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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 GASPAR PHYSICAL THERAPY, INC., et al.,
12 Plaintiffs,
13 v.
14 DAVID W. "DAVE" ROBERTS, et al.,
15 Defendants.

Case No.: 17cv2051-WQH(MSB)

**ORDER GRANTING IN PART JOINT
MOTION TO CONTINUE [ECF NO. 94]
AND ISSUING AN AMENDED
SCHEDULING ORDER**

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17 On July 29, 2019, the parties filed a "Joint Motion to Extend Deadlines for
18 Completion of Fact Discovery and Expert Witness Disclosures." (ECF No. 94.) The
19 parties describe their discovery efforts to date and ask the Court to extend most
20 deadlines in the Court's Scheduling Order [ECF No. 88] by three months. (*Id.* at 1-2.)

21 Having reviewed the motion, the Court finds that the lengthy extension of time
22 sought by the parties is unwarranted. The Court, however, finds good cause to grant a
23 shorter continuance and **GRANTS in part** the motion. Having consulted with the
24 chambers of District Judge Hayes, the Court modifies the Scheduling Order [ECF No. 88]
25 as follows:

26 1. All fact discovery shall be completed by all parties on or before
27 **December 30, 2019**. "Completed" means that all discovery under Rules 30-36 of the
28 Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be

1 initiated a sufficient period of time in advance of the cut-off date, **so that it may be**
2 **completed** by the cut-off date, taking into account the times for service, notice and
3 response as set forth in the Federal Rules of Civil Procedure. All interrogatories,
4 requests for admission, and document production requests must be served by
5 **October 25, 2019**.

6 Counsel shall promptly and in good faith meet and confer with regard to all
7 discovery disputes in compliance with Local Rule 26.1(a). All discovery motions must be
8 filed within **30 days** of the event giving rise to the dispute. For oral discovery, the event
9 giving rise to the dispute is the completion of the transcript of the relevant portion of
10 the deposition. For written discovery, the event giving rise to the discovery dispute is
11 the date of service of the response, **not** the date on which counsel reach an impasse in
12 meet and confer efforts. If a party fails to provide a discovery response, the event giving
13 rise to the discovery dispute is the date response was due.

14 The Court's procedures for resolving discovery disputes are set forth in Magistrate
15 Judge Michael S. Berg's Civil Chambers Rules, which are posted on the Court's website.
16 **A failure to comply in this regard will result in a waiver of a party's discovery issue.**
17 **Absent an order of the court, no stipulation continuing or altering this requirement**
18 **will be recognized by the court.**

19 2. The parties shall designate their respective experts in writing by **January 27,**
20 **2020**. The parties must identify any person who may be used at trial to present
21 evidence pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement is not
22 limited to retained experts. The date for exchange of rebuttal experts shall be by
23 **February 10, 2020**. The written designations shall include the name, address and
24 telephone number of the expert and a reasonable summary of the testimony the expert
25 is expected to provide. The list shall also include the normal rates the expert charges for
26 deposition and trial testimony.

27 3. By **March 16, 2020**, each party shall comply with the disclosure provisions
28 in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure

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

7 4. Any party shall supplement its disclosure regarding contradictory or
8 rebuttal evidence under Fed. R. Civ. P. 26(a)(2)(D) by **March 30, 2020**.

9 5. All expert discovery shall be completed by all parties by **April 27, 2020**. The
10 parties shall comply with the same procedures set forth in the paragraph governing fact
11 discovery.

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

15 7. All other pretrial motions must be filed by **May 25, 2020**. Counsel for the
16 moving party must obtain a motion hearing date from the law clerk of the judge who
17 will hear the motion. The period of time between the date you request a motion date
18 and the hearing date may vary from one district judge to another. Please plan
19 accordingly. Failure to make a timely request for a motion date may result in the
20 motion not being heard. Motions in limine are to be filed as directed in the Local Rules,
21 or as otherwise set by the district judge.

22 8. A Mandatory Settlement Conference shall be conducted on **March 2, 2020**,
23 at **1:30 p.m.**, in the chambers of **Magistrate Judge Michael S. Berg** located at **221 West**
24 **Broadway, Suite 3145, San Diego, CA 92101**. All discussions at the Mandatory
25 Settlement Conference will be informal, off the record, privileged, and confidential.
26 Counsel for any non-English speaking party is responsible for arranging for the
27 appearance of an interpreter at the conference.

1 a. **Personal Appearance of Parties Required:** All named parties, party
2 representatives, including claims adjusters for insured defendants, as well as the
3 principal attorney(s) responsible for the litigation, must be present **in person** and legally
4 and factually prepared to discuss and resolve the case. Counsel appearing without their
5 clients (whether or not counsel has been given settlement authority) will be cause for
6 immediate imposition of sanctions and may also result in the immediate termination of
7 the conference.

