

1 stipulations and make admissions regarding all matters which may be
2 discussed.

3 2. **IN ADDITION TO COUNSEL OF RECORD, EACH PARTY, OR A**
4 **REPRESENTATIVE OF EACH PARTY (WHO IS NOT COUNSEL OF**
5 **RECORD) WITH BINDING SETTLEMENT AUTHORITY IF THE**
6 **PARTY IS AN ENTITY, SHALL BE PRESENT AT THE**
7 **PRELIMINARY PRETRIAL CONFERENCE. NO PARTY OR**
8 **COUNSEL SHALL BE EXCUSED FROM PERSONALLY APPEARING**
9 **AT THE CONFERENCE WITHOUT PRIOR PERMISSION OF THE**
10 **COURT. See Fed. R. Civ. P. 16(f).**

11 3. Counsel must be prepared to discuss what the parties must prove in order to
12 prevail on their respective claims or defenses at the time of the Preliminary
13 Pretrial Conference.

14 4. Counsel should be prepared to discuss logistical matters.

15 **IT IS FURTHER ORDERED** that all parties are directed to meet **at least twenty-**
16 **one days** before the Preliminary Pretrial Conference, in accordance with Rule 26(f) of the
17 Federal Rules of Civil Procedure, to discuss the following matters:

18 1. The possibility of consent to trial before a United States Magistrate Judge
19 pursuant to 28 U.S.C. § 636(c), the suitability for referral of this matter to this
20 District's court-annexed voluntary arbitration program or any other alternative dispute
21 resolution mechanism, or the reference of this matter to a special master;

22 2. Any matters relating to jurisdiction or venue or the joinder of additional
23 parties;

24 3. The nature and bases of their claims and defenses and the possibilities for a
25 prompt settlement or resolution of the case;

26 4. A schedule of all pre-trial proceedings;

27 5. Modification of pre-trial procedures due to the simplicity or complexity of the
28 case;

1 6. Arrangements for Initial Disclosures in compliance with Rule 26(a)(1) of the
2 Federal Rules of Civil Procedure. Unless otherwise stipulated in writing by the
3 parties or otherwise directed by a written Order of this Court, Initial Disclosures shall
4 be made at the initial Rule 26(f) case management meeting or within fourteen (14)
5 days after the meeting; and

6 7. Any other matters which counsel may feel will help dispose of the matter in
7 an efficient manner.

8 **IT IS FURTHER ORDERED** that to satisfy the requirements of Federal Rule of
9 Civil Procedure 26(a) the parties shall file with the Clerk of the Court a Notice of Initial
10 Disclosure; copies of the actual disclosures shall therefore not be filed.

11 **IT IS FURTHER ORDERED** that at the Rule 26(f) case management meeting, the
12 parties shall develop a **Proposed Case Management Plan** which shall include brief
13 statements or proposals concerning:

14 1. The nature of the case, setting forth in brief statements the factual and legal
15 basis of Plaintiff's claims and Defendants' defenses;

16 2. A list of the elements of proof necessary for each count of the complaint and
17 each affirmative defense. Where the burden of proof shifts, each party shall list the
18 elements of the claim or defense that the party must prove in order to prevail. The list
19 of the elements of proof must contain citations to relevant legal authority (i.e., United
20 States statutory and/or administrative law, U.S. Supreme Court case law, Ninth
21 Circuit Court of Appeals case law, Arizona state case and statutory law, or other
22 authority as dictated by conflicts of law rules);

23 3. The factual and legal issues genuinely in dispute, and whether they can be
24 narrowed by stipulation or motion;

25 4. The jurisdictional basis of the case, citing specific statutes;

26 5. Parties, if any, which have not been served, as well as parties which have not
27 filed an answer or other appearance. Unless counsel can otherwise show cause, a
28 proposed form of order shall accompany the joint Case Management Plan which

1 dismisses any party which has not been served, or seeks default judgment on any non-
2 appearing party;

3 6. The names of parties not subject to the Court's jurisdiction;

4 7. Whether there are further dispositive or partially dispositive issues to be
5 decided by pretrial motions, and the legal issues about which any pretrial motions are
6 contemplated;

7 8. Whether the case is suitable for reference to arbitration, to a special master, or
8 to a United States Magistrate Judge for trial;

9 9. The status of related cases pending before other judges of this Court or before
10 other courts;

11 10. Suggested changes, if necessary, in the timing, form, or requirement for
12 disclosures under Rule 26(a), Federal Rules of Civil Procedure, including a statement
13 of when Initial Disclosures were made or will be made;

14 11. Proposed specific dates for each of the following:

15 a. A deadline for the completion of fact discovery;¹

16 b. Dates for full and complete expert disclosures under Federal Rule of
17 Civil Procedure 26(a)(2)(A)-(C);

18 c. A deadline for completion of all expert depositions;

19 d. A deadline for filing dispositive motions;

20 e. A date by which the parties shall have engaged in good faith settlement
21 talks;

22 12. The scope of discovery and whether discovery should be conducted in phases
23 or should be limited to or focused upon particular issues. For example, where
24

25 ¹The discovery deadline is the date by which all discovery must be completed.
26 Discovery requests must be served and depositions noticed sufficiently in advance of this
27 date to ensure reasonable completion by this deadline, including time to resolve discovery
28 disputes. Absent extraordinary circumstances, the Court will not entertain discovery disputes
after this deadline.

