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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RODRIGO FLORES,

CASE NO. CV F 09-1529 LJO DLB

Plaintiff,

ORDER ON MOTIONS IN LIMINE

vs.

MERCED IRRIGATION DISTRICT,
DAN POPE, ROBERT BLUM,

Defendants.

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This Court conducted a hearing on plaintiff’s and defendant’s motions in limine on February 18, 2011 in Courtroom 4 (LJO). Plaintiff Rodrigo Flores appeared by telephone by counsel Lawrence Murray and Robert Strickland and in person by counsel Dean Gordon. Defendant Merced Irrigation District appeared by telephone by counsel Golnar Fozi and Matthew Racine. Defendants filed twenty motions in limine. Plaintiffs filed one motion in limine. Each party filed oppositions to the other party’s motions in limine. The Court read and reviewed defendant’s motions in limine and plaintiff’s opposition, and plaintiff’s motion and defendant’s opposition. The Court further considered the arguments of counsel on the record at the time of the hearing. The Court ruled from the bench on the motions and incorporates those rulings herein. For the reasons described on the record and in this order, the Court issues the following written order on the defendant’s and plaintiff’s motions in limine.

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1 **Plaintiff's Motion in Limine**

2 **Motion to Exclude Evidence or Testimony of the Elimination of the Business Development or**
3 **Account Representative Employment Positions (Doc. 86)**

4 For the reasons set forth on the record, this Motion is DENIED.

5 **Defendant's Motions in Limine**

6 **1. Motion to Exclude Recovery of Damages in Excess of Plaintiff's Rule 26 Exchange (Doc.**
7 **81)**

8 For the reasons set forth on the record, this Motion is DENIED.

9 **2. Motion to Exclude the 1990 Grand Jury Report and Reference thereto (Doc. 81)**

10 For the reasons set forth on the record, this Motion is GRANTED.

11 **3. Motion to Exclude Testimony and Report of James Schmidtke concerning Statistical**
12 **Workforce Comparison (Doc. 81)**

13 For the reasons set forth on the record, this Motion is DENIED, without prejudice.

14 **4. Motion to Exclude Opinions of James Schmidtke on Ultimate Legal Determinations (Doc.**
15 **81)**

16 The motion was unopposed and therefore is GRANTED.

17 **5. Motion to Exclude Opinions of James Schmidtke re "Best" or "Accepted" Practices (Doc.**
18 **81)**

19 For the reasons set forth on the record and in this order, this Motion is GRANTED in part, and
20 DENIED in part. Dr. Schmidtke may testify what he believes the defendant should have done and which
21 it did not do, in the areas of Human Resources, that are relevant to the legal claims made. He may also
22 testify as to the reasons for such opinion, including that certain practices are routine and common in the
23 industry. The motion is granted as to evidence of "Best" practices and "Accepted" practices.

24 **6. Motion to Exclude Speculative Testimony of Dr. Philip Allman (Doc. 82)**

25 For the reasons set forth on the record, this Motion is GRANTED.

26 **7. Motion to Limit Damages Outside the Statute of Limitations (Doc. 82)**

27 For the reasons set forth on the record, this Motion is DENIED. However, plaintiff may not
28 claim damages for acts that occurred and were completed before May 5, 2008.

1 **8. Motion to Limit Evidence of Discriminatory Acts that did not Survive Summary Judgment**

2 (Doc. 82)

3 For the reasons set forth on the record, this Motion is DENIED.

4 **9. Motion to Exclude Evidence of the Conditions at MID’s Livingston Office (Doc. 82)**

5 For the reasons set forth on the record, this Motion is DENIED. However, assuming a proper
6 foundation is laid, plaintiff may offer such evidence of his complaints and the responses thereto for the
7 issue of retaliation. On Rule 403 grounds, the court will not allow any but the most basic evidence on
8 the “rundown condition.”

9 **10. Motion to Exclude Evidence of Other Employment-Related Lawsuits by LaMonte
10 Tumbling and Cindy LaCava (Doc. 82)**

11 For the reasons set forth on the record, this Motion is GRANTED. Plaintiff is not precluded
12 from discussing other wrongs or acts.

13 **11. Motion to Exclude any References to Defendant’s Alleged “Corporate Culture” of
14 Discrimination (Doc. 82)**

15 For the reasons set forth on the record, this Motion is DENIED, without prejudice.

16 **12. Motion to Exclude Evidence of Non-Probative Stray Remarks (Doc. 85)**

17 For the reasons set forth on the record and here, this Motion is GRANTED in part, and DENIED
18 in part. The motion is denied as to such statements made by decision makers, including those made by
19 Jem Brown and the members of the Board of Directors. The motion is granted as to Benny McGowan’s
20 statement.

21 **13. Motion to Exclude Hearsay Testimony of Isaias Franco Regarding Statement of Cindy
22 Ardison (Doc. 83)**

23 For the reasons set forth on the record, this Motion is GRANTED.

24 **14. Motion to Exclude Evidence of Jem Brown’s Alleged Instruction to Throw Away Job
25 Applications (Doc. 85)**

26 For the reasons set forth on the record, this Motion is GRANTED.

27 **15. Motion to Exclude Evidence of Allegations of Discrimination or Retaliation by other
28 Employees (Doc. 83)**

1 For the reasons set forth on the record, this Motion is GRANTED. However, the ruling does not
2 exclude other instances of race discrimination and race retaliation.

3 **16. Motion to Exclude the Evidence of Hiring Janet Hughes (Doc. 83)**

4 For the reasons set forth on the record, this Motion is GRANTED.

5 **17. Motion to Exclude Evidence of Marc Smith's Performance as Account Representative**
6 **(Doc. 84)**

7 For the reasons set forth on the record, this Motion is GRANTED.

8 **18. Motion to Exclude Connie Peraino from Trial (Doc. 97)**

9 For the reasons set forth on the record, this Motion is DENIED.

10 **19. Motion to Exclude Evidence of Plaintiff's Physical Injury or Severe Emotion Distress (Doc.**
11 **97)**

12 For the reasons set forth on the record, this Motion is DENIED.

13 **20. Motion to Exclude Irrelevant Testimony of Connie Peraino (Doc. 99)**

14 For the reasons set forth on the record, this Motion is DENIED, without prejudice.

15 IT IS SO ORDERED.

16 **Dated: February 21, 2011**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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