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**IN THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR DAVIS COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

GOOD CLIENT,

Defendant.

**MEMORANDUM IN OPPOSITION TO THE
MOTION IN LIMINE OF THE STATE**

Case No. 123456789

Judge: Good Judge

The above-captioned defendant, Good Client (hereinafter, “**Defendant**”), by and through his counsel of record, Saul Goodman, hereby files this “Memorandum in Opposition to the Motion in Limine of the State” (hereinafter, this “**Memorandum**”) to oppose the “State’s Motion in Limine” (hereinafter, the “**Motion**”) filed by the above-captioned plaintiff, State of Utah (hereinafter, “**Plaintiff**”), on or about April 10, 2023, and in support of this Memorandum, Defendant states and alleges as follows:

STATEMENT OF RELEVANT FACTS

Case Facts

1. Defendant is charged with Count 1, Aggravated Assault (DV), a third-degree felony; Count 2, Failure to Stop at Command of Law Enforcement Officer, a class-A misdemeanor; and Count 1, Damage to or Interruption of a Communication Device (DV), a class-B misdemeanor.

2. All the facts herein are based on allegations only.
3. On March 24, 2022, at approximately 1:30 a.m., Officer Cop responded to a domestic violence call at the residence of Alleged Victim (hereinafter, “**Ms. Alleged Victim**”).
4. Ms. Alleged Victim reported that her boyfriend, Defendant, had become violent towards her and had thrown a ceramic ring holder at her face, causing her nose to bleed, and swelling to her face.
5. Ms. Alleged Victim also reported that Defendant had pushed up on her chin and covered her mouth and nose, preventing her from breathing.
6. Officer Cop arrived at the scene and observed that Ms. Alleged Victim had visible injuries to her face and nose.
7. Ms. Alleged Victim reported that Defendant had taken her phone to prevent her from contacting the police.
8. Officer Cop also observed that Defendant was not present at the residence.
9. Officer Cop then received a call from another officer, Officer Cop 2, who reported that he had located Defendant in a home under construction and was attempting to apprehend him.
10. Defendant fled from Officer Cop 2 and other officers who arrived at the scene.
11. Officer Cop 2 yelled to Defendant, “Stop. Police!” twice when they were a hundred feet to fifty yards away, but Defendant continued to run.
12. Defendant eventually entered a vacant dwelling, and the police established a perimeter around the house.
13. After several hours, Defendant surrendered to the police.
14. Defendant was taken into custody and waived his Miranda rights.

Summary of Arguments Advanced by the State in Their Motion

15. Plaintiff's Motion discusses six different pieces of evidence that Plaintiff is arguing should be excluded from trial.

16. The first piece of evidence concerns Ms. Alleged Victim's alleged alcoholism, regarding that while evidence of Ms. Alleged Victim drinking on the night of the alleged offenses is relevant, Plaintiff argues that evidence of past drinking is not relevant and would only serve to prejudice the jury against Ms. Alleged Victim.

17. The second piece of evidence is Defendant's lost wallet, which Plaintiff argues is not relevant to the trial and would only serve to confuse the jury and waste time.

18. The third piece of evidence concerns extrinsic evidence to impeach Ms. Alleged Victim's credibility, which Plaintiff argues is not admissible under Rule 608.

19. The fourth piece of evidence concerns the ownership of \$2,000.00 cash, but Plaintiff argues that the ownership of the money is not relevant to the trial and would only serve to waste time and confuse the jury.

20. The fifth piece of evidence concerns miscellaneous financial fraud allegations against Ms. Alleged Victim, but Plaintiff argues that these allegations are not relevant to the trial and would only serve to waste time and confuse the jury.

21. The sixth piece of evidence concerns Ms. Alleged Victim's alleged violent tendencies, but Plaintiff argues that while they could present evidence of this under Rule 404(a)(2) of the Utah Rules of Evidence (hereinafter, the "**URE**"), it would open the door for the state to present evidence of Defendant's own violent history.

22. Besides the foregoing, Plaintiff also argues, generally, that the evidence they seek to exclude is inadmissible, unduly prejudicial, and is cumulative.

PRELIMINARY STATEMENTS AND CASELAW CONTEXTUALIZING MOTIONS IN LIMINE

The purpose of a Motion in Limine is to allow the trial court to rule in advance of trial on the admissibility and relevance of certain forecasted evidence.¹ Furthermore, “[e]vidence should be excluded on a Motion in Limine only when the evidence is clearly inadmissible on all potential grounds.”² In considering a Motion in Limine, courts may reserve judgment until trial, so that the motion is placed in the appropriate factual context.³ Motions in Limine that seek to exclude broad categories of evidence should rarely be granted. Furthermore, the burden is on the party looking to exclude the evidence to demonstrate why it is inadmissible, and Plaintiff in this matter has not met this burden by attempting to say that the issues Defendant wants to bring forth fails the prejudice rule, also known as Rule 403 of the URE. The issues that Defendant wants to bring forth are relevant under Rules 401 and 403 of the URE.⁴

Again, the standard for granting a Motion in Limine is quite stringent, as the Court must find that the evidence in question is “clearly inadmissible on all potential grounds.” In other words, the Court must be convinced that there is no plausible scenario in which the evidence could be

¹ See *United States v. Chan*, 184 F. Supp. 2d 337, 340 (S.D.N.Y. 2002) (citing *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984)).

² *Wechsler v. Hunt Health Sys., Ltd.*, 381 F. Supp. 2d 135, 140 (S.D.N.Y. 2003) (quoting *Baxter Diagnostics*, 1998 WL 665138, at 3).

³ See *Nat’l Union Fire Ins. Co.*, 937 F. Supp. at 287 (citing *Hawthorne Partners v. AT&T Tech., Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993) (stating that a Motion in Limine to exclude evidence should be granted only “when evidence is clearly inadmissible on all potential grounds and unless the evidence meets this high standard, evidentiary rulings should be deferred until trial”)).

⁴ See *State v. Suhail*, 2023 UT App. 15 (Utah Ct. App. 2023); see, also, *United States v. O’Dowd*, 2:20-cr-00332 (D. Utah Sep. 23, 2022).

considered admissible during the trial. This high threshold ensures that potentially relevant evidence is not prematurely excluded from the trial.

When considering a Motion in Limine, courts have the discretion to reserve judgment until the trial is underway, which allows them to assess the admissibility of the evidence in the proper factual context. This approach can be particularly helpful when it is unclear whether the evidence will be relevant or prejudicial based on pretrial submissions alone.

Again, Motions in Limine that seek to exclude broad categories of evidence should be granted sparingly, as doing so could inadvertently eliminate relevant and admissible evidence. The burden of proof rests on the party seeking to exclude the evidence, and they must demonstrate why it should be considered inadmissible.

Several cases emphasize the broad discretion that courts have in ruling on Motions in Limine. For example, in *Vitale v. Electrolux Home Prods.*,⁵ the court notes that its decisions on the parties' Motions in Limine are "guided by the following evidentiary rules," suggesting that the court has considerable leeway in making these determinations. Similarly, in *United States v. Bundy*,⁶ the court discusses the "proper use" of a Motion in Limine, noting that it is within the court's discretion to manage the course of the trial.

Many of the cases also discuss the factors that courts will consider when ruling on a Motion in Limine. For example, in *Finney v. Bibb County Public Schools*,⁷ the court grants the defendant's motion in part and reserves ruling in part, based on the defendant's objections to the introduction

⁵ CIVIL ACTION NO. 15-cv-01815-RAL (E.D. Pa. Aug. 14, 2018).

⁶ Case No.: 2:16-cr-46-GMN-PAL (D. Nev. Oct. 13, 2017).

⁷ C.A. No. 5:02-CV-468 (DF) (M.D. Ga. Oct. 5, 2005).

of evidence that is “no longer relevant” or that would “constitute unfair prejudice.” In *Vitale*, the court references the Federal Rules of Evidence that will guide its decisions, which include considerations of relevance, probative value, and prejudice. In the case of *United States v. Jefferys*,⁸ the court notes that the purpose of a Motion in Limine is to “aid the trial process” by allowing the court to rule on the relevance of evidence in advance.

Finally, some of the cases discuss the importance of the proponent’s need for the evidence in question. For example, in the case of *Magelky v. BNSF Railway Company*,⁹ the court considers the “proponent’s need for the evidence” as one of the factors in determining whether to exclude evidence under Rule 403. Similarly, in the case of *Commonwealth v. Arrington*,¹⁰ the court allows the Commonwealth’s Motion in Limine to admit the testimony of a substitute analyst, in part because the Commonwealth argued that the testimony was necessary for its case.

