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August 9, 2010

VIA E-FILING

Magistrate Judge James Larson
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 Golden Gate Avenue
Courtroom F, 15th Floor
San Francisco, CA 94102

Re: TERRY AND ELLEN AMBROFF v. AMERICAN
MEDICAL SYSTEMS, INC.
U.S.D.C., Northern District Case No. C08-04289 JL
Our File No: 302053-45/35

Dear Magistrate Judge Larson:

This letter is to follow up on our appearance at the August 4, 2010 Further Case Management Conference, where we discussed an extension of the dates, including the trial date, in this matter. Subsequent to the Case Management Conference, we met and conferred to prepare the enclosed Stipulation addressing the dates discussed with the Court. We appreciate the Court's flexibility in allowing us to try this case before the Court, in accordance with the Court's schedule, and, upon further discussion, we believe that we can get this case tried to verdict in two and one-half weeks.

On August 5, 2010, we contacted your Courtroom Deputy, Frank Justiliano, to inquire whether we could start trial in this matter on a day other than a Monday. Mr. Justiliano indicated that the Court would entertain such a request, and he instructed us to put our request in a letter,

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which we do here. As set forth in the enclosed Stipulation, we are proposing that trial in this case commence on Thursday, May 12, 2011, assuming the Court is available.

Thank you for your attention to this matter, as well as for the interest you expressed at the Case Management Conference in seeing this case through to completion.

Yours very truly,

/s/ Kimberly I. McIntyre

KEN M. MARKOWITZ
KIMBERLY I. MCINTYRE
Attorneys for Defendant
AMERICAN MEDICAL SYSTEMS, INC.

Yours very truly,

/s/ Amy Eskin

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ELLEN and TERRY AMBROFF

KIM/njc
Enclosure

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

ELLEN AMBROFF and TERRY)	CASE NUMBER C 08-04289 JL
AMBROFF,)	
)	STIPULATION AND [PROPOSED]
Plaintiffs,)	ORDER TO MODIFY PRE-TRIAL
)	ORDER
vs.)	
)	Civ.L.R. 7-12
AMERICAN MEDICAL SYSTEMS,)	
McKESSON CORPORATION, and)	
DOES ONE through TWENTY-FIVE,)	
inclusive,)	
)	
Defendants.)	
)	
)	
)	
)	

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, including 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 March 1, 2010 at AMS’ corporate office in Minnesota, however not all of AMS’ designated witnesses were available during the scheduled week. Plaintiffs thus requested and defendant agreed to produce four additional AMS employees for deposition in Minnesota.

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

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

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

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

8. Dr. Carter's deposition, scheduled for May 18, 2010, did not take place due to the unavailability of his counsel. His deposition was re-set for June 22, 2010, in Placerville, California. The first session of Dr. Carter's deposition took place on June 22, 2010. However, due to the schedule of Dr. Carter, the deposition was not completed. The next session of Dr. Carter's deposition took place on July 28, 2010 in Placerville,

California. The deposition was not completed.

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 an extension of time of certain dates in the Pre-Trial Order was discussed with the Court.

11. The parties subsequently met and conferred extensively, by and through their counsel, regarding the scheduling 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 could take place was during the week of July 19, 2010. The depositions were held on July 20, 2010, July 21, 2010, and July 22, 2010, in Minnesota.

12. On July 15, 2010, defendant AMS produced a CD of an additional 2000 pages of documents in response to plaintiffs' discovery requests included with plaintiffs' deposition notices, bringing the total number of pages of documents produced to more than 26,000 pages.

13. Plaintiff ELLEN AMBROFF appeared for a defense medical examination with Craig Comiter, M.D., on July 9, 2010 at 9:00 a.m. Plaintiffs have requested a copy of Dr. Comiter's report.

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

15. 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. Dr. Stemmler's deposition was completed on July 15, 2010.

16. On June 24, 2010, based on the stipulation of the parties, the Court modified the May 12, 2010 Pre-Trial Order to extend and set various deadlines, including a

fact discovery cut-off of August 6, 2010 to allow for the completion of certain additional discovery.

17. Some of that additional discovery still remains to be conducted, including the deposition of another of defendant's employees, Ginger Glaser, and the completion of Dr. Carter's deposition, as well as outstanding written discovery. Because of the schedule of plaintiffs' counsel, and pre-planned vacations, the parties agreed to extend the fact discovery cut-off to September 17, 2010 and to extend all other deadlines, including the trial date, set forth in this Court's June 23, 2010 Order Modifying the Pre-Trial Order.

18. For all the above reasons, the parties stipulate to modify the current Pre-Trial Order to extend the fact discovery cut-off date to September 17, 2010 in order to complete the additional depositions of Ginger Glaser and Dr. Carter and the above-mentioned outstanding written discovery and to extend the accompanying dates within the Pre-Trial Order as set forth hereinbelow. The trial date would be continued by 45 days.

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

20. For good cause, the parties stipulate to and respectfully request that the Court continue the discovery dates within the Pre-Trial Order and accompanying dates, including the trial date, as follows:

DISCOVERY

Non-Expert Discovery Cutoff	September 17, 2010
Designation of Plaintiffs' Experts with Reports	October 22, 2010
Designation of Defendants' Experts with Reports	November 5, 2010
Designation of Rebuttal Experts with Reports	November 19, 2010
Expert Discovery Cutoff	December 17, 2010

DISPOSITIVE MOTIONS

Last Day to Hear Case Dispositive Motions	April 15, 2011
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PRETRAL CONFERENCE

Final Pre-Trial Conference at 11:00 a.m. April 18, 2011

TRIAL DATE

Jury Trial to begin at 9:00 a.m. May 12, 2011

DATED: August 9, 2010

HERSH & HERSH
A Professional Corporation

By /s/ Amy Eskin
AMY ESKIN
Attorneys for Plaintiffs

DATED: August 9, 2010

KENNEY & MARKOWITZ, L.L. P.

By /s/ Kimberly I. McIntyre
KEN M. MARKOWITZ
KIMBERLY I. MCINTYRE
Attorneys for Defendant AMERICAN
MEDICAL SYSTEMS, INC.

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	September 17, 2010
Designation of Plaintiffs' Experts with Reports	October 22, 2010
Designation of Defendants' Experts with Reports	November 5, 2010
Designation of Rebuttal Experts with Reports	November 19, 2010
Expert Discovery Cutoff	December 17, 2010

DISPOSITIVE MOTIONS

Last Day to Hear Case Dispositive Motions	April 15, 2011
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PRETRIAL CONFERENCE

Final Pre-Trial Conference at 11:00 a.m.	April 18, 2011
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TRIAL DATE

Jury Trial to begin at 9:00 a.m.	May 12, 2011
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IT IS SO ORDERED:

DATED: August 11, 2010



HON. JAMES LARSON
UNITED STATES MAGISTRATE JUDGE