

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Magistrate Judge Kathleen M. Tafoya**

**Civil Action No.** 10-cv-00813-CMA-KMT

FTR - Courtroom C-201

**Date:** May 2, 2011

Deputy Clerk, Nick Richards

GUY PAQUET, and  
ELIZABETH PAQUET,

No appearance

Plaintiffs,

v.

MARK SMITH,

William James Garehime, Jr.  
Louis Daniel Lopez, Jr.

Defendant.

**COURTROOM MINUTES / MINUTE ORDER**

**EVIDENTIARY HEARING**

**Court in session: 9:17 a.m.**

Court calls case. Appearance of counsel. Counsel for Plaintiff, Mr. James E. Preston, does not appear. The Court announces that it waited 18 minutes to see if the plaintiffs' counsel would call in for the hearing. Mr. Preston made no telephonic contact with the court.

Evidentiary Hearing called in regard to Defendant's Motion for Protective Order [Doc. No. 47, filed March 16, 2011] and Defendant's Motion to Compel and Request for Hearing [Doc. No. 67, filed April 28, 2011]. The Court will also consider Plaintiff's Emergency Motion to Reset F.R.Civ.P 37 [Doc. No. 73, filed May 1, 2011] and Plaintiffs' Request for Judicial Notice F.R.E 201(d) [Doc. No. 70, filed April 29, 2011].

It is **ORDERED:** Defendant's Motion for Protective Order [47] is **GRANTED** as was stated on the record on March 21, 2011. The plaintiffs had requested an evidentiary hearing to rebut allegations in the motion but have failed to appear, even by telephone, for the hearing they requested. All other matters were resolved at the March hearing.

It is **ORDERED:** The deposition of Mr. Smith has not been noticed for the week of May 2, 2011 and therefore will not be taken. The court required Mr. Smith to appear in Denver during the week of May 2, 2011. The court noted that Mr. Smith was present in the courtroom. The

plaintiffs have therefore forfeited their right to take Mr. Smith's deposition.

It is **ORDERED**: To the extent Plaintiffs' Request for Judicial Notice F.R.E 201(d) [Doc. No. 70, filed April 29, 2011] is considered a motion regarding the Thursday afternoon setting of Elizabeth Paquet's deposition, the Request for Judicial Notice is **GRANTED**. The court notes that the defendant, in compliance with the court's minute order, has re-set the deposition to take place May 3, 2011 at 9:00 a.m.

It is **ORDERED**: Defendant's Motion to Compel and Request for Hearing [67] is **GRANTED** to the extent the depositions are rescheduled, with Elizabeth Paquet's deposition beginning May 3, 2011 at 9:00 a.m. and Guy Paquet's deposition beginning May 4, 2011 at 9:00 a.m. as previously noticed.

It is **ORDERED**: Plaintiff's Emergency Motion to Reset [73] is **DENIED**. The court notes that had the plaintiffs requested to appear by telephone at the hearing the court would have been inclined to grant such a motion, even in light of the fact that it was the plaintiffs who requested to appear in person and provide their testimony which necessitated the hearing.

It is **ORDERED**: Reasonable sanctions will be imposed on Plaintiff's counsel and the plaintiffs for failure to attend, at least by telephone, this hearing. Defense counsel will submit a cost statement detailing their attorney fees for appearing as well as lodging expenses for Sunday, May 1, 2011.

The Court has reviewed the criteria under *Ehrenhouse v. Reynolds*, 965 F.2d 916 (10th Cir. 1992) to determine if extraordinary sanctions should be considered. The Court finds there is substantial prejudice to the defendant, who flew to Denver for the purpose of this hearing and depositions set for the week of May 2, 2011 upon specific order of this court after the March 21, 2011 hearing. There were no objections filed to the order requiring all parties to appear in Denver, Colorado during the week of May 2, 2011 for properly noticed depositions and the May 2, 2011 hearing. The Court will further consider the amount of interference with the judicial process and the culpability of the plaintiffs in light of proceedings scheduled for the remainder of the week.

**Court in Recess: 9:37 a.m.**

Hearing concluded.

Total In-Court Time 00:20

\*To obtain a transcript of this proceeding, please contact Avery Woods Reporting at (303) 825-6119.