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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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| LOCKHEED LITIGATION CASES, | B251864<br><br>(Judicial Council Coordination Proceeding No. JCCP No. 2967) |

APPEAL from a judgment of the Superior Court of Los Angeles County, John A. Torribio, Judge. Affirmed.

Law Offices of Martin N. Buchanan and Martin N. Buchanan; Girardi | Keese and Robert W. Finnerty for Plaintiffs and Appellants.

Horvitz & Levy, David M. Axelrad and Jean M. Doherty; Steptoe & Johnson, Lawrence P. Riff and Jason Levin for Defendants and Respondents.

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## INTRODUCTION

Plaintiffs, who are 27 personal injury plaintiffs in what is referred to as Group 9 of this coordinated proceeding, appeal from a summary judgment entered in favor of Defendants Exxon Mobil Corporation and Union Oil Company of California doing business as Unocal. Plaintiffs contend the trial court erred by excluding their general causation expert pursuant to Code of Civil Procedure[1] section 2034.300, and this ruling inevitably resulted in a defense summary judgment in this toxic tort litigation. We conclude substantial evidence supports the court's finding that Plaintiffs unreasonably failed to timely serve their expert disclosure information and the court acted within its discretion under section 2034.300 as such. Accordingly, we affirm.

## FACTS AND PROCEDURAL BACKGROUND

Former and current employees of Lockheed Corporation sued Lockheed and multiple chemical manufacturer and supplier defendants, seeking damages for personal injuries allegedly caused by occupational exposure to chemicals. The actions were coordinated as the *Lockheed Litigation Cases*, Judicial Council Coordination Proceeding No. 2967 (*Lockheed*), and the coordinated actions have been tried in groups of plaintiffs. This appeal concerns the plaintiffs in Group 9.

To place the instant appeal in context, some background regarding the *Lockheed Litigation Cases* is required. In September 2002, the trial court entered an order excluding the general causation opinions of plaintiffs' expert, Dr. Daniel Teitelbaum, for lack of an adequate scientific foundation. In view of this ruling, the court concluded the plaintiffs in Groups 4 and 5 lacked sufficient expert evidence to prove general causation and dismissed the case as to these plaintiffs. This court affirmed that judgment and, in November 2007, the Supreme Court dismissed review of this court's decision. (*In re Lockheed Litigation Cases* (2005) 126 Cal.App.4th 271, review granted Apr. 13, 2005, review dismissed, Nov. 1, 2007.)

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[1] Unless otherwise indicated, subsequent statutory references are to the Code of Civil Procedure.

Following remand, the trial court set a hearing to determine whether its ruling concerning the admissibility of expert evidence to establish general causation applied to the remaining *Lockheed* plaintiffs. After receiving briefing and argument, the court concluded that the "prior rulings on admissibility of scientific evidence are the law of the case," and plaintiffs in subsequent groups were therefore collaterally estopped from establishing general causation, unless they could show "new science" had emerged subsequent to the court's rulings. The court's order effectively required the plaintiffs in subsequent groups to present new expert evidence concerning novel science pertinent to establishing general causation.

In December 2011, the trial court entered an order precluding the plaintiffs in Group 7 from offering expert testimony on general causation for chronic diseases after the court determined that these plaintiffs unreasonably failed to timely comply with the court's expert discovery order. Following the order, the court granted a defense motion for summary judgment as to all Group 7 claims.

On October 3, 2011, plaintiffs' counsel designated the plaintiffs for Group 9.[2] On June 25, 2012, the court entered a Case Management Order (CMO) for these 27 plaintiffs. The CMO defined the "At-Issue Chemical Products" and directed the Group 9 plaintiffs (who we subsequently refer to herein as "Plaintiffs") to identify the "At-Issue Health Effects" for which they sought damages.

With respect to expert witnesses, Section E of the CMO provided that on January 14, 2013, the parties were to serve designations of expert witnesses on general causation and "[f]ile expert declarations containing admissible expert opinions addressing general causation." The CMO expressly stated that "Plaintiffs and Defendants shall comply with the deadlines set forth below, and *no extensions shall be permitted except by court order*." (Italics added.) The CMO emphasized, "Orders granting extensions will be entered *only upon a showing of good cause* established by written motion or stipulation *filed before the passing of the subject deadline.*" (Italics added.)

