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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Leoper	Plaintiff/Petitioner(s)
VS	
Certainced Corporation	Defendant/Respondent(s)
(Abbreviated Title)	

No. RG14711162
Order
Motion
Granted

The Motion was set for hearing on 08/15/2014 at 09:31 AM in Department 30 before the Honorable Jo-Lynne Q. Lee. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The motion by Defendant Union Carbide Corporation ("UCC") to enforce the stipulation of the parties that Plaintiff Sondra Leoper would not provide product identification testimony, in this case, or, in the alternative, to continue the trial date, and for an award of monetary sanctions, is ruled upon as follows:

The motion for an order to prevent Plaintiff Sondra Leoper from providing product identification testimony, in this case is GRANTED. Plaintiffs have repeatedly asserted, and continue to assert, that Plaintiff Damon Leoper must be given an early trial date because of his health. On that basis, the court set a trial date of October 20, 2014. On May 15, 2014, Plaintiffs stipulated that Plaintiff's Sondra Leoper would not provide product identification testimony. The consideration for that stipulation was the agreement by all defendants that they would not seek to continue the trial date based on the fact that Sondra Leoper's deposition was not taken on May 15, 2014.

The stipulation on May 15, 2014, was freely entered into by Plaintiffs' counsel, on behalf of Plaintiffs, and it is an enforceable waiver of the right of Plaintiff Sondra Leoper to offer product identification testimony. *Maltskovsky v. Tenet Healthsystem* (2005) 128 Cal.App 4th 262, 279. Plaintiffs do not argue that there are grounds for rescinding the stipulation, and they provide no evidence that would justify that relief. They merely offer counsel's representation that counsel entered into the stipulation "in good faith."

Contrary to Plaintiffs' arguments, Mrs. Leoper's purported recollection of four specific, separate products affecting five defendants, which was first disclosed on August 5, 2014, creates obvious and severe prejudice to the defendants affected by Plaintiffs' attempt to withdraw the stipulation. Defendants have relied upon the stipulation in conducting discovery, preparing witnesses, and generally preparing a defense at trial. They have relied upon the stipulation in determining whether to file motions for summary judgment/summary adjudication. Moreover, the court would be required to continue the trial date if Plaintiffs were allowed to rescind the stipulation, and it is not willing to do so in light of plaintiff's purported medical condition. In addition, the evidence offered by Plaintiffs to explain why

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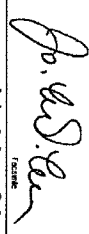
counsel was mistaken in entering into the stipulation does not show reasonable diligence or good faith on the part of Plaintiffs or their counsel.

The motion, in the alternative, to continue the trial date is moot.

The request for an award of monetary sanctions is GRANTED. Plaintiffs are ordered to pay reasonable monetary sanctions of \$1,800 to Defendant Union Carbide Corp. and its counsel. Plaintiffs' position was not substantially justified. C.C.P. sec. 2025.420(b). Sanctions are due and payable on August 22, 2014.

Defendant Union Carbide Corporation shall serve a copy of this order upon all parties forthwith and file a proof of service with the Court.

Dated: 08/15/2014


Judge Jo-Lynne Q. Lee

Order