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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

DON HENLEY, et al.,

Plaintiff(s),

vs.

CHARLES S. DEVORE, et al.,

Defendant(s).

SA CV 09-00481-JVS (RNBx)

**I. ORDER FOR JURY TRIAL
SETTING DATES FOR:**

Discovery Cut-Off:
December 21, 2009

Pre-Trial Conference:
June 21, 2010
at 11:00 A.M.

Trial:
July 6, 2010
at 8:30 A.M.

**II. Order for Preparation
for JURY TRIAL**

**III. Order Governing Attorney
& Party Conduct at Trial.**

I.

SCHEDULING:

1. In General: All motions to join other parties or to amend the pleadings shall be filed and served within sixty (60) days of the date of this order and noticed for hearing within ninety (90) days hereof. All unserved parties shall

1 be dismissed no later than the date set for the Final Pre-Trial Conference.
2

3 2. Motions for Summary Judgment or Partial Summary Judgment:

4 Motions for summary judgment or partial summary judgment shall be heard no
5 later than the last day for hearing motions, as set forth in the accompanying minute
6 order.
7

8 3. Discovery Cut-Off: The Court has established a cut-off date for
9 discovery in this action. All discovery is to be completed on, or prior to, the cut-
10 off date. Accordingly, the following discovery schedule shall apply to this case:
11

12 A. Depositions: All depositions shall be scheduled to
13 commence at least five (5) working days prior to the discovery cut-off date. All
14 original depositions to be used in trial shall be lodged with the Courtroom deputy
15 on the first day of trial or such earlier date as the Court may order.
16

17 B. Interrogatories: All interrogatories must be served at least
18 forty-five (45) days prior to the discovery cut-off date. The Court will not approve
19 stipulations between counsel that permit responses to be served after the cut-off
20 date except in extraordinary circumstances.
21

22 C. Production of Documents, etc.: All requests for production,
23 etc., shall be served at least forty-five (45) days prior to the discovery cut-off date.
24 The Court will not approve stipulations between counsel that permit responses to
25 be served after the cut-off date except in extraordinary circumstances.
26

27 D. Request for Admissions: All requests for admissions shall
28 be served at least forty-five (45) days prior to the discovery cut-off date. The

1 Court will not approve stipulations between counsel that permit responses to be
2 served after the cut-off date except in extraordinary circumstances.

3
4 E. Discovery Motions: Any motion respecting the inadequacy
5 of responses to discovery must be filed and served not later than ten (10) days after
6 the discovery cut-off date. Whenever possible, the Court expects counsel to resolve
7 discovery problems among themselves in a courteous, reasonable, and professional
8 manner. Consistent resort to the Court for guidance in discovery is unnecessary
9 and may result in the Court appointing a Special Master at the joint expense of the
10 parties to resolve discovery disputes. The Court expects that counsel will strictly
11 adhere to the Civility and Professional Guidelines adopted by the United States
12 District Court for the Central District of California.

13
14 F. Disclosure of Expert Testimony: The above discovery cut-
15 off date includes expert discovery, unless otherwise ordered by Court, and the
16 Court orders the sequence of disclosures provided by Fed. R. Civ. Proc.
17 26(a)(2)(C), unless the parties otherwise stipulate in writing and obtain the Court's
18 approval.

19
20 **FINAL PRE-TRIAL CONFERENCE:**

21
22 This case has been placed on calendar for a Final Pre-Trial
23 Conference pursuant to Fed. R. Civ. P. 16. Strict compliance with the
24 requirements of the Fed. R. Civ. P. and Local Rules are required by the Court.
25
26
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28

1 **II.**

2
3 **ORDER FOR PREPARATION FOR JURY TRIAL AND SCHEDULING**
4 **EXHIBIT CONFERENCE FRIDAY BEFORE TRIAL: MOTIONS,**
5 **INSTRUCTIONS, AND EXHIBITS**
6

7 The Court ORDERS that all counsel comply with the following in
8 their preparation for trial:

9
10 1. **MOTIONS IN LIMINE:**

11
12 All motions *in limine* must be filed and served a minimum of three (3)
13 weeks prior to the scheduled pretrial date. Each motion should be separately filed
14 and numbered. All opposition documents must be filed and served at least two (2)
15 weeks prior to the scheduled pretrial date. All reply documents must be filed and
16 served at least one (1) week prior to the scheduled pretrial date. Motions *in limine*
17 should be used to raise legitimate evidentiary issues, and not as veiled motions for
18 summary adjudication.

