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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

12 KYLE WALKER,

13 Plaintiff,

14 v.

15 STRYKER EMPLOYMENT
16 COMPANY, LLC, et al.,

17 Defendants.

Case No.: 22-cv-00264-MMA-JLB

ORDER:

**(1) GRANTING EXTENSION OF
TIME TO BRING DISCOVERY
DISPUTES;**

**(2) GRANTING JOINT MOTION TO
AMEND THE SCHEDULING
ORDER; AND**

**(3) ISSUING AMENDED
SCHEDULING ORDER**

[ECF Nos. 30; 35]

24
25 On July 28, 2022, the Court held an informal Discovery Conference before
26 Magistrate Judge Jill L. Burkhardt, to address the issues set forth in the joint discovery
27 statement submitted by the parties on July 13, 2022. (ECF Nos. 34; 36.) At the
28 conclusion of the Conference, the parties requested an extension of 30 days in order to

1 meet and confer further and then bring any remaining discovery disputes to the Court's
2 attention. (ECF No. 36.) As stated in the Conference, the parties' request is
3 **GRANTED**. Accordingly, the deadline to contact the Court with any remaining
4 discovery disputes related to the July 13, 2022 joint discovery statement, and any dispute
5 involving Defendant Howmedica Osteonics Corp.'s supplemental responses (*see* ECF
6 No. 34), is extended to **August 29, 2022**.

7 Also before the Court is the parties' second Joint Motion to Amend the Scheduling
8 Order. (ECF No. 35.) Good cause appearing, and for the reasons discussed in the
9 Conference, the parties' joint motion (ECF No. 35) is **GRANTED**, and the operative
10 Scheduling Order (ECF No. 30) is amended as follows:

11 1. All fact **and** expert discovery must be completed by all parties by
12 **November 7, 2022**. "Completed" means that all discovery under Rules 30-36 of the
13 Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be
14 initiated a sufficient period of time in advance of the cut-off date, **so that it may be**
15 **completed** by the cut-off date, taking into account the times for service, notice and
16 response as set forth in the Federal Rules of Civil Procedure. **Counsel must promptly**
17 **and in good faith meet and confer with regard to all discovery disputes in**
18 **compliance with Local Rule 26.1(a)**. The Court expects counsel to make every effort to
19 resolve all disputes without court intervention through the meet and confer process.

20 Discovery disputes must be brought to the Court's attention in the time and manner
21 required by § V of Judge Burkhardt's Civil Chambers Rules. **All discovery disputes**
22 **must be raised within 30 calendar days of the service of an objection, answer, or**
23 **response** that becomes the subject of dispute, or the passage of a discovery due date
24 without response or production, and only after counsel (and any unrepresented parties)
25 have met and conferred to resolve the dispute. *See* J. Burkhardt Civ. Chambers R. § V.
26 **A failure to comply in this regard will result in a waiver of a party's discovery issue.**
27 **Absent an order of the court, no stipulation continuing or altering this requirement**
28 **will be recognized by the court.**

1 2. The parties must designate their respective experts in writing by
2 **September 9, 2022**. The parties must identify any person who may be used at trial to
3 present evidence pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement
4 is not limited to retained experts. The date for exchange of rebuttal experts must be by
5 **October 7, 2022**. The written designations must include the name, address and telephone
6 number of the expert and a reasonable summary of the testimony the expert is expected to
7 provide. The list must also include the normal rates the expert charges for deposition and
8 trial testimony.

9 3. By **September 9, 2022**, each party must comply with the disclosure
10 provisions in Rule 26(a)(2)(B) and (C) of the Federal Rules of Civil Procedure. This
11 disclosure requirement applies to all persons retained or specially employed to provide
12 expert testimony, or whose duties as an employee of the party regularly involve the
13 giving of expert testimony. **Except as provided in the paragraph below, any party**
14 **that fails to make these disclosures will not, absent substantial justification, be**
15 **permitted to use evidence or testimony not disclosed at any hearing or at the time of**
16 **trial. In addition, the Court may impose sanctions as permitted by Fed. R. Civ. P.**
17 **37(c).**

18 4. Any party must supplement its disclosure regarding contradictory or rebuttal
19 evidence under Fed. R. Civ. P. 26(a)(2)(D) by **October 7, 2022**.

