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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RONALD MAZZAFERRO,

Plaintiff,

No. C 16-05641 WHA

v.

WILLIAM PARISI, KEN JOHNSON, SPENCER
CRUM, LYNN SEARLE, THE STATE BAR OF
CALIFORNIA, and CALIFORNIA
CONTINUING EDUCATION OF THE BAR,**AMENDED CASE MANAGEMENT
ORDER**Defendants.

Pursuant to the parties' stipulation, the Court enters the below amended case management order. No further extensions will be provided.

1. All initial disclosures under FRCP 26 must be completed by **MARCH 31, 2017**, on pain of preclusion under FRCP 37(c), including full and faithful compliance with FRCP 26(a)(1)(A)(iii).
2. Leave to add any new parties or pleading amendments must be sought by **MAY 31, 2017**.
3. The non-expert discovery cut-off date shall be **APRIL 16, 2018**.
4. The last date for designation of expert testimony and disclosure of full expert reports under FRCP 26(a)(2) as to any issue on which a party has the burden of proof ("opening reports") shall be **APRIL 16, 2018**. Within **FOURTEEN CALENDAR DAYS** of said deadline, all other parties must disclose any expert reports on the same issue ("opposition reports"). Within **SEVEN CALENDAR DAYS** thereafter, the party with the

1 burden of proof must disclose any reply reports rebutting specific material in
2 opposition reports. Reply reports must be limited to true rebuttal and should be very
3 brief. They should not add new material that should have been placed in the opening
4 report and the reply material will ordinarily be reserved for the rebuttal or sur-rebuttal
5 phase of the trial. If the party with the burden of proof neglects to make a timely
6 disclosure, the other side, if it wishes to put in expert evidence on the same issue
7 anyway, must disclose its expert report within the fourteen-day period. In that event,
8 the party with the burden of proof on the issue may then file a reply expert report
9 within the seven-day period, subject to possible exclusion for “sandbagging” and, at all
10 events, any such reply material may be presented at trial only after, if at all, the other
11 side actually presents expert testimony to which the reply is responsive. The cutoff for
12 all expert discovery shall be **FOURTEEN CALENDAR DAYS** after the deadline for reply
13 reports. In aid of preparing an opposition or reply report, a responding party may
14 depose the adverse expert sufficiently before the deadline for the opposition or reply
15 report so as to use the testimony in preparing the response. Experts must make
16 themselves readily available for such depositions. Alternatively, the responding party
17 can elect to depose the expert later in the expert-discovery period. An expert, however,
18 may be deposed only once unless the expert is used for different opening and/or
19 opposition reports, in which case the expert may be deposed independently on the
20 subject matter of each report. At least **28 CALENDAR DAYS** before the due date for
21 opening reports, each party shall serve a list of issues on which it will offer any expert
22 testimony in its case-in-chief (including from non-retained experts). This is so that all
23 parties will be timely able to obtain counter-experts on the listed issues and to facilitate
24 the timely completeness of all expert reports. Failure to so disclose may result in
25 preclusion.

26 5. As to damages studies, the cut-off date for *past damages* will be as of the expert report
27 (or such earlier date as the expert may select). In addition, the experts may try to
28 project *future damages* (i.e., after the cut-off date) if the substantive standards for

1 future damages can be met. With timely leave of Court or by written stipulation, the
2 experts may update their reports (with supplemental reports) to a date closer to the time
3 of trial.

4 6. At trial, the direct testimony of experts will be limited to the matters disclosed in their
5 reports. Omitted material may not ordinarily be added on direct examination. This
6 means the reports must be complete and sufficiently detailed. Illustrative animations,
7 diagrams, charts and models may be used on direct examination only if they were part
8 of the expert's report, with the exception of simple drawings and tabulations that
9 plainly illustrate what is already in the report, which can be drawn by the witness at
10 trial or otherwise shown to the jury. If cross-examination fairly opens the door,
11 however, an expert may go beyond the written report on cross-examination and/or
12 redirect examination. By written stipulation, of course, all sides may relax these
13 requirements. For trial, an expert must learn and testify to the full amount of billing
14 and unbilled time by him or his firm on the engagement.

