

1 L. JULIUS M. TURMAN (SBN 226126)
 PHILIP J. SMITH (SBN 232462)
 2 MORGAN, LEWIS & BOCKIUS LLP
 One Market, Spear Street Tower
 3 San Francisco, CA 94105-1126
 Tel: 415.442.1000
 4 Fax: 415.442.1001
 Email: jturman@morganlewis.com
 5 philip.smith@morganlewis.com

6 Attorneys for Defendant
 THERAKOS, INC. and JOHNSON & JOHNSON

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 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

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 11 CHARO OROSA, an Individual,
 12 Plaintiff,
 13 vs.
 14 THERAKOS INC., a corporation; JOHNSON
 & JOHNSON, INC., a corporation,
 15 Defendant.
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Case No. CV-11-02143 JST

**JOINT STATEMENT REGARDING
 INABILITY TO STIPULATE
 REGARDING LEAVE TO AMEND
 COMPLAINT AND ~~PROPOSED~~
 ORDER SETTING LIMITED CASE
 MANAGEMENT SCHEDULE**

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1 Plaintiff Charo Orosa (“Plaintiff”) and Defendants Therakos, Inc. and Johnson & Johnson
2 (together, “Defendants”)(Plaintiff and Defendants will be collectively referred to as the “Parties”)
3 hereby submit the following joint statement, by and through their respective counsel, as follows:

4 Whereas, at the March 19, 2013 case management conference (“CMC”), the Court
5 directed the parties to meet and confer to determine if Defendants would stipulate that Plaintiff be
6 granted leave to file an amended complaint;

7 Whereas, at the CMC, the Court directed the Parties to notify the Court, by April 9, 2013,
8 whether the Parties stipulated that Plaintiff be granted leave to file an amended complaint;

9 Whereas, at the CMC, the Court directed the Parties to provide the Court, by April 9,
10 2013, a proposed case management schedule;

11 Whereas, on March 26, 2013, Plaintiff provided Defendants with a copy of her proposed
12 third amended complaint;

13 Whereas, on April 2, 2013, Defendants notified Plaintiff that Defendants would stipulate
14 that Plaintiff be granted leave to file her third amended complaint except as to the portion of
15 Plaintiff’s new causes of action which are predicated upon Plaintiff’s alleged subjection to
16 retaliation for purportedly “raising concerns” regarding newly-specified acts of off-label
17 promotion. Defendants explained that Plaintiff’s knowledge of what she purportedly opposed
18 during her employment, which ended in 2010, necessarily pre-dates the filing of her initial
19 complaint in 2011 and thus any effort to rely on such allegations now as a basis to amend her
20 complaint two years later constitutes undue delay and suggests a bad faith or dilatory motive;

21 Whereas, on April 2, 2013, Defendants also notified Plaintiff that any stipulation to file an
22 amended complaint would remain subject to Defendants’ reservation of their right to move to
23 dismiss or strike Plaintiff’s newly added causes of action. Defendants explained that, based upon
24 their initial review, Plaintiff’s new causes of action would be subject to dismissal (or portions
25 being struck) on the grounds of, inter alia, lack of standing, preemption, constitutionally
26 protected activity, mootness and privilege;

27 Whereas, on April 8, 2013, Plaintiff notified Defendants that she accepted defendants’
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1 reservation of rights and defenses as to any new claims, but disputed their assertion that any
2 allegation that she “raised concerns” of off-label use and suffered retaliation as a result were “new
3 allegations”, and pointed out that the same or very similar allegations already existed in par. 19 of
4 the current complaint, and on that basis asked defendants to reconsider their stated position to
5 limit the new causes of action because the basis for the desired limitation was not accurate.;

6 Whereas, based upon the above-described meet and confer discussions, the Parties were
7 unable to stipulate that Plaintiff be granted leave to file her amended complaint;

8 Whereas, based upon the above-described meet and confer discussions, Defendants intend
9 to oppose Plaintiff’s motion for leave to file an amended complaint;

10 Whereas, the Court’s February 11, 2013 Reassignment Order vacated all law and motion
11 hearing dates, pretrial conferences and the trial date in this matter; and

12 Therefore, the Parties, by and through their counsel, hereby stipulate and agree to the
13 following limited case management schedule:

14 a. Last day to file Plaintiff’s motion for leave to file her amended complaint: **April**
15 **24, 2013;**

16 b. Last day for Defendants to file their opposition to Plaintiff’s motion for leave to
17 amend: **May 8, 2013;**

18 c. Last day for Plaintiff to file her reply brief in support of motion for leave to file an
19 amended complaint: **May 15, 2013;**

20 d. Hearing on Plaintiff’s motion for leave to file her amended complaint: **May 30,**
21 **2013 at 2 p.m.;**

22 e. Last day for Defendants to file their response to Plaintiff’s amended complaint: **20**
23 **days after the date on which Plaintiff’s amended complaint is deemed filed (if leave to**
24 **amend is granted);**

25 f. Deadline for fact discovery regarding Plaintiff’s newly added causes of action: **60**
26 **days after Defendants’ motion to dismiss and/or strike Plaintiff’s amended complaint is**
27 **ruled upon or 60 days after Defendants’ answer to Plaintiff’s amended complaint is filed;**
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3 g. Deadline to file dispositive motions: **45 days after fact discovery closes or, if**
4 **applicable, 45 days after the Court denies Plaintiff's motion for leave to amend her**
5 **complaint;**

6 h. Next case management conference: **May 23, 2013 at 2 p.m.**

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8 IT IS SO STIPULATED.

9 Dated: April 9, 2013

MORGAN, LEWIS & BOCKIUS LLP

11 /s/ PHILIP J. SMITH
12 L. JULIUS M. TURMAN
13 PHILIP J. SMITH
14 Attorneys for Defendant
15 THERAKOS, INC. and JOHNSON &
16 JOHNSON

17 Dated: April 9, 2013

LAW OFFICES OF MICHAEL T. WELCH

18 By /s/ MICHAEL T. WELCH
19 Michael T. Welch
20 Attorneys for Plaintiff
21 CHARO OROSA

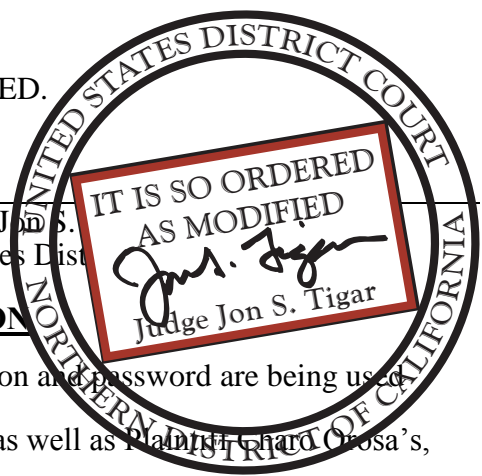
22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23 Dated: April 11, 2013

24 By _____
25 Honorable Judge S.
26 United States Dist

FILER'S ATTESTATION

27 I, Philip J. Smith, am the ECF user whose identification and password are being used
28 to file Defendants Therakos, Inc. and Johnson & Johnson's, as well as Plaintiff Charo Orosa's,
Joint Statement Regarding Inability TO Stipulate Regarding Leave TO Amend Complaint And
[Proposed] Order Setting Limited Case Management Schedule. In compliance with General
Order 45.X.B, I hereby attest that Michael T. Welch concurs in this filing.



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/s/ Philip J. Smith
Philip J. Smith
Attorneys for Defendants
THERAKOS, INC. and JOHNSON &
JOHNSON