

District Court, Weld County, Colorado Address: P.O. Box 2038 Greeley, CO 80632	
CRAIG D. BUCKLEY, an individual,  v.  DREAM STONE, INC., a Colorado corporation, SCOTT MURPHY, an individual, EVE MURPHY, an individual, RON MURPHY, an individual	<b>▲ COURT USE ONLY ▲</b>
Attorneys for Defendants: Daniel T. Goodwin, #2971 Blaine D. Bowne, #24481 Donelson Ciancio & Goodwin, PC 8001 Arista Place, Suite 400 Broomfield, Colorado 80021 Telephone: 303-450-1665 Fax: 303-457-1175 E-mail: dangoodwin@colo-law.com blainebowne@colo-law.com	Case No. 2009CV991  Division: 1  Courtroom: Judge Hartman
<b>DEFENDANTS' RESPONSE TO MOTION FOR SETTLEMENT CONFERENCE</b>	

Defendants, by and through their attorneys, Donelson, Ciancio & Goodwin, P.C., respond to Plaintiff's Motion for Settlement Conference, as follows:

1. The Plaintiff's motion amounts to nothing more than a continuing diatribe against the Defendants and their counsel. However, Plaintiff frames the sole issues which form the basis of his Complaint, i.e. his claims are limited to "approximately \$840.00 in vacation pay, and a few months of Unemployment Compensation." (See, Paragraph 1 of Plaintiff's Motion for Settlement Conference).

2. Plaintiff admits that he has "no reasonable chance of prevailing." (See, Paragraph 4 of Plaintiff's Motion for Settlement Conference). He is correct in that admission, but the reason is that his claims are not justified.

3. Plaintiff further admits that he has gained the advice of counsel and, after conferring with counsel, desires to "extricate himself from this case via a Settlement Conference before the Court," the purpose being to "end this matter." (See, Paragraph 5 of Plaintiff's Motion for Settlement Conference).

4. The Plaintiff actually requests that his case be dismissed as "allowing this case to continue will cause the loss of Plaintiff's home, as he is currently unemployed due to the rigorous, unrelenting demands of fighting the Defendants." (See, Paragraph 8 of Plaintiff's Motion for Settlement Conference).



5. Plaintiff has admitted in his previous pleadings that he sought, and has been awarded, unemployment benefits from Dream Stone, Inc. (See, Plaintiff's Complaint, especially Paragraphs 25 and 31; See, Plaintiff's First Amended Complaint Paragraph 18). Plaintiff's apparent claims for a further award of unemployment benefits from this Court is barred by res judicata.

6. Plaintiff has admitted that he has filed a claim with the Colorado Department of Labor and Employment seeking an award for payment of alleged vacation pay due him. A copy of Plaintiff's "Claimant Response" filed with the Colorado Department of Labor and Employment-Labor Relations seeking vacation pay from Dream Stone, Inc., in Claim Number: 0444-10 is attached hereto as Exhibit 1.

7. The Plaintiff did not file this action seeking review of the unemployment benefits award but rather filed it as a first party cause of action for additional benefits ("a few months of unemployment compensation") arising out of his employment with Dream Stone, Inc.

8. Further, as to the issue of vacation pay, Plaintiff chose the Colorado Department of Labor and Employment ("CDLE") as the forum to decide the issue. The CDLE has not issued an order which Plaintiff seeks to have this Court review. This Court lacks the subject matter jurisdiction to hear Plaintiff's claims regarding unemployment benefits or wage issues against Dream Stone, Inc. The Plaintiff's claims must be resolved by the proper administrative agency. Stacks v. The Industrial Commission, et al., 65 Colo. 20; 174 P. 588; (1918).

9. Even reading the Plaintiff's claims in a light most favorably to him, each and every one of his causes of action arise out of injuries he alleges to have sustained as a result of his status as an employee of Dream Stone, Inc. Plaintiff's sole and exclusive remedy for physical or mental injuries incurred in the workplace is Worker's Compensation, which has preempted judicial jurisdiction of workplace damages claims, except for review of agency awards. Again, the District Court lacks the subject matter jurisdiction to hear Plaintiff's suit.

10. Defendants' challenge to the Court's subject matter jurisdiction herein is timely brought. The Town of Carbondale v. GSS Properties, LLC, 169 P.3d 675 (Colo. 2007).

11. Though inarticulately pled, Plaintiff has requested that the Court dismiss this matter pursuant to C.R.C.P. 41(a). The Defendants do not object to dismissal of Plaintiff's case with prejudice. Plaintiff's request for dismissal is made after consultation with an attorney licensed in Colorado, and, as alleged by Plaintiff, upon the attorney's advice.

12. Plaintiff has not shown the necessity for a Settlement Conference to obtain a dismissal of his case, and Defendants do not request a Settlement Conference and advise the Court that a Settlement Conference will not resolve this case. Plaintiff's claims are unwarranted, frivolous, groundless and vexatious. Defendants are prepared to defend their reputations from all of Plaintiff's claims. A Settlement Conference would invariably be used by the Plaintiff as a bully pulpit to continue to disparage the Defendants on the record.



13. Plaintiff's Motion provides the Court with additional reason to grant Defendants' Motion to Dismiss Plaintiff's Suit With Prejudice Pursuant to C.R.C.P. Rule 37(d) and Rule 41(b), or in the Alternative for Entry of Default Judgment, and for Hearing.

WHEREFORE, Defendants confess Plaintiff's Motion for Settlement Conference to the extent that the relief granted is limited to dismissal of Plaintiff's case with prejudice.

Respectfully submitted this 7th day of May, 2010.

DONELSON CIANCIO & GOODWIN, P.C.

s/Daniel T. Goodwin, Esq.  
Daniel T. Goodwin, Esq., 2971  
Blaine D. Bowne, Esq., #24481  
Attorneys for Defendants

Pursuant to C.R.C.P. 121 §1-26(9), a printed copy of this electronically-filed document with original signatures is being maintained at the offices of Donelson Ciancio & Goodwin, P.C. and is available for inspection by other parties or the court upon request.

#### CERTIFICATE OF SERVICE

I do hereby certify that on this 7th day of May, 2010, a true and correct copy of the foregoing **DEFENDANTS' RESPONSE TO MOTION FOR SETTLEMENT CONFERENCE** was served via Lexis/Nexis File & Serve:

Craig Buckley  
[REDACTED]  
Longmont, CO 80501  
[REDACTED]

s/Janice Bennett

