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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RUSSELL TURNER, dba TURNER &  
ASSOCIATES,  
  
Plaintiff,  
  
v.  
  
THE DISTANCE LEARNING  
COMPANY, INC, dba  
TRAFFICSCHOOLONLINE.COM, et  
al.,  
  
Defendants.

No. 2:14-cv-01834-TLN-KJN

PRETRIAL SCHEDULING ORDER

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.

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1           III.    JURISDICTION/VENUE

2           Jurisdiction is predicated upon 13 U.S.C. §§ 1331 and 1338.  
3           Jurisdiction and venue are not contested.

4           IV.    DISCOVERY

5           All discovery, with the exception of expert discovery, shall  
6           be completed by **September 1, 2015**. In this context, "completed"  
7           means that all discovery shall have been conducted so that all  
8           depositions have been taken and any disputes relative to  
9           discovery shall have been resolved by appropriate order if  
10          necessary and, where discovery has been ordered, the order has  
11          been obeyed. All motions to compel discovery must be noticed on  
12          the magistrate judge's calendar in accordance with the local  
13          rules of this Court.

14          Any request to deviate from the Federal Rules of Civil  
15          Procedure should be made to the assigned Magistrate Judge.

16          V.    DISCLOSURE OF EXPERT WITNESSES

17          All counsel are to designate in writing, file with the  
18          Court, and serve upon all other parties the name, address, and  
19          area of expertise of each expert that they propose to tender at  
20          trial not later than **November 5, 2015**.<sup>1</sup> The designation shall be  
21          accompanied by a written report prepared and signed by the  
22          witness. The report shall comply with Fed. R. Civ. P.  
23          26(a)(2)(B).

24          Within twenty (20) days after the designation of expert  
25          witnesses, any party may designate a supplemental list of expert  
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27          <sup>1</sup> The discovery of experts will include whether any motions based on Daubert  
28          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 witnesses who will express an opinion on a subject covered by an  
2 expert designated by an adverse party.

3       The right to designate a supplemental expert for rebuttal  
4 purposes only shall apply to a party who has not previously  
5 disclosed an expert witness on the date set for expert witness  
6 disclosure by this Pretrial Scheduling Order.

7       Failure of a party to comply with the disclosure schedule as  
8 set forth above in all likelihood will preclude that party from  
9 calling the expert witness at the time of trial. An expert  
10 witness not appearing on the designation will not be permitted to  
11 testify unless the party offering the witness demonstrates: (a)  
12 that the necessity for the witness could not have been reasonably  
13 anticipated at the time the list was proffered; (b) that the  
14 Court and opposing counsel were promptly notified upon discovery  
15 of the witness; and (c) that the witness was promptly made  
16 available for deposition.

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

26       Each party shall identify whether a disclosed expert is  
27 percipient, retained, or both. It will be assumed that a party  
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1 designating a retained expert has acquired the express permission  
2 of the witness to be so listed.

3 Parties designating percipient experts must state in the  
4 designation who is responsible for arranging the deposition of  
5 such persons.

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

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

16 VI. MOTION HEARING SCHEDULE

17 All dispositive motions, except motions for continuances,  
18 temporary restraining orders or other emergency applications,  
19 shall be heard no later than **February 25, 2016**.

20 All purely legal issues are to be resolved by timely  
21 pretrial motions. Local Rule 230 governs the calendaring and  
22 procedures of civil motions with the following additions:

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

25 (b) When the last day for filing an opposition brief falls  
26 on a legal holiday, the opposition brief shall be filed  
27 on the last court day immediately preceding the legal  
28 holiday.

1 Failure to comply with Local Rule 230(c), as modified by  
2 this order, may be deemed consent to the motion and the court may  
3 dispose of the motion summarily. Further, failure to timely  
4 oppose a summary judgment motion<sup>2</sup> may result in the granting of  
5 that motion if the movant shifts the burden to the nonmovant to  
6 demonstrate that a genuine issue of material fact remains for  
7 trial.

8 The Court places a page limit for points and authorities  
9 (exclusive of exhibits and other supporting documentation) of  
10 twenty (20) pages on all initial moving papers, twenty (20) pages  
11 on oppositions, and ten (10) pages for replies. All requests for  
12 page limit increases must be made in writing to the Court setting  
13 forth any and all reasons for any increase in page limit at least  
14 fourteen (14) days prior to the filing of the motion.

15 For the Court's convenience, citations to Supreme Court  
16 cases should include parallel citations to the Supreme Court  
17 Reporter.

18 The parties are reminded that a motion in limine is a  
19 pretrial procedural device designed to address the admissibility  
20 of evidence. The Court will look with disfavor upon  
21 dispositional motions presented in the guise of motions in  
22 limine.

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

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

1 VII. FINAL PRETRIAL CONFERENCE

2 The Final Pretrial Conference is set for **June 2, 2016**, at  
3 **2:00 p.m.** At least one of the attorneys who will conduct the  
4 trial for each of the parties shall attend the Final Pretrial  
5 Conference. If by reason of illness or other unavoidable  
6 circumstance a trial attorney is unable to attend, the attorney  
7 who attends in place of the trial attorney shall have equal  
8 familiarity with the case and equal authorization to make  
9 commitments on behalf of the client.

