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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO – ECF PROGRAM

STIPULATION AND [PROPOSED]ORDER TO MODIFY PRE-TRIAL ORDER

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ELLEN AMBROFF and TERRY AMBROFF,	)	CASE NUMBER C 08-04289 JL
	)	
Plaintiffs,	)	<del>STIPULATION AND [PROPOSED]</del>
	)	<del>ORDER TO MODIFY PRE-TRIAL</del>
	)	<del>ORDER</del>
vs.	)	
	)	Civ.L.R. 7-12
AMERICAN MEDICAL SYSTEMS,	)	
McKESSON CORPORATION, and	)	
DOES ONE through TWENTY-FIVE,	)	
inclusive,	)	
	)	
Defendants.	)	
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	)	
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This Stipulation is entered into between Plaintiffs Ellen Ambroff and Terry Ambroff, by and through their counsel of record, Hersh & Hersh, and defendant American Medical Systems, Inc., by and through its counsel of record, Kenney & Markowitz, L.L.P. The parties stipulate as follows:

1. On June 29, 2009, this Court issued its first Case Management and Pre-Trial Order in this case with a trial date of December 6, 2010 and other dates set by the Court accordingly, include a factual discovery cut-off date of April 5, 2010.

2. On February 1, 2010, the parties stipulated to a modification of the June 29 Pre-Trial Order to extend discovery and related cut-off dates because additional time was required to schedule plaintiffs' Rule 30(b)(6) depositions. The court approved the parties' stipulation for modification of the Pre-Trial Order on February 3, 2010, setting a close of fact discovery for June 4, 2010.

3. Some of plaintiffs' Rule 30(b)(6) depositions were taken during the week of March1, 2010 at AMS' corporate office in Minnesota, however not all AMS' designated witnesses were available during the scheduled week. Plaintiffs have requested

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1 and defendant has agreed to produced four additional AMS employees for deposition in  
2 Minnesota.

3 4. On May 7, 2010, the parties stipulated to a modification of the  
4 February 3, 2010 Pre-Trial Order to extend discovery and related cut-off dates for several  
5 reasons. First, plaintiffs wished to take additional depositions of AMS employees pursuant  
6 to Federal Rule of Civil Procedure 30(b)(6) and there was difficulty getting these  
7 depositions scheduled because lead trial counsel for AMS was unavailable for several  
8 weeks in May due to a previously scheduled vacation making it difficult to schedule those  
9 depositions in Minnesota prior to the fact discovery cut-off date of June 4, 2010. The  
10 stipulation was also based on the fact that there were difficulties scheduling the deposition  
11 of plaintiff Ellen Ambroff's treating physician Robert Carter, M.D., and on the further  
12 grounds that associate counsel for AMS was unexpectedly relocating to Australia by the  
13 end of May and therefore a new associate would need to become familiar with the facts and  
14 procedural status of this action prior to taking over the handling of this action.

15 5. Finally, the parties stipulated to modify the February 3, 2010 Pre-  
16 Trial Order to move the trial of this action from January 31, 2011 to March 28, 2011  
17 because new associate counsel for AMS will be unavailable from October 2010 through  
18 December 2010 due to a scheduled maternity leave.

19 6. The Court approved the parties' stipulation for modification of the  
20 Pre-Trial Order on May 12, 2010.

21 7. The May 12, 2010 Pre-Trial Order set various deadlines, including  
22 setting the close of fact discovery for July 6, 2010 with plaintiffs' Expert Witness  
23 Disclosure and Reports due August 6, 2010, defendant's Expert Witness Disclosure and  
24 Reports due August 20, 2010 and trial set for March 28, 2011.

25 8. Dr. Carter's deposition, scheduled for May 18, 2010, did not take  
26 place due to the unavailability of his counsel. His deposition was re-set for June 22, 2010,  
27 in Placerville, California.

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9. The parties participated in mediation before court-appointed neutral Jacqueline Corley on May 19, 2010.

10. On June 3, 2010, the parties appeared at the Case Management Conference. Numerous discovery issues were discussed, and the possibility of a extension of time of certain dates in the Pre-Trial Order was discussed with the Court.

