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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERNEST LINCOLN BONNER, JR., M.D.,  
Plaintiff,  
v.  
MEDICAL BOARD OF CALIFORNIA, et  
al.,  
Defendants.

No. 2:17-cv-0445 KJM DB

STATUS (PRETRIAL SCHEDULING)

ORDER

Having reviewed the parties' Joint Status Report filed on September 3, 2019, the court makes the following orders:

I. SERVICE OF PROCESS

All defendants named in the second amended complaint have been served and no further service is permitted without leave of court, good cause having been shown.<sup>1</sup>

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<sup>1</sup> Defendants named in the prior complaints but not in the second amended complaint are DISMISSED. See *Askins v. U.S. Dep't of Homeland Sec.*, 899 F.3d 1035, 1043 (9th Cir. 2018).

1 II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

2 No further joinder of parties or amendments to pleadings is permitted without  
3 leave of court, good cause having been shown. *See* Fed. R. Civ. P. 16(b); *Johnson v. Mammoth*  
4 *Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).

5 III. JURISDICTION/VENUE

6 Jurisdiction is predicated upon 28 U.S.C. §§ 1331 and 1343. Jurisdiction and  
7 venue are not disputed.

8 IV. DISCOVERY

9 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) shall be  
10 completed by **October 1, 2019**. All discovery shall be completed by **March 2, 2020**. In this  
11 context, “completed” means that all discovery shall have been conducted so that all depositions  
12 have been taken and any disputes relative to discovery shall have been resolved by appropriate  
13 order if necessary and, where discovery has been ordered, the order has been obeyed. All  
14 motions to compel discovery must be noticed on the magistrate judge’s calendar in accordance  
15 with the local rules of this court. While the assigned magistrate judge reviews proposed  
16 discovery phase protective orders, requests to seal or redact are decided by Judge Mueller as  
17 discussed in more detail below. In addition, while the assigned magistrate judge handles  
18 discovery motions, the magistrate judge cannot change the schedule set in this order, except that  
19 the magistrate judge may modify a discovery cutoff to the extent such modification does not have  
20 the effect of requiring a change to the balance of the schedule.

21 V. DISCLOSURE OF EXPERT WITNESSES

22 All counsel are to designate in writing and serve upon all other parties the name,  
23 address, and area of expertise of each expert that they propose to tender at trial not later than  
24 **March 16, 2020**. The designation shall be accompanied by a written report prepared and signed  
25 by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B). By **April 15, 2020**, any  
26 party who previously disclosed expert witnesses may submit a rebuttal list of expert witnesses  
27 who will express an opinion on a subject covered by an expert designated by an adverse party, if  
28 the party rebutting an expert witness designation has not previously retained an expert to testify

1 on that subject. The rebuttal designation shall be accompanied by a written report, which shall  
2 also comply with the conditions stated above.

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

10 For purposes of this scheduling order, an “expert” is any person who may be used  
11 at trial to present evidence under Rules 702, 703 and 705 of the Federal Rules of Evidence, which  
12 include both “percipient experts” (persons who, because of their expertise, have rendered expert  
13 opinions in the normal course of their work duties or observations pertinent to the issues in the  
14 case) and “retained experts” (persons specifically designated by a party to be a testifying expert  
15 for the purposes of litigation). A party shall identify whether a disclosed expert is percipient,  
16 retained, or both. It will be assumed that a party designating a retained expert has acquired the  
17 express permission of the witness to be so listed. Parties designating percipient experts must state  
18 in the designation who is responsible for arranging the deposition of such persons.

19 All experts designated are to be fully prepared at the time of designation to render  
20 an informed opinion, and give the bases for their opinion, so that they will be able to give full and  
21 complete testimony at any deposition taken by the opposing party. Experts will not be permitted  
22 to testify at trial as to any information gathered or evaluated, or opinion formed, after deposition  
23 taken subsequent to designation. All expert discovery shall be completed by **May 1, 2020**.

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1 VI. MOTION HEARING SCHEDULE

2 All dispositive motions, except motions for continuances, temporary restraining  
3 orders or other emergency applications, shall be heard no later than June 12, 2020.<sup>2</sup> The parties  
4 may obtain available hearing dates by checking Judge Mueller's page on the court's website.

