UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:24-cv-01989-MWC-JDE Date: May 21, 2026

Title: Patrick Byrne v. Ameris Bank

Present: The Honorable Michelle Williams Court, United States District Judge

T. Jackson	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: (IN CHAMBERS) ORDER GRANTING PLAINTIFF'S MOTION IN LIMINE NO. 1; DENYING IN PART AND GRANTING IN PART PLAINTIFF'S MOTION IN LIMINE NO. 2; DENYING PLAINTIFF'S MOTION IN LIMINE NO. 3; DENYING DEFENDANT'S MOTION IN LIMINE NO. 1; DENYING IN PART AND GRANTING IN PART DEFENDANT'S MOTION IN LIMINE NO. 2; DENYING DEFENDANT'S MOTION IN LIMINE NO. 3; DENYING DEFENDANT'S MOTION IN LIMINE NO. 4; AND DENYING WITHOUT PREJUDICE DEFENDANT'S MOTION IN LIMINE NO. 5 (DKTS. 115, 116, 140, 141, 142, 143, 144, 145)

Before the Court are three motions *in limine* filed by Plaintiff Patrick Byrne ("Plaintiff" or "Byrne") and five motions *in limine* filed by Defendant Ameris Bank ("Defendant" or "Ameris"). *See* Dkts. # 115, 116, 140, 141, 142, 143, 144, 145. These matters are appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers, the Court **GRANTS** Plaintiff's Motion *in Limine* No. 1; **DENIES IN PART AND GRANTS IN PART** Plaintiff's Motion *in Limine* No. 2; **DENIES** Plaintiff's Motion *in Limine* No. 3; **DENIES** Defendant's Motion *in Limine* No. 1; **DENIES IN PART AND GRANTS IN PART** Defendant's Motion *in Limine* No. 2; **DENIES** Defendant's Motion *in Limine* No. 3; **DENIES** Defendant's Motion *in Limine* No. 4; and **DENIES WITHOUT PREJUDICE** Defendant's Motion *in Limine* No. 5.

UNITED STATES DISTRICT COURT
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CIVIL MINUTES – GENERAL

I. Legal Standard

A motion *in limine* is "a procedural mechanism to limit in advance testimony or evidence in a particular area." *United States v. Heller*, 551 F.3d 1108, 1111 (9th Cir. 2009). "Although the Federal Rules of Evidence do not explicitly authorize in limine rulings, the practice has developed pursuant to the district court's inherent authority to manage the course of trials." *Luce v. United States*, 469 U.S. 38, 40 n.4 (1984). Motions *in limine* that seek exclusion of broad and unspecific categories of evidence, however, are generally disfavored. *Advanced Visual Image Design, LLC v. Exist, Inc.*, No. 2:10-CV-09383J-GBA-JW, 2013 WL 12134183, at *4 (C.D. Cal. Nov. 25, 2013) (citing *Sperberg v. Goodyear Tire and Rubber Co.*, 519 F.2d 708, 712 (6th Cir. 1975)). Courts have recognized that they are often better situated during the actual trial to assess the value and utility of evidence. *Id.* (citation omitted). Rulings on motions *in limine* "are not binding on the trial judge [who] may always change [his or her] mind during the course of a trial." *Ohler v. United States*, 529 U.S. 753, 758 n.3 (2000) (citing *Luce*, 469 U.S. at 41 (identifying that *in limine* rulings are subject to change, especially if evidence unfolds in an unanticipated manner)).

II. Motions *in Limine* Concerning Experts

A. Plaintiff's Motion *in Limine* No. 1 (Dkt. 144); Defendant's Motion *in Limine* No. 1 (Dkt. 115)

The Court begins with two motions concerning whether Plaintiff's retained forensic accounting expert, Deborah Dickson, may testify in Plaintiff's case-in-chief. *See* Dkt. # 144 ("*P. MIL 1*"); 115-1 ("*D. MIL 1*").

i. Background

The Court's Scheduling Order required initial expert disclosures on December 5, 2025. Dkt. # 22 ("*Sched. O.*"). On that date, Plaintiff disclosed Dickson as a retained expert and provided a description of the subject matters of her anticipated testimony. Dkt. # 144-1 (Sessions Decl.), Ex. A at 3. However, Plaintiff did not serve Dickson's initial expert report together with the initial disclosure, as required by Federal Rule of Civil Procedure ("Rule") 26(a)(2)(B). Dkt. # 115-2 (Fode Decl.) ¶ 6; *P. MIL 1* at 2.

