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

UNITED STATES OF AMERICA, and
CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL,

Plaintiffs,

vs.

STERLING CENTRECORP INC., STEPHEN P.
ELDER, and ELDER DEVELOPMENT, INC.,

Defendants.

Case No. 2:08-cv-02556- MCE-JFM

**PHASE II PRETRIAL SCHEDULING
ORDER**

1 WHEREAS, the Court, on March 24, 2009, entered an order bifurcating this litigation into
2 two phases (see Docket No. 26), and

3 WHEREAS, Phase 1 of the litigation has now concluded, and

4 WHEREAS, pursuant to the March 24, 2009 Order, Phase 2 of the litigation is comprised of
5 discovery and trial on Plaintiffs' entitlement to the response costs sought. Defendant Sterling will be
6 permitted to raise in Phase 2 a statute of limitations defense to costs incurred prior to execution of
7 the Record of Decision for the Mine Area Operable Unit in September 2004. Defendant Sterling
8 also will be permitted to try a counterclaim against Plaintiff United States pursuant to the Court's
9 Order of October 16, 2009;

10 WHEREAS, attempts to negotiate a Stipulation and Proposed Phase II Pretrial Scheduling
11 Order with Defendants Stephen P. Elder and Elder Development, Inc., have been unsuccessful; and

12 WHEREAS, the Plaintiffs and Defendant Sterling have entered into a Stipulation lodged with
13 the Court on May 14, 2014 (ECF No. 224) and have moved the Court to enter it as an order;

14 NOW THEREFORE, pursuant to said May 14, 2014 Stipulation, and good cause appearing,
15 the Court adopts the following Phase II Pretrial Scheduling Order:

16 I. SERVICE OF PROCESS

17 All named Defendants have been served and no further service is permitted without leave of
18 court, good cause having been shown.

19 II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

20 No joinder of parties or amendments to pleadings is permitted without leave of court, good
21 cause having been shown.

22 III. JURISDICTION/VENUE

23 Jurisdiction is predicated upon 28 U.S.C. sections 1331 and 1345 and 42 U.S.C. section
24 9613(b). Jurisdiction and venue are not contested.

25 IV. DISCOVERY

26 A. All discovery, with the exception of expert discovery, shall be completed by
27 **September 18, 2015**. In this context, "completed" means that all discovery shall have been
28 conducted so that all depositions have been taken and any disputes relative to discovery shall have

1 been resolved by appropriate order if necessary and, where discovery has been ordered, the order has
2 been obeyed. All motions to compel discovery must be noticed on the magistrate judge's calendar in
3 accordance with the local rules of this Court.

4 B. The parties mutually seek to reduce the time, expense and other burdens of discovery,
5 and to better define the scope of their obligations with respect to collection, review and production
6 of relevant information. Plaintiffs and Defendant Sterling therefore are entering into this Stipulation,
7 and the Court orders, that the scope of discovery in this Phase 2 of litigation shall be limited to the
8 subjects identified in the Court's March 24, 2009 Order, as amended by the Court's Order dated
9 October 16, 2009 (Docket No. 40).

10 1. Within **120 days** of the Court's entry of this Order, the parties shall make disclosures
11 under Fed. R. Civ. P. 26(a). Plaintiffs and Defendant Sterling agree, and the Court orders that, with
12 respect to compliance with the provisions of Fed. R. Civ. P. 26(a)(ii):

13 (a) Plaintiffs' obligation to make disclosures is limited to the following
14 documents:

15 (i) the administrative records for the two Records of Decision and two
16 removal actions performed at the Lava Cap Superfund Site;

17 (ii) EPA's Cost Documentation Package, which includes financial cost
18 and work performed supporting documentation. The supporting financial cost documentation
19 generally includes a SCORPIOS (Superfund Cost Recovery Package Imaging and On-line System)
20 cost summary Report, EPA employees' timesheets and travel documents, contract public vouchers,
21 proof of payments, interagency agreements, and state cooperative agreements. The supporting work
22 performed documentation generally includes EPA work orders and work assignments, EPA
23 statements of work, and progress reports from contractors, grant recipients, and other federal
24 agencies;

25 (iii) pollution reports associated with the removal actions performed at the
26 Lava Cap Superfund Site; and

27 (iv) DTSC's cost summary and supporting cost documentation.