1 dispositive motions will be filed (e.g., motions for summary judgment or a defense
2 relying on the statute of limitations) counsel should consider limiting discovery to the
3 issue at hand until the court has ruled on the motion;

4 13. Suggested changes, if any, in the limitations on discovery imposed by the
5 Federal Rules of Civil Procedure and LRCiv 16.2;

6 14. Estimated date that the case will be ready for trial, the estimated length of trial,
7 and any suggestions for shortening the trial;

8 15. Whether a jury trial has been requested and whether the request for a jury trial
9 is contested. If the request for a jury trial is contested, the Proposed Case
10 Management Plan shall set forth the reasons that a trial by jury is in dispute;

11 16. The prospects for settlement, including any request to have a settlement
12 conference before another United States District Court Judge or Magistrate Judge, or
13 other request of the court for assistance in settlement efforts; and

14 17. Any other matters which counsel feel will aid the Court in resolving this
15 dispute in a just, speedy, and inexpensive manner.

16 **IT IS FURTHER ORDERED** that all deadlines to which the parties stipulate in the
17 Proposed Case Management Plan shall fall on a Friday barring extenuating circumstances
18 which make doing so impracticable.

19 **IT IS FURTHER ORDERED** that counsel shall jointly file their Proposed Case
20 Management Plan with the Clerk of the Court **not less than five business days** before the
21 Preliminary Pretrial Conference. Absent extraordinary circumstances, no extensions of time
22 will be granted.

23 **IT IS FURTHER ORDERED** that it is the responsibility of counsel for the Plaintiff
24 to initiate the communications necessary to prepare the joint Proposed Case Management
25 Plan. Once contacted by counsel for Plaintiff, counsel for Defendants shall act in an
26 expeditious manner to effectuate the preparation of the Case Management Plan.

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 LEONI Fiber Optics, Inc.,) No. CV-13-562-PHX-SMM

10 Plaintiff,)

11 vs.) **RULE 16 SCHEDULING ORDER**

12 Dr. Armin Kaus, et al.,)

13 Defendants.)

14

15 On December 17, 2013, a Preliminary Pretrial Conference was held in Court pursuant
16 to Rule 16(b) of the Federal Rules of Civil Procedure. Prior to the conference, the parties
17 filed a Rule 26(f) Case Management Plan. Pursuant to the terms of the Case Management
18 Plan, and the representations made by the parties at the Rule 16 Preliminary Pretrial
19 Conference, all parties were ordered to comply with the deadlines established in this Order.

20 **IT IS HEREBY ORDERED** that the current provisions of the Federal Rules of Civil
21 Procedure shall apply to all proceedings concerning this case.

22 **IT IS FURTHER ORDERED** that all Initial Disclosures as defined in Federal Rule
23 of Civil Procedure 26(a), if not already exchanged prior to the time of this Preliminary
24 Pretrial Conference, shall be made **no later than five (5) days** after date of entry of this
25 Order or, in the alternative, no later than _____.

26 **IT IS FURTHER ORDERED** that to satisfy the requirements of Federal Rule of
27 Civil Procedure 26(a), the parties shall file with the Clerk of the Court a Notice of Initial
28 Disclosure, rather than copies of the actual disclosures.

1 **IT IS FURTHER ORDERED** that any amendment to the Complaint shall be filed
2 no later than _____. Any amendment to the
3 Answer shall be filed no later than _____.

4 **IT IS FURTHER ORDERED** that all discovery, answers to interrogatories, and sup-
5 plements to interrogatories must be completed by _____. In no
6 event, however, shall this provision alter the duties and obligations imposed upon the parties
7 by Federal Rule of Civil Procedure 26(e). This Order contemplates that each party will
8 conduct discovery in such a manner as to complete, within the deadline, any and all
9 discovery. “Last minute” or “eleventh hour” discovery which results in insufficient time to
10 undertake additional discovery and which requires an extension of the discovery deadline
11 will be met with disfavor, and could result in denial of an extension, exclusion of evidence,
12 or the imposition of other sanctions.

