

1 MICHAEL L. TRACY, ESQ., SBN 237779
 2 MTRACY@MICHAELTRACYLAW.COM
 3 MEGAN E. ROSS, ESQ., SBN 227776
 4 MROSS@MICHAELTRACYLAW.COM
 5 LAW OFFICES OF MICHAEL TRACY
 6 2030 Main Street, Suite 1300
 7 Irvine, CA 92614
 8 T: (949) 260-9171
 9 F: (866) 365-3051

FILED

SEP 30 2013

RICHARD W. WEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

7 Attorneys for Plaintiff Douglas Roberts

8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

11 DOUGLAS ROBERTS , AN INDIVIDUAL;
 12 Plaintiff,
 13 vs.
 14 TRIMAC TRANSPORTATION SERVICES
 15 (WESTERN), INC., A DELAWARE
 16 CORPORATION; ,
 17 Defendant.

Case No.: 5:12-cv-05302-HRL

COURT RULING RE
OBJECTIONS TO DECLARATION OF
DAN O'CONNOR IN SUPPORT OF
PLAINTIFF'S REPLY TO MOTION OF
PARTIAL SUMMARY JUDGMENT

(RE: DOCKET No. 35-1)

19 PLAINTIFF DOUGLAS ROBERTS objects to the following statements from the
 20 Declaration of Dan O'Connor in support of Plaintiff's Reply to Motion for Partial Summary
 21 Judgment.
 22

Obj. No.	Statement	Location	Objection	Ruling
1.	“When new drivers were hired, I explained to them that Air Products controlled dispatching, that some of the legs that were dispatched were out-of-state legs, and that the drivers may be required to haul an out-of-state leg.”	2:16-18 ¶4	Lacks personal knowledge, FRE 602. Compare Paragraph 7, stating that Air Products, not the Declarant, controlled the dispatching of legs and provided dispatch instructions directly to the drivers without the Declarant being part of the process.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
2.	“ . . . all of the Santa Clara Drivers were eligible for and subject to being dispatched on out-of-state deliveries. “	3:4-5 ¶6	Lacks personal knowledge, FRE 602. Compare Paragraph 7, stating that Air Products, not the Declarant, controlled the dispatching of legs and provided dispatch instructions directly to the drivers without the Declarant being part of the process.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
3.	“ . . . I and other individuals at Trimac were asked to analyze the "TMW" information for all of the legs that were dispatched out of the Santa Clara Branch. “	3:27-4:2 ¶10	Lacks personal knowledge, FRE 602. These amorphous “other individuals” performed some or all of the analysis. However, the Declarant lacks personal knowledge regarding the analysis performed by these other individuals located at Trimac, and the methods of calculation are not explained.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled

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

			<p>Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay.</p> <p>Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.</p>	<p><input checked="" type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p> <p><input type="checkbox"/> Sustained</p> <p><input checked="" type="checkbox"/> Overruled</p>
4.	<p>"To determine the total number of Santa Clara Drivers that were dispatched on an out-of-state leg from 2008 to 2010 for the Summary, we sorted the TMW information relating to the Santa Clara Drivers to identify any of the following three categories of legs: (1) legs that originated in California with an out-of-state destination, (2) legs that originated out-of-state with a California destination, and (3) legs that originated out-of-state with an out-of-state destination. Once these legs were identified, we simply</p>	<p>4:8-15</p> <p>¶11</p>	<p>Lacks personal knowledge, FRE 602. These amorphous "other individuals" performed some or all of the analysis. However, the Declarant lacks personal knowledge regarding the analysis performed by these other individuals located at Trimac, and the methods of calculation are not explained.</p> <p>Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay.</p> <p>Calls for expert testimony, FRE 701. This declaration is based on statistical analysis,</p>	<p><input checked="" type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p> <p>SUSTAINED</p> <p>OVERRULED</p>

