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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON, No. 2:11-cv-01181-MCE-DAD  
Plaintiff,  
v. PRETRIAL SCHEDULING ORDER  
GARY FONSECA, et al.,  
Defendants.

After reviewing the parties' Joint Status Report, 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. §§ 1331, 1343 and 1367. Jurisdiction and venue are not contested.

1 IV. DISCOVERY

2 All discovery, with the exception of expert discovery, shall  
3 be completed by **August 24, 2012**. In this context, "completed"  
4 means 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 **October 24, 2012**.<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.  
18 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 The last day to hear dispositive motions shall be  
19 **February 21, 2013.** The parties shall comply with the following  
20 filing deadlines:

21 Dispositive motion	filed at least 8 weeks prior to hearing
22 Opposition and any 23 cross-motion	filed at least 5 weeks prior to hearing
24 Reply and opposition to cross-motion	filed at least 3 weeks prior to hearing
25 Reply to cross-motion	filed at least 1 week prior to hearing

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1 The parties are directed to the Court's website for  
2 available hearing dates. (www.caed.uscourts.gov → choose Court  
3 Calendar → choose Judge England → choose More Calendaring  
4 Information)

5 All purely legal issues are to be resolved by timely  
6 pretrial motions. Failure to comply with Local Rules 230 and  
7 260, as modified by this Order, may be deemed consent to the  
8 motion and the Court may dispose of the motion summarily.  
9 Further, failure to timely oppose a summary judgment motion<sup>2</sup> may  
10 result in the granting of that motion if the movant shifts the  
11 burden to the nonmovant to demonstrate that a genuine issue of  
12 material fact remains for trial.

13 The Court places a page limit for points and authorities  
14 (exclusive of exhibits and other supporting documentation) of  
15 twenty (20) pages on all initial moving papers, twenty (20) pages  
16 on oppositions, and ten (10) pages for replies. All requests for  
17 page limit increases must be made in writing to the Court setting  
18 forth any and all reasons for any increase in page limit at least  
19 fourteen (14) 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 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 2, 2013**, 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.

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1 The parties shall file, not later than **April 11, 2013**, a  
2 Joint Final Pretrial Conference Statement. The provisions of  
3 Local Rules 281 shall apply with respect to the matters to be  
4 included in the Joint Final Pretrial Conference Statement. In  
5 addition to those subjects listed in Local Rule 281(b), the  
6 parties are to provide the Court with a plain, concise statement  
7 that identifies every non-discovery motion tendered to the Court  
8 and its resolution. Failure to comply with Local Rule 281, as  
9 modified by this Pretrial Scheduling Order, may be grounds for  
10 sanctions.

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

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

26 Each party shall identify and concisely list each disputed  
27 evidentiary issue which will be the subject of a motion in  
28 limine.

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

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1 Plaintiff's exhibits shall be listed numerically.  
2 Defendants' exhibits shall be listed alphabetically. The parties  
3 shall use the standard exhibit stickers provided by the Court  
4 Clerk's Office: pink for plaintiff and blue for defendant. In  
5 the event that the alphabet is exhausted, the exhibits shall be  
6 marked "AA-ZZ" and "AAA-ZZZ" etc. After three letters, note the  
7 number of letters in parenthesis (i.e., "AAA(4)") to reduce  
8 confusion at trial. All multi-page exhibits shall be stapled or  
9 otherwise fastened together and each page within the exhibit  
10 shall be numbered. All photographs shall be marked individually.  
11 The list of exhibits shall not include excerpts of depositions,  
12 which may be used to impeach witnesses. In the event that  
13 Plaintiff and Defendants offer the same exhibit during trial,  
14 that exhibit shall be referred to by the designation the exhibit  
15 is first identified. The Court cautions the parties to pay  
16 attention to this detail so that all concerned will not be  
17 confused by one exhibit being identified with both a number and a  
18 letter.

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

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1 The parties also are reminded that pursuant to Rule 16 of  
2 the Federal Rules of Civil Procedure it will be their duty at the  
3 Final Pretrial Conference to aid the Court in: (a) the  
4 formulation and simplification of issues and the elimination of  
5 frivolous claims or defenses; (b) the settling of facts that  
6 should properly be admitted; and (c) the avoidance of unnecessary  
7 proof and cumulative evidence. Counsel must cooperatively  
8 prepare the Joint Final Pretrial Conference Statement and  
9 participate in good faith at the Final Pretrial Conference with  
10 these aims in mind. A failure to do so may result in the  
11 imposition of sanctions which may include monetary sanctions,  
12 orders precluding proof, elimination of claims or defenses, or  
13 such other sanctions as the Court deems appropriate.

14 VIII. TRIAL BRIEFS

15 The parties shall file trial briefs not later than **April 18,**  
16 **2013.** Counsel are directed to Local Rule 285 regarding the  
17 content of trial briefs.

18 IX. EVIDENTIARY AND/OR PROCEDURAL MOTIONS

19 Any evidentiary or procedural motions are to be filed by  
20 **April 11, 2013.** Oppositions must be filed by **April 18, 2013,** and  
21 any reply must be filed by **April 25, 2013.** The motions will be  
22 heard by the Court at the same time as the Final Pretrial  
23 Conference.

24 X. TRIAL SETTING

25 The trial is set for **June 24, 2013,** at **9:00 a.m.** Trial will  
26 be a bench trial. The parties estimate a trial length of **three**  
27 **(3) days.**

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1 XI. SETTLEMENT CONFERENCE

2 At the Final Pretrial Conference, the Court may set a  
3 settlement conference if the parties so request. In the event no  
4 settlement conference is requested, the parties are free to  
5 continue to mediate or attempt to settle the case with the  
6 understanding that the trial date is a firm date.

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

19 Notwithstanding the foregoing, the parties may request a  
20 settlement conference prior to the Final Pretrial Conference if  
21 they feel it would lead to the possible resolution of the case.

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1 In the event an early settlement conference date is requested,  
2 the parties shall file said request jointly, in writing. The  
3 request must state whether the parties waive disqualification,  
4 pursuant to Local Rule 270(b), before a settlement judge can be  
5 assigned to the case. Absent the parties' affirmatively  
6 requesting that the assigned Judge or Magistrate Judge  
7 participate in the settlement conference AND waiver, pursuant to  
8 Local Rule 270(b), a settlement judge will be randomly assigned  
9 to the case.

10 XII. VOLUNTARY DISPUTE RESOLUTION PROGRAM

11 Upon the stipulation of the parties in their August 2, 2011,  
12 Joint Status Report, this matter is hereby referred to the  
13 Voluntary Dispute Resolution Program.

14 XIII. MODIFICATION OF PRETRIAL SCHEDULING ORDER

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

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1           XIV. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

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

5           IT IS SO ORDERED.

6 Dated: September 12, 2011

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