8 b. **Full Settlement Authority Required:** A party or party representative
9 with full settlement authority¹ must be present at the conference. Retained outside
10 corporate counsel shall not appear on behalf of a corporation as the party
11 representative who has the authority to negotiate and enter into a settlement. A
12 government entity may be excused from this requirement so long as the government
13 attorney who attends the Mandatory Settlement Conference has (1) primary
14 responsibility for handling the case, and (2) authority to negotiate and recommend
15 settlement offers to the government official(s) having ultimate settlement authority.

16 c. **Confidential Settlement Statements Required:** On or before
17 **February 24, 2020**, the parties shall submit directly to Magistrate Judge Berg's chambers
18 (via hand delivery or by e-mail to the Court at efile_berg@casd.uscourts.gov),
19 confidential settlement statements. The statements are limited to ten (10) pages, plus
20 an additional ten (10) pages of exhibits. Each party's settlement statement must outline
21 (1) the nature of the case and the claims, (2) position on liability or defenses; (3)
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24 ¹ "Full settlement authority" 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
26 acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989).
27 The person needs to have "unfettered discretion and authority" to change the settlement position of a
28 party. Pitman 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 contemplates 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. See Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595–97 (8th Cir.
2001).

1 position regarding settlement of the case with a **specific demand/offer for settlement**,
2 and (4) any previous settlement negotiations or mediation efforts. The Mandatory
3 Settlement Conference statement **must not merely repeat** what was contained in the
4 Early Neutral Evaluation conference brief or any earlier settlement brief. The
5 settlement statement **must specifically identify what the discovery process revealed**
6 and the effect that the evidence has on the issues in the case. To the extent specific
7 discovery responses, portions of deposition testimony, or expert reports are pertinent
8 to the Court’s evaluation of the matter, these documents must be attached as exhibits.
9 Evidence supporting or refuting either party’s claim for damages must also be identified
10 and included as an exhibit.

11 If a specific demand or offer cannot be made at the time the settlement
12 statement is submitted, then the reasons as to why a demand or offer cannot be made
13 must be stated. Further, the party must explain when they will be in a position to state
14 a demand or offer. General statements such as a party will “negotiate in good faith” is
15 **not** a specific demand or offer. The settlement statement should be submitted
16 confidentially and need not be shared with other parties.

17 d. **Requests to Continue a Mandatory Settlement Conference:**

18 Any request to continue the Mandatory Settlement Conference, or request for relief
19 from any of the provisions or requirements of this Order, must be sought by a **written**
20 **application. Absent good cause, requests for continuances will not be considered**
21 **unless submitted in writing no fewer than seven (7) calendar days prior to the**
22 **scheduled conference.**

23 **If the case is settled in its entirety before the scheduled date of the conference,**
24 **counsel and any unrepresented parties must still appear in person, unless a written**
25 **joint notice confirming the complete settlement of the case is filed no fewer than**
26 **twenty-four (24) hours before the scheduled conference.**

27 9. Counsel shall file their Memoranda of Contentions of Fact and Law and take
28 any other action required by Local Rule 16.1(f)(2) by **August 27, 2020**. In jury trial cases

1 before Judge Hayes, neither party is required to file Memoranda of Contentions of Fact
2 and Law.

3 10. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.
4 Civ. P. 26(a)(3) by **August 28, 2020**. Failure to comply with these disclosure
5 requirements could result in evidence preclusion or other sanctions under Fed. R. Civ. P.
6 37.

7 11. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by
8 **September 4, 2020**. At this meeting, counsel shall discuss and attempt to enter into
9 stipulations and agreements resulting in simplification of the triable issues. Counsel shall
10 exchange copies and/or display all exhibits other than those to be used for
11 impeachment. The exhibits shall be prepared in accordance with Local Rule
12 16.1(f)(4)(c). Counsel shall note any objections they have to any other parties' Pretrial
13 Disclosures under Fed. R. Civ. P. 26(a)(3). Counsel shall cooperate in the preparation of
14 the proposed pretrial conference order.

15 12. Counsel for plaintiff will be responsible for preparing the pretrial order and
16 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **September 11,**
17 **2020**, plaintiff's counsel must provide opposing counsel with the proposed pretrial order
18 for review and approval. Opposing counsel must communicate promptly with plaintiff's
19 attorney concerning any objections to form or content of the pretrial order, and both
20 parties shall attempt promptly to resolve their differences, if any, concerning the order.

21 13. The Proposed Final Pretrial Conference Order, including objections to any
22 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
23 lodged with the assigned district judge by **September 18, 2020**, and shall be in the form
24 prescribed in and comply with Local Rule 16.1(f)(6).

25 14. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
26 **William Q. Hayes** on **September 25, 2020**, at **11:00 a.m.**

27 15. The parties must review the chambers' rules for the assigned district judge
28 and magistrate judge.

1 16. A post trial settlement conference before a magistrate judge may be held
2 within 30 days of verdict in the case.

3 17. The dates and times set forth herein will not be modified except for good
4 cause shown.

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

10 19. Plaintiff's counsel shall serve a copy of this order on all parties that enter
11 this case hereafter.

12 **IT IS SO ORDERED.**

13 Dated: July 30, 2019

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16 Honorable Michael S. Berg
17 United States Magistrate Judge
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