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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TOBY HENRY,  
  
Plaintiff,  
  
v.  
  
ANGELINI PHARMA, INC.,  
  
Defendants.

No. 2:17-cv-02593-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.

III. JURISDICTION/VENUE

Jurisdiction is predicated upon 28 U.S.C. § 1332. Jurisdiction and venue are not contested.

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1 IV. DISCOVERY

2 All discovery, with the exception of expert discovery, shall  
3 be completed by **September 20, 2021**. 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 Any request to deviate from the Federal Rules of Civil  
12 Procedure should be made to the assigned Magistrate Judge.

13 V. DISCLOSURE OF EXPERT WITNESSES

14 All counsel are to designate in writing, file with the  
15 Court, and serve upon all other parties the name, address, and  
16 area of expertise of each expert that they propose to tender at  
17 trial not later than **November 18, 2021**.<sup>1</sup> The designation shall  
18 be accompanied by a written report prepared and signed by the  
19 witness. The report shall comply with Fed. R. Civ. P.  
20 26(a)(2)(B).

21 Within twenty (20) days after the designation of expert  
22 witnesses, any party may designate a supplemental list of expert  
23 witnesses who will express an opinion on a subject covered by an  
24 expert designated by an adverse party.

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

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

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

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

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

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

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

14 VI. SUPPLEMENTAL DISCOVERY

15 Pursuant to Federal Rule of Civil Procedure 26(e), the  
16 parties shall exchange any supplemental disclosures and responses  
17 (including expert supplemental materials) no later than thirty  
18 (30) days prior to the dispositive motion hearing date. Any  
19 supplemental disclosures and responses necessary after that date  
20 will require leave of Court good cause having been shown.

21 VII. MOTION HEARING SCHEDULE

22 All dispositive motions, except motions for continuances,  
23 temporary restraining orders or other emergency applications,  
24 shall be heard no later than **March 24, 2022**.

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

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

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

7 Failure to comply with Local Rule 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 for points and authorities  
15 (exclusive of exhibits and other supporting documentation) of  
16 twenty (20) pages on all initial moving papers, twenty (20) pages  
17 on oppositions, and ten (10) pages for replies. All requests for  
18 page limit increases must be made in writing to the Court setting  
19 forth any and all reasons for any increase in page limit at least  
20 fourteen (14) days prior to the filing of the motion.

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

24 The parties are reminded that a motion in limine is a  
25 pretrial procedural device designed to address the admissibility  
26 of evidence. The Court will look with disfavor upon

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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 dispositional motions presented in the guise of motions in  
2 limine.

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

7 VIII. TRIAL SETTING

8 The parties are ordered to file a Joint Notice of Trial  
9 Readiness not later than thirty (30) days after receiving this  
10 Court's ruling(s) on the last filed dispositive motion(s). If  
11 the parties do not intend to file dispositive motions, the  
12 parties are ordered to file a Joint Notice of Trial Readiness not  
13 later than one hundred twenty (120) days after the close of  
14 discovery and the notice must include statements of intent to  
15 forgo the filing of dispositive motions.

16 The parties are to set forth in their Notice of Trial  
17 Readiness, the appropriateness of special procedures, their  
18 estimated trial length, any request for a jury, their  
19 availability for trial, and if the parties are willing to attend  
20 a settlement conference. The parties' Notice of Trial Readiness  
21 Statement shall also estimate how many court days each party will  
22 require to present its case, including opening statements and  
23 closing arguments. The parties' estimate shall include time  
24 necessary for jury selection, time necessary to finalize jury  
25 instructions and instruct the jury.

26 After review of the parties' Joint Notice of Trial  
27 Readiness, the Court will issue an order that sets forth dates  
28 for a Final Pretrial Conference and Trial.

1 IX. SETTLEMENT CONFERENCE

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

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

25 X. COURTESY COPIES

26 No party shall submit paper courtesy copies of pleadings or  
27 exhibits to the Court unless expressly ordered to do so.

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XI. VOLUNTARY DISPUTE RESOLUTION PROGRAM

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

XII. MODIFICATION OF PRETRIAL SCHEDULING ORDER

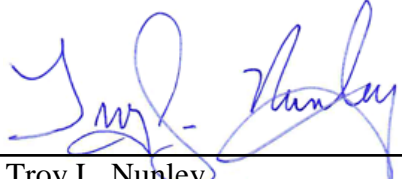
The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, the Pretrial Scheduling Order shall not be modified except by leave of court upon a showing of **good cause**. Agreement by the parties pursuant to stipulation alone to modify the Pretrial Scheduling Order does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

XIII. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

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

IT IS SO ORDERED.

DATED: May 29, 2020

  
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Troy L. Nunley  
United States District Judge