1		counted the number of individual drivers that were identified on these out-of-state loads and divided that number by the total number of Santa Clara Drivers, 25, to arrive at a percentage.”		but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	
2					
3					
4					
5					
6					
7	5.	“To determine the percentage of total legs that were out-of-state legs in 2008, 2009, and 2010 for the Summary, we simply analyzed the TMW information that was already sorted to identify the out-of-state legs. For each year, we determined the total number of out-of-state legs, the total number of all legs, and divided the out-of-state legs by the total legs to arrive at a percentage.”	4:16-19 ¶12	Lacks personal knowledge, FRE 602. These amorphous “other individuals” performed some or all of the analysis. However, the Declarant lacks personal knowledge regarding the analysis performed by these other individuals located at Trimac, and the methods of calculation are not explained. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these “TMW” reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled SUSTAINED OVERRULED
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26	6.	“To determine the percentage of total miles that were driven on out-of-state	4:20-5:2 ¶13	Lacks personal knowledge, FRE 602. These amorphous “other individuals” performed	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
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

legs in 2008, 2009, and 2010 for the Summary, we first had to filter out some of the legs on which more than one Santa Clara Driver was dispatched by Air Products. This occurred when a team operation was dispatched on the leg. Because both drivers were dispatched on the leg, the mileage information reported the total number of miles on the leg for each of them. Where a leg number appeared more than once in the information, we only counted the mileage for that leg number once. After we filtered the information, we calculated the total number of miles for all legs for each year. We then sorted the information to identify the out-of-state legs for each year in the same manner discussed above. We then calculated the total number of miles on the out-of-state legs for each year and divided by the total number of miles on all legs for each year

some or all of the analysis. However, the Declarant lacks personal knowledge regarding the analysis performed by these other individuals located at Trimac, and the methods of calculation are not explained.

Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay.

Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.

SUSTAINED

OVERRULED

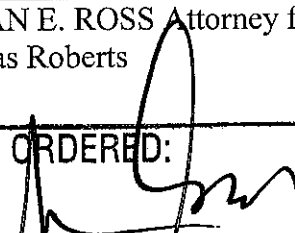
1		to arrive at a percentage.”			<input checked="" type="checkbox"/> Sustained
2	7.	“... he was eligible to be dispatched on any Air Products' leg, and was subject to being dispatched by Air Products on an interstate leg.”	5:7-9 ¶14	Lacks personal knowledge, FRE 602. Compare Paragraph 7, stating that Air Products, not the Declarant, controlled the dispatching of legs and provided dispatch instructions directly to the drivers without the Declarant being part of the process.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
3					
4					
5					
6					
7					
8					
9	8.	When he was first employed, Roberts was dispatched on a leg from Santa Clara, California, to Oregon.	5:5-6 ¶14	Lacks personal knowledge, FRE 602. Relevance. The statute of limitations on all claims in this matter would cut off any claims for the period when Roberts was first employed.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled <input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
10					
11					
12					
13					
14					
15					
16					
17					

DATED: March 12, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

By: _____
MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

IT IS SO ORDERED:

HOWARD R. LLOYD
U.S. MAGISTRATE JUDGE
DATE: 9/30/13

1 MICHAEL L. TRACY, ESQ., SBN 237779
2 MTRACY@MICHAELTRACYLAW.COM
3 MEGAN E. ROSS, ESQ., SBN 227776
4 MROSS@MICHAELTRACYLAW.COM
5 LAW OFFICES OF MICHAEL TRACY
6 2030 Main Street, Suite 1300
7 Irvine, CA 92614
8 T: (949) 260-9171
9 F: (866) 365-3051

7 Attorneys for Plaintiff Douglas Roberts

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 DOUGLAS ROBERTS , AN INDIVIDUAL,
12 Plaintiff,
13 vs.
14 TRIMAC TRANSPORTATION SERVICES
15 (WESTERN), INC., A DELAWARE
16 CORPORATION; ,
17 Defendant.