The parties subsequently stipulated to a rebuttal expert deadline of January 2, 2026, which the Court approved. Dkts. # 88, 92. On January 2, 2026, Plaintiff served Dickson's report, characterizing it as a rebuttal report to the opinions of Defendant's expert, Maryellen Sebold. Dkt. # 115-2 ¶ 9, Exs. B, C. On January 13, 2026, two days before Dickson's deposition, Plaintiff produced Dickson's expert file. *Id.* ¶ 16.

Plaintiff concedes he failed to timely produce Dickson's expert report. *See P. MIL 1* at 1, 9. Nonetheless, Plaintiff asks the Court to permit Dickson's testimony in Plaintiff's case-in-chief on the grounds that the delay was harmless. *See generally id.* Plaintiff argues exclusion would be an unduly harsh sanction, because Dickson's testimony goes to the central issues of interpreting the agreement at issue (the Balboa Capital Long-Term Cash Incentive Plan, or "LTIP") and the calculation of damages. *Id.* at 7–8. Defendant opposes the motion, contending the failure to comply with Rule 26 warrants the self-executing sanction of exclusion under Rule 37(c)(1). *See* Dkt. # 148.

Defendant separately moves *in limine* to exclude Dickson's opinions and testimony at trial under Rule 26(a). *D. MIL 1*.[1] Defendant argues it was prejudiced by having to move for summary judgment without Dickson's opinions and, with limited preparation time, having to depose Dickson as an affirmative witness rather than a rebuttal witness. *Id.* at 7–8. Plaintiff opposes the motion. *See* Dkt. # 151.[2]

[1] In the motion, Defendant requested an advanced hearing prior to the Final Pretrial Conference because the motions were made in connection with the Motion for Summary Judgment. *See D. MIL 1* at 1, 5 n. 4. The Motion for Summary Judgment was noticed for hearing on February 13, 2026, and the motions *in limine* were not filed until February 6, 2026. *See* Dkts. # 93, 115, 116. Because the issue was neither properly before the Court or fully briefed in advance of the summary judgment ruling, the Court declined to advance the hearing. The request is denied as moot.

[2] On February 20, 2026, Plaintiff filed overlength opposition briefs to Defendant's Motions *in Limine* Nos. 1 and 2. *See* Dkts. # 124, 125. On May 1, 2026, Plaintiff withdrew the prior oppositions, *see* Dkt. # 156, and filed new oppositions within the page limit, *see* Dkts. # 151, 152. Defendant opposes the withdrawal and requests the Court disregard both the overlength original oppositions and the newly filed oppositions, which were filed without leave of court. Dkt. # 166. Plaintiff fails to provide any justification for filing briefs that do not comply with the Court's standing order. *See* Dkt. # 156. Nonetheless, the Court exercises its discretion and considers Plaintiff's newly-filed oppositions as the operative opposition briefing.

ii. Legal Standard

Under Federal Rule of Civil Procedure 26(a), parties must disclose experts and provide written reports "at the times and in the sequence that the court orders." Fed. R. Civ. P. 26(a)(2)(A)(D). "If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1); *see also Yeti by Molly, Ltd. v. Deckers Outdoor Corp*., 259 F.3d 1101, 1106 (9th Cir. 2001).

"The party facing the sanction carries the burden of demonstrating that the failure to comply with rules concerning expert testimony is substantially justified or harmless." *Jarrow Formulas, Inc. v. Now Health Grp., Inc*., No. CV 10-8301 PSG (JCx), 2012 WL 3186576, at *15 (C.D. Cal. Aug. 2, 2012). Factors that may properly guide a court in determining whether a violation is substantially justified or harmless are: "(1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt trial; (4) the importance of the evidence; and (5) the nondisclosing party's explanation for its failure to disclose the evidence." *Blair v. CBE Grp., Inc*., 309 F.R.D. 621, 626 (S.D. Cal. 2015) (quotation omitted) (denying motion to exclude untimely disclosed expert report). The Court has the discretion to impose lesser sanctions where exclusion would be overly harsh. *See R&R Sails, Inc. v. Ins. Co. of Penn*., 673 F.3d 1240, 1247 (9th Cir. 2012).

iii. Application

After considering the relevant factors, the Court finds that Plaintiff's failure to timely serve Ms. Dickson's report as an affirmative expert was harmless and exclusion is not warranted.

