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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 California Lacrosse, Inc.,
11 Plaintiff,
12 v.
13 Lacrosse Unlimited, Inc.,
14 Defendant.

Case No.: 16-cv-02111-CAB-JLB
ORDER:
(1) GRANTING IN PART JOINT
MOTION TO CONTINUE CASE
MANAGEMENT DATES AND
DEADLINES [ECF No. 35];
(2) AMENDING SCHEDULING
ORDER [ECF No. 18]

15 AND RELATED COUNTER ACTION.
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17 Before the Court is the parties' Joint Motion to Continue Case Management Dates
18 and Deadlines. (ECF No. 35.) The parties seek a 45-day extension of the remaining dates
19 and deadlines set forth in the operative scheduling order. (*Id.* at 2.) For good cause shown,
20 the Joint Motion is **GRANTED in part**.¹ Accordingly, the Scheduling Order issued in
21 this case (ECF No. 18) is amended as follows:

22 1. All discovery, including expert discovery, shall be completed by all parties
23 by **June 5, 2017**. "Completed" means that all discovery under Rules 30-36 of the Federal
24 Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a
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28 ¹ The parties' Joint Motion is granted in part to the extent that the deadlines to identify all experts
and exchange all expert reports and the date for the mandatory settlement conference set forth in this Order
differ from those proposed by the parties in the Joint Motion.

1 sufficient period of time in advance of the cut-off date, **so that it may be completed** by
2 the cut-off date, taking into account the times for service, notice and response as set forth
3 in the Federal Rules of Civil Procedure. **Counsel shall promptly and in good faith meet**
4 **and confer with regard to all discovery disputes in compliance with Local Rule**
5 **26.1(a).** The Court expects counsel to make every effort to resolve all disputes without
6 court intervention through the meet and confer process. If the parties reach an impasse
7 on any discovery issue, counsel shall file an appropriate motion within the time limit and
8 procedures outlined in the undersigned magistrate judge's chambers rules. **A failure to**
9 **comply in this regard will result in a waiver of a party's discovery issue. Absent an**
10 **order of the court, no stipulation continuing or altering this requirement will be**
11 **recognized by the court.**

12 Discovery motions must be filed in the time and manner directed by Magistrate
13 Judge Burkhardt (*see* Judge Burkhardt's Civil Chambers Rules on Discovery Disputes
14 available on the Court's website). All discovery motions must be filed within 30 days of
15 the service of an objection, answer, or response which becomes the subject of dispute, or
16 the passage of a discovery due date without response or production, and only after counsel
17 have met and conferred to resolve the dispute **and** requested an informal teleconference
18 with the Court.

19 2. The parties shall designate their respective experts in writing by **May 1, 2017**.
20 The parties must identify any person who may be used at trial to present evidence pursuant
21 to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement is not limited to retained
22 experts. The date for exchange of rebuttal experts shall be by **May 19, 2017**. The written
23 designations shall include the name, address and telephone number of the expert and a
24 reasonable summary of the testimony the expert is expected to provide. The list shall also
25 include the normal rates the expert charges for deposition and trial testimony.

26 3. By **May 1, 2017**, each party shall comply with the disclosure provisions in
27 Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure
28 requirement applies to all persons retained or specially employed to provide expert

1 testimony, or whose duties as an employee of the party regularly involve the giving of
2 expert testimony. **Except as provided in the paragraph below, any party that fails to**
3 **make these disclosures shall not, absent substantial justification, be permitted to use**
4 **evidence or testimony not disclosed at any hearing or at the time of trial. In addition,**
5 **the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

6 4. Any party shall supplement its disclosure regarding contradictory or rebuttal
7 evidence under Fed. R. Civ. P. 26(a)(2)(D) by **May 19, 2017**.

8 5. Failure to comply with this section or any other discovery order of the court
9 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on
10 the introduction of experts or other designated matters in evidence.

11 6. All other pretrial motions including those addressing Daubert issues must be
12 filed by **July 3, 2017**. Counsel for the moving party must obtain a motion hearing date
13 from Judge Bencivengo's law clerk. Failure to make a timely request for a motion date
14 may result in the motion not being heard. No oral argument will be scheduled unless
15 ordered by the Court. Opposition briefs must be filed no later than fourteen days after the
16 motion was filed, and any reply briefs must be filed no later than seven days after the
17 opposition briefs. A schedule for motions in limine will be set at the final pretrial
18 conference.

19 7. A Mandatory Settlement Conference shall be conducted on **June 15, 2017**,
20 at **1:45 PM** in the chambers of Magistrate Judge **Jill L. Burkhardt**. Counsel or any party
21 representing himself or herself shall submit confidential settlement briefs directly to
22 chambers by **June 5, 2017**. All parties are ordered to read and to fully comply with the
23 Chamber Rules of the assigned magistrate judge.

