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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

XIFIN, INC.,

Plaintiff,

v.

D2 HEALTH MANAGEMENT,
LLC,

Defendant.

Case No.: 17cv15-CAB-MDD

**AMENDED SCHEDULING
ORDER REGULATING
DISCOVERY
AND OTHER PRE-TRIAL
PROCEEDINGS**

A Joint Motion for Modification of the Case Scheduling Order was filed September 15, 2017. (ECF No. 22). The Court finds good cause to grant the modification to the current scheduling order (ECF No. 18) as follows:

1. All expert disclosures required by Fed. R. Civ. P. 26(a)(2) shall be served on all parties on or before **October 30, 2017**. Any contradictory or rebuttal disclosures within the meaning of Rule 26(a)(2)(D)(ii) shall be disclosed on or before **November 29, 2017**. Unless otherwise stipulated by the parties, the required expert disclosures shall include an expert report as required by Rule 26(a)(2)(B). If a written report is not required, the disclosure must provide the information required under Rule 26(a)(2)(C).

1 2. All discovery, including expert discovery, shall be completed by all
2 parties by **January 5, 2018**. “Completed” means that interrogatories,
3 requests for production, and other discovery requests must be served at least
4 thirty (30) days prior to the established cutoff date so that responses thereto
5 will be due on or before the cutoff date. All subpoenas issued for discovery
6 must be returnable on or before the discovery cutoff date. All disputes
7 concerning discovery shall be brought to the attention of the Magistrate Judge
8 no later than forty-five (45) days following the date upon which the event giving
9 rise to the dispute occurred. Counsel are required to meet and confer regarding
10 all discovery disputes pursuant to the requirements of Local Rule 26.1(a).
11 Counsel are to comply with the chambers rules of the Magistrate Judge in
12 bringing discovery disputes before the court.

13 3. All pre-trial motions, other than *Daubert* motions, motions to
14 amend or join parties, or motions *in limine*, shall be filed on or before
15 **February 2, 2018**. All *Daubert* motions shall be filed on or before **February**
16 **2, 2018**. Counsel for the moving party shall set the motion date on the date
17 that is 35 days from the date the motion is filed. Parties intending to file a
18 motion shall *not* contact Judge Bencivengo’s chambers for a hearing date. The
19 parties should review Judge Bencivengo’s chambers rules for civil cases for the
20 additional requirements for noticed motions before Judge Bencivengo.

21 Pursuant to Local Rule 7.1.f.3.c, **if an opposing party fails to file**
22 **opposition papers in the time and manner required by Local Rule**
23 **7.1.e.2, that failure may constitute a consent to the granting of a**
24 **motion or other request for ruling by the Court.** Accordingly, all parties
25 are ordered to abide by the terms of Local Rule 7.1.e.2 or otherwise face the
26 prospect of any pretrial motion being granted as an unopposed motion
27 pursuant to Local Rule 7.1.f.3.c.
28

1 4. A Mandatory Settlement Conference shall be conducted on
2 **December 13, 2017** at **9:30AM** in the chambers of **Magistrate Judge**
3 **Mitchell D. Dembin**. Counsel shall lodge confidential settlement briefs
4 directly to chambers by **December 6, 2017**. All parties are ordered to read
5 and to fully comply with the Chamber Rules of the assigned magistrate judge.

6 5. The parties must comply with the pretrial disclosure requirements
7 of Fed. R. Civ. P. 26(a)(3) no later than **March 30, 2018**. **Please be advised**
8 **that failure to comply with this section or any other discovery order**
9 **of the Court may result in the sanctions provided for in Fed. R. Civ. P.**
10 **37, including a prohibition on the introduction of experts or other**
11 **designated matters in evidence.**

12 6. In jury trial cases before the Honorable Cathy Ann Bencivengo,
13 neither party is required to file Memoranda of Contentions of Fact and Law
14 pursuant to Civil Local Rule 16.1.f.2.

15 7. Counsel shall confer and take the action required by Local Rule
16 16.1.f.4.a on or before **April 6, 2018**. The parties shall meet and confer and
17 prepare a proposed pretrial order containing the following:
18

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

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

27 3(a). A list of each witness counsel actually expect to call at trial
28 with a brief statement, not exceeding four sentences, of the
substance of the witnesses' testimony.

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

1 3(c). A list of additional witnesses, including experts, counsel do
2 not expect to call at this time but reserve the right to call at trial
3 along with a brief statement, not exceeding four sentences, of the
4 substance of the witnesses' testimony.

5 4(a). A list of all exhibits that counsel actually expect to offer at
6 trial with a one-sentence description of the exhibit. All exhibits are
7 to be identified numerically, plaintiff starting with "1" and
8 defendant beginning with an agreed upon numerical designation.

9 4(b). A list of all other exhibits that counsel do not expect to offer
10 at this time but reserve the right to offer if necessary at trial with
11 a one-sentence description of the exhibit.

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

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

17 7. Counsel will note any objections they have to any other
18 parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures.

19 The Court encourages the parties to consult with the assigned magistrate
20 judge to work out any problems in preparation of the proposed pretrial order.

21 The court will entertain any questions concerning the conduct of the trial at
22 the pretrial conference.

23 8. Counsel for the Plaintiff(s) must provide opposing counsel with the
24 proposed pretrial order for review and approval and take any other action
25 required by Local Rule 16.1.f.6.a on or before **April 13, 2018**. Opposing counsel
26 must communicate promptly with plaintiff's attorney concerning any
27 objections to form or content of the pretrial order, and both parties shall
28 attempt promptly to resolve their differences, if any, concerning the order.

9. The proposed pretrial order shall be lodged with the district judge's
chambers on or before **April 20, 2018**, and shall be in the form prescribed in
Local Rule 16.1.f.6.

10. The final Pretrial Conference is scheduled on the calendar of the

1 **Honorable Cathy Ann Bencivengo for April 27, 2018 at 2:00PM.**

2 11. The trial in this matter shall commence on Monday, **May 29, 2018**
3 **at 8:45 a.m.**

4 12. Plaintiff's counsel shall serve a copy of this order on all parties that
5 enter this case hereafter.

6 **IT IS SO ORDERED.**

7 Dated: September 27, 2017



8
9 Hon. Mitchell D. Dembin
10 United States Magistrate Judge

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