

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 13-CV-1300-MSK-MJW

COLORADO OUTFITTERS ASSOCIATION, *et. al.*,

Plaintiffs

v.

JOHN W. HICKENLOOPER, Governor of the State of Colorado,

Defendant.

PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE CERTAIN TRIAL EXHIBITS

Plaintiffs, by and through their respective counsel, respectfully submit this Motion *in Limine* to exclude certain trial exhibits Defendant's counsel evidently intends to use in connection with two of his designated experts. In support thereof, Plaintiffs state as follows:

1. Plaintiffs' counsel conferred with Defendant's counsel regarding this Motion, pursuant to D.C.COLO.LCivR. 7.1(a). Defendant's counsel stated that Defendant opposes the Motion.

2. Defendant has listed several exhibits (51-58 and 67-82) that are intended to be used during the testimony of Daniel Webster and Jeffrey Zax. Exhibits 51-58 were listed in connection with Webster, and exhibits 67-82 were listed in connection with Zax.

3. The Webster exhibits were provided to counsel for the Plaintiffs on March 24, 2014, and the Zax exhibits on March 27, 2014.

4. Fed. R. Civ. P. 26(a)(1)(B)(iii) requires that the exhibits be in the expert report:

(B) *Witnesses Who Must Provide a Written Report*. Unless otherwise stipulated or

ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. ***The report must contain:***

. . .
(iii) ***any exhibits that will be used to summarize or support them***

5. None of the exhibits identified in connection with Webster and Zax were included in their respective expert reports, as required by Fed. R. Civ. P. 26(a)(1)(B)(iii).

6. Although supplementation is allowed pursuant to Rule 26(e), “[a]ny additions or changes to this information must be disclosed by the time the party’s pretrial disclosures under Rule 26(a)(3) are due.” Fed. R. Civ. P. 26(e)(2). The timing for pretrial disclosures, in turn, is based on 26(a)(3), which requires an identification of each document or exhibit to be used at trial at least 30 days before trial. Fed. R. Civ. P. 26(e)(3)(A)(iii).

7. The parties agreed to a meeting on March 25, 2014, in which to discuss and exchange exhibits. However, even assuming that the agreement to a March 25 meeting for the exchange of exhibit lists amounted to a waiver of the 30-day pretrial rule, the Zax exhibits were not provided until March 27, when counsel for the Plaintiffs specifically requested them.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court to exclude from evidence exhibits 51-58 and 67-82.

Dated this 6th day of April, 2014.

Respectfully submitted,

s/Richard A. Westfall

Richard A. Westfall
Peter J. Krumholz
HALE WESTFALL LLP
1600 Stout Street, Suite 500
Denver, CO 80202
Phone: (720) 904-6010
Fax: (720) 904-6020
rwestfall@halewestfall.com

**ATTORNEYS FOR DISABLED CITIZENS, OUTDOOR
BUDDIES, INC. THE COLORADO OUTFITTERS
ASSOCIATION, COLORADO FARM BUREAU, AND
WOMEN FOR CONCEALED CARRY**

s/David B. Kopel

INDEPENDENCE INSTITUTE
727 E. 16th Avenue
Denver, CO 80203
Phone: (303) 279-6536
Fax: (303) 279-4176
david@i2i.org

A

**TTORNEY FOR JOHN B. COOKE, KEN PUTNAM,
JAMES FAULL, LARRY KUNTZ, FRED JOBE,
DONALD KRUEGER, STAN HILKEY, DAVE STONG,
PETER GONZALEZ; SUE KURTZ, DOUGLAS N.
DARR, AND DAVID STRUMILLO**

s/Douglas Abbott
Jonathan M. Anderson
Douglas Abbott
HOLLAND & HART LLP
Post Office Box 8749
Denver, CO 80201-8749
Phone: (303) 295-8566
Fax: (303) 672-6508
jmanderson@hollandhart.com

**ATTORNEYS FOR MAGPUL INDUSTRIES AND THE
NATIONAL SHOOTING SPORTS FOUNDATION**

s/Marc F. Colin
BRUNO COLIN JEWELL & LOWE PC
1999 Broadway, Suite 3100
Denver, CO 80202-5731
Phone: (303) 831-1099
Fax: (303) 831-1088
mcolin@bcjpc.com

ATTORNEY FOR LICENSED FIREARMS DEALERS

s/Anthony J. Fabian
LAW OFFICES OF ANTHONY J. FABIAN PC
510 Wilcox Street, Suite C
Castle Rock, CO 80104
Phone: (303) 663-9339
Fax: (303) 713-0785
fabianlaw@qwestoffice.net

**ATTORNEY FOR COLORADO STATE SHOOTING
ASSOCIATION AND HAMILTON FAMILY
ENTERPRISES, INC. D/B/A FAMILY SHOOTING
CENTER AT CHERRY CREEK STATE PARK**

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2014, I have served the foregoing pleading via the CM/ECF system for the United States District Court for the District of Colorado:

| | |
|----------------------|--------------------------------|
| David B. Kopel | david@i2i.org |
| Jonathan M. Anderson | jmanderson@hollandhart.com |
| Douglas Abbott | dabbott@hollandhart.com |
| Marc F. Colin | mcolin@bcjlp.com |
| Anthony J. Fabian | fabianlaw@qwestoffice.net |
| Matthew Groves | matt.grove@state.co.us |
| Kathleen Spalding | kit.spalding@state.co.us |
| Jonathan Fero | jon.fero@state.co.us |
| David Blake | david.blake@state.co.us |
| Daniel D. Domenico | dan.domenico@state.co.us |
| Stephanie Scoville | stephanie.scoville@state.co.us |
| John Lee | jtle@state.co.us |
| LeeAnn Morrill | leeann.morrill@state.co.us |

s/Peter J. Krumholz
HALE WESTFALL LLP
1600 Stout Street, Suite 500
Denver, CO 80202
Phone: (720) 904-6010
Fax: (720) 904-6020