19
20 The Court limits the number of *in limine* motions which a party or
21 group of affiliated parties may file to four in addition to (1) any *in limine* motion
22 which seeks an exclusionary sanction under Rule 37(c)(1) of the Federal Rules of
23 Civil Procedure and (2) any *in limine* motion which invokes the Court's power
24 under Rule 702 of the Federal Rules of Evidence and Daubert v. Merrell Dow
25 Pharmaceuticals, 509 U.S. 579, 597 (1993), to exclude or limit expert testimony.
26 Motions made on the latter two grounds shall prominently state the basis for the
27 motion in the title of the motion on the caption page. Any party desiring to tender
28 any other *in limine* motions shall file an *ex parte* application no later than seven

1 days prior to the due date for such motions, attaching the proposed motion and
2 making a showing why it is imperative that the issue be dealt with by a motion *in*
3 *limine*.

4
5 The Court deems the following motions to have been made and
6 granted:

7
8 • Exclusion of evidence of settlement talks, offers of compromise and
9 similar evidence excludable under Federal Rule of Evidence 408 without an offer
10 of proof first made outside the presence of the jury.

11
12 • Exclusion of expert opinions not disclosed under Rule 26(a)(2) of
13 the Federal Rule of Civil Procedure or otherwise subjected to examination at the
14 expert's deposition.

15
16 All motions in limine will be heard on the scheduled pretrial date,
17 unless the Court otherwise orders.

18
19 2. JURY INSTRUCTIONS, VERDICT FORMS, and VOIR

20 DIRE:

21
22 Plaintiff shall serve plaintiff's proposed jury instructions and verdict
23 form on defendant. Defendant shall serve on plaintiff defendant's objections to
24 plaintiff's instructions and verdict form, together with any alternative verdict form
25 and any additional instructions defendant intends to offer. Counsel are ordered to
26 meet and confer to attempt to come to agreement on the proposed jury instructions
27 and verdict forms.
28

1 Counsel shall file with the Court a JOINT set of jury instructions on
2 which there is agreement. Defendant's counsel has the burden of preparing the
3 joint set of jury instructions. At the same time each party shall file its proposed
4 jury instructions which are objected to by any other party, accompanied by points
5 and authorities in support of those instructions.
6

7 **Jury instructions** are to be filed with the Clerk at the Southern
8 Division in Santa Ana and served on opposing counsel as soon as possible. The
9 Court recommends that jury instructions be submitted at least four (4) court days
10 prior to trial, but not later than the first day of trial.
11

12 At the same time, counsel must furnish to the assigned Courtroom
13 Deputy Clerk a diskette of proposed jury instructions containing only the text of
14 the proposed instructions so that unannotated copies may be submitted to the jury
15 during its deliberations. Counsel may submit the proposed instructions on a 3½"
16 diskette compatible with WordPerfect® 6.0 or later generations of WordPerfect®.
17

18 **Objections** to proposed jury instructions must be filed in writing at
19 the Southern Division in Santa Ana.
20

21 **Voir Dire:** At least four (4) court days prior to trial, each counsel
22 shall file with the Clerk at the Southern Division in Santa Ana and serve on
23 opposing counsel any special questions requested to be put to prospective jurors on
24 voir dire.
25

26 3. TRIAL EXHIBITS:
27

28 Counsel are to prepare their exhibits for presentation at the trial by

1 placing them in binders that are indexed by exhibit number with tabs or dividers on
2 the right side. Counsel shall submit to the Court an original and one copy of the
3 binders. The exhibits shall be in a three-ring binder labeled on the spine portion of
4 the binder showing both the volume number and the exhibit numbers and contain
5 an index of each exhibit included in the volume. Exhibits must be numbered in
6 accordance with Fed. R. Civ. P. 16, 26, and the Local Rules.

