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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

SARGIS SARKIZI,  
Plaintiff,  
v.  
GRAHAM PACKAGING,  
Defendants.

**Case No. 1:13-cv-01435-AWI-SKO AWI**  
**SCHEDULING ORDER (Fed.R.Civ.P 16)**  
Initial Disclosures: March 31, 2014  
Plaintiff's Expert Disclosure: August 15, 2014  
Defendant's Expert Disclosure: September 30, 2014  
Rebuttal Disclosures October 24, 2014  
Discovery Deadlines:  
Non Expert: December 1, 2014,  
Expert: February 2, 2015  
Mid-Discovery Status Conference:  
August 27, 2014, at 9:30 a.m.  
Courtroom 7  
Non-Dispositive Motion Deadlines:  
Filing: February 4, 2015,  
Dispositive Motion Deadlines:  
Filing: March 16, 2015,  
Settlement Conference:  
February 5, 2015, at 10:30 a.m.  
Courtroom 9  
Pre-Trial Conference:  
June 17, 2015, at 10:00 a.m.  
Courtroom 2  
Jury Trial: August 11, 2015, at 8:30 a.m.  
Courtroom 2  
5 Trial Days

1 This Court conducted a scheduling conference on January 30, 2014. Counsel Christopher  
2 DeClue appeared telephonically on behalf of Plaintiff Sargis Sarkizi. Counsel Frederick Lewis  
3 and Timothy McConnell appeared telephonically on behalf of Defendant Graham Packaging.  
4 Pursuant to F.R.Civ.P. 16(b), this Court sets a schedule for this action.

5 **1. Important Information about Scheduling and Trailing**

6 District Court Judges of the Fresno Division of the Eastern District of California currently  
7 have the heaviest caseload in the nation. As a result, each District Judge schedules multiple trials  
8 to begin on each available trial date. Civil cases will "trail" and begin as soon as a courtroom is  
9 cleared. The law requires that the Court give any criminal trial priority over civil trials or any  
10 other matter. A civil trial set to begin while a criminal trial is proceeding will trail the completion  
11 of the criminal trial.

12 Without the ability to definitively predict which cases will actually go to trial or precisely  
13 how long each will last, the Court cannot provide advance notice of which cases will trail or for  
14 how long. Once the trial date arrives, counsel, parties and witnesses must remain on 24-hour  
15 standby until a court is available. Since continuance to a date certain will simply postpone, but  
16 not solve, the problem, continuances of any civil trial under these circumstances will no longer be  
17 entertained, absent a specific and stated finding of good cause.

18 The parties are also informed that in response to its large caseload, the Fresno Division of  
19 the Eastern District of California is assigning cases, whenever possible, to Article III District  
20 Court Judges from around the nation as Visiting Judges. Pursuant to the Local Rules, Appendix  
21 A, such reassignments will be random, and the parties will receive no advance notice before their  
22 case is reassigned to an Article III District Court Judge from outside of the Eastern District of  
23 California.

24 The parties are reminded that they may *consent to a United States Magistrate Judge* to  
25 conduct all proceedings, including trial and entry of final judgment, pursuant to 28 U.S.C. §  
26 636(c), Federal Rule of Civil Procedure 73, and Local Rule 305. The Eastern District Magistrate  
27 Judges, all experienced former trial lawyers, use the same jury pool and same court facilities as  
28 United States District Court Judges. Since Magistrate Judges do not conduct felony trials, they

1 have greater flexibility and schedule *firm trial dates*. Judgment entered by a United States  
2 Magistrate Judge is appealable directly to the United States Court of Appeals for the Ninth  
3 Circuit<sup>1</sup>.

4 **2. Current Status of Consent to the Magistrate Judge Jurisdiction**

5 Pursuant to 28 U.S.C. § 636(c), the parties have not consented to conduct all further  
6 proceedings in this case, including trial, before the Honorable Sheila K. Oberto, U.S. Magistrate  
7 Judge.

