional or  
8 corrective information has not otherwise been made known to the other parties  
9 during the discovery process or in writing.” Fed. R. Civ. P. 26(e). If a party fails to  
10 properly disclose information...as required by Rule 26(a) or (e), which it will seek  
11 to use to support its claims or defenses, “the party is not allowed to use that  
12 information or witness to supply evidence on a motion, at a hearing, or at trial,  
13 unless the failure was substantially justified or is harmless.” Fed. R. Civ. P.  
14 37(e)(1).

15 Federal Rule of Civil Procedure 16(f) provides that “[o]n motion or on its  
16 own, the court may issue any just orders, including those authorized by Rule  
17 37(b)(2)(A)(ii)-(vii), if a party or its attorney...fails to obey a scheduling or other  
18 pretrial order.” Fed. R. Civ. P. 16(f)(1)(C).

19 Defendants Rose, Hampton and Allen were required to produce all  
20 document and materials responsive to Plaintiff Doe’s production requests by the  
21 Court ordered close of discovery, and was also required to supplement or correct  
22 its disclosures in a timely manner. The Court has never revised the fact discovery  
23 period, and producing pictures of Plaintiff Doe over two months after the close of  
24 fact discovery and on the eve of trial is not considered supplementing in a timely  
25 manner.

26 Defendants Rose, Hampton and Allen have not shown substantial  
27 justification as to why they produced the pictures months after fact discovery was  
28 closed. In addition, if Defendant Rose, Hampton and Allen are permitted, after the

1 close of discovery, to submit evidence, it would harm and prejudice Plaintiff Doe  
2 substantially. With trial scheduled weeks away, Plaintiff Doe would be precluded  
3 from conducting discovery related to the pictures, as to who took the pictures, what  
4 are the pictures of, and when exactly the pictures were taken. Moreover, Plaintiff  
5 Doe would be precluded from taking the deposition of the person who took the  
6 pictures or of witnesses who were with Plaintiff in the pictures.

7 Furthermore, Defendants Rose, Hampton and Allen’s failure to timely  
8 disclose the newly-produced evidence unfairly prejudices Plaintiff Doe and  
9 impedes her effective preparation for trial in precisely the manner that the Federal  
10 Rules of Civil Procedure forbid. Therefore, the late produced pictures of Plaintiff  
11 Doe should be stricken for violating the Federal Rules of Civil Procedure and the  
12 Court’s Scheduling Order.

13 **B. The Pictures of Plaintiff Doe In Las Vegas, Nevada Are Irrelevant**  
14 **And Therefore Inadmissible Under FRE 402.**

15 In the alternative, if the Court finds no violation of the Federal Rules of Civil  
16 Procedure and the Court’s scheduling order, the pictures of Plaintiff Doe in Las  
17 Vegas, NV are inadmissible under Federal Rule of Evidence 402. The pictures  
18 have no relevancy to the events that occurred on the dates in question that give rise  
19 to this action. The pictures provide no evidence to the claims or defense that  
20 Defendants Rose, Hampton and Randall conspired to and committed sexual  
21 battery, trespass, battery, and gender violence against Plaintiff Doe. Therefore the  
22 recently produced pictures of Plaintiff Doe should be inadmissible.

23 **C. The Pictures of Plaintiff Doe In Las Vegas, Nevada Is Likely To**  
24 **Prejudice Plaintiff Doe, Confuse The Jury And Result In Undue**  
25 **Delay And Waste Of Time.**

26 Because the newly produced pictures of Plaintiff Doe have no relevancy to  
27 these proceedings, evidence or argument relating to them is inadmissible under  
28 Rule 402. Alternatively, however, the evidence should be excluded under FRE

