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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DAMIEN ALVAREZ and  
LETICIA ALVAREZ,  
  
Plaintiffs,  
  
\_\_\_\_\_  
vs.  
BLACK & DECKER (U.S.), INC.,  
a Maryland Corporation; D.H. FOWLE  
CO., INC., a Massachusetts Corporation,  
et al.,  
  
Defendants.

CASE NO. CV F 08-1615 LJO GSA

**SCHEDULING CONFERENCE ORDER**

Expert  
Disclosure: July 10, 2009  
  
Supplemental  
Expert Disclosure: July 30, 2009  
  
Nonexpert  
Discovery Cutoff: August 25, 2009  
  
Expert  
Discovery Cutoff: September 8, 2009  
  
Pretrial  
Motion Filing  
Deadline: September 3, 2009  
  
Pretrial Motion  
Hearing Deadline: October 8, 2009  
  
Settlement Conf.: None set.  
  
Pretrial Conf.: Date: October 26, 2009  
Time: 8:30 a.m.  
Dept.: 4 (LJO)  
  
Jury Trial: Date: December 7, 2009  
(8 day est.) Time: 9 a.m.  
Dept.: 4 (LJO)

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This Court conducted a February 17, 2009, scheduling conference. Plaintiffs Damien and Leticia Alvarez appeared by telephone by counsel Minh T. Nguyen. Defendant Black & Decker (U.S.), Inc.,

1 appeared by telephone by counsel Archie S. Robinson. Pursuant to F.R.Civ.P. 16(b), this Court sets a  
2 schedule for this action.

3 **1. Amendment To The Parties' Pleadings**

4 Defendant Black & Decker (U.S.), Inc., asserts that Plaintiffs have named the wrong corporate  
5 entity and will provide documentation accordingly. Plaintiffs believe "The Black & Decker  
6 Corporation" may be the correct entity, and may need to amend its pleadings to name the proper  
7 defendant, subject to review of the documentation to be provided. Counsel are cooperating to determine  
8 the proper parties.

9 The Court noted that Defendant Woburn-Fowle Company, Inc., was served with the Complaint  
10 on or about December 16, 2008. To date, Defendant Woburn-Fowle has not filed a responsive pleading,  
11 nor have Plaintiffs commenced default proceedings.

12 **2. Consent To Magistrate Judge**

13 All parties do not consent to the conduct of further proceedings, including trial and entry of  
14 judgment, by a United States Magistrate Judge. Due to this Court's heavy caseload and its effect to hold  
15 to scheduled dates, the parties are encouraged to consent to the conduct of further proceedings by a  
16 United States Magistrate Judge.

17 **3. F.R.Civ.P. 26(a)(1) Initial Disclosures**

18 The parties shall serve their respective F.R.Civ.P. 26(a)(1) initial disclosures no later than  
19 **February 20, 2009.**

20 **4. Expert Witnesses**

21 Initial expert witness disclosures by any party shall be served no later than **July 10, 2009.**  
22 Supplemental expert witness disclosures by any party shall be served no later than **July 30, 2009.** Such  
23 disclosures must be made pursuant to F.R.Civ.P. 26(a)(2)(A) and (B) and shall include all information  
24 required thereunder. In addition, F.R.Civ.P. 26(b)(4) and F.R.Civ.P. 26(e) shall specifically apply to all  
25 discovery relating to expert witnesses and their opinions. Each expert witness must be prepared fully  
26 to be examined on all subjects and opinions included in the designations. Failure to comply with these  
27 requirements will result in the imposition of appropriate sanctions, which may include the preclusion  
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1 of testimony or other evidence offered through the expert witness. In particular, this Court will enforce  
2 preclusion of testimony or other evidence if F.R.Civ.P. 26(e) is not strictly complied with.

3 **5. Discovery Cutoffs And Limits**

4 All nonexpert discovery and related discovery motions (including motions to compel) shall be  
5 completed or heard no later than **August 25, 2009**. All expert discovery and related discovery motions  
6 (including motions to compel) shall be completed or heard no later than **September 8, 2009**.

7 **6. Pretrial Motion Schedule**

8 All pretrial motions, both dispositive and nondispositive (except discovery motions addressed  
9 above), shall be served and filed no later than **September 3, 2009**. All pretrial dispositive and  
10 nondispositive motions (except discovery motions addressed above) shall be set before the appropriate  
11 judge for a hearing to be conducted no later than **October 8, 2009**.