COUNTERARGUMENTS TO EACH NUMBERED ARGUMENT ADVANCED BY PLAINTIFF

(5) Counterarguments to the exclusion of Ms. Alleged Victim’s history of alcoholism: (1) demonstrating a pattern of behavior, (2) assessing credibility, (3) demonstrating the severity of the issue, (4) establishing the relevance of the alleged incident with a minor, limiting the scope of the evidence, and (6) further arguments and authorities.

I. Demonstrating a Pattern of Behavior

Ms. Alleged Victim’s history of alcoholism is essential to establish a pattern of behavior that may have played a role in the incident in question. A consistent history of alcoholism, leading to negative consequences, suggest that her actions on the night of the alleged offenses were

⁸ 18-CR-359(KAM) (E.D.N.Y. Oct. 9, 2019).

⁹ Case No. 1:06-cv-025 (D.N.D. Jan. 28, 2008).

¹⁰ 455 Mass. 437 (Mass. 2009).

influenced by her habitual behavior, making the evidence more probative than prejudicial. Ms. Alleged Victim's alcoholism history establishes a pattern of behavior that may have led to the incident. A history of alcohol abuse often involves a series of events or actions that demonstrate an inability to control one's consumption of alcohol. By establishing this pattern, it may be easier to argue that her actions on the night of the alleged offenses were not isolated or random, but rather a continuation of Ms. Alleged Victim's established behavior.

II. Assessing Credibility

Ms. Alleged Victim's history of alcoholism is relevant to her credibility as a witness. If she has a history of "numerous run-ins with law enforcement" and has faced consequences due to her alcoholism, it may cast doubt on her ability to accurately recall the events of the night in question, particularly if she was intoxicated at the time. During the night in question, Ms. Alleged Victim mentioned that she and Defendant were consuming alcohol together. However, Defendant has never consumed alcohol with Ms. Alleged Victim. Presenting evidence to demonstrate Ms. Alleged Victim's alcohol consumption habits and Defendant's lack thereof is crucial to discredit her statement. Moreover, alcohol-related disagreements are the main source of tension within the marriage, and this issue played a role during the night in question. If Defendant is unable to elaborate on Ms. Alleged Victim's alcohol issues, it would be unduly difficult to establish her motive for making false accusations.

III. Demonstrating the Severity of the Issue

Presenting evidence of Ms. Alleged Victim's history of alcoholism would help the jury understand the severity of her alcohol problem, which could directly impact her actions and behavior on the night in question. By excluding this evidence, the jury might not fully comprehend

the extent of her alcoholism, leading them to make decisions based on an incomplete understanding of the circumstances.

IV. Establishing the Relevance of the Alleged Incident With a Minor

The incident where Ms. Alleged Victim allegedly gave alcohol to a minor child is relevant to the case, as it demonstrates her willingness to engage in irresponsible and potentially dangerous behavior while under the influence of alcohol. This could be important in evaluating her actions on the night of the alleged offenses. Providing alcohol to a minor demonstrates a level of irresponsibility and disregard for the safety and well-being of others. This incident, combined with Ms. Alleged Victim's history of alcoholism, may indicate a pattern of poor decision-making while intoxicated, which could have played a role in the alleged offenses under examination.

V. Limiting the Scope of the Evidence

As an alternative to introducing this evidence in full, and to address concerns about wasting the Court's time or confusing the issues, the Court could limit the scope of evidence and testimony related to Ms. Alleged Victim's alcoholism to only the most relevant incidents, and, in such a case, both sides should be given equal opportunity to present their respective arguments about the relevance of Ms. Alleged Victim's alcoholism to the case at hand. By focusing only on the most relevant aspects of the dispute, the Court can avoid unnecessary confusion and delays, while still allowing the jury to consider the evidence when evaluating the credibility of the parties involved.

VI. Further Arguments and Authorities

Rule 402 of the URE provides that relevant evidence is "admissible unless provided otherwise by the U.S. Constitution, Utah Constitution, statute, or a rule applicable in the courts of the state of Utah." Irrelevant evidence is not admissible. Rule 401 of the URE defines evidence as

relevant if “it has a tendency to make a fact more or less probable than it would be without the evidence.”

Plaintiff concedes that Ms. Alleged Victim was drinking alcohol on the night of March 24, 2022—the night of the assault. Furthermore, Plaintiff concedes that the issue of alcohol is “relevant.” Indeed, there can be no doubt that the drinking is relevant and admissible because the drinking affected the decision-making process of Ms. Alleged Victim, and in turn, the actions that proceeded therefrom.¹¹

Plaintiff, however, wants to exclude statements made by Defendant regarding Ms. Alleged Victim, which statements include that Ms. Alleged Victim is a “seasoned alcoholic”; that the drinking has estranged Ms. Alleged Victim from her family; that there were “numerous run ins with law enforcement”; and that Ms. Alleged Victim gave alcohol to a minor child, resulting in a visit from DCFS. Plaintiff cites Rule 403 of the URE and advances the notion that “the 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 cumulative evidence.” However, an exclusion under Rule 403 of the URE is considered “an extraordinary measure because it permits a trial court to exclude concededly probative evidence, and thus it should be used sparingly.”¹² Indeed, doubts should be resolved in favor of admissibility.¹³ The statements made by Defendant center around the issue of Ms. Alleged Victim’s drinking habits; it

¹¹ See *Dowdy v. Coleman Company*, 2012 WL 5944232 (stating that “[t]he evidence of drinking on the night in question . . . is relevant to decision making and potential impact on actions.”).

¹² *United States v. Caldwell*, 820 F.2d 1395 (1987), (citing *United States v. Thevis*, 664 F.2d 616, 633 (5th Cir.), cert. denied, 459 U.S. 825 (1982)).

¹³ See *United States v. Dennis*, 625 F.2d 782, 797 (8th Cir. 1980).

appears that the issue of alcohol takes center stage in the relationship. In Ms. Alleged Victim's deposition, there are several instances to note which tie into this issue of alcohol. First, the Washington trip where there was drinking and another argument that got out of control. Second, Ms. Alleged Victim discussed a visit from DCFS that involved the question of the safety of her children, which ties into the claim made by Defendant that DCFS was called because of another incident involving alcohol. Third, in the deposition, Ms. Alleged Victim discussed the fact that she and Defendant decided it was in their best interest to stop drinking. When asked if it was suggested that Ms. Alleged Victim had a drinking problem, Ms. Alleged Victim responded in the negative. There is a clear disagreement between what Ms. Alleged Victim stated in the deposition, under oath, and Defendant's claims; therefore, the evidence should be admitted for further examination.

1. Counterarguments for the inclusion of the wallet evidence: (1) establishing a connection between the parties, (2) providing context for other evidence, (3) evaluating Defendant's credibility, (4) assessing alternative explanations, (5) probative value outweighs potential prejudice, and (6) limiting the scope of the evidence.

I. Establishing a Connection Between the Parties

The wallet's presence at the scene of the alleged crimes serves as evidence connecting Defendant to the events in question. If the wallet was found at or near the location of the incident, it may indicate that Defendant was present during the time of the alleged offenses, making the wallet a relevant piece of evidence.

II. Providing Context for Other Evidence

The wallet could provide context for other pieces of evidence or testimony presented during the trial. For instance, if there are witnesses who claim to have seen Defendant at the scene or near the scene, the wallet's presence could corroborate their testimony, strengthening the case against Defendant. Defendant specifically claims that the wallet was unlawfully handed over to Ms.

Alleged Victim by the police, constituting a clear breach of constitutional law. Subsequently, Ms. Alleged Victim exploited Defendant's identification and financial transaction cards to achieve her ultimate objective, which was to continuously swindle Defendant out of money and possessions.

III. Evaluating Defendant's Credibility

Defendant's account of how the wallet was lost and the circumstances surrounding its discovery may be relevant to assessing the credibility of Defendant and Ms. Alleged Victim. If there are inconsistencies in Defendant's story or Ms. Alleged Victim's story, it could cast doubt on their overall testimonies and suggest that they may not be entirely truthful about other aspects of the case. The consistency and coherence of the accounts of Defendant and Ms. Alleged Victim regarding the lost wallet are a key factor in determining their credibility. Inconsistencies or contradictions in their stories may raise questions about their truthfulness and reliability, potentially impacting the Court's assessment of their testimonies in relation to the broader case.

Law enforcement falsely claimed to have "lost" the wallet at the time of the arrest. Defendant should be permitted to use this insincere misplacement to challenge the credibility of the law enforcement officers involved.

IV. Assessing Alternative Explanations

The wallet's presence and the circumstances of its loss could very likely be relevant in evaluating alternative explanations for the alleged crimes. Since Defendant claims that there is a provable possibility that the events relevant to this matter transpired differently than the prosecution's narrative, the wallet's presence could help the jury determine the plausibility of these alternative explanations.