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1 (b) Defendant Sterling's obligation to make disclosures is limited to the following
2 documents:

3 (i) documents relevant to Sterling's counterclaim; and

4 (ii) documents relevant to any defenses Sterling intends to prove.

5 (c) This Order does not modify the obligations of Defendants Stephen P. Elder
6 and Elder Development, Inc., with respect to their obligations under Fed. R. Civ. P. 26(a)(ii).

7 2. Prior to making Rule 26(a) disclosures, Defendant Sterling and Plaintiff United
8 States of America shall agree on a scope of documents relating to the War Production Board to be
9 obtained from the National Archives and Records Administration. If Defendant Sterling is seeking
10 to recover response costs from Plaintiff United States of America pursuant to its counterclaim,
11 Defendant Sterling shall produce the documents relating to such claims during this phase of the case.

12 3. Plaintiffs and Defendant Sterling intend to exchange most, if not all, relevant
13 information through Rule 26(a) disclosures. If, after reviewing such disclosures, a party identifies a
14 need for additional information, that party shall serve interrogatories and document requests on that
15 issue within **60 days** of the parties' Rule 26(a) disclosures. Thereafter, the parties shall meet and
16 confer to determine whether the scope of the interrogatories and requests may be focused on the
17 issues identified. A party shall have 30 days from the date of the meet and confer to respond to any
18 discovery served upon it, unless the serving party agrees to an extension. All discovery of
19 electronically stored information shall be conducted pursuant to the terms in Paragraph IV(C) below.
20 In no event shall Plaintiffs be required to produce or log the emails of attorneys at the Department of
21 Justice, EPA Office of Regional Counsel, EPA Headquarters, the U.S. Department of Commerce,
22 the California Attorney General's Office, or the California Department of Toxic Substances Control.
23 In no event shall Defendant Sterling be required to produce or log the emails of attorneys at
24 Beveridge & Diamond, or of Sterling in-house counsel.

25 C. Electronically Stored Information. At this time, Plaintiffs and Defendant Sterling do
26 not contemplate the exchange of any electronically stored information. If a party identifies a need
27 for such information pursuant to subparagraph IV(B)(3) above, the parties shall conduct discovery of
28 electronically stored information pursuant to this paragraph C. Plaintiffs and Defendant Sterling

1 mutually seek to reduce the time, expense and other burdens of discovery of certain electronically
2 stored information and privileged materials, as described further below, and to better define the
3 scope of their obligations with respect to preserving such information and materials. Plaintiffs and
4 Defendant Sterling therefore are entering into this Stipulation, and the Court orders:

5 1. Preservation Not Required for Not Reasonably Accessible Electronic
6 Information.

7 a. Except as provided in subparagraph (b) below, the parties need not
8 preserve the following categories of electronic information for this litigation:

9 i. Data duplicated in any electronic backup system for the
10 purpose of system recovery or information restoration, including but not limited to, system recovery
11 backup tapes, continuity of operations systems, and data or system mirrors or shadows, if such data
12 are routinely purged, overwritten or otherwise made not reasonably accessible in accordance with an
13 established routine system maintenance policy;

14 ii. Voicemail messages;

15 iii. Instant messages such as messages sent on AOL Instant
16 Messenger or Microsoft Communicator;

17 iv. Text messages, such as cell phone to cell phone SMS
18 messages;

19 v. Electronic mail sent to or from a personal digital assistant
20 (“PDA”) or smartphone (e.g., BlackBerry) provided that a copy of such email is routinely saved
21 elsewhere;

22 v. Other electronic data stored on a PDA or smartphone, such as
23 calendar or contract data or notes, provided that a copy of such information is routinely saved
24 elsewhere;

25 vi. Logs of calls made from cellular phones;

26 vii. Deleted computer files, whether fragmented or whole;

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1 viii. Data stored in random access memory (“RAM”), cache
2 memory, or in temporary or cache files, including internet history, web browser cache and cookie
3 files, wherever located;

4 ix. Data stored on photocopiers, scanners, and fax machines;

5 x. Server, system, or network logs; and

6 xi. Electronic data temporarily stored by scientific equipment or
7 attached devices, provided that the data that is ordinarily preserved as part of a laboratory report is,
8 in fact, preserved in its ordinary location and form.

9 b. Notwithstanding subparagraph (a) above, if on the date of this
10 agreement any party has a policy established by management that results in the routine preservation
11 of any of the categories of information identified in subparagraph (a), such party shall continue to
12 preserve such information in accordance with its policy.

