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7
8 SUPERIOR COURT – STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA – UNLIMITED JURISDICTION

10 DAMON LEEPER AND SONDRAL (ASBESTOS)
LEEPER, Case No. RG14711162
11
12 Plaintiff(s),
vs.
13 CERTAINTEED CORPORATION, et al.,
14 Defendants.

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT UNION CARBIDE
CORPORATION’S MOTION FOR
PROTECTIVE ORDER TO ENFORCE
STIPULATION, OR IN THE ALTERNATIVE,
VACATE AND CONTINUE THE TRIAL
DATE AND REQUEST FOR MONETARY
SANCTIONS

[Served concurrently with supporting Notice
of Motion and Declaration of Tina M.
Glezakos with exhibits]

Date: August 15, 2014
Time: 9:31 p.m.
Dept.: 30
Reservation No.: R-154112

Action Filed: January 24, 2014
Trial Date: October 20, 2014

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1 **I. INTRODUCTION**

2 The issue presented is straight forward – is a stipulation agreed to by all parties on
3 the record at a deposition, after mutual consideration, binding and enforceable or can one
4 party unilaterally choose to disregard the stipulation simply based on later acquired facts
5 that were knowable to that party at, or before, the time the stipulation was entered into?
6 The law and public policy require that the answer be a resounding no.

7 On May 15, 2014, at the deposition of plaintiff Damon Leeper, counsel for plaintiffs
8 Damon Leeper and Sondra Leeper (“Plaintiffs”) entered into a stipulation on the record
9 with counsel for defendants, after discussion and agreement between the parties,
10 explicitly stating “I am stipulating and do stipulate that **Sondra Leeper will not have**
11 **product identification testimony that will be offered as against any defendant being**
12 **joined in this lawsuit.** So stipulated.” Close to *two months later*, after Union Carbide
13 Corporation (“Union Carbide”) filed and served its Motion for Summary Judgment
14 relying on the no product identification stipulation entered into by the parties regarding
15 Mrs. Leeper, Plaintiffs’ counsel announced on the morning of August 5, 2014 at the
16 commencement of Mrs. Leeper’s deposition that he was no longer adhering to the
17 previously agreed to stipulation and that Plaintiffs now intended to offer Mrs. Leeper as a
18 product identification witness against certain defendants, including Union Carbide. The
19 only explanation given by Plaintiffs’ counsel for the attempted unilateral rescission of the
20 stipulation was that neither he, nor anyone at the Brayton Purcell law firm, had discussed
21 with Mrs. Leeper – their own client – over at least the six month period since the case was
22 filed whether or not she would have any product identification knowledge relevant to the
23 defendants in the case.

24 The fact that Plaintiffs’ counsel failed to explore their own client’s product
25 identification knowledge before making the tactical decision to enter into the May 15, 2014
26 stipulation with all defendants does not provide legal grounds for the recession of
27 mutually agreed to stipulation. Nor should Plaintiffs’ counsel’s conduct be sanctioned by
28 this Court as it would essentially create precedent that any stipulation voluntarily entered

1 into by the parties to facilitate the progression of a case could be unilaterally disregarded
2 by any party, at any time, for any reason; gamesmanship that would have disastrous
3 consequences. Union Carbide, therefore, respectfully requests this Court enter a
4 protective order pursuant to Code of Civil Procedure Section 2025.420 and enforce the
5 stipulation voluntarily entered into by the parties regarding the testimony of Mrs. Leeper.

6 In the alternative, if this Court is inclined to allow Plaintiffs to unilaterally rescind
7 the stipulation relied on by all parties in good faith at this late stage with only two months
8 before trial, an outcome that Union Carbide strenuously opposes, Union Carbide requests
9 that the Court vacate and continue the current October 20, 2014 trial date pursuant to
10 California Rule of Court 1.1332 (c) and (d). This is not a preference case. However, the
11 Court did set an advanced trial date given Mr. Leeper's mesothelioma diagnosis back in
12 April 2014. Inherent in the granting of the advanced trial date was an obligation on all the
13 parties to proceed expeditiously with preparation for trial, including responding to
14 discovery and promptly disclosing relevant witnesses and documents. Plaintiffs' actions
15 to the contrary mandate that the current trial date be continued in the interests of justice.

