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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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|---------------------------------|---|--------------------------|
| PAUL EVAN STREETER, |) | No. 3:10-cv-01466-JO |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | <u>OPINION AND ORDER</u> |
| |) | |
| TASER INTERNATIONAL, INC., |) | |
| a Delaware corporation; ET AL., |) | |
| |) | |
| Defendants. |) | |

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JONES, Judge:

This action is before the court on defendant Taser International, Inc.'s ("Taser") motion to dismiss and motion to strike (## 25, 37), and defendant Clackamas County's motion for summary judgment.

1. Taser's Motions

In earlier proceedings in this case, Taser moved to dismiss plaintiff's complaint for failure to prosecute, based, in essence, on plaintiff's failure to respond to discovery requests or to participate in discovery on a timely basis. I ordered plaintiff to appear for deposition and, more significantly, to provide Taser with expert disclosures, and deferred ruling on the motion to dismiss pending those events.

Since then, plaintiff has been deposed and has produced the expert disclosures. Taser has now moved to strike plaintiff's causation expert, Richard Berkey, M.D. I deny the motion to strike at this juncture, and will consider the validity and merits of Dr. Berkey's opinions as they pertain to plaintiff's state law claims against Clackamas County in future proceedings. Having

reviewed Dr. Berkey's written opinion as well as his supplemental opinion¹ carefully, however, I find that they are inadequate to support plaintiff's product liability claim against Taser. Consequently, I grant Taser's motion to dismiss plaintiff's claim against it because there is no evidence that the taser used on plaintiff was defective.

2. Clackamas County's Motion

Clackamas County moves for summary judgment on plaintiff's six claims against it, four of which are federal claims and two of which are state law claims.² Plaintiff has conceded that his federal claims should be dismissed. See Plaintiff's Response to Defendant Clackamas County's Motion for Summary Judgment, p. 1.

With respect to plaintiff's state law claims, while the court agrees with plaintiff's characterization that the "labeling of [his] claims might not be artful," Plaintiff's Response, p. 17, I also agree that disputed issues of material fact prevent entry of summary judgment as a matter of law on plaintiff's state law claims.

In summary, plaintiff's motion (# 45) to file supplemental expert report is granted. Taser's motion (# 25) to dismiss is granted as to plaintiff's claim against it. Taser's motion (# 37) to strike is denied. Clackamas County's motion (# 33) is granted as to plaintiff's federal


¹ Plaintiff's motion (# 45) to file supplemental expert report is granted.

² Claim 5 alleges violation of two federal statutes and one Oregon statute. To the extent the claim is based on federal law, that portion of the claim also is dismissed.

claims and denied as to his supplemental state law claims. This court will retain jurisdiction over the supplemental claims.

IT IS SO ORDERED.

DATED this 8th day of February, 2012.



ROBERT E. JONES
U.S. District Judge