13 2. Obligations Related to “Draft” Documents and “Non-Identical” Documents.

14 For the purposes of preserving potentially discoverable material in this litigation, and for purposes of
15 discovery in this litigation, a “draft” document, regardless of whether it is in an electronic or hard
16 copy form, shall mean, “a preliminary version of a document that has been shared by the author with
17 another person (by email, print, or otherwise) or that the author no longer intends to finalize or to
18 share with another person.” In addition, a “non-identical” document is one that shows at least one
19 facial change such as the inclusion of highlights, underlining, marginalia, total pages, attachments,
20 markings, revisions, or the inclusion of tracked changes. The parties need not preserve for
21 discovery a document before and after every change made to it, so long as “draft” documents, as
22 defined by this paragraph, are preserved. A document that is identical on its face to another
23 document, but has small detectable differences in the metadata, shall be considered an identical
24 copy.

25 3. No Discovery of Material Not Required To Be Preserved. The parties will not
26 seek discovery of items that need not be preserved pursuant to subparagraphs (C)(1)-(2) above. If
27 any discovery request is susceptible of a construction which calls for the production of items that

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1 need not be preserved pursuant to paragraphs (C)(1)-(2), such items need not be searched for,
2 produced, or identified on a privilege log pursuant to Fed. R. Civ. P. 26(b)(5).

3 4. Preservation Does Not Affect Discoverability or Claims of Privilege. By
4 preserving information for the purpose of this litigation, the parties are not conceding that such
5 material is discoverable, nor are they waiving any claim of privilege. Except as otherwise provided
6 in subparagraphs (C)(1)(b) and (C)(2), and in Section IV(E), nothing in this Stipulation shall alter
7 the obligations of the parties to provide a privilege log for material withheld under a claim of
8 privilege.

9 5. Format for Production: Plaintiffs and Defendant Sterling stipulate, and the
10 Court orders, the following methods of production:

11 a. Paper documents: At the Producing Party's discretion, documents on
12 paper may be produced on paper or may be scanned and produced on CD-ROM, DVD-ROM, or
13 external hard drive.

14 b. Paper documents that are produced on disc shall be scanned as 300 dpi
15 single-page TIFF files, using CCITT Group IV compression. Each page shall be branded with a
16 unique Bates number, which shall not be an overlay of the image. The images shall be accompanied
17 by: (1) an Opticon™ or IPRO® "cross reference file" which associates each Bates number with its
18 corresponding single-page TIFF image file; and (2) a "text load file" containing comma delimited,
19 double-quotation qualified ASCII text which will populate fields in a searchable flat database
20 environment, containing one line for each document and each of the applicable fields as described in
21 Appendix A;

22 c. Word, WordPerfect, and PDF documents will be converted to single-
23 page TIFF images and produced consistent with the specifications in subparagraph (C)(5)(b), except
24 that the text load file shall contain the extracted text from each document in place of OCR text,
25 unless the document contains redactions, in which case OCR text may be provided. If the document
26 contains comments or tracked changes, the TIFF images shall be generated based on how the
27 document appears when first opened using view settings contained in the file, and the receiving party
28 shall have the option, after reviewing the produced TIFF image, to request the native file;

1 d. Microsoft PowerPoint files will be processed and produced in the same
2 manner as Word, WordPerfect, and PDF documents, except that the images shall be generated as full
3 color, full page, JPEG images with one slide per page. Notes and other text that would not appear on
4 the screen in the presentation view need not be shown on the JPEG images. The receiving party shall
5 have the option, after reviewing the produced images, to request the native files;

6 e. E-mail and attachments should be converted to single-page TIFF
7 images and produced consistent with the specification in subparagraph (C)(5)(b). If the producing
8 party redacts any part of the e-mail before producing it, OCR text may be provided in place of
9 extracted text. Attachments shall be processed as though they were separate documents, and the text
10 load file shall include a field in which the producing party shall identify, for each e-mail, the bates
11 range of any attachment;

12 f. Microsoft Excel files and other spreadsheets will be produced in native
13 file format in a separate folder on the production media, and the text load file shall contain a field
14 that identifies the file path of the native file corresponding to each document;

15 g. Digital photographs will be produced as image files at their original
16 resolution with bates numbers branded onto them;

17 h. Embedded files shall be treated as though they were separate files,
18 except that the text load file shall include a field in which the producing party shall identify, for each
19 document containing an embedded file, the bates range of any such embedded file. This bates range
20 may be identified in the same field as the Bates range of an e-mail attachment.

