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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JESUS DE LEON, ET AL.,

No. 2:12-cv-2740-TLN-EFB

Plaintiffs,

AMENDED PRETRIAL SCHEDULING ORDER

v.

ROBERT BURKETT, ET AL.,

Defendants.

_____ /

After reviewing Defendants' request to allow further pleading amendments, the Court amends the 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

The parties have until October 17, 2013, to amend pleadings. After that date, further amendments to pleadings will not be allowed except by leave of court, good cause having been shown.

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1 III. JURISDICTION/VENUE

2 Jurisdiction is predicated upon 28 U.S.C. § 1331 and Section
3 16(b) of the FLSA, and 29 U.S.C. § 216(b). Jurisdiction and
4 venue are not contested.

5
6 **PHASE I - CLASS CERTIFICATION**

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8 IV. CLASS CERTIFICATION

9 The Plaintiff's motion for class certification shall be
10 filed by **January 16, 2014**. Defendant's opposition shall be filed
11 by **February 6, 2014**. Plaintiff's reply shall be filed by
12 **February 20, 2014**. The Class Certification Hearing is set for
13 **March 13, 2014, at 2:00 p.m.**

14 **PHASE II**

15
16 V. DISCOVERY

17 All discovery, with the exception of expert discovery, shall
18 be completed by **November 13, 2014**. In this context, "completed"
19 means that all discovery shall have been conducted so that all
20 depositions have been taken and any disputes relative to
21 discovery shall have been resolved by appropriate order if
22 necessary and, where discovery has been ordered, the order has
23 been obeyed. All motions to compel discovery must be noticed on
24 the magistrate judge's calendar in accordance with the local
25 rules of this Court.

26 VI. DISCLOSURE OF EXPERT WITNESSES

27 All counsel are to designate in writing, file with the
28 Court, and serve upon all other parties the name, address, and

1 area of expertise of each expert that they propose to tender at
2 trial not later than **January 13, 2015**.¹ The designation shall be
3 accompanied by a written report prepared and signed by the
4 witness. The report shall comply with Fed. R. Civ. P.
5 26(a)(2)(B).

6 Within thirty (30) days after the designation of expert
7 witnesses, any party may designate a supplemental list of expert
8 witnesses who will express an opinion on a subject covered by an
9 expert designated by an adverse party. The right to designate a
10 supplemental expert for rebuttal purposes only shall apply to a
11 party who has not previously disclosed an expert witness on the
12 date set for expert witness disclosure by this Pretrial
13 Scheduling Order.

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

19 (a) that the necessity for the witness could not have been
20 reasonably anticipated at the time the list was proffered;
21 (b) that the Court and opposing counsel were promptly notified
22 upon discovery of the witness; and (c) that the witness was
23 promptly made available for deposition.

24 For purposes of this Pretrial Scheduling Order, an "expert"
25 is any person who may be used at trial to present evidence under

26
27 ¹ 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 Rules 702, 703, and 705 of the Federal Rules of Evidence, which
2 include both "percipient experts" (persons who, because of their
3 expertise, have rendered expert opinions in the normal course of
4 their work duties or observations pertinent to the issues in the
5 case) and "retained experts" (persons specifically designated by
6 a party to be a testifying expert for the purposes of
7 litigation).

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

14 All experts designated are to be fully prepared at the time
15 of designation to render an informed opinion, and give their
16 bases for their opinion, so that they will be able to give full
17 and complete testimony at any deposition taken by the opposing
18 party. Experts will not be permitted to testify at the trial as
19 to any information gathered or evaluated, or opinion formed,
20 after deposition taken subsequent to designation.

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

24 VII. MOTION HEARING SCHEDULE

25 The last day to hear dispositive motions shall be **April 9,**
26 **2015.** The parties shall comply with the following filing
27 deadlines:

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| | | |
|---|-------------------------|------------------------|
| 1 | Dispositive motion | filed at least 8 weeks |
| 2 | | prior to hearing |
| 3 | Opposition and any | filed at least 5 weeks |
| 4 | cross-motion | prior to hearing |
| 5 | Reply and opposition to | filed at least 3 weeks |
| 6 | cross-motion | prior to hearing |
| 7 | Reply to cross-motion | filed at least 1 week |
| 8 | | prior to hearing |

8 All purely legal issues are to be resolved by timely
9 pretrial motions. Failure to comply with Local Rules 230 and
10 260, as modified by this Order, may be deemed consent to the
11 motion and the Court may dispose of the motion summarily.
12 Further, failure to timely oppose a summary judgment motion² may
13 result in the granting of that motion if the movant shifts the
14 burden to the nonmovant to demonstrate that a genuine issue of
15 material fact remains for trial.

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

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

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27 ² 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 VIII. FINAL PRETRIAL CONFERENCE

11 The Final Pretrial Conference is set for **June 18, 2015** 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 **May 21, 2015**, a Joint
24 Final Pretrial Conference Statement. The provisions of Local
25 Rules 281 shall apply with respect to the matters to be included
26 in the Joint Final Pretrial Conference Statement. In addition to
27 those subjects listed in Local Rule 281(b), the parties are to
28 provide the Court with a plain, concise statement that identifies

1 every non-discovery motion tendered to the Court and its
2 resolution. Failure to comply with Local Rule 281, as modified
3 by this Pretrial Scheduling Order, may be grounds for sanctions.

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

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

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

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

28 The parties shall prepare a joint statement of the case in

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

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

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

1 attention to this detail so that all concerned, including the
2 jury, will not be confused by one exhibit being identified with
3 both a number and a letter.

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

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

23 IX. TRIAL BRIEFS

24 The parties shall file trial briefs not later than **June 4,**
25 **2015.** Counsel are directed to Local Rule 285 regarding the
26 content of trial briefs.

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1 X. EVIDENTIARY AND/OR PROCEDURAL MOTIONS

2 Any evidentiary or procedural motions are to be filed by **May**
3 **28, 2015**. Oppositions must be filed by **June 4, 2015** and any
4 reply must be filed by **June 11, 2015**. The motions will be heard
5 by the Court at the same time as the Final Pretrial Conference.

6 XI. TRIAL SETTING

7 The trial is set for **August 31, 2015 at 9:00 a.m.** Trial
8 will be by jury. The panel will consist of **eight (8) jurors**.
9 The parties estimate a trial length of **ten (10) days**.

10 XII. SETTLEMENT CONFERENCE

11 At the Final Pretrial Conference, the Court may set a
12 settlement conference if the parties so request. In the event no
13 settlement conference is requested, the parties are free to
14 continue to mediate or attempt to settle the case with the
15 understanding that the trial date is a firm date.

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

28 Notwithstanding the foregoing, the parties may request a

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

12 XIII. VOLUNTARY DISPUTE RESOLUTION PROGRAM

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

16 XIV. MODIFICATION OF PRETRIAL SCHEDULING ORDER

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

24 XV. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

25 This Pretrial Scheduling Order will become final without
26 further order of the Court unless objections are filed within
27 seven (7) *court* days of service of this Order.

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