16 Lastly, Union Carbide respectfully requests that this Court issue monetary
17 sanctions pursuant to Code of Civil Procedure Section 2025.420(h) in the amount of
18 \$1,800.00 for attorneys' fees and costs incurred by Union Carbide in having to bring the
19 instant motion to enforce the stipulation previously agreed to by all parties. Had Plaintiffs
20 chosen to abide by the terms of the stipulation offered and entered into on their behalf,
21 Union Carbide would not have been forced to incur any of the above expenses.
22 Conversely, if the Court denies the instant motion and allows Plaintiffs to unilaterally
23 rescind the agreed upon stipulation, Union Carbide requests monetary sanctions in the
24 amount of \$2,475.00 for attorneys' fees and costs incurred by Union Carbide in the
25 preparation and filing of a Motion for Summary Judgment based on the no product
26 identification stipulation voluntarily entered into by the parties on which Union Carbide
27 relied in good faith in bringing its dispositive motion.

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1 **II. STATEMENT OF FACTS**

2 Plaintiffs filed this personal injury action on January 24, 2014, over seven months
3 ago, naming over seventy defendants. (Declaration of Tina M. Glezakos in support of
4 Union Carbide’s Motion for Protective Order [“Glezakos Decl.”], Exhibit A.) On February
5 19, 2014, Plaintiffs served a Notice of Taking Trial Preservation Testimony of Mr. Leeper
6 for March 11, 2014. (Glezakos Decl., Exhibit B.) On February 27, 2014, Berry & Berry
7 served a Notice of Taking Discovery Deposition and Request for Production of
8 Documents on behalf of defendants setting the cross-examination of Mr. Leeper to
9 commence on March 11, 2014, immediately following the conclusion of Plaintiffs’ direct
10 examination. (Glezakos Decl., Exhibit C.) Also on February 27, 2014, Berry & Berry served
11 a Notice of Taking Deposition and Request for Production of Documents on behalf of
12 defendants to Mrs. Leeper setting her deposition for March 14, 2014, “immediately
13 following the deposition of Damon Leeper.” (Glezakos Decl., Exhibit D.)

14 Mr. Leeper’s deposition commenced on March 12, 2014, in Bakersfield, California.
15 (Glezakos Decl., ¶ 5.) Given the large number of defendants attending (approximately
16 fifty-five), Mr. Leeper’s extensive work history as a pipefitter and welder over 36 years at
17 numerous sites, and the fact that Mr. Leeper was undergoing medical treatment, including
18 chemotherapy, during the course of his deposition, Mr. Leeper’s deposition did not
19 conclude until May 16, 2014. (*Id.*)

20 At the May 15, 2014, deposition of Mr. Leeper, in anticipation of the deposition’s
21 conclusion, the parties discussed the notice of deposition setting Mrs. Leeper’s deposition
22 to commence immediately following the conclusion of Mr. Leeper’s deposition. (*See*
23 Exhibit C.) Although all parties were amenable to continuing Mrs. Leeper’s deposition to
24 a future date, as the advanced trial date of October 20, 2014, had already been assigned,
25 defendants were concerned that postponing Mrs. Leeper’s deposition would interfere
26 with the timely completion of necessary factual investigations and the preparation of
27 dispositive motions where appropriate. (Glezakos Decl., ¶ 6.) After discussing the matter
28 with all defense counsel present and on the phone, and in exchange for defendants not

1 seeking to continue the current trial date, Plaintiffs offered a no product identification
2 stipulation for Mrs. Leeper so her deposition could be conducted at a later date.

3 Specifically, Plaintiffs' counsel stated on the record:

4 3805

9 MR. SOLOMON: Good morning again. We're
5 10 back on the record. The date is May 15th, 2014.

6 11 The time is 11:27 a.m., Pacific Daylight Time.

7 12 This is the continued videotaped deposition of
13 Damon Leeper.

