

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-00324-CMA-MJW

PAULA D. BRAGG,

Plaintiff(s),

v.

OFFICE OF THE DISTRICT ATTORNEY, THIRTEENTH JUDICIAL DISTRICT,

Defendant(s).

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MINUTE ORDER

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Entered by Magistrate Judge Michael J. Watanabe

It is hereby **ORDERED** that Plaintiff's Motion for Court Approval of a Specific Witness for Plaintiff (docket no. 117) is **GRANTED** for the following reasons:

I find that Defendant was aware of witness Larry Mueller. See paragraphs 4 through 23, inclusive, in the subject motion (docket no. 117). In addition, I also find, to the extent that Defendant asserts Plaintiff failed to disclose Mr. Mueller pursuant to Fed. R. Civ. P. 26(a)(1), that such "failure to comply with the mandate of Rule 26(a)(1) is harmless when there is no prejudice to the party entitled to the disclosure." Lobato v. Ford, 2007 WL 2593485, (D. Colo. Sept 5, 2007), [Civil Action No. 05-cv-01437-LTB-CBS], \*8, p. 9, citing Nguyen v. IPB, Inc., 162 F.R.D. 675, 680 (D. Kan. 1995). Moreover, I find that Defendant will not be prejudiced or surprised concerning the testimony of Mr. Mueller. The Defendant has the ability to cure any prejudice by taking the deposition of Mr. Mueller prior to the Final Trial Preparation Conference set for July 17, 2009, at 9:00 a.m. and prior to the jury trial that is scheduled to begin on August 10, 2009, at 1:30 p.m. See docket no. 112 for these settings by Judge Arguello. That the testimony of Mr. Mueller will not disrupt the trial. The Plaintiff did not engage in bad faith or willfulness concerning Mr. Mueller. Accordingly, under both Lobato, *supra*, and Woodworkers Supply Inc. v. Principle Mutual Life Insurance Co., 170 F.3d 985, 993 (10<sup>th</sup> Cir. 1999), the subject motion (docket no. 117) should be GRANTED.

It is **FURTHER ORDERED** that the parties shall meet forthwith and set the deposition for Larry Mueller. Mr. Mueller's deposition shall be completed on or before June 15, 2009, and discovery is extended to June 15, 2009, for the limited purpose of taking Mr. Mueller's deposition and for no other purpose.

Date: May 15, 2009

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