13 **IT IS FURTHER ORDERED** that discovery by interrogatory shall generally be
14 governed by Federal Rule of Civil Procedure 33. However, notwithstanding Federal Rule
15 of Civil Procedure 33, there is a limit of _____ interrogatories, including discrete
16 subparts, applicable to this case.

17 **IT IS FURTHER ORDERED** that requests for admissions shall be governed by
18 Federal Rule of Civil Procedure 36. The parties shall serve no more than _____
19 requests for admissions.

20 **IT IS FURTHER ORDERED** reminding counsel of their duty under Rule 26(e) of
21 the Federal Rules of Civil Procedure to supplement all Rule 26(a) disclosures and responses
22 to discovery requests. Pursuant to Rule 26(e)(1), any additions or other changes to
23 information previously disclosed must be made prior to the time that Rule 26(a)(3) Pretrial
24 Disclosures are due. Since this Court effectively requires all Rule 26(a)(3) Pretrial
25 Disclosures to be contained in the Proposed Final Pretrial Order, this Order contemplates that
26 all exhibits and witnesses that may be offered at trial will have been disclosed before the
27 close of discovery as established by the provisions of this Order. This Order therefore
28 supersedes the “thirty-day before trial” disclosure deadline contained in that Rule. Therefore

1 (1) failure to have timely supplemented a Rule 26(a) disclosure, including but not limited to
2 witnesses and exhibits, or (2) a failure to have timely supplemented responses to any valid
3 discovery requests, or (3) attempting to include any witnesses or exhibits in the Proposed
4 Final Pretrial Order that were not previously disclosed in a timely manner as to allow for
5 meaningful discovery prior to the discovery cutoff date as established by this Order, may
6 result in the exclusion of such evidence at trial or the imposition of other sanctions.

7 **IT IS FURTHER ORDERED** that, **in the event of a discovery dispute, the parties**
8 **shall contact the Court to request a telephonic conference prior to filing any discovery**
9 **motions.** The parties shall not contact the Court regarding a discovery dispute unless they
10 have been unable to resolve the dispute themselves, despite personal consultation and sincere
11 efforts to do so. The parties shall not file any written materials related to a discovery dispute
12 or discovery motion without express leave of Court. If the Court does order written
13 submissions, the movant shall include a statement certifying that counsel could not
14 satisfactorily resolve the matter despite personal consultation and sincere efforts to do so, in
15 accordance with LRCiv 7.2(j) of the Rules of Practice of the United States District Court for
16 the District of Arizona.

17 **IT IS FURTHER ORDERED** that the Plaintiff(s) shall disclose the identity of any
18 person who may be used at trial to present evidence under Federal Rules of Evidence 701,
19 702, 703, 704, and 705 no later than _____.¹
20 The Defendant(s) shall disclose the identity of any person who may be used at trial to present
21 evidence under Federal Rules of Evidence 701, 702, 703, 704, or 705 no later than
22 _____. Rebuttal experts if any, shall be disclosed no
23 later than _____. No deposition of any expert witnesses shall
24 occur before the disclosures concerning expert witnesses mandated by this Order are made.
25 Depositions of all expert witnesses must be concluded by _____.

26 _____
27 ¹ The parties are hereby given notice that this Order requires disclosure greater
28 than that required by Federal Rule of Civil Procedure 26(a)(2).

1 **IT IS FURTHER ORDERED** that the disclosures of the identities of any persons
2 who may be used at trial to present evidence under Federal Rules of Evidence 701, 702, 703,
3 704, or 705 shall also include all of the disclosures required by Federal Rule of Civil
4 Procedure 26(a)(2)(B) if the witness is either (1) retained or specifically employed to provide
5 expert testimony in the case, or (2) is an agent or employee of the party offering the
6 testimony whose duties regularly involve giving expert testimony.

7 **IT IS FURTHER ORDERED** that depositions shall be limited as provided by Rules
8 30 and 31 of the Federal Rules of Civil Procedure unless the parties otherwise stipulate in
9 writing when permitted to do so pursuant to the Rules or when granted permission to depart
10 from the provisions of the Rules by Order of this Court. Notwithstanding any provision in
11 the Federal Rules of Civil Procedure or the Local Rules, the parties shall conduct no more
12 than _____ depositions.

13 **IT IS FURTHER ORDERED** pursuant to Federal Rule of Civil Procedure 30(d)(1)
14 that there shall be a time limit of _____ hours² to conduct a deposition of any witness
15 in this case. Additional time shall be allowed where the deponent or a party impedes or
16 delays the examination. This time limit may only be extended by Order of this Court upon
17 motion of any party that demonstrates good cause for doing so. Counsel shall conduct
18 themselves courteously and professionally, especially during the taking of depositions. Any
19 objections made during the course of a deposition must be in accordance with Rule 30(c)(2)
20 of the Federal Rules of Civil Procedure.

