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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

WM. BOLTHOUSE FARMS, INC., )  
HOUSTON CASUALTY CO., and )  
LIBERTY SURPLUS INSURANCE CORP., )  
Plaintiffs, )  
v. )  
ECOLAB, INC., )  
Defendant. )

1:10-cv-2322 OWW SKO  
SCHEDULING CONFERENCE ORDER  
Discovery Cut-Off: 8/1/12  
Non-Dispositive Motion  
Filing Deadline: 8/1/12  
Non-Dispositive Motion  
Hearing Date: 9/7/12 9:00  
Ctrm. 8  
Dispositive Motion Filing  
Deadline: 8/31/12  
Dispositive Motion Hearing  
Date: 10/1/12 10:00 Ctrm. 3  
Settlement Conference Date:  
8/7/12 10:30 Ctrm. 8  
Pre-Trial Conference Date:  
10/29/12 11:00 Ctrm. 3  
Trial Date: 12/11/12 9:00  
Ctrm. 3 (JT-10 days)

I. Date of Scheduling Conference.  
June 10, 2011.  
II. Appearances Of Counsel.  
Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP  
by Barry L. Goldner, Esq., and Jeffrey W. Noe, Esq., appeared on

1 behalf of Plaintiffs.

2 Kirkland & Ellis LLP by Andrew R. Running, Esq., also  
3 appeared on behalf of Plaintiffs.

4 Bowman and Brooke LLP by Ryan Nilsen, Esq., and Gregory P.  
5 Gilmer, Esq., appeared on behalf of Defendant Ecolab Inc.

6 Troutman Sanders LLP by William D. Burger, Jr., Esq.,  
7 appeared on behalf of Plaintiff Houston Casualty Company.

8 Rimac & Martin by Matthew Hickey, Esq., appeared on behalf  
9 of Plaintiff Liberty Surplus Insurance Corp.

10 III. Summary of Pleadings.

11 1. This case arises out of Plaintiff Bolthouse Farms'  
12 purchase and use of Defendant Ecolab's Tsunami 100 antimicrobial  
13 process water treatment in the production of Bolthouse's ready-  
14 to-eat baby carrots. Bolthouse claims Ecolab's Tsunami 100  
15 caused "early spoilage" of carrots, resulting in over \$50 million  
16 of business losses. Ecolab denies Bolthouse's claims, and Ecolab  
17 contends Bolthouse's own failure to adequately design, maintain,  
18 clean, and sanitize its carrot production equipment created the  
19 problems about which it now complains.

20 IV. Orders Re Amendments To Pleadings.

21 1. The parties do not anticipate amending the pleadings at  
22 this time.

23 V. Factual Summary.

24 A. Admitted Facts Which Are Deemed Proven Without Further  
25 Proceedings.

26 1. Plaintiff Wm. Bolthouse Farms, Inc., is a  
27 corporation incorporated under the laws of the State of Michigan  
28 with its principal place of business in Bakersfield, California.

1           2.     Houston Casualty Company is a corporation  
2 incorporated under the laws of the State of Texas and does a  
3 general property and casualty business in the State of  
4 California.

5           3.     Liberty Surplus Insurance Corp. is a corporation  
6 incorporated under the laws of New Hampshire and doing business  
7 as a surplus lines carrier in the State of California.

8           4.     Ecolabs, Inc. is a corporation incorporated under  
9 the laws of Delaware with its principal place of business in St.  
10 Paul, Minnesota.

11          5.     Plaintiff Wm. Bolthouse Farms, Inc. processes and  
12 sells fresh food products, including fresh bagged baby carrots.

13          6.     Defendant Ecolab Inc. manufactures and sells  
14 cleaning and sanitizing products, including certain products used  
15 in the production of food.

16          7.     During the relevant time period, Bolthouse had two  
17 processing plants in the Bakersfield area: the "West Plant" and  
18 the "East Plant."