10 Counsel for all parties are to be fully prepared for trial  
11 at the time of the Final Pretrial Conference, with no matters  
12 remaining to be accomplished except production of witnesses for  
13 oral testimony.

14 The parties shall file, not later than **May 26, 2016**, a Joint  
15 Final Pretrial Conference Statement. The provisions of Local  
16 Rules 281 shall apply with respect to the matters to be included  
17 in the Joint Final Pretrial Conference Statement. In addition to  
18 those subjects listed in Local Rule 281(b), the parties are to  
19 provide the Court with a plain, concise statement that identifies  
20 every non-discovery motion tendered to the Court and its  
21 resolution. Failure to comply with Local Rule 281, as modified  
22 by this Pretrial Scheduling Order, may be grounds for sanctions.

23 At the time of filing the Joint Final Pretrial Conference  
24 Statement, counsel shall also electronically mail to the Court in  
25 digital format compatible with Microsoft Word, the Joint Final  
26 Pretrial Conference Statement in its entirety including the  
27 witness and exhibit lists. **These documents shall be sent to:**  
28 **tlnorders@caed.uscourts.gov.**

1           The parties should identify first the core undisputed facts  
2 relevant to all claims. The parties should then, in a concise  
3 manner, identify those undisputed core facts that are relevant to  
4 each claim. The disputed facts should be identified in the same  
5 manner. Where the parties are unable to agree as to what  
6 disputed facts are properly before the Court for trial, they  
7 should nevertheless list all disputed facts asserted by each  
8 party. Each disputed fact or undisputed fact should be  
9 separately numbered or lettered.

10           Each party shall identify and concisely list each disputed  
11 evidentiary issue which will be the subject of a motion in  
12 limine.

13           Each party shall identify the points of law which concisely  
14 describe the legal issues of the trial which will be discussed in  
15 the parties' respective trial briefs. Points of law should  
16 reflect issues derived from the core undisputed and disputed  
17 facts. Parties shall not include argument or authorities with  
18 any point of law.

19           The parties shall prepare a joint statement of the case in  
20 plain concise language which will be read to the jury at the  
21 beginning of the trial. The purpose of the joint statement is to  
22 inform the jury what the case is about.

23           The parties are reminded that pursuant to Local Rule 281  
24 they are required to list in the Joint Final Pretrial Conference  
25 Statement all witnesses and exhibits they propose to offer at  
26 trial. After the name of each witness, each party shall provide  
27 a brief statement of the nature of the testimony to be proffered.  
28 The parties may file a joint list or each party may file separate

1 lists. These list(s) shall not be contained in the body of the  
2 Joint Final Pretrial Conference Statement itself, but shall be  
3 attached as separate documents to be used as addenda to the Final  
4 Pretrial Order.

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

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



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 fourteen  
16 (14) days before trial. Counsel are directed to Local Rule 285  
17 regarding the content of trial briefs.

18           IX. EVIDENTIARY AND/OR PROCEDURAL MOTIONS

19           It is the Court's practice to hear motions in limine on the  
20 first day of trial. However, depending on the number and nature  
21 of the parties' motions, the need to special set a hearing date  
22 to hear such motions shall be addressed at the Final Pretrial  
23 Conference.

24           X. TRIAL SETTING

25           The trial is set for **August 1, 2016, at 9:00 a.m.** Trial  
26 will be by jury. The panel will consist of eight (8) jurors.  
27 The parties estimate a trial length of **two to four (2-4) 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.  
22 In the event an early settlement conference date is requested,  
23 the parties shall file said request jointly, in writing. The  
24 request must state whether the parties waive disqualification,  
25 pursuant to Local Rule 270(b), before a settlement judge can be  
26 assigned to the case. Absent the parties' affirmatively  
27 requesting that the assigned Judge or Magistrate Judge  
28 participate in the settlement conference AND waiver, pursuant to

1 Local Rule 270(b), a settlement judge will be randomly assigned  
2 to the case.

3 XII. VOLUNTARY DISPUTE RESOLUTION PROGRAM

4 Pursuant to Local Rule 271, parties may stipulate at any  
5 stage in the proceedings to refer the action, in whole or in  
6 part, to the Voluntary Dispute Resolution Program.

7 XIII. MODIFICATION OF PRETRIAL SCHEDULING ORDER

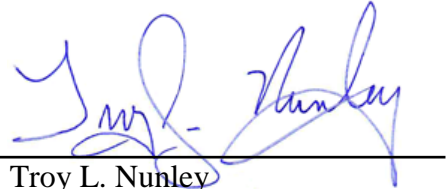
8 The parties are reminded that pursuant to Rule 16(b) of the  
9 Federal Rules of Civil Procedure, the Pretrial Scheduling Order  
10 shall not be modified except by leave of court upon a showing of  
11 **good cause**. Agreement by the parties pursuant to stipulation  
12 alone to modify the Pretrial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

16 XIV. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

17 This Pretrial Scheduling Order will become final without  
18 further order of the Court unless objections are filed within  
19 fourteen (14) days of service of this Order.

20 IT IS SO ORDERED.

21 DATED: December 04, 2014

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23   
24 Troy L. Nunley  
25 United States District Judge  
26  
27  
28