21 **IT IS FURTHER ORDERED** that notwithstanding any provisions of the Federal
22 Rules of Civil Procedure or any other provisions of this Order, non-party witnesses shall not
23 be permitted to attend, either physically, electronically, or otherwise, the deposition of any
24 other witness in this case without an Order of this Court to the contrary.

25
26
27 _____
28 ² The Court finds that a presumptive limit of seven (7) hours is sufficient for
depositions in a standard track civil case.

1 **IT IS FURTHER ORDERED** that all dispositive motions shall be filed no later than
2 _____ . Such motions must be, in all respects, in full
3 compliance with the Rules of Practice of the United States District Court for the District of
4 Arizona.

5 **IT IS FURTHER ORDERED** that no submissions to the Court shall contain any
6 footnotes in excess of five (5) lines.

7 **IT IS FURTHER ORDERED** that all parties are hereby specifically admonished that
8 failure to respond to a motion by serving and filing an answering memorandum within the
9 time period expressly provided for in LRCiv 7.2 of the Rules of Practice of the United States
10 District Court for the District of Arizona may be deemed a consent to the denial or granting
11 of the motion and the Court may then dispose of the motion summarily.

12 **IT IS FURTHER ORDERED** that the parties shall not notice oral argument on any
13 motion. Instead, a party desiring oral argument on a motion shall request argument by
14 placing “Oral Argument Requested” immediately below the title of such motion, pursuant
15 to LRCiv 7.2(f) of the Rules of Practice of the United States District Court for the District
16 of Arizona. The Court will then issue a minute order scheduling the oral argument.

17 Oral argument shall be scheduled at the request of a party on all motions to dismiss
18 and motions for summary judgment. On all other motions on which a party requests oral
19 argument, the Court will determine whether oral argument is necessary. FURTHER, THE
20 PARTIES ARE REMINDED THAT OBTAINING A HEARING DATE IS PURELY
21 ADMINISTRIAL. ACCORDINGLY, REGARDLESS OF A HEARING DATE, THE
22 COURT MAY, AT ANY TIME AFTER THE MOTION IS FULLY BRIEFED,
23 DETERMINE THAT A HEARING IS UNWARRANTED AND RULE ON THE MOTION
24 WITHOUT ORAL ARGUMENT.

25 **IT IS FURTHER ORDERED** that any and all motions, requests, or stipulations for
26 extensions of time shall be made in accordance with the provisions of LRCiv 7.3 of the Rules
27 of Practice of the United States District Court for the District of Arizona. Notwithstanding
28 this directive, however, if such a motion, request, or stipulation seeks an extension of time

1 in which to file a memorandum in response or in reply to a motion previously noticed for oral
2 argument, under no circumstances shall such a motion, request, or stipulation seek an
3 extension that would preclude the Court from having at least thirty (30) days from the due
4 date for the filing of the reply memorandum to consider the merits of the underlying motion
5 unless the motion, request, or stipulation also seeks to vacate and reschedule the oral
6 argument. Any motion, request, or stipulation that so seeks both an extension of time and
7 rescheduling of a hearing shall contain a memorandum of points and authorities which
8 demonstrates good cause for the Court to grant the requested extension.

9 **IT IS FURTHER ORDERED** that, if no dispositive motions are pending before the
10 Court after the dispositive motions deadline has passed, Plaintiff(s) shall file a Notice of
11 Readiness for Order Re: Final Pretrial Conference within ten (10) days of the dispositive
12 motions deadline.

13 **IT IS FURTHER ORDERED** that, if dispositive motions are pending before the
14 Court following the dispositive motions deadline, the Court will issue an Order Re: Final
15 Pretrial Conference following its resolution of the dispositive motions, if necessary.

16 **IT IS FURTHER ORDERED** that the Order Re: Final Pretrial Conference shall: 1)
17 set deadlines for the filing of and response to motions in limine; 2) instruct the parties on
18 their duties in preparing for the Final Pretrial Conference and for trial; and 3) include a form
19 for the completion of the parties' Proposed Pretrial Form of Order.

20 **IT IS ORDERED** that the attorneys for each party who will be responsible for trial
21 of the lawsuit shall **APPEAR** and **PARTICIPATE** in a Final Pretrial Conference on
22 _____ at _____, ____m.
23 in courtroom # 605 on the sixth floor of the United States Courthouse, 401 West Washington
24 Street, Phoenix, Arizona. Because the Final Pretrial Conference is held for the benefit of all
25 parties, and further because the presence of all parties will facilitate frank discussion of the
26 pertinent issues in the lawsuit, **each party, or a representative with binding settlement**
27 **authority if the party is an entity**, shall attend the Final Pretrial Conference. At the Final
28 Pretrial Conference, the Court shall set a firm trial date.