19          8.     Beginning in or around 2007, Ecolab marketed to  
20 Bolthouse Tsunami 100 as an alternative to chlorine dioxide, the  
21 process water treatment Bolthouse had been using.

22           B.     Contested Facts.

23           Bolthouse

24           1.     Ecolab offered Bolthouse certain technical support  
25 in connection with the purchase of Tsunami 100, including support  
26 from its "SEALS Team," which Ecolab describes as "an elite group  
27 of highly trained and experienced specialists...."

28           2.     According to Ecolab, Tsunami 100 controls surface

1 microbial activity so product spoilage is minimized and shelf  
2 life is enhanced. A longer shelf life would enable Bolthouse to  
3 avoid the higher costs for refrigerated truck shipments during  
4 the summer season.

5 3. In May 2009, Bolthouse informed Ecolab that it  
6 wanted to replace chlorine dioxide with Tsunami 100 on one of its  
7 production lines at the East Plant, which produced baby carrots  
8 exclusively (the "North Short-Cut line" or NSC line).

9 4. Because Tsunami 100 is approximately ten times  
10 more expensive than chlorine dioxide, to induce Bolthouse to  
11 purchase Tsunami 100, Ecolab told Bolthouse that the higher cost  
12 of its product was justified by improved shelf life for baby  
13 carrots.

14 5. Ecolab never warned Bolthouse that there was any  
15 risk that Tsunami 100 would actually decrease the shelf life of  
16 the carrots being processed, even though studies, including those  
17 by Ecolab's own researchers, showed Tsunami 100 was ineffective  
18 at controlling the growth of yeast in treated produce and it  
19 would decrease the shelf life of carrots.

20 6. Ecolab also sought to induce Bolthouse to purchase  
21 and use Tsunami 100 by representing that Ecolab would provide  
22 valuable technical services to Bolthouse related to testing and  
23 converting to Tsunami 100.

24 7. On May 26, 2009, Timm Miller and David Walker  
25 (Ecolab's sales and technical representatives) instructed  
26 Bolthouse's personnel on the protocol that would be followed in  
27 converting the NSC line from chlorine dioxide to Tsunami 100.

28 8. From June 7 to 15, 2009, Mr. Walker personally

1 supervised and directed the conversion of the NSC line from  
2 chlorine dioxide to Tsunami 100. Mr. Walker repeatedly assured  
3 Bolthouse personnel that Bolthouse was properly implementing  
4 Ecolab's advice and instructions.

5 9. On or around June 23, 2009, Bolthouse received its  
6 first customer complaints of abnormal decomposition. It quickly  
7 determined that all of the abnormally-decomposed carrots had been  
8 processed on the NSC line using Tsunami 100.

9 10. Bolthouse promptly checked its "retain samples"  
10 from the NSC line, and discovered that carrots treated with  
11 Tsunami 100 had a peculiar odor and were failing at an  
12 unprecedented 12 days after processing.

13 11. Subsequent testing determined that the  
14 fermentation odor and the accelerated spoilage were associated  
15 with significantly accelerated yeast growth (including the yeast  
16 *Candida sake*) on the carrots treated with Tsunami 100, as well as  
17 the growth of other microorganisms.

18 12. The "Food Service line" is the NSC's sister  
19 production line. Also located in the East Plant, it  
20 simultaneously processes carrots from the same agricultural  
21 fields and the same inbound trucks as those that supply the NSC  
22 line, using the same processing methods and types of equipment.

23 13. During the June 2009 time period at issue, the  
24 only difference between the carrots processed on the Food Service  
25 line and the NSC line was that the Food Service line continued to  
26 use chlorine dioxide to sanitize its hydro-cooler chill water,  
27 while the NSC line switched to Tsunami 100.

28 14. The carrots processed on the Food Service line had

1 normal 28-day shelf lives and experienced no unusual spoilage or  
2 microbial growth. Most of the carrots processed on the NSC using  
3 Tsunami 100 were spoiled after 12 days and exhibited accelerated  
4 levels of *Candida sake* yeast growth as well as other  
5 microorganisms. Bolthouse has never experienced such abnormal  
6 decomposition of its carrots at any other time on any of its  
7 production lines.

