

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Christine M. Arguello**

Civil Action No. 08-cv-00656-CMA-CBS

REX E. FULLER,

Plaintiff,

v.

SEAGATE TECHNOLOGY, LLC,

Defendant.

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**ORDER REGARDING MOTION TO STRIKE**

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This matter is before the Court on Plaintiff's Motion to Strike Portions of Defendant's Reply Brief on Summary Judgment, to Consider Plaintiff's Sur-Reply, and to Await and Consider the Result of Defendant's Internal Investigation into the Origin and Authenticity of Exhibit 34 (Doc. # 42) ("Motion to Strike"). For the following reasons, the Motion to Strike is GRANTED IN PART AND DENIED IN PART.

First, Plaintiff contends that Defendant improperly submitted Exhibit WW with Defendant's Reply in Support of Its Motion for Summary Judgment. Plaintiff argues that Exhibit WW is untimely and contravenes Defendant's duty to supplement its earlier discovery responses. The Court, having reviewed the issue and the parties' arguments, concludes that Exhibit WW need not be stricken, but that Plaintiff should be permitted leave to respond to Exhibit WW with a short sur-reply brief. The sur-reply shall be

limited solely to addressing the effect of Exhibit WW on Plaintiff's arguments in opposition to summary judgment and limited to five pages in length.

Second, Plaintiff asks the Court to forestall any decision on the Motion for Summary Judgment until Defendant can determine the author of the "talk bubbles" portion of Plaintiff's Exhibit 34, a "Critical Skills" document that Plaintiff received from Defendant during discovery. The author's identity was the subject of an earlier Motion to Compel and, apparently, Defendant's in-house counsel has endeavored to discern the author of the talk bubbles to determine the authenticity and admissibility of the document. To date, the parties have not indicated whether Defendant's in-house counsel has completed the investigation. Given Defendant's counsel's representations to Plaintiff's counsel, the Court will refrain from acting on the Motion for Summary Judgment until Defendant submits a status report on the investigation into the identity of the author of the talk bubbles. Defendant's report should inform the Court and Plaintiff of the current status of Defendant's investigation and any other relevant issues regarding Exhibit 34.

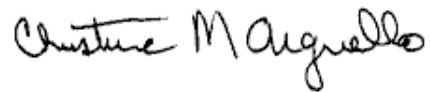
Accordingly, the Motion to Strike (Doc. # 42) is GRANTED IN PART AND DENIED IN PART; it is

FURTHER ORDERED that Plaintiff shall be permitted leave to file a sur-reply brief within ten (10) days of the date of this Order. The sur-reply shall be limited to five pages; it is

FURTHER ORDERED that Defendant shall file a status report regarding the investigation into the authorship of the talk bubbles within ten (10) days of the date of this Order.

DATED: July 8, 2009

BY THE COURT:

A handwritten signature in black ink that reads "Christine M. Arguello". The signature is written in a cursive style with a large initial 'C' and 'A'.

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CHRISTINE M. ARGUELLO  
United States District Judge