

PORTER | SCOTT  
350 University Avenue, Suite 200  
Sacramento, CA 95825  
TEL: 916.929.1481  
FAX: 916.927.3706

1 **PORTER | SCOTT**  
2 A PROFESSIONAL CORPORATION  
3 Martin N. Jensen, SBN 232231  
4 Katlyn L. Gregg, SBN 306078  
5 350 University Avenue, Suite 200  
6 Sacramento, California 95825  
7 TEL: 916.929.1481  
8 FAX: 916.927.3706

6 Attorneys for Plaintiffs  
7 REMARK ENTERPRISES LLC and, US CRYOTHERAPY DIRECT SALES LLC

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

12 REMARK ENTERPRISES LLC and, US  
13 CRYOTHERAPY DIRECT SALES LLC,

CASE NO. 2:16-cv-00755-JAM-CKD

14 Plaintiffs,

**STIPULATION AND ORDER  
REGARDING THE ADMISSION OF ICC  
ARBITRATION TESTIMONY AT  
TRIAL**

15 v.

16 MECOTEC GMBH and MECOTEC SALES  
17 GMBH,

Complaint Filed: April 13, 2016  
Trial Date: April 2, 2018

18 Defendants

19 \_\_\_\_\_/  
20 Plaintiffs, Remark Enterprises LLC, US Cryotherapy Direct Sales LLC, and Defendants,  
21 Mecotec GmbH, and Mecotec Sales GmbH (collectively the “Parties”), by and through their  
22 attorneys of record, hereby stipulate as follows:

23 **RECITALS**

24  
25 A. In or around February, 2016, Defendant Mecotec GmbH filed a request for  
26 arbitration with the International Court of Arbitration (“ICC”) in Europe against Remark  
27 Enterprises LLC claiming a breach of an exclusive distribution agreement which is at issue in the  
28 present case.

1 B. On December 15, 2016, the Parties attended and took part in the ICC arbitration  
2 proceedings (the "Arbitration") held in Germany. Plaintiff Remark Enterprises LLC and  
3 Defendant Mecotec GmbH were represented by counsel at the Arbitration.

4 C. At the Arbitration, several witnesses testified, including a third party witness  
5 named Hanspeter Nitz. Mr. Nitz was subject to examination by counsel for Plaintiff Remark  
6 Enterprises LLC and Defendant Mecotec GmbH regarding the exclusive distribution agreement at  
7 issue in the present case.  
8

9 D. The testimony given by Mr. Nitz relates to the issues to be decided at trial in the  
10 present case. However, due to illness, geographical distance, and this Court's lack of jurisdiction  
11 over Mr. Nitz, it is unlikely that Mr. Nitz will attend the trial in the present case.  
12

13 E. As a result of the above, the Parties have agreed to admit the testimony of Mr. Nitz  
14 from the Arbitration, in its entirety, for use for any and all purposes at trial in the present case as  
15 set forth below.

16 F. The Parties stipulate to admit the Exclusive Distribution Agreement marked for  
17 purposes of the Arbitration as Claimant's Exhibit C-1 for use for any and all purposes at trial in  
18 the present case as set forth below.  
19

20 G. The Parties further stipulate to admit the Letter of Intent marked for purposes of the  
21 Arbitration as Claimant's Exhibit C-8 for use for any and all purposes at trial in the present case as  
22 set forth below.  
23

## 24 STIPULATION

25 1. The testimony of Hanspeter Nitz from the International Court of Arbitration Case  
26 No. 21620, dated December 15, 2016 (attached hereto as **Exhibit A**) shall be admitted for use for  
27 any and all purposes at trial in the present case (the "**Stipulated Testimony**").  
28

2. The Exclusive Distribution Agreement marked for purposes of the Arbitration as C-

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 and the Letter of Intent marked for purposes of the Arbitration as C-8 (the “**Exhibits**”) shall be admitted for use for any and all purposes at trial in the present case.

3. This stipulation and agreement does not apply to any other exhibits marked at the Arbitration or to Mr. Nitz’ “witness statement.”

4. Any and all objections to the admissibility of the Stipulated Testimony for any purpose are hereby waived.

5. Any and all objections to the admissibility of the Exhibits for any purpose are hereby waived.

**IT IS SO STIPULATED:**

Dated: May 8, 2017

PORTER SCOTT  
A PROFESSIONAL CORPORATION

By: /s/ Martin N. Jensen  
Martin N. Jensen  
Katlyn L. Gregg  
Attorneys for Plaintiffs

Dated: May 5, 2017

JEFFER MANGELS BUTLER &  
MITCHELL LLP

By: /s/ Matthew S. Kenefick  
Matthew S. Kenefick  
Afua Adjei  
Attorneys for Defendants  
MECOTEC GMBH and MECOTEC  
SALES GMBH

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

Good cause appearing, the Stipulated Testimony and the Exhibits shall be admitted for use for any and all purposes at trial in the present case. The Parties have waived all objections to the admissibility of the Stipulated Testimony for any purpose. The Parties have waived all objections to the admissibility of the Exhibits for any purpose.

**IT IS SO ORDERED.**

Dated: 5/8/2017

/s/ John A. Mendez  
United States District Court Judge