8           15. Bolthouse promptly notified its customers of the  
9 need to remove the contaminated carrots from the market.

10 Bolthouse sent replacement carrots and otherwise compensated its  
11 customers for the contaminated carrots.

12           16. Bolthouse's long-developed and hard-earned  
13 reputation was severely damaged. For example, Loblaw, Canada's  
14 largest food retailer, completely stopped making any purchases  
15 from Bolthouse, even though Bolthouse had, up to that time, been  
16 Loblaw's exclusive supplier of carrots.

17           17. Bolthouse's lost profits and other damages to date  
18 far exceed \$20 million, and the discounted present value of  
19 future lost profits exceeds \$30 million. Thus, total damages  
20 exceed \$50 million.

21           18. In this action, Bolthouse asserts claims for  
22 breach of warranty, fraud/misrepresentation, negligent  
23 performance of services, and product liability.

24           Insurance Plaintiffs

25           1. Plaintiffs Houston Casualty Co. and Liberty  
26 Surplus Insurance Corp. paid \$5 and \$4 million, respectively, to  
27 Bolthouse under policies issued to Bolthouse.

28           2. Those insurers assert in this action subrogation

1 claims against Ecolab.

2 Ecolab

3 1. To manufacture "ready-to-eat" baby carrots,  
4 Bolthouse uses water to wash and move carrots throughout its  
5 production line. This production water is referred to as  
6 "process water," and is recycled and reused throughout a  
7 production shift. Left untreated, recycled process water can  
8 contaminate carrots with bacterial or fungal cells. To help  
9 avoid contamination, Bolthouse adds antimicrobial agents to the  
10 recycled process water to inactivate bacterial and fungal cells  
11 in the water.

12 2. There are a variety of antimicrobial agents used  
13 to treat process water. Ecolab manufactures and sells an  
14 antimicrobial process water treatment known as "Tsunami 100."

15 3. Before selecting Tsunami 100, Bolthouse had  
16 previously used chlorine dioxide as a process water treatment.  
17 But, because of poor finished-product quality and shelf life  
18 using chlorine dioxide, Bolthouse switched to Ecolab's Tsunami  
19 100 antimicrobial treatment on its entire ready-to-eat baby  
20 carrot production line at the West Plant, and portions of its  
21 ready-to-eat baby carrot production line at the East Plant.  
22 Bolthouse's decision to purchase Tsunami 100 was based on results  
23 of two Tsunami 100 test applications.

24 4. In March 2007 and October 2008, Bolthouse tested  
25 Ecolab's Tsunami 100 on its West Plant carrot production line.

26 5. Based on those test results, Bolthouse decided to  
27 use Tsunami 100 on its West Plant carrot production line in May  
28 2009. Using Tsunami 100 at the West Plant, Bolthouse produced

1 high-quality carrots with prolonged shelf life compared to those  
2 carrots previously produced using chlorine dioxide.

3           6. Based on its West Plant results, Bolthouse  
4 converted portions of the East Plant from chlorine dioxide to  
5 Tsunami 100 in June 2009. Bolthouse did not, however, test  
6 Tsunami 100 at the East Plant before switching to it in June  
7 2009.

8           7. After Bolthouse received customer complaints on  
9 June 23, 2009 about carrots produced on the East Plant production  
10 line, Bolthouse's Tracy Parnell (quality Assurance Manager) and  
11 Joe Purcell (Maintenance Manager), and Ecolab's David Walker  
12 (Technical Service Representative) inspected the East Plant  
13 production line to search for the cause of the complaints.  
14 Parnell, Purcell and Walker located significant deposits of  
15 organic filth and debris throughout the production line  
16 equipment.

