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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 LENNAR MARE ISLAND, LLC,

12 Plaintiff,

13 v.

14 STEADFAST INSURANCE COMPANY,
15 et al.,

16 Defendants.
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No. 2:12-cv-02182-KJM-KJN

ORDER

18 On September 11, 2013, defendant and counter-claimant Steadfast Insurance Company
19 (“Steadfast”) filed its Notice of Motion For Relief From Presumptive Discovery Limits For
20 Depositions, and the parties filed their related Joint Statement and supporting declarations on
21 November 14, 2013.¹ (ECF Nos. 43-45, 66.) The undersigned partially granted and partially
22 denied the motion, and ordered the parties to submit a further Joint Statement regarding the
23 proposed additional deponents. (Order, ECF No. 77 at 2-3.) The undersigned also ordered the
24 parties to appear telephonically at a hearing regarding the proposed additional depositions, and set
25 the hearing to occur on December 20, 2013.² (Id.)

26 _____
27 ¹ This matter proceeds before the undersigned pursuant to Eastern District of California Local
Rule 302(c)(1).

28 ² On December 16, 2013, United States District Judge Kimberly J. Mueller denied LMI’s

1 The parties filed their Joint Statement on November 25, 2013. (Joint Statement, ECF No.
2 84.) The matter came on for hearing on December 20, 2013. Attorney David Campagne
3 appeared telephonically on behalf of Steadfast. Attorney Ryan Werner appeared telephonically
4 on behalf of plaintiff and counter-defendant Lennar Mare Island ("LMI"). Attorney Amanda
5 Hairston appeared on behalf of counter-defendant and counter-claimant CH2M Hill Constructors,
6 Inc. ("CCI").

7 For all the reasons discussed on the record during the hearing, it is HEREBY ORDERED
8 THAT:

9 1. The following depositions have been mutually agreed upon by the parties (see Joint
10 Statement, ECF No. 84 at 2), and Steadfast may proceed with deposing these
11 individuals in whatever chronological order it chooses (with the understanding that all
12 parties will cooperate in the scheduling of the depositions):

- 13 a. Jill Benson
- 14 b. Carla Duncan
- 15 c. Steve Farley
- 16 d. Sheila Roebuck³
- 17 e. Tom Sheaff⁴
- 18 f. Neal Siler⁵
- 19 g. Rick Teczon

20 2. Steadfast may also choose to depose the following individuals given that LMI has
21 agreed to the following deponents but with the caveat that LMI believes (Joint

22 Motion to Sever this case. (Order, ECF No. 81.)

23 ³ Ms. Roebuck's deposition length has been extended to 14 hours pursuant to the Order at ECF
24 No. 77 at 2.

25 ⁴ Mr. Sheaff's deposition length has been extended to 14 hours pursuant to the Order at ECF No.
26 77 at 2.

27 ⁵ Mr. Siler's deposition length has been extended to 14 hours pursuant to the Order at ECF No.
28 77 at 2.

Statement, ECF No. 84 at 1) these deponents are “irrelevant”⁶:

- a. Kathy Gettys
- b. Gordon Hart
- c. Janet Naito
- d. Steve Watson

3. Steadfast may depose LMI’s corporate designee(s) to be identified following Steadfast’s circulation of draft deposition notices delineating topics to be addressed by LMI’s person(s) most knowledgeable (“PMKs”). Steadfast may also depose CCI’s corporate designee(s) to be identified following Steadfast’s circulation of draft deposition notices delineating topics to be addressed by CCI’s PMKs. These draft notices will be circulated among counsel prior to January 30, 2014, and LMI’s counsel and CCI’s counsel shall each identify their clients’ PMKs on the listed topics reasonably promptly thereafter.

a. As discussed during the hearing, the court is not inclined to allow “two-step” depositions of individuals who can testify as to percipient knowledge *and* testify in a PMK capacity. In other words, the court is not inclined to allow an individual to first be deposed as a percipient witness, and thereafter, to be re-deposed as a PMK in a separate second deposition. Because the court envisions a single deposition for such individual(s), the court will entertain requests to extend the time allowed for such deposition(s).

b. The court permits Steadfast to depose LMI’s and CCI’s percipient witnesses/PMKs in whatever chronological order Steadfast chooses.

