

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

**\*E-FILED 04-28-2011\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

BONIFACIO CARRERA,

No. C09-02672 HRL

Plaintiff,

**ORDER (1) GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO STRIKE; AND (2) RE-SETTING DEADLINES**

v.

THYSSEN KRUPP SAFEWAY, INC. and  
DOES 1 to 100, inclusive,

[Re: Docket No. 61]

Defendant.

Defendant previously moved to strike plaintiff's expert designations. Although plaintiff's prior disclosures were admittedly late and did not provide all the information required by Fed. R. Civ. P. 26, this court, in the exercise of its discretion, denied the motion and gave plaintiff until March 21, 2011 in which to submit expert disclosures that complied with Fed. R. Civ. P. 26(a)(2). (See Docket No. 59).

Defendant now moves to strike plaintiff's March 21 expert disclosures because (1) the disclosure served by fax on March 21 did not contain a written report; (2) defendant received a written report (by mail) on March 23; and (3) that written report merely is a verbatim copy of the written report plaintiff served with his prior disclosure of Daniel Fleming—the only difference being that another purported expert, James Flynn, has added his signature to it. Plaintiff has not filed an opposition to the motion. The matter is deemed suitable for

1 determination without oral argument, and the May 3, 2011 hearing is vacated. Civ. L.R. 7-1(b).

2 Upon consideration of the moving papers, this court rules as follows:

3 Although defendant did not receive the written report until March 23, the court finds  
4 that defendant was not seriously prejudiced by the two-day delay. Nevertheless, the court also  
5 finds that plaintiff did not comply with Fed. R. Civ. P. 26 by having Flynn simply add his  
6 signature to the report prepared by Fleming. See Fed. R. Civ. P. 26(a)(2)(B). Moreover, at the  
7 motion hearing on defendant's prior motion to strike, plaintiff indicated to the court that he  
8 intended to proceed only with Fleming. Accordingly, defendant's motion to strike is granted as  
9 to Flynn and denied as to Fleming.

10 Defendant shall have until **May 20, 2011** to serve rebuttal expert reports, if any.

11 The expert discovery cutoff is extended to **June 20, 2011**.

12 The last date to hear motions re experts or expert disclosures (including any motions  
13 under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)) is re-set for **August**  
14 **9, 2011, 10:00 a.m.**

15 All other deadlines set in the court's March 8, 2011 Order (Docket No. 59) remain  
16 unchanged.

17 SO ORDERED.

18 Dated: April 28, 2011

19   
20 \_\_\_\_\_  
21 HOWARD B. LLOYD  
22 UNITED STATES MAGISTRATE JUDGE  
23  
24  
25  
26  
27  
28

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

5:09-cv-02672-HRL Notice has been electronically mailed to:  
Frank Edward Schimaneck feschimaneck@drydenlaw.com, llbenson@drydenlaw.com,  
lpnewman@drydenlaw.com, sefoe@drydenlaw.com  
Gerald Herbert Scher geraldsher@sbcglobal.net, chaparita30@sbcglobal.net,  
marysanchez1970@yahoo.com  
Roger Arne Agen raagen@drydenlaw.com  
Susan E. Foe sefoe@drydenlaw.com, llbenson@drydenlaw.com, rbalinton@drydenlaw.com  
William John Armstrong barmstrong@acs-lawfirm.com  
Counsel are responsible for distributing copies of this document to co-counsel who have not  
registered for e-filing under the court's CM/ECF program.