Surprise to Defendant. First, it is not reasonably disputed that Plaintiff caused surprise to Defendant by belatedly disclosing Dickson's expert opinion. *See Cardona v. Cnty. of Los Angeles*, No. 2:23-CV-06225-MWC-AGR, 2025 WL 4227217, at *3 (C.D. Cal. Dec. 16, 2025) ("Without a timely expert report, Defendants have not had sufficient notice to prevent unfair surprise at trial."). Nonetheless, the Court finds this distinction does not rise to the level of prejudice to warrant exclusion under Rule 37, because the substance of the testimony was known by December 5, 2025, when Plaintiff made the initial expert disclosure. *See* Dkt. # 144-1, Ex. A. There Plaintiff disclosed her identity, qualifications, and the subjects of her anticipated testimony, including LTIP calculations and economic damages, which ameliorates some of the surprise caused by the report's delay. *Id.* at 3; *see, e.g.*, *Lanard Toys Ltd. v. Novelty, Inc.,* 375 F. App'x 705, 713 (9th Cir. 2010) (finding no prejudice to party seeking exclusion in part where, "[a]lthough [plaintiff] did not strictly comply with the requirements of that Rule by the disclosure deadline, it did timely serve a 'preliminary' expert declaration containing detailed information about [plaintiff's expert's] background and expertise, a copy of his curriculum vitae, a list of representative cases in which he had testified, a listing of the materials reviewed in support of his declaration, and a statement of his scope of work for this case," three weeks before the cutoff date for expert discovery and seven months before trial).

Ability of Defendant to cure the surprise. Second, Defendant had the opportunity to cure potential prejudice to it during expert discovery. Plaintiff provided Dickson's expert file, including all of Dickson's calculations, on January 13, 2026, two days before Dickson's deposition. Thus, Defendant had an opportunity to, and did, depose Dickson and question her regarding her opinions and calculations. *See* Dkt. # 152-1 (Villagomez Decl.) ¶ 5, Ex. 4 (Dickson Dep. Tr.). Defendant's expert, Maryanne Sebold, also reviewed Dickson's report and offered responsive opinions. *See* Dkt. # 144-1 ¶ 4, Ex. C (Sebold Dep Tr. (describing critiques of Dickson's expert report)).

Disruption to trial. Third, permitting Dickson to testify will not disrupt trial. The report was disclosed six months before trial, and Defendant has not shown that additional discovery or a continuance is needed if Dickson were permitted to testify.

Importance of the evidence. Fourth, Plaintiff persuasively argues that Dickson's testimony is central to the issues in this case, including the calculation of damages and interpretation of the LTIP Agreement. *See P. MIL 1* at 7–8. Courts are reluctant to impose case-dispositive or near-case-dispositive sanctions when lesser remedies suffice. *See, e.g., Dubey v. Concentric Healthcare Sols. LLC*, No. CV-22-02044-PHX-DJH, 2024 WL 3888463, at *6 (D. Ariz. Aug. 21, 2024) ("The Court, in its discretion, declines to implement the 'harsh' sanction of exclusion—especially since such an exclusion could hamstring Plaintiff's ability to prove the essential damages element of her claims.").

Reason for the failure to disclose. Finally, the Ninth Circuit has encouraged district courts to consider bad faith or willfulness when determining the appropriate sanction under Rule 37(c). *See Lanard*, 375 F. App'x at 713. Plaintiff attributes the failure to timely serve Dickson's report to a "simple timing error" rather than bad faith or deliberate misconduct. *P. MIL 1* at 9. Although Plaintiff's conduct demonstrates a lack of diligence, the record does not otherwise contain evidence of Plaintiff's bad faith.

Considering the totality of the circumstances and in the interests of justice, the Court finds Plaintiff's late disclosure of Dickson's expert report was harmless within the meaning of Rule 37(c)(1). Plaintiff's Motion *in Limine* No. 1 is **GRANTED**, and Defendant's Motion *in Limine* No. 1 is **DENIED**.