24 The **confidential** settlement statements should be lodged by e-mail to
25 efile_Burkhardt@casd.uscourts.gov. Each party's settlement statement shall concisely set
26 forth the following: (1) the party's statement of the case; (2) the controlling legal issues;
27 (3) issues of liability and damages; (4) the party's settlement position, including the last
28 offer or demand made by that party; (5) a separate statement of the offer or demand the

1 party is prepared to make at the settlement conference; and (6) a list of all attorney and
2 non-attorney attendees for the Conference, including person(s) and their title(s) or
3 position(s) with the party who will attend and have settlement authority at the conference.
4 If exhibits are attached and the total submission amounts to more than 20 pages, a hard
5 copy must also be delivered directly to Magistrate Judge Burkhardt's chambers.
6 **Settlement conference statements shall not be filed with the Clerk of the Court.**
7 **Settlement conference statements may be exchanged confidentially with opposing**
8 **counsel within the parties' discretion.**

9 Pursuant to Local Civil Rule 16.3, all party representatives and claims adjusters for
10 insured defendants with full and unlimited authority² to negotiate and enter into a binding
11 settlement, as well as the principal attorney(s) responsible for the litigation, must be
12 present and legally and factually prepared to discuss and resolve the case at the mandatory
13 settlement conference. In the case of a corporate entity, an authorized representative of
14 the corporation who is not retained outside counsel must be present and must have
15 discretionary authority to commit the company to pay an amount up to the amount of the
16 Plaintiff's prayer (excluding punitive damages prayers). The purpose of this requirement
17 is to have representatives present who can settle the case during the course of the
18 conference without consulting a superior.

19 Failure to attend the conference or obtain proper excuse will be considered grounds
20 for sanctions.

21 8. In jury trial cases before Judge Bencivengo, neither party is required to file
22 Memoranda of Contentions of Fact and Law.

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24 ² "Full authority to settle" means that the individuals at the settlement conference must be
25 authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable
26 to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648 (7th Cir. 1989). The person
27 needs to have "unfettered discretion and authority" to change the settlement position of a party. *Pitman*
28 *v. Brinker Int'l, Inc.*, 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with
unlimited settlement authority to attend the conference includes that the person's view of the case may be
altered during the face to face conference. *Id.* at 486. A limited or a sum certain of authority is not
adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590 (8th Cir. 2001).

1 9. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.
2 Civ. P. 26(a)(3) by **August 25, 2017**. Failure to comply with these disclosure requirements
3 could result in evidence preclusion or other sanctions under Fed. R. Civ. P. 37.

4 10. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by
5 **September 1, 2017**. The parties shall meet and confer and prepare a proposed pretrial
6 order containing the following:

7 1. A joint neutral statement to be read to the jury, not in excess of one
8 page, of the nature of the case and the claims and defenses.

9 2. A list of the causes of action to be tried, referenced to the Complaint
10 [and Counterclaim if applicable]. For each cause of action, the order shall
11 succinctly list the elements of the claim, damages and any defenses. A cause
of action in the Complaint [and/or Counterclaim] which is not listed shall be
dismissed with prejudice.

12 3(a). A list of each witness counsel actually expect to call at trial with a brief
13 statement, not exceeding four sentences, of the substance of the witnesses'
testimony.

14 3(b). A list of each expert witness counsel actually expect to call at trial with
15 a brief statement, not exceeding four sentences, of the substance of the
witnesses' testimony.

16 3(c). A list of additional witnesses, including experts, counsel do not expect
17 to call at this time but reserve the right to call at trial along with a brief
18 statement, not exceeding four sentences, of the substance of the witnesses'
testimony.

19 4(a). A list of all exhibits that counsel actually expect to offer at trial with a
20 one-sentence description of the exhibit. All exhibits are to be identified
numerically, plaintiff starting with "1" and defendant beginning with an
agreed upon numerical designation.

21 4(b). A list of all other exhibits that counsel do not expect to offer at this
22 time but reserve the right to offer if necessary at trial with a one-sentence
description of the exhibit.

23 5. A statement of all facts to which the parties stipulate. This statement
24 shall be on a separate page and will be read to and provided to the jury.

25 6. A list of all deposition transcripts by page and line, or videotape
depositions by section, that will be offered at trial.

26 7. Counsel will note any objections they have to any other parties' Fed.
27 R. Civ. P. 26(a)(3) Pretrial Disclosures.
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1 The Court encourages the parties to consult with the assigned magistrate judge to
2 work out any problems in preparation of the proposed pretrial order. The court will
3 entertain any questions concerning the conduct of the trial at the pretrial conference.

4 11. Counsel for plaintiff will be responsible for preparing the pretrial order and
5 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **September 8,**
6 **2017,** plaintiff's counsel must provide opposing counsel with the proposed pretrial order
7 for review and approval. Opposing counsel must communicate promptly with plaintiff's
8 attorney concerning any objections to form or content of the pretrial order, and both parties
9 shall attempt promptly to resolve their differences, if any, concerning the order.

10 12. The Proposed Final Pretrial Conference Order, including objections to any
11 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
12 lodged with the assigned district judge by **September 15, 2017,** and shall be in the form
13 prescribed in and comply with Local Rule 16.1(f)(6).

14 13. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
15 **Cathy Ann Bencivengo** on **September 22, 2017,** at **2:00 PM.**

16 14. The parties must review the chambers' rules for the assigned district judge
17 and magistrate judge.

18 15. A post trial settlement conference before a magistrate judge may be held
19 within 30 days of verdict in the case.

20 16. The dates and times set forth herein will not be modified except for good
21 cause shown.

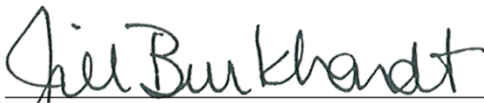
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1 17. Briefs or memoranda in support of or in opposition to any pending motion
2 shall not exceed twenty-five (25) pages in length without leave of a district court judge.
3 No reply memorandum shall exceed ten (10) pages without leave of a district court judge.
4 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents
5 and a table of authorities cited.

6 18. Plaintiff's counsel shall serve a copy of this order on all parties that enter this
7 case hereafter.

8 **IT IS SO ORDERED.**

9 Dated: April 7, 2017

10 
11 Hon. Jill L. Burkhardt
12 United States Magistrate Judge

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