

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

OCT 3 0 2003

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEPUTY CLERK

EUGENE JAMES SULLIVAN, JR.,

Plaintiff,

VS.

WESTEX CAPITAL LTD., d/b/a PICO §
 PETROLEUM PRODUCTS; TOM GARCIA, §
 and RANDALL BAUM, In Their Individual §
 Capacities, §

Defendants.

CIVIL ACTION NO. SA-01-CA-0499-FB

ORDER CONCERNING PENDING MOTIONS AND
REFERRAL TO UNITED STATES MAGISTRATE JUDGE

Before the Court are the following: (1) Plaintiff's Motion for Leave to File Plaintiff's First Amended List of Proposed Exhibits and Plaintiff's First Amended Designation of Witnesses (docket #80); (2) Defendant's Response to Plaintiff's Motion for Leave and Motion to Strike Plaintiff's First Amended Initial Disclosures (docket #81); (3) Plaintiff's Reply to Defendants' Response to Plaintiff's Motion for Leave and Response to Defendant's Motion to Strike (docket #82); (4) Defendant's Reply Regarding Plaintiff's Motion for Leave and Reply to Plaintiff's Response to Defendant's Motion to Strike (docket #83); (5) Plaintiff's Motion to Strike Defendants' Reply Regarding Plaintiff's Motion for Leave (docket #84); (6) Defendants' Response to Plaintiff's Motion to Strike Defendants' Reply Regarding Plaintiff's Motion for Leave (docket #85); (7) Plaintiff's Reply to Defendant's Response to Plaintiff's Motion to Strike Defendants' Reply Regarding Plaintiff's Motion for Leave (docket #87), as well as (8) Defendant's Motion to Strike Plaintiff's Pleadings, Alternatively, Preclude Evidence Regarding Overtime Damages and Motion for Sanctions (docket #86), and (9) Plaintiff's Response to Defendant's Motion to Strike

21

Plaintiff's Pleadings, Alternatively, Preclude Evidence Regarding Overtime Damages and Motion for Sanctions (docket #88).

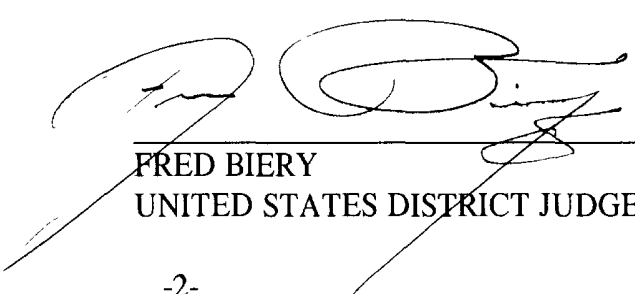
The Court interprets some of counsels' pleading language as acerbic shrillness. Counsel are reminded this is not an egocentric Ramboesque (or perhaps more timely, Terminatoresque) contest. Counsel are reminded they are sworn officers of the Court who, among other things, are obligated to help their clients resolve their dispute as expeditiously and inexpensively as possible. A good portion of a large tree has already been expended in what should be a relatively routine Fair Labor Standards Act case. Plaintiff, Eugene James Sullivan, either IS or IS NOT an independent contractor.

The parties and counsel are therefore encouraged to get this matter ready for trial if they are unable to resolve the matter on their own; however, because of the apparent gamesmanship in lieu of focusing on the needs of the client (the Court is reminded of partisan legislative bodies which focus on everything but the needs of the people who sent them there) IS IT HEREBY ORDERED that the November 17 trial setting is CANCELLED.

IT IS FURTHER ORDERED that the above referenced motions, as well as any additional motions the parties may choose to file, are referred to United States Magistrate Judge John W. Primomo for disposition because Judge Primomo is familiar with this case, counsel, and the remaining issue for trial.

It is so ORDERED.

SIGNED this 30 day of October, 2003.



FRED BIERY
UNITED STATES DISTRICT JUDGE