8 14 Off the record, I just had a discussion
15 with the various defense counsel, both of those
9 16 that are appearing here personally in the room and

10 17 those that are appearing live via telephone. **We**
11 **18 discussed the taking of Sondra Leeper's deposition,**
12 **19 which as we all know, was noticed to commence**
20 **20 immediately succeeding the conclusion of Damon**
21 **21 Leeper's deposition.**

13 22 It is my belief that based on our
14 23 discussion that we just had, that we have agreed to
24 the following: Number one, **I am stipulating and do**
15 **25 stipulate that Sondra Leeper will not have product**

16 3806

17 **1 identification testimony that will be offered as**
18 **2 against any defendant being joined in this lawsuit.**
19 **3 So stipulated.**

4 Two, that we must produce Sondra Leeper
5 and have her deposition concluded not later than
20 6 July 15th, 19 -- 2014. And that's the day it has
7 to finish, on or before that date.

21 8 Three, nobody will seek to have a
22 9 continuation of Mr. Leeper's current October 2014
10 trial date because Sondra Leeper's deposition was
23 11 not completed prior to July 15th, 2014.

24 12 Have I made any statement that anybody
13 considers to be a misstatement?

25 14 I am hearing nothing.

26 (Glezakos Decl., Exhibit E [emphasis added].)

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1 Relying in good faith on the parties' stipulation made on the record, when Union
2 Carbide received Plaintiffs' responses to its Special Interrogatories on May 28, 2014, *after*
3 the no product identification stipulation was offered and accepted, identifying Sondra
4 Leeper as a witness in this case, Union Carbide did not proceed with requesting that Berry
5 & Berry notice her deposition.¹ (Glezakos Decl. ¶8, Exhibit F.) Instead, Union Carbide
6 proceeded with noticing and filing its Motion for Summary Judgment on July 25, 2014, for
7 hearing on October 10, 2014, on the good faith belief that Mrs. Leeper would not be
8 offered as a product identification witness against Union Carbide in any capacity in this
9 case.² (Glezakos Decl., ¶ 11.)

10 On July 10, 2014, Berry & Berry served a new Notice of Taking Deposition and
11 Request for Production of Documents to Mrs. Leeper noticing her deposition for August 5,
12 2014. (Glezakos Decl., Exhibit H.) At no time after the deposition notice was served, and
13 before Mrs. Leeper's deposition commenced, did Brayton Purcell inform defense counsel
14 that Plaintiffs would not longer adhere to the agreed to stipulation that Mrs. Leeper
15 would not be a product identification witness *against any defendant* in this case. (Glezakos
16 Decl., ¶ 12.) Instead, on the morning of August 5, 2014, as the deposition was about to
17 begin Plaintiffs' counsel informed defense counsel that the previously agreed to
18 stipulation was being unilaterally withdrawn as against five specific defendants: Georgia-
19 Pacific, Kaiser Gypsum, Lamons Gaskets, Honeywell, and Union Carbide. (Glezakos
20 Decl., ¶ 13.)

21 Counsel for Union Carbide objected to the unilateral rescission of the stipulation by
22

23 ¹ Plaintiffs' Product Identification Witness List, served on April 25, 2014, pursuant to the Court's
24 April 18, 2014, Order denying Plaintiffs' Motion for Preference did not list plaintiff Sondra Leeper as a
25 witness against Union Carbide, specifically, or any other defendant in the case. (Glezakos Decl. ¶ 9, Exhibit
26 G.)

27 ² Union Carbide is being sued in this case as a supplier of Calidria asbestos to Georgia-Pacific and
28 Kaiser Gypsum for use in joint compound and sheetrock used by Mr. Leeper during two home remodel
projects; one prior to 1965 and the other sometime in 1970 or 1971 as testified to by Mr. Leeper at his
deposition. Union Carbide contends that based on Mr. Leeper's deposition testimony, Plaintiffs cannot
prove it is more likely than not that any of the joint compound or sheetrock Mr. Leeper used actually
contained Calidria during the relevant time periods. (Glezakos Decl., ¶ 10.)