Case No.: 5:12-cv-05302-HRL
COURT RULINGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATION OF VICENT G.
CLARK USED IN SUPPORT OF
DEFENDANT'S SUPPLEMENTAL
OPPOSITION TO MOTION OF
PARTIAL SUMMARY JUDGMENT

(RE: DOCKET NO. 44-5)

18
19 PLAINTIFF DOUGLAS ROBERTS objects to the Declaration of VICENT G.
20 CLARK used in support of Defendant's Supplemental Opposition to Motion for Partial
21 Summary Judgment.
22
23
24
25
26
27
28

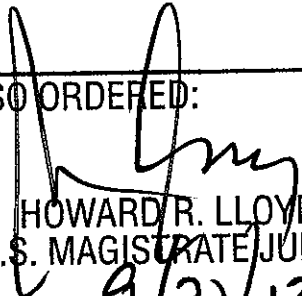
Obj. No.	Statement	Location	Objection	Ruling
2.	"The purification process does not change the essential character of the argon. The product is 97% argon when it begins the process, and it is 99.99% argon when it is delivered to the customer."	2:19-21 ¶5	Legal conclusion. FRE 602. Calls for expert testimony, FRE 701. This declaration is based on chemical process and statistically analysis of such processing, but the Declarant has not been qualified under FRE 702 as an expert.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED

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

DATED: May 14, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross
By: _____
MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

IT IS SO ORDERED:

HOWARD R. LLOYD
U.S. MAGISTRATE JUDGE
DATE: 9/30/13

1 MICHAEL L. TRACY, ESQ., SBN 237779
2 MTRACY@MICHAELTRACYLAW.COM
3 MEGAN E. ROSS, ESQ., SBN 227776
4 MROSS@MICHAELTRACYLAW.COM
5 LAW OFFICES OF MICHAEL TRACY
6 2030 Main Street, Suite 1300
7 Irvine, CA 92614
8 T: (949) 260-9171
9 F: (866) 365-3051

10 Attorneys for Plaintiff Douglas Roberts

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN JOSE DIVISION**

14 DOUGLAS ROBERTS , AN INDIVIDUAL;

15 Plaintiff,

16 vs.

17 TRIMAC TRANSPORTATION SERVICES
18 (WESTERN), INC., A DELAWARE
19 CORPORATION; ,

20 Defendant.

Case No.: 5:12-cv-05302-HRL
COURT RULINGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATION OF KEVIN
DECELLES USED IN SUPPORT OF
DEFENDANT'S SUPPLEMENTAL
OPPOSITION TO MOTION OF
PARTIAL SUMMARY JUDGMENT

(RE: DOCKET No. 46-6)

21 PLAINTIFF DOUGLAS ROBERTS objects to the Declaration of KEVIN
22 DECELLES used in support of Defendant's Supplemental Opposition to Motion for Partial
23 Summary Judgment.
24
25
26
27
28

Obj. No.	Statement	Location	Objection	Ruling
1.	<p>"I have reviewed the documents attached to this declaration as Exhibits 1, 2, and 3 and compared them with the spreadsheet I created when I ran the queries. Exhibit 1 is a true and accurate copy of the 2008 TMW information tab in the spreadsheet I created when I ran the query of the TMW database. Exhibit 2 is a true and accurate copy of the 2009 TMW information tab in the spreadsheet I created when I ran the query of the TMW database. Exhibit 3 is a true and accurate copy of the 2010 TMW information tab in the spreadsheet I created when I ran the query of the TMW database. The columns in the exhibits show the TMW system information for, among other things, the leg number, total miles, driver, branch, start date, origin state, leg completion date, destination state, and the commodity transported. The data</p>	<p>3:19-26 4:1-3 ¶7</p>	<p>Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay.</p> <p>Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.</p>	<p><u> </u> Sustained ✓ <u> </u> Overruled</p> <p><u> </u> Sustained ✓ <u> </u> Overruled</p>

1		in these exhibits is the same data that was inputted into the TMW system. The only difference is the format. Trimac personnel regularly run reports similar to these 3 exhibits in the normal course of business."			
2					
3					
4					
5					
6					
7					
8	2.	"In preparing to provide this Declaration, I was asked to analyze the information provided in <i>Exhibits</i> 1-3 related to the legs dispatched to the following drivers:	4:4-25 5:1-3 ¶8	Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	<u> </u> Sustained <input checked="" type="checkbox"/> Overruled <u> </u> Sustained <input checked="" type="checkbox"/> Overruled
9		Randall Banks,			
10		Martin Baudoin,			
11		Michael Brogdon,			
12		Kerry Bushnell, Cary Carandang, Victor Cunningham,			
13		Thomas Darnell,			
14		Anthony Davis,			
15		Randal Gorshe,			
16		Raymond Greene,			
17		Robert Hass,			
18		Christopher Larsen,			
19		Michael Magee, Oleg Marchenko, Leo Mueller, Michael Myers, Robert Penicks, Ronald Phillips, Leland Pike, Douglas Roberts, George Sabilino, David Surgick, Rocky Torrecillas, Jason Vieth, and Christopher Wilks (the "Santa Clara			
20					
21					
22					
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

