

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ELIZABETH AGNES WALKER, et al.,	)	1: 15-CV-01597 - DAD - JLT
)	
Plaintiffs,	)	SCHEDULING ORDER (Fed. R. Civ. P. 16)
)	
v.	)	Pleading Amendment Deadline: 9/29/2016
)	
UNITED STATES OF AMERICA, et al.,	)	Discovery Deadlines:
	)	Initial Disclosures: 7/29/2017
Defendants.	)	Non-Expert: 2/27/2017
	)	Expert: 5/1/2017
	)	Mid-Discovery Status Conference:
	)	11/4/2016 at 8:30 a.m.
)	
	)	Non-Dispositive Motion Deadlines:
	)	Filing: 5/12/2017
	)	Hearing: 6/9/2017
)	
	)	Dispositive Motion Deadlines:
	)	Filing: 6/19/2017
	)	Hearing: 8/1/2017
)	
	)	Settlement Conference:
	)	7/7/2017 9:30 a.m.
	)	510 19th Street, Bakersfield, CA
)	
	)	Pre-Trial Conference:
	)	10/10/2017 at 8:30 a.m.
	)	Courtroom 5
)	
	)	Trial: 12/5/2017 at 1:00 p.m.
	)	Courtroom 5
	)	Jury trial: 10 days

1 **I. Date of Scheduling Conference**

2 June 28, 2016.

3 **II. Appearances of Counsel**

4 Ashley Arnett appeared on behalf of Plaintiffs.

5 Benjamin Hall appeared on behalf of the United States of America.

6 Aggie Lee appeared on behalf of Janssen Pharmaceuticals, Inc.

7 **III. Magistrate Judge Consent:**

8 **Notice of Congested Docket and Court Policy of Trailing**

9 Due to the District Judges' heavy caseload, the newly adopted policy of the Fresno Division of
10 the Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set
11 before a District Judge, the parties will trail indefinitely behind any higher priority criminal or older
12 civil case set on the same date until a courtroom becomes available. The trial date will not be reset to a
13 continued date.

14 The Magistrate Judges' availability is far more realistic and accommodating to parties than that
15 of the U.S. District Judges who carry the heaviest caseloads in the nation and who must prioritize
16 criminal and older civil cases over more recently filed civil cases. A United States Magistrate Judge
17 may conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of
18 Civil Procedure 73, and Local Rule 305. Any appeal from a judgment entered by a United States
19 Magistrate Judge is taken directly to the United States Court of Appeal for the Ninth Circuit.

20 The Fresno Division of the Eastern District of California, whenever possible, is utilizing United
21 States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant to the
22 Local Rules, Appendix A, such reassignments will be random, and the parties will receive no advance
23 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern
24 District of California.

25 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
26 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, counsel
27 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating
28 whether they will consent to the jurisdiction of the Magistrate Judge.

1 **IV. Pleading Amendment Deadline**

2 Any requested pleading amendments are ordered to be filed, either through a stipulation or
3 motion to amend, no later than **September 29, 2016**. Any motion to amend shall be set before the
4 Honorable Dale A. Drozd, United States District Court Judge.

5 **V. Discovery Plan and Cut-Off Date**

6 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
7 on or before **July 29, 2017**.

8 The parties are ordered to complete all discovery pertaining to non-experts on or before
9 **February 27, 2017**¹, and all discovery pertaining to experts² on or before **May 1, 2017**.

10 The parties are directed to disclose all expert witnesses³, in writing, on or before **February 27,**
11 **2017**, and to disclose all rebuttal experts on or before **March 27, 2017**. The written designation of
12 retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B),**
13 **and (C) and shall include all information required thereunder**. Failure to designate experts in
14 compliance with this order may result in the Court excluding the testimony or other evidence offered
15 through such experts that are not disclosed pursuant to this order.

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

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

22 A mid-discovery status conference is scheduled for **November 4, 2016** at 8:30 a.m. before the
23 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
24

25 ¹ In the event Janssen Pharmaceuticals, Inc. determines a protective order is needed, it still will be obligated
26 to respond to discovery requests in a timely fashion. Thus, Janssen may wish to circulate a proposed protective order
in advance of discovery requests being propounded.

27 ² Counsel SHALL make efforts to ensure that treating physicians are deposed only one time whether they
intend to ask questions that go beyond percipient information.

28 ³ In the event an expert will offer opinions related to an independent medical or mental health evaluation, the
examination SHALL occur sufficiently in advance of the disclosure deadline so the expert's report fully details the expert's
opinions in this regard.

1 California. Counsel SHALL file a joint mid-discovery status conference report one week before the
2 conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
3 The joint statement SHALL outline the discovery counsel have completed and that which needs to be
4 completed as well as any impediments to completing the discovery within the deadlines set forth in this
5 order. Counsel may appear via CourtCall, providing a written notice of the intent to appear
6 telephonically is provided to the Magistrate Judge's Courtroom Deputy Clerk no later than five court
7 days before the noticed hearing date.

8 **VI. Pre-Trial Motion Schedule**

9 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
10 than **May 12, 2017**, and heard on or before **June 9, 2017**. Non-dispositive motions are heard before the
11 Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States Courthouse in
12 Bakersfield, California.

13 **No motion to amend or stipulation to amend the case schedule will be entertained unless it**
14 **is filed at least one week before the first deadline the parties wish to extend.** Likewise, no written
15 discovery motions shall be filed without the prior approval of the assigned Magistrate Judge. A party
16 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by
17 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
18 shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be the
19 obligation of the moving party to arrange and originate the conference call to the court. To schedule
20 this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at
21 (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with Local Rule 251**
22 **with respect to discovery disputes or the motion will be denied without prejudice and dropped**
23 **from the Court's calendar.**

24 All dispositive pre-trial motions shall be filed no later than **June 19, 2017** and heard no later
25 than **August 1, 2017**, in Courtroom 5 at 8:30 a.m. before the Honorable Dale A. Drozd, United States
26 District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56 and**
27 **Local Rules 230 and 260.**

28 ///

1 **VII. Motions for Summary Judgment or Summary Adjudication**

2 **At least 21 days before** filing a motion for summary judgment or motion for summary
3 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues
4 to be raised in the motion.

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

10 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed
11 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of
12 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be
13 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
14 statement of undisputed facts.

15 In the notice of motion the moving party **SHALL** certify that the parties have met and conferred
16 as ordered above, or set forth a statement of good cause for the failure to meet and confer. **Failure to**
17 **comply may result in the motion being stricken.**

18 **VIII. Pre-Trial Conference Date**

19 **October 10, 2017** at 8:30 a.m. in Courtroom 5 before Judge Drozd.

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

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

28 ///

1 **IX. Trial Date**

2 **December 5, 2017** at 1:00 p.m. in Courtroom 5 before the Honorable Dale A. Drozd, United
3 States District Court Judge.

4 A. This is a jury trial for claims against Janssen Pharmaceuticals, and a court trial for
5 claims against the Government.

6 B. Counsels' Estimate of Trial Time: 10 days.

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

9 **X. Settlement Conference**

10 A settlement conference is scheduled for **July 7, 2017** at 9:30 a.m. at 510 19th Street,
11 Bakersfield, California. The settlement conference will be conducted by Magistrate Judge Thurston. **If**
12 **any party prefers that the settlement conference be conducted by a judicial officer not assigned to**
13 **this case, that party is directed to notify the Court no later than 60 days in advance of the**
14 **scheduled settlement conference** to allow sufficient time for another judicial officer to be assigned to
15 handle the conference.

16 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case shall**
17 **appear** at the Settlement Conference **with the parties** and the person or persons having **full authority**
18 to negotiate and settle the case **on any terms**⁴ at the conference. Consideration of settlement is a
19 serious matter that requires preparation prior to the settlement conference. Set forth below are the
20 procedures the Court will employ, absent good cause, in conducting the conference.

21 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via
22 fax or e-mail, a written itemization of damages and a meaningful⁵ settlement demand which includes a
23 brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before** the
24

25 ⁴ Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements
26 are subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by a
27 person or persons who occupy high executive positions in the party organization and who will be directly involved in the
28 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.

⁵ "Meaningful" means that the offer is reasonably calculated to settle the case on terms acceptable to the offering
party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to the other party.

1 settlement conference, Defendant **SHALL** respond, via fax or e-mail, with an acceptance of the offer or
2 with a meaningful counteroffer, which includes a brief explanation of why such a settlement is
3 appropriate.

4 If settlement is not achieved, each party **SHALL** attach copies of their settlement offers to their
5 confidential settlement conference statement, as described below. Copies of these documents shall not
6 be filed on the court docket.

7 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

8 **At least five court days before** the settlement conference, the parties shall submit, directly to
9 Judge Thurston's chambers by e-mail to JLTorders@caed.uscourts.gov, a confidential settlement
10 conference statement. The statement **should not be filed** with the Clerk of the Court **nor served on**
11 **any other party**, although the parties may file a notice of lodging of settlement conference statement.
12 Each statement shall be clearly marked "confidential" with the date and time of the settlement
13 conference indicated prominently thereon.

14 The confidential settlement conference statement shall include the following:

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

24 **XI. Request for Bifurcation, Appointment of Special Master, or other**
25 **Techniques to Shorten Trial**

26 Not applicable at this time.

27 **XII. Related Matters Pending**

28 A related case is pending in state court: Elizabeth Agnes Walker and Mario James Gayles v.

1 Janssen Pharmaceuticals, Inc., et al., Case No. CIVDS1500655, Superior Court of California, County
2 of San Bernadino. The parties have agreed to coordinate discovery of these matters.

3 **XIII. Compliance with Federal Procedure**

4 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
5 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any
6 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently
7 handle its increasing case load and sanctions will be imposed for failure to follow both the Federal
8 Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

9 **XIV. Effect of this Order**

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

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

20 Failure to comply with this order may result in the imposition of sanctions.

21
22 IT IS SO ORDERED.

23 Dated: June 28, 2016

/s/ Jennifer L. Thurston
24 UNITED STATES MAGISTRATE JUDGE