

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
JUDGE WILEY Y. DANIEL**

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Courtroom Deputy: Robert R. Keech  
E.C.R./Reporter: Therese Lindblom

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Date: November 16, 2009

Civil Action No: **07-cv-00004-WYD-KLM**

Counsel:

**STONE INTERNATIONAL MARKET, INC.,**

Sander N. Karp  
James F. Fosnaught

Plaintiff,

v.

**CITY OF WHEAT RIDGE, COLORADO,**

Steven J. Dawes  
Sophia H. Tsai

Defendant.

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**COURTROOM MINUTES**

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**TRIAL TO JURY (DAY 5)**

**8:41 a.m.** Court in Session - Jury not present

Discussion regarding juror 100163028 requesting to be excused due to a death in the family.

Defendant's Motion to Limit Cross-Examination [doc. #302], filed November 16, 2009, is raised for argument.

8:42 a.m. Argument by Defendant (Ms. Tsai).

8:44 a.m. Jury enters

8:45 a.m. Juror 100163028 is excused.

8:46 a.m. Defendant's witness **Chad Root** sworn.

Direct examination by Defendant (Mr. Dawes).

**EX ID: Joint Exhibit 41, A34, A35**

**Exhibit/s A34 RECEIVED.**

9:01 a.m. Cross examination by Plaintiff (Mr. ).

**EX ID: 235, 201, 172**

9:20 a.m. Defendant's witness **Justin Paugh** sworn.

Direct examination by Defendant (Ms. Tsai).

**EX ID: Joint Exhibit 2**

9:27 a.m. Cross examination by Plaintiff (Mr. Fosnaught).

9:34 a.m. Re-Direct examination by Defendant (Ms. Tsai).

9:36 a.m. Defendant's witness **Mark Steven Hester** sworn.

Direct examination by Defendant (Ms. Tsai).

9:40 a.m. Cross examination by Plaintiff (Mr. Fosnaught).

9:42 a.m. Defendant's witness **Tyler Josifek** sworn.

Direct examination by Defendant (Ms. Tsai).

**EX ID: Joint Exhibit 2**

9:55 a.m. Cross examination by Plaintiff (Mr. Fosnaught).

**EX ID: Joint Exhibit 2, A64**

10:07 a.m. Re-Direct examination by Defendant (Ms. Tsai).

**EX ID: 2, A64**

10:11 a.m. Defendant's witness **Ronald C. Sloan** sworn.

Direct examination by Defendant (Ms. Tsai).

**EX ID: A70**

***Witness tendered and accepted as an expert.***

**10:40 a.m.** Court in Recess

**11:04 a.m.** Court in Session - Jury enters

11:05 a.m. Defendant's witness **Ronald C. Sloan** resumes.

Cross examination by Plaintiff (Mr. Karp).

**EX ID: A64, deposition of Justin Paugh (10/26/07) for purposes of refreshing recollection, Joint Exhibit 41**

11:38 a.m. Defendant's witness **Tracy Wardell** sworn.

Direct examination by Defendant (Mr. Dawes).

**EX ID: Joint Exhibit 8, Joint Exhibit 10**

11:45 a.m. Cross examination by Plaintiff (Mr. Fosnaught).

**EX ID: Joint Exhibit 10, Joint Exhibit 8, Joint Exhibit 21, A64, A63**

11:54 a.m. Defendant's witness **Joe Cassa** sworn.

Direct examination by Defendant (Mr. Dawes).

**EX ID: A54, A50**

**Exhibit/s A54, A50 RECEIVED.**

12:12 p.m. Cross examination by Plaintiff (Mr. Fosnaught).

**EX ID: A64, 201, 202**

**Exhibit/s 202 (p. 8 only) RECEIVED.**

12:25 p.m. Re-Direct examination by Defendant (Mr. Dawes).

12:26 p.m. Defendant's witness **Daniel Brennan** sworn.

Direct examination by Defendant (Ms. Tsai).

**EX ID: 164, 238, 164**

**Exhibit/s 238 RECEIVED.**

**12:49 p.m.** Court in Recess

**12:57 p.m.** Court in Session - Jury enters

12:58 p.m. Defendant's witness **Daniel Brennan** resumes.

Direct examination by Defendant continues (Ms. Tsai).

**EX ID: 36, 2**

1:18 p.m. Cross examination by Plaintiff (Mr. Fosnaught).

**EX ID: 2, 164, A48**

**Exhibit/s A48 RECEIVED.**

1:33 p.m. Re-Direct examination by Defendant (Ms. Tsai).

**EX ID: A48**

1:33 p.m. Defendant rests

1:34 p.m. Plaintiff has no rebuttal evidence.

1:35 p.m. Jury excused

**JURY INSTRUCTION CONFERENCE**

#7 Objection by Defendant - OVERRULED.

#12 Objection by Defendant - COURT WILL MODIFY

#15 Objection by Defendant - COURT WILL REMOVE #15.

#18 Objection by Defendant - DEFERRED.

1:45 p.m. Discussion regarding time limits for closing arguments.

**ORDERED:** Closing arguments shall not exceed **thirty (30) per side.**

**1:45 p.m.** Court in Recess

**3:05 p.m.** Court in Session - Jury not present

**JURY INSTRUCTION CONFERENCE**

#18 Objection by Defendant - COURT WILL MODIFY - NO OBJECTION.

Plaintiff's oral motion for judgment as a matter of law.

3:14 p.m. Argument by Plaintiff (Mr. Karp).

**ORDERED:** Plaintiff's oral motion for judgment as a matter of law is **DENIED**.

Defendant's oral motion for judgment as a matter of law.

3:15 p.m. Argument by Defendant (Ms. Tsai).

**ORDERED:** Defendant's oral motion for judgment as a matter of law is **DENIED**.

#26 Objection by Plaintiff - COURT WILL MODIFY - NO OBJECTION.

Defendant's Special Interrogatory is REFUSED.

Verdict Form Objection by Defendant - OVERRULED.

**ORDERED:** Defendant's Motion to Limit Cross-Examination [doc. #302], filed November 16, 2009, is **DENIED AS MOOT**.

3:35 p.m. Jury enters

Court reads stipulated facts, jury instructions, and verdict form.

3:51 p.m. Bench conference regarding jury instruction 17.

3:52 p.m. Court continues reading jury instructions and verdict form.

4:09 p.m. No objection to jury instructions and verdict form as read by the Court.

4:11 p.m. Closing argument by Plaintiff (Mr. Karp).

4:37 p.m. Closing argument by Defendant (Mr. Dawes).

5:08 p.m. Rebuttal argument by Plaintiff (Mr. Karp).

5:11 p.m. CSO sworn

Court's remarks to jurors regarding protocol for jury deliberations.

5:13 p.m. Jury excused for the evening and shall commence deliberations on Tuesday, November 17, 2009, at 9:00 a.m.

Court's remarks to counsel regarding availability.

**5:14 p.m.** Court in Recess - HEARING CONTINUED

**TOTAL TIME: 6:41**