



1           III. JURISDICTION/VENUE

2           Jurisdiction is predicated upon 28 U.S.C. §§ 1331 and 1367;  
3 18 U.S.C. § 1964(c) and 15 U.S.C. § 1640(e). Jurisdiction and  
4 venue are not contested.

5           IV. DISCOVERY

6           All discovery, with the exception of expert discovery, shall  
7 be completed by **August 5, 2011**. In this context, "completed"  
8 means that all discovery shall have been conducted so that all  
9 depositions have been taken and any disputes relative to  
10 discovery shall have been resolved by appropriate order if  
11 necessary and, where discovery has been ordered, the order has  
12 been obeyed. All motions to compel discovery must be noticed on  
13 the magistrate judge's calendar in accordance with the local  
14 rules of this Court.

15           V. DISCLOSURE OF EXPERT WITNESSES

16           All counsel are to designate in writing, file with the  
17 Court, and serve upon all other parties the name, address, and  
18 area of expertise of each expert that they propose to tender at  
19 trial not later than **October 5, 2011**.<sup>1</sup> The designation shall be  
20 accompanied by a written report prepared and signed by the  
21 witness. The report shall comply with Fed. R. Civ. P.  
22 26(a)(2)(B).

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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           Within twenty (20) days after the designation of expert  
2 witnesses, any party may designate a supplemental list of expert  
3 witnesses who will express an opinion on a subject covered by an  
4 expert designated by an adverse party. The right to designate a  
5 supplemental expert for rebuttal purposes only shall apply to a  
6 party who has not previously disclosed an expert witness on the  
7 date set for expert witness disclosure by this Pretrial  
8 Scheduling Order.

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

- 14 (a) that the necessity for the witness could not have been  
15 reasonably anticipated at the time the list was proffered;  
16 (b) that the Court and opposing counsel were promptly notified  
17 upon discovery of the witness; and (c) that the witness was  
18 promptly made available for deposition.

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

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

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

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

17 VI. MOTION HEARING SCHEDULE

18 All dispositive motions, except motions for continuances,  
19 temporary restraining orders or other emergency applications,  
20 shall be heard no later than December 5, 2011. 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 presented at the Final Pretrial Conference  
5 or at trial in the guise of motions in limine.

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

10 VII. FINAL PRETRIAL CONFERENCE

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

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

23 The parties shall file, not later than **April 19, 2012**, a  
24 Joint Final Pretrial Conference Statement. The provisions of  
25 Local Rules 16-281 shall apply with respect to the matters to be  
26 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.

25 Each party shall identify the points of law which concisely  
26 describe the legal issues of the trial which will be discussed in  
27 the parties' respective trial briefs.

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1 Points of law should reflect issues derived from the core  
2 undisputed and disputed facts. Parties shall not include  
3 argument or authorities with any point of law.

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

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

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

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

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

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

1 VIII. TRIAL BRIEFS

2 The parties shall file trial briefs not later than **April 26,**  
3 **2012 by 4:00 p.m.** Counsel are directed to Local Rule 16-285  
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 **April 19, 2012.** Oppositions must be filed by **April 26, 2012** and  
8 any reply must be filed by **May 3, 2012.** The motions will be  
9 heard by the Court at the same time as the Final Pretrial  
10 Conference.

11 X. TRIAL SETTING

12 The trial is set for **July 9, 2012 at 9:00 a.m.** Trial will  
13 be by jury. The panel will consist of **eight (8) jurors.** The  
14 parties estimate a trial length of **five (5) 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 16-270(b), before a settlement judge can  
13 be 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 16-270(b), a settlement judge will be randomly  
17 assigned to the case.

18 XII. VOLUNTARY DISPUTE RESOLUTION PROGRAM

19 Pursuant to Local Rule 16-271 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: November 18, 2009

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