Again, the wallet's existence and the details surrounding its disappearance play a significant role in assessing alternative theories for the purported offenses. As Defendant asserts that a verifiable possibility exists for events unfolding differently than the prosecution's account, the wallet's presence would significantly aid the jury in evaluating the credibility of these alternate scenarios.

V. Probative Value Outweighs Potential Prejudice

The probative value of the wallet evidence in establishing connections, providing context, and assessing credibility outweighs the potential prejudice or confusion that might arise from its inclusion. The court has a responsibility to ensure that all relevant evidence is considered, and excluding the wallet could deprive the jury of important information necessary for making an informed decision.

Again, the wallet evidence's significance in revealing relationships, offering context, and evaluating trustworthiness surpasses any possible bias or perplexity resulting from its inclusion. It is the Court's duty to guarantee that all pertinent evidence is examined, and omitting the wallet would deprive the jury of crucial insights needed to reach a well-informed verdict.

VI. Limiting the Scope of the Evidence

As an alternative to introducing this evidence in full, and to address concerns about wasting the Court's time or confusing the issues, both sides could agree, and the Court could order, to limit the scope of evidence and testimony related to the wallet. By focusing only on the most relevant aspects of the dispute, the Court can avoid unnecessary confusion and delays, while still allowing the jury to consider the evidence when evaluating the credibility of the parties involved and the actions of law enforcement.

2. Counterarguments for the inclusion of extrinsic evidence to impeach Ms. Alleged Victim: (1) demonstrating a pattern of dishonest behavior, (2) relevance to the specific case, (3) ensuring a fair trial, (4) balancing probative value with potential prejudice, (5) limiting the scope of the evidence, and (6) further arguments and authorities.

I. Demonstrating a Pattern of Dishonest Behavior

The extrinsic evidence of Ms. Alleged Victim's history of false 911 calls and police reports is crucial to establish a pattern of dishonest behavior that directly affects her credibility as a witness. If the jury is made aware of her history of falsifying reports, they may be more likely to question the veracity of her testimony in the current case.

II. Relevance to the Specific Case

Ms. Alleged Victim's history of false reports is particularly relevant to the case at hand, as it directly relates to her interactions with law enforcement, which are central to the alleged offenses. This connection between her past conduct and the current case warrants the inclusion of extrinsic evidence under exceptional circumstances.

III. Ensuring a Fair Trial

Excluding extrinsic evidence of Ms. Alleged Victim's past false reports hinders Defendant's right to a fair trial. By preventing the jury from considering this potentially significant aspect of Ms. Alleged Victim's credibility, the Court may inadvertently bias the jury in favor of the prosecution, undermining Defendant's right to present a complete defense.

IV. Balancing Probative Value with Potential Prejudice

The Court should balance the probative value of the extrinsic evidence against any potential prejudice, as required by Rule 403. If the Court determines that the probative value of the evidence in establishing Ms. Alleged Victim's credibility outweighs any potential prejudice, then the evidence should be admissible.

V. *Limiting the Scope of the Evidence*

As an alternative to introducing this evidence in full, and to address concerns about the admissibility of extrinsic evidence under Rule 608(b), the scope of the evidence could be limited to only the most relevant instances of false reports. By focusing on specific instances that are directly related to the case at hand, reason compels the conclusion that the evidence is admissible under exceptional circumstances.

VI. *Further Arguments and Authorities*

Rule 404(b) of the URE states that evidence of a crime, wrong, or other act is not admissible “to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” However, said evidence “may be admissible for another purpose.” Moreover, the “use of . . . evidence for impeachment [is] a permissible ‘other purpose’ under Rule 404(b).”¹⁴ Utah caselaw generally allows for the use of Rule 404(b) evidence to impeach a witness’s credibility if the evidence is relevant for a non-character purpose and meets the requirements of Rules 402 and 403 of the URE.¹⁵

Introducing this evidence is essential for “another purpose,” such as casting doubt upon Ms. Alleged Victim’s allegations, and not necessarily to prove certain things about her character. Because Ms. Alleged Victim’s allegations are what the case against Defendant is contingent upon, introducing any doubt as to these allegations constitutes legitimate probative value that heavily outweighs any potential prejudicial effect. Rule 404(b) of the URE allows for the introduction of evidence related to past crimes or acts for purposes other than proving a person’s character. In this

¹⁴ See *United States v. Lara*, 956 F.2d 994, 997 (10th Cir. 1992).

¹⁵ See *State v. Otkovic*, 322 P.3d 746 (holding that evidence of prior bad acts was admissible to show motive and impeach a witness).

case, presenting such evidence serves to challenge Ms. Alleged Victim's credibility and the reliability of her allegations, rather than to make assertions about her character. Since the case against Defendant relies heavily on Ms. Alleged Victim's allegations, introducing evidence that casts doubt on the veracity of said allegations is crucial, with the probative value substantially outweighing any potential prejudicial effects.

3. Counterarguments for the inclusion of the ownership dispute over the \$2,000.00 in cash: (1) motive for the alleged offenses, (2) assessing credibility of the parties involved, (3) evaluating the actions of law enforcement, (4) balancing probative value with potential prejudice, and (5) limiting the scope of the evidence.

I. Motive For the Alleged Offenses

The dispute over the ownership of the cash is relevant to establishing a motive for the alleged offenses. If it can be shown that Defendant had a legitimate claim to the money, it might cast doubt on the prosecution's narrative or suggest alternative explanations for the events that transpired. The evidence referred to as "extrinsic" is, in reality, not extrinsic at all. All of the wrongful acts Defendant plans to present involving Ms. Alleged Victim pertain to actions she took to advance her scheme. This also demonstrates a pattern of making false allegations and subsequently retracting them.

II. Assessing Credibility of the Parties Involved

The conflicting accounts of the ownership of the cash are relevant to assessing the credibility of both Ms. Alleged Victim and Defendant. If either party is shown to have lied or misrepresented the facts about the ownership of the money, it could cast doubt on their credibility and the veracity of their other statements or testimony.

Again, discrepancies in the claims regarding the cash ownership are pertinent to evaluating the trustworthiness of both Ms. Alleged Victim and Defendant. Should either party be proven to

have deceived or distorted the truth about the money's ownership, it would undermine their credibility and the accuracy of their other declarations or testimonies.

III. Evaluating the Actions of Law Enforcement

The handling of the cash by the police is relevant to evaluating the overall investigation and law enforcement's actions related to the case. If the police acted inappropriately or failed to properly handle the situation, it could raise questions about the thoroughness and impartiality of their investigation, which could affect the jury's perception of the case.

Again, the police's management of the cash is crucial for assessing the comprehensiveness of the investigation and law enforcement's conduct in relation to the case. Should the police have behaved improperly or mishandled the situation, it would cast reasonable doubt on the rigor and objectivity of their inquiry, influencing the jury's view of the case.

IV. Balancing Probative Value With Potential Prejudice

The Court should balance the probative value of the evidence regarding the ownership of the cash against any potential prejudice, as required by Rule 403. If the Court determines that the probative value of the evidence in establishing motive, credibility, or evaluating law enforcement's actions outweighs any potential prejudice or confusion, then the evidence should be admissible.

V. Limiting the Scope of the Evidence

As an alternative to introducing this evidence in full, and to address concerns about wasting the Court's time or confusing the issues, the Court could limit the scope of evidence and testimony related to the ownership of the cash. By focusing only on the most relevant aspects of the dispute, the Court can avoid unnecessary confusion and delays, while still allowing the jury to consider the

evidence when evaluating the credibility of the parties involved and the actions of law enforcement.

4. Counterarguments for the inclusion of miscellaneous financial fraud allegations against Ms. Alleged Victim: (1) establishing motive and character, (2) evaluating the relationship between the parties, (3) demonstrating a pattern of dishonest behavior, (4) balancing probative value with potential prejudice, (5) limiting the scope of the evidence, and (6) further arguments and authorities.

I. Establishing Motive and Character

The financial fraud allegations against Ms. Alleged Victim are relevant to understanding her character and potential motives for her actions in the case. If it can be shown that Ms. Alleged Victim has a history of financial irresponsibility or dishonesty, it might cast doubt on her credibility and provide an alternative explanation for the events that transpired. The financial fraud allegations against Ms. Alleged Victim are relevant in evaluating her credibility and potential motives in the case. Demonstrating a history of financial dishonesty or irresponsibility might cast doubt on Ms. Alleged Victim's trustworthiness, and potentially offer an alternative context for the events in question.