21 i. Before any party produces any other kinds of electronic data, including
22 databases, CAD drawings, GIS data, videos, etc., the parties will meet and confer to discuss the
23 format for the production;

24 j. The parties will meet and confer to identify mutually agreeable search
25 terms for email messages and other electronically stored information, however, this agreement to
26 meet and confer does not obligate any party to agree to perform an electronic search.

27 6. Other Preservation Obligations Not Affected. Nothing in this agreement shall
28 affect any other obligations of the parties to preserve documents or information for other purposes,

1 such as pursuant to court order, administrative order, statute, or in response to other anticipated
2 litigation.

3 7. Meet and Confer Requirement. Before filing any motion with the Court
4 regarding electronic discovery or evidence, the parties will meet and confer in a good faith attempt
5 to resolve such disputes.

6 D. Protection of Privileges.

7 1. Plaintiffs and Defendant Sterling agree that this Stipulation and Order from
8 the Court invokes the protections afforded by Rule 502(d) of the Federal Rules of Evidence.

9 2. The prosecution and defense of this action will require each party to review
10 and to disclose very large quantities of information and documents, including electronically stored
11 information, through the discovery process. As a result, record-by-record preproduction privilege
12 review would likely impose an undue burden on the parties' resources.

13 3. Each party shall examine the files containing documents to be produced and
14 shall screen documents for privilege. Such examination shall be performed with due regard for the
15 likelihood that the files contain privileged documents, but may rely on sampling or electronic
16 searching.

17 4. If a producing party determines that it has produced a document upon which it
18 wishes to make a claim of privilege, the producing party shall within 14 days give all counsel of
19 record notice of the claim of privilege. The notice shall identify the document(s) that is (are)
20 privileged and the date the document(s) was (were) produced. If the producing party claims that
21 only a portion of the document is privileged, the producing party shall provide, along with the notice
22 of the claim of privilege, a new copy of the document with the allegedly privileged portions
23 redacted.

24 5. A receiving party is under a good-faith obligation to notify the producing
25 party upon identification of a document which appears on its face or in light of facts known to the
26 receiving Party to be potentially privileged. Such notification shall not waive the receiving party's
27 ability to subsequently challenge any assertion of privilege with respect to the identified document.
28 The producing party shall provide notice under subparagraph (D)(4) above within five (5) business

1 days of notification of production of a potentially privileged document by the receiving party if the
2 producing party believes the document to be privileged.

3 6. Upon receiving notice of a claim of privilege on a produced document, the
4 receiving party must, in accordance with Fed. R. Civ. P. 26(b)(5)(B), promptly sequester the
5 specified information and any copies it has and may not use or disclose the information, except as
6 provided by Fed. R. Civ. P. 26(b)(5)(B), until the claim is resolved. If the receiving party disclosed
7 the information before being notified, it must take reasonable steps to prevent further use of such
8 information until the claim is resolved. The parties will follow the procedure described in Fed. R.
9 Civ. P. 26(b)(5)(B) for documents produced in this litigation regardless of whether the producing
10 party asserts its claim of privilege during or after this litigation.

11 7. Pursuant to Federal Rule of Evidence 502(d), the disclosure of privileged
12 information or documents in discovery conducted in this litigation consistent with the terms of this
13 order shall not waive the claim of privilege or protection in any other federal or state proceeding.

14 E. Privileged Materials Located in the Offices of Counsel. The parties agree that, in
15 response to discovery requests, the parties need not search for and produce, nor create a privilege log
16 for, any privileged material which is located in the offices of the U.S. Department of Justice, EPA's
17 Office of Regional Counsel, lawyers in EPA Headquarters or the U.S. Department of Commerce, the
18 California Department of Justice, lawyers in the California Department of Toxic Substances Control,
19 Beveridge & Diamond, or Sterling in-house counsel. The parties shall not keep discoverable
20 materials in the offices covered by this paragraph unless a copy or duplicate of the materials is
21 located elsewhere in the possession, custody, or control of the party and such copy or duplicate is
22 identical except for marks, notes, or annotation provided by counsel.

23 F. Costs of Document Production. Each party shall bear the costs of producing its own
24 documents.

25 G. Expert Discovery

26 1. Each party shall produce the following regarding expert discovery at the time
27 the expert reports will be exchanged between the parties:

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- 1 a. An identification of the data, documents, or other information
2 considered by the expert witness in forming the opinions expressed in the expert report;
3 b. The curriculum vitae of the expert;
4 c. A description of the compensation to be paid to the expert;
5 d. A list of the expert's professional publications within the last ten
6 years; and
7 e. A list of any other cases in which the expert has testified as an expert
8 at trial or by deposition within the last four years.

- 9 2. No party shall pursue through discovery, trial subpoena, or otherwise:
10 a. Draft expert reports, regardless of the form of the draft;
11 b. Expert notes;
12 c. Expert correspondence; and
13 d. Communications between a party's attorney and any witness required
14 to provide a report under Fed. R. Civ. P. 26(a)(2)(B) regardless of the form of the communications,
15 except to the extent that the communications:
16 i. Relate to compensation for the expert's study or testimony;
17 ///
18 ii. Identify facts or data that a party's attorney provided and that
19 the expert considered in forming the opinions to be expressed; or
20 iii. Identify assumptions that a party's attorney provided and that
21 the expert relied upon in forming the opinions to be expressed.

22 3. The parties shall bear the costs of their own testifying experts in responding to
23 discovery, and not require the party seeking discovery to pay the other party's testifying expert any
24 fee for the time spent in responding to discovery.

25 H. Integration/Appendices. The following documents are incorporated herein by
26 reference:

27 "Appendix A" is a table describing the fields to be included in the databases produced by
28 each party.

1 V. DISCLOSURE OF EXPERT WITNESSES

2 A. All expert discovery shall be completed by **November 18, 2015**. All counsel are to
3 designate in writing, file with the Court, and serve upon all other parties the name, address, and area
4 of expertise of each expert that they propose to tender at trial not later than **August 11, 2015**.¹ The
5 designation shall be accompanied by a written report prepared and signed by the witness. The report
6 shall comply with Fed. R. Civ. P. 26(a)(2)(B).

7 B. Within **45 days** after the designation of expert witnesses, any party may designate a
8 supplemental list of expert witnesses who will express an opinion on a subject covered by an expert
9 designated by an adverse party.

10 C. The right to designate a supplemental expert for rebuttal purposes only shall apply to
11 a party who has not previously disclosed an expert witness on the date set for expert witness
12 disclosure by this Pretrial Scheduling Order.

13 D. Failure of a party to comply with the disclosure schedule as set forth above in all
14 likelihood will preclude that party from calling the expert witness at the time of trial. An expert
15 witness not appearing on the designation will not be permitted to testify unless the party offering the
16 witness demonstrates:

17 (1) that the necessity for the witness could not have been reasonably anticipated at
18 the time the list was proffered;

19 (2) that the Court and opposing counsel were promptly notified upon discovery of
20 the witness; and

21 (3) that the witness was promptly made available for deposition.

22 E. For purposes of this Pretrial Scheduling Order, an “expert” is any person who may be
23 used at trial to present evidence under Rules 702, 703, and 705 of the Federal Rules of Evidence,
24 which include both “percipient experts” (persons who, because of their expertise, have rendered
25 expert opinions in the normal course of their work duties or observations pertinent to the issues in
26

27 ¹ The discovery of experts will include whether any motions based on *Daubert v. Merrell Dow*
28 *Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786 (1993), and/or *Kumho Tire Co. v. Carmichael*,
526 U.S. 137, 119 S. Ct. 1167 (1999), are anticipated.

1 the case) and “retained experts” (persons specifically designated by a party to be a testifying expert
2 for the purposes of litigation).

3 F. Each party shall identify whether a disclosed expert is percipient, retained, or both. It
4 will be assumed that a party designating a retained expert has acquired the express permission of the
5 witness to be so listed. Parties designating percipient experts must state in the designation who is
6 responsible for arranging the deposition of such persons.

7 G. All experts designated are to be fully prepared at the time of designation to render an
8 informed opinion, and give their bases for their opinion, so that they will be able to give full and
9 complete testimony at any deposition taken by the opposing party. Experts will not be permitted to
10 testify at the trial as to any information gathered or evaluated, or opinion formed, after deposition
11 taken subsequent to designation.

