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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	)	
	)	
Plaintiff,	)	CV-S-03-1230-KJD-(RJJ)
vs.	)	
SUN CAB COMPANY, INC., d/b/a/ NELLIS CAB COMPANY,	)	<u>ORDER</u>
	)	
Defendant.	)	

This matter came before the undersigned Magistrate Judge on Defendants' Motion to Compel attendance at deposition (#13) and Plaintiff's Motion for Protective Order (#15). The Court has considered the Motion to Compel (#13), Plaintiff's Opposition (#14), Plaintiff's Motion (#15), Defendant's Reply and Opposition (#16) and Plaintiff's Reply.

Defendant seeks to depose three employees of Equal Employment Opportunity Commission (the Commission) including the District Director, regarding the Commission's investigation, decision and efforts of conciliation regarding claims of discrimination made against the Defendant. The Defendant contends that conciliation is relevant and discoverable as a good faith effort is a prerequisite to the jurisdiction of the Court. The Defendant seeks the factual predicate for the letter of determination in an attempt to counteract its value if admitted at trial.

The deposition of the employees will not be allowed regarding the investigation that led to the letter of determination being issued. The Commission has agreed not to introduce the

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1 Letter of Determination at trial, thus the investigation that led up to it is not relevant. Further  
2 even if it were relevant, the Commission and the employees themselves admit that none of the  
3 individuals subpoenaed have a personal recollection of the factual events that gave rise to  
4 Commission filing suit in this case or the issuance of the letter of determination, which is  
5 independent of the documents already provided. Decl. of Perry, Kite, Nelson, attached to  
6 Motion for Protective Order (#15). Also, the Commission has agreed to redact the Investigator's  
7 Memorandum and disclose all factual information to the Defendant. Reply at p. 2.

8 The Depositions will not be allowed regarding the efforts at conciliation as the degree of  
9 conciliation is not a jurisdictional prerequisite. Although the Commission must make an effort to  
10 conciliate prior to filing suit, the Ninth Circuit has not held the adequacy of the effort is  
11 jurisdictional. E.E.O.C. v. Pierce Packing Co., 669 F.2d 605, 608 (9th Cir. 1982). Therefore,  
12 evidence beyond that conciliation was attempted does not remove the power of the court to hear  
13 the case. Further, none of the subpoenaed employees currently has an independent recollection  
14 of the events. Decl. of Perry, Kite, Nelson, attached to Motion for Protective Order (#15).  
15 Therefore, their testimony would be unlikely to lead to admissible information.


16 **ORDER**

17 Based on the foregoing and good cause appearing therefore,

18 IT IS HEREBY ORDERED Defendant's Motion to Compel (#13) is **DENIED**.

19 IT IS FURTHER ORDERED Plaintiff's Motion for Protective Order (#15) is **GRANTED**.

20 DATED this 14<sup>th</sup> day of June, 2004.

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23 ROBERT J. JOHNSTON  
24 United States Magistrate Judge  
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