1 Plaintiffs and sought Court intervention to resolve the issue. (Glezakos Decl., Exhibit I, at
2 10:1-14:5.) A discussion was held with the Court at which time Plaintiffs' counsel stated
3 that it was not until *the day before* Mrs. Leeper's deposition on August 5, 2014, that he or
4 anyone from his firm had spoken to Mrs. Leeper about what, if any, product identification
5 testimony she may have relevant to defendants in this case. (*Id.*, at 64:11-83:24.) Moreover,
6 Plaintiffs' counsel stated that not only was he unwilling to abide by the agreed to
7 stipulation entered into months prior, he was also unwilling to continue the trial date to
8 accommodate the change in circumstances necessitated by Brayton Purcell's actions in not
9 confirming their own client's product identification knowledge *before* offering and
10 entering into a no product identification stipulation on Plaintiffs' behalf. (*Id.*)

11 Of importance, the above conduct by Brayton Purcell illustrates a pattern and
12 practice of unilaterally altering and withdrawing stipulations offered to defense counsel
13 that are intended to make the deposition process more convenient for their clients. For
14 example, just recently in the case of *David Murphy, et al. v. Kaiser Gypsum, Inc., et al.*
15 (Alameda County Superior Court Case No. RG13667886), Brayton Purcell sent a letter to
16 Berry & Berry stating that plaintiff David Murphy would not be providing any product
17 identification information in the case and that as a result, plaintiffs would like Berry &
18 Berry to amend the deposition notice to make it a telephone or video-conference
19 deposition only. (Glezakos Decl., Exhibit J.) Defendants agreed to the offered no product
20 identification stipulation. However, on the day of Mr. Murphy's deposition the plaintiffs'
21 attorney appearing for Brayton Purcell stated that he "had never seen that letter" from his
22 own firm confirming the offered stipulation and that the witness in fact had product
23 identification testimony so he was unwilling to abide by the no product identification
24 stipulation offered by his own firm. (Glezakos Decl., Exhibit K, at 96:17-100:20.) Again,
25 the fact that different attorneys from the same firm failed to speak to their own clients or
26 each other in advance of a deposition to determine what knowledge the client had
27 resulted in extreme prejudice to defendants who relied in good faith on a stipulation that
28 was later unilaterally withdrawn.

1 **III. LEGAL ARGUMENT**

2 **A. The Court Has Authority To Grant The Requested Protective Order.**

3 Pursuant to California Code of Civil Procedure Code § 2025.420 (a) and (b), a Court
4 may grant a protective order before, during or after a deposition to protect a party from
5 unwarranted annoyance, oppression, or undue burden. The Court is empowered to
6 terminate a deposition that will unreasonably annoy or oppress the deponent or a party.
7 (Code Civ. Pro. § 2025.420(b).)

8 **B. The Voluntary And Mutually Agreed To Stipulation Is Legally Binding And**
9 **Enforceable.**

10 "A stipulation is '[a]n agreement between opposing counsel...ordinarily entered
11 into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,'
12 (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to
13 narrow [the] range of litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1)."
14 (*County of Sacramento v. Workers' Comp. Appeals Bd.* (2000) 77 Cal.App.4th 1114, 1118.) "A
15 stipulation in proper form is binding upon the parties if it is within the authority of the
16 attorneys." (*Bowden v. Green* (1982) 128 Cal.App.3d 65, 72.) "The attorney is authorized
17 by virtue of his employment to bind the client in procedural matters arising during the
18 course of the action," such as stipulations. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396,
19 403-404.) "A stipulation may result in impairment of a party's rights. 'But a poor
20 outcome is not a principled reason to set aside a stipulation by counsel.'" (*Mileikowsky v.*
21 *Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279; citing *County of Sacramento, supra*, 77
22 Cal.App.4th at 1121.) "[S]tipulations serve both judicial economy and the convenience of
23 the parties, [and] courts will enforce them absent indications of involuntary or
24 uninformed consent." (*CDN Inc. v. Kapes* (9th Cir. 1999) 197 F.3d 1256, 1258.) Even in the
25 criminal context with heightened evidentiary standards, courts have consistently held that
26 the standard for enforceability of a stipulation is voluntariness (*Id.*, at 1168-1169.)

27 Moreover, "[a] stipulation is a contract..., and is sometimes said to be governed by
28 the usual rules of construction of other contracts. [Citations]." (1 Witkin, Cal. Procedure

1 (4th ed. 1996) Attorneys, § 304, pp. 373-374.) A contract must be interpreted so as to give
2 effect to the mutual intent of the parties. (Civ. Code § 1636.) The terms of a contract are
3 determined by the objective rather than by subjective criteria. The question is what the
4 parties' objective manifestations of agreement or objective expressions of intent would
5 leave a reasonable person to believe." (*Winograd v. American Broadcasting Co.* (1998) 68
6 Cal.App.4th 624, 632.)

