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ATTACHMENT "B" to Preliminary Discovery and Scheduling Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Perry C. Butler,

Plaintiff,

v.

Dr. O. Onyejie, et al.,

Defendants.

No. 1:11-cv-0723-MJS (PC)

**EXPEDITED LITIGATION
AGREEMENT
AND
ORDER THEREON¹**

In order to lessen the time and cost of litigation, the parties to this case hereby stipulate and agree to those terms below which they have followed with entry of their initials or the initials of their counsel of record. Each party shall strike any term(s) it is unwilling voluntarily to be bound to. A party's initials below a provision will be deemed a request by that party that the Court accept, adopt and order compliance with that term. However, no Expedited Litigation Procedures (hereinafter "ELP") initialed by a party will be implemented unless and until accepted by all parties and approved by the Court or otherwise made the order of the Court.

¹ Revised December 23, 2013

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AGREEMENT

1. Consent to Magistrate Judge Jurisdiction. The party whose initials appear immediately below consents to the jurisdiction of a Magistrate Judge for all purposes in accordance with 28 U.S.C. § 636(c)(1).

Plaintiff _____ Defendant _____

2. Early trial date. The party whose initials appear immediately below asks the Court to assign a firm trial date no more than one hundred eighty days from the date of filing this ELP Agreement with the Court. The parties acknowledge and agree that once assigned no continuance of the trial date will be considered except in unforeseeable and extraordinary circumstances.

Plaintiff _____ Defendant _____

3. Discovery

A. Initial exchanges – Within _____ days² of the Court’s adoption of an ELP Agreement, the parties shall informally, and without further order of the Court, make available to one another the following information and documents which are not subject to a valid work product or attorney-client privilege:

- 1. The names and last known whereabouts of any person believed to be a percipient witness to the event giving rise to the claim in the operable complaint (the "event") along with a brief (not to exceed 100 word) description of what it is believed the witness perceived.

Plaintiff _____ Defendant _____

² The Court strongly recommends that initial disclosures be made within 30 days.

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2. Medical records reflecting treatment related to the event.

Plaintiff _____ **Defendant** _____

3. Other “writings” (as defined in F.R.E. § 1001), if any, relating to the event, to include, but not be limited to, writings reflecting;

a. disciplinary action initiated against any party to the litigation related to the event.

b. administrative claims proceedings and appeals relating to the event.

Plaintiff _____ **Defendant** _____

4. Statements made or attributed to any party or witness relating to the event.

Plaintiff _____ **Defendant** _____

5. The identities of no more than ____³ non-party percipient witnesses (included in section 3.A.1, above) whom each party wishes to call as witnesses at trial.

³ The Court finds that except in very unique cases, the calling of more than two percipient witnesses to testify is redundant and wasteful, particularly where one or more of the parties also describe the event.

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Plaintiff_____ Defendant _____

6. A list of facts believed by each party not to be in dispute (e.g., date, location, parties, witnesses, etc., to the event).

Plaintiff_____ Defendant _____

7. Each party shall have an ongoing mandatory obligation to update and exchange this information voluntarily as the case progresses.

Plaintiff_____ Defendant _____

8. Each party reserves the right to seek an order of the Court relieving, for good cause shown, that party of the obligation to exchange specified information otherwise designated for exchange in this section.

Plaintiff_____ Defendant _____

9. A party seeking leave to call more than two percipient witnesses to testify at trial shall provide the information called for in section 3..A. 1, 4 and 5, above, as to each said proposed witness.

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Plaintiff _____ Defendant _____

B. Discovery Limits

1. **Percipient witness depositions** - Each party may, at its own option and expense, depose an opposing party and each of the percipient witnesses identified in accordance with section 3.A.4., above. Absent order of the Court for good cause shown, no other percipient witness depositions will be allowed.

Plaintiff _____ Defendant _____

2. **Expert witness discovery** - Fourteen days before the pretrial conference provided for in Section VII, below, each party shall make a written disclosure to the other of the identity and qualifications of each non-percipient witness expected to be called to give expert opinion testimony at trial and include a written summary of the facts and opinions to which the expert is expected to testify at trial. No expert's testimony will be permitted to extend beyond the bounds of the summary. Absent order of the Court for good cause shown, no expert depositions shall be allowed. The Court will determine at the time of the pretrial conference provided for in Section 5, below, whether any party may call more than one expert witness to testify at trial.

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Plaintiff _____ **Defendant** _____

3. No written discovery – Other than as provided herein or on order of the Court for good cause shown, there shall be no written discovery.

Plaintiff _____ **Defendant** _____

4. Discovery deadline – Other than the continuing voluntary exchange of information called for in Section 3.A., above, all discovery provided for under the EPL Agreement or otherwise by order of the Court shall be concluded not later than thirty days prior to the date set for the pretrial conference called for in Section 5., below.

Plaintiff _____ **Defendant** _____

4. Motions

A. Non-dispositive motions – A discovery or other non-dispositive motion shall be in a written narrative form, typed in twelve point type or clearly hand-printed, on not more than three double spaced 8.5 by 11 inch pages. Legal authorities need not be specifically cited or summarized. A party opposing such a motion shall have no more than seven days following service of the motion to respond in a writing of the same style and length or less. No reply or other papers shall be filed. Unless the Court determines

1 that other procedures are necessary, it shall rule on the motion by minute order and
2 without oral argument. There shall be no reconsideration or review of rulings on non-
3 dispositive motions.
4

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6 **Plaintiff**_____ **Defendant** _____
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8 **B. Dispositive motions** – The case having been screened by the
9 Magistrate Judge in accordance with 28 U.S.C. § 1915A(a) and found suitable for
10 expedited litigation, no dispositive motions may be filed except on order of the Court for
11 good cause shown. Discovery, after a screening order has issued, of a potential Heck⁴
12 bar or failure to exhaust defense in the action, may constitute good cause.
13

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15 **Plaintiff**_____ **Defendant** _____
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17 **5. Pretrial Conference**

18 The Court shall schedule a telephonic pretrial conference no less than three
19 weeks or more than four weeks prior to the trial date.

20 No later than ten days before the pretrial conference, each of the parties shall file
21 with the Court a Pretrial Memorandum containing the following information:
22

- 23 A. A brief narrative summary of the claims and defenses.
24 B. A list of facts believed not in dispute.
25 C. A list of all witnesses expected to be called to present evidence on
26 direct by each party.
27

28 ⁴ Heck v. Humphery, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed. 2d. 383 (1994).

1 **For Plaintiff** _____ ::

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Date

Signature of Plaintiff or his counsel

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Printed name of signatory for Plaintiff

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10 **For Defendant(s)** _____ :

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Date

Signature of Defendant or his counsel

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Printed name of signatory for Defendants(s)

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For Defendant(s) _____ :

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Date

Signature of Defendant or his counsel

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Printed name of signatory for Defendants(s)

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ORDER

Good cause appearing, the above ELP Agreement is accepted, adopted and made the order of the Court.

Date: _____

U.S. Magistrate Judge