⁶ Given LMI’s position that these individual deponents are “irrelevant,” Steadfast may wish to reconsider some or all of these depositions. This order does not *require* Steadfast to depose these individuals; it *permits* Steadfast to do so. By permitting Steadfast to proceed with these depositions, the court in no way determines that these witnesses are more or less relevant than other potential deponents. As the court emphasized during the hearing, however, if Steadfast chooses to proceed with these depositions despite LMI’s “irrelevance” argument, Steadfast is strongly cautioned that the court will take into consideration the total amount of “extra” depositions Steadfast has taken (i.e., the number beyond the 10-deposition limit) when deciding any future requests from Steadfast seeking additional depositions.

- 1 4. Steadfast may depose a “corporate designee” from the Navy. However, this order
2 *does not* require that the Navy actually produce any such witness. This order is
3 limited solely to permitting Steadfast to use one of its allotted depositions on a Navy
4 designee/PMK. The court makes no determination as to whether the Navy is or should
5 be a party to this case, whether the Navy is obligated to produce a PMK witness in this
6 case, or any other determination binding upon the Navy.
- 7 5. Steadfast may also depose the following individuals notwithstanding LMI’s
8 disagreement regarding such depositions; however, Steadfast’s decision to proceed
9 with such depositions may negatively impact Steadfast’s ability to conduct additional
10 “extra” depositions in the future:
- 11 a. Starr Dehn⁷
 - 12 b. Tim Graves⁸
 - 13 c. Jeff Morris⁹
 - 14 d. Paul Scherbak¹⁰
- 15 6. Steadfast’s requests to depose the following individuals are denied without prejudice
16 at this time, but Steadfast may request these depositions in the future if it believes it
17 can make the requisite particularized showing of need, and the parties remain free to

19 ⁷ As discussed during the hearing, should Steadfast choose to proceed with deposing Starr Dehn
20 despite LMI’s arguments that witnesses Jennifer Lindquist or Daisy Wei are more appropriate
21 deponents, the court may not look favorably upon a potential future request from Steadfast to
22 depose Ms. Lindquist and/or Ms. Wei.

22 ⁸ As discussed during the hearing, should Steadfast choose to proceed with deposing Tim Graves
23 despite LMI’s arguments that witness Jennifer Lindquist is a more appropriate deponent, the court
24 may not look favorably upon a potential future request from Steadfast to depose Ms. Lindquist.

24 ⁹ As discussed during the hearing, should Steadfast choose to proceed with deposing Jeff Morris
25 despite LMI’s arguments that witness Daisy Wei is a more appropriate deponent, the court may
26 not look favorably upon a potential future request from Steadfast to depose Ms. Wei.

26 ¹⁰ As discussed during the hearing, should Steadfast choose to proceed with deposing Paul
27 Scherbak despite LMI’s arguments that witnesses Jennifer Lindquist or Daisy Wei are more
28 appropriate deponents, the court may not look favorably upon a potential future request from
29 Steadfast to depose Ms. Lindquist and/or Ms. Wei.

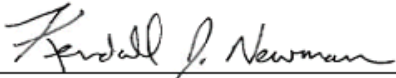
1 stipulate to such depositions:

- 2 a. Jim Kovalcik¹¹
3 b. Beth Pennington¹²
4 c. Michael Walker¹³

5 7. The parties are welcome to stipulate to additional depositions or to stipulate to
6 eliminate any deposition permitted in this order. However, the court clarifies that a
7 stipulation to eliminate any particular deposition permitted in this order shall not result
8 in the deposing party's having the ability to fill the "spot" of the vacated deposition
9 with some other witness. For example, if Steadfast ultimately decides not to depose
10 Gordon Hart, Steadfast may not unilaterally switch some other potential deponent into
11 Hart's "spot" without an agreement of all other parties. All depositions in excess of
12 the 10-deposition limit must be approved by the court or by way of an agreement by
13 all parties.

14 IT IS SO ORDERED.

15 Dated: December 23, 2013

16 
17 KENDALL J. NEWMAN
18 UNITED STATES MAGISTRATE JUDGE
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23 ¹¹ As discussed during the hearing, the agreed-upon deposition of Jill Benson may render Mr.
24 Walker's deposition unnecessary.

25 ¹² The court is inclined to assess the propriety of Ms. Pennington's deposition at a later date in
26 this case, following the completion of other depositions that may narrow the topics upon which
27 Ms. Pennington might testify.

28 ¹³ As discussed during the hearing, the agreed-upon deposition of Tom Sheaff may render Mr.
Walker's deposition unnecessary.