

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-01396-RBJ-KLM

FEDERAL TRADE COMMISSION and  
STATE OF COLORADO, *ex rel.* JOHN W. SUTHERS, ATTORNEY GENERAL,

Plaintiffs,

v.

RUSSELL T. DALBEY,  
DEI, LLLP,  
DALBEY EDUCATION INSTITUTE, LLC,  
IPME, LLLP,  
CATHERINE L. DALBEY, and  
MARSHA KELLOGG,

Defendants.

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MINUTE ORDER

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ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

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This matter is before the Court on Plaintiffs' **Motion for a Preliminary Injunction and Other Equitable Relief** [Docket No. 2; Filed May 26, 2011] (the "Motion for Preliminary Injunction"); Defendants Russell T. Dalbey and Dalbey Education Institute, LLC's **Motion to Exclude for All Purposes All Evidence Regarding Surveys Conducted by FTC's Experts Manoj Hastak and Frederica Conrey Under *Daubert v. Merrell Dow Pharms, Inc.*** [Docket No. 80; Filed August 24, 2011] (the "Motion to Exclude"); and Plaintiffs' **Notice of Withdrawal of Their Motion for a Preliminary Injunction and Other Equitable Relief** [Docket No. 109; Filed September 29, 2011] (the "Notice"). On September 30, 2011, the Notice was converted into a motion. See *Docket Annotation* [#111]. As an initial matter, the Notice, as a motion, does not comply with D.C.COLO.LCivR 7.1A, which provides as follows:

The Court will not consider any motion, other than a motion under Fed. R. Civ. P. 12 or 56, unless counsel for the moving party or a *pro se* party, before filing the motion, has conferred or made reasonable, good faith efforts to confer with opposing counsel or a *pro se* party to resolve the disputed matter. The moving party shall state in the motion, or in a certificate attached to the motion, the specific efforts to comply with this rule.

The Notice is subject to denial on this basis alone. Nevertheless, in the interest of expediency,

IT IS HEREBY **ORDERED** that the Notice [#109] is **GRANTED**. Accordingly,

IT IS FURTHER **ORDERED** that the Motion for Preliminary Injunction [#2] is **WITHDRAWN**.

IT IS FURTHER **ORDERED** that the Status Report Deadline with respect to the Motion for Preliminary Injunction [#2] set for October 25, 2011, see *Minute Order* [Docket No. 90], is **VACATED**. Further, in light of the withdrawal of the Motion for Preliminary Injunction [#2],

IT IS FURTHER **ORDERED** that the Motion to Exclude [#80] is **DENIED, without prejudice, as moot**.

Dated: October 6, 2011