5 All purely legal issues are to be resolved by timely pretrial motions. Local Rule  
6 230 governs the calendaring and procedures of civil motions; the following provisions also apply:

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

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

10 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to  
11 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,  
12 652-53 (9th Cir. 1994).

13 The court values the importance of training young attorneys. The parties are  
14 encouraged to consider assigning oral argument to a young attorney. If a written request for oral  
15 argument is filed before a hearing, stating an attorney of four or fewer years out of law school  
16 will argue the oral argument, then the court will ordinarily hold the hearing, although the court's  
17 schedule and calendar may require the hearing to be reset. Otherwise, the court may find it  
18 appropriate in some actions to submit a motion without oral argument.

19 The court places a page limit of twenty (20) pages on all moving papers, twenty  
20 (20) pages on oppositions, and ten (10) pages for replies. All requests for page limit increases  
21 must be made in writing at least fourteen (14) days prior to the filing of the motion.

22 Prior to filing a motion in a case in which the parties are represented by counsel,  
23 counsel shall engage in a pre-filing meet and confer to discuss thoroughly the substance of the  
24 contemplated motion and any potential resolution. Plaintiff's counsel should carefully evaluate  
25 the defendant's contentions as to deficiencies in the complaint and in many instances the party  
26 considering a motion should agree to any amendment that would cure a curable defect. Counsel

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<sup>2</sup> Note that this date may not correspond to a law and motion calendar date.

1 should discuss the issues sufficiently so that if a motion of any kind is filed, including for  
2 summary judgment, the briefing is directed only to those substantive issues requiring resolution  
3 by the court. Counsel should resolve minor procedural or other non-substantive matters during  
4 the meet and confer. **A notice of motion shall contain a certification by counsel filing the**  
5 **motion that meet and confer efforts have been exhausted, with a brief summary of meet and**  
6 **confer efforts.**

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

10 VII. SEALING

11 No document will be sealed, nor shall a redacted document be filed, without the  
12 prior approval of the court. If a document for which sealing or redaction is sought relates to the  
13 record on a motion to be decided by Judge Mueller, the request to seal or redact should be  
14 directed to her and not the assigned Magistrate Judge. All requests to seal or redact shall be  
15 governed by Local Rules 141 (sealing) and 140 (redaction); protective orders covering the  
16 discovery phase of litigation shall not govern the filing of sealed or redacted documents on the  
17 public docket. The court will only consider requests to seal or redact filed by the proponent of  
18 sealing or redaction. If a party plans to make a filing that includes material an opposing party has  
19 identified as confidential and potentially subject to sealing, the filing party shall provide the  
20 opposing party with sufficient notice in advance of filing to allow for the seeking of an order of  
21 sealing or redaction from the court.

22 VIII. FURTHER SCHEDULING

23 The court will set a Final Pretrial Conference date after the resolution of any  
24 dispositive motions, or passage of the dispositive motion cutoff, with a trial date being  
25 determined at the pretrial conference. The parties should be prepared to confirm a trial date  
26 within 60 to 120 days from the date of the final pretrial conference, and should be available for  
27 trial accordingly.

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1 IX. SETTLEMENT CONFERENCE

2 The parties agree to conduct settlement negotiations before the assigned  
3 Magistrate Judge, with settlement efforts completed on or before **July 3, 2020**. The parties shall  
4 contact Magistrate Judge Barnes' courtroom deputy Pete Buzo at 916-930-4128 for scheduling a  
5 settlement conference.

6 X. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER

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

12 As noted, the assigned magistrate judge is authorized to modify only the discovery  
13 dates shown above to the extent any such modification does not impact the balance of the  
14 schedule of the case.

15 XI. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

16 This Status Order will become final without further order of the court unless  
17 objections are filed within fourteen (14) *calendar* days of service of this Order.

18 IT IS SO ORDERED.

19 DATED: September 20, 2019.

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22 UNITED STATES DISTRICT JUDGE  
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