II. Evaluating the Relationship Between the Parties

The financial fraud allegations are relevant to assessing the relationship between Ms. Alleged Victim and Defendant, which is crucial to understanding the context of the alleged offenses. If Ms. Alleged Victim regularly borrowed money from Defendant or had financial disputes with him, it may provide insight into the nature of their relationship and any potential conflicts that could have arisen between them.

Again, the financial fraud allegations play a vital role in evaluating the relationship between Ms. Alleged Victim and Defendant, providing context for the purported crimes.

III. Demonstrating a Pattern of Dishonest Behavior

The allegations of financial fraud, if proven true, could establish a pattern of dishonest behavior on Ms. Alleged Victim's part, which could be relevant to her credibility as a witness. If Ms. Alleged Victim has a history of defrauding social security benefits or running an unlicensed daycare, it could raise questions about her trustworthiness and the veracity of her testimony in the current case.

IV. Balancing Probative Value With Potential Prejudice

The Court should balance the probative value of the evidence regarding the financial fraud allegations against any potential prejudice or confusion, as required by Rule 403. If the Court determines that the probative value of the evidence in establishing character, motive, or relationship outweighs any potential prejudice, then the evidence should be admissible.

V. Limiting the Scope of the Evidence

As an alternative to introducing this evidence in full, and to address concerns about wasting the Court's time or confusing the issues, the Court could limit the scope of evidence and testimony related to the financial fraud allegations. By focusing only on the most relevant aspects of the allegations, the Court can avoid unnecessary confusion and delays, while still allowing the jury to consider the evidence when evaluating Ms. Alleged Victim's character, motive, and relationship with Defendant.

VI. Further Arguments and Authorities

Plaintiff holds that the various allegations made by Defendant against Ms. Alleged Victim—regarding social security fraud, bankruptcy filings, borrowing money from Defendant and her daughter, as well as running an unlicensed daycare out of her home—is not relevant to the

matter at hand. Under Rule 608 of the URE, specific instances of conduct may be used to attack or support a witness's character for truthfulness, but extrinsic evidence is generally not admissible for this purpose. However, again, courts have discretion to allow inquiry into specific instances of conduct on cross-examination if they are probative of the witness's character for truthfulness or untruthfulness.¹⁶

Ms. Alleged Victim had already admitted to lying during the deposition when questioned about a visit DCFS made to her home. Therefore, it is relevant and probative to examine her penchant for being truthful or not.

While Plaintiff argues that the various allegations against Ms. Alleged Victim are irrelevant, Rule 608 of the URE allows for the inquiry into specific instances of conduct to assess a witness's character for truthfulness during cross-examination. Given Ms. Alleged Victim's admission of lying during her deposition, examining her propensity for honesty is relevant and probative to her credibility as a witness in the case.

5. Counterarguments for the inclusion of Ms. Alleged Victim's alleged violent tendencies: (1) relevant character evidence, (2) supporting Defendant's narrative, (3) context for Defendant's actions, (4) fairness and reciprocity, (5) limiting the scope and prejudice, and (6) balancing probative value with potential prejudice.

I. Relevant Character Evidence

Evidence of Ms. Alleged Victim's violent tendencies is relevant character evidence that has a significant tendency of shedding light on the events surrounding the alleged offenses. If Ms.

¹⁶ See *Russo v. Ballard Medical Products*, Case No. 2:05 CV 59 (D. Utah Aug. 10, 2006) (providing guidance to courts in assessing the probative value of evidence under Rule 608(b)); see, also, *United States ex rel. Barrick v. Parker-Migliorini Int'l*, 2:12-cv-00381-JNP-CMR (D. Utah Feb. 2, 2023).

Alleged Victim has a history of violent behavior, this would be pertinent to understanding her role in the incident and her credibility as a witness.

Again, Ms. Alleged Victim's history of violent behavior, if proven, serves as relevant character evidence that could help elucidate the circumstances of the alleged crimes. This information would be important for comprehending her involvement in the incident and evaluating her reliability as a witness.

II. Supporting Defendant's Narrative

Because Defendant is presenting a narrative that portrays Defendant as a victim of Ms. Alleged Victim's aggression, evidence of Ms. Alleged Victim's violent tendencies is essential to supporting this claim. By providing a broader context of Ms. Alleged Victim's past actions, the jury would be more inclined to consider alternative explanations for the alleged offenses.

III. Context for Defendant's Actions

Evidence of Ms. Alleged Victim's violent tendencies could be relevant in understanding the context of Defendant's actions during the alleged offenses. If Defendant was acting in self-defense or under duress due to Ms. Alleged Victim's aggressive behavior, this evidence would be essential to establishing a viable defense.

IV. Fairness and Reciprocity

Excluding evidence of Ms. Alleged Victim's violent tendencies while allowing Plaintiff to present evidence of Defendant's past violent acts would be unfairly prejudicial and unbalanced. To ensure a fair trial, both sides should be allowed to present character evidence related to the parties involved.

Again, disallowing evidence of Ms. Alleged Victim's violent inclinations while permitting Plaintiff to introduce evidence of Defendant's previous violent behavior would result in unfair prejudice to Defendant and an imbalanced trial.

V. Limiting the Scope and Prejudice

As an alternative to introducing this evidence in full, and to address concerns about potential prejudice or confusion, the Court could limit the scope of evidence related to Ms. Alleged Victim's violent tendencies, focusing on incidents that are most relevant to the case at hand. By focusing only on the most relevant aspects of the allegations, the Court can avoid unnecessary confusion and delays, while still allowing the jury to consider the relevant evidence.

VI. Balancing Probative Value With Potential Prejudice

The Court should balance the probative value of the evidence regarding Ms. Alleged Victim's violent tendencies against any potential prejudice, as required by Rule 403. If the Court determines that the probative value of the evidence in establishing Ms. Alleged Victim's character, supporting Defendant's narrative, or providing context for Defendant's actions outweighs any potential prejudice, then the evidence should be admissible.

Again, the Court must weigh the evidence of Ms. Alleged Victim's violent tendencies for its probative value against any portentous potential prejudicial effect, as mandated by Rule 403 of the URE.

ADDITIONAL ARGUMENTS AND CASELAW

With respect to all the arguments made by Plaintiff in favor of excluding the evidence they seek to exclude in their Motion, Plaintiff argues, firstly, that the evidence as to Ms. Alleged Victim's alcoholism is irrelevant; secondly, that the evidence regarding the wallet is also irrelevant

and “not of consequence”; thirdly, that the extrinsic evidence to impeach Ms. Alleged Victim constitutes improper character evidence; fourthly, that the evidence as to the ownership of the \$2,000.00 in cash was irrelevant; and, fifthly, that the evidence regarding the miscellaneous financial fraud allegations against Ms. Alleged Victim is irrelevant. Besides the foregoing, Plaintiff also argues, generally, that the evidence is inadmissible and unduly prejudicial.

In contraposition to the above-referenced notions advanced by Plaintiff, the following arguments and caselaw apply:

- 1. Counterarguments, and corresponding caselaw, to Plaintiff’s notion that the evidence described in Plaintiff’s Motion as to (i) Ms. Alleged Victim’s alcoholism, (ii) the wallet, (iii) the ownership of the \$2,000.00 in cash, and (iv) the miscellaneous financial fraud allegations against Ms. Alleged Victim, are irrelevant.**

The rule which governs relevancy of evidence is Rule 401 of the URE, which states that “[e]vidence is relevant if . . . it has *any* tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the action” (emphasis added).

In addition, “[i]f evidence is irrelevant as defined by Rule 401, it is inadmissible under Rule 402,”¹⁷ and “Rule 401 defines relevance as evidence having ‘any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.’”¹⁸

¹⁷ 1 R. COLLIN MANGRUM & HONORABLE DEE BENSON, MANGRUM & BENSON ON UTAH EVIDENCE 157 (2019-2020 ed. 2019).

¹⁸ *Id.*

Furthermore, the cases of *United States v. Fitzsimons*¹⁹ and *State v. Greaves*²⁰ also demonstrate that evidence is generally considered relevant if it has *any* tendency to make a fact more or less probable, and the fact is of consequence in determining the action. Thus, Plaintiff's notion that the evidence is irrelevant fails because the evidence, indeed, has substantially more than just "any" tendency to make the fact at issue more or less probable, and the fact is amply of consequence in determining the relevant factors of Defendant's case.

For example, the evidence of Ms. Alleged Victim's alcoholism is relevant to establish a pattern of behavior as well as to challenge her credibility and the reliability of her testimony, because an alcoholic's credibility and reliability is significantly hampered by their state of inebriation and related withdrawals from alcohol—i.e., whether Ms. Alleged Victim is in a state of inebriation or not, her state of withdrawal from alcohol as an alcoholic equally undermines her credibility and reliability as a witness regardless.

