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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONALD HAYES ALBEE, No. 2:09-cv-01145-MCE-EFB
 Plaintiff,
 v. PRETRIAL SCHEDULING ORDER
CONTINENTAL TIRE NORTH
AMERICA, INC., an Ohio
corporation, et al.,
 Defendants.

_____ /

The Court makes the following Pretrial Scheduling Order.

I. SERVICE OF PROCESS

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

II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

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

III. JURISDICTION/VENUE

Jurisdiction is predicated upon 28 U.S.C. section 1332.
Jurisdiction and venue are not contested.

1 IV. DISCOVERY

2 Discovery is closed.

3 V. DISCLOSURE OF EXPERT WITNESSES

4 The expert disclosure deadline has passed.

5 VI. MOTION HEARING SCHEDULE

6 The dispositive motion deadline has passed.

7 VII. FINAL PRETRIAL CONFERENCE

8 The Final Pretrial Conference is set for **November 15, 2012**
9 at **2:00 p.m.** At least one of the attorneys who will conduct the
10 trial for each of the parties shall attend the Final Pretrial
11 Conference. If by reason of illness or other unavoidable
12 circumstance a trial attorney is unable to attend, the attorney
13 who attends in place of the trial attorney shall have equal
14 familiarity with the case and equal authorization to make
15 commitments on behalf of the client.

16 Counsel for all parties are to be fully prepared for trial
17 at the time of the Final Pretrial Conference, with no matters
18 remaining to be accomplished except production of witnesses for
19 oral testimony.

20 The parties shall file, not later than **October 25, 2012**, a
21 Joint Final Pretrial Conference Statement. The provisions of
22 Local Rules 281 shall apply with respect to the matters to be
23 included in the Joint Final Pretrial Conference Statement. In
24 addition to those subjects listed in Local Rule 281(b), the
25 parties are to provide the Court with a plain, concise statement
26 that identifies every non-discovery motion tendered to the Court
27 and its resolution.

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1 Failure to comply with Local Rule 281, as modified by this
2 Pretrial Scheduling Order, may be grounds for sanctions.

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

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

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

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

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1 The parties shall prepare a joint statement of the case in
2 plain concise language which will be read to the jury at the
3 beginning of the trial. The purpose of the joint statement is to
4 inform the jury what the case is about.

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

15 Plaintiff's exhibits shall be listed numerically.
16 Defendants' exhibits shall be listed alphabetically. The parties
17 shall use the standard exhibit stickers provided by the Court
18 Clerk's Office: pink for plaintiff and blue for defendant. In
19 the event that the alphabet is exhausted, the exhibits shall be
20 marked "AA-ZZ" and "AAA-ZZZ" etc. After three letters, note the
21 number of letters in parenthesis (i.e., "AAAA(4)") to reduce
22 confusion at trial. All multi-page exhibits shall be stapled or
23 otherwise fastened together and each page within the exhibit
24 shall be numbered. All photographs shall be marked individually.
25 The list of exhibits shall not include excerpts of depositions,
26 which may be used to impeach witnesses.

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1 In the event that Plaintiff and Defendants offer the same exhibit
2 during trial, that exhibit shall be referred to by the
3 designation the exhibit is first identified. The Court cautions
4 the parties to pay attention to this detail so that all
5 concerned, including the jury, will not be confused by one
6 exhibit being identified with both a number and a letter.

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

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

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1 VIII. TRIAL BRIEFS

2 The parties shall file trial briefs not later than
3 **November 1, 2012**. Counsel are directed to Local Rule 285
4 regarding the content of trial briefs.

5 IX. EVIDENTIARY AND/OR PROCEDURAL MOTIONS

6 Any evidentiary or procedural motions are to be filed by
7 **October 25, 2012**. Oppositions must be filed by **November 1, 2012**
8 and any reply must be filed by **November 8, 2012**. The motions
9 will be heard by the Court at the same time as the Final Pretrial
10 Conference.

11 X. TRIAL SETTING

12 The trial is set for **January 7, 2013 at 9:00 a.m.** Trial
13 will be by jury. The panel will consist of **eight (8) jurors**.
14 The parties estimate a trial length of **twenty (20) days**.

15 XI. SETTLEMENT CONFERENCE

16 At the Final Pretrial Conference, the Court may set a
17 settlement conference if the parties so request. In the event no
18 settlement conference is requested, the parties are free to
19 continue to mediate or attempt to settle the case with the
20 understanding that the trial date is a firm date.

21 In the event a settlement conference is set by the Court,
22 counsel are instructed to have a principal with full settlement
23 authority present at the Settlement Conference or to be fully
24 authorized to settle the matter on any terms. At least seven (7)
25 calendar days before the settlement conference, counsel for each
26 party shall submit to the chambers of the settlement judge a
27 confidential Settlement Conference Statement.

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1 Such statements are neither to be filed with the Clerk nor served
2 on opposing counsel. Each party, however, shall serve notice on
3 all other parties that the statement has been submitted. If the
4 settlement judge is not the trial judge, the Settlement
5 Conference Statement shall not be disclosed to the trial judge.

6 Notwithstanding the foregoing, the parties may request a
7 settlement conference prior to the Final Pretrial Conference if
8 they feel it would lead to the possible resolution of the case.
9 In the event an early settlement conference date is requested,
10 the parties shall file said request jointly, in writing. The
11 request must state whether the parties waive disqualification,
12 pursuant to Local Rule 270(b), before a settlement judge can be
13 assigned to the case. Absent the parties' affirmatively
14 requesting that the assigned Judge or Magistrate Judge
15 participate in the settlement conference AND waiver, pursuant to
16 Local Rule 270(b), a settlement judge will be randomly assigned
17 to the case.

18 XII. VOLUNTARY DISPUTE RESOLUTION PROGRAM

19 Pursuant to Local Rule 271 parties will need to lodge a
20 stipulation and proposed order requesting referral to the
21 Voluntary Dispute Resolution Program.

22 XIII. MODIFICATION OF PRETRIAL SCHEDULING ORDER

23 The parties are reminded that pursuant to Rule 16(b) of the
24 Federal Rules of Civil Procedure, the Pretrial Scheduling Order
25 shall not be modified except by leave of court upon a showing of
26 **good cause**. Agreement by the parties pursuant to stipulation
27 alone to modify the Pretrial Scheduling Order does not constitute
28 good cause.

1 Except in extraordinary circumstances, unavailability of
2 witnesses or counsel will not constitute good cause.

3 XIV. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

4 This Pretrial Scheduling Order will become final without
5 further order of the Court unless objections are filed within
6 seven (7) court days of service of this Order.

7 IT IS SO ORDERED.

8 Dated: May 10, 2011

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MORRISON C. ENGLAND, JR.
12 UNITED STATES DISTRICT JUDGE
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