UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DOUGLAS G. LOGAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 1:10-CV-1315-TWP-TAB
	)	
USA TRACK & FIELD, INC.,	)	
	)	
Defendant.	)	

DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO STRIKE PARAGRAPHS 17 AND 24 OF PLAINTIFF'S COMPLAINT

Defendant, USA Track & Field, Inc. ("USATF"), by counsel, submits its Brief in Support of Motion to Strike Paragraphs 17 and 24 of Plaintiff's Complaint.

I. INTRODUCTION

On October 20, 2010, Plaintiff Douglas Logan ("Plaintiff" or "Logan") filed his Complaint seeking damages for alleged breach of contract and alleged violation of the Indiana Wage Claim Statute, I.C. § 22-2-9 et seq. (Docket No. 1) Paragraphs 17 and 24 of Plaintiff's Complaint allege:

> (17) On or about September 13, 2010, USATF presented Logan with a release agreement offering him $500,000 in exchange for a full and final release of all claims, including those related to his employment contract. Logan refused that offer.
>
> * * *
>
> (24) While USATF apparently claims that it had "Cause" to terminate Logan's employment, USATF offered Logan a one-time, lump sum payment of $500,000 in exchange for Logan's execution of a release of claims.

(Docket No. 1, ¶¶ 17, 24) Pursuant to Federal Rule of Civil Procedure 12(f), a court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Because paragraphs 17 and 24 contain material that is expressly

prohibited under Federal Rule of Evidence 408, as evidence of an offer to compromise, such allegations should be stricken from the Complaint as immaterial. Fed. R. Evid. 408. In addition, allowing such allegations to remain in the Complaint inhibits the purposes of Federal Rule of Evidence 408, and violates USATF's legitimate expectations under such Rule. The allegations are prejudicial, scandalous and impertinent, and should be stricken.

II. APPLICABLE FEDERAL RULES

A. Federal Rule of Civil Procedure 12(f)

Rule 12(f) provides a mechanism for the Court to strike allegations in pleadings that are "immaterial, impertinent, or scandalous." *See* Fed. R. Civ. P. 12(f). Such Motion should be granted where the moving party demonstrates that the challenged matter "has no bearing on the subject matter of the litigation and that its inclusion will prejudice defendant[]." 2 Moore's Federal Practice § 12.37[3] (Matthew Bender 3d ed.) Material is "impertinent" or "immaterial" if it is not relevant to the issues involved in the action. *Id.*; *see also Pigford v. Veneman*, 215 F.R.D. 2 (D. Colo. 2003).

B. Federal Rule of Evidence 408

Federal Rule of Evidence 408 deems certain types of settlement-related evidence inadmissible:

> **(a) Prohibited Uses.**—Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:
>
> (1) furnishing or offering or promising to furnish—or accepting or offering or promising to accept—a valuable consideration in compromising or attempting to compromise the claim; and
>
> (2) conduct or statements made in compromise negotiations regarding the claim . . . .

Fed. R. Evid. 408(a).

III. PARAGRAPHS 17 AND 24 ARE IMMATERIAL, IMPERTINENT, SCANDALOUS AND PREJUDICIAL AND SHOULD BE STRICKEN FROM THE COMPLAINT

A. Paragraphs 17 and 24 Contain Inadmissible Evidence of Alleged Settlement Negotiations, and thus are Immaterial

As set forth above, paragraphs 17 and 24 of Plaintiff's Complaint contain allegations that USATF offered valuable consideration in compromising or attempting to compromise Plaintiff's claims, which are inadmissible under Federal Rule of Evidence 408(a). Fed. R. Evid. 408(a). Specifically, paragraph 17 states USATF "presented Logan a release agreement offering him $500,000 in exchange for a full and final release of all claims, including those related to his employment contract." Clearly, the offer of compromise was directed to the pending dispute. In addition, Logan is using this offer of compromise in an attempt to prove his claim that he was not fired for cause. In paragraph 24, Plaintiff states "While USATF apparently claims that it had 'Cause' to terminate Logan's employment USATF offered Logan a one-time, lump sum payment of $500,000 in exchange for Logan's execution of a release of claims." With these words, it is clear that Plaintiff is attempting to demonstrate that, in his view, USATF did not have cause to terminate his employment because otherwise it would not have made such a substantial offer of compromise. Thus, it is apparent from paragraphs 17 and 24 that Plaintiff provides such allegations to "prove liability for" a "claim that was disputed" and/or to attempt to "impeach through a prior [alleged] inconsistent statement or contradiction"—all considered prohibited uses of such information under Federal Rule of Evidence 408. *See* Fed. R. Evid. 408(a). This is blatantly prohibited by Rule 408.

