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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL D. BIRD,

Plaintiff,

v.

FOSS MARITIME COMPANY,

Defendant.

No. C 07-5776 WDB

ORDER FOLLOWING MARCH 27,
2009, CASE MANAGEMENT
CONFERENCE

On March 27, 2009, the Court conducted a case management conference to discuss plaintiff's request for discovery that he contends he needs to respond to defendant's Motion for Summary Judgment. For the reasons stated on the record, the Court ORDERS as follows.

1. **On Wednesday, May 20, 2009, at 3:15 p.m.**, the Court will conduct a follow up telephonic case management conference. Counsel for defendant will initiate the conference call and telephone the court at 510-637-3909 with all parties on the line. **The parties should note that the above date is not the date specified at the March 27th hearing.** If either party is unavailable on May 20th that party must notify the court promptly.

2. Prior to May 20th, the parties will make all reasonable efforts to complete Port Captain John Butcher's deposition with respect to the issues presented by defendant's Motion for Summary Judgment.

1 At this juncture, the Court finds that it is appropriate for plaintiff to depose
2 Capt. Butcher about the following subjects: (1) the information Capt. Butcher knew
3 before October 18, 2006, with respect to plaintiff's alleged safety complaints, (2)
4 conversations between Capt. Butcher and plaintiff that occurred between September
5 29, 2006 and October 18, 2006, (3) communications between Capt. Butcher and any
6 representative of the Inland Boatman's Union ("IBU") pertaining to the status of Mr.
7 Bird's dues and his eligibility to work in September and October 2006, and (4) actions
8 taken by Capt. Butcher relating to Mr. Bird's employment between September 29,
9 2006 and October 18, 2006.

10 3. Prior to the May 20th conference, plaintiff will contact a representative of
11 the IBU to determine whether the IBU will agree to provide plaintiff with the
12 information needed to respond to defendant's Motion for Summary Judgment. If the
13 union declines to provide this information, plaintiff promptly must use the process
14 provided by Federal Rule of Civil Procedure 45.

15 At this juncture, plaintiff may request from the IBU (1) copies of the union's
16 rules and/or regulations relating to the payment of dues and what actions the union
17 normally takes when a member's dues are in arrears, (2) documents that reflect the
18 status of Mr. Bird's dues between April and November 2006, (3) information about
19 communications, if any, that were exchanged between the union and Foss on the
20 subject of Mr. Bird's dues status and eligibility to work, and (4) information about
21 communications, if any, that were exchanged between the union and Michael Bird on
22 the subject of Mr. Bird's dues status and eligibility to work.

23 4. Defendant's counsel will contact Foss employee Bruce Reed to determine
24 whether Mr. Reed recalls the alleged October 2, 2006, telephone conversation
25 between Mr. Reed and plaintiff.

26 Counsel will obtain a declaration, under penalty of perjury, from Mr. Reed
27 setting forth the information he recalls about that conversation with plaintiff or
28 asserting that he has no recollection of the conversation.

1 5. Defendant's counsel will conduct a reasonable investigation to determine
2 who at Foss may have communicated to the Captain on duty on September 29, 2006,
3 that Mr. Bird should go home on that date.

4 **IT IS SO ORDERED.**

5 Dated: March 30, 2009

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7 WAYNE D. BRAZIL
8 United States Magistrate Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 MICHAEL BIRD,
5 Plaintiff,

Case Number: C 07-5776 WDB

CERTIFICATE OF SERVICE

6 v.

7 FOSS MARITIME COMPANY.
8 Defendants.

9 I, the undersigned, hereby certify that I am an employee in Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on March 30, 2009, I SERVED a true and correct copy(ies) of the Order Following March 27,
12 2009 Case Management Conference and the minute order, filed March 27, 2009, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
15 located in the Clerk's office.

14 Michael D. Bird
15 6196 Inglewood Drive
16 Pleasanton, CA 94588-3934

17 Dated: March 30, 2009

Richard W. Wieking, Clerk

18 *Michelle Sicula*

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20 By: Michelle Sicula, Law Clerk/Deputy Clerk
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