

**Allstate**

**The Cover-Up**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:20-cv-03139-NYW-MEH

ALLSTATE INSURANCE COMPANY,

Plaintiff,

v.

JOHN CRUZ,

Defendant.

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**PLAINTIFF'S OMNIBUS MOTION IN LIMINE**

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Plaintiff Allstate Insurance Company ("Allstate" or "Plaintiff"), by and through its counsel, and pursuant to Federal Rules of Evidence 401, 402, and 403, and this Court's Amended Trial Preparation Order (Dkt. No. 247), hereby submits this Omnibus Motion in Limine to preclude certain irrelevant and inadmissible arguments, evidence, and/or testimony from trial. In support hereof, Allstate states as follows:

**INTRODUCTION**

Throughout this litigation, Cruz raised a number of unsubstantiated allegations about Allstate that have no effect on any of the claims raised by either party. Cruz's allegations include, among others, alleging that Allstate was engaged in a series of unproven crimes, Cruz's Exclusive Agent Agreement with Allstate ("EA Agreement") was terminated due to his discovery of Allstate's crimes and racial discrimination within Allstate, Allstate used gift cards to make payments to agents and/or customers, and Allstate defamed him after the termination of the EA Agreement. None of these allegations are true, and Cruz provided **no** evidence or information to support these allegations. More importantly, now that the Court has dismissed each of Cruz's

counterclaims, Cruz's evidence at trial should be limited to evidence relating to Cruz's breach of his Allstate Agreement and misappropriation of Allstate confidential information.

Accordingly, Allstate moves for an Order instructing Cruz and any and all witnesses to refrain from making any mention or interrogation, directly or indirectly, orally or through documents or exhibits, concerning any of the matters set forth below, and at minimum without first approaching the Bench and obtaining a ruling outside the presence of all jurors. Specifically, Allstate seeks an Order barring the following subject matters: (1) accusations of Allstate financial crimes; (2) the termination of Cruz's EA Agreement being due to Cruz exposing financial corruption; (3) Allstate allegedly using gift cards to make payments; (4) Allstate terminating Cruz due to purported racial discrimination; (5) Allstate's purported defamation or slander of Cruz after terminating the EA Agreement; and (6) requesting that the jury put themselves in the shoes of Cruz. These subject matters and any related testimony or evidence are irrelevant and inadmissible pursuant to Federal Rules of Evidence 401 and 402. Alternatively, the evidence should be precluded because the subject matters are designed only to shed Allstate in a poor light, and are distracting, confusing, and prejudicial to Allstate. Fed. R. Evid. 403. In addition, and given the Court's summary judgment ruling and Cruz's own admissions, Cruz should also be barred from arguing at trial that he did not solicit Allstate customers or continue to possess Allstate confidential information after his EA Agreement terminated.

For these reasons, the Court should preclude the arguments, evidence, and/or testimony set forth in Motions in Limine No. 1 through 7 below.

### **RELEVANT BACKGROUND INFORMATION**

Allstate provides insurance, including property and casualty insurance, as well as other financial products and services to individuals and businesses in Colorado. Dkt. 40 ¶ 13. In addition to providing these products and services directly to customers, Allstate appoints exclusive agents

(“EAs”), through its Exclusive Agency Program, to sell Allstate products. *Id.* ¶ 14. EAs are independent contractors. Dkt. 191-1 at ¶ I(D).

In April 2010, Cruz purchased three books of business from an existing Allstate EA, opened an Allstate Exclusive Agency, and signed and agreed to be bound by the Allstate R3001 Exclusive Agency Agreement (“EA Agreement”). Dkt. 191 ¶¶ 5, 27-29; Dkt. 205 ¶ 16. As an EA, Cruz was only authorized to sell and service Allstate approved products. *Id.* In 2012, Cruz’s wife launched an independent insurance agency (“CPI”) that competed with Allstate. Dkt. 221 at ¶ 10.

In late 2019, Allstate received word that Cruz was selling insurance products in competition with Allstate and in violation of the terms of the EA Agreement. *Id.* ¶ 17. Allstate conducted an investigation into Cruz’s activities. The investigation revealed Cruz to be brokering insurance on behalf of competing insurance carriers, including CPI. Dkt. 191 ¶¶ 36-50. Based on the findings of the investigation, on August 26, 2020, Allstate terminated Cruz’s EA Agreement for cause and initiated a shutdown of his Allstate Exclusive Agency. *Id.* at ¶¶ 51-53. In accordance with the terms of the EA Agreement, Cruz was given 90 days to sell his economic interest in the customers he serviced on behalf of Allstate (“book of business”) or, in the alternative, Allstate would pay Cruz a termination payment (“TPP”). Dkt. 221 at ¶ 29.

