

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 12/03/2015  
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2014-00458073-CU-AS-VTA  
CASE TITLE: ROBERT DENYER VS AB ELECTROLUX

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Asbestos

EVENT TYPE: Motion to Compel Production - (Defendants The Coleman Company and Rheem Manufacturing Company  
CAUSAL DOCUMENT/DATE FILED:

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With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

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**The court's tentative ruling is as follows:**

**Counsel are reminded that on 12/1/15 the court sent an email inquiring as to whether jurors will be needed for the December 21<sup>st</sup> trial date and is still waiting for responses. That email also attached the court's trial rules which include matters that must be addressed before the trial date. Those trial court rules need to be read, signed by counsel, and emailed or FAXed back to the court by December 9<sup>th</sup>.**

The court denies Plaintiffs Gertrude Denyer's, Edward Lawrence Denyer's and Elizabeth Denyer Hoggan's Application to Compel Defendant(s) The Coleman Company and Rheem Manufacturing Co., Inc. to Produce Summary Judgment Declarants **Marc Freund** and **Richard Fuhrman** for Deposition. (**CCP §§ 2024.050; 2025.280(b).**)

**Discussion:**

Plaintiffs argue that Defendants have relied on the declaration s of Freund and Fuhrman in their motions, that Plaintiffs timely noticed their deposition, that Plaintiffs are entitled as a matter of right to conduct discovery in order to prepare opposition to the MSJs.

**Rheem Manufacturing Co./Richard Fuhrman:**

Rheem argues that Fuhrman is a former employee, and that a notice of deposition on the employer defendant is not sufficient (CCP § 2025.280(a)), and a deposition subpoena is required (CCP § 2025.280(b)) served in Arkansas where he resides. *Maldonado v. Superior Court 2002) 94 Cal. App.4th 1390, 1398* (employment affiliation must exist at the time of the deposition). Rheem also argues that Plaintiffs' counsel has already deposed Mr. Fuhrman on at least four occasions. and another deposition would be duplicative. Plaintiffs allege that Rheem identified Fuhrman as its officer

and agent because he signed discovery responses on behalf of Defendant on October 13, 2015. CCP § 2030.250 (verification must be signed by officer, director, agent).

**The Coleman Company, Inc./Mark Freund:**

**Coleman argues that** discovery closed November 20, that Plaintiffs knew of Freud's declaration with the filing of the MSJ (60 days before the hearing date of Dec. 9), but waited until Nov. 5 to notice his deposition. Coleman also alleges that Freund is a former employee, that the parties agreed to a PMK deposition for November 3 in Philadelphia, that Robert Napp was identified as the PMK, and that there was second affidavit of Mr. Freud for that depo. Mr. Napp testified at his deposition that Mr. Freud was a **former** employee.

Coleman alleges that the notice served on its counsel (Selman-Breitman) for Mr. Freund's deposition on November 5 for a depo date of Nov. 18 was defective, it timely objected on that basis, that a subpoena was requied because Mr. Freud was a former employee who resides in Kansas. CCP § 2025.280(b).

Plaintiffs reference an affidavit of Mr. Freund dated May 8, 2008, covering a time period through 1995 and Coleman's separate statement to their Supp. Reply, which refers to Mr. Freud as a "current employee."

**1. CCP § 437(h) provides the Court may continue an MSJ hearing** to allow the opposing party to conduct discovery, if that party's affidavits show that facts essential to the opposition may exist, but cannot be presented. Plaintiffs don't want to continue the MSJs, and they haven't shown in their filings what facts exist which are essential to their opposition.

**2. Were Freund and Fuhrman employees such that a deposition notice sent to the employer would** be sufficient to for a deposition? (CCP § 2024.280(b).) The court concludes that they were not employees such that a deposition notice sent to the employer would be sufficient. Fuhrman's declaration clearly states he was employed by Rheem from 1966-1999. That he signed the verifications for discovery responses on behalf of Rheem in 2015 does not compel a conclusion that he was Rheems agent, for anything other than the period covered by the discovery requests. He identifies himself as the former Product Engineer at Rheem, e.g.,1956 – 1992, as the relevant period is defined by Plaintiffs. Plaintiff had Mr. Fuhrman's declaration at least by October 10, and the court sees no basis to grant relief to take his deposition, after the discovery cut-off.

Defendant Coleman says it produced Robert Napp at its PMK deposition on November 3, and Plaintiff asked at the deposition the status of Mr. Freud, and was told he was a "former employee." Defendant's separate statement identified Mr. Freud as a current employee, and although Plaintiff may not have known until Nov. 3 that his status changed to "former" employee, Plaintiff should have sought prompt relief from the discovery cut-off, per CCP § 2024.050.