B. Defendant's Motion in Limine No. 2 (Dkt. 116); Plaintiff's Motion *in Limine* No. 2 (Dkt. 145)

Next, the Court addresses two motions concerning whether the opposing party's expert report and testimony should be excluded pursuant to Federal Rule of Evidence ("FRE") 702 and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). Dkt. # 116-1 ("*D. MIL 2*"); 145 ("*P. MIL 2*").[3]

i. Legal Standard

Federal Rule of Evidence ("FRE") 702 provides,

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:
>
> a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
>
> b) the testimony is based on sufficient facts or data;

[3] Plaintiff files a request for judicial notice of three provisions in the Code of Federal Regulations, which govern financial reporting and disclosure. *See* Dkt. # 145-1. "These documents are true and correct copies of the Code of Federal Regulations, which are proper matters for judicial notice." *See Crimson California Pipeline, L.P. v. S. California Edison Co*., No. CV 15-07036 SJO (FFMx), 2016 WL 5340528, at *2 n.1 (C.D. Cal. Feb. 12, 2016) (citation and quotation omitted). Thus, the request is **GRANTED**.

c) the testimony is the product of reliable principles and methods; and

d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

Fed. R. Evid. 702. This standard, alongside the standard that the Supreme Court articulated in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), governs the admissibility of expert testimony. *See Brighton Collectibles, Inc. v. RK Tex. Leather Mfg.*, 923 F. Supp. 2d 1245, 1253 (S.D. Cal. 2013). Under *Daubert*, the Court "must assess 'whether the reasoning or methodology underlying the testimony' is valid and 'whether that reasoning or methodology properly can be applied to the facts in issue.'" *Sw. Fair Hous. Council v. WG Chandler Villas SH LLC*, 562 F.Supp.3d 18, 23 (D. Ariz. 2021) (quoting *Daubert*, 509 U.S. at 592–93). Factors relevant to the reliability of expert testimony include, but are not limited to, whether the expert's theory or technique "can be (and has been) tested," whether it "has been subjected to peer review and publication," "the known or potential rate of error," and "the existence and maintenance of standards controlling the technique's operation," along with the degree of acceptance in the relevant expert community. *Daubert*, 509 U.S. at 593–94.

An expert witness need not possess specialized qualifications to testify on a particular topic so long as the testimony is "within the reasonable confines of his subject area." *Avila v. Willits Env't Remediation Tr.*, 633 F.3d 828, 839 (9th Cir. 2011). The party seeking admission of the expert witness carries the burden of proving admissibility by a preponderance of the evidence. *Cooper v. Brown*, 510 F.3d 870, 942 (9th Cir. 2007).

ii. Dickson's Expert Report

Dickson is a CPA with more than 30 years' accounting experience and more than 15 years' experience in litigation support services and expert testimony as a forensic accountant. *See* Dkt. # 115-2, Ex. B ("*Dickson Report*") at 9. Dickson's expert report provides three opinions on factual issues presented in this case. *See id.* at 3, 8. First, Dickson opines that Defendant's expert, Sebold, calculated the 2022 and 2023 EBT calculations based on an incorrect interpretation of the LTIP Agreement, with respect to Sebold's application of Generally Accepted Accounting Principles ("GAAP") and her calculation of the allowance for loan losses. *Id.* at 3–4. Second, Dickson opines that Plaintiff is owed LTIP cash bonuses for calendar years 2022 and 2023. *Id.* at 5–7. Third, Dickson opines that Plaintiff is owed acquisition proceeds under the terms of the parties' purchase agreement. *Id*. at 7.

In Defendant's Motion *in Limine* No. 2, Defendant first argues that Dickson's testimony is inadmissible pursuant to FRE 702 and *Daubert* because Dickson's report and testimony improperly interpret contract language, a legal determination. *D. MIL 2* at 4–5. Defendant further argues Dickson's testimony is based on unsupported (and incorrect) assumptions provided by Plaintiff, *id.* at 5–7, incorrectly calculates Plaintiff's entitlement to the LTIP incentive pool, *id.* at 8–9, and fails to consider Defendant's alternative interpretation and analysis of Plaintiff's damages claim, *id.* at 9–10. Plaintiff opposes, arguing that Dickson's opinions are reliable, relevant, and appropriate for the jury. *See* Dkt. # 152.

The Court finds Dickson's methodology meets the threshold of reliability. First, the fact that Dickson consulted Plaintiff does not mean her opinions are necessarily unsubstantiated or unreliable. *See United States v. Liew*, No. CR 11-00573-1 JSW, 2014 WL 554491, at *2 (N.D. Cal. Feb. 7, 2014) ("[C]ourts have found that it is reasonable for experts in the field of accounting to rely on conversations with a defendant's employees."). The report shows Dickson also independently reviewed Defendant's financial records, including the 2022 and 2023 LTIP workbooks and supporting schedules; applied accounting methodologies to recalculate earnings and damages; and utilized her professional judgment to evaluate competing accounting analysis. *Dickson Report* at 3–4, 6–7. Additionally, Dickson's credentials as a CPA and experience as a forensic accountant provide at least a minimally sufficient basis for Dickson to opine on the accuracy of Sebold's damages calculation. "Thus, the objections by [Defendant] go to credibility and weight, which are best addressed during cross-examination and contrary evidence." *See Walker Prods., Inc. v. Yue Frank Cong*, No. 8:23-CV-02201-JVS-ADS, 2026 WL 790758, at *4 (C.D. Cal. Jan. 8, 2026).

