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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CONCEPTUS, INC.,

No. C 09-02280 WHA (JCS)

Plaintiff(s),

**AMENDED NOTICE OF SETTLEMENT
CONFERENCE AND SETTLEMENT
CONFERENCE ORDER
(PATENT CASE)**

v.

HOLOGIC, INC.,

Defendant(s).

TO ALL PARTIES AND COUNSEL OF RECORD:

The above matter was referred to Magistrate Judge Joseph C. Spero for settlement purposes.

You are hereby notified that a Settlement Conference is scheduled for **October 29, 2009, at 9:30 a.m.**, in Courtroom A, 15th Floor, Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102.

IT IS HEREBY ORDERED that the principals of all parties, with unlimited authority to settle the case, shall meet and confer *in person* on or before **October 16, 2009**, to discuss settlement. Plaintiff(s) shall make a settlement proposal, in writing, by **October 2, 2009**, with a copy to the undersigned. Defendant(s) shall respond and make a counter-proposal, in writing, by **October 9, 2009**, with a copy to the undersigned.

It is the responsibility of counsel to ensure that whatever discovery is needed for all sides to evaluate the case for settlement purposes is completed by the date of the Settlement Conference. Counsel shall cooperate in providing discovery informally and expeditiously.

Lead trial counsel shall appear at the Settlement Conference with the parties. Any party who is not a natural person shall be represented by the person(s) with **unlimited** authority to negotiate a settlement. A person who needs to call another person not present before agreeing to any settlement

1 does not have unlimited authority. If a party is a governmental entity, its governing body shall
2 designate one of its members or a senior executive to appear at the Settlement Conference with
3 authority to participate in the Settlement Conference and, if a tentative settlement agreement is
4 reached, to recommend the agreement to the governmental entity for its approval. An insured party
5 shall appear with a representative of the carrier with full authority to negotiate up to the limits of
6 coverage. Personal attendance of a party representative will rarely be excused by the Court, and
7 then only upon separate written application demonstrating substantial hardship served on opposing
8 counsel and lodged as early as the basis for the hardship is known but no later than the Settlement
9 Conference Statement.

10 Each party shall prepare a Settlement Conference Statement, which must be LODGED with
11 the undersigned's Chambers no later than **October 22, 2009**. The Settlement Conference Statement
12 should **not** be electronically filed with the Clerk of the Court, and need not be served on opposing
13 counsel. The parties are encouraged, however, to exchange Settlement Conference Statements. If
14 Settlement Conference Statements are exchanged, any party may submit an additional confidential
15 settlement letter to the Court not to exceed three (3) pages. The contents of this confidential
16 settlement letter will not be disclosed to the other parties.

17 The Settlement Conference Statement shall include the following:

- 18 1. A brief statement of the facts of the case.
- 19 2. A brief statement of the claims and defenses including, but not limited to, statutory or
20 other grounds upon which the claims are founded, and a **candid** evaluation of the parties' likelihood
21 of prevailing on the claims and defenses. The more candid the parties are, the more productive the
22 conference will be.
- 23 3. A list of the key facts in dispute and a brief statement of the **specific** evidence
24 relevant to a determination of those facts.
- 25 4. A summary of the proceedings to date and any pending motions.
- 26 5. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
- 27 6. The relief sought, including an itemization of damages.

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1 7. The party's position on settlement, including present demands and offers and a history
2 of past settlement discussions. The Court's time can best be used to assist the parties in completing
3 their negotiations, not in starting them. The parties are urged to carefully evaluate their case before
4 taking a settlement position since extreme positions hinder the settlement process.

5 Settlement Conference Statements **may** be submitted on CD-ROM with hypertext links to
6 exhibits. Otherwise, the portion of exhibits on which the party relies shall be highlighted.

7 It is not unusual for the conference to last three (3) or more hours. Parties are encouraged to
8 participate and frankly discuss their case. Statements they make during the conference will not be
9 admissible at trial in the event the case does not settle. The parties should be prepared to discuss
10 such issues as:

- 11 1. Their settlement objectives.
- 12 2. Any impediments to settlement they perceive.
- 13 3. Whether they have enough information to discuss settlement. If not, what additional
14 information is needed.
- 15 4. The possibility of a creative resolution of the dispute.

16 The parties shall notify Chambers immediately at (415) 522-3691 if this case settles prior to
17 the date set for Settlement Conference. Counsel shall provide a copy of this order to each party who
18 will participate in the conference.

19 IT IS SO ORDERED.

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21 Dated: September 1, 2009

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23 _____
24 JOSEPH C. SPERO
25 United States Magistrate Judge
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