12 H. Counsel are instructed to complete all discovery of expert witnesses in a timely
13 manner in order to comply with the Court’s deadline for filing dispositive motions.

14 VI. MOTION HEARING SCHEDULE

15 A. There are no motions pending before this Court. Should the parties intend to file any
16 new motions, they are directed to file in accordance with the local rules.

17 B. All dispositive motions, except motions for continuances, temporary restraining
18 orders or other emergency applications, shall be heard no later than **March 17, 2016**. The parties are
19 responsible for ensuring that all motions are filed to allow for proper notice of the hearing under the
20 Federal Rules of Civil Procedure and/or Local Rules. Available hearing dates may be obtained by
21 calling Stephanie Deutsch, Courtroom Deputy Clerk, at (916) 930-4207.

22 C. All purely legal issues are to be resolved by timely pretrial motions.² Local Rule 230
23 governs the calendaring and procedures of civil motions with the following additions:

24 (1) The opposition and reply must be filed by **4:00 p.m.** on the day due; and

25 (2) When the last day for filing an opposition brief falls on a legal holiday, the
26 opposition brief shall be filed on the last court day immediately preceding the legal holiday.

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28 ² The Court urges any party that contemplates bringing a motion for summary judgment or who must
oppose a motion for summary judgment to review Local Rule 260.

1 D. Failure to comply with Local Rule 230(c), as modified by this Order, may be deemed
2 consent to the motion and the Court may dispose of the motion summarily. Further, failure to timely
3 oppose a summary judgment motion may result in the granting of that motion if the movant shifts
4 the burden to the nonmovant to demonstrate that a genuine issue of material fact remains for trial.

5 E. The Court places a page limit of twenty (20) pages on all initial moving papers,
6 twenty (20) pages on oppositions, and ten (10) pages for replies. All requests for page limit increases
7 must be made in writing to the Court setting forth any and all reasons for any increase in page limit
8 at least seven (7) days prior to the filing of the motion.

9 F. For the Court's convenience, citations to Supreme Court cases should include parallel
10 citations to the Supreme Court Reporter.

11 G. The parties are reminded that a motion in limine is a pretrial procedural device
12 designed to address the admissibility of evidence. The Court will look with disfavor upon
13 dispositional motions (except for those noted in paragraph V(D)) presented at the Final Pretrial
14 Conference or at trial in the guise of motions in limine.

15 H. The parties are cautioned that failure to raise a dispositive legal issue that could have
16 been tendered to the Court by proper pretrial motion prior to the dispositive motion cut-off date may
17 constitute waiver of such issue.

18 VII. FINAL PRETRIAL CONFERENCE

19 A. The Final Pretrial Conference is set for **May 26, 2016, at 2:00 p.m.** At least one of
20 the attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial
21 Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable to
22 attend, the attorney who attends in place of the trial attorney shall have equal familiarity with the
23 case and equal authorization to make commitments on behalf of the client.

24 B. Counsel for all parties are to be fully prepared for trial at the time of the Final Pretrial
25 Conference, with no matters remaining to be accomplished except production of witnesses for oral
26 testimony.

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1 C. The parties shall file, not later than **May 5, 2016**, a Joint Final Pretrial Conference
2 Statement. The provisions of Local Rules 281 shall apply with respect to the matters to be included
3 in the Joint Final Pretrial Conference Statement.

4 D. In addition to those subjects listed in Local Rule 281(b), the parties are to provide the
5 Court with a plain, concise statement that identifies every non-discovery motion tendered to the
6 Court and its resolution. Failure to comply with Local Rule 281, as modified by this Pretrial
7 Scheduling Order, may be grounds for sanctions.

8 E. At the time of filing the Joint Final Pretrial Conference Statement, counsel shall also
9 electronically mail to the Court in digital format compatible with Microsoft Word, the Joint Final
10 Pretrial Conference Statement in its entirety including the witness and exhibit lists. **These**
11 **documents shall be sent to: mceorders@caed.uscourts.gov.**

12 F. The parties should identify first the core undisputed facts relevant to all claims. The
13 parties should then, in a concise manner, identify those undisputed core facts that are relevant to
14 each claim. The disputed facts should be identified in the same manner. Where the parties are unable
15 to agree as to what disputed facts are properly before the Court for trial, they should nevertheless list
16 all disputed facts asserted by each party. Each disputed fact or undisputed fact should be separately
17 numbered or lettered.

