

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch**

Date: September 29, 2009
Courtroom Deputy: J. Chris Smith
FTR Technician: Kathy Terasaki

Civil Action No. 06-cv-00381-RPM

PURE RESEARCH PRODUCTS, L.L.C.,

Plaintiff,

Richard A. Marsh
William Marsh

v.

ALLERGY RESEARCH GROUP, INC. and
NUTRICOLOGY, INC.

Rick Edwards

Defendants and Third Party Plaintiffs,

v.

JOHN A. SICHEL,

Third-Party Defendant.

COURTROOM MINUTES

Second Pretrial Conference

1:55 p.m. Court in session.

Discussion regarding Plaintiff's Motion to Substitute or Join Party-Defendants or in the Alternative for Leave to Take Limited Discovery.

Counsel state they agree to successor liability, the motion is moot and there are no additional parties needed.

ORDERED: Plaintiff's Motion to Substitute or Join Party-Defendants or in the Alternative for Leave to Take Limited Discovery, filed December 8, 2008 [105], is moot.

Court states for trial purposes Dr. Levine's deposition will be treated as a party.

Counsel agree to not refer to defendant Nutricology, Inc. and assume for trial purposes that defendants are one entity Allergy Research Group, Inc.

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Discussion regarding case claims, facts, defenses, witnesses and pending motions.

ORDERED: Plaintiff's Motion to Exclude Evidence: Comparative Product Efficacy, filed 9/24/2009 [119], is denied.

ORDERED: Plaintiff's Motion to Exclude Evidence: Unlawful Trademark Use - FDA Labeling Requirements, filed 9/24/2009 [120], is denied.

Court states the issue of misuse will not be decided by the jury.

ORDERED: Joint Statement of the Case, plaintiff's additional proposed jury instructions and final lists of witnesses (order to be called and estimated examination time) to be faxed to Court's chambers by 4:00 p.m. October 1, 2009.

Trial briefs to shall be filed by 4:00 p.m. October 2, 2009.

Counsel shall prepare a glossary of technical terms for court recorder.

Court states only stipulated exhibits maybe used during opening statements.

Court states its trial procedures.

Counsel agree that the scope of examination maybe exceeded on witnesses that will called by both sides.

Court states that the Statute of Fraud is an affirmative defense.

3:20 p.m. Court in recess.

Hearing concluded. Total time: 1 hr. 25 min.