Furthermore, the lost wallet is relevant to the question of whether the police mishandled evidence. This is relevant because it allows Defendant to take potential legal action in his case related to the mishandling of evidence by law enforcement.

Finally, evidence of Ms. Alleged Victim's financial problems and violent tendencies is relevant to establishing a motive for her to falsely accuse Defendant, so this evidence is amply relevant as well.

Generally, the evidence is relevant because it undermines Ms. Alleged Victim's credibility as a witness (due to her alcoholism, history of false reports, and financial fraud), it casts doubt on

¹⁹ 21-cr-158 (D.D.C. May. 24, 2022).

²⁰ 2012 Ohio 1989 (Ohio Ct. App. 2012).

the prosecution's case (due to the missing wallet and disputed cash), and because it suggests that Ms. Alleged Victim was the aggressor in the incident (due to her violent tendencies).

Again, Defendant seeks to introduce evidence of Ms. Alleged Victim's alcoholism, history of false reports, and financial fraud in order to undermine her credibility as a witness; seeks to argue that the missing wallet and disputed ownership of the \$2,000.00 cash casts doubt on the prosecution's case; and, finally, seeks to introduce evidence of Ms. Alleged Victim's violent tendencies in order to argue that she was the aggressor in the incident.

Furthermore, under Rule 608 of the URE, Ms. Alleged Victim's alcoholism, past false reports, and financial fraud is, as aforementioned, relevant to her credibility. In addition, during Ms. Alleged Victim's deposition, she acknowledged that she sometimes threatened Defendant and was jealous of his relationship with his ex-wife,²¹ has gaps in her memory,²² and has inconsistencies in her testimony.²³ Additionally, there are some discrepancies between her account and the officer's testimony,²⁴ and she acknowledges that Defendant did not take her phone in order to destroy evidence.²⁵

It should be also noted that, as reflected in the deposition, Ms. Alleged Victim acknowledges that she sometimes threatened to report Defendant to law enforcement or his probation officer when he was allegedly abusive, which suggests that she used this to control Defendant. Additionally, Ms. Alleged Victim admits that she was jealous of Defendant's continued

²¹ See Transcript of Deposition of Ms. Weyburn (hereinafter, "**Deposition**"), at 27-28.

²² See *id.* at 19.

²³ See *id.* at 35, 36, and 39.

²⁴ See *id.* at 51-52.

²⁵ See *id.* at 54-55, and 57.

relationship with his ex-wife, which suggests that Ms. Alleged Victim was not entirely blameless in the arguments between herself and Defendant. Furthermore, there are inconsistencies in Ms. Alleged Victim's testimony. For example, in the deposition, Ms. Alleged Victim initially says that she does not know if the ceramic ring holder caused a wound on her nose, but later says definitively that it did not. Additionally, Ms. Alleged Victim seems to contradict herself when discussing whether or not there was blood when Defendant put his hand over her mouth and nose. These factors, because they are relevant to establish the true relationship between Ms. Alleged Victim and Defendant and the nature of Defendant's alleged offenses against Ms. Alleged Victim, therefore, are far from being "irrelevant," because they have more than just "any" tendency to make factors related to Defendant's relationship with Ms. Alleged Victim, and associated alleged offenses on the part of Defendant, more or less probable.

As to the probative value of the evidence sought by Defendant to be unexcluded, "[u]nder the minimal definition of Rule 401, evidence is not inadmissible solely because the probative value of the evidence is slight."²⁶ Therefore, Defendant need not prove that the evidence he seeks to rescue from exclusion is of any particularly high probative value—only that the prejudicial effect does not outweigh the probative value. Additionally,

Rule 401 also identifies the slight probative value that any item of evidence must satisfy as "any tendency." If evidence would make a disputed fact of consequence more probable in any degree, then the evidence satisfies the level of probative value required by Rule 401. Stated differently, the evidence by itself need not establish the disputed fact or even make it more probable than any other explanation or possibility. All that must be established is a rational

²⁶ 1 MANGRUM & BENSON, *supra*, at 157.

connection, however slight, between the offered evidence and a disputed fact.²⁷

Regarding the above-referenced “rational connection, however slight, between the offered evidence and a disputed fact” that can be applied to the evidence of the case at hand in the context of the disputed facts of this matter, and the probative value of which amply outweighs any prejudicial effect, include the following pieces of evidence for the following reasons:

1. Ms. Alleged Victim’s alcoholism history is vital to show a behavioral pattern that could have influenced the incident, making this evidence more probative than prejudicial, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

2. The history of alcoholism is relevant to Ms. Alleged Victim’s credibility as a witness, thereby comprising probative value that outweighs any feasible unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

3. The episode where Ms. Alleged Victim gave alcohol to a minor shows her propensity for irresponsible behavior while intoxicated, which is significant for assessing her actions during the alleged offenses, thereby constituting evidence whose probative value substantially outweighs any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

4. The wallet found at the crime scene could link Defendant to the alleged events, making it relevant evidence whose probative value outweighs any unduly prejudicial effect, as

²⁷ See, e.g., *State v. Wetzel*, 888 P.2d 64, 67 (Utah 1993).

well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

5. The wallet may provide context for other evidence or testimonies during the trial, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

6. The wallet’s presence and the circumstances of its loss could be pertinent in evaluating alternative explanations for the alleged crimes, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

7. The extrinsic evidence of Ms. Alleged Victim’s false 911 calls and police reports is essential for establishing a pattern of dishonesty that affects her witness credibility, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

8. Ms. Alleged Victim’s history of false reports is particularly relevant since it involves interactions with law enforcement, which are central to the case, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

9. Excluding extrinsic evidence of Ms. Alleged Victim’s false reports jeopardizes Defendant’s right to a fair trial, as it may bias the jury in favor of the prosecution, thereby making

the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

10. Introducing this evidence is crucial for casting doubt on Ms. Alleged Victim’s allegations, providing legitimate probative value that outweighs any potential prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it..

11. The cash ownership dispute is relevant for establishing a motive for the alleged offenses, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

12. The conflicting cash ownership accounts are relevant for assessing the credibility of both Ms. Alleged Victim and Defendant, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

13. The police’s handling of the cash is relevant for evaluating the overall investigation and law enforcement’s actions related to the case, which could be vital to Defendant’s case considering that mishandling of evidence by police are grounds for, e.g., suppression, exclusion, or inclusion of evidence, which could drastically impact the direction and outcome of the case, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it..

14. The financial fraud allegations against Ms. Alleged Victim are relevant for understanding her character, potential motives, and providing an alternative explanation for the events, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

15. The financial fraud allegations are relevant for assessing the relationship between Ms. Alleged Victim and Defendant, as well as crucial for understanding the context of the alleged offenses, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

16. If proven true, the financial fraud allegations against Ms. Alleged Victim could establish a dishonest behavior pattern, raising questions about Ms. Alleged Victim’s trustworthiness and testimony veracity, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

17. Ms. Alleged Victim’s admission to lying during the deposition makes examining her truthfulness relevant and probative, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

18. Evidence of Ms. Alleged Victim’s violent tendencies is relevant for understanding her role in the incident and her witness credibility, as well as could provide at alternate explanation for the happenings of this matter, thereby making the probative value of this evidence outweigh

any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

19. Evidence of Ms. Alleged Victim’s violent tendencies supports Defendant’s narrative as a victim of Ms. Alleged Victim, providing a broader context for the jury to consider alternative explanations, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

20. Evidence of Ms. Alleged Victim’s violent tendencies could be relevant for understanding Defendant’s actions during the alleged offenses, which would be essential for establishing a viable defense, thereby making the probative value of this evidence outweigh any unduly prejudicial effect, as well as establishing an ample “rational connection” between this evidence and the disputed fact associated to it.

21. Excluding evidence of Ms. Alleged Victim’s violent tendencies while allowing Plaintiff to present evidence of Defendant’s past violent acts would be unfairly prejudicial. Both sides should be allowed to present character evidence related to the parties involved, in order to have a fair trial.

Furthermore, “relevancy objections should be seldom sustained if counsel offering the evidence can explain the rational connection between the evidence offered and the issues of consequence in the case.”²⁸ Defendant has amply explained herein “the rational connection between the evidence offered and the issues of consequence in [his] case.” In addition, “[t]he key relevancy question for all evidence is whether the evidence relates to a matter in issue according

²⁸ *Id.*

to the pleadings and the substantive law of the case or the credibility of any witness testifying as to these matters.”²⁹

Moreover, as is the case in the matter at hand, “evidence of prior acts or statement demonstrating an ongoing dispute between parties may be relevant and admissible if intent is at issue.”³⁰ Because Defendant and Ms. Alleged Victim had a physical altercation, there are two sides to the story, evidence of which would significantly affect the narrative of events and Ms. Alleged Victim’s credibility, because said evidence includes proof that Ms. Alleged Victim was habitually physically violent toward Defendant—therefore, establishing an avenue for Defendant to claim that, for example, his actions were due to self-defense.