17           8. The June 28, 2009 joint inspection demonstrated  
18 that, based on production line design defects and sanitation and  
19 maintenance failures, Bolthouse had been manufacturing carrots  
20 under unsanitary conditions at the East Plant. Bolthouse  
21 identified several design modifications and repairs necessary for  
22 the East Plant production line. In addition, Bolthouse  
23 recognized the need to make certain improvements to its  
24 sanitation and maintenance policies and practices.

25           9. Nevertheless, Bolthouse discontinued using Tsunami  
26 100 at both the East and West Plants, despite the fact that  
27 Bolthouse continued producing high-quality carrots with prolonged  
28 shelf life at the West Plant.



1           10. Ecolab recently learned that, not long before the  
2 introduction of Tsunami 100 on the East Plant ready-to-eat baby  
3 carrot production line, Bolthouse laid off many sanitation  
4 workers. As a result, Bolthouse understaffed its Sanitation  
5 Department which was directly responsible for cleaning and  
6 sanitizing the East Plant production line.

7           11. In November 2008, several months before Bolthouse  
8 decided to implement Tsunami 100, Ecolab performed a Plant  
9 Sanitation Review at Bolthouse's West Plant and made several  
10 recommendations to improve Bolthouse's sanitary operations.

11           12. Based on the 2007 and 2008 Tsunami 100 test  
12 results and Ecolab's October 2008 Plant Sanitation Review,  
13 Bolthouse knew that it risked finished-product quality and shelf  
14 life if Bolthouse failed to properly clean and sanitize its  
15 carrot production lines.

16           13. At no time did Bolthouse hire Ecolab to design,  
17 clean or sanitize Bolthouse's ready-to-eat baby carrot production  
18 lines.

19           14. Under the Good Manufacturing Practices Act ("the  
20 Act"), Bolthouse is responsible for the "[o]verall sanitation of  
21 the plant" and has a non-delegable duty to maintain its plant in  
22 a "sanitary condition" and "in repair sufficient to prevent food  
23 from becoming adulterated." *Id.* at § 110.80. The Act describes  
24 the methods, equipment, facilities, and controls for producing  
25 processed food. The Act applies to food producers, including  
26 Bolthouse, and sets out minimum sanitary and processing  
27 requirements for producing safe and wholesome food.

28           15. Bolthouse failed, under the Act, to sanitize all

1 food-contact surfaces as "frequently as necessary to protect  
2 against contamination of food," 21 CFR § 110.35(d), and further  
3 failed to maintain its East Plant in minimum sanitary condition  
4 for producing safe and wholesome food, as required under the Act.  
5 Bolthouse's failures to adequately maintain, clean and sanitize  
6 its carrot production equipment created a filthy environment  
7 unfit for the production of food, contaminating the carrots, and  
8 causing poor finished-goods quality and reduced shelf-life.

9 16. In addition, Bolthouse failed to design its plant  
10 equipment "to be adequately cleanable." 21 CFR § 110.40(a).  
11 Bolthouse knew or should have known about design flaws,  
12 preventing it from ever properly sanitizing its ready-to-eat baby  
13 carrot production line.

14 17. In July 2009, after Bolthouse stopped using  
15 Tsunami 100, Bolthouse made several repairs and modifications to  
16 its East Plant ready-to-eat baby carrot production line, and  
17 updated its sanitation policies and procedures.

18 18. Whether any failure by Bolthouse to sanitize and  
19 otherwise observe clean processing practices, contributed to its  
20 entirety, caused any failure of the product in dispute.

21 E. Relief Sought by Plaintiffs.

22 Damages for costs incurred and lost profits to date of  
23 well over \$20 million; future lost profits of at least \$30  
24 million; punitive damages; prejudgment interest; and attorney's  
25 fees and costs.

26 VI. Legal Issues.

27 A. Uncontested.

28 1. Jurisdiction exists under 28 U.S.C. § 1332.

1           2.    Venue is proper under 28 U.S.C. § 1392.

