

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**VERONICA BUTLER,** )  
**Wife of Anthony Butler, Deceased,** )  
 )  
**Plaintiff,** )  
 )  
**vs.** )  
 )  
**KEVIN J. CAVANAUGH et al.,** )  
 )  
**Defendants.** )

**Case No. 4:14-CV-00094-JAR**

**MEMORANDUM AND ORDER**

This matter is before the Court on Defendant/Cross Claimant Kevin Cavanaugh’s (“Cavanaugh”) Motion for Leave to File Sur-reply (Doc. 199), Cavanaugh’s Motion for Leave to File Kevin Johnson’s Affidavit and Full Deposition Transcript (Doc. 200), Defendant Cody McKee’s (“McKee”) Motion to Strike (Doc. 203), and Defendants PAM Transport, Inc. (“PAM Transport”), McKee, and Wade McClure’s (“McClure”) Motion to Strike (Doc. 204). The Motions are ready for disposition. For the following reasons, Cavanaugh’s Motion for Leave to file Sur-reply will be **GRANTED**, Cavanaugh’s Motion for Leave to File Kevin Johnson’s Affidavit and Full Deposition Transcript will be **GRANTED**, McKee’s Motion to Strike will be **DENIED**, and PAM Transport, McKee, and McClure’s Motion to Strike will be **DENIED**.

Motion for Leave to File Sur-reply

In his Motion for Leave to File Sur-reply (Doc. 199), Cavanaugh requests leave to file a sur-reply in opposition to Defendants Furex, Inc. and Ivan Chepynets’ Motion to Exclude the Expert Testimony of Kevin Johnson. He further indicates that his sur-reply would also constitute a sur-reply to Defendants Pam Transport, McKee, and McClure’s Motion to Exclude the Opinions of Kevin Johnson and Notice of Joinder in Defendants Furex, Inc. and Ivan Chepynets’

Motion to Exclude Expert Testimony of Kevin Johnson (Doc. 163). In support of his motion, Cavanaugh asserts that Defendants make new arguments which were not addressed in their original motion. He further argues that in his Suggestions in Opposition, he sought to reserve the right to ask this Court for leave to supplement his suggestions after the transcript of Mark Erza, Defendant Furex, Inc's expert witness, was available and that the last defense expert, William Hampton, was not deposed until April 9, 2015. The other Defendants jointly respond, asserting that no new arguments were presented in their joint reply memorandum. They also argue that the testimonies of Mark Ezra and William Hampton have no bearing on whether Mr. Johnson's opinions should be excluded at trial. Upon consideration, the Court will allow Cavanaugh to file his sur-reply.

#### Motion for Leave to File Kevin Johnson's Affidavit and Full Deposition Transcript

Cavanaugh also filed a Motion for Leave to File Kevin Johnson's Affidavit and Full Deposition Transcript (Doc. 200). Cavanaugh argues that the Court should consider Mr. Johnson's report in regard to the motion for summary judgment. Neither Plaintiff nor the other Defendants responded to Cavanaugh's Motion. Without commenting on the merits of the Parties' respective arguments regarding either the admissibility of Mr. Johnson's testimony or what, if any, weight the Court will give it during the summary judgment phase, in the interest of a full and fair review, the Court will allow Cavanaugh to file Mr. Johnson's affidavit, report, and full deposition transcript.

#### Motions to Strike

Also pending before the Court is McKee's Motion to Strike (Doc. 203) and PAM Transport, McKee, and McClure's Motion to Strike (Doc. 204). These Defendants seek to strike Plaintiff's Supplemental Case Citations in response to their respective motions (Docs. 197, 198). In support of their motions, Defendants McKee, PAM Transport, and McClure assert that the

filings are akin to sur-replies and Plaintiff did not seek the required leave from the Court. Although Plaintiff did not seek leave from the Court to file her Supplemental Case Citations, the Court will review the case. Further, to the extent that these Defendants' Motions include merit based arguments against the application of the case to the present matter, the Court will also review those arguments.

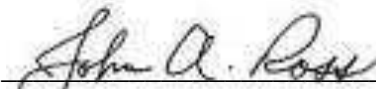
Accordingly,

**IT IS HEREBY ORDERED** that Defendant/Cross Claimant Kevin Cavanaugh's ("Cavanaugh") Motion for Leave to File Sur-reply (Doc. 199) is **GRANTED**.

**IT IS FURTHER ORDERED** that Cavanaugh's Motion for Leave to File Kevin Johnson's Affidavit and Full Deposition Transcript (Doc. 200) is **GRANTED**.

**IT IS FURTHER ORDERED** that Defendant Cody McKee's Motion to Strike (Doc. 203) and Defendants PAM Transport, Inc., McKee, and Wade McClure's ("McClure") Motion to Strike (Doc. 204) are **DENIED**.

Dated this 28th day of May, 2015.

  
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JOHN A. ROSS  
UNITED STATES DISTRICT JUDGE