

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge William J. Martínez

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Courtroom Deputy: Deborah Hansen  
Court Reporter: Gwen Daniel

Date: August 11, 2011

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Civil Case No. 09-cv-02895-WJM-MJW

Counsel:

MICHAEL McCAMMOND,

James C. Vaughters

Plaintiff,

v.

SCHWAN'S HOME SERVICE, INC.,

Alan L. Rupe

Defendant.

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COURTROOM MINUTES

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TRIAL PREPARATION CONFERENCE

03:00 p.m. Court in Session

Appearances

Court's comments

Discussion re stipulations to exhibits

**ORDERED: Counsel shall meet and confer over the telephone, by Monday, August 15, and submit no later than Tuesday, August 16, 2011 amended Exhibit Lists reflecting their best effort to stipulation to as many trial exhibits as possible.**

Discussion re proposed Voir Dire

Mr. Rupe will e-mail a copy of Defendant's proposed Voir Dire to chambers.

Court's comments

The Defendant's proposed disputed Jury Instructions do not contain legal citations nor are they properly entitled as is required by this Court's Practice Standards.

Discussion

**ORDERED: The Defendant shall file on or before Tuesday, August 16, 2011, a revised set of disputed Jury Instructions which comply with this Court's Practice Standards.**

Court's further comments

The Defendant has not filed its objections to Plaintiff's disputed Jury Instructions.

Discussion

**ORDERED: The Defendant has until the close of business Friday, August 12, 2011 to file its objections to Plaintiff's disputed Jury Instructions. No further extensions will be granted.**

Court's further comments

Previously the Court had entered an Order directing simultaneous trial briefs to be filed on or before August 12, 2011. The Court will issue an order prior to trial disposing of one, some or all of the issues directed to be addressed in the trial briefs.

Court's further comments

Discussion re Plaintiff's damage calculation, front pay

**ORDERED: The parties shall include in the trial briefs to be filed on August 12, 2011 a discussion of whether calculations regarding Plaintiff's purported front pay damages must be reduced to present value.**

The Court addresses the issue of whether Minnesota law provides that the Court or a jury determine the amount of front pay.

Discussion

**ORDERED: The parties shall file simultaneous supplemental trial briefs on or before Tuesday, August 16, 2011, limited to five pages or less, addressing the issue of whether Minnesota law provides that it is the Court or the jury which determines the amount of Plaintiff's front pay, if any. No responses to the supplemental trial briefs shall be filed and no extension of time to submit same will be granted.**

The Court addresses deposition designations.

Plaintiff filed objections to Defendant's designation of deposition testimony -- specifically the testimony of the Plaintiff.

Although Defendant served its proposed deposition designations on Plaintiff on August 1, 2011, it has not filed them with the Court.

Discussion

**ORDERED:** By no later than August 12, 2011, Defendant shall file its proposed designations of deposition testimony. The Court will consider that document as having been filed *nunc pro tunc* to August 1, 2011. The Court will make a determination as to whether it will allow the use at trial of Plaintiff's deposition in the manner proposed.

Mr. Vaughters' comments

**ORDERED:** The parties shall submit hard copies of the exhibits; and submit the exhibits by electronic filing – on a disk.

Defendant's Motion in Limine [52]

**ORDERED:** The Defendant's Motion in Limine [52] is GRANTED IN PART AND DENIED IN PART as follows:

The Motion in Limine is DENIED as to Category A, Evidence of and/or Request for Damages Exceeding Contractual Provisions.

The Motion in Limine is GRANTED as to Category B, Findings of the Colorado Department of Labor and Employment.

The Motion in Limine is DENIED as to Category C, Out of Court Statements and Unavailable Witness Testimony.

The Motion in Limine is DENIED as to Categories D & E, Home Service's Financial Status (D) and "David and Goliath" and Similar Analogies (E). The Court will allow Plaintiff to reference at trial the facts that Defendant is a well-known, large, national entity, as well as make general comments about the respective status of the parties. Given that punitive damages are not sought in this case, however, the Court will not permit more particularized statements about Defendant's sales, net worth or other financial information.

**The Motion in Limine is GRANTED as to Category F, Existence of this Motion in Limine and/or Subsequent Order.**

Mr. Vaughters' comments

**ORDERED: The rule of sequestration, Rule 615, will be invoked.**

**ORDERED: Trial will commence on August 22, 2011 at 8:00 a.m. Courtroom A601.**

03:47 p.m. Court in Recess  
Hearing concluded  
Time: /47