Second, Defendant argues Dickson incorrectly calculated Plaintiff's award to be 100 percent of the LTIP incentive pool. *D. MIL 2* at 8–9. Plaintiff argues Dickson's analysis focused on calculating "the size of the pool and the amount allegedly underpaid—not how that pool would be distributed among participants," and, to that end, produced a supplemental Dickson report on May 1, 2026, in which she calculated Plaintiff's portion of the LTIP pools. Dkt. # 152 at 9.[4] The Court finds the allocation of the LTIP incentive pool, and any discrepancies in how those calculations should be interpreted or applied, is a subject appropriate for cross-examination and rebuttal rather than exclusion of testimony.

Similarly, Defendant contends Dickson's failure to perform alternative calculations using GAAP renders her opinions unreliable. But an expert is not required to adopt or replicate an opposing expert's methodology. An expert may critique the opposing methodology and offer a competing analysis, so long as the approach is reasoned and grounded in the record. *See Galinis v. Bayer Corp.*, No. 09-CV-04980-SI, 2019 WL 2716480, at *9 (N.D. Cal. June 28, 2019) ("Defendant may cross-examine [plaintiff's expert] or present its own expert testimony in contradiction, but the focus under *Daubert* is 'on the principles and methodology' employed by the expert and 'not the conclusions they generate.'" (citing *Daubert*, 509 U.S. at 595)). The Dickson report addresses Defendant's GAAP-based approach and explains why, in her view, it does not govern the relevant calculations under the LTIP framework. Such methodology is sufficiently reliable.

The Court agrees, however, that expert testimony may not include legal opinions or misstatements of law. At the same time, the Ninth Circuit has permitted experts to testify about industry standards even where the testimony "relie[s] in part on [the expert's] understanding of the requirements of . . . law." *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1017 (9th Cir. 2004) ("A witness may refer to the law in expressing an opinion without that reference rendering the testimony inadmissible. Indeed, a witness may properly be called upon to aid the jury in understanding the facts in evidence even though reference to those facts is couched in legal terms.") (quotation omitted). Here, while both experts may properly analyze how the LTIP's terms impact financial calculations, including whether and how certain accounting principles apply, no expert may testify as to the legal question of contract interpretation. *See Plymouth Grain Terminals, LLC v. Lansing Grain Co., LLC*, No. 10-CV-5019-TOR, 2013 WL 12177076, at *6 (E.D. Wash. Dec. 20, 2013) ("[E]xclusion applies only insofar as a term is a matter of contract interpretation and not industry standard or terminology. Contract interpretation is an issue of law, and expert testimony is not proper for issues of law."); *Veritas Operating Corp. v. Microsoft Corp.*, No. C06-0703-JCC, 2008 WL 7404616, at *2 (W.D. Wash. Feb. 28,

[4] Defendant filed an objection to the supplemental (May 1, 2026) Dickson report, see Dkt. # 168, which Plaintiff opposed, Dkt. # 171. Defendant's objection is functionally a sixth motion *in limine*. Thus, the Court **OVERRULES** the objection as untimely and filed without leave of court.

2008) (stating "[t]he Court will not permit Dr. Chase to testify in Court as to the legal meaning of the parties' contract or as to what the law is," but "the Court is not persuaded that Dr. Chase should be barred from explaining his analysis of technical issues that illuminate the contract terms."). Dickson's testimony is limited to interpretations of terms and standards appropriate for an expert, but she may not testify regarding her interpretation of the contract.