Other courts have stricken complaint allegations or exhibits containing similar offers of compromise. *See Fidelity Nat'l Title Co. v. Law Title Ins. Co., Inc.*, Case No. 04-C-6382, 2005 WL 1126899 (N.D. Ill. May 3, 2005). In *Fidelity*, the Northern District of Illinois considered

whether to strike a letter attached to the complaint purportedly written to offer to compromise the plaintiff's claims. *Id.* at *5. Because there was no dispute that the letter was prepared to "'settle or repair'" the parties' relationship, the plaintiff did not dispute that it sought to use the letter to establish the defendant's liability, and the defendant did not, in fact, admit to liability, the court accordingly struck the letter and referenced paragraph. *Id.* at *7. *Fidelity* is on "all fours" with the instant case: (1) there is no credible dispute that the alleged compromise was intended to settle the relationship between Plaintiff and the USATF; (2) Plaintiff's Complaint is explicit in its intent to use such offer to prove liability; and (3) USATF does not admit liability. Because the allegations contained in paragraphs 17 and 24 are inadmissible, they are immaterial in this litigation and should be stricken.

B. Paragraphs 17 and 24 are Impertinent, Scandalous and Prejudicial to USATF

Further, such paragraphs are impertinent, scandalous and prejudicial to USATF because they unequivocally cast USATF's alleged actions in a light that is prohibited by the Federal Rules of Evidence—that is, that an offer to resolve claims in dispute be taken as evidence that USATF is liable to Plaintiff for any reason. *See Braman v. Woodfield Gardens Associates*, 715 F. Supp. 226, 230 (N.D. Ill. 1989) (striking allegations of settlement negotiations, finding that allowing such statements to remain would "undermine the purpose of Rule 408: 'to encourage settlements. The fear is that settlement negotiations will be inhibited if the parties know that their statements may later be used as admissions of liability.'" (quoting *Central Soya Co. v. Epstein Fisheries, Inc.*, 676 F.2d 939, 944 (7th Cir. 1982)). As was the *Braman* court's concern, allowing such allegations to remain in a Complaint, when it is clear that the information is intended for a prohibited use, would chill an employer's inclination to work with a disgruntled ex-employee, for fear that such efforts would be misconstrued as an admission in future

litigation. *See id.* at 230; *see also Ciolli v. Iravani*, 625 F. Supp. 2d 276, 288 (E.D. Pa. 2009) (striking complaint allegations based upon Rule 408 inadmissibility, stating: "If parties were permitted to take the content of these negotiations and use them in subsequent litigation for wrongful initiation of civil proceedings or abuse of process, then counsel would put themselves and their clients at risk of suit in every settlement conference in which they participate, resulting in either less effective or even non-existent negotiations. This is precisely the situation that FRE 408 is designed to avoid."). Such prejudice to USATF is realized in paragraphs 17 and 24 of Plaintiff's Complaint. In fact, USATF is disinclined to ever again negotiate with Logan for fear that all negotiations will make it into a pleading or paper and be used to argue that USAFT is liable.

Moreover, paragraphs 17 and 24 imply that the alleged offers made by USATF to Plaintiff are somehow unseemly or improper, casting a derogatory light on USATF when terminated CEOs are routinely offered one year of severance as a matter of course. Accordingly, paragraphs 17 and 24 of Plaintiff's Complaint should be stricken.

IV. CONCLUSION

Paragraphs 17 and 24 have no place in Plaintiff's Complaint, and should be stricken. Such statements are inadmissible and actually discourage settlement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2010, a copy of the foregoing *Brief in Support of Motion to Strike Paragraphs 17 and 24 of Plaintiff's Complaint* was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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