

1 James W. Geriak (State Bar No. 32871)
 jgeriak@orrick.com
 2 Robert W. Dickerson (State Bar No. 89367)
 rdickerson@orrick.com
 3 Kurt T. Mulville (State Bar No. 149218)
 kmulville@orrick.com
 4 Allan W. Jansen (State Bar No. 81992)
 ajansen@orrick.com
 5 André De La Cruz (State Bar No. 245175)
 adelacruz@orrick.com
 6 Ehab M. Samuel (State Bar No. 228296)
 esamuel@orrick.com
 7 ORRICK, HERRINGTON & SUTCLIFFE LLP
 4 Park Plaza, Suite 1600
 8 Irvine, CA 92614-2558
 Telephone: (949) 567-6700
 9 Facsimile: (949) 567-6710

E-FILED - 2/3/11

10 Monte M.F. Cooper (State Bar No. 196746)
 mcooper@orrick.com
 11 ORRICK, HERRINGTON & SUTCLIFFE LLP
 1000 Marsh Road
 12 Menlo Park, CA 94025
 Telephone: 650-614-7400
 13 Facsimile: 650-614-7401

14 Attorneys for Defendant
 SPINAL KINETICS, INC.

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN JOSE DIVISION

20 SYNTHES USA, LLC (f/k/a SYNTHES
 (U.S.A.)); SYNTHES USA SALES, LLC;
 21 and SYNTHES, INC.,
 22 Plaintiffs,
 23 v.
 24 SPINAL KINETICS, INC.,
 25 Defendant.

CASE NO. 5:09-CV-01201 RMW
**STIPULATION AND []
 ORDER RE BRIEFING SCHEDULE
 FOR SPINAL KINETICS' MOTION
 FOR SUMMARY JUDGMENT OF
 INVALIDITY**

Hon. Ronald M. Whyte

26 AND RELATED COUNTERCLAIMS.
 27

28

1 On January 7, 2011, defendant Spinal Kinetics, Inc. (“Spinal Kinetics”) submitted, under
2 seal, its Motion for Summary Judgment of Invalidity of Claims 29-31 of U.S. Patent No.
3 7,429,270 under 35 U.S.C. § 112, ¶ 1 (“Motion”).

4 On January 21, 2011, plaintiffs Synthes USA, LLC (f/k/a Synthes (U.S.A.)), Synthes USA
5 Sales, LLC, and Synthes, Inc. (collectively, “Synthes”), filed their Brief in Opposition to Spinal
6 Kinetics’ Motion (“Opposition”). [Dkt. No. 135].

7 Spinal Kinetics’ Reply in support of its motion is presently due January 28, 2011. Spinal
8 Kinetics has requested that Synthes stipulate to an extension for Spinal Kinetics to submit its
9 Reply, and that the parties agree to move the hearing date, presently scheduled for February 11,
10 2011, to February 18, 2011.

11 Counsel for Synthes is unavailable on February 18, and thus cannot agree to move the
12 hearing date. However, counsel for Synthes informed counsel for Spinal Kinetics that Synthes
13 does not object to Spinal Kinetics filing its Reply on February 1 or February 2, provided that this
14 procedure would be acceptable to the Court in view of the February 11, 2011 hearing date.

15 Spinal Kinetics contacted the clerk to ascertain whether this procedure would be
16 acceptable to the Court, but has not received a reply as of the filing of this document.

17 IT IS HEREBY STIPULATED by and between the parties, through their counsel of
18 record, that:

19 (1) The hearing date for Spinal Kinetics’ Motion, previously calendared for February
20 11, 2011 at 9:00 a.m., remains unchanged; and

21 (2) [If acceptable to the Court], Spinal Kinetics’ Reply in support of its Motion is to
22 be filed no later than February 2, 2011 [or February 1, 2011].

23
24 IT IS SO ORDERED.

25 Dated: February 3, 2011



The Honorable Ronald M. Whyte
United States District Judge

1 Agreed to and submitted by:

2 Dated: January 28, 2011

Respectfully submitted,

3 ORRICK, HERRINGTON & SUTCLIFFE LLP

4
5 By: /s/ André De La Cruz

6 André De La Cruz
Attorneys for Defendant
SPINAL KINETICS, INC.

7 Dated: January 28, 2011

SIDLEY AUSTIN LLP

8
9 By /s/ Jeffrey M. Olson

10 Jeffrey M. Olson
Attorneys for Plaintiffs
SYNTHES USA, LLC, SYNTHES USA SALES,
11 LLC, AND SYNTHES, INC.

12 Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under
13 penalty of perjury that concurrence in the filing of this document has been obtained from Jeffrey
14 M. Olson.

15 Dated: January 28, 2011

Respectfully submitted,

16 ORRICK, HERRINGTON & SUTCLIFFE LLP

17
18 By: /s/ André De La Cruz

19 André De La Cruz
Attorneys for Defendant
20 SPINAL KINETICS, INC.