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11 and Track Four, Inc.

12
13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15
16 ABARCA, RAUL VALENCIA, et al.,

17 Plaintiffs,

18 v.

19 MERCK & CO., INC., et al.,

20 Defendants.
21

Case No. 1:07-cv-00388-OWW-DLB

**STIPULATION AND ORDER RE:
DISCLOSURE OF PHASE 1 TRIAL
WITNESSES**

22
23 The undersigned parties, by and through their counsel of record, hereby stipulate and
24 request that the Court order as follows:

25 1. On or before August 16, 2010, Plaintiffs shall serve on all parties a list of all witnesses
26 to be called by Plaintiffs during Plaintiffs' case during the Phase 1 trial with the exception of
27 rebuttal and impeachment witnesses.
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1 2. On or before August 23, 2010, each Defendant shall serve on all parties a list of all
2 witnesses to be called by it during Defendants' case during the Phase 1 trial with the exception of
3 sur-rebuttal and impeachment witnesses.

4 3. On or before August 30, 2010, Plaintiffs may serve a supplemental list of witnesses to
5 be called by Plaintiffs during Plaintiffs' case during the Phase 1 trial.

6 4. On or before September 7, 2010, each Defendant may serve a supplemental list of
7 witnesses to be called by it during Defendants' case during the Phase 1 trial.

8 5. Each witness list referred to in paragraphs 1 through 4 above shall specify the
9 witness's name, business affiliation (if any), address, telephone number, and the general subject
10 matter of the witness's testimony.

11 6. This stipulation requires the disclosure of trial witnesses regardless of whether
12 previously designated by name in a Rule 26 disclosure or discovery response prior to the May 6
13 Phase 1 discovery cut-off in this action, except those witnesses called for rebuttal or sur-rebuttal,
14 or solely for purposes of impeachment. The parties may only supplement their witness lists upon
15 a showing of good cause sufficient to modify the Final Pretrial Conference Order. The parties
16 request that the Court, by approving and ordering this stipulation, hereby exclude any witness
17 that is required to be disclosed by this Stipulation and Order but that is not identified by the
18 undersigned parties in compliance with this Stipulation and Order.

19 7. It is the intention of the parties that this stipulation fulfills the parties' obligations
20 related to the pre-trial disclosure of trial witnesses pursuant to Federal Rules of Civil Procedure
21 26(a)(3)(A)(i) and (ii) and Eastern District Local Rule 281.

22 8. Notwithstanding the Phase 1 discovery cut-off, any party may depose any witness
23 listed by any other party subject to the following conditions:

- 24 a. Any party may depose any trial witness listed by any opposing party pursuant to
25 this stipulation if that witness was not previously deposed in this case. Any
26 affiliated¹ witness or out-of-state non-affiliated witness shall be produced by the

27 _____
28 ¹ The term "affiliated" as used herein is defined to mean all past and present, employees, officers, directors, agents,
representatives, consultants and contractors, including independent contractors and their employees, of a party. 2

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designating party for a deposition. Such depositions shall not exceed 7 hours in accordance with Federal Rule of Civil Procedure 30. Depositions of witnesses who reside in Merced County shall be taken in Merced, or, if the witness does not reside in Merced County, the party noticing the deposition agrees to pay the reasonable costs of the witness’s travel to Los Angeles, Fresno or San Francisco, with the location of the deposition to be selected by the party noticing the deposition. Any designated witness who resides in California, who is not affiliated with a party, and who is not willing to travel to Merced, Los Angeles, Fresno or San Francisco may be deposed, subject to the terms of this stipulation, at any location in California where he or she may be compelled to attend by service of a subpoena. The term “opposing party” as used in this paragraph means that plaintiffs may depose a trial witness not previously deposed only if designated pursuant to this stipulation by one or more defendants, and defendants may depose a trial witness not previously deposed only if designated pursuant to this stipulation by plaintiffs.

b. The party noticing the deposition will be responsible for the cost of the original deposition transcript and original audio or video recording, if any. All parties will be responsible for the cost of ordering their own copies of deposition transcripts and audio and/or videotapes, if any.

c. All depositions taken pursuant to this Stipulation and Order shall be completed by October 15, 2010.

IT IS SO STIPULATED.

Dated: August 11, 2010

MARDEROSIAN, RUNYON, CERCONE &
LEHMAN

By: s/Michael Marderosian (as authorized 8/10/10)
MICHAEL G. MARDEROSIAN

Attorneys for Plaintiffs



1 Dated: August 11, 2010

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Attorneys for Defendant FRANKLIN COUNTY
WATER DISTRICT

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7 Dated: August 11, 2010

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13 Dated: August 11, 2010

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19 Dated: August 11, 2010

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25 Dated: August 11, 2010

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Dated: August 11, 2010

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Dated: August 11, 2010

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By: s/David Gifford (as authorized 8/10/10)
DAVID GIFFORD

Attorneys for Defendants MEADOWBROOK
WATER COMPANY OF MERCED, INC.

IT IS SO ORDERED.

Dated: **August 12, 2010**

 /s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