18 G. Each party shall identify and concisely list each disputed evidentiary issue which will
19 be the subject of a motion in limine.

20 H. Each party shall identify the points of law which concisely describe the legal issues of
21 the trial which will be discussed in the parties' respective trial briefs. Points of law should reflect
22 issues derived from the core undisputed and disputed facts. Parties shall not include argument or
23 authorities with any point of law.

24 I. The parties shall prepare a joint statement of the case in plain concise language which
25 will be read to the jury at the beginning of the trial. The purpose of the joint statement is to inform
26 the jury what the case is about.

27 J. The parties are reminded that pursuant to Local Rule 281 they are required to list in
28 the Joint Final Pretrial Conference Statement all witnesses and exhibits they propose to offer at trial.

1 After the name of each witness, each party shall provide a brief statement of the nature of the
2 testimony to be proffered. The parties may file a joint list or each party may file separate lists. These
3 list(s) shall not be contained in the body of the Joint Final Pretrial Conference Statement itself, but
4 shall be attached as separate documents to be used as addenda to the Final Pretrial Order.

5 K. Plaintiffs' exhibits shall be listed numerically. Defendants' exhibits shall be listed
6 alphabetically. The parties shall use the standard exhibit stickers provided by the Court Clerk's
7 Office: pink for Plaintiffs and blue for Defendants. In the event that the alphabet is exhausted, the
8 exhibits shall be marked "AA-ZZ" and "AAA-ZZZ" etc. After three letters, note the number of
9 letters in parenthesis (i.e., "AAAA(4)") to reduce confusion at trial.

10 L. All multi-page exhibits shall be stapled or otherwise fastened together and each page
11 within the exhibit shall be numbered. All photographs shall be marked individually. The list of
12 exhibits shall not include excerpts of depositions, which may be used to impeach witnesses. In the
13 event that Plaintiffs and Defendants offer the same exhibit during trial, that exhibit shall be referred
14 to by the designation the exhibit is first identified. The Court cautions the parties to pay attention to
15 this detail so that all concerned, including the jury, will not be confused by one exhibit being
16 identified with both a number and a letter.

17 M. The Final Pretrial Order will contain a stringent standard for the offering at trial of
18 witnesses and exhibits not listed in the Final Pretrial Order, and the parties are cautioned that the
19 standard will be strictly applied. On the other hand, the listing of exhibits or witnesses that a party
20 does not intend to offer will be viewed as an abuse of the court's processes.

21 N. The parties also are reminded that pursuant to Rule 16 of the Federal Rules of Civil
22 Procedure it will be their duty at the Final Pretrial Conference to aid the Court in: (a) the formulation
23 and simplification of issues and the elimination of frivolous claims or defenses; (b) the settling of
24 facts that should properly be admitted; and (c) the avoidance of unnecessary proof and cumulative
25 evidence. Counsel must cooperatively prepare the Joint Final Pretrial Conference Statement and
26 participate in good faith at the Final Pretrial Conference with these aims in mind. A failure to do so
27 may result in the imposition of sanctions which may include monetary sanctions, orders precluding
28 proof, elimination of claims or defenses, or such other sanctions as the Court deems appropriate.

1 VIII. TRIAL BRIEFS

2 A. The parties shall file trial briefs not later than **May 12, 2016** by **4:00 p.m.** Counsel
3 are directed to Local Rule 285 regarding the content of trial briefs.

4 IX. EVIDENTIARY AND/OR PROCEDURAL MOTIONS

5 A. Any evidentiary or procedural motions are to be filed by **May 5, 2016**. Oppositions
6 must be filed by **May 12, 2016**, and any reply must be filed by **May 19, 2016**. The motions will be
7 heard by the Court at the same time as the Final Pretrial Conference.

8 X. TRIAL SETTING

9 A. The trial is set for **July 18, 2016**, at **9:00 a.m.** Trial will be a bench trial. The parties
10 estimate a trial length of five (5) days.

11 XI. SETTLEMENT CONFERENCE

12 A. No settlement conference is currently scheduled. A settlement conference may be set
13 at the parties' request. In the event a settlement conference date is requested, the parties shall file
14 said request jointly, in writing.