2           3.    The parties agree that the substantive law of the  
3 State of California provides the rule of decision in this  
4 diversity action (Ecolab contends that federal law preempts state  
5 law in certain instances as to EPA-required product labels on  
6 Ecolab products).

7           B.    Contested.

8           Plaintiffs

9           1.    Breach of contract.

10          2.    Liability.

11          3.    Nature and extent of damages.

12          4.    Whether and to what extent Plaintiff Bolthouse is  
13 a food processor within the meaning of the Good Manufacturing  
14 Practices Act (21 C.F.R. § 110, et seq.)

15          5.    Whether and to what extent the Good Manufacturing  
16 Practices Act applies to Plaintiff Bolthouse.

17          6.    Whether Ecolab breached any promise to, through  
18 the use of Ecolab's product, provide advice and expert services,  
19 decrease microbial growth and substantially increase the shelf  
20 life of Bolthouse carrots.

21          7.    Whether Ecolab misrepresented to Bolthouse that  
22 Tsunami 100 would reduce microbial growth and increase shelf  
23 life.

24          8.    Whether Ecolab negligently performed its services  
25 in providing Tsunami 100 as a substitute for chlorine dioxide in  
26 its NSC line.

27          9.    Whether the Tsunami 100 product sold to Bolthouse  
28 was defective in its design and manufacture, and whether Ecolab

1 failed to warn Bolthouse about the possible risks of Tsunami 100,  
2 assuming the foundation that Ecolab knew of any alleged risks.

3 Defendants

4 1. Whether Bolthouse's violations of the Good  
5 Manufacturing Practices Act is evidence of negligence per se.

6 2. Whether Plaintiffs' warnings and/or instruction  
7 claims are barred by the doctrine of federal preemption.

8 3. Whether Plaintiffs' negligence and strict  
9 liability claims are barred by California's Economic Loss Rule.

10 4. Comparative fault.

11 VII. Consent to Magistrate Judge Jurisdiction.

12 1. The parties have not consented to transfer the  
13 case to the Magistrate Judge for all purposes, including trial.

14 VIII. Corporate Identification Statement.

15 1. Any nongovernmental corporate party to any action in  
16 this court shall file a statement identifying all its parent  
17 corporations and listing any entity that owns 10% or more of the  
18 party's equity securities. A party shall file the statement with  
19 its initial pleading filed in this court and shall supplement the  
20 statement within a reasonable time of any change in the  
21 information.

22 IX. Discovery Plan and Cut-Off Date.

23 A. Subjects and timing of discovery.

24 1. The parties have scheduled a mediation for July  
25 27, 2011, and have thus agreed to hold off on initiating formal  
26 discovery through August 1, 2011 (or until an agreed-upon earlier  
27 date if the mediation is postponed or the parties decide to not  
28 mediate at this time). In the meantime, the parties will

1 informally exchange agreed-upon information prior to the  
2 mediation.

3           2. Bolthouse intends to conduct discovery on the  
4 following subjects:

5           a. Other customers of Ecolab that have  
6 experienced problems with Tsunami 100;

7           b. Marketing materials and any other  
8 representations made by Ecolab to the public or its customers as  
9 to the effectiveness of Tsunami 100 (including the alleged  
10 "certain conditions" that are required for Tsunami 100 to be  
11 effective);

12           c. The design and manufacture of Tsunami 100;

13           d. Testing and research concerning Tsunami 100;

14           e. Warnings given about Tsunami 100;

15           f. Regulatory approval of Tsunami 100;

16           g. Communications (including presentations)  
17 between the parties and nonparties concerning Bolthouse's  
18 purchase or use of Tsunami 100;

19           h. The use of Tsunami 100 by Bolthouse,  
20 including any related services, recommendations, or testing  
21 provided by Ecolab;

22           i. Any pre- or post-dispute investigation  
23 concerning Bolthouse's 2009 carrot spoilage problem or its legal  
24 claims;

25           j. The facts allegedly supporting Ecolab's  
26 affirmative defenses;

27           k. Sales and profits of Tsunami 100; and

28           l. Insurance coverage.