7
8 The Court requires that the following be submitted to the Courtroom
9 Deputy Clerk on the first day of trial:

10
11 A. The original exhibits with the Court's exhibit tags shall be
12 stapled to the front of the exhibit on the upper right-hand corner with the case
13 number, case name, and exhibit number placed on each tag.

14
15 B. One bench book with a copy of each exhibit for use by the
16 Court, tabbed with numbers as described above. (Court's exhibit tags not
17 necessary.)

18
19 C. Three (3) copies of exhibit lists, plus a 3 ½” disk in
20 WordPerfect® 6.0 or later generations of WordPerfect®.

21
22 D. Three (3) copies of witness lists.

23
24 E. A joint statement of the case suitable for reading by the
25 Court to the prospective panel of jurors prior to the commencement of jury
26 selection. Counsel are ordered to confer and agree to a one-page joint statement of
27 the case no later than five (5) days prior to the trial date.

1 All counsel are to meet not later than ten (10) days before trial and to
2 stipulate so far as is possible as to foundation, waiver of the best evidence rule, and
3 to those exhibits which may be received into evidence at the start of trial. The
4 exhibits to be so received will be noted on the extra copies of the exhibit lists.

5
6 **III.**

7
8 **ORDER GOVERNING ATTORNEY AND PARTY CONDUCT AT TRIAL:**
9 **Opening Statements, Examining Witnesses, and Summation**

10
11 A. Unless otherwise ordered, the trial day will be 9:00 a.m. to noon
12 and 1:30 p.m. to 4:30 p.m. with a 15 minute break during each session.

13
14 B. At the end of each day, counsel presenting his or her case shall
15 advice opposing counsel of the witnesses anticipated the following day with an
16 estimate the length of direct examination. Opposing counsel shall provide an
17 estimate of the length of cross-examination. Cooperation of counsel will ensure a
18 smooth flow of witnesses.

19
20 C. Opening statements, examination of witnesses, and summation
21 will be from the lectern only. Counsel must not consume time by writing out
22 words or drawing charts or diagrams. Counsel may do so in advance and explain
23 that the item was prepared earlier as ordered by the Court to save time.

24
25 D. In final argument of jury cases, counsel must avoid addressing
26 any juror by name and avoid any appeal to a juror putting the juror in the position
27 of a party, such as “What would you take for such pain?” or “What would you
28 expect your son or daughter to do in the same circumstances?”

1 E. In criminal cases, defense counsel should avoid asking their client
2 such self-serving questions as whether the client is married, has children, has a war
3 record or has ever been arrested. Such questions are almost always irrelevant.
4 Where such information would be relevant, in counsel's opinion, counsel must
5 seek advance permission from the Court to inquire.

6
7 F. Never strike the lectern for emphasis.

8
9 G. The Court will honor reasonable time estimates for opening and
10 closing addresses to the jury. Please be advised this Court will not require a jury to
11 sit longer than 60 minutes in any one session during counsel's summation.

12
13 **Objections to Questions:**

14
15 A. Counsel must not use objections for the purpose of making a
16 speech, recapitulating testimony, or attempting to guide the witness.

17
18 B. When objecting, counsel must rise to state the objection and state
19 only that counsel objects and the legal ground of objection. If counsel wishes to
20 argue an objection further, counsel must ask for permission to do so; the Court may
21 or may not grant a request for conference at sidebar. The Court strongly
22 discourage sidebars because they represent an inefficient use of jury time when
23 matters can be anticipated.