In conclusion to this section, Defendant has provided a comprehensive analysis of the evidence and its relevance under Rules 401 and 608 of the URE. The evidence pertaining to Ms. Alleged Victim’s alcoholism, the wallet, the ownership of the \$2,000.00 in cash, and the miscellaneous financial fraud allegations against her is, indeed, relevant to the case. The evidence has a rational connection to the disputed facts and is of consequence in determining the action.

Furthermore, the probative value of this evidence substantially outweighs any potential prejudicial effect, rendering it admissible under the relevant rules of evidence. Defendant has also highlighted multiple instances in which this evidence is crucial for understanding the context of the alleged offenses, the credibility of the witnesses, and potential alternative explanations for the incident.

²⁹ *Id.* at 158.

³⁰ *Id.* at 161.

In light of the above, Plaintiff's notion that the evidence is irrelevant fails. Defendant has amply demonstrated the relevancy of the evidence and its admissibility in court. Denying Defendant the opportunity to present this evidence would be unfairly prejudicial and jeopardize their right to a fair trial.

In conclusion to this section, Defendant has convincingly shown the relevance of the evidence under Rules 401 and 608 of the URE, and its connection to crucial case issues. The probative value of the evidence amply outweighs any potential prejudice, making it admissible. Plaintiff's claim that the evidence is irrelevant is unsupported, and denying Defendant the opportunity to present it would jeopardize and hinder Defendant's right to a fair trial.

2. Counterarguments, and corresponding caselaw, to Plaintiff's notion that the extrinsic evidence to impeach Ms. Alleged Victim constitutes improper character evidence.

The case of *Washington v. Fed. Bureau of Prisons*³¹ demonstrates that a court may allow evidence that is relevant and necessary to rebut allegations made by the plaintiff. The evidence in question herein are admissible for this purpose. In the case at hand against Defendant, Plaintiff is asserting several allegations against Defendant, so the Court must allow the introduction of evidence that is relevant and necessary to rebut these allegations made by Plaintiff, such as is the evidence sought by Plaintiff to be excluded. Indeed, because many of the charges placed against Defendant could be rebutted, or the notions of which otherwise challenged, by the evidence that Plaintiff seeks to exclude, this evidence makes important factors of this case more or less probable, to the benefit of Defendant, thereby making this evidence relevant to the case, not unduly prejudicial, and, therefore, admissible.

³¹ Civil Action No. 5:16-3913-BHH (D.S.C. Feb. 3, 2020).

Under Rule 608 of the URE, specific instances of conduct may be used to attack or support a witness's character for truthfulness, but extrinsic evidence is generally not admissible for this purpose. However, courts have discretion to allow inquiry into specific instances of conduct on cross-examination if they are probative of the witness's character for truthfulness or untruthfulness. Additionally, Rule 609 allows for the admission of evidence of prior convictions to impeach a witness's character for truthfulness. Therefore, under these conditions, the introduction of Ms. Alleged Victim's character evidence is admissible.

Some cases also provide guidance on how courts assess the probative value of evidence covered by Rule 608(b). For example, in the case of *Russo v. Ballard Medical Products*,³² the court outlined four factors to consider when assessing probative value: (1) the importance of the witness's credibility to the case, (2) whether the evidence is probative of other matters at issue, (3) the similarity of the past specific conduct and the situation in which the witness is offering testimony, and (4) the remoteness of the specific act. Supplementing the foregoing and reiterating in part, *Russo* provides the following:

Rule 608 of the [Utah] Rules of Evidence provides that specific instances of conduct may “in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness.”³³ But the allowance of such an inquiry is constrained by rule 403 of the [Utah] Rules of Evidence.³⁴ Rule 403 allows the court to exclude relevant evidence if the probative value of the evidence “is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless

³² Case No. 2:05 CV 59 (D. Utah Aug. 10, 2006).

³³ Rule 608(b) of the URE; *see, also*, Fed.R.Evid. 608(b).

³⁴ *See United States v. Leake*, 642 F.2d 715, 718 (4th Cir. 1981) (providing that “[Rule 608(b)] recognizes that the trial court must have discretion to apply the overriding safeguards of rule 403. . . .”).

presentation of cumulative evidence.”³⁵ In assessing the probative value of evidence covered by rule 608(b), courts consider (1) the importance of the witness’s credibility to the case, (2) whether the evidence is probative of other matters at issue in the parties’ larger dispute, (3) the similarity of the past specific conduct and the situation in which the witness is offering testimony, and (4) the remoteness of the specific act.³⁶

In applying the above-referenced four factors from *Russo* to the case at hand, the following is true:

1. Ms. Alleged Victim’s credibility in this case is elemental because the charges placed against Defendant in this matter are contingent upon the version of events told by Ms. Alleged Victim. Ms. Alleged Victim’s testimony serves as a critical source of information that directly impacts the outcome of the case. If Ms. Alleged Victim’s credibility is called into question, it could potentially weaken Plaintiff’s case, making it difficult to establish Defendant’s guilt. As a result, it is crucial to examine Ms. Alleged Victim’s credibility and determine whether her version of events can be relied upon to ensure a fair and just trial.

2. The evidence in question is probative of both the main dispute in this matter as well as other matters at issue in the larger dispute. This means that the evidence has the potential to help resolve key points of contention in the case, shedding light on crucial aspects that can ultimately sway the outcome. Given the importance of this evidence, its admissibility and weight in court proceedings could have a substantial impact on the final verdict.

3. The past specific conduct of Ms. Alleged Victim involves hostility toward Defendant, and the situation in which Ms. Alleged Victim offered testimony, such as during the

³⁵ Rule 403 of the URE; *see, also*, Fed.R.Evid. 403.

³⁶ *See State v. Gomez*, 2002 UT 120, ¶ 35, 63 P.3d 72 (citing 28 Charles Alan Wright Victor James Gold, Federal Practice and Procedure: Evidence § 6118, at 94-96 (1993)).

deposition, also involves hostility toward Defendant—thereby making both instances not only similar but identical. This similarity leads the reasonable person to question the objectivity and impartiality of Ms. Alleged Victim’s testimony. If Ms. Alleged Victim’s hostility towards Defendant has influenced her version of events, it effectively undermines the reliability of her account, therefore making it crucial to consider this factor when assessing her credibility.

4. As to the remoteness of the acts of Ms. Alleged Victim giving rise to the evidence in question herein, it is true that if the damage associated to these acts was not reasonably foreseeable, the actor would not be held responsible, and the damage is said to be too remote. However, in the case at hand, Ms. Alleged Victim’s acts generated consequences that were foreseeable—such as her hostility toward Defendant and the resulting consequences—so Ms. Alleged Victim’s acts would not be considered remote in the context of the damages. Ms. Alleged Victim’s acts cannot be considered remote in relation to the damages, and this would further influence the court’s assessment of her credibility and the overall outcome of the case.

Regarding evidence of Ms. Alleged Victim’s alcoholism, and because alcohol is a drug, the following excerpt from the case of *Solis-Marrufo v. Bd. of Comm’rs for Bernalillo*³⁷ applies in support of not excluding said evidence of Ms. Alleged Victim’s alcoholism:

The Court will also allow the Individual Defendants to question Solis-Marrufo on cross-examination regarding his previous admissions and denials of cocaine use. Rule 608(b) allows inquiry into specific instances of conduct that are “probative of the character for truthfulness or untruthfulness of . . . the witness.”³⁸ The Court has previously allowed similar inquiries.³⁹ The Individual

³⁷ No. CIV 11-0107 JB/KBM (D.N.M. Mar. 28, 2013).

³⁸ Rule 608(b)(1) of the URE; *see, also*, Fed. R. Evid. 608(b)(1).

³⁹ *See Chamberlin v. City of Albuquerque*, 2005 WL 2313515, at *2 (stating that “[t]he Court will allow Lochocky to introduce Chamberlin’s admissions and denials of drug and alcohol use.”).

Defendants should be mindful, however, to not stray into generally attacking Solis-Marrufo's character for truthfulness based upon his cocaine use alone. Rule 608 of the [Utah] Rules of Evidence provides mechanisms for attacking witnesses' character for truthfulness or untruthfulness.⁴⁰

In the case at hand, evidence of Ms. Alleged Victim's alcoholism should be included into these proceedings because her alcoholism constitutes specific instances of conduct that are "probative of the character for truthfulness or untruthfulness of . . ." ⁴¹ Ms. Alleged Victim.