Following termination of the Agreement, Cruz was obligated to, among other things, immediately return Allstate property and confidential information, cease using and return to Allstate any phone numbers used by his Allstate Exclusive Agency, and abide by certain post-termination restrictive covenants. Dkt. 191 at ¶¶ 22-25, 55. Unfortunately, Cruz failed to abide by these provisions. *Id.* at ¶¶ 66-82. Cruz failed to return all of Allstate’s confidential information to Allstate, transfer the telephone numbers he used while performing services under the EA Agreement, stop holding himself out as an Allstate agent, solicited Allstate customers, and

continued to operate out of his Allstate location, among other violations. Consequently, Allstate withheld Cruz's TPP because payment is contingent upon the return of Allstate property and compliance with the EA Agreement's restrictive covenants and confidential information obligations. Dkt. 221 ¶¶ 34, 37.

Allstate filed its Complaint against Cruz on October 10, 2020, asserting breach of Cruz's EA Agreement (Count I) and misappropriation of trade secrets (Counts II and III). Dkt. 1. Cruz filed his Answer and Counterclaim on February 5, 2021, where he asserted the following claims against Allstate: breach of contract (Counterclaims I and III); unjust enrichment (Counterclaim II); breach of the implied covenant of good faith and fair dealing (Counterclaim IV); defamation (Counterclaim V); and violations of 42 U.S.C. § 1981 (Counterclaim VI). Dkt. 40.

On October 31, 2022, Allstate moved for summary judgment on its claims related to Cruz's breaches of his EA Agreement and all of Cruz's counterclaims. Dkt. 191. Allstate did not seek summary judgment on its trade secret claims. The Court granted summary judgment to Allstate on breach of the EA Agreement with respect to Cruz's refusal to turnover the Allstate phone number. Dkt. 236 at 8-9. The Court also determined that, as a matter of law, Cruz solicited Allstate customers and used an Allstate customer list in his solicitations for CPI but held that whether Allstate customer lists and contact information are trade secrets is a fact issue to be determined at trial. *Id.* at 3. Lastly, the Court granted Allstate summary judgment on all six of Cruz's counterclaims. Dkt. 236 at 8-9.

The dismissal of Cruz's counterclaims significantly narrowed the scope of the trial and, as such, this case will go to trial only on: (a) Count I, to the extent that the EA Agreement is based on Cruz's violation of various non-competition covenants; (b) Count II, violation of the Defend Trade Secrets Act); (c) Count III, violation of the Colorado Uniform Trade Secrets Act, and (d)

Allstate's damages relating to Counts I, II and III. Put another way, the only evidence allowed at trial should relate to Cruz's breach of the EA Agreement and Cruz's misappropriation of trade secrets. Consequently, Allstate seeks to preclude Cruz from introducing evidence or raising arguments—which he has previously raised in this litigation—that have no relevance to the claims to be decided at trial. As set forth more fully below, this Court should grant Allstate's Motions in Limine Nos. 1 through 7.

### **LEGAL STANDARD**

“A creature of neither the Federal Rules of Civil Procedure nor the Federal Rules of Evidence, a motion in limine gives the court the opportunity to take up before trial those certain and limited evidentiary issues in order to minimize interruptions at trial.” *United States v. Cline*, 188 F. Supp. 2d 1287, 1291 (D. Kan. 2002) (quoting *Palmieri v. Defaria*, 88 F.3d 136, 141 (2d Cir. 1996)). Pre-trial rulings on motions in limine can save time during trial as well as cost and effort for the parties as they prepare their cases. *Scherbarth v. Woods*, 1:16-CV-02391-SKC, 2022 WL 1128931, at \*1 (D. Colo. Apr. 15, 2022).

Under Federal Rule of Evidence 401, “[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.” Relevant evidence is generally admissible and should only be excluded “if its probative value is substantially outweighed by a danger of ... unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. “Irrelevant evidence is not admissible.” Fed. R. Evid. 402.

## ARGUMENT

### **I. Motion in Limine No. 1: Cruz's References To Criminal Activity At Allstate Should Be Prohibited.**

Throughout this litigation, Cruz has made numerous uncorroborated claims about purported “crimes” he uncovered while affiliated with Allstate. Those “crimes” include tax evasion, tax fraud, wire fraud, cyber crimes, RESPA violations, and Sarbanes-Oxley Act violations. Dkt. 231 at 10, 21. Separately, Cruz has made posts on social media about Allstate engaging in sex trafficking and fraud. Not only are these claims unsupported by any evidence (because the claims are false), but Cruz relies on them—as well as the defenses described below—whenever he is unable to defend against Allstate’s breach of contract or trade secret misappropriation claims. *See, e.g.*, Dkt. 209, 231. This practice must not be allowed at trial.

