

E-filed: November 1, 2012

NOT FOR CITATION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

AREAS USA SJC, LLC,

No. C11-04487 HRL

Plaintiff,

**ORDER DENYING PLAINTIFF'S
MOTION TO EXCLUDE
DEFENDANTS' EXPERT WITNESSES**

v.

MISSION SAN JOSE AIRPORT, LLC; ET
AL.,

[Dkt. 92]

Defendants.

Areas USA SJC, LLC ("Areas") moves the Court for an order barring defendants Mission San Jose Airport, LLC and Mission Yogurt, Inc. (collectively "Mission") from presenting any expert witness testimony from Stanley Jackson, Dan Ludwig, Rod Tafoya, or Mark Schafer. Mission opposes the motion. The matter is deemed submitted without oral argument. *See* Civ. L. R. 7-1(b). Upon consideration of the moving and responding papers, Areas' motion is denied.

As a basis for its motion, Areas claims that Mission failed to provide expert reports for these witnesses, as required by Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure. Mission counters that Rule 26(a)(2)(C), not Rule 26(a)(2)(B), governs these witnesses and that Rule 26(a)(2)(C) does not require the submission of expert reports. Rule 26(a)(2)(B) requires a witness to provide a written report "if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony." Fed. R. Civ. P. 26(a)(2)(B). The parties do not dispute that Jackson and Ludwig work for Legends Group and that Mission hired Legends Group as a project manager before this litigation began. These individuals were therefore *not* retained to provide expert testimony and their duties do *not* regularly involve giving expert testimony. The same goes for Tafoya and Schafer, who work for

1 Mission itself. Accordingly, the expert testimony of these individuals is governed by Rule
2 26(a)(2)(C), which requires a disclosure, but no written reports. Areas does not dispute the
3 sufficiency of Mission's disclosures under Rule 26(a)(2)(C). As Mission's expert disclosures did
4 not run afoul of any duty to provide written reports, Areas' motion to exclude witnesses on that
5 basis is DENIED.

6 **IT IS SO ORDERED.**

7 Dated: November 1, 2012

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10 HOWARD R. LLOYD
11 UNITED STATES MAGISTRATE JUDGE
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1 **C11-04487 HRL Notice will be electronically mailed to:**

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5 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
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