1           3.    Ecolab intends to seek discovery on the following  
2 subjects:

3                   a.    East and West Plant ready-to-eat baby carrot  
4 production line and equipment design, manufacture, maintenance,  
5 design changes, improvements, and repairs.

6                   b.    East and West Plant baby carrot production  
7 from 2005 through 2010.

8                   c.    Communications by and within Bolthouse  
9 concerning its decision to purchase Tsunami 100.

10                  d.    Bolthouse's shelf-life history, expectations,  
11 and related information.

12                  e.    Customer complaints of abnormal decomposition  
13 of Bolthouse products.

14                  f.    Photographs and videos depicting the carrot  
15 production lines, including photographs taken during the post-  
16 discovery investigation.

17                  g.    Microbial tests on East and West Plants  
18 carrot production lines for previous five years.

19                  h.    FDA and other agency investigations at  
20 Bolthouse.

21                  i.    Process water monitoring information and  
22 documentation.

23                  j.    Bolthouse's policies and requirements  
24 concerning its carrot suppliers and other suppliers.

25                  k.    Inventory rotation policies.

26                  l.    Bolthouse's cleaning and sanitation practices  
27 and policies, cross-contamination controls, weather tracking data  
28 for harvesting, temperature and humidity data, and Sanitation

1 Standard Operating Procedures for the previous ten years.

2 m. Bolthouse's purchase of cleaning and  
3 sanitation products and services for East and West Plants for  
4 previous five years.

5 n. Bolthouse employee training concerning Good  
6 Manufacturing Practices, cleaning, sanitation, personnel hygiene,  
7 food safety, and carrot production.

8 o. Temperature information and related documents  
9 for buildings, water, warehousing, transportation, and pallet  
10 RFIDs.

11 p. Bolthouse product recalls for similar  
12 contamination issues.

13 q. Documents and information supporting  
14 Bolthouse's alleged damages.

15 r. Bolthouse's reputation as a supplier of  
16 quality carrots and other products, and the alleged damage to  
17 Bolthouse's reputation as a result of the carrot quality issues.

18 s. Other incidents that have affected  
19 Bolthouse's reputation as a supplier of quality products.

20 t. Bolthouse's relationship with Loblaw and  
21 other customers, and information related to Bolthouse's claimed  
22 damages related to Loblaw and other customers.

23 u. Communications between Bolthouse and its  
24 insurance carriers concerning the claims and allegations in  
25 Plaintiffs' Complaint, including claims accepted and paid by  
26 insurance carriers, and claims rejected.

27 v. Bolthouse's layoffs of sanitation workers in  
28 2008, and the effect on sanitation practices, policies, and

1 results.

2 w. Changes in Bolthouse corporate culture and  
3 carrot production philosophies when the William Bolthouse family  
4 sold its majority interest in the business to a Chicago-based  
5 private equity group.

6 C. Issues concerning electronically stored information.

7 1. No issues have been identified at this time. The  
8 parties will continue to meet and confer about ESI, including the  
9 form in which it should be produced.

10 D. Issues concerning privileges.

11 1. No issues have been identified at this time.

12 E. Limits on discovery.

13 1. The parties have stipulated to a maximum of 30  
14 written interrogatories and 30 requests for admission per side,  
15 with no limits on requests for production of documents.  
16 Responses to written discovery will be due 45 days after service  
17 (plus any additional time under Rule 6(d)).

18 F. Other orders.

19 1. The parties will file a proposed stipulated  
20 protective order to preserve the confidentiality of information.  
21 The parties will agree to the form of a protective order to  
22 protect confidential information identified and/or produced in  
23 discovery.

24 G. The case is scheduled as follows:

25 1. The parties have agreed that they shall make their  
26 Rule 26(a)(1) initial disclosures on or before June 29, 2011.