Therefore, the Court **GRANTS IN PART** Defendant's second motion *in limine* with regards to excluding any testimony from Dickson as to contract interpretation and other legal conclusions, but **DENIES** the motion in all other respects.

iii. Sebold's Expert Report (Pl. MIL 2)

Plaintiff moves *in limine* for the Court to exclude the opinions and testimony of Defendant's expert, Ms. Maryellen Sebold, under Rule 702 and *Daubert*. *See P. MIL 2.* According to Plaintiff, Sebold impermissibly (and incorrectly) seeks to testify as to the legal conclusion that Defendant is "required to follow GAAP" because Ameris is publicly traded. *Id.* at 2–6. Additionally, Plaintiff argues both Sebold's and Dickson's reports "interpreted Balboa's LTIP Agreement, and Ms. Sebold's opinions rely heavily on the self-serving statements of Ameris's employees," and thus should either be excluded together or admitted together. *Id.* at 1. Defendant opposes, arguing that Plaintiff misrepresents Sebold's testimony and attacks her conclusions rather than her methodology. Dkt. # 149.

Sebold has more than 35 years' experience in accounting and specializes in litigation consulting in forensic accounting, damage calculations and analysis, and bankruptcy and litigation support. Dkt. # 144-1, Ex. B (Sebold Report) at 1. Sebold's expert report offers four opinions: (1) regarding the 2022 LTIP calculation, Plaintiff is not due any additional payment; (2) the 2023 LTIP calculation did not meet the threshold for an award, so Plaintiff is not due any payment; (3) Plaintiff's requested adjustments were not supported by GAAP or the LTIP Agreement terms; and (4) Defendant's recording of unclaimed security deposits acquired in the Balboa transaction are supported by GAAP and accounting principals.[5] *Id.* at 2. Sebold's opinions are based on her review of the Complaint, relevant agreements, the LTIP plan, deposition testimony, Balboa Capital and

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[5] The Court incorporates and refers to the factual background stated in its order denying in part and granting in part Defendant's motion for summary judgment. *See* Dkts. # 121, 122.

Ameris financial statements, U.S. GAAP accounting standards, and other documents, and conducting interviews with employees Nicole Stokes and James LaHaise. *Id.* at 3.

The Court finds Sebold's methodology described in the report, combined with her experience as a CPA and forensic accountant, meets the threshold of reliability. Accounting experts may rely on GAAP and other industry standards in forming their opinions. *See, e.g., King v. GEICO Indem. Co*., 712 Fed. Appx. 649 (9th Cir. 2017) ("Although it is well established that experts may not give opinions as to legal conclusions, experts may testify about industry standards"). Sebold may testify regarding GAAP principles; how Defendant applied those principles; and whether Defendant's calculations were consistent with GAAP or accepted accounting practices. Disputes over whether GAAP should apply, or whether Sebold's conclusions are correct, go to the weight of the evidence, not its admissibility.

As stated above, expert testimony may not include legal opinions or misstatements of law. *See supra* Section II.B.ii. For the same reasons Dickson (or any other witness) may not testify as to the interpretation of contract terms, Sebold may not testify that Defendant was required to apply GAAP to the LTIP calculations as a matter of law.

Therefore, the Court **GRANTS IN PART** Plaintiff's second motion *in limine* with regards to excluding testimony from Sebold as to legal conclusions such as contract interpretation, but **DENIES** the motion in all other respects.

III. Remaining Motions

A. Plaintiff's Motion *in Limine* No. 3 (Dkt. 141)

Plaintiff moves *in limine* for the Court to exclude Defendant's evidence suggesting the LTIP payment was "discretionary" and therefore not recoverable as wages. *See* Dkt. # 141 ("*P. MIL 3*"). At summary judgment, the Court rejected Defendant's argument that LTIP payments were not "wages" for purposes of Plaintiff's Labor Code claims. *See* Dkt. # 121 ("*MSJ O.*") at 13–14. The Court noted, pursuant to California case law, "the LTIP Cash Award is properly considered incentive compensation that, if Plaintiff satisfied the conditions precedent to receiving the LTIP cash award, needed to be paid upon termination." *Id.* at 14. Plaintiff now argues the Court determined as a matter of law that the LTIP cash award was not a discretionary bonus but constituted wages that needed to be paid out; therefore, under the "law of the case" doctrine, Defendant may not present evidence or argument suggesting otherwise. *See generally P. MIL 3*. Defendant opposes the motion on procedural and substantive grounds. *See* Dkt. # 150.