11. Since the Case Management Conference, the parties have met and conferred extensively, by and through their counsel regarding scheduling the depositions of plaintiffs' additional 30(b)(6) depositions as well as many other discovery matters. Due to the schedules of the witnesses and counsel for both parties, the earliest date that those depositions can take place is during the week of July 19, 2010. The depositions have been noticed by agreement to take place on July 20, 2010, July 21, 2010, and July 22, 2010, in Minnesota. The witnesses include defendant's 30(b)(6) designee Diane Sahr, John Nealon, the GM of the Women's Health Division of AMS, Christie Brizinka, an AMS employee with knowledge of the January, 2009 FDA audit of AMS, and Gabriel Gulbranson, one of AMS' investigators of adverse events regarding vaginal mesh.

12. Plaintiff ELLEN AMBROFF will appear for a defense medical examination with Craig Comiter, M.D., on July 9, 2010 at 8:30 a.m.

13. Defendant AMS provided plaintiffs with an exemplar piece of large pore polypropylene mesh on June 16, 2010.

14. On June 18, 2010, defendant AMS commenced the deposition of one of plaintiff ELLEN AMBROFF'S treating physicians, Kenneth R. Stemmler, M.D. Due to Dr. Stemmler's schedule, the deposition was not completed.

15. On June 22, 2010, defendant AMS commenced the deposition of Robert Carter, M.D., one of plaintiff ELLEN AMBROFF'S treating physicians. Due to Dr. Carter's schedule, the deposition was not completed.

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1           16. Based on all the foregoing, the parties have agreed to extend the fact  
2 discovery cut-off of June 4, 2010 as to plaintiffs' 30(b)(6) depositions only and to allow for  
3 the completion of Dr. Stemmler's deposition, Dr. Carter's deposition, for the completion of  
4 the DME and to extend the other deadlines set forth in this Court's May 12, 2010 Order  
5 Modifying the Pre-Trial Order.

6           17. For all the above reasons, the parties stipulate to modify the current  
7 Pre-Trial Order to extend the fact discovery cut-off date to August 6, 2010 in order to  
8 complete the additional depositions and remaining discovery and to extend the  
9 accompanying dates within the Pre-Trial Order as set forth hereinbelow. The trial date  
10 would remain the same as previously set.

11           18. It is not the intention of the parties to waive any rights to object to  
12 discovery requests by this Stipulation.

13           19. For good cause, the parties stipulate to and respectfully request that  
14 the Court continue the discovery dates within the Pre-Trial Order and accompanying dates  
15 as follows:

16                   DISCOVERY

17           Non-Expert Discovery Cutoff	August 6, 2010
18           Designation of Plaintiffs' Experts with Reports	September 10, 2010
19           Designation of Defendants' Experts with Reports	September 24, 2010
20           Designation of Rebuttal Experts with Reports	October 8, 2010
21           Expert Discovery Cutoff	November 5, 2010

22                   DISPOSITIVE MOTIONS

23           Last Day to Hear Case Dispositive Motions	February 2, 2011
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24                   PRETRIAL CONFERENCE

25           Final Pre-Trial Conference at 11:00 a.m.	March 16, 2011
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**[PROPOSED] ORDER**

Pursuant to the parties' stipulation and request for modification of the Court's Case Management Order and Pre-Trial Order, the following schedule shall apply to this case:

DISCOVERY

Non-Expert Discovery Cutoff	August 6, 2010
Designation of Plaintiffs' Experts with Reports	September 10, 2010
Designation of Defendants' Experts with Reports	September 24, 2010
Designation of Rebuttal Experts with Reports	October 8, 2010
Expert Discovery Cutoff	November 5, 2010

DISPOSITIVE MOTIONS

Last Day to Hear Case Dispositive Motions	February 2, 2011
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PRETRIAL CONFERENCE

Final Pre-Trial Conference at 11:00 a.m.	March 16, 2011
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TRIAL DATE

Jury Trial to begin at 9:00 a.m.	March 28, 2011
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**IT IS SO ORDERED:**

June 24, 2010

DATED: \_\_\_\_\_



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HON. JAMES LARSON  
UNITED STATES MAGISTRATE JUDGE

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