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Michael Malatesta
9

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 ROBERT AKANA, individually

13 Plaintiff,

14 vs.

15 CARTER POWERSPORTS; JESSE
16 PATTERSON, an individual; MICHAEL
MALATESTA, an individual; DOE
17 EMPLOYEES I-X; ROE ENTITIES I-X;
inclusive,

18 Defendants.

Case No: 2:16-cv-02221-GMN-PAL

**DEFENDANTS' REQUEST FOR
EXCEPTION FROM PERSONAL
ATTENDANCE AT EARLY NEUTRAL
EVALUATION CONFERENCE**

19 Defendants CARTER POWERSPORTS ("Carter") and MICHAEL MALATESTA, by and
20 through their counsel of record, SHERI M. THOME and CHAD C. BUTTERFIELD of the law firm
21 of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, hereby submit the instant
22 request for exception from personal attendance at the Early Neutral Evaluation Conference set for
23 March 1, 2017, before Judge Hoffman. [ECF No. #20] The request is to excuse the personal
24 attendance of two out-of-state persons, Defendant Michael Malatesta and Sentry Insurance
25 representative Matt Tobin, both of whom can be available by phone. Defendant Carter Powersports,
26 through its President Dave Carter, will attend the ENE in person with counsel. If Jesse Patterson has
27 been served with the Complaint by that time, he should be able to attend the ENE as well.
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Background and Grounds for the Request

This is an employment discrimination matter in which Mr. Akana, a former employer of Carter Powersports, is making state and federal claims against the company and two of its former employees, Michael Malatesta and Jesse Patterson. Mr. Malatesta lives and runs his own business in Illinois, thus it would be burdensome for him to travel to Las Vegas for the conference. Mr. Malatesta will be available to discuss the matter with the Court via phone, should the Court wish to speak to him.

Carter Powersports is insured through Sentry Insurance, and the claims representative, Matt Tobin, is located in Wisconsin. The policy affords coverage with a deductible that equates to 10% of the total defense/indemnity costs, thus Mr. Carter has authority as it pertains to the decision to settle, and can productively discuss resolution at the ENE. Additionally, Mr. Tobin will be available to discuss by phone as needed. Finally, Plaintiff’s counsel has indicated that she will be preparing a demand before the conference, so Mr. Tobin, counsel and Mr. Carter can jointly discuss authority in light of the demand. All of these factors demonstrate that Mr. Tobin’s absence will not impact Defendants’ ability to resolve the matter, if desired. Accordingly, Defendants request that Mr. Malatesta and Mr. Tobin be permitted to appear at the ENE via telephone.

DATED this 13th day of February, 2017.

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

BY: /s/ Sheri M. Thome
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IT IS SO ORDERED.

DATED: February 15, 2017



C.W. HOFFMAN, JR.
UNITED STATES MAGISTRATE JUDGE

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Fed. R. Civ. P. 5(b), I certify that I am an employee of WILSON, ELSER,
3 MOSKOWITZ, EDELMAN & DICKER LLP and that on this 13th day of February, 2017, I served a
4 true and correct copy of the foregoing **DEFENDANTS' REQUEST FOR EXCEPTION FROM**
5 **PERSONAL ATTENDANCE AT EARLY NEUTRAL EVALUATION CONFERENCE** as
6 follows:

- 7 by placing same to be deposited for mailing in the United States Mail, in a sealed
8 envelope upon which first class postage was prepaid in Las Vegas, Nevada;
9 and/or
- 10 via electronic means by operation of the Court's electronic filing system, upon
11 each party in this case who is registered as an electronic case filing user with the
12 Clerk; and/or
- 13 via hand-delivery to the addressees listed below; and/or
- 14 via facsimile; and/or
- 15 by transmitting via email the document listed above to the email address set forth
16 below on this date before 5:00 p.m. (PST/PDT).

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BY: /s/ Naomi E. Sudranski
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