Drivers").
Specifically, I was asked to identify the following:

a. The total number of Santa Clara Drivers dispatched on legs that were (1) from CA to another state, (2) between two non-CA states, and (3) from another state to CA ("out-of-state legs").

b. The total number of Santa Clara Drivers dispatched on local California deliveries of argon in California from 2008-2010.

c. The total number of legs dispatched to the Santa Clara Drivers in 2008, 2009, and 2010.

d. The total number of out-of-state legs dispatched to the Santa Clara Drivers for 2008,2009,2010.

e. The total number of legs of argon dispatched to the Santa Clara Drivers for local delivery in California in 2008, 2009, and 2010.

1	f. The total miles driven on all legs dispatched to the Santa Clara Drivers in 2008, 2009,2010.			
2				
3				
4	g. The total miles driven on all legs dispatched to the Santa Clara Drivers on out-of-state legs in 2008,2009,2010.			
5				
6				
7				
8				
9	h. The total number of miles driven on the legs of argon dispatched to the Santa Clara Drivers for local delivery in California in 2008, 2009, and 2010.			
10				
11				
12				
13				
14				
15	i. A list of the products that were hauled on out-of-state legs during 2008 and 2010."			
16				
17				
18	3. "A summary of my analysis of the information contained in <i>Exhibit</i> 1-3 is attached to this declaration as <i>Exhibit</i> 4 (the "Summary"). <i>Exhibit</i> 4 contains three tables. The first table is titled "Summary of Santa Clara Drivers from 2008-2010." The second column of the first table shows the total number of Santa Clara Drivers	5:11-21 ¶10	Lacks personal knowledge, FRE 602. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED <input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				

1		dispatched on either an out-of-state leg or local argon leg. This number was derived from combining the list of 20 Santa Clara Drivers that hauled a local argon leg and the 16 Santa Clara Drivers that hauled an out-of-state leg. The third column shows the percentage of Santa Clara Drivers who hauled those legs by dividing the number in the second column by 25, the number of Santa Clara Drivers. The fourth column shows the total number of Santa Clara Drivers who were dispatched on out-of-state legs. The fifth column shows the percentage of Santa Clara Drivers who hauled those legs by dividing the number in the second column by 25, the number of Santa Clara Drivers."		FRE 702 as an expert in statistical analysis.	
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23	4.	The second table in the Summary is titled "Summary of Interstate Legs from 2008-2010." The second column of the table shows the total number of legs dispatched to Santa Clara Drivers in	5:22-26 6:1-8 ¶11	Lacks personal knowledge, FRE 602. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED <input type="checkbox"/> Sustained
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

2008, 2009, and 2010. Legs that were dispatched to more than one driver to complete were counted twice. The third column of the table shows the total number of out-of-state legs and local argon legs that were dispatched in 2008, 2009, and 2010. The fourth column of the table shows the percentage of interstate legs compared to the total number of legs by dividing the number of legs in the third column by the number of legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in 2008, 2009, and 2010. The sixth column of the table shows the number of miles on out-of-state legs and local argon legs. For the fifth and sixth columns, the miles related to legs that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the percentage of

Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.

