

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
Sacramento Division

CIVIL MINUTES - GENERAL

Case No. 2:06-2404-RT

Date September 1, 2011

Title: *Jeffrey McDonald v. Roseanne Campbell, et al.*

PRESENT:

THE HONORABLE ROBERT J. TIMLIN, JUDGE

Patricia Gomez

Courtroom Clerk

None

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None

ATTORNEYS PRESENT FOR DEFENDANTS:

None

**PROCEEDINGS: ORDER GRANTING DEFENDANT BAKER'S MOTION FOR  
LEAVE OF COURT TO CONDUCT A VIDEO DEPOSITION TO BE USED AT TRIAL  
IN LIEU OF LIVE TESTIMONY (IN CHAMBERS)**

The court has read and considered Defendant Baker's motion for leave of court to conduct a video deposition to be used at trial in lieu of live testimony filed August 5, 2011 ("motion"), Plaintiff McDonald's opposition to that motion filed August 18, 2011, and Defendant Baker's reply filed August 29, 2011. The court will grant Defendant Baker's motion.

The court finds that Defendant Baker has established the existence of "exceptional circumstances" under Federal Rules of Civil Procedure, Rule 32(a)(4)(E) to require a video deposition be taken of witness David Swaney to be used a trial in lieu of his live testimony. As Defendant Baker has stated in his moving papers and the declaration of David Swaney attached thereto, the witness will be out of the country on a pre-paid vacation to South Africa during the time of the trial.<sup>1</sup> Because of the current lack of availability of courtrooms in the courthouse for the Sacramento Division of the Eastern District of California, this trial must proceed on the date it is currently scheduled in the Sacramento Division, or this court will have to move the trial to the Central District of California, Los Angeles for it to be able to go to trial in a timely fashion. Defendant Baker's witnesses (many of whom are doctors and nurses), and their employer, the state prison system, will suffer the attendant increase in financial expense and the loss of medical providers in the overpopulated California prison system for a longer period of time, if these witnesses are required to come to Los Angeles to testify. Further, the court

<sup>1</sup> Mr. Swaney will not be in the USA from October 3 to October 20, 2011. The parties estimate the trial will conclude on or about October 11, 2011.

finds Plaintiff McDonald's objections to be without merit, as Defendant Baker has agreed that Plaintiff McDonald will be given the opportunity to conduct a proper cross-examination during the deposition and to make objections to the admissibility of Mr. Swaney's testimony. The court will rule on those objections before the video of Mr. Swaney's testimony is played to the jury.

IT IS HEREBY ORDERED that Defendant Baker is granted leave to conduct a video deposition of witness David Swaney to be used at trial in this case. Plaintiff McDonald must be present at the deposition, either in person or via videoconference, and be afforded the opportunity to cross-examine the witness and make evidentiary objections.

**IT IS SO ORDERED.**

CIVIL MINUTES

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