In conclusion to this section, the introduction of extrinsic evidence to impeach Ms. Alleged Victim is not only permissible under the specific circumstances of this case, but it is also crucial to ensure a fair and just trial. The case of *Washington v. Fed. Bureau of Prisons* emphasizes the importance of allowing relevant evidence to rebut allegations made by the plaintiff. Under Rule 608 of the URE, specific instances of conduct may be inquired into on cross-examination if they are probative of a witness's character for truthfulness or untruthfulness, and Rule 609 allows for the admission of evidence of prior convictions for the same purpose.

The four factors outlined in *Russo v. Ballard Medical Products* demonstrate the importance of Ms. Alleged Victim's credibility to the case, the probative value of the evidence in question, the similarity of past conduct and the situation in which the witness is offering testimony, and the lack of remoteness of the specific act. Applying these factors to the case at hand shows that the introduction of the extrinsic evidence is warranted and necessary.

⁴⁰ See *Montoya v. Sheldon*, No. CIV 10-0360 JB/WDS, 2012 WL 1132505, at *5 (D.N.M. Mar. 20, 2012)(Browning, J.); *United States v. Huerta-Rodriguez*, 83 Fed. R. Evid. Serv. 681, 2010 WL 3834061, at *7 (D.N.M. 2010)(Browning, J.).

⁴¹ Rule 608(b)(1) of the URE; see, also, Fed. R. Evid. 608(b)(1).

Finally, the case of *Solis-Marrufo v. Bd. of Comm'rs for Bernalillo*⁴² supports the admissibility of evidence of Ms. Alleged Victim's alcoholism, as her alcoholism constitutes specific instances of conduct that are probative of her character for truthfulness or untruthfulness. In light of these considerations, the extrinsic evidence in question should be deemed admissible, as it is relevant, not unduly prejudicial, and essential for a comprehensive assessment of Ms. Alleged Victim's credibility, ultimately contributing to a fair and just resolution of the case.

3. Counterarguments, and corresponding caselaw, to Plaintiff's notion that, generally, the evidence is inadmissible.

Rule 402 of the URE provides that “[r]elevant evidence is admissible unless any of the following provides otherwise: the United States Constitution; the Utah Constitution; a statute; or rules applicable in courts of this state. Irrelevant evidence is not admissible.”⁴³ In the present case, because the evidence is relevant, and because none of the aforementioned factors provides that the evidence should not be admitted, the evidence is, therefore, admissible.

The cases of *Hunter v. Mobis Alabama, LLC*,⁴⁴ and *United States v. Fitzsimons*⁴⁵ demonstrate that a court must assess whether the evidence is relevant and admissible pursuant to Federal Rules of Evidence 401 and 402. If the evidence is found to be relevant, it is generally admissible unless its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or other concerns outlined in Rule 403.

Fitzsimons specifically provides the following:

⁴² No. CIV 11-0107 JB/KBM (D.N.M. Apr. 10, 2013).

⁴³ 1 MANGRUM & BENSON, *supra*, at 168.

⁴⁴ 559 F. Supp. 2d 1247 (M.D. Ala. 2008).

⁴⁵ 21-cr-158 (D.D.C. May. 24, 2022).

“In evaluating the admissibility of proffered evidence on a pretrial motion in limine the court must assess whether the evidence is relevant and, if so, whether it is admissible, pursuant to Federal Rules of Evidence 401 and 402.”⁴⁶ [Furthermore,] “[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would without the evidence; and (b) the fact is of consequence in determining the action.”⁴⁷ Under Rule 402, only relevant evidence is admissible. [] Relevant evidence may still be excluded by a court 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.”⁴⁸

In applying the foregoing to the case at hand, the following relevant assertions can be made with respect to the evidence that Plaintiff seeks to exclude:

1. The Court must assess whether the evidence sought to be excluded by Plaintiff is relevant to this matter. However, as previously established herein, evidence is relevant if it has *any* tendency to make a fact more or less probable than it would be without the evidence, so, because there are factors at issue in this matter that could be proven true or false with the evidence, the Court should properly and reasonably conclude that the evidence is relevant.
2. Furthermore, because the fact—i.e., the evidence—is “of consequence” in determining the action, it is relevant.
3. As established hereinabove, the evidence is admissible pursuant to Rule 401 and 402 of the URE.

⁴⁶ *Daniels v. District of Columbia*, 15 F.Supp.3d 62, 66 (D.D.C. 2014).

⁴⁷ Fed.R.Evid. 401; *see, also*, Rule 401 of the URE.

⁴⁸ Fed.R.Evid. 403; *see, also*, Rule 403 of the URE.

4. As to the probative value of the evidence being outweighed, *none* of the following factors apply to the evidence: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

In conclusion to this section, the counterarguments and corresponding caselaw presented herein demonstrate that the evidence Plaintiff seeks to exclude is, in fact, admissible under the rules and principles of the URE. Rule 402 establishes that relevant evidence is admissible unless otherwise provided by the United States Constitution, the Utah Constitution, a statute, or rules applicable in courts of this state. As previously discussed, the evidence in question is relevant to the case at hand and none of the aforementioned factors prohibit its admission.

The cases of *Hunter v. Mobis Alabama, LLC*, and *United States v. Fitzsimons* provide guidance on the admissibility of relevant evidence under Federal Rules of Evidence 401 and 402—which reflect the Utah Rules of Evidence. Both cases emphasize the need for the court to assess whether the evidence is relevant and, if so, whether it is admissible. The evidence in question meets the criteria for relevance, as it has a tendency to make certain facts more or less probable than they would be without the evidence, and these facts are of consequence in determining the action.

Moreover, the potential concerns outlined in Rule 403, such as unfair prejudice, confusion of the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence, do not apply to the evidence in question. As a result, there is no basis for excluding the evidence on the grounds of Rule 403.

Considering the relevance and admissibility of the evidence under Rules 401, 402, and 403 of the URE, and considering the supporting caselaw, it is evident that the evidence sought to be

excluded by Plaintiff should be deemed admissible in the present case. By allowing the introduction of this evidence, the Court can ensure a comprehensive evaluation of the facts and facilitate a fair and just resolution of the case.

4. Counterarguments, and corresponding caselaw, to Plaintiff's notion that the evidence is, generally, unduly prejudicial.

The prejudicial effect of evidence is described in Rule 403 of the URE, which states that “[t]he court may 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.”⁴⁹

The cases of *East v. Lake Cnty. Cmty. Corr.*⁵⁰ and *Wilson v. Port City Air, Inc.*⁵¹ demonstrate that a court must balance the probative value of the evidence against the danger of unfair prejudice. In both cases, the court found that the probative value was not substantially outweighed by the danger of unfair prejudice.

In addition, “[t]he court has remarked that given the balancing preference found in Rule 403, ‘[t]his means that in the usual case, the presumption is in favor of admissibility.’”⁵² Further,

Simply because evidence is prejudicial against one or the other parties does not establish a Rule 403 justification for exclusion. Indeed, if it were not prejudicial in the sense of having a tendency to prove a fact at issue, it would probably not be relevant. While a

⁴⁹ 1 MANGRUM & BENSON, *supra*, at 172.

⁵⁰ CAUSE NO.: 2:10-CV-85-PRC (N.D. Ind. Dec. 14, 2011).

⁵¹ 2015 DNH 53 (D.N.H. 2015).

⁵² *State v. Dibello*, 780 P.2d 1221 (Utah 1989), citing *State v. Lafferty*, 749 P.2d 1239, 1256 (Utah 1988), adhered to on reconsideration, 776 P.2d 631 (Utah 1989); *see, also, State v. C.D.L.*, 2011 UT App 55, 250 P.3d 69, 80 (Utah Ct. App. 2011) (stating that “[u]nder rule 403, the court ‘indulg[es] a presumption in favor of admissibility’”) (quoting *State v. Dunn*, 850 P.2d 1201, 1222 (Utah 1993)).

trial court has broad discretion in admitting or excluding evidence under rule 403, “that discretion is not unbounded.”⁵³

Furthermore, in balancing the probative value of the evidence sought to be unexcluded against any unfair prejudicial effect, the following applies:

The third step of the Rule 403 analysis requires a balancing of probative value against unfair prejudicial effect. The rule provides that the court may exclude probative evidence only if the probative value is substantially outweighed by the unfair prejudicial effect of such evidence. Thus, the rule favors admissibility and imposes on the opponent the obligation to prove that the probative value is substantially outweighed by the unfair prejudicial effect. The courts regularly are faced with applying the Rule 403 balancing test in a number of common factual contexts.⁵⁴

For example, incriminating statements by a physician in a medical malpractice case, “I jumped the gun,” “I’ve missed something,” and “I don’t think we should have done this surgery,” would clearly be “highly prejudicial” to the defense case, but excluding such statements would be [a] reversible error because they would not be “unfairly prejudicial” even if they did not establish a breach of the standard of care, and even if the defendant denied ever making the statements.⁵⁵

The critical issues in Rule 403 cases, therefore, include both whether the evidence is “unfairly” prejudicial, and, if so, whether the “unfair” prejudicial effect “substantially outweighs” the probative value of the evidence.⁵⁶

Because the way that courts have decided Rule 403 evidence has been in favor of admissibility, the Court should apply the foregoing elements to the case at hand and properly decide that the evidence should be admitted.