15 B. Counsel are instructed to have a principal with full settlement authority present at the
16 Settlement Conference or to be fully authorized to settle the matter on any terms. At least **seven (7)**
17 **calendar days** before the settlement conference, counsel for each party shall submit to the chambers
18 of the settlement judge a confidential Settlement Conference Statement. Such statements are neither
19 to be filed with the Clerk nor served on opposing counsel. Each party, however, shall serve notice on
20 all other parties that the statement has been submitted. If the settlement judge is not the trial judge,
21 the Settlement Conference Statement shall not be disclosed to the trial judge.

22 C. After the Final Pretrial Conference, the Court will not set a settlement conference.
23 The parties are free, however, to continue to mediate or attempt to settle the case with the
24 understanding that the trial date is a firm date.

25 XII. VOLUNTARY DISPUTE RESOLUTION PROGRAM

26 A. Pursuant to Local Rule 271 parties will need to lodge a stipulation and proposed order
27 requesting referral to the Voluntary Dispute Resolution Program.

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1 XIII. MODIFICATION OF PRETRIAL SCHEDULING ORDER

2 A. The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil
3 Procedure, the Pretrial Scheduling Order shall not be modified except by leave of court upon a
4 showing of good cause. Agreement by the parties pursuant to stipulation alone to modify the Pretrial
5 Scheduling Order does not constitute **good cause**. Except in extraordinary circumstances,
6 unavailability of witnesses or counsel will not constitute good cause.

7 XIV. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

8 A. This Pretrial Scheduling Order will become final without further order of the Court
9 unless objections are filed within seven (7) court days of the date this Order is electronically filed.

10 IT IS SO ORDERED.

11 Dated: September 26, 2014

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14 MORRISON C. ENGLAND, JR., CHIEF JUDGE
15 UNITED STATES DISTRICT COURT
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Appendix A:
Fields to Exchange in Databases of Discovery Materials

Name of Field	Type of field	Contents				
		E-mail	Word Processing or PDFs	Spreadsheets	Digital Photos	Paper
Begin_Bates	Text	Bates number for the TIFF image of the first page	Bates number for the TIFF image of the first page	Bates number for the TIFF image of the first page, or, if spreadsheets are not TIFFed, the Bates number of the placeholder page	Bates number branded onto a TIFF file that has the same resolution as the native image file.	Bates number for the TIFF image of the first page
End_Bates	Text	Bates number for the TIFF image of the last page	Bates number for the TIFF image of the last page	Bates number for the TIFF image of the last page or, if spreadsheets are not TIFFed, the Bates number of the placeholder page	Bates number branded onto the native image file	Bates number for the TIFF image of the last page
Attachment	Text	Bates range of the attachments. Only the first page of the first attachment and the last page of the last attachment are indicated.	Bates range of all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Only the first page of the first attachment and the last page of the last attachment are indicated.	Bates range of all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Only the first page of the first attachment and the last page of the last attachment are indicated.	Bates range of all documents (including e-mails) to which this file was attached or in which it was embedded. Only the first page of the first attachment and the last page of the last attachment are indicated.	Bates range of all document that were physically attached by clips, staples, or binding. Only the first page of the first attachment and the last page of the last attachment are indicated.
Author	Paragraph	"From" field	<blank>	<blank>	<blank>	<blank>
To	Paragraph	"To" field	<blank>	<blank>	<blank>	<blank>
CC	Paragraph	"CC" field	<blank>	<blank>	<blank>	<blank>
BCC	Paragraph	"BCC" field	<blank>	<blank>	<blank>	<blank>
Subject	Paragraph	"Subject" field	<blank>	<blank>	<blank>	<blank>
DateSent	Date	The date and time the message was sent	<blank>	<blank>	<blank>	<blank>

Name of Field	Type of field	Contents				
		E-mail	Word Processing or PDFs	Spreadsheets	Digital Photos	Paper
Message_ID	Text	For e-mails in Microsoft Outlook, the "Message ID" field; For e-mail stored in Lotus Notes, the UNID field	<blank>	<blank>	<blank>	<blank>
Filename	Paragraph	<blank>	The name the file	The name the file	The name the file	<blank>
Native_File	Paragraph	<blank>	The path to the native file on the production media	The path to the native file on the production media	<blank>	<blank>
Text	Paragraph	Text extracted from the message body	Text extracted from the file. However, if the file does not contain text or if redactions were made, then OCR text shall be provided.	Text extracted from the file or if redactions were made, then OCR text shall be provided.	<blank>	OCR Text