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[2] There was no Group 8 designation.

At 6:51 p.m. on January 11, 2013—the Friday before the January 14, 2013 deadline to exchange expert witness discovery—Plaintiffs' counsel, Carmen Miranda, sent an email to defense counsel, Lawrence Riff, explaining that she and her co-counsel had been in trial in San Francisco since the beginning of the year. Ms. Miranda's email asked Mr. Riff whether he would "be amenable to extending the deadline to exchange expert discovery by two weeks?" Ms. Miranda's email concluded, "Please let us know if you are amenable. We can prepare a formal stipulation if needed."

Mr. Riff responded by email on Sunday, January 13, 2013. Mr. Riff stated that he could not "unilaterally extend this deadline which has been on the books for a very long time," explaining that his clients had been "really disturbed by plaintiffs' non-compliance with this same order for Group 7 after they spent six figures complying." Mr. Riff concluded, "So I will have to ask the clients on Monday but my guess is that they won't agree. I'm sorry."

The deadline to exchange expert witness discovery came the following day, Monday, January 14, 2013. Defendants filed and served their expert designation, a declaration by their general causation expert, Dr. Philip Edelman, his written report, the medical and scientific literature he relied upon in formulating his opinions, and notice of Dr. Edelman's availability for deposition. Plaintiffs did not serve any information about their general causation experts on the CMO deadline.

On January 22, 2013, Defendants filed a motion to exclude Plaintiffs' general causation experts. Defendants argued Plaintiffs should be barred from introducing expert evidence pursuant to section 2034.300 because "Plaintiffs unreasonably failed to comply with the [CMO] requiring simultaneous production of expert evidence on general causation." Defendants maintained Plaintiffs would be "unable to reasonably explain their CMO violation," given that they had "over a year to obtain the required expert evidence." Further, Defendants argued Plaintiffs' failure to comply with the simultaneous exchange order engendered significant prejudice insofar as Plaintiffs' expert could "avoid the time and expense of doing his own research" by reviewing Dr. Edelman's work product and preparing a "point-by-point response."

On February 1, 2013, Plaintiffs filed their opposition to Defendants' motion to exclude, together with a declaration by Ms. Miranda explaining the circumstances surrounding the San Francisco trial and Plaintiffs' request for an extension of time. Plaintiffs argued the motion should be denied because they had "tried to be reasonable by promptly notifying Defense counsel, requesting a brief continuance, and offering to prepare a stipulation," but "Defendants ignored these requests" and filed their expert disclosures.

In their opposition, filed 18 days after the deadline to exchange expert information, Plaintiffs also argued the court should grant them leave to submit tardy expert witness information pursuant to section 2034.720.[3] As justification for their tardy submission, Plaintiffs reiterated that "Defendants chose to ignore Plaintiffs['] request for a continuance of the deadline to simultaneously exchange expert discovery even though Plaintiffs['] counsel had been engaged in trial since January 3, 2013." With their opposition, Plaintiffs submitted the declaration of their general causation expert, Dr. Max Costa, and the authorities he relied upon in formulating his opinion. Plaintiffs also agreed to make Dr. Costa available for deposition within 60 days.

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[3] Section 2034.720 provides: "The court shall grant leave to submit tardy expert witness information only if all of the following conditions are satisfied: [¶] (a) The court has taken into account the extent to which the opposing party has relied on the absence of a list of expert witnesses. [¶] (b) The court has determined that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits. [¶] (c) The court has determined that the moving party did all of the following: [¶] (1) Failed to submit the information as the result of mistake, inadvertence, surprise, or excusable neglect. [¶] (2) Sought leave to submit the information promptly after learning of the mistake, inadvertence, surprise, or excusable neglect. [¶] (3) Promptly thereafter served a copy of the proposed expert witness information described in Section 2034.260 on all other parties who have appeared in the action. [¶] (d) The order is conditioned on the moving party making the expert available immediately for a deposition under Article 3 (commencing with Section 2034.410), and on any other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion."

On March 14, 2013, the trial court heard argument on Defendants' motion to exclude Plaintiffs' general causation expert. In explaining its tentative decision to grant the motion, the court stated that " 'the exclusion of experts is required where one side complies with expert discovery, while the other party does not' . . . 'this is because' -- and it's rather self-explanatory -- 'the Discovery Act requires simultaneous expert disclosure to place the parties on roughly equal footing and to prevent one side from taking unfair advantage of the other's work product.' " Addressing Plaintiffs' request for leave to file a tardy submission pursuant to section 2034.720, the court observed that there had been no showing of "mistake, inadvertence, surprise or excusable neglect"; "Plaintiffs did not seek leave to submit the information promptly after learning of the mistake"; and Plaintiffs "did not promptly thereafter serve a copy of the proposed expert witness [information]"; rather, it was served "18 days later" with Plaintiffs' opposition to Defendants' motion to exclude.

Responding to the tentative, Plaintiffs' counsel argued the failure to comply was not unreasonable because "[w]e contacted defense counsel, and we asked that the simultaneous exchange be continued by the parties." The court rejoined that the request for an extension had come the last business day before the exchange deadline. Plaintiffs' counsel discounted the relevance of the request's timing, arguing "[t]he fact remains that the defendants chose to submit on that Monday knowing full well that . . . the Plaintiffs would not be able to comply." Defense counsel responded that complying with the CMO was not an "election," emphasizing that the CMO specified there would be no continuances without good cause and a court order. After a brief exchange concerning Plaintiffs' request for leave to make a tardy submission pursuant to section 2034.720, the court made its final ruling granting Defendants' motion.

On April 12, 2013, the trial court entered an order barring Plaintiffs from introducing expert evidence on general causation. The order stated: "After considering the submitted pleadings, evidence, and oral argument, the Court ruled, for reasons stated on the record, that Plaintiffs in Trial Group 9 [fn. omitted] unreasonably failed to timely comply with the general causation expert discovery that had been ordered by the Court in

connection with their claims. Therefore, pursuant to Code of Civil Procedure section 2034.300, Plaintiffs in Trial Group 9 may not offer expert opinion testimony in support of their allegations that the Defendants' chemical products caused their adverse health effects."

On May 15, 2013, Defendants moved for summary judgment. Defendants argued expert testimony was required to prove general causation in a toxic tort case, and, in view of the court's order barring such evidence, Plaintiffs had "no way to prove the cause of their injuries." The trial court granted the motion, concluding Plaintiffs could not establish triable issues of fact on the element of general causation because the court's prior order barred them from introducing expert evidence on the issue.

## DISCUSSION

A. *Applicable Law and Standard of Review*

Plaintiffs' appeal exclusively focuses on the trial court's order barring Plaintiffs from introducing expert evidence concerning general causation. Plaintiffs challenge the summary judgment insofar as it is necessarily predicated on the exclusion order.

Our Supreme Court has recognized "that the need for pretrial discovery is greater with respect to expert witnesses than ordinary fact witnesses because the opponent must prepare to cope with the expert's specialized knowledge." (*Boston v. Penny Lane Centers, Inc.*, 170 Cal.App.4th 936, 951 (*Boston*), citing *Bonds v. Roy* (1999) 20 Cal.4th 140, 147.) "The Legislature responded to this need by enacting detailed procedures for discovery pertaining to expert witnesses." (*Boston*, at p. 951.)

Section 2034.210 requires parties to "*simultaneously* exchange information concerning each other's expert trial witnesses." (Italics added.) Consistent with the simultaneous exchange requirement, the trial court's CMO required the parties to serve their general causation expert witness information on January 14, 2013, and specified that no extensions would be permitted except by court order for good cause shown. (See § 2034.250, subd. (b) [authorizing trial court to "make any order that justice requires" pertaining to simultaneous exchange of expert witness information].)