24
25
26 **General Decorum:**

27
28 A. Please keep the trial low-key. It is not a contest of dramatic

1 ability or an oratorical contest. It is to be a dignified search for the truth.
2

3 B. Counsel must not approach the Clerk or the witness box without
4 specific permission. When permission is given, please return to the lectern when
5 the purpose of the permission is finished. Counsel must not engage in questioning
6 a witness at the witness stand.
7

8 C. Please rise when addressing the Court and rise when the jury
9 enters or leaves the courtroom.
10

11 D. Counsel must address all remarks to the Court. Counsel are not to
12 address the Clerk, the Reporter, persons in the audience, or opposing counsel. If
13 counsel wishes to speak with opposing counsel, counsel must ask permission to
14 talk off the record. Any request for the re-reading of questions or answers shall be
15 addressed to the Court.
16

17 E. Counsel must not address or refer to witnesses or parties by first
18 names alone. Young witnesses (under 14) may, however, be addressed and
19 referred to by first names.
20

21 F. Counsel must not make an offer of stipulation unless counsel has
22 conferred with opposing counsel and has reason to believe the stipulation will be
23 acceptable.
24

25 G. While Court is in session, counsel must not leave counsel table to
26 confer with any personnel or witnesses in the back of the courtroom unless
27 permission has been granted in advance.
28

1 H. Counsel should not by facial expression, nodding or other conduct
2 exhibit any opinion, adverse or favorable, concerning any testimony being given
3 by a witness. Counsel should admonish counsel's own client(s) and witnesses to
4 avoid such conduct.

5
6 I. Where a party has more than one lawyer, only one may conduct
7 the direct or cross-examination of a given witness.

8
9 **Promptness of Counsel and Witnesses:**

10
11 A. The Court makes every effort to commence proceedings at the
12 time set. Promptness is expected from counsel and witnesses. It is counsel's duty
13 to tell the Court on the first day of any commitments in any other court on a
14 subsequent day that may result in absence or late arrival.

15
16 B. If a witness was on the stand at a recess, it is counsel's duty to
17 have the witness back on the stand, ready to proceed, when the court session
18 resumes.

19
20 (1) If a witness was on the stand at adjournment, it is counsel's
21 duty to have the witness adjacent to, but not on, the stand, ready to proceed, when
22 the court session resumes.

23
24 (2) It is counsel's duty to notify the courtroom deputy clerk in
25 advance if any witness should be accommodated by use of the witness stand's
26 automated platform which lowers and raises to accommodate witnesses who are
27 unable to otherwise take the witness stand.

1 C. No presenting party may be without witnesses. If counsel has no
2 more witnesses to call and there is more than a brief delay, the Court may deem
3 that the party has rested.

4
5 D. The Court attempts to cooperate with physicians, scientists, and
6 all other professional witnesses and will, except in extraordinary circumstances,
7 accommodate them by permitting them to be put on out of sequence. Counsel must
8 anticipate any such possibility and discuss it with opposing counsel. If there is
9 objection, confer with the Court in advance.

10
11 **Exhibits:**

12
13 A. Each counsel should keep counsel's own list of exhibits and
14 should keep track when each has been admitted in evidence.

15
16 B. Each counsel is responsible for any exhibits that counsel secures
17 from the Clerk and, at all recesses and at noontime and afternoon adjournments,
18 must return all exhibits in counsel's possession to the Clerk.

19
20 C. An exhibit not previously marked should, at the time of its first
21 mention, be accompanied by a request that the Clerk mark it for identification. To
22 save time, counsel must show a new exhibit to opposing counsel before it is
23 mentioned in Court.

24
25 D. Whenever in counsel's opinion a particular exhibit is admissible,
26 it should be offered unless tactical considerations dictate otherwise. The motion to
27 admit will dealt with at the next available recess if there is objection. No exhibit
28 shall be read or displayed to the jury until admitted.

1 E. The Court regards admissibility of exhibits as a legal issue for the
2 Court to rule on unless there is agreement among counsel. Counsel are
3 admonished to make no motion to introduce an exhibit while the jury is present
4 unless counsel has previously conferred with opposing counsel and knows that
5 there will be no objection to the motion to admit.