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

23 6. All dispositive pretrial motions, including motions for summary judgment
24 and motions addressing *Daubert* issues, must be filed by **December 15, 2022**.¹ Counsel
25 for the moving party must obtain a motion hearing date from Judge Anello's law clerk.

26
27 ¹ This deadline is not applicable to pretrial motions *in limine*. For further
28 information regarding motions *in limine*, please refer to Judge Anello's Civil Chambers
Rules.

1 The period of time between the date you request a motion date and the hearing date may
2 vary from one district judge to another. Please plan accordingly. Failure to make a
3 timely request for a motion date may result in the motion not being heard.

4 7. If appropriate, following the filing of an order ruling on a motion for
5 summary judgment or other dispositive pretrial motion, or in the event no such motion is
6 filed, after the expiration of the deadline set forth in paragraph 8, supra, Judge Anello will
7 issue a pretrial scheduling order setting a pretrial conference, trial date, and all related
8 pretrial deadlines. The parties must review and be familiar with Judge Anello’s Civil
9 Chambers Rules, which provide additional information regarding pretrial scheduling.

10 8. The Mandatory Settlement Conference (“MSC”) is hereby rescheduled to
11 **January 25, 2023** at **1:45 PM** before **Magistrate Judge Jill L. Burkhardt** and will
12 occur by video conference.² **Mandatory directions for participating in the MSC by**
13 **video conference are attached hereto.** The purpose of the MSC is to permit an
14 informal, candid discussion between the attorneys, parties, and the settlement judge of
15 every aspect of the lawsuit in an effort to achieve a mediated resolution of the case. All
16 MSC discussions will be off the record, privileged, and confidential. *See* CivLR 16.3(h).

17 Pursuant to Civil Local Rule 16.3, all party representatives and claims adjusters for
18 insured defendants with full and unlimited authority³ to negotiate and enter into a binding
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20 ² If any party believes the MSC is more likely to be successful if conducted in-
21 person, that party shall meet and confer on the issue with the other parties. After meeting
22 and conferring, and no later than **60 days before the MSC**, the parties shall leave a joint
23 voicemail with chambers at (619) 557-6624 indicating which of the parties requests an
24 in-person MSC. In the voicemail, the parties shall leave three mutually available dates
25 for a telephonic status conference to discuss whether the MSC should be held in-person.
26 The final decision will be made by the Court.

27 ³ “Full authority to settle” means that the individuals at the settlement conference
28 must be authorized to fully explore settlement options and to agree at that time to any
settlement terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648 (7th Cir. 1989). The person needs to have “unfettered discretion and authority” to change the settlement position of a 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

1 settlement, as well as the principal attorney(s) responsible for the litigation, must be
2 present and legally and factually prepared to discuss and resolve the case at the MSC. In
3 the case of an entity, an authorized representative of the entity who is not retained outside
4 counsel must be present and must have discretionary authority to commit the entity to pay
5 an amount up to the amount of the Plaintiff's prayer (excluding punitive damages
6 prayers). The purpose of this requirement is to have representatives present who can
7 settle the case during the course of the conference without consulting a superior.

8 **Failure to attend the MSC or obtain proper excuse will be considered grounds**
9 **for sanctions.**

10 No later than **21 days before the MSC**, the parties shall exchange formal
11 settlement proposals, as required by § III.A. of Judge Burkhardt's Civil Chambers Rules.

12 No later than **14 days before the MSC**, the parties shall meet and confer in person or
13 telephonically, as required by § III.B. of Judge Burkhardt's Civil Chambers Rules.