✓ Overruled

1		interstate miles driven by the Santa Clara Drivers by dividing the number of miles in the sixth column by the number of miles in the fifth column.			
2					
3					
4					
5					
6	5.	The third table in the Summary is titled "Summary of Out-of-State Legs from 2008-2010." The second column of the table shows the total number of legs dispatched to Santa Clara Drivers in 2008, 2009, and 2010. Legs that were dispatched to more than one driver to complete were counted twice. The third column of the table shows the total number of out-of-state legs that were dispatched in 2008, 2009, and 2010. The fourth column of the table shows the percentage of out-of-state legs compared to the total number of legs by dividing the number of legs in the third column by the number of legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in	6:9-20 ¶12	Lacks personal knowledge, FRE 602. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED <input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
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

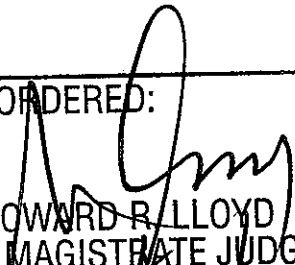
	<p>2008,2009, and 2010. The sixth column of the table shows the number of miles on out-of-state legs. For the fifth and sixth columns, the miles related to legs dispatched to more than one driver were only counted once. Finally, the seventh column shows the percentage of out-of-state miles driven by the Santa Clara Drivers by dividing the number of miles in the sixth column by the number of miles in the fifth column.</p>			
6.	<p>The following products were hauled on out-of-state legs from 2008 to 2010: Argon, Nitrogen, Oxygen, Hydrogen Liquid Cryogenic, Helium, Helium Gaseous.</p>	<p>6:21-22 ¶13</p>	<p>Lacks personal knowledge, FRE 602.</p>	<p>SUSTAINED</p>

DATED: May 14, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

IT IS SO ORDERED: By:


 HOWARD R. LLOYD
 U.S. MAGISTRATE JUDGE
 DATE: 9/30/13

MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

1 MICHAEL L. TRACY, ESQ., SBN 237779
2 MTRACY@MICHAELTRACYLAW.COM
3 MEGAN E. ROSS, ESQ., SBN 227776
4 MROSS@MICHAELTRACYLAW.COM
5 LAW OFFICES OF MICHAEL TRACY
6 2030 Main Street, Suite 1300
7 Irvine, CA 92614
8 T: (949) 260-9171
9 F: (866) 365-3051

10 Attorneys for Plaintiff Douglas Roberts

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 DOUGLAS ROBERTS, AN INDIVIDUAL;

15 Plaintiff,

16 vs.

17 TRIMAC TRANSPORTATION SERVICES
18 (WESTERN), INC., A DELAWARE
19 CORPORATION; ,

20 Defendant.

Case No.: 5:12-cv-05302-HRL

**COURT RULINGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATION OF JANE DELISI
USED IN SUPPORT OF DEFENDANT'S
SUPPLEMENTAL OPPOSITION TO
MOTION OF PARTIAL SUMMARY
JUDGMENT**

(RE: DOCKET NO. 46-7)

21 PLAINTIFF DOUGLAS ROBERTS objects to the Declaration of JANE DELISI
22 used in support of Defendant's Supplemental Opposition to Motion for Partial Summary
23 Judgment.
24
25
26
27
28

Obj. No.	Title	Location	Objection	Ruling
1.	Declaration of Jane Delisi in Support of Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment	Document #43-9	Failure to disclose the witness pursuant to Rule 26(a)(1).	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled

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

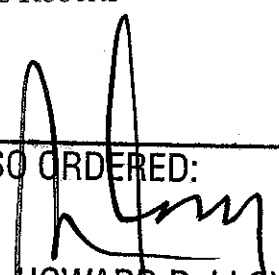
DATED: May 14, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

By:

MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

IT IS SO ORDERED:

HOWARD R. LLOYD
U.S. MAGISTRATE JUDGE
DATE: 9/30/13

1 MICHAEL L. TRACY, ESQ., SBN 237779
2 MTRACY@MICHAELTRACYLAW.COM
3 MEGAN E. ROSS, ESQ., SBN 227776
4 MROSS@MICHAELTRACYLAW.COM
5 LAW OFFICES OF MICHAEL TRACY
6 2030 Main Street, Suite 1300
7 Irvine, CA 92614
8 T: (949) 260-9171
9 F: (866) 365-3051

10 Attorneys for Plaintiff Douglas Roberts

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN JOSE DIVISION**

14 DOUGLAS ROBERTS , AN INDIVIDUAL;

15 Plaintiff,

16 vs.