8 **3. Amendment to the Parties' Pleadings**

9 The parties do not anticipate any amendments to the pleadings at this time. Any  
10 motions or stipulations requesting leave to amend the pleadings must be filed by no later than  
11 April 30, 2014. The parties are advised that filing motions and/or stipulations requesting leave to  
12 amend the pleadings by April 30, 2014 does not reflect on the propriety of the amendment or  
13 imply good cause to modify the existing schedule, if necessary. All proposed amendments must  
14 (A) be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the amendment requires any  
15 modification to the existing schedule, *see Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,  
16 609 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an amendment is not  
17 (1) prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in bad faith, or  
18 (4) futile, *see Foman v. Davis*, 371 U.S. 178, 182 (1962).

19 **4. F.R.Civ.P. 26(a)(1) Initial Disclosures**

20 Initial disclosures shall be completed on or before March 31, 2014.

21 **5. Discovery Cutoff And Limits**

22 The parties shall file a joint mid-discovery status report on or before August 20, 2014, and  
23 the mid-discovery status conference is set for August 27, 2014, at 9:30a.m., before the Honorable  
24 Sheila K. Oberto, United States Magistrate Judge in Courtroom 7. If the parties determine that a  
25 mid-discovery status conference is not necessary, the parties may contact Judge Oberto's  
26 Courtroom Deputy before August 20, 2014, filing date for the mid-discovery status report and

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27 <sup>1</sup> While there are scheduling benefits to consenting to Magistrate Judge jurisdiction, substantive rulings and decisions  
28 will not be affected whether or not a party chooses to consent.

1 request that the August 27, 2014, status conference be taken off calendar.

2 The parties are ordered to complete all discovery pertaining to non-experts on or before  
3 December 1, 2014, and all discovery pertaining to experts on or before February 2, 2015.

4 Plaintiff is directed to disclose all expert witnesses, in writing, on or before August 15,  
5 2014. Defendant is directed to disclose all expert witnesses, in writing, on or before September  
6 30, 2014. The parties shall disclose all rebuttal experts on or before October 24, 2014. The  
7 written designation of retained and non-retained experts shall **be made pursuant to Fed. R. Civ.**  
8 **P. Rule 26(a)(2), (A), (B) and (C) and shall include all information required thereunder.**  
9 Failure to designate experts in compliance with this order may result in the Court excluding the  
10 testimony or other evidence offered through such experts that are not disclosed pursuant to this  
11 order.

12 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to  
13 experts and their opinions. Experts must be fully prepared to be examined on all subjects and  
14 opinions included in the designation. Failure to comply will result in the imposition of sanctions,  
15 which may include striking the expert designation and preclusion of expert testimony.

16 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement  
17 disclosures and responses to discovery requests will be strictly enforced.

18 **6. Pre-Trial Motion Schedule**

19 a. Non-Dispositive Pre-Trial Motions

20 Unless prior leave of the Court is obtained, all moving and opposition briefs or legal  
21 memorandum in civil cases before Judge Oberto shall not exceed twenty-five (25) pages. Reply  
22 briefs by the moving party shall not exceed ten (10) pages. These page limitations do

23 All non-dispositive pre-trial motions, including any discovery motions, shall be filed by  
24 no later than 4:00 p.m. on February 4, 2015, and heard on or before March 4, 2015. Non-  
25 dispositive motions are heard on Wednesdays at 9:30 a.m., before the Honorable Sheila K.  
26 Oberto, United States Magistrate Judge in Courtroom 7. In scheduling such motions, the parties  
27 shall comply with Local Rule 230. **Counsel must comply with Local Rule 251 with respect to**  
28 **discovery disputes or the motion will be denied without prejudice and dropped from**

1 **calendar.** In scheduling such motions, the Magistrate Judge may grant applications for an order  
2 shortening time pursuant to Local Rule 144(e). However, if counsel does not obtain an order  
3 shortening time, the notice of motion *must* comply with Local Rule 251. In addition to filing a  
4 joint statement electronically, a copy of the joint statement shall also be sent to Judge Oberto's  
5 chambers by email to SKOorders@caed.uscourts.gov.