⁵³ 1 MANGRUM & BENSON, *supra*, at 174.

⁵⁴ 1 MANGRUM & BENSON, *supra*, at 176-177.

⁵⁵ *Id.* at 177.

⁵⁶ *Id.*

In conclusion to this section, the counterarguments and corresponding caselaw indicate that the evidence Plaintiff claims to be unduly prejudicial should not be excluded based on Rule 403 of the URE. The rule allows for the exclusion of relevant evidence only if its probative value is substantially outweighed by the danger of unfair prejudice or the other named negative consequences. However, the cases of *East v. Lake Cnty. Cmty. Corr.* and *Wilson v. Port City Air, Inc.* show that the court must carefully balance the probative value of the evidence against the danger of unfair prejudice before making a decision.

It is important to note that the rule favors admissibility and the burden is on the opponent to prove that the probative value is substantially outweighed by the unfair prejudicial effect. Courts often apply the Rule 403 balancing test in various factual contexts, and the critical issues include determining whether the evidence is unfairly prejudicial and whether the unfair prejudicial effect substantially outweighs the probative value of the evidence.

Given the preference for admissibility in Rule 403 and the need for a thorough balancing test, the court should carefully consider the probative value and potential prejudicial effect of the evidence in question in the present case. Based on the counterarguments and caselaw presented, there is a strong argument in favor of admitting the evidence. By allowing the introduction of this evidence, the Court ensures a comprehensive evaluation of the facts, promoting a fair and just resolution of the case.

CONCLUSION

In conclusion to this Memorandum, the Court should consider the entirety of the foregoing as well as the following reiterated factors when deciding to enter into these proceedings the evidence that Plaintiff seeks to exclude in their Motion:

1. A Motion in Limine serves to enable the trial court to make a pre-trial decision on the admissibility and relevance of specific anticipated evidence.

2. Evidence should only be excluded through a Motion in Limine if it is indisputably inadmissible on all conceivable grounds.

3. It is uncommon for Motions in Limine that aim to exclude extensive categories of evidence, like Plaintiff's Motion, to be granted.

4. The criteria for approving a Motion in Limine is strict, as the Court must determine that the evidence in question is undeniably inadmissible on all possible grounds, meaning there is no plausible situation in which the evidence could be deemed admissible during trial.

5. Ms. Alleged Victim's alcoholism history is crucial for establishing a pattern of behavior that could have influenced the event under scrutiny.

6. Ms. Alleged Victim's alcoholism history bears relevance to her credibility as a witness.

7. Introducing evidence of Ms. Alleged Victim's alcoholism history would aid the jury in comprehending the gravity of her alcohol issue, which reasonably directly affected her actions and behavior during the incident in question.

8. The episode in which Ms. Alleged Victim allegedly supplied alcohol to a minor is pertinent to the case, as it highlights her propensity for engaging in reckless and potentially hazardous behavior while intoxicated.

9. According to URE Rule 402, relevant evidence is admissible unless it is prohibited by the U.S. Constitution, Utah Constitution, statute, or a rule applicable in Utah courts.

10. Rule 401 of the URE states that evidence is considered relevant if it can make a fact more or less probable than it would be without the evidence.

11. The relevance and admissibility of the drinking are undeniable, as it influenced Ms. Alleged Victim's decision-making process and her subsequent actions.

12. The wallet found at the alleged crime scene serves as evidence linking Defendant to the events in question.

13. The wallet could offer context for other evidence or testimonies introduced during the trial.

14. Defendant's explanation of how the wallet was misplaced, and the circumstances of its discovery, are relevant to evaluating the credibility of the parties.

15. The extrinsic evidence of Ms. Alleged Victim's history of false 911 calls and police reports is vital to establishing a pattern of dishonest behavior that directly impacts her credibility as a witness.

16. Ms. Alleged Victim's history of false reports is especially relevant to the current case, as it directly pertains to her interactions with law enforcement, which are central to the alleged offenses.

17. Omitting extrinsic evidence of Ms. Alleged Victim's past false reports jeopardizes Defendant's right to a fair trial.

18. Using such evidence for impeachment is a permissible "other purpose" under Rule 404(b), as it is essential for another purpose, like casting doubt on Ms. Alleged Victim's allegations, rather than proving specific aspects of her character.

19. The disagreement over the cash ownership is relevant for establishing a motive for the alleged offenses.

20. The conflicting accounts of cash ownership are relevant for assessing the credibility of both Ms. Alleged Victim and Defendant.

21. The police's handling of the cash is relevant for evaluating the overall investigation and law enforcement's actions related to the case, which may enable Defendant to make future defenses.

22. The financial fraud allegations against Ms. Alleged Victim are relevant for understanding her character and potential motives for her actions in the case.

23. The financial fraud allegations are relevant for assessing the relationship between Ms. Alleged Victim and Defendant, which is crucial for understanding the context of the alleged offenses.

24. If proven true, the financial fraud allegations against Ms. Alleged Victim could establish a pattern of dishonest behavior by Ms. Alleged Victim, which could be relevant to her credibility as a witness.

25. Ms. Alleged Victim has already admitted to lying during the deposition when asked about a visit from DCFS to her home. Therefore, examining her tendency for truthfulness or lack thereof is relevant and probative.

26. Evidence of Ms. Alleged Victim's violent tendencies is relevant character evidence that significantly contributes to understanding the circumstances surrounding the alleged offenses.

27. As Defendant portrays themselves as a victim of Ms. Alleged Victim's aggression, evidence of her violent tendencies is crucial to support this assertion.

28. Evidence of Ms. Alleged Victim's violent tendencies is relevant for comprehending the context of Defendant's actions during the alleged offenses.

29. Excluding evidence of Ms. Alleged Victim's violent tendencies while allowing Plaintiff to present evidence of Defendant's past violent acts would be unjustly prejudicial and unbalanced.

30. Rule 401 of the URE defines relevance as evidence with "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence."

31. Plaintiff's claim that the evidence is irrelevant fails because the evidence indeed has substantially more than just "any" tendency to make the fact at issue more or less probable, and the fact is of significant consequence in determining the relevant factors of Defendant's case.

32. As to the probative value of the evidence sought by Defendant to be unexcluded, "under the minimal definition of Rule 401, evidence is not inadmissible solely because the probative value of the evidence is slight." Therefore, Defendant need not prove that the evidence they seek to save from exclusion is of particularly high probative value—only that the prejudicial effect does not outweigh the probative value.

33. Relevancy objections should rarely be sustained if counsel offering the evidence can explain the rational connection between the evidence offered and the issues of consequence in the case.

34. Ms. Alleged Victim's credibility in this case is fundamental because the charges against Defendant in this matter rely on Ms. Alleged Victim's account of the events.

35. In this case, evidence of Ms. Alleged Victim’s alcoholism should be included in the proceedings because her alcoholism comprises specific instances of conduct that are probative of the character for truthfulness or untruthfulness of Ms. Alleged Victim.

36. Because the fact—i.e., the evidence pertaining to Ms. Alleged Victim—is “of consequence” in determining the action, it is relevant.

WHEREFORE, upon the facts and arguments presented herein, as well as upon the general merits of this Memorandum, Defendant hereby respectfully asks the Court to *DENY* Plaintiff’s Motion, with prejudice, and to allow the evidence that Plaintiff seeks to exclude to be entered into these proceedings, so as to ensure fairness and equity in this matter, and Defendant asks the Court to issue any other, different, and further relief as the Court deems fair, just, and equitable under the circumstances of this matter.

DATED April 27, 2023.

/s/ Saul Goodman
Saul Goodman,
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2023, I caused to be served, via electronic filing, a true and correct copy of the foregoing upon the following person from the following entity:

Johnny Prosecutor
Davis County Attorney’s Office

/s/ Saul Goodman