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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 No. CV

10 **CASE MANAGEMENT ORDER**

11 Plaintiff,

12 v.

13 ,

14 Defendants.

15 The Court enters the following Case Management Order to govern the litigation in
16 this case:

17 1. Initial Disclosures. The deadline for making the initial disclosures required by
18 Federal Rule of Civil Procedure 26(a)(1) is **14 days** from the date of this Order.

19 2. Deadline for Joinder, Amending Pleadings, and Filing Supplemental Pleadings. The
20 deadline for joining parties, amending pleadings, and filing supplemental pleadings is **60**
21 **days** from the date of this Order.

22 3. Federal Rule of Evidence 502(d) Non-Waiver Order. The Court orders that a
23 communication or information covered by the attorney-client privilege or work-product
24 protection that is disclosed in connection with the litigation pending before the Court does
25 not waive the privilege or protection in this or any other federal or state proceeding. This
26 provision does not require any party agreement, and it avoids the need to litigate whether
27 an inadvertent production was reasonable. By reducing the risk of waiver, this Order
28 affords parties the opportunity to reduce the cost of discovery by reducing preproduction

1 privilege review.

2 4. Discovery Limitations. Depositions shall be limited to seven hours each, as
3 provided in Rule 30(d)(1) of the Federal Rules of Civil Procedure. A party may serve on
4 any other party up to 25 interrogatories, including subparts, 25 requests for production of
5 documents, including subparts, and 25 requests for admissions, including subparts. The
6 limitations set forth in this paragraph may be increased by mutual agreement of the parties,
7 but such an increase will not result in an extension of the discovery deadlines set forth in
8 this Order.

9 5. Fact Discovery. The deadline for completion of fact discovery, including discovery
10 by subpoena and all disclosure required under Rule 26(a)(3), shall be _____. To
11 ensure compliance with this deadline, the following rules shall apply:

12 a. Depositions: All depositions shall be scheduled to start at least five working
13 days before the discovery deadline. A deposition started five days before the deadline may
14 continue up until the deadline, as necessary.

15 b. Written Discovery: All interrogatories, requests for production of
16 documents, and requests for admissions shall be served at least **45 days** before the fact
17 discovery deadline.

18 c. Notwithstanding Local Rule of Civil Procedure 7.3, the parties may mutually
19 agree in writing, without Court approval, to extend the time for providing discovery in
20 response to requests under Rules 33, 34, and 36 of the Federal Rules of Civil Procedure.
21 Such agreed-upon extensions, however, shall not alter or extend the deadlines set forth in
22 this Order.

23 d. Notwithstanding any provisions of the Federal Rules of Civil Procedure, non-
24 party witnesses shall **not** be permitted to attend (either physically, electronically, or
25 otherwise) the deposition of any other witness in this case without an order of this Court to
26 the contrary.

27 6. Expert Disclosures, Expert Discovery, and Motions Challenging Expert Testimony.

28 a. The party with the burden of proof on an issue shall provide full and complete

1 expert disclosures, as required by Rule 26(a)(2)(A)-(C) of the Federal Rules of Civil
2 Procedure, no later than _____.

3 b. The responding party (not having the burden of proof on the issue) shall
4 provide full and complete expert disclosures, as required by Rule 26(a)(2)(A)-(C) of the
5 Federal Rules of Civil Procedure, no later than _____.

6 c. The party with the burden of proof on the issue shall make its rebuttal expert
7 disclosures, if any, no later than _____. Rebuttal experts shall be limited to
8 responding to opinions stated by the opposing party's experts.

9 d. No depositions of any expert witnesses shall occur before the aforementioned
10 disclosures concerning expert witnesses are made.

11 e. Expert depositions shall be completed no later than _____. All
12 expert depositions shall be scheduled to commence at least five working days before this
13 deadline.

14 f. Disclosures under Rule 26(a)(2)(A) of the Federal Rules of Civil Procedure
15 must include the identities of treating physicians and other witnesses who will provide
16 testimony under Federal Rules of Evidence 702, 703, or 705, but who are not required to
17 provide expert reports under Rule 26(a)(2)(B). Rule 26(a)(2)(C) disclosures are required
18 for such witnesses on the dates set forth above. Rule 26(a)(2)(C) disclosures must identify
19 not only the subjects on which the witness will testify, but must also provide a summary of
20 the facts and opinions to which the expert will testify. The summary, although not as
21 detailed as a Rule 26(a)(2)(B) report, must be sufficiently detailed to provide fair notice of
22 what the expert will say at trial.¹

23 g. As stated in the Advisory Committee Notes to Rule 26 of the Federal Rules
24 _____

25
26 ¹ In *Goodman v. Staples The Office Superstore, LLC*, 644 F.3d 817 (9th Cir. 2011),
27 the Ninth Circuit held that “a treating physician is only exempt from Rule 26(a)(2)(B)’s
28 written report requirement to the extent that his opinions were formed during the course of
treatment.” *Id.* at 826. Thus, for opinions formed outside the course of treatment, Rule
26(a)(2)(B) written reports are required. *Id.* For opinions formed during the course of
treatment, Rule 26(a)(2)(C) disclosures will suffice.

