

Honorable Barbara Mack
Hearing Date: June 1, 2016
Without Oral Argument

Trial Date: July 11, 2016

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

MARIA LUISA JOHNSON, CARMELIA
DAVIS-RAINES, CHERYL MUSKELLY,
PAULINE ROBINSON, ELAINE SEAY-
DAVIS, TONI WILLIAMSON, and
LYNDA JONES

Plaintiffs,

v.

SEATTLE PUBLIC UTILITIES, a
department of the CITY OF SEATTLE, a
municipality,

Defendants.

Case No.: 15-2-03013-2 SEA

**REPLY IN PLAINTIFFS' MOTION
TO COMPEL**

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1 I. REPLY

2 Instructing a witness not to answer a question is an improper and sanctionable
3 violation of the Civil Rules:

4 *Instructions Not to Answer.* Instructions to the deponent not to answer
5 questions are improper, except when based upon privilege or pursuant to rule
6 30(d). When a privilege is claimed the deponent shall nevertheless answer
7 questions related to the existence, extent, or waiver of the privilege, such as
the date of communication, identity of the declarant, and in whose presence
the statement was made.

8 CR 30(h)(3). The defendant claims that the deposition was closed, but at the first
9 deposition, the defendant produced current SPU Supervisor Faustino, and he brought
10 documents pursuant to the subpoena not in paper form, but on a thumb drive, which could
11 not be opened at the deposition, so they could not be reviewed or used. A second deposition
12 was required. At his first deposition, Faustino admitted to making ageist statements (calling
13 older women workers “old hags”), and denied that he made a racist video of two of the
14 plaintiffs. Moments after the deposition, he apologized to Plaintiff Toni Williamson for
15 lying at the first deposition.

16 In setting up the follow up deposition, plaintiffs’ counsel agreed, “not to cover
17 ground already covered.” At the second deposition, he did not cover old ground. Defense
18 counsel improperly instructed Faustino not to answer the questions about his admissions to
19 Ms. Williamson even though those questions could not have been posed at the first
20 deposition, because Faustino’s admissions did not happen until after the deposition
21 concluded for the day.

22 No doubt opposing counsel prepared in advance to improperly instruct the witness
23 not to answer in violation of the Civil Rules, because he came armed with printed emails to
24 justify his misconduct, which *he entered into the record at the deposition*, and he made a
25 speech, which was prepared in advance, for the record, again to justify his misconduct.

- 1 1. Attorney Arthur Simpson's instruction to Mr. Faustino not to answer a
2 question properly posed at his deposition was a willful violation of CR
3 30(h)(3).
- 4 2. By submitting a declaration of Mr. Faustino, Mr. Simpson's conduct
5 amounted to coaching the witness between the question and the answer,
6 which was obstructionistic and sanctionable under *Johnson v. Jones*, 91 Wn.
7 App. 127, 134, 955 P.2d 826 (1998).
- 8 3. By coaching the witness between the question and the answer, plaintiffs have
9 been prejudiced.

10 The Court should order the following:

- 11 1. Plaintiffs' motion to compel the testimony of Mr. Faustino is GRANTED.
- 12 2. Mr. Faustino shall appear at a time and place to be determined by the
13 plaintiffs.
- 14 3. The Court will consider at a later time whether and what types of sanctions
15 are appropriate.
- 16 4. The attorneys for the defense are ordered not to interfere again in the conduct
17 of any deposition.

18 Respectfully submitted this 31st day of May, 2016.

19 THE SHERIDAN LAW FIRM, P.S.

20
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