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COUNSEL LISTED ON LAST PAGE

*\*E-FILED - 3/21/11\**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SYNTHES USA, LLC (f/k/a SYNTHES  
(U.S.A.)); SYNTHES USA SALES, LLC;  
and SYNTHES, INC.

Plaintiffs,

v.

SPINAL KINETICS, INC.,

Defendant.

) Case No. C-09-01201-RMW

) Assigned to: Hon. Ronald M. Whyte

) **STIPULATION AND []**  
) **ORDER REGARDING AMENDMENTS TO**  
) **PRETRIAL SCHEDULE AND**  
) **WITHDRAWAL OF PENDING MOTIONS**

1 On March 7, 2011, the Plaintiffs (“Synthes”) filed (1) An Appeal Of Magistrate Judge’s  
2 Order Re Samples Of Accused Infringing Products; And (2) A Notice Of Motion And Motion To  
3 Amend Pretrial Order To Allow Plaintiffs To Submit Supplemental Expert Reports Regarding  
4 Product Testing And To Bar Spinal Kinetics From Relying On Withheld Testing Information. Dkt.  
5 175. On March 11, 2011, the Defendant (“Spinal Kinetics”) filed a Notice Of Motion And Motion  
6 To Strike Plaintiff’s “Appeal” Of Magistrate Judge’s Order And Motion To Amend Pretrial Order.  
7 Dkt. 178.

8 The parties have met and conferred, and have reached an agreement that will resolve many of  
9 the disputed issues and that will allow the pending motions to be withdrawn.

10 IT IS HEREBY STIPULATED by and between the parties, through their counsel, that:

11 (1) Spinal Kinetics will deliver to Synthes an additional 12 core samples on March 15,  
12 2011, for which Synthes will pay a total of \$540.

13 (2) The deadlines in the Amended Joint Second Case Management Order (Dkt. 102) are  
14 amended as follows:

- 15 • Opening Expert Reports on issues the party bears the burden of proof: **April 11, 2011**.
- 16 • Rebuttal Expert Reports solely to contradict or rebut opening expert reports: **May 2, 2011**.
- 17 • Close of Expert Discovery: **May 27, 2011**.

18 All other deadlines in the Amended Joint Second Case Management Order remain  
19 unchanged. Additionally, the deposition of Robert Donohue may be taken by Spinal Kinetics after  
20 the close of fact discovery on March 17, 2011 in Philadelphia.

21 (3) Synthes hereby withdraws its Appeal Of Magistrate Judge’s Order Re Samples Of  
22 Accused Infringing Products and Motion To Amend Pretrial Order To Allow Plaintiffs To Submit  
23 Supplemental Expert Reports Regarding Product Testing And To Bar Spinal Kinetics From Relying  
24 On Withheld Testing Information (Dkt. 175).

25 (4) Spinal Kinetics hereby withdraws its Motion To Strike Plaintiff’s “Appeal” Of  
26 Magistrate Judge’s Order And Motion To Amend Pretrial Order (Dkt. 178);

1 (5) Synthes' agreement to the above schedule and withdrawal of its motion are made  
2 without waiver to Synthes' right to seek to exclude evidence relating to Spinal Kinetics' testing of  
3 the accused devices, or to seek any other appropriate relief, at a later date in view of the timing of the  
4 disclosure of this evidence and the timing and the amount of discovery provided by Spinal Kinetics  
5 in response to Synthes' discovery requests relating to the subject matter of testing of the accused  
6 devices, and the timing of the Spinal Kinetic's production of samples and components for testing by  
7 Synthes.

8  
9 SO ORDERED, this 21 day of March 2011.

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12 HONORABLE RONALD M. WHITE  
13 UNITED STATES DISTRICT COURT JUDGE

14 Agreed to and submitted by:

15 SIDLEY AUSTIN LLP

16  
17 Dated: March 14, 2011

18 By: /s/ Jeffrey M. Olson  
19 Jeffrey M. Olson  
20 Attorneys for Plaintiffs  
21 SYNTHES USA, LLC (f/k/a SYNTHES (U.S.A.));  
22 SYNTHES USA SALES, LLC; and SYNTHES, INC.

23 DICKSTEIN SHAPIRO LLP

24 Dated: March 14, 2011

25 By: /s/ Allan W. Jansen  
26 Allan W. Jansen  
27 Attorneys for Defendant  
28 SPINAL KINETICS, INC.

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1 Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under penalty  
2 of perjury that concurrence in the filing of this document has been obtained from Allan W. Jansen.  
3

4 Dated: March 14, 2011

By: /s/ Jeffrey M. Olson  
Jeffrey M. Olson  
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