1 of Civil Procedure (1993 amendment), expert reports under Rule 26(a)(2)(B) must set forth
2 “the testimony the witness is expected to present during direct examination, together with
3 the reasons therefor.” Full and complete disclosures of such testimony are required on the
4 dates set forth above. Absent extraordinary circumstances, parties will not be permitted to
5 supplement expert reports after these dates. The Court notes, however, that it usually
6 permits parties to present opinions of their experts that were elicited by opposing counsel
7 during depositions of the experts. Counsel should depose experts with this fact in mind.

8 h. Each side shall be limited to one retained or specifically employed expert
9 witness per issue.

10 i. An untimely-disclosed expert will not be permitted to testify unless the party
11 offering the witness demonstrates that (a) the necessity of the expert witness could not have
12 been reasonably anticipated at the time of the disclosure deadline, (b) the opposing counsel
13 or unrepresented parties were promptly notified upon discovery of the expert witness, and
14 (c) the expert witness was promptly proffered for deposition. *See Wong v. Regents of Univ.*
15 *of Cal.*, 410 F.3d 1052, 1060 (9th Cir. 2005).

16 j. Any motions challenging expert testimony must be filed no later than 28 days
17 after the deadline for close of expert discovery.

18 k. Rule 35 physical or mental examination will be noticed by _____.

19 7. Discovery Disputes.

20 a. The parties shall not file written discovery motions without leave of the
21 Court. Except during a deposition, if a discovery dispute arises and cannot be resolved
22 despite sincere efforts to resolve the matter through personal consultation (in person or by
23 telephone), the parties shall jointly file (1) a brief written summary of the dispute, not to
24 exceed three pages per side,² explaining the position taken by each party, and (2) a joint
25 written certification that counsel or the parties have attempted to resolve the matter through
26 _____

27 ² The discovery dispute summary shall adhere to the formatting requirements of
28 LRCiv 7.1(b)(1). Discovery dispute filings that do not conform to the procedures outlined
in this paragraph, including the page limitation, may be summarily stricken.

1 personal consultation and sincere efforts as required by Local Rule of Civil Procedure
2 7.2(j) and have reached an impasse. If the opposing party has refused to personally consult,
3 the party seeking relief shall describe the efforts made to obtain personal consultation.
4 Upon review of the written submission, the Court may set a telephonic conference, order
5 written briefing, or decide the dispute without conference or briefing. Any briefing ordered
6 by the Court shall also comply with Local Rule of Civil Procedure 7.2(j).

7 b. If a discovery dispute arises in the course of a deposition and requires an
8 immediate ruling of the Court, the parties shall jointly telephone the Court to request a
9 telephone conference regarding the dispute.

10 c. Absent extraordinary circumstances, the Court will not entertain fact
11 discovery disputes after the deadline for completion of fact discovery and will not entertain
12 expert discovery disputes after the deadline for completion of expert discovery. Delay in
13 presenting discovery disputes for resolution is not a basis for extending discovery
14 deadlines.

15 8. Dispositive Motions.

16 a. Dispositive motions shall be filed no later than _____.

17 b. No party shall file more than one motion for summary judgment under Rule
18 56 of the Federal Rules of Civil Procedure without leave of the Court.

19 c. Local Rule of Civil Procedure 56.1 is suspended, except for subsection (d).
20 The Court will decide summary judgment motions under Federal Rule of Civil Procedure
21 56 only. In other words, the parties may not file separate statements of facts or separate
22 controverting statements of facts, and instead must include all facts in the motion, response,
23 or reply itself. All evidence to support a motion or response that is not already part of the
24 record must be attached to the briefs. The evidence may include only relevant excerpts
25 rather than full documents. The only evidence that may be attached to a reply is evidence
26 intended to rebut arguments raised for the first time in the non-movant's response. Because
27 no separate controverting statement of facts will be permitted, the responding party must
28 carefully address all material facts raised in the motion. Likewise, the reply must carefully

1 address all material facts raised in the response. Any fact that is ignored may be deemed
2 uncontested. Procedurally, immediately following the motion should be a numerical table
3 of contents for the exhibits. The table of contents shall include only a title for each exhibit,
4 not a description. Following the table of contents should be each exhibit (unless the
5 document is already part of the record), numbered individually. Immediately following
6 the response to the motion should be an alphabetical table of contents (again, the table of
7 contents shall include only a title for each exhibit, not a description). Following the table
8 of contents should be each exhibit (unless the document is already part of the record),
9 labeled alphabetically. By way of example, citations to exhibits attached to the motion
10 would be “(Ex. 1 at 7)” and citations to exhibits attached to the response would be “(Ex. D
11 at 3).” Citations to documents that are already part of the record shall reference the docket
12 number where the document can be found and include a pin cite to the relevant page—for
13 example, “(Doc. 15 at 4).” All papers shall be submitted via filing on the docket. Do not
14 send paper courtesy copies.

