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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

XXXXXX,

Plaintiffs,

v.

XXXXXX.,

Defendants.

No. CV-XX-0XXXXX-PXX-GMS

CASE MANAGEMENT ORDER

The Court enters the following Case Management Order to govern the class and merits discovery in this case. Following the ruling on the Motion for Class Certification, the Court will set a scheduling conference.

A. CLASS DISCOVERY

1. Discovery Confidentiality Order: The parties shall submit a Discovery Confidentiality Order for the Court’s approval no later than _____.

2. Deadline for Joining Parties, Amending Pleadings, and Filing Supplemental Pleadings. The deadline for joining parties, amending pleadings, and filing supplemental pleadings is _____.

3. Motion for Class Certification. The deadline for filing a Motion for Class Certification is _____.

4. Class Expert Disclosures and Reports.

a. The parties shall provide full and complete Class Expert Disclosures and Reports, as required by Rule 26(a)(2)(A)-(C) of the Federal Rules of Civil Procedure,

1 no later than _____.

2 b. Class Rebuttal Expert Disclosures and Reports, if any, shall be made
3 no later than _____. Rebuttal experts shall be limited to responding to
4 opinions stated by initial experts.

5 c. Disclosures under Rule 26(a)(2)(A) must include the identities of
6 treating physicians and other witnesses who will provide testimony under Federal Rules
7 of Evidence 702, 703, or 705, but who are not required to provide expert reports under
8 Rule 26(a)(2)(B). Rule 26(a)(2)(C) disclosures are required for such witnesses on the
9 dates set forth above. Rule 26(a)(2)(C) disclosures must identify not only the subjects on
10 which the witness will testify but must also provide a summary of the facts and opinions
11 to which the expert will testify. The summary, although clearly not as detailed as a
12 Rule 26(a)(2)(B) report, must be sufficiently detailed to provide fair notice of what the
13 expert will say at trial.¹

14 d. As stated in the Advisory Committee Notes to Rule 26 (1993
15 Amendments), expert reports under Rule 26(a)(2)(B) must set forth “the testimony the
16 witness is expected to present during direct examination, together with the reasons
17 therefor.” Full and complete disclosures of such testimony are required on the dates set
18 forth above; absent extraordinary circumstances, parties will not be permitted to
19 supplement expert reports after these dates. The Court notes, however, that it usually
20 permits parties to present opinions of their experts that were elicited by opposing counsel
21 during depositions of the experts. Counsel should depose experts with this fact in mind.

22 e. Each side shall be limited to one retained or specifically employed
23 expert witness per issue.

24 _____

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26 ¹ In *Goodman v. Staples The Office Superstore, LLC*, 644 F.3d 817 (9th Cir.
27 2011), the Ninth Circuit held that “a treating physician is only exempt from Rule
28 26(a)(2)(B)’s 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 5. Class Discovery Limitations. Depositions shall be limited to seven hours
2 each as provided in Rule 30(d)(1) of the Federal Rules of Civil Procedure. Each side
3 may propound up to 25 interrogatories, including subparts, 25 requests for production of
4 documents, including subparts, and 25 requests for admissions, including subparts.

5 6. Class Discovery. The deadline for the completion of fact discovery,
6 including discovery by subpoena, shall be _____. To ensure compliance
7 with this deadline, the following rules shall apply:

8 a. Written Discovery: All interrogatories, requests for production of
9 document, and requests for admissions shall be served at least **45 days** before the
10 discovery deadline.

11 b. The parties may mutually agree in writing, without Court approval,
12 to extend the time provided for discovery responses in Rules 33, 34, and 36 of the Federal
13 Rules of Civil Procedure. Such agreed-upon extensions, however, shall not alter or
14 extend the discovery deadlines set forth in this Order.

15 **B. MERITS DISCOVERY**

16 1. Good Faith Settlement Talks. All parties and their counsel shall meet in
17 person and engage in good faith settlement talks no later than **30 days from the Class**
18 **Certification Decision.** Upon completion of such settlement talks, and in no event later
19 than five working days after the deadline set forth in the preceding sentence, the parties
20 shall file with the Court a joint report on settlement talks executed by or on behalf of all
21 counsel. The report shall inform the Court that good faith settlement talks have been held
22 and shall report on the outcome of such talks. The parties shall indicate whether
23 assistance from the Court is needed in seeking settlement of the case. The parties shall
24 promptly notify the Court at any time when settlement is reached during the course of
25 this litigation.

