

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARIA SALINAS,

Plaintiff,

v.

CITY OF NEW BRAUNFELS,

Defendant.

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Civil Action No. SA-06-CA-0729XR

PLAINTIFF'S MOTION IN LIMINE

Plaintiff respectfully files this Motion in Limine. Plaintiff requests that the parties, counsel for the parties, and, through counsel, any and all witnesses be instructed to refrain from asking about or mentioning, directly or indirectly, any of the matters contained in this Motion in Limine. Specifically, Plaintiff requests that the Court exclude from evidence at trial any testimony or documents regarding the following:

- A. Reference to any drug use by Edwin Spencer. Plaintiff requests that all exhibits on which the names of medications appear be redacted, and that the jury be specifically instructed not to concern itself with the decision of the Court to redact this personal information.
- B. Any testimony by any defense expert witnesses, since none were identified.
- C. Any reference or suggestion that Defendant has employed or attempted to employ individuals with disabilities, or that it generally treats people with disabilities in a fair manner. Such evidence would be irrelevant, confusing and highly prejudicial pursuant to F.R.E. 401 and 403. The issue for the jury is not what happened to others, but what happened to Salinas.

- D. Reference to alleged tattoos of Edwin Spencer.
- E. Any reference that Salinas is or has been involved in any grievance, claim or lawsuit or has settled any claim which lawsuit or claim was unrelated to the subject of the present action for the reason that such matters are irrelevant to the issues of this case and are highly prejudicial to Salinas.
- F. Any and all references to alleged prior arrests, detention, or prior interaction with law enforcement officers.
- G. References to any prior relationships Maria Salinas may have had with men other than Mr. Spencer.
- H. Any reference or stating to the jury that Salinas was cohabiting with or was involved in a sexual relationship with Mr. Spencer, for such evidence would be prejudicial and not probative of any controlling issue of fact.
- I. Any reference to herpes or any sexually transmitted disease. Plaintiff specifically requests that the Defendant not refer to any "diagnosis" or "medical information received" by Ms. Salinas. References to her having been diagnosed or having received other information might cause the jury to suspect that she has a stigmatizing disease.
- J. The undue burden or fundamental alteration defenses or any evidence that providing a sign language interpreter would have been costly, expensive, inconvenient, or administratively burdensome. Defendant has not presented any facts supporting the administrative and fiscal defenses available under the ADA. *See* Plaintiff's Response to Defendant's Motion for Summary Judgment, Exhibit 22 (Supplemental Response to Interrogatory No. 2, Response to Interrogatory No. 6). Nor did Defendant comply with the regulations governing these

defenses, as the decision not to provide Ms. Salinas with an interpreter was not made by the head of the public entity, and no written statement was provided to Ms. Salinas. Finally, Defendant has conceded that providing an interpreter to Ms. Salinas would not have created an undue financial burden. Ex. 22 (Request for Admission No. 11).

If Defendant had presented evidence of an undue burden or fundamental alteration, those defenses would involve fact issues to be resolved by the jury. In this case, because Defendant did not raise any affirmative defenses in its answer or in its motion for summary judgment, and has failed to provide any facts supporting these defenses in response to Plaintiff's discovery on these issues, the defenses have been waived and are not before this Court. *Automated Med. Labs., Inc. v. Armour Pharm. Co.*, 629 F.2d 1118, 1123 (5th Cir. 1980) (when defendant has waived his affirmative defense by failing to allege it in his answer and other pleadings, defense has been waived).

For these reasons Defendant must be precluded from making any reference to the cost or administrative difficulties it might have or would have incurred in calling for and paying for a sign language interpreter. References to cost or administrative difficulty or burden before the jury would likely prejudice the jury against Plaintiff, causing them to conclude that costs or administrative burdens would be significant, when in fact Defendant has not provided any facts to Plaintiff that would so suggest.

