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14 Attorneys for Plaintiffs
 15 SYNTHES USA, LLC (f/k/a SYNTHES (U.S.A.);
 SYNTHES USA SALES, LLC; and SYNTHES, INC.

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

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

CASE NO. 5:09-CV-01201 RMW

**JOINT STIPULATION AND
 [] ORDER CONCERNING
 BRIEFING SCHEDULE AND
 HEARING DATES (DOCKET NOS.
 206, 216, 218, 224-225 & 228)**

Current Dates: July 8, 2011 and
 July 22, 2011
 Proposed Date: July 22, 2011
 Time: 9:00 a.m.
 Courtroom: 6
 Judge: Hon. Ronald M. Whyte

26 AND RELATED COUNTERCLAIMS.
 27

1 On June 10, 2011, the parties filed five motions in connection with the above-captioned
2 action. These motions are entitled: (1) Spinal Kinetics, Inc.'s Motion for Summary Adjudication
3 Precluding Plaintiffs Synthes, Inc. and Synthes USA Sales, LLC from Recovering Any Damages
4 and Precluding Plaintiff Synthes USA, LLC from Recovering Any Lost Profit Damages
5 (Administrative Motion to File Under Seal at Docket No. 216); (2) Spinal Kinetics, Inc.'s Motion
6 that Each of Claims 29-31 of U.S. Patent No. 7,429,270 is Not Entitled to the Effective Filing
7 Date of the PCT Application Under 35 U.S.C. §120 (Docket No. 218); (3) Plaintiffs' Motion for
8 Partial Summary Judgment Dismissing Spinal Kinetics' Anticipation and Obviousness Defenses
9 (Docket No. 224); (4) Plaintiffs' Motion for Partial Summary Judgment Dismissing Invalidity
10 Defenses Based on 35 U.S.C. §112 (Written Description, Enablement, Indefiniteness, Best Mode)
11 and §101 (Utility) (Docket No. 225); and (5) Plaintiffs' Motion to Strike or Otherwise Exclude
12 Spinal Kinetics, Inc.'s Experts, George Strong, Nicholas Koske, and Thomas Smegal on Certain
13 Issues (Administrative Motion to File Under Seal at Docket No. 228). All five motions are
14 currently set to be heard by this Court at 9:00 a.m. on July 22, 2011.

15 Given the recent amendments to Local Rule 7-3, the Oppositions to these five motions are
16 currently due by June 24, 2011 and the Replies are currently due by July 1, 2011. However, given
17 the volume of material contained therein, the parties respectfully request that the Court approve a
18 brief continuance of these dates – so that the Oppositions will now be due by June 29, 2011 and
19 the Replies will now be due by July 8, 2011, which is 14 days prior to the hearing. The parties'
20 intent in making this proposal is that this brief continuance not impact the July 22, 2011 hearing
21 date.

22 In addition, by the Court's own motion (Docket No. 215), the hearing date for Spinal
23 Kinetics, Inc.'s Motion to Dismiss Plaintiffs Synthes, Inc. and Synthes USA Sales, LLC for Lack
24 of Standing (Docket No. 206, filed May 6, 2011) was recently continued to July 8, 2011. Shortly
25 after this date was continued, Spinal Kinetics' counsel informed Synthes' counsel that Spinal
26 Kinetics' counsel is unavailable on July 8, 2011. Further, because this motion raises many of the
27 same issues as Spinal Kinetics, Inc.'s Motion for Summary Adjudication Precluding Plaintiffs
28 Synthes, Inc. and Synthes USA Sales, LLC from Recovering Any Damages and Precluding

1 Plaintiff Synthes USA, LLC from Recovering Any Lost Profit Damages and the preparation of the
2 briefing relating to these motions will substantially overlap, the parties also respectfully request:

3 (1) that the hearing on Spinal Kinetics, Inc.'s Motion to Dismiss Plaintiffs Synthes, Inc. and
4 Synthes USA Sales, LLC for Lack of Standing be continued to July 22, 2011; and (2) that the
5 briefing schedule be adjusted to conform with the schedule proposed for the five other motions set
6 to be heard the same day.

7 IT IS THEREFORE HEREBY STIPULATED, by and between the parties, through their
8 undersigned counsel of record:

9 1. That any Opposition to Spinal Kinetics, Inc.'s Motion for Summary Adjudication
10 Precluding Plaintiffs Synthes, Inc. and Synthes USA Sales, LLC from Recovering Any Damages
11 and Precluding Plaintiff Synthes USA, LLC from Recovering Any Lost Profit Damages
12 (Administrative Motion to File Under Seal at Docket No. 216) shall be filed/served by June 29,
13 2011 and that any Reply shall be filed/served by July 8, 2011;

14 2. That any Opposition to Spinal Kinetics, Inc.'s Motion that Each of Claims 29-31 of
15 U.S. Patent No. 7,429,270 is Not Entitled to the Effective Filing Date of the PCT Application
16 Under 35 U.S.C. §120 (Docket No. 218) shall be filed/served by June 29, 2011 and that any Reply
17 shall be filed/served by July 8, 2011;

18 3. That any Opposition to Plaintiffs' Motion for Partial Summary Judgment
19 Dismissing Spinal Kinetics' Anticipation and Obviousness Defenses (Docket No. 224) shall be
20 filed/served by June 29, 2011 and that any Reply shall be filed/served by July 8, 2011;

21 4. That any Opposition to Plaintiffs' Motion for Partial Summary Judgment
22 Dismissing Invalidity Defenses Based on 35 U.S.C. §112 (Written Description, Enablement,
23 Indefiniteness, Best Mode) and §101 (Utility) (Docket No. 225) shall be filed/served by June 29,
24 2011 and that any Reply shall be filed/served by July 8, 2011;

25 5. That any Opposition to Plaintiffs' Motion to Strike or Otherwise Exclude Spinal
26 Kinetics, Inc.'s Experts, George Strong, Nicholas Koske, and Thomas Smegal on Certain Issues
27 (Administrative Motion to File Under Seal at Docket No. 228) shall be filed/served by June 29,
28 2011 and that any Reply shall be filed/served by July 8, 2011;

1 6. That the hearing on Spinal Kinetics, Inc.'s Motion to Dismiss Plaintiffs Synthes,
2 Inc. and Synthes USA Sales, LLC for Lack of Standing (Docket No. 206), currently set for 9:00
3 a.m. on July 8, 2011, shall be continued until 9:00 a.m. on July 22, 2011; and

4 7. That any Opposition to Spinal Kinetics, Inc.'s Motion to Dismiss Plaintiffs
5 Synthes, Inc. and Synthes USA Sales, LLC for Lack of Standing (Docket No. 206) shall be
6 filed/served by June 29, 2011 and that any Reply shall be filed/served by July 8, 2011.

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8 **IT IS SO ORDERED:**

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10 Dated: June 23, 2011

By: Ronald M. Whyte
Hon. Ronald M. Whyte
United States District Court Judge

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13 **AGREED TO AND SUBMITTED BY:**

14

15 Dated: June 15, 2011

DICKSTEIN SHAPIRO LLP

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By: //S//
Allan W. Jansen

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Attorneys for Defendant
SPINAL KINETICS, INC.

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21 Dated: June 15, 2011

SIDLEY AUSTIN LLP

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By: //S//
Jeffrey M. Olson

24

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

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