15 d. The parties shall not notice oral argument on any motion. Instead, a party
16 desiring oral argument shall place the words “Oral Argument Requested” immediately
17 below the title of the motion pursuant to Local Rule of Civil Procedure 7.2(f). The Court
18 may decline the request and decide the motion without holding oral argument. If the
19 request is granted, the Court will issue a minute entry informing the parties of the argument
20 date and time.

21 9. Motions for Attorneys’ Fees. All motions for an award of attorneys’ fees shall be
22 accompanied by an electronic Microsoft Excel spreadsheet, to be emailed to the Court and
23 opposing counsel, containing an itemized statement of legal services with all information
24 required by Local Rule 54.2(e)(1). This spreadsheet shall be organized with rows and
25 columns and shall automatically total the amount of fees requested to enable the Court to
26 efficiently review and recompute, if needed, the total amount of any award after
27 disallowing any individual billing entries. This spreadsheet does not relieve the moving
28 party of its burden under Local Rule 54.2(d) to attach all necessary supporting

1 documentation to its motion. A party opposing a motion for attorneys' fees shall email to
2 the Court and opposing counsel a copy of the moving party's spreadsheet, adding any
3 objections to each contested billing entry (next to each row, in an additional column) to
4 enable the Court to efficiently review the objections. This spreadsheet does not relieve the
5 non-moving party of the requirements of Local Rule 54.2(f) concerning its responsive
6 memorandum.

7 10. Tentative Rulings. Before holding oral argument, the Court sometimes issues a
8 "tentative ruling"—a working draft of the order resolving the pending motion(s)—to allow
9 the parties to focus their argument on the issues that seem salient to the Court and to
10 maximize their ability to address any perceived errors in the Court's logic. If a tentative
11 ruling issues, it is not an invitation to submit additional evidence or briefing. If the parties
12 choose not to proceed with oral argument after reviewing the tentative ruling, the parties
13 may stipulate to issuance of an order substantively identical to the tentative ruling.³

14 11. Good Faith Settlement Talks. All parties and their counsel shall meet in person and
15 engage in good faith settlement talks no later than _____. Upon completion of
16 such settlement talks, and in no event later than five working days after the deadline set
17 forth in the preceding sentence, the parties shall file with the Court a joint report on
18 settlement talks executed by or on behalf of all counsel. The report shall inform the Court
19 that good faith settlement talks have been held and shall report on the outcome of such
20 talks. The parties shall indicate whether assistance from the Court is needed in seeking
21 settlement of the case. The Court will set a settlement conference before a magistrate judge
22 upon request of all parties. The parties are reminded that they are encouraged to discuss
23 settlement at all times during the pendency of the litigation, but the Court will not extend
24 the case management deadlines if and when the parties elect to pursue settlement efforts,
25 including a settlement conference before a magistrate judge. The parties should plan their
26 _____

27 ³ The Court might make stylistic changes before finalizing the order. If the tentative
28 ruling contains any factual error, the parties may note the error in the stipulation to allow
for correction.

1 settlement efforts accordingly. The parties shall promptly notify the Court if settlement is
2 reached.

3 12. The Deadlines Are Real. The Court intends to enforce the deadlines set forth in this
4 Order, and the parties should plan their litigation activities accordingly.

5 13. Briefing Requirements.

6 a. All memoranda filed with the Court shall comply with Local Rule of Civil
7 Procedure 7.1(b) requiring 13-point font in text and footnotes.

8 b. Citations in support of any assertion in the text shall be included in the text,
9 not in footnotes.

10 c. To ensure timely case processing, a party moving for an extension of time,
11 enlargement of page limitations, leave to amend, or leave to file a document under seal
12 shall indicate in the motion whether the non-movant opposes the request and intends to file
13 a written response. If such a motion does not so indicate, it may be denied for failure to
14 comply with this Order.

15 14. Deadline for Notice of Readiness for Trial. The Plaintiff(s) shall notify the Court
16 that the parties are ready to proceed to trial. The Plaintiff(s) shall file and serve this notice
17 within seven days after the dispositive motion deadline if no dispositive motions are
18 pending on that date. If dispositive motions are pending, Plaintiff(s) shall file and serve
19 such notice within seven days after the resolution of the dispositive motions. The Court
20 will then issue an order identifying a window of time when the Court is available for trial
21 and instructing the parties to propose dates from within this window when all parties,
22 counsel, and witnesses are available to begin trial. The Court will then issue an order
23 setting a firm date for trial and the final pretrial conference that (a) sets deadlines for
24 briefing motions in limine, (b) includes a form for the completion of the parties' joint
25 proposed final pretrial order, and (c) otherwise instructs the parties concerning their duties
26 in preparing for the final pretrial conference.

27 15. Dismissal for Failure to Meet Deadlines. The parties are warned that failure to meet
28 any of the deadlines in this Order or in the Federal or Local Rules of Civil Procedure

1 without substantial justification may result in sanctions, including dismissal of the action
2 or entry of default.

3 16. Paper Courtesy Copies. Please ***do not send*** paper courtesy copies of filings or
4 proposed orders unless specifically ordered to do so by the Court.

5
6 Dated this ____ day of ____, ____.