15 7. To head off a recurring problem, experts lacking percipient knowledge should avoid
16 vouching for the credibility of witnesses, *i.e.*, whose version of the facts in dispute is
17 correct. This means that they may not, for example, testify that based upon a review of
18 fact depositions and other material supplied by counsel, a police officer did (or did not)
19 violate standards. Rather, the expert should be asked for his or her opinion based —
20 explicitly — upon an assumed fact scenario. This will make clear that the witness is
21 not attempting to make credibility and fact findings and thereby to invade the province
22 of the jury. Of course, a qualified expert can testify to relevant customs, usages,
23 practices, recognized standards of conduct, and other specialized matters beyond the
24 ken of a lay jury. This subject is addressed further in the trial guidelines referenced in
25 paragraph 18 below.

26 8. Counsel need not request a motion hearing date and may notice non-discovery motions
27 for any Thursday (excepting holidays) at 8:00 a.m. The Court sometimes rules on the
28 papers, issuing a written order and vacating the hearing. If a written request for oral

1 argument is filed before a ruling, stating that a lawyer of four or fewer years out of law
2 school will conduct the oral argument or at least the lion's share, then the Court will
3 hear oral argument, believing that young lawyers need more opportunities for
4 appearances than they usually receive. Discovery motions should be as per the
5 supplemental order referenced in paragraph 18 and shall be expedited.

6 9. The last date to file dispositive motions shall be **JUNE 1, 2018**. No dispositive motions
7 shall be heard more than 35 days *after* this deadline, *i.e.*, if any party waits until the last
8 day to file, then the parties must adhere to the 35-day track in order to avoid pressure
9 on the trial date.

10 10. The **FINAL PRETRIAL CONFERENCE** shall be at **2:00 P.M.** on **AUGUST 15, 2018**.
11 Although the Court encourages argument and participation by younger attorneys, lead
12 trial counsel must attend the final pretrial conference. For the form of submissions for
13 the final pretrial conference and trial, please see paragraph 18 below.

14 11. A **JURY TRIAL** shall begin on **AUGUST 27, 2018**, at **7:30 A.M.**, in Courtroom 8,
15 19th Floor, 450 Golden Gate Avenue, San Francisco, California, 94102. The trial
16 schedule and time limits shall be set at the final pretrial conference. Although almost
17 all trials proceed on the date scheduled, it may be necessary on occasion for a case to
18 trail, meaning the trial may commence a few days or even a few weeks after the date
19 stated above, due to calendar congestion and the need to give priority to criminal trials.
20 Counsel and the parties should plan accordingly, including advising witnesses.

21 12. Counsel may not stipulate around the foregoing dates without Court approval.


22 13. While the Court encourages the parties to engage in settlement discussions, please do
23 not ask for any extensions on the ground of settlement discussions or on the ground that
24 the parties experienced delays in scheduling settlement conferences, mediation or ENE.
25 The parties should proceed to prepare their cases for trial. No continuance (even if
26 stipulated) shall be granted on the ground of incomplete preparation without competent
27 and detailed declarations setting forth good cause.
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14. To avoid any misunderstanding with respect to the final pretrial conference and trial, the Court wishes to emphasize that all filings and appearances must be made — on pain of dismissal, default or other sanction — unless and until a dismissal fully resolving the case is received. It will not be enough to inform the clerk that a settlement in principle has been reached or to lodge a partially executed settlement agreement or to lodge a fully executed agreement (or dismissal) that resolves less than the entire case. Where, however, a fully-executed settlement agreement clearly and fully disposing of the entire case is lodged reasonably in advance of the pretrial conference or trial and only a ministerial act remains, the Court will arrange a telephone conference to work out an alternate procedure pending a formal dismissal.
16. All pretrial disclosures under FRCP 26(a)(3) and objections required by FRCP 26(a)(3) must be made on the schedule established by said rule.

IT IS SO ORDERED.

Dated: September 19, 2017.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE