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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 PROTECTMARRIAGE.COM, et al., No. 2:09-cv-00058-MCE-DAD

12 Plaintiffs,

13 v.

PRETRIAL SCHEDULING ORDER

14 DEBRA BOWEN, et al.,

15 Defendants.  
16 \_\_\_\_\_/

17 After reviewing the parties' Joint Status Report, the Court  
18 makes the following Pretrial Scheduling Order.

19 I. SERVICE OF PROCESS

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

22 II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

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

25 III. JURISDICTION/VENUE

26 Jurisdiction is predicated upon 28 U.S.C. sections 1331 and  
27 1343(a). Jurisdiction and venue are not contested.

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1 IV. DISCOVERY

2 All discovery, with the exception of expert discovery, shall  
3 be completed by **May 14, 2010**. In this context, "completed" means  
4 that all discovery shall have been conducted so that all  
5 depositions have been taken and any disputes relative to  
6 discovery shall have been resolved by appropriate order if  
7 necessary and, where discovery has been ordered, the order has  
8 been obeyed. All motions to compel discovery must be noticed on  
9 the magistrate judge's calendar in accordance with the local  
10 rules of this Court.

11 V. DISCLOSURE OF EXPERT WITNESSES

12 All counsel are to designate in writing, file with the  
13 Court, and serve upon all other parties the name, address, and  
14 area of expertise of each expert that they propose to tender at  
15 trial not later than **July 14, 2010**.<sup>1</sup> The designation shall be  
16 accompanied by a written report prepared and signed by the  
17 witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).

18 Within twenty (20) days after the designation of expert  
19 witnesses, any party may designate a supplemental list of expert  
20 witnesses who will express an opinion on a subject covered by an  
21 expert designated by an adverse party. The right to designate a  
22 supplemental expert for rebuttal purposes only shall apply to a  
23 party who has not previously disclosed an expert witness on the  
24 date set for expert witness disclosure by this Pretrial  
25 Scheduling Order.

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

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

6 (a) that the necessity for the witness could not have been  
7 reasonably anticipated at the time the list was proffered;

8 (b) that the Court and opposing counsel were promptly notified  
9 upon discovery of the witness; and (c) that the witness was  
10 promptly made available for deposition.

11 For purposes of this Pretrial Scheduling Order, an "expert"  
12 is any person who may be used at trial to present evidence under  
13 Rules 702, 703, and 705 of the Federal Rules of Evidence, which  
14 include both "percipient experts" (persons who, because of their  
15 expertise, have rendered expert opinions in the normal course of  
16 their work duties or observations pertinent to the issues in the  
17 case) and "retained experts" (persons specifically designated by  
18 a party to be a testifying expert for the purposes of  
19 litigation).

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

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

8 Counsel are instructed to complete all discovery of expert  
9 witnesses in a timely manner in order to comply with the Court's  
10 deadline for filing dispositive motions.

11 VI. MOTION HEARING SCHEDULE

12 There are no motions pending before this Court. Any motion  
13 that may have been pending prior to judgment being entered in  
14 this case was terminated when that judgment was entered.  
15 Accordingly, should the parties intend to file any new motions,  
16 they are directed to file anew in accordance with the local  
17 rules.

18 All dispositive motions, except motions for continuances,  
19 temporary restraining orders or other emergency applications,  
20 shall be heard no later than **September 16, 2010**. The parties are  
21 responsible for ensuring that all motions are filed to allow for  
22 proper notice of the hearing under the Federal Rules of Civil  
23 Procedure and/or Local Rules. Available hearing dates may be  
24 obtained by calling Stephanie Deutsch, Courtroom Deputy Clerk, at  
25 (916) 930-4207.

26 All purely legal issues are to be resolved by timely  
27 pretrial motions. Local Rule 78-230 governs the calendaring and  
28 procedures of civil motions with the following additions:

1 (a) The opposition and reply must be filed by  
2 **4:00 p.m.** on the day due; and

3 (b) When the last day for filing an opposition brief  
4 falls on a legal holiday, the opposition brief  
5 shall be filed on the last court day immediately  
6 preceding the legal holiday.

7 Failure to comply with Local Rule 78-230(c), as modified by  
8 this Order, may be deemed consent to the motion and the Court may  
9 dispose of the motion summarily. Further, failure to timely  
10 oppose a summary judgment motion<sup>2</sup> may result in the granting of  
11 that motion if the movant shifts the burden to the nonmovant to  
12 demonstrate that a genuine issue of material fact remains for  
13 trial.

14 The Court places a page limit of twenty (20) pages on all  
15 initial moving papers, twenty (20) pages on oppositions, and ten  
16 (10) pages for replies. All requests for page limit increases  
17 must be made in writing to the Court setting forth any and all  
18 reasons for any increase in page limit at least fourteen (14)  
19 days prior to the filing of the motion.

20 For the Court's convenience, citations to Supreme Court  
21 cases should include parallel citations to the Supreme Court  
22 Reporter.

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27 <sup>2</sup> The Court urges any party that contemplates bringing a  
28 motion for summary judgment or who must oppose a motion for  
summary judgment to review Local Rule 56-260.

1 The parties are reminded that a motion in limine is a  
2 pretrial procedural device designed to address the admissibility  
3 of evidence. The Court will look with disfavor upon  
4 dispositional motions (except those noted on page 3) presented at  
5 the Final Pretrial Conference or at trial in the guise of motions  
6 in limine.

7 The parties are cautioned that failure to raise a  
8 dispositive legal issue that could have been tendered to the  
9 court by proper pretrial motion prior to the dispositive motion  
10 cut-off date may constitute waiver of such issue.

11 VII. FINAL PRETRIAL CONFERENCE

12 The Final Pretrial Conference is set for **January 27, 2011**,  
13 at **2:00 p.m.** At least one of the attorneys who will conduct the  
14 trial for each of the parties shall attend the Final Pretrial  
15 Conference. If by reason of illness or other unavoidable  
16 circumstance a trial attorney is unable to attend, the attorney  
17 who attends in place of the trial attorney shall have equal  
18 familiarity with the case and equal authorization to make  
19 commitments on behalf of the client.

20 Counsel for all parties are to be fully prepared for trial  
21 at the time of the Final Pretrial Conference, with no matters  
22 remaining to be accomplished except production of witnesses for  
23 oral testimony.

24 The parties shall file, not later than **January 6, 2011**, a  
25 Joint Final Pretrial Conference Statement. The provisions of  
26 Local Rules 16-281 shall apply with respect to the matters to be  
27 included in the Joint Final Pretrial Conference Statement.

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1 In addition to those subjects listed in Local Rule 16-281(b), the  
2 parties are to provide the Court with a plain, concise statement  
3 that identifies every non-discovery motion tendered to the Court  
4 and its resolution. Failure to comply with Local Rule 16-281, as  
5 modified by this Pretrial Scheduling Order, may be grounds for  
6 sanctions.

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

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

22 Each party shall identify and concisely list each disputed  
23 evidentiary issue which will be the subject of a motion in  
24 limine.

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1 Each party shall identify the points of law which concisely  
2 describe the legal issues of the trial which will be discussed in  
3 the parties' respective trial briefs. Points of law should  
4 reflect issues derived from the core undisputed and disputed  
5 facts. Parties shall not include argument or authorities with  
6 any point of law.

7 The parties shall prepare a joint statement of the case in  
8 plain concise language which will be read to the jury at the  
9 beginning of the trial. The purpose of the joint statement is to  
10 inform the jury what the case is about.

11 The parties are reminded that pursuant to Local Rule 16-281  
12 they are required to list in the Joint Final Pretrial Conference  
13 Statement all witnesses and exhibits they propose to offer at  
14 trial. After the name of each witness, each party shall provide  
15 a brief statement of the nature of the testimony to be proffered.  
16 The parties may file a joint list or each party may file separate  
17 lists. These list(s) shall not be contained in the body of the  
18 Joint Final Pretrial Conference Statement itself, but shall be  
19 attached as separate documents to be used as addenda to the Final  
20 Pretrial Order.

21 Plaintiff's exhibits shall be listed numerically.  
22 Defendants' exhibits shall be listed alphabetically. The parties  
23 shall use the standard exhibit stickers provided by the Court  
24 Clerk's Office: pink for Plaintiff and blue for Defendant. In  
25 the event that the alphabet is exhausted, the exhibits shall be  
26 marked "AA-ZZ" and "AAA-ZZZ" etc. After three letters, note the  
27 number of letters in parenthesis (i.e., "AAAA(4)") to reduce  
28 confusion at trial.

1 All multi-page exhibits shall be stapled or otherwise fastened  
2 together and each page within the exhibit shall be numbered. All  
3 photographs shall be marked individually. The list of exhibits  
4 shall not include excerpts of depositions, which may be used to  
5 impeach witnesses. In the event that Plaintiff and Defendants'  
6 offer the same exhibit during trial, that exhibit shall be  
7 referred to by the designation the exhibit is first identified.  
8 The Court cautions the parties to pay attention to this detail so  
9 that all concerned, including the jury, will not be confused by  
10 one exhibit being identified with both a number and a letter.

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

17 The parties also are reminded that pursuant to Rule 16 of  
18 the Federal Rules of Civil Procedure it will be their duty at the  
19 Final Pretrial Conference to aid the Court in: (a) the  
20 formulation and simplification of issues and the elimination of  
21 frivolous claims or defenses; (b) the settling of facts that  
22 should properly be admitted; and (c) the avoidance of unnecessary  
23 proof and cumulative evidence. Counsel must cooperatively  
24 prepare the Joint Final Pretrial Conference Statement and  
25 participate in good faith at the Final Pretrial Conference with  
26 these aims in mind.

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1 A failure to do so may result in the imposition of sanctions  
2 which may include monetary sanctions, orders precluding proof,  
3 elimination of claims or defenses, or such other sanctions as the  
4 Court deems appropriate.

5 VIII. TRIAL BRIEFS

6 The parties shall file trial briefs not later than  
7 **January 13, 2011** by **4:00 p.m.** Counsel are directed to Local Rule  
8 16-285 regarding the content of trial briefs.

9 IX. EVIDENTIARY AND/OR PROCEDURAL MOTIONS

10 Any evidentiary or procedural motions are to be filed by  
11 **January 6, 2011.** Oppositions must be filed by **January 13, 2011**  
12 and any reply must be filed by **January 20, 2011.** The motions  
13 will be heard by the Court at the same time as the Final Pretrial  
14 Conference.

15 X. TRIAL SETTING

16 The trial is set for **March 14, 2011, at 9:00 a.m.** Trial  
17 will be by jury. The panel will consist of **eight (8) jurors.**  
18 The parties estimate a trial length of **fifteen (15) days.**

19 XI. SETTLEMENT CONFERENCE

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

24 Counsel are instructed to have a principal with full  
25 settlement authority present at the Settlement Conference or to  
26 be fully authorized to settle the matter on any terms.

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1 At least seven (7) calendar days before the settlement  
2 conference, counsel for each party shall submit to the chambers  
3 of the settlement judge a confidential Settlement Conference  
4 Statement. Such statements are neither to be filed with the  
5 Clerk nor served on opposing counsel. Each party, however, shall  
6 serve notice on all other parties that the statement has been  
7 submitted. If the settlement judge is not the trial judge, the  
8 Settlement Conference Statement shall not be disclosed to the  
9 trial judge.

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

14 XII. VOLUNTARY DISPUTE RESOLUTION PROGRAM

15 Pursuant to Local Rule 16-271 parties will need to lodge a  
16 stipulation and proposed order requesting referral to the  
17 Voluntary Dispute Resolution Program.

18 XIII. MODIFICATION OF PRETRIAL SCHEDULING ORDER

19 The parties are reminded that pursuant to Rule 16(b) of the  
20 Federal Rules of Civil Procedure, the Pretrial Scheduling Order  
21 shall not be modified except by leave of court upon a showing of  
22 **good cause**. Agreement by the parties pursuant to stipulation  
23 alone to modify the Pretrial Scheduling Order does not constitute  
24 good cause. Except in extraordinary circumstances,  
25 unavailability of witnesses or counsel will not constitute good  
26 cause.

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1           XIV. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

2           This Status Order will become final without further order of  
3 the Court unless objections are filed within seven (7) *court* days  
4 of the date this Order is electronically filed.

5           IT IS SO ORDERED.

6           Dated: May 15, 2009

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10 MORRISON C. ENGLAND, JR.  
11 UNITED STATES DISTRICT JUDGE  
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