17 TRIMAC TRANSPORTATION SERVICES
18 (WESTERN), INC., A DELAWARE
19 CORPORATION; ,

20 Defendant.

Case No.: 5:12-cv-05302-HRL
COURT RULINGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATION OF VICENT G.
CLARK USED IN SUPPORT OF
DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

(RE: DOCKET No. 47-1)

21 PLAINTIFF DOUGLAS ROBERTS objects to the Declaration of VICENT G.
22 CLARK used in support of Defendant's Motion for Partial Summary Judgment (Document
23 #44-2).

Obj. No.	Statement	Location	Objection	Ruling
1.	"The purification process does not change the essential character of the argon. The product is 97% argon when it begins the process, and it is 99.99% argon when it is delivered to the customer."	2:19-21 ¶5	Legal conclusion. FRE 602. Calls for expert testimony, FRE 701. This declaration is based on chemical process and statistically analysis of such processing, but the Declarant has not been qualified under FRE 702 as an expert.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED

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

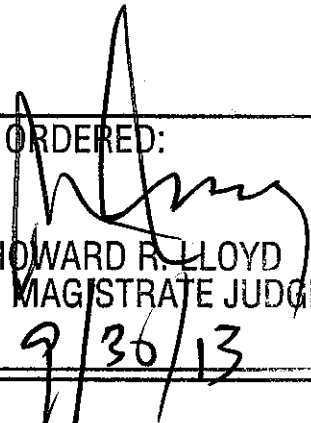
DATED: May 21, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

By:

MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

IT IS SO ORDERED:

HOWARD R. LLOYD
U.S. MAGISTRATE JUDGE
DATE: 9/30/13

1 MICHAEL L. TRACY, ESQ., SBN 237779
2 MTRACY@MICHAELTRACYLAW.COM
3 MEGAN E. ROSS, ESQ., SBN 227776
4 MROSS@MICHAELTRACYLAW.COM
5 LAW OFFICES OF MICHAEL TRACY
6 2030 Main Street, Suite 1300
7 Irvine, CA 92614
8 T: (949) 260-9171
9 F: (866) 365-3051

10 Attorneys for Plaintiff Douglas Roberts

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 DOUGLAS ROBERTS , AN INDIVIDUAL;
15 Plaintiff,
16 vs.
17 TRIMAC TRANSPORTATION SERVICES
18 (WESTERN), INC., A DELAWARE
19 CORPORATION; ,
20 Defendant.

Case No.: 5:12-cv-05302-HRL
COURT RULINGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATION OF KEVIN
DECELLES USED IN SUPPORT OF
DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

(RE: DOCKET No. 47-2)

21 PLAINTIFF DOUGLAS ROBERTS objects to the Declaration of KEVIN
22 DECELLES used in support of Defendant's Motion for Partial Summary Judgment
23 (Document #44-8).
24
25
26
27
28

Obj. No.	Statement	Location	Objection	Ruling
1.	<p>“I have reviewed the documents attached to this declaration as <i>Exhibits 1, 2, and 3</i> and compared them with the spreadsheet I created when I ran the queries. <i>Exhibit 1</i> is a true and accurate copy of the 2008 TMW information tab in the spreadsheet I created when I ran the query of the TMW database. <i>Exhibit 2</i> is a true and accurate copy of the 2009 TMW information tab in the spreadsheet I created when I ran the query of the TMW database. <i>Exhibit 3</i> is a true and accurate copy of the 2010 TMW information tab in the spreadsheet I created when I ran the query of the TMW database. The columns in the exhibits show the TMW system information for, among other things, the leg number, total miles, driver, branch, start date, origin state, leg completion date, destination state, and the commodity transported. The data</p>	<p>3:19-26 4:1-3 ¶7</p>	<p>Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these “TMW” reports, the contents are hearsay.</p> <p>Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.</p>	<p><u> </u> Sustained <input checked="" type="checkbox"/> Overruled</p> <p><u> </u> Sustained <input checked="" type="checkbox"/> Overruled</p>