14 9. No later than **January 13, 2023**, counsel (and any unrepresented parties)
15 shall **lodge** confidential MSC statements with Judge Burkhardt's chambers via e-mail at
16 efile_Burkhardt@casd.uscourts.gov. The parties' MSC statements shall comply with §
17 III.C. of Judge Burkhardt's Civil Chambers Rules

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

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

22 12. Briefs or memoranda in support of or in opposition to any pending motion
23 must not exceed twenty-five (25) pages in length without leave of a district court judge.
24 No reply memorandum will exceed ten (10) pages without leave of a district court judge.
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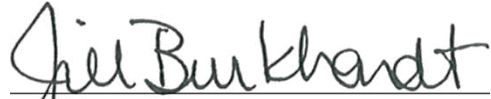
26 settlement authority to attend the conference includes that the person's view of the case
27 may be altered during the face to face conference. *Id.* at 486. A limited or a sum certain
28 of authority is not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 595–97 (8th
Cir. 2001).

1 Briefs and memoranda exceeding ten (10) pages in length must have a table of contents
2 and a table of authorities cited.

3 13. Plaintiff's counsel must serve a copy of this order on all parties that enter
4 this case hereafter.

5 **IT IS SO ORDERED.**

6 Dated: July 29, 2022

7 
8 Hon. Jill L. Burkhardt
9 United States Magistrate Judge

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1 **Mandatory Directions for Zoom Video Conference Participation**

2 1. The Court will use its official ZoomGov video conferencing account to hold
3 the MSC. **IF YOU ARE UNFAMILIAR WITH ZOOM:** Zoom is available on
4 computers through a download on the Zoom website (<https://zoom.us/meetings>) or on
5 mobile devices through the installation of a free app.⁴ Joining a Zoom conference does
6 not require creating a Zoom account, but it does require downloading the .exe file (if
7 using a computer) or the app (if using a mobile device). Participants are encouraged to
8 create an account, install Zoom and familiarize themselves with Zoom in advance of the
9 MSC.⁵ There is a cost-free option for creating a Zoom account.

10 2. Prior to the start of the MSC, the Court will e-mail each MSC participant an
11 invitation to join a Zoom video conference. Again, if possible, participants are
12 encouraged to use laptops or desktop computers for the video conference, as mobile
13 devices often offer inferior performance. Because Zoom may quickly deplete the battery
14 of a participant’s device, each participant should ensure that her or his device is plugged
15 in or that a charging cable is readily available during the video conference. Participants
16 shall join the video conference by following the ZoomGov Meeting hyperlink in the
17 invitation. **Participants who do not have Zoom already installed on their device**
18 **when they click on the ZoomGov Meeting hyperlink will be prompted to download**
19 **and install Zoom before proceeding.** Zoom may then prompt participants to enter the
20 password included in the invitation. All participants will be placed in a waiting room
21 until the MSC begins.

22 3. Each participant should plan to join the Zoom video conference **at least**
23 **5 minutes** before the start of the MSC to ensure that the MSC begins on time.

24 4. Zoom’s functionalities will allow the Court to conduct the MSC as it
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26 ⁴ If possible, participants are encouraged to use laptops or desktop computers for the
27 video conference, as mobile devices often offer inferior performance.

28 ⁵ For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>

1 ordinarily would conduct an in-person MSC. That is, the Court will begin the MSC with
2 all participants joined together in a main session. After an initial discussion in the main
3 session, the Court will divide participants into separate, confidential sessions, which
4 Zoom calls Breakout Rooms.⁶ In a Breakout Room, the Court will be able to
5 communicate with participants from a single party in confidence. Breakout Rooms will
6 also allow parties and counsel to communicate confidentially without the Court.

7 5. As previously stated, MSCs are confidential court proceedings. All
8 attendees must participate from a private and stable location where no individual who is
9 not a party, a party representative, or an attorney for a party can overhear the
10 proceedings. All attendees must be prepared to devote their full attention to the MSC as
11 if they were attending in person. This means that attendees must clear their schedules of
12 all conflicts for the entire period of the MSC.⁷ Attendees may not participate from a
13 moving car or a public space.

14 6. All participants are expected to display the same level of professionalism
15 and civility as they would at an in-person court proceeding. *See* CivLR 2.1; J.
16 Burkhardt's Civ. Chambers R. § I.

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27 ⁶ For more information on what to expect when participating in a Zoom Breakout
28 Room, visit: <https://support.zoom.us/hc/en-us/articles/115005769646>

⁷ MSCs are ordinarily scheduled for three hours but may last considerably longer.