The law of the case doctrine provides that a court will not reexamine an issue previously decided by the same or higher court in the same case. *United States v. Jingles*, 702 F.3d 494, 499 (9th Cir. 2012). However, as the Ninth Circuit in *Peralta v. Dillard* concluded, "denial of a summary judgment motion is never law of the case because factual development of the case is still ongoing." 744 F.3d 1076, 1088 (9th Cir. 2014). The Court's summary judgment order articulated the governing legal framework for Plaintiff's unpaid wages claim, but because the motion was denied, the Court is "not bound to the arguments or facts presented before it at the summary judgment stage" and may consider the claims and evidence put before it at trial. *See Am. Multi-cinema, Inc. v. Manteca Lifestyle Ctr., LLC*, No. 216CV01066TLNKJN, 2023 WL 3775333, at *10 (E.D. Cal. June 2, 2023).

Additionally, Plaintiff's argument under Rule 403 is unpersuasive. The admission of such evidence will not mislead or confuse the jury where, as here, the Court will instruct the jury on the governing legal standards.

For the foregoing reasons, Plaintiff's Motion *in Limine* No. 3 is **DENIED**.

B. <u>Defendant's Motion *in Limine* No. 3 (Dkt. 140)</u>

In its third motion *in limine*, Defendant seeks to exclude documents, testimony, and argument based on information Plaintiff disclosed after the close of fact discovery. Dkt. # 140-1 ("*D. MIL 3*"). Fact discovery closed November 28, 2025. *See Sched. O*. Plaintiff produced documents and supplemental interrogatory responses on December 1, 2025. Dkt. # 140-2 (Fode Decl.) ¶ 9. Accordingly, the disclosure was several days late. Defendant also argues Plaintiff introduced a new theory regarding the LTIP agreement in a January 23, 2026 declaration in opposition to Defendant's motion for summary judgment, after expert discovery had already closed, to which Defendant was not able to respond with its own expert analysis. *D. MIL 3* at 1, 4–5. Plaintiff opposes. *See* Dkt. # 153.

Pursuant to Rule 26, a party must disclose "all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses." Fed. R. Civ. P. 26(a)(1)(ii). Disclosures must be supplemented "in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." Fed. R. Civ. P. 26(e)(1)(A). "If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). This rule is a "self-executing, automatic sanction to provide a strong inducement for disclosure." *Yeti by Molly, Ltd. v. Deckers Outdoor Corp*., 259 F.3d 1101, 1106 (9th Cir. 2001) (quotation omitted)). In order to avoid the "self-executing" sanction of exclusion, Plaintiff must demonstrate that the failure to timely disclose DEF 3271 was "substantially justified or harmless." *Yeti*, 259 F.3d at 1106; Fed. R. Civ. P. 37(c)(1).

Regarding the December 1, 2025 production, Plaintiff again blames prior counsel for "case-management errors," which does not substantially justify missed deadlines. Dkt. # 153 at 9–10. Nonetheless, the Court concludes the delay was minimal and harmless, since Plaintiff produced the documents three calendar days later, after a major holiday. Nor has Defendant shown it was prejudiced by the timing of Plaintiff's disclosures. The December 1, 2025 documents were produced before completion of expert discovery, and Defendant participated in expert depositions and dispositive motion practice.

Next, Defendant seeks to exclude argument and evidence that Plaintiff was entitled to a certain fixed percentage of the LTIP pool because that theory was not introduced until January 26, 2026, via Plaintiff and Rasmussen declarations filed in support of Plaintiff's opposition to the motion for summary judgment. *D. MIL 3* at 4–5; *see* Dkts. # 108-8, 108-9. Arguing the theory was not new, Plaintiff points to his deposition testimony from October 27, 2025, where he stated the LTIP pool was pre-negotiated to be "split" between himself and several other employees. *See* Dkt. # 143-1 (Sessions Decl.), Ex. 1 (Pl. Dep. Tr.). Unlike the summary judgment opposition declarations, Plaintiff did not state the precise allocation of the LTIP pool at deposition. *See id.* However, the theory that he was not entitled to 100% of the LTIP pool was not newly disclosed after the close of discovery. The Court therefore declines to categorically exclude all evidence and argument concerning the LTIP allocation.

Given the limited impact of the December 1, 2025 delay, and the limited prejudice resulting from the late disclosure of Plaintiff's precise LTIP allocation percentage, exclusion would be disproportionate. Thus, the motion is **DENIED**.

C. Defendant's Motion *in Limine* No. 4 (Dkt. 142)

At summary judgment, the Court granted the motion in part and held that Plaintiff could not recover the 2024 LTIP award as unpaid wages under Labor Code §§ 201–203 because Plaintiff was terminated in June 2024, before the year-end LTIP pool had been calculated. *MSJ O.* at 14–15, 21. Defendant now seeks to exclude all references to the 2024 LTIP at trial. Dkt. # 142-1 ("*D. MIL 4*"). Plaintiff opposes. Dkt. # 154.