1		in these exhibits is the same data that was inputted into the TMW system. The only difference is the format. Trimac personnel regularly run reports similar to these 3 exhibits in the normal course of business."			
2					
3					
4					
5					
6					
7					
8	2.	"In preparing to provide this Declaration, I was asked to analyze the information provided in Exhibits 1-3 related to the legs dispatched to the following drivers: Randall Banks, Martin Baudoin, Michael Brogdon, Kerry Bushnell, Cary Carandang, Victor Cunningham, Thomas Darnell, Anthony Davis, Randal Gorshe, Raymond Greene, Robert Hass, Christopher Larsen, Michael Magee, Oleg Marchenko, Leo Mueller, Michael Myers, Robert Penicks, Ronald Phillips, Leland Pike, Douglas Roberts, George Sabilino, David Surgick, Rocky Torrecillas, Jason Vieth, and Christopher Wilks (the "Santa Clara	4:4-25 5:1-3 ¶8	Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled <input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
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

Drivers").
Specifically, I was asked to identify the following:

a. The total number of Santa Clara Drivers dispatched on legs that were (1) from CA to another state, (2) between two non-CA states, and (3) from another state to CA ("out-of-state legs").

b. The total number of Santa Clara Drivers dispatched on local California deliveries of argon in California from 2008-2010.

c. The total number of legs dispatched to the Santa Clara Drivers in 2008, 2009, and 2010.

d. The total number of out-of-state legs dispatched to the Santa Clara Drivers for 2008,2009,2010.

e. The total number of legs of argon dispatched to the Santa Clara Drivers for local delivery in California in 2008, 2009, and 2010.

1	f. The total miles driven on all legs dispatched to the Santa Clara Drivers in 2008, 2009,2010.			
2				
3				
4	g. The total miles driven on all legs dispatched to the Santa Clara Drivers on out-of-state legs in 2008,2009,2010.			
5				
6				
7				
8				
9	h. The total number of miles driven on the legs of argon dispatched to the Santa Clara Drivers for local delivery in California in 2008, 2009, and 2010.			
10				
11				
12				
13				
14				
15	i. A list of the products that were hauled on out-of-state legs during 2008 and 2010."			
16				
17				
18	3. "A summary of my analysis of the information contained in <i>Exhibit</i> 1-3 is attached to this declaration as <i>Exhibit</i> 4 (the "Summary"). <i>Exhibit</i> 4 contains three tables. The first table is titled "Summary of Santa Clara Drivers from 2008-2010." The second column of the first table shows the total number of Santa Clara Drivers	5:11-21 ¶10	Lacks personal knowledge, FRE 602. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED <input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				

1		dispatched on either an out-of-state leg or local argon leg. This number was derived from combining the list of 20 Santa Clara Drivers that hauled a local argon leg and the 16 Santa Clara Drivers that hauled an out-of-state leg. The third column shows the percentage of Santa Clara Drivers who hauled those legs by dividing the number in the second column by 25, the number of Santa Clara Drivers. The fourth column shows the total number of Santa Clara Drivers who were dispatched on out-of-state legs. The fifth column shows the percentage of Santa Clara Drivers who hauled those legs by dividing the number in the second column by 25, the number of Santa Clara Drivers.”		FRE 702 as an expert in statistical analysis.	
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23	4.	“The second table in the Summary is titled "Summary of Interstate Legs from 2008-2010." The second column of the table shows the total number of legs dispatched to Santa Clara Drivers in	5:22-26 6:1-8 ¶11	Lacks personal knowledge, FRE 602. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these “TMW” reports, the contents are hearsay.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED <input type="checkbox"/> Sustained
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

2008, 2009, and 2010. Legs that were dispatched to more than one driver to complete were counted twice. The third column of the table shows the total number of out-of-state legs and local argon legs that were dispatched in 2008, 2009, and 2010. The fourth column of the table shows the percentage of interstate legs compared to the total number of legs by dividing the number of legs in the third column by the number of legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in 2008, 2009, and 2010. The sixth column of the table shows the number of miles on out-of-state legs and local argon legs. For the fifth and sixth columns, the miles related to legs that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the percentage of

Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.

✓ Overruled

1		interstate miles driven by the Santa Clara Drivers by dividing the number of miles in the sixth column by the number of miles in the fifth column.”			
2					
3					
4					
5					
6	5.	“The third table in the Summary is titled	6:9-20	Lacks personal knowledge, FRE 602.	<input type="checkbox"/> Sustained
7		"Summary of Out-of-State Legs from	¶12	Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these “TMW” reports, the contents are hearsay.	<input checked="" type="checkbox"/> Overruled
8		The second column of the table shows the total number of legs dispatched to Santa Clara Drivers in 2008, 2009, and 2010. Legs that were dispatched to more than one driver to complete were counted twice. The third column of the table shows the total number of out-of-state legs that were dispatched in 2008, 2009, and 2010. The fourth column of the table shows the percentage of out-of-state legs compared to the total number of legs by dividing the number of legs in the third column by the number of legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in		Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	OVERRULED
9					<input type="checkbox"/> Sustained
10					<input checked="" type="checkbox"/> Overruled
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
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

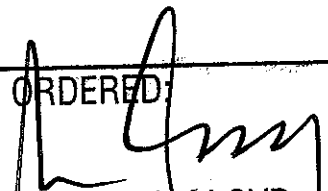
	<p>2008,2009, and 2010. The sixth column of the table shows the number of miles on out-of-state legs. For the fifth and sixth columns, the miles related to legs dispatched to more than one driver were only counted once. Finally, the seventh column shows the percentage of out-of-state miles driven by the Santa Clara Drivers by dividing the number of miles in the sixth column by the number of miles in the fifth column.”</p>			
6.	<p>“The following products were hauled on out-of-state legs from 2008 to 2010: Argon, Nitrogen, Oxygen, Hydrogen Liquid Cryogenic, Helium, Helium Gaseous.”</p>	<p>6:21-22 ¶13</p>	<p>Lacks personal knowledge, FRE 602.</p>	<p>SUSTAINED</p>

DATED: May 21, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

IT IS SO ORDERED: By:



HOWARD R. LLOYD
U.S. MAGISTRATE JUDGE

DATE: 9/30/13

MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

1 MICHAEL L. TRACY, ESQ., SBN 237779
2 MTRACY@MICHAELTRACYLAW.COM
3 MEGAN E. ROSS, ESQ., SBN 227776
4 MROSS@MICHAELTRACYLAW.COM
5 LAW OFFICES OF MICHAEL TRACY
6 2030 Main Street, Suite 1300
7 Irvine, CA 92614
8 T: (949) 260-9171
9 F: (866) 365-3051

10 Attorneys for Plaintiff Douglas Roberts

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN JOSE DIVISION**

14 DOUGLAS ROBERTS, AN INDIVIDUAL;
15 Plaintiff,
16 vs.
17 TRIMAC TRANSPORTATION SERVICES
18 (WESTERN), INC., A DELAWARE
19 CORPORATION;
20 Defendant.

Case No.: 5:12-cv-05302-HRL
COURT RULINGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATION OF JANE DELISI
USED IN SUPPORT OF DEFENDANT'S
MOTION OF PARTIAL SUMMARY
JUDGMENT

(RE: DOCKET No. 47-3)

21 PLAINTIFF DOUGLAS ROBERTS objects to the Declaration of JANE DELISI
22 used in support of Defendant's Motion for Partial Summary Judgment.
23
24
25
26
27
28

Obj. No.	Title	Location	Objection	Ruling
1.	Declaration of Jane Delisi in Support of Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment	Document #44-9	Failure to disclose the witness pursuant to Rule 26(a)(1).	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled

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

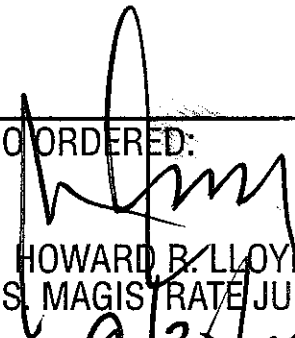
DATED: May 21, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

By:

MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

IT IS SO ORDERED:

HOWARD B. LLOYD
U.S. MAGISTRATE JUDGE
DATE: 9/30/13