26 2. Merits Expert Disclosures and Reports

27 a. The parties shall provide full and complete Merits Expert
28 Disclosures and Reports, as required by Rule 26(a)(2)(A)-(C) of the Federal Rules of

1 Civil Procedure, no later than **90 days from the Class Certification Decision.**

2 b. Merits Rebuttal Expert Disclosures and Reports, if any, shall be
3 made no later than **120 days from the Class Certification Decision.** Rebuttal experts
4 shall be limited to responding to opinions stated by initial experts.

5 c. Disclosures under Rule 26(a)(2)(A) must include the identities of
6 treating physicians and other witnesses who will provide testimony under Federal Rules
7 of Evidence 702, 703, or 705, but who are not required to provide expert reports under
8 Rule 26(a)(2)(B). Rule 26(a)(2)(C) disclosures are required for such witnesses on the
9 dates set forth above. Rule 26(a)(2)(C) disclosures must identify not only the subjects on
10 which the witness will testify but must also provide a summary of the facts and opinions
11 to which the expert will testify. The summary, although clearly not as detailed as a
12 Rule 26(a)(2)(B) report, must be sufficiently detailed to provide fair notice of what the
13 expert will say at trial.²

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17 therefor.” Full and complete disclosures of such testimony are required on the dates set
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19 supplement expert reports after these dates. The Court notes, however, that it usually
20 permits parties to present opinions of their experts that were elicited by opposing counsel
21 during depositions of the experts. Counsel should depose experts with this fact in mind.

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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 6. Discovery Disputes.

2 a. The parties shall not file written discovery motions without leave of
3 court. Except during a deposition, if a discovery dispute arises and cannot be resolved
4 despite sincere efforts to resolve the matter through personal consultation (in person or by
5 telephone), the parties shall jointly file (1) a brief written summary of the dispute with
6 explanation of the position taken by each party and (2) a written certification that the
7 counsel or the parties have attempted to resolve the matter through personal consultation
8 and sincere effort as required by LRCiv 7.2(j) and have reached an impasse. If the
9 opposing party has refused to personally consult, the party seeking relief shall describe
10 the efforts made to obtain personal consultation. Upon review of the filed written
11 summary of dispute, the Court may set a telephonic conference, order written briefing, or
12 decide the dispute without conference or briefing. Any briefing ordered by the Court
13 shall also comply with LRCiv 7.2(j).

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

17 c. Discovery disputes must be promptly resolved or presented to the
18 Court for decision. Discovery disputes must be presented in time to be decided and, if
19 relief is granted, complied with before expiration of the discovery deadline or they will
20 be deemed waived. Absent extraordinary circumstances, the Court will not entertain fact
21 discovery disputes after the deadline for completion of fact discovery and will not
22 entertain expert discovery disputes after the deadline for completion of expert discovery.
23 Delay in presenting discovery disputes for resolution is not a basis for extending
24 discovery deadlines.

25 7. Dispositive Motions.

26 a. Dispositive motions shall be filed no later than **180 days from the**
27 **Class Certification Decision.**

28 b. No party shall file more than one motion for summary judgment

1 under Rule 56 of the Federal Rules of Civil Procedure without leave of court.

2 c. Statements of fact required by Local Rule of Civil Procedure 56.1
3 shall not exceed ten pages in length, exclusive of exhibits.

4 d. The parties shall not notice oral argument on any motion. Instead, a
5 party desiring oral argument shall place the words "Oral Argument Requested"
6 immediately below the title of the motion pursuant to Local Rule of Civil Procedure
7 7.2(f). The Court will issue an order scheduling oral argument as it deems appropriate.

8 8. The Deadlines Are Real. The parties are advised that the Court intends to
9 enforce the deadlines set forth in this Order and should plan their litigation activities
10 accordingly. The parties are specifically informed that the Court will not, absent truly
11 unusual circumstances, extend the schedule in this case to accommodate settlement talks.

12 9. Briefing Requirements.

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

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

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