27 2. The parties are ordered to complete all non-expert  
28 discovery on or before March 16, 2012.



1           3.     Plaintiffs are directed to disclose all expert  
2 witnesses, in writing, on or before April 16, 2012. Defendants  
3 are directed to disclose all expert witnesses, in writing, on or  
4 before May 15, 2012. Any rebuttal or supplemental expert  
5 disclosures by Plaintiffs will be made on or before June 15,  
6 2012. Any rebuttal or supplemental expert disclosures by  
7 Defendants will be made on or before July 16, 2012. The parties  
8 will comply with the provisions of Federal Rule of Civil  
9 Procedure 26(a)(2) regarding their expert designations. Local  
10 Rule 16-240(a) notwithstanding, the written designation of  
11 experts shall be made pursuant to F. R. Civ. P. Rule 26(a)(2),  
12 (A) and (B) and shall include all information required  
13 thereunder. Failure to designate experts in compliance with this  
14 order may result in the Court excluding the testimony or other  
15 evidence offered through such experts that are not disclosed  
16 pursuant to this order.

17           4.     The parties are ordered to complete all expert  
18 discovery on or before August 1, 2012.

19           5.     The provisions of F. R. Civ. P. 26(b)(4) shall  
20 apply to all discovery relating to experts and their opinions.  
21 Experts shall be fully prepared to be examined on all subjects  
22 and opinions included in the designation and their reports, which  
23 shall include every opinion to be rendered and all reasons for  
24 each opinion. Failure to comply will result in the imposition of  
25 sanctions.

26 X.     Pre-Trial Motion Schedule.

27           1.     All Non-Dispositive Pre-Trial Motions, including any  
28 discovery motions, shall be filed on or before August 1, 2012,

1 and heard on September 7, 2012, at 9:00 a.m. before Magistrate  
2 Judge Sheila K. Oberto in Courtroom 8.

3 2. In scheduling such motions, the Magistrate  
4 Judge may grant applications for an order shortening time  
5 pursuant to Local Rule 142(d). However, if counsel does not  
6 obtain an order shortening time, the notice of motion must comply  
7 with Local Rule 251 and this schedule.

8 3. All Dispositive Pre-Trial Motions are to be  
9 filed no later than August 31, 2012, and will be heard on October  
10 1, 2012, at 10:00 a.m. before the Honorable Oliver W. Wanger, in  
11 Courtroom 3, 7th Floor. In scheduling such motions, counsel  
12 shall comply with Local Rule 230.

13 XI. Pre-Trial Conference Date.

14 1. October 29, 2012, at 11:00 a.m. in Courtroom 3, 7th  
15 Floor, before the Honorable Oliver W. Wanger.

16 2. The parties are ordered to file a Joint Pre-  
17 Trial Statement pursuant to Local Rule 281(a)(2).

18 3. Counsel's attention is directed to Rules 281  
19 and 282 of the Local Rules of Practice for the Eastern District  
20 of California, as to the obligations of counsel in preparing for  
21 the pre-trial conference. The Court insists upon strict  
22 compliance with those rules.

23 XII. Motions - Hard Copy.

24 1. The parties shall submit one (1) courtesy paper copy to  
25 the Court of any motions filed. Exhibits shall be marked with  
26 protruding numbered or lettered tabs so that the Court can easily  
27 identify such exhibits.

28 ///

1 XIII. Trial Date.

2 1. December 11, 2012, at the hour of 9:00 a.m. in  
3 Courtroom 3, 7th Floor, before the Honorable Oliver W. Wanger,  
4 United States District Judge.

5 2. This is a jury trial.

6 3. Counsels' Estimate Of Trial Time:

7 a. Eight to 10 days.

8 4. Counsels' attention is directed to Local Rules  
9 of Practice for the Eastern District of California, Rule 285.

10 XIV. Settlement Conference.

11 1. A Settlement Conference is scheduled for August 7,  
12 2012, at 10:30 a.m. in Courtroom 8 before the Honorable Sheila K.  
13 Oberto, United States Magistrate Judge.