12 At the pretrial conference, the Court will set filing and hearing dates for motions in limine.

13 **7. Mandatory Settlement Conference**

14 At this time, this Court sets no settlement conference. If the parties later desire a settlement  
15 conference, they may jointly request one by contacting the chambers of the United States Magistrate  
16 Judge assigned to this action.

17 If a settlement conference is set and unless otherwise permitted in advance by the Court, the  
18 attorneys who will try the case shall appear at the settlement conference with the parties and the person  
19 or persons having full authority to negotiate and settle the case, on any terms, at the conference.

20 **No later than seven days prior to the settlement conference**, each party shall submit directly  
21 to the settlement conference judge's chambers a confidential settlement conference statement. This  
22 statement should neither be filed with the clerk of the Court nor served on any other party. Each  
23 statement shall be clearly marked "CONFIDENTIAL" with the date and time of the mandatory  
24 settlement conference indicated prominently. Counsel are urged to request the return of their statements.  
25 If such request is not made, the Court will dispose of the statement.

26 The confidential settlement conference statement shall include the following:

- 27 A. A brief statement of the facts of the case;  
28 B. A brief statement of the claims and defenses (i.e., statutory or other grounds upon which

1 the claims or defenses are based), a forthright evaluation of the parties' likelihood of prevailing on the  
2 claims and defenses, and a description of the major issues in dispute;

3 C. A summary of the proceedings to date;

4 D. An estimate of the cost and time to be expended for further pretrial and trial matters,  
5 including discovery;

6 E. The relief sought; and

7 F. The party's position on settlement, **including the amount which or otherwise what the**  
8 **party will accept to settle, realistic settlement expectations**, present demands and offers, and a history  
9 of past settlement discussions, offers, and demands.

10 This Court will vacate the settlement conference if the Court finds the settlement conference will  
11 be neither productive nor meaningful to attempt to resolve all or part of this case. As far in advance of  
12 the settlement conference as possible, a party shall inform the Court and other parties that it believes the  
13 case is not in a settlement posture so the Court may vacate or reset the settlement conference. Otherwise  
14 the parties shall proceed with the settlement conference in good faith to attempt to resolve all or part of  
15 the case.

16 **8. Pretrial Conference**

17 This Court sets a pretrial conference for **October 26, 2009, at 8:30 a.m.** in Department 4 (LJO)  
18 of this Court. The parties are directed to file a joint pretrial statement which complies with the  
19 requirements of this Court's Local Rule 16-281. In addition, the joint pretrial statement should include  
20 a brief factual summary and an agreed upon neutral statement of the case. An additional copy of the  
21 joint pretrial statement, carefully prepared and executed by all counsel, shall be electronically filed in  
22 CM/ECF and shall be e-mailed in WordPerfect format to ljoorders@caed.uscourts.gov.

23 The parties' attention is directed to this Court's Local Rules 16-281 and 16-282. This Court will  
24 insist upon strict compliance with those rules.

25 At the pretrial conference, the Court will set deadlines, among others, to file motions in limine,  
26 final witness lists, exhibits, jury instructions, objections, and other trial documents.

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1 **9. Trial Date**

2 An eight-day jury trial is set for **December 7, 2009, at 9 a.m.** in Department 4 (LJO) of this  
3 Court.

4 Plaintiffs requested bifurcation of the issues of liability and damages. Defendant made no  
5 request for bifurcation. Plaintiffs also requested separate juries as to each issue. Defendant objects.  
6 This Court cautioned counsel for Plaintiffs that it is unlikely Plaintiffs' request for separate juries as to  
7 the issues of liability and damages would be granted, particularly in light of caseload and judicial  
8 economy.

9 **10. Effect Of This Order**

10 This order represents the best estimate of the Court and parties as to the agenda most suitable to  
11 dispose of this case. If the parties determine at any time that the schedule outlined in this order cannot  
12 be met, the parties are ordered to notify the Court immediately of that fact so that adjustments may be  
13 made, either by stipulation or by subsequent status conference. Stipulations extending the deadlines  
14 contained herein will not be considered unless they are accompanied by affidavits or declarations with  
15 attached exhibits, where appropriate, which establish good cause for granting the relief requested.

16 Failure to comply with this order shall result in the imposition of sanctions.

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18 **IT IS SO ORDERED.**

19 **Dated: February 17, 2009**

/s/ Gary S. Austin  
**UNITED STATES MAGISTRATE JUDGE**

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