6
7 When the Court hears a motion to admit an exhibit before the
8 jury, the Court will assume that counsel has already cleared admission of the
9 exhibit with opposing counsel and grant the motion. If any objection is lodged, the
10 Court will expect a full explanation from counsel who made the motion to admit an
11 exhibit while the jury was present. Counsel are to advise the Clerk of any
12 agreements they have with respect to the proposed exhibits and as to those exhibits
13 that may be received so that no further motion to admit need be made.

14
15 F. When referring to an exhibit, counsel should refer to its exhibit
16 number whenever possible. Witnesses should be asked to do the same.

17
18 G. The Court resists taking time to pass an exhibit among the jury for
19 viewing when it is admitted. A request to do so should be made to the Court in a
20 recess period preceding introduction of the exhibit.

21
22 H. Absent unusual circumstances, counsel must not ask witnesses to
23 draw charts or diagrams nor ask the Court's permission for a witness to do so. If
24 counsel wishes to question a witness in connection with graphic aids, the material
25 must be fully prepared before the court session starts.

1 **Depositions:**

2
3 A. All depositions that are to be used in the trial, either as evidence
4 or for impeachment, must be signed and lodged with the Courtroom Deputy on the
5 first day of trial or such earlier date as the Court may order. Counsel should check
6 with the Clerk as to whether any deposition in which counsel is interested is in the
7 Clerk's hands and is properly signed.

8
9 B. In using depositions of an adverse party for impeachment, counsel
10 shall first announce the page and line reference of the passage desired to be read,
11 and allow opposing counsel an opportunity to state any objection. Counsel shall
12 the use either one of the following procedures:

13
14 (1) If counsel wishes to read the questions and answers as
15 alleged impeachment and ask the witness no further questions on that subject,
16 counsel may merely read the relevant portions of the deposition into the record.

17
18 (2) If counsel wishes to ask the witness further questions on
19 the subject matter, the deposition is placed in front of the witness and the witness is
20 told to read silently the pages and lines involved. Then counsel may either ask the
21 witness further questions on the matter and thereafter read the quotations or read
22 the quotations and thereafter ask the further questions. Counsel should have an
23 extra copy of the deposition for this purpose.

24
25 C. Where a witness is absent and the witness' testimony is offered by
26 deposition, please observe the following procedure. A reader should occupy the
27 witness chair and read the testimony of the witness while the examining lawyer
28 asks the questions.

1 **Using Numerous Answers to Interrogatories and Requests for Admissions:**

2
3 Whenever counsel expects to offer answers to interrogatories or
4 requests for admissions, the desired discovery shall be read to the jury. Any
5 objections shall be resolved in advance.
6

7 **Advance Notice of Evidentiary or Difficult Questions:**

8
9 If any counsel has reason to anticipate that a difficult question of law
10 or evidence will raise legal argument, requiring research and/or briefing, counsel
11 must give the Court advance notice. Counsel are directed to notify the Clerk at the
12 day's adjournment if an unexpected legal issue arises that could not have been
13 foreseen and addressed by a motion *in limine* (see Fed. R. Evid. 103). To the
14 maximum extent possible such matters shall be taken outside normal jury hours
15 (e.g., recess, before or after the trial day.
16

17 **Juror Questionnaires:**

18
19 The Court discourages the use of juror questionnaires except in
20 complex cases or cases involving juror privacy issues. If a party intends to propose
21 a questionnaire, the party shall meet and confer with all parties with the goal of
22 arriving at a joint questionnaire. Any proposed questionnaire shall be submitted to
23 the Court not later than thirty days prior to trial.
24
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IV.

The Clerk is ordered to serve a copy of this Order on counsel/parties
in this action.

DATED: August 11, 2009



James V. Selna
United States District Judge

COPIES TO:
COUNSEL OF RECORD
PRO SE PARTIES

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