

1 Daley & Heft, LLP
 Attorneys at Law
 2 Neal S. Meyers, Esq. (SBN 109625)
 Golnar J. Fozi, Esq. (SBN 167674)
 3 Matthew T. Racine, Esq. (SBN 256865)
 462 Stevens Avenue, Suite 201
 4 Solana Beach, CA 92075
 Telephone: (858) 755-5666
 5 Facsimile: (858) 755-7870

6 Attorneys for Defendant,
 MERCED IRRIGATION DISTRICT

7
 8 Lawrence D. Murray (SBN 77536)
 MURRAY & ASSOCIATES
 1781 Union Street
 9 San Francisco, CA 94123
 Tel: (415) 673-0555
 10 Fax: (415) 928-4084

11 Dean Gordon (SBN 61311)
 LAW OFFICES OF DEAN GORDON
 12 1220 East Olive Avenue
 Fresno, CA 93728
 13 Tel: (559) 221-7777
 Fax: (559) 221-5812

14 Attorneys for Plaintiff,
 15 LAMONTE TUMBLING

16 **UNITED STATES DISTRICT COURT**
 17 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

18 LAMONTE TUMBLING,)	Case No. 1:08-CV-01801-LJO-DLB
)	
19 Plaintiff,)	STIPULATION RESOLVING
)	DEFENDANT'S MOTION TO EXCLUDE
20 v.)	TESTIMONY OF BARRY BENNET (Doc.
)	126)
21 MERCED IRRIGATION DISTRICT, a)	JUDGE: Lawrence J. O'Neill
public entity)	COURTROOM: 9
)	MAGISTRATE: Dennis L. Beck
22 Defendant.)	
23 _____)	

24 Merced Irrigation District ("Defendant") and LaMonte Tumbling ("Plaintiff"), by and
 25 through their respective attorneys of record, hereby stipulate to and request the Court enter an
 26 order resolving Defendant's Motion for Sanctions to Exclude Testimony of Barry Bennett from
 27 Trial (Doc. 126).

28 ///

1 After conferring, the parties agree that if plaintiff calls Barry Bennett as a witness at trial
2 it will only be for impeachment purposes. Plaintiff did not list Barry Bennett as a witness in his
3 initial disclosures until October 19, 2010. However, a party need not disclose a witness if that
4 witness will be used "solely for impeachment." Fed. R. Civ. P. 26(a)(1)(A)(i).

5 Therefore, the parties move the court for an order as follows:

6 1. Plaintiff may call Barry Bennett as a witness at trial only for the purpose of
7 impeachment.

8 2. In light of the parties' stipulation, defendant's Motion for Sanctions to Exclude
9 Testimony of Barry Bennett from Trial (Doc. 126) is denied without prejudice as moot.

10 Dated: November 10, 2010

Daley & Heft, LLP

11 By: /s/ Neal S. Meyers

12 NEAL S. MEYERS
13 GOLNAR J. FOZI
14 MATTHEW T. RACINE
15 Attorneys for Defendant,
16 MERCED IRRIGATION DISTRICT

16 Dated: November 10, 2010

MURRAY & ASSOCIATES

17 By: /s/ Lawrence D. Murray

18 LAWRENCE D. MURRAY
19 Attorney for Plaintiff,
20 LAMONTE TUMBLING

20 **ORDER ON STIPULATION FOR ORDER**

21 HAVING READ AND CONSIDERED THE FOREGOING, and good cause appearing:

22 The foregoing is the order of the court.

23 IT IS SO ORDERED.

24 **Dated: November 18, 2010**

25 **/s/ Dennis L. Beck**
26 UNITED STATES MAGISTRATE JUDGE