

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BIOZONE LABORATORIES, INC.,
Plaintiff,
v.
NEXT STEP LABORATORIES CORP.,
et al.,
Defendants.

Case No. 17-cv-02768-NC

**PRETRIAL PREPARATION
ORDER**

A jury trial is scheduled in this case on September 17, 2018. A pretrial conference is scheduled for September 5, 2018, at 2:00 p.m. in Courtroom 5, San Jose. This order prepares for the trial.

Additionally, the parties are referred to Magistrate Judge Virginia DeMarchi for a settlement conference to occur no later than September 4, 2018. The parties must contact Judge DeMarchi’s courtroom deputy to schedule the conference.

I. MOTIONS IN LIMINE

The parties must file their motions in limine by August 22, 2018, with responses due by August 29, 2018. No party may file a reply without leave of Court. The total number of pages each party submits for all motions and all responses must not exceed 15 pages. While it is up to each party to decide how much space to allocate for their motions and how much for their responses, the parties must each stay within the 15-page limit (e.g., a party can allocate 9 pages for their motions, and 6 pages for their responses). The Court

1 will hold a hearing on the motions in limine at the pretrial conference.

2 **II. JOINT TRIAL READINESS BINDER**

3 The parties are ordered to provide the Court with two copies of a Joint Trial
4 Readiness Binder. The documents and binder are due by August 22, 2018, at 12 p.m. at
5 the San Jose Courthouse. The parties must also file a copy of the Joint Trial Readiness
6 Binder in ECF. The Joint Trial Readiness Binders must contain an index and copies of
7 filed documents with the ECF header reflecting the item's docket number and filing date,
8 including:

9 **A. Proposed Order Re: Trial Stipulations**

10 The Court expects that the parties will agree to a variety of stipulations regarding
11 the conduct of the trial. A proposed order outlining all such stipulations must be presented
12 to the Court.

13 **B. Witness Lists**

14 The parties must submit an updated list of all witnesses likely to be called at trial
15 (other than solely for impeachment or rebuttal), with a brief statement following each
16 name describing the substance of the testimony to be given and a time estimate of the
17 direct and cross examinations. This information must be presented in chart format and
18 organized by party. Witnesses who will be testifying as experts should be identified as
19 such and included in a separate expert witness list (see below).

20 **C. Expert Witness Lists**

21 The parties must submit an updated list of all expert witnesses with a summary
22 which must clearly describe the expert's theories and conclusions; a curriculum vitae; and
23 expert reports. Witnesses not included on the list may be excluded from testifying.

24 **D. Updated Exhibit Lists Annotated with Stipulations/Objections**

25 The parties must submit an updated list of all documents and other items to be
26 offered as exhibits at the trial (other than solely for impeachment or rebuttal), with a brief
27 description of each exhibit's contents, and the identity of each sponsoring witness. As
28 applicable, the exhibit list must specify whether the parties stipulate to admit the exhibit or

1 the grounds for any objections to the exhibit. The exhibit list must also include an
2 additional column so that the Court can track the date on which each exhibit is admitted.
3 Prior to submitting the list, the parties must meet and confer and attempt to stipulate as to
4 the admissibility of each exhibit. This information must be presented in chart format and
5 organized numerically.

6 **E. Updated List of Discovery Excerpts**

7 The parties must list those excerpts from depositions, from interrogatory answers,
8 or from responses to requests for admission (other than those solely for impeachment or
9 rebuttal) likely to be used as trial. Prior to submitting the list, the parties must meet and
10 confer and attempt to resolve any disagreements regarding designations or counter-
11 designations. The parties must (i) identify any remaining legal objections to the excerpts
12 on the list itself, and (ii) attach in a separate appendix copies of the disputed excerpts so
13 that the Court can review the disputed materials. The parties must provide a single
14 proposed order with each disputed designation which will allow the Court to rule on
15 whether permission to use each is granted, granted with modification, or denied.

16 **F. Voir Dire Questions**

17 The parties must include any proposed jury questionnaire or questions for the court-
18 directed voir dire, if applicable. If any questions are contested, each party must state the
19 basis for proposing or opposing the question.

20 **III. ELECTRONIC COPIES OF TRIAL DOCUMENTS**

21 The parties must send an electronic copy in Word format to
22 ncpo@cand.uscourts.gov of the following documents listed above: (i) Proposed Order Re:
23 Trial Stipulations; and (ii) Proposed Order Re: Discovery Excerpts.

24 **IV. STIPULATIONS RE: ADMISSIBILITY**

25 The parties must make a good faith effort to stipulate to exhibits' admissibility. If
26 stipulation is not possible, the parties must make every effort to stipulate to authenticity
27 and foundation absent a legitimate objection.

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1 **V. EXHIBITS**

2 Exhibits must be provided to the Court by August 22, 2018, at 12:00 p.m. at the San
3 Jose Courthouse as follows: two sets of exhibits marked, tabbed, indexed, and to be
4 provided in binders. Exhibit sets may be delivered/mailed directly to Chambers in San
5 Jose. The parties must otherwise coordinate with the Courtroom Deputy for other
6 delivery.

7 Each exhibit must be pre-marked with an exhibit tag placed in the top right corner
8 of the first page of a document. Parties are to use a color other than white for the exhibit
9 tags. A page of blank trial exhibit tags can be found on the Court’s website. If an exhibit
10 is a physical object (rather than a document), a picture should be taken and placed in the
11 binder.

12 Upon the conclusion of the trial, each party must retain its exhibit through the
13 appellate process. It is each party’s responsibility to make arrangement with the Clerk of
14 Court to file the record on appeal.

15 **VI. SCHEDULING OF JURY SELECTION**

16 The parties must notify the Court whether they wish to proceed with a jury or bench
17 trial by August 22, 2018. If the parties decide to proceed with a jury trial, the jury will be
18 selected September 17, 2018. Opening statements will be on September 17 after jury
19 selection. The first witness will be called on September 18.

20 **VII. JURY INSTRUCTIONS**

21 If applicable, the parties must submit jointly to the Court via email in Word format
22 to ncpo@cand.uscourts.gov a set of jury instructions by August 22, 2018. If any
23 instructions are contested, each party must state the legal basis for proposing or opposing
24 the instructions.

25 **VIII. SUMMARY OF CASE STATEMENT**

26 By August 22, 2018, the parties must jointly submit an agreed-upon summary of the
27 case, not to exceed one page. This statement of the case will be read to the jury at jury
28 selection. If the parties cannot agree on such a statement, each party must submit its own

1 summary, not to exceed one page.

2 **IX. TRIAL LIMITS**

3 The Court anticipates giving each side a total of 8 hours to present its case. This
4 includes all aspects of trial (e.g., objections, examinations) except jury selection.

5 **X. MISCELLANEOUS**

6 **Electronic Equipment**

7 If a party wishes to use electronic equipment or other large items (such as
8 bookshelves), the party must file a request and proposed order with the Court by August
9 22, 2018.

10 Equipment not provided by the Court must be tested in the courtroom prior to the
11 day when it will be used. Arrangements may be made with the Courtroom Deputy, Lili
12 Harrell at (408) 535-5343, as to an appropriate time for doing so.

13 **Questions from Jury**

14 If the parties select a jury trial, the Court will give an instruction to allow questions
15 from the jury in accordance with Ninth Circuit Model Instruction 1.15 (“Questions to
16 Witnesses by Jurors”).

17 **IT IS SO ORDERED.**

18
19 Dated: July 13, 2018



NATHANAEL M. COUSINS
United States Magistrate Judge