To ensure a party does not gain an unfair advantage by failing to comply with the simultaneous exchange requirement, section 2034.300 provides that, "on objection of any party who has made a complete and timely compliance with [the expert information exchange requirement], the trial court *shall* exclude from evidence the expert opinion of any witness that is offered by any party who has *unreasonably* failed to do any of the following: [¶] (a) List that witness as an expert . . . . [¶] (b) Submit an expert witness declaration. [¶] (c) Produce reports and writings of expert witnesses . . . . [¶] (d) Make that expert available for a deposition . . . ." (§ 2034.300, italics added; see also *Fairfax v. Lords* (2006) 138 Cal.App.4th 1019, 1026 (*Fairfax*) [trial court erred in failing to exclude defense expert where defense delayed expert designation until it could review plaintiff's expert list as part of express strategy to minimize litigation costs].)

"[S]ection 2034.300 does not provide explicit guidance as to how a court should decide if the party's failure was reasonable or unreasonable." (*Staub v. Kiley* (2014) 226 Cal.App.4th 1437, 1446 (*Staub*).) Nevertheless, the appellate courts have largely recognized that reasonableness should be judged through the lens of the discovery statutes' purposes. (See *Staub,* at p. 1447; *Boston, supra,* 170 Cal.App.4th at p. 950; *Stanchfield v. Hamer Toyota, Inc*. (1995) 37 Cal.App.4th 1495, 1504 (*Stanchfield*); see also *Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, 1117.) Thus, "[t]he operative inquiry is whether the conduct being evaluated will compromise these evident purposes of the discovery statutes: ' "to assist the parties and the trier of fact in ascertaining the truth; to encourage settlement by educating the parties as to the strengths of their claims and defenses; to expedite and facilitate preparation and trial; to prevent delay; and to safeguard against surprise." ' " (*Staub,* at p. 1447; *Boston,* at p. 950; *Stanchfield,* at p. 1504; see also *Zellerino,* at p. 1113 [unreasonableness may be found where conduct constitutes a misuse of the discovery process, such as " 'Using a discovery method in a manner that does not comply with its specified procedures' " or " 'Disobeying a court order to provide discovery,' " quoting former § 2023, subd. (a), current § 2023.010].)

"We review the trial court's reasonableness determination under section 2034.300 for abuse of discretion." (*Boston, supra*, 170 Cal.App.4th at p. 950.) We will set aside the trial court's decision only if the appellant can show, on the record presented, that "no judge could reasonably have made the order that he did." (*Newbauer v. Newbauer* (1949) 95 Cal.App.2d 36, 40; *DiCola v. White Brothers Performance Products, Inc*. (2008) 158 Cal.App.4th 666, 679 (*DiCola*).) In applying this standard, we are "bound in our reviewing function by the substantial evidence rule." (*In re Marriage of Zimmerman* (1993) 16 Cal.App.4th 556, 561.) Thus, the appellant's showing will be "insufficient if it presents a state of facts which simply affords an opportunity for a difference of opinion." (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 118; *DiCola*, at pp. 679-680.)

B. *The Trial Court Properly Exercised Its Discretion to Exclude Plaintiffs' Expert Based on Plaintiffs' Unreasonable Failure to Comply with the CMO*

As stated in its written order, the trial court excluded Plaintiffs' expert testimony on general causation because "Plaintiffs in Trial Group 9 [fn. omitted] unreasonably failed to timely comply with the general causation expert discovery that had been ordered by the Court in connection with their claims." On appeal, Plaintiffs contend the court applied the wrong legal standard under section 2034.300. Specifically, Plaintiffs challenge the court's statement, made in its oral explanation of its tentative decision, that " 'the exclusion of experts is required where one side complies with expert discovery, while the other party does not.' " Based on this statement, Plaintiffs contend the trial court either failed to recognize that section 2034.300 applies only when a party has *unreasonably* failed to comply with its expert disclosure obligations, or the court "effectively treated plaintiffs' noncompliance as 'unreasonable' just because the defense complied." With respect to the latter point, Plaintiffs contend the "[f]ailure to comply with expert designation rules is 'unreasonable' only when the party's conduct amounts to 'gamesmanship' or ' "a comprehensive attempt to thwart the opposition from legitimate and necessary discovery." ' " We conclude the trial court applied the correct legal standard and properly exercised its discretion.

