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16	UNITED STATES DISTRICT COURT
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18	DISTRICT OF NEVADA
19	STEVEN A. KEGEL,
20	$\hat{)}$ Case No. CV-N-06-0093-LRH(VPC)
21	Plaintiff, ) vs. )
22	BROWN & WILLIAMSON TOBACCO ) STIPULATION TO AMEND
23	CORPORATION; et al., ) <u>SCHEDULING ORDER</u>
24	Defendants.
25	
86 70	Pursuant to Local Rules 6-1 and 7-1, Plaintiff, Steven Kegel, and Defendants R.J.
27 28	Reynolds Tobacco Company, for itself and as successor-in-interest to Brown & Williamson
CORRIS PETERSON ATTORNEYS AT LAW DO NEIL ROAD, SUITE 555 RENO, NEVADA 89511 775/829-6000 FAX 775/829-6001	Tobacco Company and the Reynolds American Inc. Special Severance Pay Plan (named

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erroneously by plaintiff as the Brown & Williamson Tobacco Corporation/Reynolds American, Inc. Special Severance Benefits), recite as follows:

 As previously amended, the Scheduling Order in this case provides that the Joint Pretrial Order shall be filed no later than thirty (30) days after the determination of dispositive motions. (Docket No. 106)

2. The Court entered its order granting in part and denying in part the defendants' motion for summary judgment on March 3, 2009. (Docket No. 150) As part of that order, the Court allowed plaintiff to file a Fifth Amended Complaint.

3. Plaintiff filed both a motion for reconsideration of the Court's order on summary judgment and a Fifth Amended Complaint on March 26, 2009. (Docket Nos. 155, 154)

4. On April 16, 2009, defendant R.J. Reynolds Tobacco Company filed a motion to dismiss the Tenth Claim for Relief added by the Fifth Amended Complaint. (Docket No. 160)

5. On September 25, 2009, the Court entered its order granting reconsideration in part and denying the motion to dismiss the Tenth Claim for Relief. (Docket No. 173)

6. Defendants have moved to amend the order of dismissal to include the language to permit interlocutory review by the Ninth Circuit Court of Appeals. (Docket No. 175)

7. Plaintiff and defendants disagree with respect to the deadline for filing the joint pretrial order in this matter. Plaintiff believes that the joint pretrial order is due on October 26, 2009, which would be thirty (30) days from the date of the Court's decision granting reconsideration in part and denying the motion to dismiss the Tenth Claim for Relief. Defendants believe that, if the motion to amend to permit an interlocutory appeal is denied, consistent with the requirements of due process, the Court's decision to allow the plaintiff to file a fifth amended complaint nonetheless allows the defendants time to answer the new claim for relief, seek discovery with respect to that claim and pursue the dismissal of that claim on summary judgment and that the deadline for filing the joint pretrial order expires thirty (30) days after the decision on any such motion for summary judgment.

ACC IORRIS PETERSON ATTORNEYS AT LAW 00 NEIL ROAD, SUITE 555 RENO, NEVADA 89511 775/829-6000 FAX 775/829-6001 8. Plaintiff and defendants have agreed to extend the deadline for submitting the joint pretrial order to not earlier than thirty (30) days after the determination of the pending

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motion to amend to permit interlocutory appeal and the determination of such appeal if allowed.

Accordingly, plaintiff and defendants stipulate and ask the Court to approve the following amendment to the scheduling order:

1. The deadline for submitting the joint pretrial order in this matter shall be no earlier than thirty (30) days after the determination of the pending motion to amend to permit interlocutory appeal and the determination of such appeal if allowed.

2. Defendants reserve the right to answer the Fifth Amended Complaint, to seek to reopen discovery, and to seek leave to move for summary judgment on the Tenth Claim for Relief. Plaintiff reserves the right to oppose all such efforts as well as to oppose the defendants' pending motion to amend to permit an interlocutory appeal of the decision denying the motion to dismiss the Tenth Claim for Relief.

DATED this 16<sup>th</sup> day of October, 2009.

DATED this 26th day of October, 2009.

WHITEHEAD & WHITEHEAD and ROSE LAW OFFICE

/s/ Jonathan J. Whitehead by

IT IS SO ORDERED.

Attorneys for plaintiff

MORRIS PETERSON

/s/ Suellen Fulstone

by\_

Attorneys for defendant R.J. Reynolds Tobacco Company and the Reynolds American Inc. Special Severance Pay Plan

<u>ORDER</u>

Sinh

LARRY R. HICKS UNITED STATES DISTRICT JUDGE

28 ORRIS PETERSON ATTORNEYS AT LAW DO NEIL ROAD, SUITE 555 RENO, NEVADA 89511 775/829-6000 FAX 775/829-6001