7 In this instance, the record makes clear that all the legal elements necessary to hold
8 the stipulation legally binding and enforceable are present: (1) the stipulation was
9 voluntarily entered into by counsel for Plaintiffs and defendants with the inherent
10 authority to do so; (2) there was mutual consideration in that the parties agreed that Mrs.
11 Leeper's deposition would be continued to a later date in exchange for an agreement that
12 no party would seek a trial continuance; (3) Brayton Purcell had more than ample
13 opportunity to discuss with Mrs. Leeper, their client, the scope of her product knowledge
14 and should have done so before offering and accepting the stipulation in question, the fact
15 that Plaintiffs' counsel chose not to verify their client's knowledge before agreeing to the
16 stipulation does not render the stipulation involuntary; and (4) the objective expressions
17 of intent on the record demonstrates that all parties agreed to, and expected, that Mrs.
18 Leeper would not be offered as a product identification witness against any defendant at
19 any time in this case.

20 Simply put, the fact that Plaintiffs now feel that the stipulation is no longer
21 advantageous does not provide a legal basis for this Court to rescind the parties'
22 stipulation. (*See Mileikowsky, supra*, 128 Cal.App.4th 262 at 279.) The stipulation must be
23 enforced.

24 Furthermore, allowing parties to unilaterally rescind voluntary stipulations at
25 whim is contrary to the well-founded principal that "stipulation[s] further[] the public
26 policies of settling disputes and expediting trials." (*Estate of Burson* (1975) 51 Cal.App.3d,
27 300, 307.) In fact, as discussed above, Brayton Purcell has demonstrated a pattern and
28 practice of offering no product identification stipulations for the convenience of their

1 witnesses (i.e. to allow depositions to proceed by phone only or to shorten the deposition
2 length) and then withdrawing those stipulation at the deposition without advance
3 warning to defense counsel simply because attorneys are not aware that a stipulation was
4 entered into or did not take the time to speak to their own clients before offering the
5 stipulation. (See Glezakos Decl., Exhibits E, I-K.)

6 If stipulations are to be effective tools in expediting discovery and trial, then this
7 Court should set the precedent that stipulations voluntarily entered into are binding and
8 enforceable. To hold otherwise obliterates the purpose and value of stipulations and
9 contravenes the strong public policy in favor of encouraging stipulations.

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12 **C. If The Court Rescinds The Voluntary Stipulation, The Current Trial Date
Should Be Vacated And Continued.**

13 On April 18, 2014, this Court entered an order denying Plaintiffs' request for trial
14 preference but setting an advanced trial date of October 20, 2015. It is evident from the
15 record surrounding the stipulation in question that Mrs. Leeper's deposition was not
16 taken "immediately following the deposition of Damon Leeper" in exchange for an
17 agreement that no party would seek to continue the October 20, 2014 trial date. The
18 agreement not to seek a continued trial date was based on the presumption that since Mrs.
19 Leeper would not be offering any product identification testimony against any defendant
20 her deposition could proceed closer to trial without prejudice to defendants. Rescinding
21 the stipulation alters that presumption and in fact causes undue prejudice and harm to
22 Union Carbide that can only be remedied by a continuation of the current trial.

23 Pursuant to California Code of Civil Procedure section 128(a)(8), this Court has
24 authority to "amend and control its process and orders so as to make them conform to law
25 and justice," including discretionary authority to grant a continuance of trial upon a
26 showing of good cause. (See *Color-Vue, Inc. v. Abrams* (1996) 44 Cal.App.4th 1599, 1603.)
27 As part of its inherent power, the Court has authority to grant continuances at any stage

1 of the proceedings upon a showing of good cause. (Cal. Rules of Court, Rule 3.1332(c)).
2 Under Rule 3.1332(d), the relevant factors addressing good cause to continue the trial here
3 include: the proximity of the trial date, the lack of a prior trial continuance, the lack of any
4 alternative remedy, the prejudice to defendants if it is unable to depose plaintiff, and that
5 the interests of justice are best served by a continuance. (Cal. Rules of Court, Rule
6 3.1332(d)(1), (2), (4), (5), & (10).)

7 Union Carbide relied in good faith on the stipulation that Mrs. Leeper would not
8 provide product identification testimony in preparing its case for trial, including filing a
9 summary judgment motion. (See Glezakos Decl., ¶ 10.) Until Union Carbide has an
10 opportunity to cross-examine Mrs. Leeper, it remains unclear the scope of her product
11 identification testimony, what other documents or witnesses may be uncovered, or what
12 further investigations and discovery must be conducted to adequately prepare Union
13 Carbide's defenses for trial based on Mrs. Leeper's newly offered product identificaiton
14 testimony.

15 This is not a preference case and it is within the Court's sound discretion to vacate
16 and continue the current trial date. Allowing Plaintiffs to unilaterally rescind the
17 stipulation and also maintain the current trial date would essentially reward
18 gamesmanship to the detriment of Union Carbide. As such, Union Carbide requests this
19 Court vacate the current trial date and continue the trial date for at least 60 days.

20 **D. Union Carbide Is Entitled To An Award Of Monetary Sanctions Pursuant**
21 **to Code of Civil Procedure Section 2025.420(h).**

22 Code of Civil Procedure Section 2025.420(h) allows the Court to impose monetary
23 sanctions on any party who unsuccessfully makes or opposes a motion for protective
24 order, unless it finds the one subject to the sanction acted with substantial justification.
25 (Code Civ. Proc., § 2025.420(h).)

26 Union Carbide acted with substantial justification in bringing the instant motion to
27 enforce a stipulation entered into in good faith. Union Carbide attempted to meet and
28 confer with Plaintiffs' counsel at Mrs. Leeper's deposition regarding the unilateral and

1 improper withdrawal of the stipulation and even sought Court assistance in resolving the
2 matter informally to no avail. (Glezakos Decl., Exhibit I, at 10:1-14:5.) If the Court grants
3 Union Carbide's motion, it should award monetary sanctions in the amount of \$1800.00
4 for the attorney's fees and costs Union Carbide was forced to incur to obtain a court order
5 finding the stipulation binding on all parties that it would not have had to expend had
6 Plaintiffs acted in accordance with the original agreed to stipulation. (Glezakos Decl., ¶
7 17.) Plaintiffs have presented no facts nor do any facts exist, other than stating that
8 Plaintiffs' counsel did not attempt to ascertain Mrs. Leeper's product identification
9 knowledge until the day before her deposition and months after counsel offered and
10 entered into the stipulation on behalf of Plaintiffs, providing substantial justification for
11 the refusal to abide by the stipulation or for opposing the instant motion. As such, Union
12 Carbide is entitled to the requested sanctions.

13 Alternatively, if this Court finds some basis to allow Plaintiffs to unilaterally
14 rescind the stipulation as to Union Carbide, Union Carbide is entitled to recover \$2475.00,
15 which reflects the costs and expenses incurred in drafting and filing its summary
16 judgment motion prepared in good faith reliance on the no product stipulation offered
17 and accepted. (Glezakos Decl., ¶ 18.) There was no notice to Union Carbide before it
18 undertook the laborious and costly effort to prepare its dispositive motion that the
19 stipulation agreed to by the parties on May 15, 2014, would be withdrawn. (*Id.*) If
20 Plaintiffs are allowed to withdraw their voluntary stipulation, then Union Carbide should
21 be compensated for the costs it incurred as to do otherwise would unjustifiably punish
22 Union Carbide and allow Plaintiffs to benefit from their tactics.

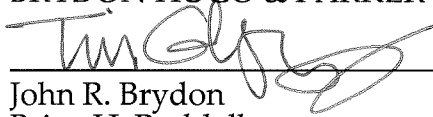
23 **IV. CONCLUSION**

24 The May 15, 2015 no product identification stipulation pertaining to Mrs. Leeper
25 was voluntarily agreed to, after mutual consideration, and is therefore an enforceable
26 stipulation that should be found binding on all parties by this Court. Alternatively, if the
27 Court allows Plaintiffs to unilaterally renege on their prior agreement, the current trial
28 date of October 20, 2014, must be vacated and continued for at least 60 days. Lastly,

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Union Carbide is entitled to monetary sanctions to reimburse it for the costs incurred with bringing this motion, or alternatively, for the costs incurred in preparing and filing its Motion for Summary Judgment made in reliance on the parties' stipulation.

Dated: August 8, 2014

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