Contrary to both of Plaintiffs' principal contentions, the record demonstrates that the trial court assessed the reasonableness of Plaintiffs' failure to make a timely expert disclosure and determined that Plaintiffs' failure was unreasonable based on more than the fact that Defendants complied with the mandated deadline while Plaintiffs did not. Plaintiffs' contentions focus exclusively upon the court's statement concerning the lack of simultaneous exchange—a statement which, in our view, properly recognizes the potential for prejudice to Defendants, whose expert's work product could, by virtue of the non-simultaneous disclosure, be appropriated to assist Plaintiffs' expert in formulating his opinions. (See, e.g., *Fairfax, supra,* 138 Cal.App.4th at p. 1026.) However, Plaintiffs fail to acknowledge that the court also considered Plaintiffs' unexplained delay in requesting a continuance, as well as Plaintiffs' failure to serve their expert disclosures promptly after the deadline passed. Indeed, the record shows the court identified these considerations as its primary reasons for rejecting Plaintiffs' counsel's contention, offered in response to the court's tentative, that Plaintiffs had acted reasonably by requesting a two-week continuance in view of counsel's trial commitments on another matter.

The undisputed evidence of Plaintiffs' dilatory conduct supports the trial court's conclusion that Plaintiffs unreasonably failed to comply with their expert disclosure obligations. Relying on *Staub*, Plaintiffs implicitly contend that any failure to make the disclosures listed in section 2034.300, subdivisions (a) through (d) must be regarded as reasonable, so long as the failure was not the product of " 'gamesmanship' or ' "a comprehensive attempt to thwart the opposition from legitimate and necessary discovery." ' " This contention overstates the *Staub* court's holding. Though the *Staub* court reasoned that the "[f]ailure to comply with expert designation rules may be found to be 'unreasonable' when a party's conduct gives the appearance of gamesmanship" (*ibid.*), the court did not categorically limit the trial court's discretion under section 2034.300 to only those instances. On the contrary, the *Staub* court recognized that the "*operative* inquiry is whether the conduct being evaluated will compromise [the] evident purposes of the discovery statutes." (*Staub, supra,* 226 Cal.App.4th at p. 1447, italics added.)

Plainly, dilatory conduct, particularly in the face of an existing discovery order like the CMO, contravenes those purposes insofar as the discovery statutes seek " ' "to expedite and facilitate preparation and trial; to prevent delay; and to safeguard against surprise." ' " (*Ibid.*)

Moreover, even if we accept the premise that the expert exclusion sanction requires some "appearance of gamesmanship" (*Staub, supra,* 226 Cal.App.4th at p. 1447), we cannot say that was wholly lacking in this case. *Staub* presents an instructive counter example. In *Staub*, the plaintiffs' counsel averred that he had been unable to reach the plaintiffs' experts during the critical period following the defense's expert exchange demand, due to the winter holidays, one expert's travels in Spain, and a medical emergency involving plaintiffs' counsel's brother. (*Id*. at pp. 1443, 1447.) In view of these circumstances, which were largely outside the control of plaintiffs' counsel, the *Staub* court found there was no reason to believe the plaintiffs' one-week delay in disclosing their experts had been the product of gamesmanship. (*Id.* at p. 1447.)

In contrast to *Staub*, the explanation offered by Plaintiffs' counsel for their failure to meet their expert disclosure obligations admitted of circumstances that were entirely *within counsel's control*, and thus permitted an inference of gamesmanship. According to counsel, their conduct could not be regarded as unreasonable, because they requested a stipulation from the defense *at 6:51 p.m. on January 11, 2013—the last business day before the expert exchange deadline*—due to a trial commitment in an unrelated case that existed since the beginning of the year. Setting aside the fact that Plaintiffs' counsel had been aware of the expert exchange deadline since the court entered the CMO on June 25, 2012—more than six months before counsel's stipulation request—this asserted justification fails to explain why counsel waited until January 11 to request the stipulation when they had known since January 3, by their own account, that they would be engaged in trial and unable to meet the disclosure deadline. This omission is especially relevant, since the CMO in this case provided that "*no extensions shall be permitted except by court order*" and that "[o]rders granting extensions will be entered *only upon a showing of good cause* established by written motion or stipulation *filed before the passing of the*

*subject deadline*." (Italics added.) In view of the good cause requirement, there could be no assurance that the court would order an extension, even had a stipulation been filed *on the deadline* (the only date left due to the timing of Plaintiffs' request). Thus, counsel's belated stipulation request left Defendants in the untenable position of either potentially violating the court's CMO, or serving their defense expert information as ordered, even if this meant Plaintiffs would have the opportunity to review that information before serving their own expert disclosures.[4] In view of Plaintiffs' unexplained, but entirely avoidable, delay in requesting an extension, and the prejudice it predictably engendered against Defendants, the trial court could very reasonably have found the "appearance of gamesmanship" on this record. (*Staub, supra,* 226 Cal.App.4th at p. 1447; see also *Boston, supra,* 170 Cal.App.4th at p. 950; *DiCola*, *supra*, 158 Cal.App.4th at pp. 679-680.)

Lastly, we reject Plaintiffs' assertion that "[i]f anything, the record suggests gamesmanship by the defense." Plaintiffs argue Defendants "could just have stipulated to a mutual two-week extension, but instead chose to capitalize on plaintiffs' predicament by . . . unilaterally filing [their] own expert witness information on the Monday it was due," thereby "put[ting] *themselves* in a position to claim that the Group 9 plaintiffs had gained 'an unfair opportunity to preview defendants' general causation expert materials before submitting their own." The argument does not withstand scrutiny.

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[4] Notably, despite defense counsel's response that his clients likely would not agree to the requested stipulation, Plaintiffs' counsel nevertheless failed to file a motion for a continuance "before the passing of the subject deadline" as required by the CMO. What is more, after missing the deadline, Plaintiffs remained silent about their failure to disclose expert information. It was not until *after* Defendants filed their motion to exclude Plaintiffs' expert that Plaintiffs finally sought leave to serve a tardy disclosure—18 days later with their opposition to the exclusion motion. As the trial court astutely observed, Plaintiffs failed to act "promptly" to remedy their purported "excusable neglect," and thus failed to satisfy their burden under section 2034.720 to avoid the exclusion sanction.

To begin, Plaintiffs' premise is incorrect. It cannot be assumed that the court would have ordered an extension if Defendants had "just" stipulated to one. On the contrary, the CMO specified that extensions would be ordered only "upon a showing of good cause." In view of the thin explanation Plaintiffs gave for their delay, Defendants cannot be faulted for thinking an extension was neither justified nor forthcoming.

Moreover, the logical consequence of endorsing Plaintiffs' argument is contrary to a plain reading of section 2034.300 and ultimately untenable. By Plaintiffs' reasoning, so long as an offending party requested an extension of the expert exchange deadline, no matter how *unreasonable* that party's extension request or conduct might have been, the other party cannot claim prejudice by complying with its expert disclosure obligations, because it knows the offending party is not going to comply. That logic turns the prescribed analysis on its head. It effectively absolves the offending party of its unreasonable conduct, while forcing the other party into noncompliance, so as to avoid the prejudice engendered by the offending party's unreasonable conduct. Under section 2034.300, the analysis works the other way—a party that "has made a complete and timely compliance" with its expert disclosure obligations is authorized to object (not barred from objecting) to the other party's failure to comply, upon which "the trial court *shall* exclude from evidence the expert opinion of any witness that is offered by any party who has *unreasonably* failed" to meet its disclosure obligations. (Italics added.) It follows from the statutory language that Plaintiffs cannot avoid the exclusion sanction by making an eleventh-hour request for an extension, on a virtually nonexistent showing of good cause, while claiming that Defendants brought the prejudice upon "*themselves*" by timely complying with their expert disclosure obligations.[5] The trial court acted within its discretion to exclude Plaintiffs' general causation expert under section 2034.300.

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[5] Plaintiffs could have avoided the sanction by making the showing required under section 2034.720 for relief to submit tardy expert witness information. However, the trial court found that Plaintiffs failed to make the requisite showing, and Plaintiffs do not challenge this finding on appeal.

## DISPOSITION

The judgment is affirmed. Defendants Mobil Corporation and Union Oil Company of California doing business as Unocal are entitled to their costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KITCHING, J.

We concur:

EDMON, P. J.

EGERTON, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.