Cruz’s “criminal activity” references have no tendency to make any fact more or less probable, and they are of no consequence in determining the issues to be decided by the jury. Fed. R. Evid. 401. These statements are, therefore, irrelevant and inadmissible. Fed. R. Evid. 402. The Court stated as much in its summary judgment order when it rejected Cruz’s invocation of the Sarbanes-Oxley Act because it failed to create a genuine issue of material fact. Dkt. 236 at 20. In other words, whether or not Allstate engaged in any criminal activity (it did not) neither absolves Cruz of his EA Agreement breaches, nor does it absolve or justify his trade secret misappropriation. This case is relatively straightforward and allowing Cruz to delve into the particulars of Allstate’s “crimes” would take this case too far afield. Allstate would then have to defend against each “crime,” which would result in a series of “minitrials” ancillary to the contract and trade secret claims. *See Schneider v. City and County of Denver*, 47 Fed. Appx. 517, 529 (10th Cir. Aug. 22, 2002) (appellate court will “give wide discretion to the avoidance of side issues and ‘minitrials’ by district courts”); *United States v. Talamante*, 981 F.2d 1153, 1156 n.5 (10th

Cir.1992) (court retains discretion under Rule 403 to exclude evidence which “could [lead] to collateral mini trials”), *cert. denied*, 113 S.Ct. 1876 (1993). The result would be an unnecessary and unduly delay of the proceedings.

Even if this Court allows Cruz to reference Allstate’s unsubstantiated “crimes,” such references or evidence creates a substantial risk of unnecessarily misleading the jury and confusing the issues. Fed. R. Evid. 403. These dangers substantially outweigh whatever marginal probativity Cruz’s “evidence” might have. *RCHFU, LLC v. Marriott Vacations Worldwide Corp.*, 445 F. Supp. 3d 1327, 1334 (D. Colo. 2020) (finding that references to other legal issues are inadmissible pursuant to Fed. R. Evid. 403 due to the “substantial risk of injecting unfair prejudice into the trial” and there would be “little probative value in this case”); *Jean-Laurent v. Hennessy*, 840 F. Supp. 2d 529, 556 (E.D.N.Y. 2011) (unsubstantiated complaints are precluded pursuant to Federal Rule of Evidence 403); *In re: Gen. Motors LLC*, 14-MD-2543 (JMF), 2015 WL 9480477, at \*1 (S.D.N.Y. Dec. 29, 2015) (unsubstantiated allegations were precluded by Federal Rules of Evidence 401, 402, and 403 due to the danger that the jurors might treat the allegations as true, forcing the parties to address the allegations). Therefore, the Court should grant Allstate’s first Motion in Limine and prohibit Cruz from introducing arguments, evidence, and/or testimony regarding any crimes he purportedly uncovered at Allstate.

**II. Motion in Limine No. 2: Cruz’s References to “Whistleblowing” About Purported Criminal Activity Should Be Precluded.**

Cruz has made a number of uncorroborated allegations about his status as a “whistleblower” and his termination from Allstate for uncovering the “crimes” discussed in Motion in Limine No. 1. First, Cruz alleges that representatives from Allstate began making statements to Cruz that Allstate did not “want” Cruz because he was a whistleblower and had blown the whistle on his prior employer. Dkt. 40 at ¶ 12. Then, Cruz claims that he did not report



any of these “crimes” to a government agency, but he was still entitled to whistleblower status that would protect him from this lawsuit and retaliation. *Id.* Finally, Cruz claims Allstate terminated the EA Agreement after discovering he was a whistleblower. Dkt. 209 at ¶ 47-48.

As a preliminary matter, Allstate terminated Cruz’s EA Agreement following an investigation that revealed he was selling insurance products for CPI in competition with Allstate (among other reasons), which was prohibited by Cruz’s EA Agreement. Cruz’s termination had nothing to do with Allstate’s “crimes” or Cruz’s involvement in “uncovering” them. The Court also previously found that Cruz’s whistleblower defense to be “meritless.” In fact, the Court noted that Cruz “provides no evidence” in support of the whistleblower issue, and “has not brought a claim for retaliation under Title VII, which would not lie in any event given his independent contractor status.” Dkt. 236 at 19. Further, the Court noted that Cruz “continually asserts that his Contract with [Allstate] was terminated because he is a whistleblower ... [b]ut again, he provides no evidence to support this allegation.” Dkt. 236 at 20. Cruz’s whistleblower claims should be similarly rejected and precluded from trial.