- K. Maria Salinas' application or attempted application to receive social security or other governmental benefit.
- L. Maria Salinas' application for or receipt of unemployment benefits.
- M. The use of video relay services or video phone as a means by which Maria Salinas could have communicated with Defendant. Ms. Salinas has a video phone with which she can call

hearing people at another location through an interpreter through Video Relay Services (VRS). Defendant implied in its Motion for Summary Judgment that Plaintiff should have used this video phone in order to communicate with the police on the scene. As Plaintiff has previously briefed, Defendant is not set up to receive such a call, and Ms. Salinas was prevented by Defendant from using her video phone in any case.

More important, VRS may not be used for communications between deaf individuals and hearing individuals who are at the same location or site. *See* Plaintiff's Response to Defendant's Motion for Summary Judgment, Exhibit 27. VRS is a free relay service designed to give deaf persons the same degree of access to *telephone services* as hearing individuals enjoy. It therefore may not be used by a deaf to communicate with a hearing person who is physically present at the same site, as Defendant suggests.

Defendant must be prohibited suggesting that VRS (or Ms. Salinas' video phone) might have been used between to facilitate communication between Ms. Salinas and any of Defendant's employees. Mentioning this possibility – which would have been unlawful and which Defendant's own actions made impossible in any event – will likely confuse the jury and could result in their erroneously thinking that VRS might have been used between Ms. Salinas and Defendant on the evening in question.

- N. Any reference to any of Salinas's personal habits such as smoking, drinking, or swearing in an effort to impugn his character as such are not relevant to the issues of this case and are prejudicial to her. F.R.E. 401 and 403.
- O. That this Motion in Limine has been filed or any ruling by the Court in response to this Motion in Limine, suggesting or inferring to the jury that Salinas has moved to prohibit certain matters from being heard by the jurors, or that the Court has excluded certain matters

from the hearing of the jury. F.R.E. 401.

- P. Any reading or reference to comments or statements of attorneys, other than questions to witnesses, contained in any deposition taken in this case because such constitutes unsworn testimony or statements. F.R.E. 603.
- Q. Any mention or reference that a recovery by Salinas may not be subject to federal income taxation. F.R.E. 401 and 403.
- R. Any mention that Salinas has retained his attorneys on a contingency fee basis since such information is irrelevant since this Court will determine the fees she is entitled to recover on an hourly basis pursuant to statute if she prevails. F.R.E. 401 and 403.
- S. Any mention of or reference to any witness who was equally available to either party, was not called as a witness, or to what would have been the testimony of any witness who was not actually called to testify. F.R.E. 401 and 403.
- T. Any reference to when, or how Salinas obtained legal counsel.
- U. Any reference to the financial arrangements with, or the financial strength of, Salinas's counsel.
- V. Any reference or suggestion that Salinas, by this suit, seeks "preferential treatment" in that the duties imposed on Defendant are duties imposed by law.

Plaintiff respectfully submits that each of the matters set out in this Motion in Limine is inadmissible for any purpose, is unduly prejudicial, and would be excluded from evidence on timely and proper objection.

Respectfully submitted,

By: /s/ Lucy D. Wood

LUCY D. WOOD

State Bar No. 24013780
7800 Shoal Creek Blvd., Suite 142-S
Austin, Texas 78757
(512) 454-4816 (Phone)
(512) 302-4936 (Fax)

THOMAS J. CRANE
State Bar No. 05007320
6800 Park Ten Blvd, Suite 208-N
San Antonio, Texas 78213
(210) 737-0499 (PHONE)
(210) 737-2403 (FAX)

JOHN W. GRIFFIN
State Bar No. 08460300
Marek, Griffin & Knaupp
203 N. Liberty St.
Victoria, Texas 77901
(361) 573-5500 (PHONE)
(361) 573-5040 (FAX)

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

Plaintiff's counsel certifies that she has attempted to confer with Defendant's counsel before the filing of this document. Defense counsel has not been available and has not commented on the draft sent him via email.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 2008, a true and correct copy of the foregoing document was sent electronically to the person listed below in accordance with the Local Rules for the U.S. District Court for the Western District of Texas:

Charles S. Frigerio
Riverview Towers
111 Soledad, Suite 840
San Antonio, Texas 78205

Attorney for Defendant

/s/ Lucy D. Wood
LUCY D. WOOD