The Motion is denied as overbroad. The Court's prior ruling was limited to Plaintiff's unpaid wages claim, but evidence relating to the 2024 LTIP may be admissible for other purposes. Plaintiff identifies several areas where evidence relating to the 2024 LTIP may be relevant, such as demonstrating lost future earnings, establishing Defendant's motive or intent to support Plaintiff's wrongful termination and retaliation claims, and providing context for Plaintiff's damages. *See id.* at 11–13.

For these reasons, the motion is **DENIED**, and the Court will address specific evidentiary objections at trial.

D. Defendant's Motion *in Limine* No. 5 (Dkt. 143)

Defendant's final motion *in limine* seeks to preclude Plaintiff from calling as witnesses "high-level 'Apex' executives who have no personal knowledge of the underlying issues in this case and whose testimony would serve no purpose other than harassment and abuse of the judicial process." Dkt. # 143-1 ("*D. MIL 5*") at 1. Plaintiff's trial witness list includes nine high-level executives whose testimony Defendant characterizes as irrelevant and/or entirely cumulative of testimony that numerous Ameris executives and employees have already provided at deposition. *Id.* at 5–7. Defendant also objects to Plaintiff identifying as a trial witness Jody Spencer, Ameris's Chief Legal Officer, on the grounds of relevance, Rule 403, and courts' disfavor of testimony from opposing or in-house counsel. *Id.* at 7–10. Plaintiff opposes the motion. Dkt. # 155.

District courts have recognized that "apex" depositions or depositions of high-level executives create "a tremendous potential for abuse or harassment"; therefore, district courts have discretion to limit these depositions under Federal Rule of Civil Procedure 26(c). *In re Mosaic LLM Litig.*, No. 24-CV-01451-CRB (LJC), 2025 WL 3080548, at *1 (N.D. Cal. Nov. 4, 2025) (quotation omitted). "In determining whether to allow an apex deposition, district courts generally consider (1) whether the deponent has unique firsthand, non-repetitive knowledge of the facts at issue in the case and (2) whether the party seeking the deposition has exhausted other less intrusive discovery methods." *Id*. (quotation omitted). "[T]he apex doctrine has been applied," by district courts within the Ninth Circuit, "to preclude testimony at trial." *See Yphantides v. Cnty. of San Diego*, No. 21-CV-1575, 2023 WL 7555301, at *4 (S.D. Cal. Nov. 14, 2023) (collecting cases).

At this stage, the Court declines to issue a blanket pretrial exclusion of Ameris executive testimony based on the apex doctrine. Although Defendant identifies the proposed executive witnesses by name and title, the Court cannot determine, in the abstract, whether each challenged witness lacks relevant, nonduplicative knowledge. The relevance, scope, and cumulative nature of any given witness's testimony are better evaluated in the context of trial presentation. For the same reason, the Court does not grant the motion at this time with respect to the proposed testimony of Defendant's in-house counsel. Issues concerning the applicability of attorney-client privilege, scope of examination, and potential prejudice are highly fact-dependent and more appropriately addressed through specific objections at trial.

Finally, a motion *in limine* addresses evidentiary admissibility and not arguments as to the subpoena power of this Court, including geographic limitations under Rule 45.

For the foregoing reasons, Defendants' fifth motion *in limine* is **DENIED WITHOUT PREJUDICE.** Defendant may raise appropriate objections at trial, including but not limited to objections based on relevance, cumulative evidence, undue prejudice, privilege, and scope of examination. The Court will rule on such objections in the context of the evidence as presented.

IV. Conclusion

For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion *in Limine* No. 1; **DENIES IN PART AND GRANTS IN PART** Plaintiff's Motion *in Limine* No. 2; **DENIES** Plaintiff's Motion *in Limine* No. 3; **DENIES** Defendant's Motion *in Limine* No. 1; **DENIES IN PART AND GRANTS IN PART** Defendant's Motion *in Limine* No. 2; **DENIES** Defendants' Motion *in Limine* No. 3; **DENIES** Defendant's Motion *in Limine* No. 4; and **DENIES WITHOUT PREJUDICE** Defendant's Motion *in Limine* No. 5.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:24-cv-01989-MWC-JDE Date: May 21, 2026

Title: Patrick Byrne v. Ameris Bank

IT IS SO ORDERED.

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Initials of Preparer TJ