6 Counsel may request to appear and argue non-dispositive motions by telephone, provided  
7 a written request to so appear is made to the Magistrate Judge's Courtroom Clerk no later than  
8 five (5) court days before the noticed hearing date and such request is granted. In the event that  
9 more than one attorney requests to appear by telephone, then it shall be the obligation of the  
10 moving part(ies) to arrange and originate a conference call to the court. Prior to filing a non-  
11 dispositive motion the parties are ORDERED to meet, in person or by telephone, and confer to  
12 discuss the issues to be raised in the motion.

13 b. Dispositive Pre-Trial Motions

14 All dispositive pre-trial motions shall be filed no later than March 16, 2015, and heard no  
15 later than April 27, 2015, in Courtroom 2 before the Honorable Anthony W. Ishii, United States  
16 District Judge. In scheduling such motions, counsel shall comply with **Fed.R.Civ.P 56 and**  
17 **Local Rules 230 and 260.**

18 **Motions for Summary Judgment or Summary Adjudication:** Prior to filing a motion  
19 for summary judgment or motion for summary adjudication the parties are ORDERED to meet, in  
20 person or by telephone, and confer to discuss the issues to be raised in the motion.

21 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment  
22 where a question of fact exists, 2) determine whether the respondent agrees that the motion has  
23 merit in whole or in part, 3) discuss whether issues can be resolved without the necessity for  
24 briefing, 4) narrow the issues for review by the court, 5) explore the possibility of settlement  
25 before the parties incur the expense of briefing a summary judgment motion, and 6) arrive at a  
26 joint statement of undisputed facts.

27 The moving party shall initiate the meeting and provide a draft of the joint statement of  
28 undisputed facts. **In addition to complying with the requirements of Local Rule 260 the**

1 **moving party shall file a joint statement of undisputed facts.**

2 In the notice of motion, the moving party shall certify that the parties have met and  
3 conferred as ordered above or set forth a statement of good cause for the failure to meet and  
4 confer.

5 **7. Pretrial Conference**

6 The pretrial conference is set for June 17, 2015, at 10:00 a.m. in Courtroom 2 before the  
7 Honorable Anthony W. Ishii, United States District Judge.

8 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule**  
9 **281(a)(2)**. The parties are further directed to submit a digital copy of their pretrial statement in  
10 Word format, directly to Judge Ishii's chambers by email at AWIorders@caed.uscourts.gov.

11 The parties' attention of counsel is directed to **Rules 281 and 282 of the Local Rules** of  
12 Practice for the Eastern District of California, as to the obligations of counsel in preparing for the  
13 pre-trial conference. The Court will insist upon strict compliance with those rules. In addition to  
14 the matters set forth in the Local Rules the Joint Pretrial Statement shall include a Joint Statement  
15 of the case to be used by the Court to explain the nature of the case to the jury during voir dire.

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

18 **8. Trial Date**

19 Trial date for August 11, 2015, at 8:30 a.m. in Courtroom 2 before the Honorable Anthony  
20 W. Ishii, United States District Court Judge.

21 a. This is a jury trial.

22 b. Counsel's estimate of trial time: 5 days.

23 c. The parties' attention is directed to Local Rules of Practice for the Eastern District  
24 of California, Rule 285 for preparation of trial briefs.

25 **9. Settlement Conference**

26 A Settlement Conference is scheduled for February 5, 2015, at 10:30 a.m. in Courtroom 9  
27 before the Honorable Stanley A. Boone. Unless otherwise permitted in advance by the Court, **the**  
28 **attorneys who will try the case** shall appear at the Settlement Conference **with the parties** and

1 the person or persons having **full authority** to negotiate and settle the case **on any terms**<sup>2</sup> at the  
2 conference.

3 At least five (5) court days prior to the Settlement Conference the parties shall submit,  
4 directly to the Honorable Stanley A. Boone chambers by e-mail to [saborders@caed.uscourts.gov](mailto:saborders@caed.uscourts.gov),  
5 a **Confidential Settlement Conference Statement**. The statement **should not be filed** with the  
6 Clerk of the Court **or served on any other party**, however, the parties are **required to file** their  
7 Notice of submission of Confidential Settlement Conference Statement (See Local Rule 270(d)).  
8 Each statement shall be clearly marked "CONFIDENTIAL" with the date and time of the  
9 Settlement Conference indicated prominently thereon. The parties are urged to request the return  
10 of their statement if a settlement is not achieved, and if such a request is not made, the Court will  
11 dispose of the statement.

12 The Confidential Settlement Conference Statement shall include the following:

- 13 a. A brief statement of the facts of the case,
- 14 b. A brief statement of the claims and defenses, i.e., statutory or other grounds upon  
15 which the claims are founded, a forthright evaluation of the parties' likelihood of  
16 prevailing on the claims and defenses, and a description of the major issues in  
17 dispute,
- 18 c. A summary of the proceedings to date,
- 19 d. An estimate of the cost and time to be expended for further discovery, pretrial and  
20 trial,
- 21 e. The relief sought, and
- 22 f. The party's position on settlement, **including present demands and offers and a**  
23 **history of past settlement discussions, offers and demands.**

24 This Court will vacate the settlement conference if the Court finds the settlement

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26 <sup>2</sup> Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements are  
27 subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by  
28 a person or persons who occupy high executive positions in the party organization and who will be directly involved  
in the process of approval of any settlement offers or agreements. To the extent possible, the representative shall  
have the authority, if he or she deems it appropriate, to settle the action on terms consistent with the opposing party's  
most recent demand.

1 conference will be neither productive nor meaningful to attempt to resolve all or part of this case.  
2 As far in advance of the settlement conference as possible, a party shall inform the Court and  
3 other parties that it believes the case is not in a settlement posture so the Court may vacate or  
4 reset the settlement conference. Otherwise the parties shall proceed with the settlement  
5 conference in good faith to attempt to resolve all or part of this case.

6 **10. Requests for Bifurcation, Appointment of Special Master, or Other Techniques to**  
7 **Shorten Trial**

8 Not applicable at this time.

9 **11. Related Matters Pending**

10 There are no pending related matters.

11 **12. Compliance with Federal Procedure**

12 All parties are expected to familiarize themselves with the Federal Rules of Civil  
13 Procedure and the Local Rules of Practice of the Eastern District of California, and to keep  
14 abreast of any amendments thereto. The Court must insist upon compliance with these Rules if it  
15 is to efficiently handle its increasing case load and sanctions will be imposed for failure to follow  
16 the Rules as provided in both the Federal Rules of Civil Procedure and the Local Rules of  
17 Practice for the Eastern District of California.

18 **13. Effect of this Order**

19 This order represents the best estimate of the court and counsel as to the agenda most  
20 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the  
21 parties determine at any time that the schedule outlined in this order cannot be met, counsel are  
22 ordered to notify the court immediately of that fact so that adjustments may be made, either by  
23 stipulation or by subsequent status conference.

24 **The dates set in this Order are considered to be firm and will not be modified absent**  
25 **a showing of good cause even if the request to modify is made by stipulation. Stipulations**  
26 **extending the deadlines contained herein will not be considered unless they are**  
27 **accompanied by affidavits or declarations, and where appropriate, attached exhibits, which**  
28 **establish good cause for granting the relief requested.**



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The failure to comply with this order may result in the imposition of sanctions.

IT IS SO ORDERED.

Dated: February 10, 2014

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE