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

Brandy Brewer,

Plaintiff,

v.

Leprino Foods Company, Inc.,

Defendant.

No. CV-1:16-1091-SMM

**ORDER SETTING FINAL
PRETRIAL CONFERENCE**

The deadline for the parties to file dispositive motions has passed. This matter has been set for a ten (10) day jury trial beginning on **Monday, April 1, 2019**. A Final Pretrial Conference is scheduled as follows.

IT IS HEREBY ORDERED setting a telephonic Final Pretrial Conference on **Wednesday, February 6, 2019 at 2:00 p.m.** in Courtroom 401, on the fourth floor of the Sandra Day O'Connor U.S. Federal Courthouse, 401 W. Washington St., Phoenix, Arizona, 85003 before Senior Judge Stephen M. McNamee. The parties are directed to conference on one single, clear telephone line prior to calling Judge McNamee's chambers at 602-322-7555 five (5) minutes before the start of the proceeding. The attorneys who will be responsible for the trial of the case shall attend the telephonic Final Pretrial Conference. Counsel shall bring their calendars so that trial scheduling can be discussed.

IT IS FURTHER ORDERED that, if this case shall be tried to a jury, the attorneys who will be responsible for the trial of the lawsuit shall prepare and sign a joint Proposed Pretrial Order and file it by **Friday, January 25, 2019**.

1 **IT IS FURTHER ORDERED** that the content of the Proposed Pretrial Order shall
2 include, but not be limited to, that prescribed in the Form of Pretrial Order attached hereto.
3 Statements made shall not be in the form of a question, but should be a concise narrative
4 statement of each party's contention as to each uncontested and contested issue. The parties
5 shall also email the joint Proposed Pretrial Order to the Chambers mailbox at
6 mcnamee_chambers@azd.uscourts.gov in either Word perfect or Word format.

7 **IT IS FURTHER ORDERED** pursuant to Federal Rule of Civil Procedure 37(c)
8 that the Court will not allow the parties to offer any exhibits, witnesses, or other
9 information that were not previously disclosed in accordance with the provisions of this
10 Order and/or the Federal Rules of Civil Procedure and/or not listed in the Proposed Pretrial
11 Order, except for good cause. The parties shall inform the Courtroom Deputy Clerk of all
12 exhibits that are stipulated into evidence and those that are not.

13 **IT IS FURTHER ORDERED** directing the parties to exchange drafts of the
14 Proposed Pretrial Order **no later than seven (7) days before the submission deadline**. In
15 addition, the parties shall exchange marked copies of all exhibits to be used at trial. While
16 meeting to exchange exhibits, the parties shall eliminate any duplicate exhibits. The
17 numbering of the exhibits as listed in the joint Proposed Pretrial Order shall correspond to
18 the numbering of the exhibits at trial.

19 **IT IS FURTHER ORDERED** that the parties shall file and serve all motions in
20 limine no later than **Friday, January 4, 2019**. Responses to motions in limine are due by
21 **Friday, January 18, 2019**. The motions and responses must be concise and shall not
22 exceed three (3) pages in length. No replies will be permitted. Each motion in limine shall
23 include the legal basis supporting it and the proposed language for the order in limine being
24 sought from the Court. Counsel shall be prepared to address the merits of all motions in
25 limine at the telephonic Final Pretrial Conference.

26 **IT IS FURTHER ORDERED** directing the parties to complete the following tasks
27 by the time of the filing of the Proposed Pretrial Order if they intend to try the case before
28 a jury:

- 1 (1) The parties shall jointly file a short description of the case to be read to the jury.
- 2 (2) The parties shall jointly file a proposed set of voir dire questions. The voir dire
- 3 questions shall be drafted in a neutral manner. To the extent possible, the parties
- 4 shall stipulate to the proposed voir dire questions. If the parties have any
- 5 disagreement about a particular question, the party or parties objecting shall state
- 6 the reason for their objection below the question.
- 7 (3) The parties shall file a proposed set of stipulated jury instructions. The
- 8 instructions shall be accompanied by citations to legal authority. If a party
- 9 believes that a proposed instruction is a correct statement of the law, but the facts
- 10 will not warrant the giving of the instructions, the party shall so state. The party
- 11 who believes that the facts will not warrant the particular instruction shall
- 12 provide an alternative instruction with appropriate citations to legal authority.
- 13 (4) Each party shall submit a proposed form of verdict to be given to the jury at the
- 14 end of trial.

15 **IT IS FURTHER ORDERED** directing the parties to submit their proposed joint

16 statement of the case, joint voir dire questions and stipulated jury instructions in .pdf

17 format, and their proposed form of verdict in Word perfect or Word format to the Chambers

18 mailbox, at mcnamee_chambers@azd.uscourts.gov.

19 **IT IS FURTHER ORDERED** that the parties shall keep the Court apprised of the

20 possibility of settlement and should settlement be reached, the parties shall file a Notice of


21 Settlement.

22 **IT IS FURTHER ORDERED** that this Court views compliance with the

23 provisions of this Order as critical to its case management responsibilities and the

24 responsibilities of the parties under Rule 1 of the Federal Rules of Civil Procedure.

25 Dated this 21st day of September, 2018.

26 
27 Honorable Stephen M. McNamee
28 Senior United States District Judge

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

Brandy Brewer,

Plaintiff,

v.

Leprino Foods Company, Inc.,

Defendant.

No. CV-1:16-1091-SMM
**PROPOSED PRETRIAL FORM OF
ORDER**

Pursuant to the Scheduling Order, the following is the joint Proposed Pretrial Order to be considered at the telephonic Final Pretrial Conference set for **Wednesday, February 6, 2019 at 2:00 p.m.** before Judge McNamee.

A. TRIAL COUNSEL FOR THE PARTIES.

(Include mailing address, office phone, fax number, and email address).

Plaintiff(s):

Defendant(s):

B. CONTENTIONS OF THE PARTIES.

With respect to each count of the complaint, counterclaim or cross-claim, and to any defense, affirmative defense, or the rebuttal of a presumption where the burden of proof has shifted, the party having the burden of proof shall list the elements or standards that must be proved in order for the party to prevail on that claim or defense. Citation to relevant legal authority is required.

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(e.g., To prevail on this products liability case, the plaintiff must prove the following elements)

(e.g., To defeat this products liability claim based on the statute of repose, the defendant must prove the following elements)

C. STIPULATIONS AND UNDISPUTED FACTS AND LAW.

- 1. The following facts are admitted by the parties and require no proof:
- 2. The following facts, although not admitted, will not be contested at trial by evidence to the contrary:
- 3. The following issues of law are uncontested and stipulated to by the parties:

D. CONTESTED ISSUES OF FACT.

The following are the issues of fact to be tried and decided: (Each issue of fact must be stated separately and in specific terms. Each parties' contention as to each issue must be set forth with respect to each and every issue of fact).

E.g., Issue # 1: Whether Plaintiff used due care.

Plaintiff Contends: Plaintiff looked both ways before stepping into the street...

Defendant Contends: Plaintiff was chasing a ball and darted out into the street without looking...

E. ISSUES OF LAW IN CONTROVERSY.

List briefly any points of law (substantive, evidentiary, or procedural) concerning the measure and kind of relief requested that is or may be reasonably expected to be in controversy.

F. LIST OF WITNESSES.

Provide a separate list for each party of all witnesses whom the party will call or may call in person or through deposition, except witnesses who may be called only for impeachment or rebuttal. A brief statement as to the testimony of each witness must also be included. Additionally, the parties

1 shall designate which witnesses (1) will be called at trial, (2) may be called
2 at trial, and (3) are unlikely to be called at trial. If any additional witnesses
3 come to the attention of counsel prior to the trial, a supplemental list and
4 summary must be prepared and filed with the Court. This supplemental list
5 must include the reason why the witness' name was not set forth in the
6 Proposed Pretrial Order. If a witness will appear by deposition only, the
7 party calling the witness will give notice of the pages to be read on the date
8 the Proposed Pretrial Order is filed with the Court. (Do not include
9 deposition pages in the Proposed Pretrial Order.)

10 **G. LIST OF EXHIBITS.**

11 1. The following exhibits are admissible in evidence and may be marked in
12 evidence by the Clerk:

13 a. Plaintiff's Exhibits:

14 b. Defendant's Exhibits:

15 2. As to the following exhibits, the parties have reached the following
16 stipulations:

17 a. Plaintiff's Exhibits:

18 b. Defendant's Exhibits:

19 3. As to the following exhibits, the party against whom the exhibit is to be
20 offered objects to the admission of the exhibit and offers the objection stated
21 beneath:

22 a. Plaintiff's Exhibits:

23 (*E.g.*, City Hospital records of Plaintiff from March 6, 1985 through March
24 22, 1985. Defendant objects for lack of foundation because.... (the objection
25 must specify why there is a lack of foundation)).

26 b. Defendant's Exhibits:

27 (*E.g.*, Payroll records of Plaintiff's employer which evidences payment of
28 Plaintiff's salary during hospitalization and recovery. Plaintiff objects on the