The only conceivable purpose Cruz may have for introducing “whistleblower” evidence is to portray Allstate in a poor light, and it provides no legitimate defense to either the breach of contract or trade secret misappropriation claims. The evidence has no tendency to make any fact more or less probable than it would be without the evidence, and it is of no consequence in determining this issues to be decided by the jury. Fed. R. Evid. 401. It is, therefore, irrelevant and should be excluded. Fed. R. Evid. 402.

Furthermore, even if Cruz’s whistleblower evidence were somehow relevant (it is not), its probative value would be substantially outweighed by the prejudicial nature of the evidence and the confusion that it may cause the jury. Fed. R. Evid. 403. The jury may focus on the cause of

Cruz's termination of the EA Agreement or the relationship between the parties, rather than the claims at hand. Such evidence must be excluded because of the impact it may have on the jury's outlook of the case. This risk of confusion outweighs the probative value of the evidence. *RCHFU, LLC v. Marriott Vacations Worldwide Corp.*, 445 F. Supp. 3d at 1333-34. Worse yet, permitting Cruz's whistleblower evidence would force Allstate to defend itself against Cruz's unsubstantiated claims, which would result in unnecessary delays as Allstate defends itself in "mini trials." *United States v. Talamante*, 981 F.2d at 1156 n.5. This type of evidence is properly excluded pursuant to Federal Rule of Evidence 403. *Couturier v. Bard Peripheral Vascular, Inc.*, CV 19-12497, 2021 WL 3187368, at \*4 (E.D. La. July 28, 2021) (excluding whistleblower evidence and unsubstantiated evidence pursuant to Federal Rule of Evidence 403 because they were irrelevant and "accepting the allegations at issue would lend to undue prejudice and bias"); *Hyundai Motor Am. Corp. v. EFN W. Palm Motor Sales, LLC*, 20-CV-82102, 2022 WL 16950475, at \*4 (S.D. Fla. Nov. 15, 2022) (whistleblower evidence is excluded under Federal Rules of Evidence 401, 402, and 403).

For these reasons, Allstate's second Motion in Limine should be granted, and the Court should preclude Cruz from introducing arguments, evidence, and/or testimony regarding being a "whistleblower" at Allstate and/or Allstate terminating Cruz for being a "whistleblower."

### **III. Motion in Limine No. 3: Cruz's References To Gift Cards Should Be Precluded.**

Cruz should be prohibited from making any references to gift cards. Specifically, Cruz has alleged at various times in this litigation that Allstate made commission and/or referral payments with gift cards. Dkt. 196 ¶ 9; Dkt. 209 ¶ 31, 39, 40; Dkt. 231 at 32-34. In social media posts outside of the litigation, Cruz suggested that Allstate used gift cards to engage in sex trafficking and fraud. Cruz further claims that Allstate never reported the purported use of gift cards to government agencies, which is a violation of various laws. *Id.* In addition to not being true, these

references have no relevance to whether Cruz breached the EA Agreement or misappropriated Allstate's trade secrets, and the Court even called Cruz's gift cards defense "meritless." Dkt. 236 at 19-20. The Court should therefore prohibit Cruz from referencing or introducing evidence regarding Allstate's use of gift cards because the issue has no bearing on whether Cruz breached his EA Agreement or misappropriated trade secrets. Allstate's use of gift cards is therefore irrelevant and inadmissible pursuant to Federal Rules of Evidence 401 and 402.

Similarly, permitting Cruz to introduce evidence pertaining to Allstate's use of gift cards only serves the purpose of confusing the issues and distracting the jury from the claims at issue. Further, the evidence's probative value would be, at most, minimal and substantially outweighed by the prejudicial nature of the evidence. *See* Fed. R. Evid. 403. Therefore, Cruz's references to Allstate's use of gift cards must be excluded pursuant to Federal Rule of Evidence 403, and Allstate's third Motion in Limine should be granted.

**IV. Motion in Limine No. 4: Cruz's Argument That His EA Agreement Was Terminated Due To Discrimination Should Be Precluded.**

This Court should preclude any references to Cruz being discriminated against at Allstate. Cruz alleges that his EA Agreement was terminated due to discrimination and/or that Allstate violated 42 U.S.C. § 1981. *See, e.g.*, Dkt. 40 ¶¶ 88-98. At one point in the litigation, Cruz also attempted to introduce evidence that he filed a claim for discrimination against Allstate. Dkt. 89 (stricken per Dkt. 100). As Cruz knows, however, this "evidence" is of no consequence to whether Cruz breached his EA Agreement or misappropriated Allstate's trade secrets. Rather, Cruz's EA Agreement was terminated after an internal investigation revealed that he was working for his wife's competing insurance agency, CPI, among other violations. Any such evidence regarding or relating to "discrimination" is therefore irrelevant and inadmissible because it has no probative

value with respect to any fact that Cruz may raise in defense of the breach of contract or misappropriation of trade secret claims at trial. Fed. R. Evid. 401, 402.

Allowing Cruz to reference or introduce evidence of discrimination may also have the effect of confusing the issues, misleading the jury, and/or unnecessarily delaying proceedings as Allstate defends itself from the allegations. The Court is entitled to, and should, prohibit Cruz from referencing or introducing such evidence. Fed. R. Evid. 403. For these reasons, the Court should grant Allstate's fourth Motion in Limine and prohibit Cruz from introducing arguments, evidence, and/or testimony regarding his termination being caused by discrimination within Allstate.

**V. Motion in Limine No. 5: Cruz's Argument That Allstate Is Slandering/Defaming Him Should Be Precluded.**

Cruz should be prohibited from introducing or referencing any statements that Allstate is slandering or defaming him and/or that Allstate is telling members of his community that he is a criminal. *See, e.g.*, Dkt. 40 at ¶¶ 75-79; Dkt. 168 at 5. These statements, in addition to being false, are irrelevant to the claims at issue and have no bearing on whether Cruz breached his EA Agreement or misappropriated Allstate trade secrets. In other words, the evidence has no tendency to make any fact more or less probable and is of no consequence in determining the action. These statements are, therefore, inadmissible under Federal Rules of Evidence 401 and 402.

Cruz's unsubstantiated claims of Allstate's purported defamation or slander should also be excluded by Federal Rule of Evidence 403 because, in addition to being false, the unsubstantiated claims would unfairly prejudice Allstate, mislead the jury, and waste time that should be devoted to the claims at hand. For these reasons, the statements' probative value is substantially outweighed by the prejudice to Allstate and confusion it could cause the jury. Evidence regarding Allstate's alleged defamation or slander must be barred from trial.

**VI. Motion in Limine No. 6: Cruz Should be Precluded From Making “Golden Rule” Arguments**

Cruz should be prohibited from urging the jury to place themselves in his position or the position of his family. Such an argument is commonly referred to as a “Golden Rule” appeal and such an argument “is universally recognized as improper because it encourages the jury to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence.” *Blevins v. Cessna Aircraft Co.*, 728 F.2d 1576, 1580 (10th Cir. 1984). Therefore, this Court should grant Allstate’s sixth motion in limine and prohibit Cruz from asking the jurors to put themselves in his position or the position of his family.

**VII. Motion in Limine No. 7: Cruz Should Be Prohibited From Arguing Or Introducing Evidence That He Did Not Solicit Customers Or Use An Allstate Customer List.**

Cruz should be prohibited from arguing that he did not solicit customers or use an Allstate customer list. The court unequivocally determined that “[a] month after his termination, Mr. Cruz sent an email soliciting business for CPI to a list of customer email addresses obtained through Allstate.” Dkt. 236 at 3. In other words, this Court determined that, as a matter of law, Cruz solicited Allstate customers and used an Allstate customer list in his solicitations for CPI. *Id.* Cruz should be prohibited from trying to undo this Court’s decision by referencing or introducing arguments, evidence, and/or testimony at trial that contradict this determination. Any attempt to do so would serve only to mislead or confuse the jury, and accordingly, such evidence should be excluded pursuant to Federal Rule of Evidence 403. Therefore, this Court should grant Allstate’s seventh motion in limine and prohibit arguments, evidence, and/or testimony at trial that suggest or show that Cruz did not solicit Allstate’s customers or use an Allstate customer list after his termination from Allstate.

**CONCLUSION**

For the foregoing reasons, this Court should grant Allstate's motion in limine and should preclude each of the categories of information discussed above from arguments, evidence, and/or testimony at trial.

Dated: January 24, 2024

/s/ J. Scott Humphrey  
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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, states that on January 24, 2024, he caused a true and correct copy of the foregoing Plaintiff Allstate Insurance Company's Omnibus Motion in Limine to be served via email upon the following:

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/s/ J. Scott Humphrey  
J. Scott Humphrey