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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NORTH VIEW ESTATES, GP, a
General Partnership,

Case No. 2:08-CV-02230-JAM-GGH

Plaintiff,

ORDER DENYING PLAINTIFF'S
MOTION TO AUGMENT EXPERT
WITNESS DISCLOSURE AND REPORTS

v.

YREKA HOLDINGS, II, an Oregon
Limited Partnership; CHRIS A.
GALPIN, an individual; GREGG
ADAMS, an individual; PREMIER
WEST BANK, a business entity,
form unknown; and DOES 1-50,
inclusive,

Defendants.

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This matter comes before the Court on Plaintiff North View
Estates' ("Plaintiff") motion to augment expert witness
disclosure and reports pursuant to Federal Rule of Civil
Procedure 26.¹ (Doc # 105). Specifically, Plaintiff moves to

¹ Because oral argument will not be of material assistance,
the Court orders this matter submitted on the briefs. E.D. Cal.
L.R. 230(g).

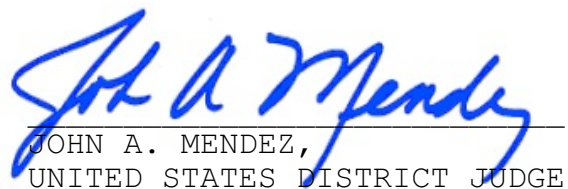
1 serve three supplemental expert witness reports and to disclose
2 an additional expert witness. Defendants oppose Plaintiff's
3 motion. (Doc # 129).

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5 Federal Rule of Civil Procedure 26(a)(2) prescribes
6 disclosure requirements for expert witnesses, and rule
7 26(e)(1)(A) governs supplementing disclosures and responses.
8 Fed. R. Civ. P. 26. A party is required to supplement a rule
9 26(a) disclosure "in a timely manner if the party learns that in
10 some material respect the disclosure [] is incomplete or
11 incorrect, and if the additional or corrective information has
12 not otherwise been made known to the other part[y]" Id.
13 26(e)(1)(A). However, a party may not use a supplement to extend
14 the discovery deadline and introduce new opinion, e.g., City of
15 Grass Valley v. Newmont Mining Corp., 2007 WL 210516 at *2 (E.D.
16 Cal., Jan. 26, 2007), nor may a party simply use an existing
17 expert's disclosure "as a placeholder to spring a 'supplemental
18 opinion' in the eleventh hour." White v. Cinemark USA, Inc.,
19 2005 WL 1865495 at *3 (E.D. Cal., Aug. 3, 2005) (citing Keener
20 v. United States, 181 F.R.D. 639, 641 (D.Mont.1998)). Finally, a
21 party "*must* make [expert] disclosures at the times and in the
22 sequence that the court orders." Fed. R. Civ. P. 26(a)(2)(C)
23 (emphasis added).
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1 The Court's December 4, 2008, scheduling order required the
2 Plaintiff to make all expert witness disclosures by March 6,
3 2009, and supplemental disclosures no later than March 20, 2009.
4 The Court warned that failure to comply with those deadlines
5 would preclude the party from calling the expert witness, absent
6 a showing that the necessity for the witness could not have been
7 reasonably anticipated and that the failure to make a timely
8 disclosure did not prejudice any other party. Plaintiff has not
9 made the requisite showing as to James Bray; accordingly,
10 Plaintiff's motion to disclose an additional expert witness is
11 DENIED. Plaintiff has also failed to demonstrate it was diligent
12 in complying with the disclosure requirements as to the three
13 previously disclosed expert witnesses, see Johnson v. Mammoth
14 Recreations, Inc., 975 F.2d 604, 608 (9th Cir. 1992), as
15 Plaintiff had ample time to adequately prepare its expert
16 reports. Accordingly, Plaintiff's motion to serve three
17 supplemental expert witness reports is DENIED.
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23 IT IS SO ORDERED.

24 Dated: May 19, 2010

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE