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9 *Attorney for Defendants*
 Case Peter VanVeen and
 10 Case VanVeen dba Lazevee Farms, Inc.

11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF NEVADA**

13 MARIA GARCIA HERNANDEZ,
 14 Plaintiff,

15 vs.

16 CASE PETER VANVEEN, an individual;
 17 CASE VANVEEN, dba LAZEVEE FARMS,
 INC., a California corporation; DOES I
 18 through V, inclusive, and ROE
 CORPORATIONS I through V, inclusive,
 19 Defendants.

CASE NO. 2:14-cv-01493-JCM-CWH

**ORDER REGARDING DEFENDANTS
 VANVEEN AND LAZEVEE FARMS, INC.,’S
 MOTION TO PRECLUDE OR LIMIT THE
 TESTIMONY OF PAUL PAXTON, OR,
 ALTERNATIVELY, TO ALLOW
 COMPLETION OF DEPOSITION, AND
 MOTION FOR SANCTIONS**

21 On August 22, 2016, Defendants CASE PETER VANVEEN and LAZEVEE FARMS, INC.
 22 (“Defendants”) brought their Motion to Preclude or Limit the Testimony of Plaintiff’s Expert, Paul
 23 Paxton, or, Alternatively, to Allow Completion of Deposition, and Motion for Sanctions for hearing. The
 24 Court, having reviewed the papers and pleadings on file herein, having heard oral arguments of counsel,
 25 Steven T. Jaffe, Esq. on behalf of the Defendants and R. Todd Terry, Esq. on behalf of Plaintiff, and
 26 having been otherwise fully informed on the premises, hereby enters the following Order:

27 IT IS HEREBY ORDERED, ADJUDGED and DECREED that this Court will not make a
 28 decision regarding the qualifications of Mr. Paxton as an expert under Rule 702. That is a decision that
 Judge Mahan can make as he sees fit;

1 IT IS ALSO HEREBY ORDERED, ADJUDGED and DECREED that Mr. Paxton's First and
2 Second Supplemental Reports are stricken. This Court bases its decision on the fact that both
3 supplemental reports were based upon information that was well known and available to the Plaintiff
4 prior to the court-ordered initial expert disclosure deadline, and are therefore untimely. The Court also
5 finds that there is no substantial justification for the lateness of the opinions and facts supporting those
6 opinions. The Court further finds that these untimely supplements are not harmless;

7 IT IS FURTHER ORDERED, ADJUDGED and DECREED that Mr. Paxton may not support his
8 testimony, or supplement his initial report, with facts, foundation, or opinions that are expressed in the
9 first or second supplemental reports, or any additional discovery that Mr. Paxton was provided with that
10 led to the second supplemental report or the site inspection that led to the first supplemental report;

11 IT IS FURTHER ORDERED, ADJUDGED and DECREED that Mr. Paxton will not be allowed
12 to supplement his report based upon the deposition testimony of Mr. Vanveen, or otherwise allowed to
13 reference or use Mr. Vanveen's deposition testimony to support any of his opinions at trial;

14 IT IS FURTHER ORDERED, ADJUDGED and DECREED that Defendants prevailed and were
15 successful in this motion pursuant to FRCP 37© and as a result will be awarded their fees and costs for
16 having to file this Motion;

17 IT IS FURTHER ORDERED, ADJUDGED and DECREED that Plaintiff shall reimburse
18 Defendants for the costs of Defendants' counsel having to travel to Florida for the February 26, 2016,
19 deposition, and for eight hours of attorney time for travel to and from Florida. This is because the
20 effectiveness of the deposition was undermined by Mr. Paxton's untimely supplement, because Mr.
21 Paxton was unrealistic in his belief that he would only have to testify for three hours as that was the only
22 amount advanced at that time (particularly given the untimely supplement served shortly prior to the
23 deposition), and because Mr. Paxton failed to otherwise make known any issues with a normal
24 deposition day prior to the deposition.

25 IT IS FURTHER ORDERED, ADJUDGED and DECREED that Plaintiff shall be required to
26 pay Defendants for the costs of the failed April 8, 2016, deposition, which will be the court reporter fees,
27 the appearance fees, and the videography fees. This is due to the second untimely supplemental report
28 that confused things further and made the second videotaped deposition a waste of time. The parties

1 shall meet and confer regarding these amounts and Defendants shall file a motion within 14 days of this
2 Order if the parties cannot come to an agreement regarding the amount;

3 IT IS FURTHER ORDERED, ADJUDGED and DECREED that all financial sanctions from this
4 order be due to Defendants at the resolution of this case;

5 IT IS FURTHER HEREBY ORDERED, ADJUDGED and DECREED that Mr. Paxton is either
6 to return the fees that he received from the Defense in anticipation of the second deposition or credit
7 such fees to the continuation of his deposition. Failure by Mr. Paxton to return the fees or credit them to
8 the continuation of his deposition will result in him being precluded from testifying in this case;

9 IT IS FURTHER HEREBY ORDERED, ADJUDGED and DECREED that Mr. Paxton's fees for
10 the next deposition will be \$350 an hour, and Mr. Paxton will not be allowed to increase his fee in the
11 middle of the deposition;

12 IT IS FURTHER ORDERED, ADJUDGED and DECREED that Defendants will be allowed
13 another four and a half (4.5) hours of testimony time to complete the deposition of Mr. Paxton, and that
14 Plaintiff's counsel is to inform Defendants' counsel regarding whether Mr. Paxton will be able to
15 complete the 4.5 hours in one sitting or whether the deposition would have to be scheduled for
16 consecutive days at least three (3) weeks in advance of Mr. Paxton's deposition to allow Defendants to
17 make the necessary arrangements.

18 IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Court will extend discovery
19 in this matter, but asks that the parties meet and confer to select a date certain for the settlement
20 conference, assess the proposed amount of time needed to complete discovery if needed, and submit a
21 stipulation and order to this Court with those terms.

22 IT IS SO ORDERED.

23 DATED: September 21,
24 2016

25
26 THE HONORABLE CARL W. HOFFMAN
27 U.S. DISTRICT COURT JUDGE
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1 Respectfully submitted by:

2 HALL JAFFE & CLAYTON, LLP
3

4 By: /s/ Steven T. Jaffe
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14 Approved as to form and content:

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