14 2. Unless otherwise permitted in advance by the  
15 Court, the attorneys who will try the case shall appear at the  
16 Settlement Conference with the parties and the person or persons  
17 having full authority to negotiate and settle the case on any  
18 terms at the conference.

19 3. Permission for a party [not attorney] to attend  
20 by telephone may be granted upon request, by letter, with a copy  
21 to the other parties, if the party [not attorney] lives and works  
22 outside the Eastern District of California, and attendance in  
23 person would constitute a hardship. If telephone attendance is  
24 allowed, the party must be immediately available throughout the  
25 conference until excused regardless of time zone differences.  
26 Any other special arrangements desired in cases where settlement  
27 authority rests with a governing body, shall also be proposed in  
28 advance by letter copied to all other parties.

1           4.    Confidential Settlement Conference Statement.

2 At least five (5) days prior to the Settlement Conference the  
3 parties shall submit, directly to the Magistrate Judge's  
4 chambers, a confidential settlement conference statement. The  
5 statement should not be filed with the Clerk of the Court nor  
6 served on any other party. Each statement shall be clearly  
7 marked "confidential" with the date and time of the Settlement  
8 Conference indicated prominently thereon. Counsel are urged to  
9 request the return of their statements if settlement is not  
10 achieved and if such a request is not made the Court will dispose  
11 of the statement.

12           5.    The Confidential Settlement Conference

13 Statement shall include the following:

14           a.    A brief statement of the facts of the  
15 case.

16           b.    A brief statement of the claims and  
17 defenses, i.e., statutory or other grounds upon which the claims  
18 are founded; a forthright evaluation of the parties' likelihood  
19 of prevailing on the claims and defenses; and a description of  
20 the major issues in dispute.

21           c.    A summary of the proceedings to date.

22           d.    An estimate of the cost and time to be  
23 expended for further discovery, pre-trial and trial.

24           e.    The relief sought.

25           f.    The parties' position on settlement,  
26 including present demands and offers and a history of past  
27 settlement discussions, offers and demands.

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1 XV. Request For Bifurcation, Appointment Of Special Master,  
2 Or Other Techniques To Shorten Trial.

3 1. The parties have not requested bifurcation. To the  
4 extent that punitive damages are sought, that issue of the  
5 amount, if any, of punitive damages, shall be tried in a  
6 continuous trial in a second phase before the same jury after the  
7 entitlement has been established, both as to liability and the  
8 existence of compensatory damages, and the grounds for the  
9 recovery of punitive damages, if any.

10 XVI. Related Matters Pending.

11 1. There are no related matters.

12 XVII. Compliance With Federal Procedure.

13 1. The Court requires compliance with the Federal  
14 Rules of Civil Procedure and the Local Rules of Practice for the  
15 Eastern District of California. To aid the court in the  
16 efficient administration of this case, all counsel are directed  
17 to familiarize themselves with the Federal Rules of Civil  
18 Procedure and the Local Rules of Practice of the Eastern District  
19 of California, and keep abreast of any amendments thereto.

20 XVIII. Effect Of This Order.

21 1. The foregoing order represents the best  
22 estimate of the court and counsel as to the agenda most suitable  
23 to bring this case to resolution. The trial date reserved is  
24 specifically reserved for this case. If the parties determine at  
25 any time that the schedule outlined in this order cannot be met,  
26 counsel are ordered to notify the court immediately of that fact  
27 so that adjustments may be made, either by stipulation or by  
28 subsequent scheduling conference.

1           2.    Stipulations extending the deadlines contained  
2 herein will not be considered unless they are accompanied by  
3 affidavits or declarations, and where appropriate attached  
4 exhibits, which establish good cause for granting the relief  
5 requested.

6           3.    Failure to comply with this order may result in  
7 the imposition of sanctions.

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9 IT IS SO ORDERED.

10 Dated: June 14, 2011

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

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